



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 8 May 2012

9707/12

**Interinstitutional File:
2011/0363 (NLE)**

**ATO 70
CADREFIN 240**

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

Delegations will find attached the outcome of the work of the Working Party on Atomic Questions as assessed by the Presidency on the basis of consultations so far. As noted in the message concluding the silence procedure good note has been taken of reservations linked to issues of an horizontal nature (e.g. applicability of comitology) and to the principle according to which nothing is agreed until everything is agreed. Likewise the outcome reflected in the attached text is without prejudice to comments of a legal nature concerning the legal basis ¹ of the proposed Regulation or article 4.

Without prejudice to future work by the WPAQ this outcome will be brought to the attention of the horizontal working party dealing with Heading 1 of the MFF.

¹ See in this respect doc. 9526/12.

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 Commission²,

Having regard to the opinion of the European Parliament³,

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 ('Protocol No. 4'), 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.

² OJ C, , p..

³ 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 operations and to implement the steady process towards the decommissioning end state 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. Protocol No. 4 states that the Union assistance under the Ignalina Programme will be seamlessly continued and extended beyond 2006, for the period of next financial perspectives.
- (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 caused the Slovak Republic, besides social and energy implications, a significant financial burden of direct as well as indirect costs.
- (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 has posed a heavy long-term burden on Bulgarian citizens in terms of energy, economic, environmental and social implications.

- (5) The Union has committed to assist Bulgaria, Lithuania and Slovakia in addressing the exceptional financial burden implied by the decommissioning process. 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 established for the period 2007 - 2013 under these Programmes will terminate in 2013.
- (6) Acknowledging the Union's commitment according to Protocol No. 4 on the Ignalina Nuclear Power Plant 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"⁴ 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]⁵ and the Kozloduy units 1-4 nuclear power plants over the period from [2014 to 2020].
- (6a) The amount of the appropriations allocated to the Programmes, as well as the programming period and distribution amongst the Kozloduy, Ignalina and Bohunice Programmes may be reviewed based on the results of the mid-term and the final evaluation report.
- (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 state⁶ whilst ensuring that the highest safety standards are applied, as such measures bring the greatest Union added value, while the ultimate responsibility for nuclear safety remains with the Member States concerned. 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 on the Functioning of the European Union.
- (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.

⁴ COM(2011) 500

⁵ *Within the currently foreseen budgetary amounts and their distribution by Programmes, it is suggested to extend the Programmes period for Lithuania and Slovakia to 2020.*

⁶ IAEA WS-R-5 (2006)

- (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 safety⁷ and waste management⁸ and on the environment⁹.
- (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.
- (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.

⁷ 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.

⁸ 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.

⁹ 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).

- (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) Certain measures under the Kozloduy, Ignalina and Bohunice Programmes may require a high level of ~~co~~-financing from the Union, which may, in well founded exceptional cases, amount up to the full amount of the funding. However, 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 powers¹⁰.
- (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)¹¹, 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)¹² 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)¹³ should accordingly be repealed.

¹⁰ OJ L 55, 28.2.2011, p. 13.

¹¹ OJ L 411, 30.12.2006, p.10.

¹² OJ L 131, 23.5.2007, p.1.

¹³ OJ L 189, 22.7.2010, p.9.

- (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.

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 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 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;

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

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]¹⁴ in current prices. This Regulation does not prejudice in anyway financial commitments under future Multiannual Financial Frameworks.

¹⁴ *Financial envelope to be addressed by the FoP-MFF group.*

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 2020]¹⁵;
 - (c) EUR [114 815 000] for the Bohunice Programme for the period [2014 to 2020]¹⁵.
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 2017 within the framework of the mid-term evaluation referred to in Art. 8. 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.
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 may 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.

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:

¹⁵ *Within the currently foreseen budgetary amounts and their distribution by Programmes, it is suggested to extend the Programmes period for Lithuania and Slovakia to 2020.*

- (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/Euratom⁷ on nuclear safety and the Council Directive 2011/70/Euratom on the management of spent fuel and radioactive waste.
 - (b) Establish in a national framework a financing plan identifying the full costs and the envisaged 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.
 - (c) Submit to the Commission a revised detailed decommissioning plan broken down to the level of decommissioning activities, schedule and corresponding cost structure based on an internationally recognized standard for decommissioning cost estimation.
- 1a. Bulgaria, Lithuania and Slovakia shall provide the Commission with the necessary information about fulfilment of the above mentioned *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 conditionalities 1(b) or 1(c) is not satisfactory, the decision on suspension of all or part of the Union financial assistance shall be taken in accordance with the examination procedure referred to in Article 9(2). Such decision would be reflected in the adoption of the 2014 annual work programme. The amount of the suspended assistance shall be defined following criteria set out in the act referred to in Article 6(2).

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 the year, the Commission shall adopt, by means of implementing acts, a 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, in accordance with the examination procedure referred to in Article 9(2).
2. At the end of the year, the Commission establishes a progress report of the implementation of the work carried out in the previous years. This progress report shall be transmitted the European Parliament and the Council and shall be a basis for the adoption of the next joint annual work programme.

Article 6
Detailed implementation procedures

The Commission shall adopt, by means of implementing acts, not later than 31 December 2014, detailed implementation procedures for the duration of the Programme, in accordance with the examination procedure referred to in Article 9(2). The act setting out the implementation procedures shall also define in more detail for the Kozloduy, Ignalina and Bohunice Programmes objectives, expected results, milestones, target end dates, as well as the corresponding performance indicators. It shall 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.

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.

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

Mid-term Evaluation

1. No later than end 2017, a mid-term evaluation report shall be established by the Commission, in close cooperation with the Member States, 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. The evaluation shall additionally address the scope for modification of the specific objectives and detailed implementation procedures described respectively in article 2(2) and article 6(2).
2. The mid-term evaluations shall take account of progress against performance indicators as referred to in Article 2(2).
3. The Commission shall communicate the conclusions of this[]evaluations to the European Parliament and the Council.

Article 8a
Final evaluation

1. The Commission shall conduct, in close cooperation with the Member States, an ex-post evaluation 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. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the opinion of the committee is to be obtained by written procedure, that[] 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.

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.

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
