



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from: General Secretariat of the Council
to: Delegations
No. Cion prop.: 17752/11 ATO 149 CADREFIN 159

Subject: Proposal for a Council Regulation on Union support for the nuclear
 decommissioning assistance programmes in Bulgaria, Lithuania and Slovakia

Based on the suggestions received, the Presidency prepared the attached text to be discussed at the next WPAQ meeting on 13 April 2012.

The changes are in **bold underline**; deletions are marked with ~~strikethrough~~.

Proposal for a
COUNCIL REGULATION
**on Union support for the nuclear decommissioning assistance programmes in Bulgaria,
Lithuania and Slovakia.**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 203 thereof,

Having regard to the proposal from the European Commission¹,

Having regard to the opinion of the European Parliament²,

Whereas:

- (1) According to Article 30 of the Protocol concerning the conditions and arrangements for admission of the Republic of Bulgaria and Romania to the European Union, Bulgaria committed itself to the closure of Units 1 and 2 and Units 3 and 4 of the Kozloduy nuclear power plant by 31 December 2002 and 31 December 2006, respectively and to the subsequent decommissioning of these units. In line with its obligations, Bulgaria shut down all units concerned within the respective deadlines.
- (2) According to Protocol No. 4 on the Ignalina nuclear power plant in Lithuania attached to the Act of accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, acknowledging in 2004 the readiness of the Union to provide adequate additional Community assistance to the efforts by Lithuania to decommission the Ignalina Nuclear Power Plant and highlighting this expression of solidarity, Lithuania committed to the closure of Unit 1 of the Ignalina Nuclear Power Plant before 2005 and of Unit 2 of this plant by 31 December 2009 at the latest, and to the subsequent decommissioning of these units. In line with its obligations, Lithuania shut down all units concerned within the respective deadlines.

¹ OJ C, , p..

² OJ C, , p..

- (3) According to Protocol No. 9 on unit 1 and unit 2 of the Bohunice V1 nuclear power plant in Slovakia attached to the Act of accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, Slovakia committed itself to the closure of unit 1 and unit 2 of the Bohunice V1 nuclear power plant by 31 December 2006 and 31 December 2008, respectively and to the subsequent decommissioning of these units. In line with its obligations, Slovakia shut down all units concerned within the respective deadlines.
- (4) In line with the Accession Treaty obligations and with the support of Community assistance, Bulgaria, Lithuania and Slovakia have closed the nuclear power plants and made significant progress towards their decommissioning. Further work is necessary in order to continue the progress with the actual decontamination, dismantling, and **management of spent fuel and radioactive waste** ~~demolition~~ operations **and to implement the steady process towards the decommissioning end state** ~~until the decommissioning process is safely implemented in accordance with respective decommissioning plans [], whilst ensuring that the highest safety standards are applied. Based on the available estimates, completion of decommissioning work will require substantial additional financial resources.~~
- (4a) Recognising that the premature shutdown and consequent decommissioning of the Ignalina Power Plant with two 1500 MW RBMK reactor units ~~inherited from the Soviet Union~~ is of an unprecedented nature and represents for Lithuania an exceptional financial burden ~~not commensurate with the size and economic strength of the country.~~
- (4b) Recognising that the premature shutdown and consequent decommissioning of the V1 Bohunice Power Plant with two units with the capacity of 880 MW type WWER 440 V 230 **is of an unprecedented nature and represents for Slovakia an exceptional financial burden** caused the Slovak Republic a financial burden of direct as well as indirect costs in the amount of 4,615.6 MEUR.
- (4c) Recognising that the premature shutdown and consequent decommissioning of four units type WWER 440 V 230 of Kozloduy Nuclear Power Plant with overall capacity 1760 MW **is of an unprecedented nature** has posed a heavy long term burden on Bulgarian citizens in terms of energy, economic, environmental and social implications **and represents for Bulgaria an exceptional financial burden** the financial dimensions of which are assessed to surmount 4 billion euros.

- (5) The Union has committed to assist Bulgaria, Lithuania and Slovakia in addressing the exceptional financial burden implied by the decommissioning process, without prejudice to the principle that the final responsibility of decommissioning rests with the Member States concerned. Since the pre-accession period, Bulgaria, Lithuania and Slovakia have received substantial financial support from the Union, notably through the Kozloduy, Ignalina and Bohunice Programmes established for the period 2007 - 2013. The Union financial support under these Programmes will terminate in 2013.
- (6) Acknowledging the Union's commitments and following the request for further funding from Bulgaria, Lithuania and Slovakia, provision has been made in the Commission proposal for the next Multi-Annual financial framework for the period 2014-2020: "A Budget for Europe 2020"³ for a sum of [EUR 700 million] from the general budget of the European Union for nuclear safety and decommissioning. From this the amount [EUR 500 million] in 2011 prices which is about [EUR 553 million] in the current prices is foreseen for a new Programme to further support the decommissioning of the Bohunice V1 units 1-2 and the Ignalina units 1-2 over the period from [2014 to 2017]⁴ and the Kozloduy units 1-4 nuclear power plants over the period from [2014 to 2020]. Funding under this new Programme should be made available in a gradually decreasing manner.
- (6a) The amount of the appropriations allocated to the Programme **and**, as well as the programming period and distribution amongst the Kozloduy, Ignalina and Bohunice Programmes may be reviewed based on the results of the intermediary and the final evaluation reports.
- (7) The support covered by this Regulation should ensure seamless continuation of decommissioning and concentrate on measures to **implement the steady process towards the decommissioning end state⁵ whilst ensuring that the highest safety standards are applied** reach an irreversible state within the safe decommissioning process, as such **measures** bringing the greatest Union added value **and provide added value to the region and the countries concerned**, while ensuring the transition towards Member State funding for the completion of decommissioning. The ultimate responsibility for nuclear safety remains with the Member States concerned, which also implies the ultimate responsibility for its financing, including the financing of decommissioning. This Regulation does not prejudice the outcome of any future State aid procedures that may be undertaken in accordance with Articles 107 and 108 of the Treaty.

³ COM(2011) 500

⁴ **Within the currently foreseen budgetary amounts the period might be extended to 2020**

⁵ **IAEA WS-R-5 (2006)**

- (8) The provisions of this Regulation are without prejudice to the rights and obligations arising from Accession Treaties, in particular provisions of the Protocols mentioned in recitals 1 to 3 of the preamble.
- (9) The decommissioning of the nuclear power plants covered by this Regulation should be carried out with recourse to the best available technical expertise, and with due regard to the nature and technological specifications of the units to be shut down, in order to ensure the highest possible efficiency, **thus taking into account international best practices**.
- (10) The activities covered by this Regulation and the operations which they support should comply with applicable Union and national law which is directly or indirectly linked to the implementation of the operation. The decommissioning of the nuclear power plants covered by this Regulation should be carried out in line with the legislation on nuclear safety⁶ and waste management⁷ and on the environment⁸.

(10a) The activities covered by this Regulation and the operations which they support should be based on an up to date decommissioning plan covering the decommissioning activities, their associated schedule, costs and required human resources. The costs should be established according internationally recognized standards for decommissioning cost estimation, such as for example the International Structure for Decommissioning Costing jointly published by the NEA, IAEA and the European Commission.

- (11) An effective control of the evolution of the decommissioning process will be ensured by the Commission in order to assure the highest Union added value of the funding allocated within this Regulation, although the final responsibility for the decommissioning rests with the Member States. This includes effective performance measurement and assessment of corrective measures during the programme.

⁶ OJ L 172, 2.7.2009, p.18; Council Directive 2009/71/Euratom of 25 June 2009 establishing a Community framework for the nuclear safety of nuclear installations.

⁷ OJ L 199, 2.8.2011, p. 48; Council Directive 2011/70/Euratom of 19 July 2011 establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste.

⁸ In particularly Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment OJ L 175, 5.7.1985, p. 40; Directive 2009/31/EC of the European Parliament and of the Council 23 April 2009 (OJ L 140, 5.6.2009, p.114).

- (12) The financial interests of the Union should be protected through proportionate measures throughout the expenditure cycle, including the prevention, detection and investigation of irregularities, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, penalties.
- (13) Since the objectives of the action to be taken, and in particular the provisions for adequate financial resources for the continuation of safe decommissioning, cannot be sufficiently achieved by the Member States, the Union may **in extraordinary cases** adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as also set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(13a) The contribution under the Kozloduy, Ignalina and Bohunice Programmes may, for certain measures in well founded exceptional cases, require a high level of co-financing. Every effort should be made to continue the co-financing practice established under the pre-accession assistance and the assistance given over the period 2007-2013 for decommissioning efforts of Bulgaria, Lithuania and Slovakia as well as to attract co-financing from other sources as appropriate.

- (14) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission as regards the adoption of annual work programmes and detailed implementing procedures. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers⁹.

⁹ OJ L 55, 28.2.2011, p. 13.

- (15) Council Regulation (EC) 1990/2006 of 21 December 2006 on the implementation of Protocol No 4 on the Ignalina nuclear power plant in Lithuania to the Act of accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (Ignalina Programme)¹⁰, Regulation (Euratom) No 549/2007 of 14 May 2007 on the implementation of Protocol No 9 on Unit 1 and Unit 2 of the Bohunice V1 nuclear power plant in Slovakia to the Act concerning the conditions of accession to the European Union of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (Bohunice Programme)¹¹ and Council Regulation (Euratom) 647/2010 of 22 July 2010 on financial assistance of the Union with respect to the decommissioning of Units 1 to 4 of the Kozloduy Nuclear Power Plant in Bulgaria (Kozloduy Programme)¹² should accordingly be repealed.
- (16) Due account was taken of the Court of Auditors' Special Report No 16/2011 on EU financial assistance for the decommissioning of nuclear plants in Bulgaria, Lithuania and Slovakia, its recommendations and the reply from the Commission.

¹⁰ OJ L 411, 30.12.2006, p.10.

¹¹ OJ L 131, 23.5.2007, p.1.

¹² OJ L 189, 22.7.2010, p.9.

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation establishes the multi-annual Nuclear Decommissioning Assistance Programme 2014 - 2020 ('the Programme') laying down rules for [] ~~further~~ implementation of the Union's financial support for measures connected with the decommissioning of the Kozloduy (units 1 to 4; the Kozloduy Programme), Ignalina (units 1 and 2; the Ignalina Programme) and Bohunice V1 (units 1 and 2; the Bohunice Programme) nuclear power plants.

Article 2

Objectives

1. The general objective of the Programme is to assist the Member States concerned to **implement the steady process towards the decommissioning end states** ~~reach an irreversible state within the safe decommissioning process~~ of Kozloduy units 1 to 4, Ignalina units 1 and 2 and Bohunice V1 units 1 and 2 nuclear power plants, in accordance with their respective decommissioning plans, while maintaining [] the highest level of safety.
2. Within the funding periods the main specific objectives for the Kozloduy, Ignalina and Bohunice Programmes are:
 - (a) Kozloduy Programme:
 - (i) performing dismantling in the turbine halls of units 1 to 4 and in auxiliary buildings, to be measured by the number and type of systems dismantled;
 - (ii) dismantling of large components and equipments in the reactor buildings of units 1 to 4, to be measured by the number and type of systems and equipments dismantled;
 - (iii) safely managing the decommissioning waste in accordance with a detailed waste management plan, to be measured by the quantity and type of **safely** conditioned waste, **including through selecting an**, ~~as well as the appropriateness of the container~~ **for** ~~to~~ the type of waste;

- (b) Ignalina Programme:
- (i) defueling of the reactor core of unit 2 and the unit 1 and 2 reactor fuel ponds into the dry spent fuel storage facility, to be measured by the number of unloaded fuel assemblies;
 - (ii) safely maintaining the reactor units [], to be measured[] by the number of registered incidents;
 - (iii) performing dismantling in the turbine hall and other auxiliary buildings and safely managing the decommissioning waste in accordance with a detailed waste management plan to be measured by the type and number of auxiliary systems dismantled, the quantity and type of **safely** conditioned waste, **including through selecting an**, as well as the appropriateness of the container for to the type of waste;
- (c) Bohunice Programme:
- (i) performing dismantling in the turbine hall and auxiliary buildings of reactor V1, to be measured by the number and type of systems dismantled;
 - (ii) dismantling of large components and equipments in the V1 reactor buildings, to be measured by the number and type of systems and equipments dismantled;
 - (iii) safely managing the decommissioning waste in accordance with a detailed waste management plan, to be measured by the quantity and type of **safely** conditioned waste, **including through selecting an**, as well as the appropriateness of the container for to the type of waste;

2a. The above Kozloduy, Ignalina and Bohunice Programmes may also include measures to maintain a high level of operational safety at the nuclear power plants, including support with respect to plants personnel.

3. Milestones and target end dates shall be defined in the act as referred to under Article 6(2).

Article 3

Budget

1. The financial envelope for the implementation of the Programme for the period 2014 to 2020 shall be [EUR 552 947 000]¹³ in current prices.

That amount shall be distributed among the Kozloduy, Ignalina and Bohunice Programmes as follows:

- (a) EUR [208 503 000] for the Kozloduy Programme for the period [2014 to 2020];
 - (b) EUR [229 629 000] for the Ignalina Programme for the period [2014 to 2017]¹⁴;
 - (c) EUR [114 815 000] for the Bohunice Programme for the period [2014 to 2017].
2. The Commission will review the performance of the Programme and assess the progress of the Kozloduy, Ignalina and Bohunice Programmes against the milestones and target dates referred to in Art 2.3 by the end of ~~2016~~ 2015 within the framework of the interim evaluation referred to in Art. 8. []
 3. The financial allocation for the Kozloduy, Ignalina and Bohunice Programmes may also cover expenses pertaining to preparatory, monitoring, control, audit and evaluation activities which are required for the management of the programme and the achievement of its objectives; in particular, studies, meetings of experts, information and communication actions, including corporate communication of the political priorities of the European Union as far as they are related to the general objectives of this Regulation, expenses linked to IT networks focusing on information processing and exchange, together with all other technical and administrative assistance expenses incurred by the Commission for the management of the programme can be covered.

The financial allocation may also cover the technical and administrative assistance expenses necessary to ensure the transition between the Programme and the measures adopted under Council Regulation (EC) 1990/2006, Regulation (Euratom) No 549/2007 and Council Regulation (Euratom) 647/2010.

¹³ *Financial envelope to be addressed by the FoP-MFF group.*

¹⁴ **Within the currently foreseen budgetary amounts, the period might be extended to 2020.**

4. ~~The contribution under the Kozloduy, Ignalina and Bohunice Programmes may, for certain measures, amount to up to 100 % of the total expenditure. Every effort should be made to continue the co-financing practice established under the pre-accession assistance and the assistance given over the period 2007-2013 for all 3 Member States' decommissioning efforts as well as to attract co-financing from other sources as appropriate.~~
5. ~~The Ignalina Programmes shall also include measures to support plant personnel in maintaining a high level of operational safety at the Ignalina nuclear power plants in the periods to the closure and during the decommissioning of the reactor units.~~

Article 4

Ex ante conditionalities

1. By 1 January 2014 Bulgaria, Lithuania and Slovakia shall take the appropriate measures to fulfil the following *ex ante* conditionalities:
- (a) Comply with the Euratom Treaty's [] *acquis* in the area of nuclear safety; in particular regarding [] the transposition into national law of the Council Directive 2009/71/Euratom⁶ on nuclear safety and the Council Directive 2011/70/Euratom on the management of spent fuel and radioactive waste⁷.
 - (b) Establish **in a national framework** an overall financing plan that ~~identifying~~ies the full costs **and the funding sources** required for the safe completion of decommissioning of the nuclear reactor units, **including management of spent fuel and radioactive waste**, concerned by this Regulation with the clear identification of the funding sources, anchored in a national legal framework and in accordance with applicable State aid rules.
 - (c) Submit to the Commission a revised detailed decommissioning plan, **for the time period referred to in Article 3(1) for each of these Programmes, setting up main objectives and tasks** broken down to the level of decommissioning activities, **anticipated projects pipeline**, schedule and corresponding cost structure **based on** ~~in~~ accordance with an internationally recognized standard for decommissioning cost estimation¹⁵.
- 1a. ~~Before 1 January 2014~~ Bulgaria, Lithuania and Slovakia shall provide the Commission with **the necessary** information **about fulfilment of** showing that they fulfil the above mentioned

¹⁵ *Meaning: the International Structure for Decommissioning Costing (ISDC: NEA-IAEA-EC report) explained in Recital 10a*

ex ante conditionalities, at the latest by the time of the budgetary commitment in 2014.

2. The Commission shall assess the information provided on the fulfilment of the *ex ante* conditionalities when preparing the 2014 annual work programme as referred to in Article 6(1). If there is a reasoned opinion by the Commission in respect of an infringement under Article 258 of the Treaty on the Functioning of the European Union for non-compliance with conditionality 1(a) or if there is non-compliance with conditionalities 1(b) or 1(c), ~~it~~ **the Commission** may decide, as part of its decision on the adoption of ~~when adopting~~ the 2014 annual work programme, to suspend all or part of the Union financial assistance pending the satisfactory completion of the *ex ante* conditionalities.

Article 5

Forms of implementation

1. The Programme shall be implemented by one or several of the forms provided for by Regulation (EU) No XXX/2012 [New Financial Regulation], in particular, grants and procurements.
2. The Commission may entrust the implementation of the Union's financial assistance under this Programme to the bodies set out in Article 55(1)(c) of Regulation (EU) No XXXX/2012 [New Financial Regulation].

Article 5a

Annual work programmes

1. At the beginning of each year of the 2014-2020 period, the Commission shall adopt one joint annual work programme for Kozloduy, Ignalina and Bohunice Programmes specifying **for each Programme** the objectives, expected results, related performance indicators and timeline for the use of funds under each annual financial commitment.
2. At the end of each year of the 2014-2020 period, the Commission establishes and transmit to the Member states an evaluation report of the implementation of the joint annual work carried out in the previous years ~~programme.~~ This evaluation report serves as a basis for the adoption of the next joint annual work programme.

[3. Joint annual work programmes shall be adopted in accordance with the examination procedure referred to in Article 9(2).]¹⁶

Article 6

[] Detailed implementation procedures

[]

2. The Commission shall adopt not later than 31 December 2014, detailed implementation procedures for the duration of the Programme. The act setting out the implementation procedures shall also ~~provide, if necessary, precisions on~~ **define in more detail for** the Kozloduy, Ignalina and Bohunice Programmes [] **objectives,** expected ~~general and specific~~ results, ~~activities, detailed milestones, as well as~~ [] the corresponding performance indicators. It will contain the revised detailed decommissioning plans as referred to under Article 4(1)(c) that shall serve as baseline for the monitoring of the progress and the timely achievement of the expected results.
- [3. The [] acts setting out the detailed implementation procedures referred to in paragraph 1 and 2 shall be adopted in accordance with the examination procedure referred to in Article 9(2).]¹⁷

Article 7

Protection of the financial interests of the European Union

1. The Commission shall take appropriate measures ensuring that, when actions financed under this Regulation are implemented, the financial interests of the European Union are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by the recovery of the amounts wrongly paid and, where appropriate, by effective, proportionate and deterrent penalties.

¹⁶ *Still under review by legal service*

¹⁷ *Still under review by legal service*

2. The Commission or its representatives and the Court of Auditors shall have the power of audit, on the basis of documents and on-the-spot, over all grant beneficiaries, contractors and subcontractors who have received Union funds.

The European Anti-fraud Office (OLAF) may carry out on-the-spot checks and inspections on economic operators concerned directly or indirectly by such funding in accordance with the procedures laid down in Regulation (Euratom, EC) No 2185/96 with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the European Union in connection with a grant agreement or grant decision or a contract concerning Union funding.

Without prejudice to the first and second sub-paragraphs, cooperation agreements with third countries and international organisations and grant agreements and grant decisions and contracts resulting from the implementation of this Regulation shall expressly empower the Commission, the Court of Auditors and OLAF to conduct such audits, on-the-spot checks and inspections.

Article 8

Intermediary Evaluation

1. No later than end ~~2016~~ 2015, an intermediary evaluation report shall be established by the Commission, in close cooperation with the Member States and beneficiaries, on the achievement of the objectives of all the measures, at the level of results and impacts, the efficiency of the use of resources and its Union added value, in view of a decision amending or suspending the measures. Based on the results of this assessment, the Commission may review the amount of the appropriations allocated to the Programme, as well as the programming period and distribution amongst the Kozloduy, Ignalina and Bohunice Programmes. The evaluation shall additionally address the scope for modification of the specific objectives and detailed implementation procedures described respectively at article 2(2) and article 6(2). []
3. The intermediary evaluations shall take account of progress against performance indicators as referred to in Article 2(2).
4. The Commission shall communicate the conclusions of this [] evaluations to the European Parliament and the Council.

Article 8a
Final evaluation

1. Not later than one year after ~~Before~~ December 31st 2020, the Commission shall establish[], in close cooperation with the Member States and beneficiaries, a final evaluation report on [] the effectiveness and efficiency of the Programme, [] as well as the effectiveness of financed measures in terms of impacts, use of resources and added-value for the Union.
2. The final evaluation shall take account of progress against performance indicators as referred to in Article 2(2).
3. The Commission shall communicate the conclusions of this evaluation to the European Parliament and the Council.

[Article 9
Committee

1. The Commission shall be assisted by a Committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, the procedure provided for in Article 5 of Regulation (EU) No 182/2011 shall apply.
Where the opinion of the Committee is to be obtained by written procedure, the procedure shall be terminated without result when, within the time limit for delivery of the opinion, the chair of the Committee so decides or a simple majority of committee members so requests.¹⁸

Article 10
Transitional provisions

This Regulation shall not affect the continuation or modification, including the total or partial cancellation, of the projects concerned, until their closure, or of financial aid awarded by the Commission on the basis of Council Regulation (EC) 1990/2006, Regulation (Euratom) No 549/2007 and Council Regulation (Euratom) 647/2010, or any other legislation applying to that assistance on 31 December 2013, which shall continue to apply to the actions concerned until their closure.

¹⁸ *Still under review by legal service.*

Article 11

Repeal

Council Regulation (EC) 1990/2006, Regulation (Euratom) No 549/2007 and Council Regulation (Euratom) 647/2010 are repealed with effect from 1 January 2014.

Article 12

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2014.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council

The President
