



Council of the
European Union

Brussels, 4 September 2018
(OR. en)

11130/18

**Interinstitutional File:
2018/0245(NLE)**

**ATO 52
CADREFIN 160**

NOTE

From: General Secretariat of the Council
To: Delegations

No. Cion doc.: 10226/18
+ ADD 1
+ ADD 2

Subject: Proposal for a COUNCIL REGULATION establishing a European Instrument for Nuclear Safety complementing the Neighbourhood, Development and International Cooperation Instrument on the basis of the Euratom Treaty

1. Delegations will find in the Annex the first revision of the above-mentioned proposal.
2. New text is **bold underlined**, deletions are ~~strikethrough~~.

Proposal for a

COUNCIL REGULATION

establishing a European Cooperation Instrument for Nuclear Safety complementing the Neighbourhood, Development and International Cooperation Instrument on the basis of the Euratom Treaty

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 Commission,

Having regard to the opinion of the European Parliament¹,

Whereas:

- (1) The Union should uphold and promote the Union's values and interests worldwide in order to pursue the objectives and principles of the Union's external actions, as laid down in Articles 3(5), 8 and 21 of the Treaty on European Union.
- (2) In order to implement the new international framework established by the 2030 Agenda, the Global Strategy and the Consensus, Regulation No .../.... (NDICI) aims at increasing the coherence and ensuring the effectiveness of the Union's external action by concentrating its efforts through a streamlined instrument to improve the implementations of the different external action policies.

¹ Placeholder for the Opinion reference

- (3) The objective of the present Programme "European **Cooperation** Instrument for Nuclear Safety complementing the Neighbourhood, Development and International Cooperation Instrument on the basis of the Euratom Treaty" should be to promote the establishment of **a high level of** effective and efficient nuclear safety, radiation protection, and the application of efficient and effective safeguards of nuclear materials in third countries, building on its own activities within the Union.
- (4) This Regulation forms part of the framework devised for the planning of cooperation and should complement those nuclear cooperation measures that are financed under [the Regulation NDICI].
- (5) Member States are signatory parties of the Nuclear Non Proliferation Treaty and **apply** the Additional Protocol **to their respective IAEA safeguards agreements**.
- (5a) In order to maintain and promote the continuous improvement of nuclear safety and its regulation, the Council adopted Directive 2009/71/Euratom as amended by Directive 2014/87/Euratom² and Directive 2011/70/Euratom³. These Directives and the high standard of nuclear safety and of radioactive waste and spent fuel management implemented in the Community are examples to be used in order to encourage third countries to adopt similar high standards.**
- (5b) The European Atomic Energy Community (Euratom) and its Member States are Contracting Parties to the Convention on Nuclear Safety and the Joint Convention on the Safety of Spent Management and on the Safety of Radioactive Waste Management.**

² Council Directive (Euratom) No 87/2014 of 8 July 2014 amending Directive 2009/71/Euratom of 25 June 2009 establishing a Community framework for nuclear safety of nuclear installations (OJ L 219 25.7.2014 p 42)

³ 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 (OJ L 199, 2.8.2011, p 48)

- (6) The Community should continue its close cooperation, in accordance with Chapter 10 of the Euratom Treaty with the International Atomic Energy Agency (IAEA), in relation to nuclear safety and nuclear safeguards, in furtherance of the objectives of Chapters 3 and 7 of Title II. **The Community cooperates with other international organisations and programmes pursuing similar objectives.**
- (7) This Instrument should provide for actions in support of those objectives and **in line with** ~~build on~~ the actions previously supported under Regulation (Euratom) No 237/2014⁴ concerning nuclear safety **culture and implementation of the highest nuclear safety and radiation protection standards and continuous improvement of nuclear safety, responsible and safe management of spent fuel and radioactive waste and the decommissioning of former nuclear sites and installations** and nuclear safeguards in third countries, in particular in acceding countries, candidate countries, ~~and~~ potential candidates **and countries covered by the European Neighbourhood Policy.**
- (8) The implementation of this Regulation should be based on consultation, where relevant, with the relevant authorities of the Member States, and on a dialogue with the partner countries.
- (9) Whenever possible and appropriate, the results of the Community's external action should be monitored and assessed on the basis of pre-defined, transparent, country-specific and measurable indicators, adapted to the specificities and objectives of the Instrument and preferably based on the results framework of the partner country.

⁴ Council Regulation (Euratom) No 237/2014 of 13 December 2013 establishing an Instrument for Nuclear Safety Cooperation (OJ L 77 15.3.2014 p 109.)

- (10) The Union and the Community should seek the most efficient use of available resources in order to optimise the impact of their external action. That should be achieved through coherence and complementarity between the Union's external financing instruments, as well as the creation of synergies with other Union policies and Programmes. In order to maximise the impact of combined interventions to achieve a common objective, this Regulation should allow for the combination of funding with other Union Programmes, as long as the contributions do not cover the same costs.
- (11) This Regulation lays down a financial envelope for this Instrument, which is to constitute the financial reference amount, within the meaning of point 18 of the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management⁵ for the European Parliament and the Council during the annual budgetary procedure.
- (12) The rules and procedures laid down in Regulation (EU) No .../.... (NDICI) should apply for the implementation of this Regulation, as appropriate, and the implementing provisions under this Regulation should mirror those provided for in the Regulation (EU) No .../... (NDICI).

⁵ OJ C 373, 20.12.2013, p. 1.

- (13) Horizontal financial rules adopted by the European Parliament and the Council on the basis of Article 106(a) of the Euratom Treaty and Article 322 of the Treaty on the Functioning of the European Union should apply to this Regulation. These rules are laid down in the Financial Regulation and determine in particular the procedure for establishing and implementing the budget through grants, procurement, prizes, indirect implementation, financial assistance, budget support, trust funds, financial instruments and budgetary guarantees, and provide for checks on the responsibility of financial actors. [Rules adopted on the basis of Article 106(a) of the Euratom Treaty and Article 322 of the Treaty on the Functioning of the EU also concern the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in Member States and third countries, as the respect for the rule of law is essential for sound financial management and effective EU funding].
- (14) The types of financing and the methods of implementation under this Regulation should be chosen on the basis of their ability to achieve the specific objectives of the actions and to deliver results, taking into account, in particular, the costs of controls, the administrative burden, and the expected risk of non-compliance. This should include consideration of the use of lump sums, flat rates and unit costs, as well as financing not linked to costs as referred to in Article 125(1) of the Financial Regulation.
- (15) Annual ~~or multi-annual~~ action plans and measures should constitute work programmes under the Financial Regulation. Annual or multi-annual action plans consist of a set of measures grouped into one document.

(16) In accordance with the Financial Regulation, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council⁶, Council Regulation (EC, Euratom) No 2988/95⁷, Council Regulation (Euratom, EC) No 2185/96⁸ and Council Regulation (EU) 2017/1939⁹, the financial interests of the Union are to be protected through effective and proportionate measures, including the prevention, detection, correction and investigation of irregularities, including fraud, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, the imposition of administrative sanctions. In particular, in accordance with Regulation (EU, Euratom) No 883/2013 and Regulation (Euratom, EC) No 2185/96 the European Anti-Fraud Office (OLAF) may carry out administrative investigations, including on-the-spot checks and inspections, with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union. In accordance with Regulation (EU) 2017/1939, the European Public Prosecutor's Office ('EPPO') may investigate and prosecute fraud and other criminal offences affecting the financial interests of the Union, as provided for in Directive (EU) 2017/1371¹⁰ of the European Parliament and of the Council. In accordance with the Financial Regulation, any person or entity receiving Union funds is to fully cooperate in the protection of the Union's financial interests and grant the necessary rights and access to the Commission, OLAF and the European Court of Auditors, and to ensure that any third parties involved in the implementation of Union funds grant equivalent rights; for this reason, agreements with third countries and territories and with international organisations, and any contract or agreement resulting from the implementation of this Regulation should contain provisions expressly empowering the Commission, the Court of Auditors and OLAF to conduct such audits, on-the-spot checks and inspections, according to their respective competences and ensuring that any third parties involved in the implementation of Union funding grant equivalent rights.

⁶ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248 18.9.2013 p.1)

⁷ Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.95, p.1).

⁸ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292 15.11.1996 p.2)

⁹ OJ L 283, 31.10.2017, C , , p.1. .

¹⁰ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ 198 28.7.2017 p.29)

- (17) In order to ensure uniform conditions for the implementation of the relevant provisions of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011¹¹ of the European Parliament and of the Council.
- (18) The references to Union instruments in Article 9 of Council Decision 2010/427/EU¹², should be read as references to this Regulation and to those Regulations referred to herein. The Commission should ensure that this Regulation is implemented in accordance with the role of the EEAS as provided in that Decision.
- (19) The envisaged actions as provided for hereunder should strictly follow the conditions and procedures set out by the restrictive measures of the Union,

HAVE ADOPTED THIS REGULATION:

TITLE I GENERAL PROVISIONS

Article 1

Subject matter

This Regulation establishes the Programme “European **Cooperation** Instrument for Nuclear Safety complementing the Neighbourhood, Development and International Cooperation Instrument on the basis of the Euratom Treaty”.

¹¹ 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 Member States of the Commission's exercise of implementing powers (OJ L 55 28.2.2011 p.13)

¹² Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service (OJ L 201, 3.8.2010, p. 30).

It lays down the objectives of this Programme, the budget for the period 2021 – 2027, the forms of Union funding and the rules for providing such funding.

Article 2

Objectives

1. The objective of this Regulation is to complement those nuclear cooperation activities that are financed under [the Regulation NDICI], in particular in order to support the promotion of a high level of nuclear safety, radiation protection, and the application of effective and efficient safeguards of nuclear materials in third countries, building on the activities within the Community, **of the relevant European regulation framework**, and in line with the provisions of this Regulation.
2. In accordance with paragraph 1, this Regulation shall in particular aim at:
 - (a) the promotion of an effective nuclear safety **and radiation protection** culture and implementation of the highest nuclear safety and radiation protection standards, and continuous improvement of nuclear safety;
 - (b) responsible and safe management of spent fuel and radioactive waste and the decommissioning and remediation of former nuclear sites and installations;
 - (c) establishing efficient and effective safeguards **for nuclear material in third countries** systems.

Article 3

Coherence, consistency and complementarity

1. In implementing this Regulation, consistency, synergies and complementarity with Regulation (EU) No XXX/XXX NDICI, other Programmes of Union external action, other relevant Union policies and Programmes, as well as policy coherence for development shall be ensured.

2. Where appropriate, other Union Programmes may contribute to actions established under this Regulation, provided that the contributions do not cover the same costs. This Regulation may also contribute to measures established under other Union Programmes, provided that the contributions do not cover the same costs. In such cases, the work programme covering those actions shall establish which set of rules shall be applicable.

Article 4

Budget

The financial envelope for the implementation of this Regulation for the period 2021 – 2027 shall be [EUR 300 million] in [current prices].

Article 5

Policy framework

The association agreements, partnership and cooperation agreements, multilateral agreements, and other agreements that establish a legally binding relationship with partner countries, as well as, European Council conclusions and Council conclusions, summit declarations or conclusions of high-level meetings with partner countries, communications of the Commission or Joint communications of the Commission and the High Representative of the Union for Foreign Affairs and Security Policy, shall constitute the overall policy framework for the implementation of this Regulation.

TITLE II

IMPLEMENTATION OF THIS REGULATION

Article 6

Multiannual Indicative Programmes

1. Community cooperation under this Regulation shall be implemented on the basis of multiannual indicative programmes **which shall cover periods of two to four years.**

2. The multiannual indicative programmes shall aim at providing a coherent framework for cooperation between the Community and the third countries or regions concerned, consistent with the overall purpose and scope, objectives, principles and policy of the Community and based on the policy framework referred to in article 5.
3. The multiannual indicative programmes shall constitute a general basis for the cooperation, and shall set out the Community's goals for cooperation under this Regulation, having regard to the needs of the countries concerned, the Community's priorities, the international situation and the activities of the third countries concerned. The multiannual indicative programmes shall also indicate the added value of the cooperation and how to avoid duplication with other programmes and initiatives, in particular those of international organisations pursuing similar objectives and major donors.
4. Multiannual indicative programmes shall set out the priority areas selected for financing, the specific objectives, the expected results, the performance indicators and the indicative financial allocations, both overall and per objective
5. Multiannual indicative programmes shall be based on a dialogue with the partner countries or regions.
6. **After consultation of the European Nuclear Safety regulators Group (ENSREG)**, the Commission shall adopt the multiannual indicative programmes in accordance with the examination procedure referred to in Article 13(2). The Commission shall, **following the same procedure, and based on the midterm evaluation referred to in Article 12(1)** revise and, if necessary, update those indicative programmes.

Article 7

Action plans and measures

1. The Commission shall adopt annual ~~or multiannual~~ action plans and individual measures based on the multiannual indicative programme. The Commission may also adopt special measures and support measures.

Action plans and individual measures shall specify for each ~~action~~ **third country or region** the objectives pursued, **projects to be financed**, **an indicative planning**, the expected results and main activities, the methods and , **where appropriate, the status** of implementation, the budget and any associated support expenditures.

~~When necessary, an action may be adopted as an individual measure, before or after the adoption of the multiannual indicative programme.~~

In the event of unforeseen and duly justified needs, circumstances or commitments, the Commission may adopt special measures.

2. Action plans and measures shall be adopted by means of implementing acts adopted in accordance with the examination procedure referred to in Article 13(2).
3. The procedure referred to in paragraph 2 shall not be required for:
 - (a) ~~action plans~~, individual measures ~~and support measures~~, for which the Union's funding does not exceed EUR ~~40~~ **5** million;
 - (b) special measures for which the Union's funding does not exceed EUR ~~40~~ **5** million;
 - (c) technical amendments, provided such amendments do not substantially affect the objectives of the action plan or measure concerned, such as:
 - (i) change of method of implementation;
 - (ii) reassignments of funds between actions contained in an action plan;
 - (iii) increases or reductions of the budget of action plans, **individual measures** and **special** ~~and~~ measures by not more than 20 % of the initial budget and not exceeding EUR ~~40~~ **5** million, **provided these increases or reductions do not substantially affect the objective of the action plan or measure concerned;**

~~In case of multiannual action plans and measures, the thresholds referred to in paragraph (3)(a), (b) and (c)(iii) shall be applicable on a yearly basis.~~

When adopted in accordance with this paragraph, action plans and measures ~~and~~ **as well as** technical amendments **thereof**, shall be communicated to the relevant committee referred to in Article ~~132~~ within one month of their adoption. They shall also be communicated to the European Parliament.

4. On duly justified imperative grounds of urgency relating to the need for a swift response from the Community, the Commission shall adopt or amend the action plans or measures by means of immediately applicable implementing acts in accordance with the procedure referred to in Article 13(3).

Article 8

Support measures

1. Union financing may cover support expenditure for the implementation of the Instrument and for the achievement of its objectives, including administrative support associated with the preparation, follow-up, monitoring, control, audit and evaluation activities necessary for such implementation, as well as expenditure at headquarters for the administrative support needed for the programme, and to manage operations financed under this Regulation, including information and communication actions, and corporate information technology systems.
2. When support expenditure is not included in the action plans or measures referred to in Article ~~76~~, the Commission shall adopt, where applicable, support measures. Union financing under support measures may cover:
 - (a) studies, meetings, information, awareness-raising, training, preparation and exchange of lessons learnt and best practices, publication activities and any other administrative or technical assistance expenditure necessary for the programming and management of actions, including fact-finding missions or remunerated external experts;
 - (b) expenditures related to the provision of information and communication actions, including the development of communication strategies and corporate communication and visibility of the political priorities of the Union.

Article 9

Methods of cooperation

Financing under this Instrument shall be implemented by the Commission, as provided for by the Financial Regulation, either directly by the Commission itself or indirectly through any of the entities listed in Article 62(1)(c) **i iii-vi** of the Financial Regulation **and when duly justified by a specific expertise and comparative advantage by the entities listed in Article 62(1)(c)ii of the Financial Regulation.**

Article 10

Forms of EU funding and methods of implementation

1. The Union funding may be provided through the types of financing envisaged by the Financial Regulation and in particular:
 - (a) grants;
 - (b) procurement contracts for services or supplies;
 - (c) remunerated external experts;
 - (d) blending.
2. The support under this Regulation may be also implemented under the rules applicable for the External Action Guarantee established under Regulation (EU) No XXX/XXX NDICI and contribute to the provisioning for the External Action Guarantee. The External Action Guarantee established under Regulation (EU) No XXX/XXX NDICI shall also support the operations on the basis of Council Decision 77/270/Euratom¹³.

The provisioning rate for the operations of the External Action Guarantee to which this Regulation contributes shall be 9%.

¹³ Council decision 77/270/EURATOM of 29 March 1977 empowering the Commission to issue Euratom loans for the purpose of contributing to the financing of nuclear power stations (OJ L 88, 6.4.1977, p. 9).

3. The provisioning rates shall be reviewed every three years from the date of application of this Regulation.

Article 11

Eligible persons and entities

1. **Priority shall be given to persons and entities from acceding countries, candidate countries, potential candidates and countries covered by the European neighbourhood policy.** **The** Participation in procurement, grant and prize award procedures for actions financed under the present regulation shall be open to international organisations and to all legal entities who are nationals of and, in the case of legal persons, who are also effectively established in, the following countries or territories:
 - (a) Member States, beneficiaries of the Regulation (EU) IPA III, and contracting parties to the Agreement on the European Economic Area;
 - (b) partner countries in the neighbourhood area of the Regulation (EU) NDICI;
 - (c) developing countries and territories, as included in the list of Official Development Assistance recipients published by the Development Assistance Committee of the Organisation for Economic Cooperation and Development, which are not members of the G-20 group, and overseas countries and territories as defined in Council Decision .../... (EU);
 - (d) developing countries, as included in the list of Official Development Assistance recipients, which are members of the G-20 group, and other countries and territories, when the relevant procedure takes place in the context of an action financed by the Union under this Regulation in which they participate;

- (e) countries for which reciprocal access to external funding is established by the Commission; that access may be granted, for a limited period of at least one year, whenever a country grants eligibility on equal terms to entities from the Union and from countries eligible under this Regulation; the Commission shall decide on the reciprocal access and on its duration after consultation of the recipient country or countries concerned;
- (f) member countries of the Organisation for Economic Cooperation and Development, in the case of contracts implemented in a Least Developed Country or a Highly Indebted Poor Country, as included in the list of Official Development Assistance recipients;
- (g) other third countries where the activities take place as provided for in the specific multiannual indicative programmes, action plans or measures.

Focused on the improvement of the nuclear safety framework, radiation protection and the application of safeguards, the cooperation shall benefit to the safety authorities and their Technical Support Organisations, to guarantee their technical skills, independence and the reinforcement of the regulatory framework in the relevant topics.

Cooperation with the nuclear operators of the third countries shall be considered for specific cases, in particular in the follow-up of the comprehensive risk and safety assessment.

Such cooperation with the nuclear operators of the third countries shall exclude supply of any equipment, either to nuclear utilities or stakeholders under commercial agreement with such utilities. Any supply of equipments for safety authorities and their Technical Support Organisations will require prior authorization of the Committee create by article 13.

2. All supplies and materials financed under this Regulation may originate from the countries and under the respective conditions specified in paragraph 1.

3. The rules laid down in this Article shall not apply to, and shall not create, nationality restrictions for natural persons employed or otherwise legally contracted by an eligible contractor or, where applicable, subcontractor.
4. For actions jointly co-financed by an entity, or implemented in direct or indirect management with entities as referred to point (c) (ii) to (viii) of Article 62(1) of the Financial Regulation, the eligibility rules of those entities shall also apply.
5. Where donors provide financing to a trust fund established by the Commission or through external assigned revenues, the eligibility rules in the constitutive act of the trust fund or in the agreement with the donor in case of external assigned revenues shall apply.
6. In the case of actions financed under this Regulation and by another Union Programme, eligible entities under any of those Programmes shall be considered eligible.
7. The eligibility rules of this Article may be restricted with regard to the nationality, geographical location or nature of applicants, or origins of supplies and materials, where such restrictions are required on account of the specific nature and the objectives of the action and where they are necessary for its effective implementation.
8. Tenderers, applicants and candidates from non-eligible countries may be accepted as eligible in the case of urgency or the unavailability of services in the markets of the countries or territories concerned, or in other duly substantiated cases where application of the eligibility rules would make the realisation of an action impossible or exceedingly difficult.
9. In order to promote local capacities, markets and purchases, priority shall be given to local and regional contractors when the Financial Regulation provides for an award on the basis of a single tender. In all other cases, participation of local and regional contractors shall be promoted in accordance with the relevant provisions of that Regulation.

Article 12

Monitoring, reporting and evaluation

1. Monitoring, reporting and evaluation shall be carried out in accordance with Article 31 paragraphs 2, 4, 5 and 6, and Articles 32 ~~and 36~~ of the Regulation (EU) No XXX/XXX NDICI.
2. The achievement of the objective of this Regulation shall be measured based on the following indicators:
 - (a) number of legal and regulatory acts prepared, introduced and or revised; and
 - (b) number of design, concept or feasibility studies for the establishment of facilities in line with the highest standards of nuclear safety.

TITLE III

FINAL PROVISIONS

Article 13

Committee

1. The Commission shall be assisted by the **European Cooperation Instrument for** Nuclear Safety committee. This 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.
3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

Article 14

Information, communication, publicity and derogation from visibility requirements

Information, communication and publicity related to the objective referred to in Article 3, and derogation from visibility requirements shall be carried out in accordance with Article 36 and 37 of the Regulation (EU) No XXX/XXX NDICI.

Article 15

EEAS clause

This Regulation shall apply in accordance with Decision 2010/427/EU.

Article 16

Transitional provisions

1. The financial envelope for this Regulation may also cover technical and administrative assistance expenditures necessary to ensure the transition between this Regulation and actions adopted before it enters into force, in particular those covered by Council Regulation (Euratom) No 237/2014.
2. The financial envelope for this regulation may cover expenditures related to the preparation of any successor to this Regulation.
3. If necessary, appropriations may be entered in the budget beyond 2027 to cover the expenditures provided for in Article 6, to enable the management of actions not completed by 31 December 2027.

Article 17

Entry into force

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

It shall apply from 1 January 2021.

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

Done at Brussels,

For the Council

The President
