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'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2)
No. Cion doc.:	10137/18
Subject:	Proposal for a COUNCIL REGULATION establishing a dedicated financial programme for decommissioning of nuclear facilities and management of radioactive waste, and repealing Council Regulation (Euratom) No 1368/2013
	- Progress report

I. INTRODUCTION

1. On 13 June 2018, the Commission adopted the proposal for a Council Regulation for establishing a funding programme for financial assistance for decommissioning of nuclear facilities and management of radioactive waste, and repealing Council Regulation (Euratom) No 1368/2013¹.
2. Based on the needs identified for the 2021-2027 Multiannual Financial Framework (hereinafter "MFF"), the aim of the proposal was to lay down a financial envelope for:

¹ COM(2018)0467.

a) the nuclear decommissioning assistance programmes of the Kozloduy nuclear power plant units 1 to 4 in Bulgaria and the Bohunice V1 nuclear power plant units 1 and 2 in Slovakia; and

b) the decommissioning and spent fuel and radioactive waste management of the Commission's Joint Research Centre (hereinafter "JRC") own nuclear installations in four sites: JRC-Geel in Belgium, JRC-Karlsruhe in Germany, JRC-Ispra in Italy and JRC-Petten in the Netherlands.

3. The European Parliament has not been involved in active negotiations with the Council, since only the Council and the Member States hold legislative competence for Euratom-related matters. Nevertheless, further to consultation by the Council, the European Parliament adopted its resolutions on 16 January 2019².

II. MAIN DEVELOPMENTS AND STATE OF PLAY IN THE COUNCIL

4. In the Council, the examination of this proposal has been carried out in the Atomic Questions Working Party (hereinafter "ATO WP"), except for the "bracketed" parts of the text which include budgetary or financial provisions and have been (and currently are) discussed in the framework of MFF-related negotiating process. The examination started under the Bulgarian Presidency and intense work continued under the Austrian and Romanian Presidencies.
5. In particular, under the Romanian Presidency, the proposal has been discussed on nine occasions at the level of the ATO WP and regular informal bilateral meetings or contacts have been held between the Presidency, the delegations and the Commission, where necessary.

² http://www.europarl.europa.eu/doceo/document/TA-8-2019-0024_EN.html?redirect.

6. During the Romanian Presidency, the discussion addressed a significant number of aspects; mainly the following:

- Article 1 on the subject matter was restructured with the aim of being further clarified. Notably, this provision now presents two sub-paragraphs that address separately the scope of the Programme, on the one hand, for the Kozloduy and Bohunice nuclear power plants and, on the other hand, for the JRC sites;
- Article 3 on the Programme objectives was revised in order to clarify that: a) storage of radioactive waste is also addressed by the Programme as regards the decommissioning of the Kozloduy and Bohunice nuclear power plants; and b) the transfer of decommissioning and waste management liabilities from the JRC to the host Member States is optional and subject to mutual bilateral agreements³. In particular, this latter aspect was perceived as highly controversial by some delegations, therefore intense work has been necessary to find a compromise solution;
- Article 4 on the budget was highly debated as regards the distribution of the financial envelope foreseen for the Programme amongst the actions for the decommissioning of Kozloduy and Bohunice nuclear power plants and the JRC sites. In particular, this provision lays down now that budgetary flexibility can be obtained by re-distributing funds amongst the above mentioned actions after evaluation of the Programme, in line with the progress of said actions and in accordance with Regulation (EU, Euratom) No 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012⁴ ("the Financial Regulation");

³ Changes in this respect are also reflected in recital 9.

⁴ OJ L 193, 30.7.2018, p. 1.

- Article 4a on knowledge dissemination and slight modifications in Article 7 as well as in Annexes I and II were introduced to clarify that knowledge created in the implementation process of the Programme will be disseminated at the Union level. Additionally: a) actions for accomplishing this activity will be financed under the JRC decommissioning and waste management programme; b) the knowledge structuring and dissemination to Member States will be coordinated by the JRC; and c) the process of dissemination of knowledge will be included and defined in the work programmes. Some delegations considered the topic of knowledge dissemination as extremely controversial and it was highly debated in order to find a compromise wording;
- Article 7 on the co-financing rates was considered to be of significant importance for some delegations and was revised to mainly clarify that, without prejudice to Article 190(1) of the Financial Regulation, the co-financing rates could be different for the two Kozloduy and Bohunice programmes;
- Article 8 on the work programmes was restructured to clarify that the multiannual work programmes for the implementation of the Kozloduy and Bohunice programmes will be adopted further through comitology procedure. Additionally, as with the multiannual work programme for the implementation of the JRC programme, the above mentioned multiannual work programmes will reflect the decommissioning plans serving as a baseline for programme monitoring and evaluation;
- Article 9 on monitoring and reporting was revised to clarify that the Commission progress report on the implementation of the work carried out in the framework of the Programme will include the rate of actions resulting from calls for tenders.

7. Recital 25⁵ relating to the link between the Programme and climate objectives was perceived as extremely controversial and was highly debated. While not contesting the principle of an Union financial contribution to the decommissioning costs of nuclear power facilities or plants, many delegations failed to see a specific link between the Programme and its contribution to climate objectives and explicitly asked the Presidency to "bracket" such recital.

In an attempt to find a compromise solution, at the Working Party meeting held on 17 May, the Presidency presented a revised text for recital 25. Such text and additional technical amendments proposed by one delegation as regards other provisions of the draft Regulation were included in document ST 11126/12/18. Still on 17 May, this latter document was subject to a silence procedure⁶ that nevertheless did not apply to: a) the whole recital 25; and b) bracketed MFF-related provisions falling outside the competence of the ATO WP⁷.

⁵ Please note that the text of this provision is also mirrored in recital 22 of the proposal for a Council Regulation establishing the nuclear decommissioning assistance programme of the Ignalina nuclear power plant in Lithuania (Ignalina programme), and repealing Council Regulation (EU) No 1369/2013. The discussion on the two recitals 25 and 22 has been thus always jointly carried out.

⁶ The silence procedure was precisely launched on documents ST 11126/12/18 and ST 11124/9/18 until 24 May.

⁷ Please note that, while launching the silence procedure, the Presidency wished to give the delegations the possibility to scrutinise the last comments proposed by one delegation as regards other provisions of the draft Regulation and see if they could have been accepted. Since the discussion at the ATO WP meeting on 17 May indicated that recital 25 was still perceived controversial, this was excluded from the scope of the silence procedure with a clarification that this situation would be reflected in the note to the Permanent Representatives Committee.

The silence procedure was broken. Although it did not apply to recital 25, the Austrian, Swedish and Luxemburgish delegations⁸ were finally not in the position to silently accept the drafted text because of issues with this recital, as well as with recital 22 included in the proposal for a Council Regulation establishing the nuclear decommissioning assistance programme of the Ignalina nuclear power plant in Lithuania (Ignalina programme), and repealing Council Regulation (EU) No 1369/2013⁹. The German delegation also expressed some concerns on this recital.

III. CONCLUSIONS

8. In the light of the above, the Presidency:
- understood that the additional technical amendments proposed by one delegation as regards other provisions of the draft Regulation could have been anyway considered to be acceptable;
 - carried out further work to accommodate suggestions on recital 17 that now reads as follows:

⁸ In particular, the Austrian and Luxemburgish delegations respectively indicated to the Presidency the following:

- "Austria participated actively in the discussions, including by written statements. Austria made oral comments asking for amendments on both drafts at the most recent meeting of the Working Party on Atomic Questions (AQG). The documents under silent procedure however do not reflect the Austrian position as expressed, nor the discussion in the Working Group. The corresponding email [*this is the email sent by the Council Secretariat -on behalf of the Presidency- to launch the silence procedure*] does not clarify how the Presidency would like to proceed further with the drafts. (It is well understood by AT, that some elements are to be discussed in other working groups and at higher political level). Austria is therefore not in a position to accept the drafts silently. To be accepted, Austria requests recital 22, 25 respectively, to be bracketed. A footnote explaining dissenting opinions expressed in the AQG should explain the reasoning of the brackets. Austria accepts the changes in wording by the Presidency in its latest draft (11126/18 Rev 12), Austria encourages, however, a better formulation in recital 17 clarifying the role of the Commission, Member States concerned and monitoring for each decommissioning program"; and
- "Referring to the silence procedure launched on May 17, 2019, Luxembourg would like to recall and point out that we are not in a position to agree on a text until the pending issues in recitals 22 and 25 are resolved. Note has been taken of the fact that the above recitals have not been put in brackets in the relevant documents (11124/9/18 REV 9 & 11126/12/18 REV 12). Luxembourg is therefore obliged to break the silence procedure which calls for a partial support of the text of both Regulations. While Luxembourg does not question the principle of an EU financial contribution to the decommissioning costs of nuclear power facilities or plants in the corresponding cases, we consider that the decommissioning of nuclear power facilities or plants can never be justified as a credible contribution to climate action. Luxembourg kindly invites the Presidency to reflect this in its progress report".

⁹ COM(2018)0466.

"An effective monitoring and control of the evolution of the decommissioning process should be ensured by Bulgaria, Slovakia and the Commission in order to assure the highest Union added value of the funding allocated under this Regulation to the Kozloduy and Bohunice programmes, although the ultimate responsibility for the decommissioning rests with the two Member States concerned. This includes effective measurement of performance and the enacting of corrective measures where necessary. To this end, a committee with monitoring and information functions should be established and co-chaired by a representative of the Commission and of the Member State concerned. Likewise, a group of independent experts from the Member States appointed by the Commission assists the JRC decommissioning and waste management programme."; and

- announced -at the ATO WP meeting held on 4 June- its decision to "bracket" recital 25 and reflect the situation in the present document.

In this respect, it is understood that this recital in curly brackets¹⁰ is left outside of the scope of the present document and of its Annex, as it requires to be further tackled.

9. The Presidency also recalls that elements in square brackets (i.e. provisions with budgetary implications) as set out in the Annex are also left outside of the scope, as they require the completion of negotiations on the Multiannual Financial Framework 2021-2027.
10. Given the importance and the complexity of the issues related to the climate objective, the Presidency considers that discussions should be pursued horizontally, taking into consideration the need for political impetus on this aspect.

¹⁰ Please note that "curly" brackets are deliberately used with the intention to keep a distinction with those MFF-related provisions included into "square" brackets.

11. Work on the draft Regulation might continue -if necessary- in the ATO WP, in order to reflect any relevant changes of horizontal nature.
12. The Permanent Representatives Committee is therefore invited to take note of the progress made on the draft Regulation as it is reflected in this document and in the Annex, indicating how the text of the draft Regulation stands at present.

2018/0252 (NLE)

Proposal for a

COUNCIL REGULATION

establishing a dedicated financial programme for decommissioning of nuclear facilities and management of radioactive waste, and repealing Council Regulation (Euratom) No 1368/2013

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 opinion¹¹ of the European Parliament,

Whereas:

- (1) In line with the Rome Declaration¹², the Union budget should enable a Europe that is safe and secure; this is a dimension where the nuclear decommissioning programmes have contributed so far and may further contribute. After shut-down of a nuclear facility, the main positive impact to be achieved is the progressive reduction of radiological risk for the workers, the public and the environment in the concerned Member States but also in the Union as a whole.

¹¹

¹² Declaration of the leaders of 27 member states and of the European Council, the European Parliament and the European Commission (25 March 2017)
<http://www.consilium.europa.eu/en/press/press-releases/2017/03/25/rome-declaration/pdf>

- (2) A dedicated spending financial programme can bring additional Union added value through becoming a benchmark within the Union for safely managing technological issues in nuclear decommissioning and disseminating knowledge. Such financial assistance should be provided on the basis of an ex ante evaluation identifying the specific needs and demonstrating the Union added value with the aim to support decommissioning of nuclear facilities and safe management of radioactive waste.
- (3) The activities covered by this Regulation should comply with applicable Union and national law. Such financial assistance should remain exceptional, without prejudice to the principles and objectives stemming from the legislation on nuclear safety, namely Council Directive 2009/71/Euratom¹³, and waste management, namely Council Directive 2011/70/Euratom¹⁴. The ultimate responsibility for the safe management of the spent fuel and radioactive waste generated remains with the Member States, in accordance with article 4 (1) and 7 (1) of the Council Directive 2011/70/Euratom.
- (4) According to the Protocol concerning the conditions and arrangements for admission of the Republic of Bulgaria and Romania to the European Union¹⁵, Bulgaria committed 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 those units. The decommissioning has resulted in a significant financial burden of direct and indirect cost for Bulgaria. In line with its obligations, Bulgaria shut down all units concerned within the respective deadlines.

¹³ Council Directive 2009/71/Euratom of 25 June 2009 establishing a Community framework for the nuclear safety of nuclear installations (OJ L 172, 2.7.2009, p. 18)

¹⁴ 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)

¹⁵ OJ L 157, 21.6.2005, p. 29

- (5) According to Protocol No 9 on unit 1 and unit 2 of the Bohunice V1 nuclear power plant in Slovakia¹⁶ attached to the 2003 Act of Accession, 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 those units. The decommissioning has resulted in a significant financial burden of direct and indirect cost for Slovakia. In line with its obligations, Slovakia shut down all units concerned within the respective deadlines.
- (6) In line with their obligations under the Accession Treaty and with Union assistance, Bulgaria and Slovakia have made significant progress towards the decommissioning of the Kozloduy and Bohunice V1 nuclear power plants. Further work is necessary in order to safely achieve the decommissioning end state. Based on the current decommissioning plans, completion of the decommissioning work is scheduled by the end of 2030 for Kozloduy nuclear power plant and by 2025 for the Bohunice V1 nuclear power plant.
- (7) The Joint Research Centre (JRC) of the European Commission was established by Article 8 of the Euratom Treaty. In application of this Article, Site agreements were signed during the period 1960-62 between the Community, Germany, Belgium, Italy and the Netherlands. In the two latter cases, national nuclear installations were transferred to the Community. An infrastructure geared to nuclear research and comprising new installations was put in place at the four sites. Some of these installations are still in use today while others have been shut down, in some instances more than 20 years ago, and have mostly become obsolete.
- (8) On the basis of Article 8 of the Euratom Treaty, and in line with Article 7 of Council Directive 2011/70/Euratom²⁴ the JRC should manage its historical nuclear liabilities and decommission its shut-down nuclear installations in accordance with the respective national legislation. Accordingly, the JRC decommissioning and waste management programme was launched in 1999 with a Communication to the European Parliament and the Council¹⁷, and since then the Commission has provided a regular update of the programme progress¹⁸.

¹⁶ OJ L 236, 23.9.2003, p. 954

¹⁷ Historical liabilities resulting from nuclear activities carried out at the JRC under the Euratom Treaty – Decommissioning of obsolete Nuclear Installations and Waste Management, COM(1999)114 final

¹⁸ Communication from the Commission to the Council and the European Parliament - Decommissioning of nuclear installations and waste management - Nuclear liabilities arising out of the activities of the Joint Research Centre (JRC) carried out under the Euratom

- (9) The European Commission has assessed that the best option to satisfy requirements as per Articles 5(1)(f) and Article 7 of Council Directive 2011/70/Euratom is to pursue a strategy combining decommissioning and waste management activities together with initiating the discussions between the JRC and host Member States regarding a potential transfer of the decommissioning and spent fuel and radioactive waste management liabilities in the case of mutual agreements between the Commission and the host Member States. The JRC should provide for and maintain adequate resources to fulfil its obligations with respect to decommissioning and the safety of spent fuel and radioactive waste management.
- (10) This Regulation responds to the needs identified for the Multiannual Financial Framework period of 2021-2027 and it lays down a financial envelope for the nuclear decommissioning assistance programmes of the Kozloduy nuclear power plant units 1 to 4 in Bulgaria (Kozloduy programme) and the Bohunice V1 nuclear power plant units 1 and 2 in Slovakia (Bohunice Programme), and for the decommissioning and spent fuel and radioactive waste management of the Commission's JRC own nuclear installations in four sites: JRC-Geel in Belgium, JRC-Karlsruhe in Germany, JRC-Ispira in Italy and JRC-Petten in the Netherlands (JRC decommissioning and waste management programme), which is to constitute the prime reference amount, within the meaning of point 17 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 management¹⁹, for the European Parliament and the Council during the annual budgetary procedure.

Treaty, SEC(2004)621 final

Communication from the Commission to the Council and the European Parliament - Decommissioning of Nuclear Installations and Management of Radioactive Waste:

Management of Nuclear Liabilities arising out of the Activities of the Joint Research Centre (JRC) carried out under the Euratom Treaty, COM(2008)903 final

Communication from the Commission to the Council and the European Parliament - Decommissioning of Nuclear Installations and Management of Radioactive Waste:

Management of Nuclear Liabilities arising out of the Activities of the Joint Research Centre (JRC) carried out under the Euratom Treaty, COM(2013)734 final

¹⁹ 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 management (OJ C 373, 20.12.2013, p. 1)

- (11) Regulation (EU, Euratom) No [the new FR]²⁰ (the ‘Financial Regulation’) applies to this Programme. It lays down rules on the implementation of the Union budget, including the rules on grants, prizes, procurement, indirect implementation, financial assistance, financial instruments and budgetary guarantees.
- (12) In accordance with Regulation (EU, Euratom) No 2018/1046 of the European Parliament and of the Council²¹ ("the Financial Regulation"), Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council²², Council Regulations (Euratom, EC) No 2988/95²³, Council Regulation (Euratom, EC) No 2185/96²⁴ and Council Regulation (EU) 2017/1939²⁵, the financial interests of the Union are to be protected through 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 Regulations (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 offences against the Union's financial interests, as provided for in Directive (EU)

²⁰ [full title; OJ reference].

²¹ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1)

²² 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)

²³ 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)

²⁴ 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, 15.11.96, p. 2)

²⁵ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1)

2017/1371 of the European Parliament and of the Council²⁶. 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, to grant the necessary rights and access to the Commission, OLAF, the EPPO in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939 and the European Court of Auditors (ECA) and to ensure that any third parties involved in the implementation of Union funds grant equivalent rights.

- (13) 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.
- (14) The amount of the appropriations allocated to the programme, as well as the programming period and the distribution of funds amongst the actions, may be reviewed based on the results of the mid-term and the final evaluation reports. Additional budgetary flexibility may be obtained by re-distributing funds amongst the actions where and when needed prioritization on activities contributing towards addressing safety challenges of decommissioning and radioactive waste management of Kozloduy nuclear power plant units 1 to 4 in Bulgaria and of Bohunice V1 nuclear power plant units 1 and 2 in Slovakia, without prejudice to other actions carried out under this Regulation and in accordance with the Financial Regulation.
- (15) The Programme should also relate to the creation of knowledge and sharing of experience and lessons learnt on the decommissioning process gained under this Programme should be disseminated in the Union, in coordination and synergy with the other relevant Union programme for decommissioning activities in Lithuania; as such measures bring the greatest Union added value and contribute to the safety of the workers and the general public as well as protection of the environment. The scope, procedure and economic aspects of cooperation should be detailed in the multiannual work programme and could also be subject to agreements between the Member States and/or with the Commission.

²⁶ 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 L 198, 28.7.2017, p. 29)

- (15a) The JRC should facilitate the dissemination of knowledge among different Union stakeholders (e.g. by carrying out market analysis, reviews and assessments of knowledge needs in the EU, identifying potential directions for cooperation, interested stakeholders and spheres in which knowledge created in the implementation of the programme would bring the greatest added value, developing formats for knowledge sharing) in a coordinated way. The dissemination of knowledge created should be financed by the JRC. Any Member State may initiate the development of ties and exchanges for knowledge dissemination.
- (16) The decommissioning of the nuclear facilities and radioactive waste management 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 installations to be decommissioned, in order to ensure safety and the highest possible efficiency, thus taking into account international best practices.
- (17) An effective monitoring and control of the evolution of the decommissioning process should be ensured by Bulgaria, Slovakia and the Commission in order to assure the highest Union added value of the funding allocated under this Regulation, although the ultimate responsibility for the decommissioning rests with the two Member States concerned. This includes effective measurement of performance and the enacting of corrective measures where necessary. To this end, a committee with monitoring and information functions should be established and co-chaired by a representative of the Commission and of the Member State concerned. Likewise, a group of independent experts from the Member States appointed by the Commission assists the JRC decommissioning and waste management programme.
- (18) Pursuant to paragraphs 22 and 23 of the Inter-institutional agreement for Better Law-Making of 13 April 2016, there is a need to evaluate this Programme on the basis of the information collected through specific monitoring requirements, while avoiding overregulation and administrative burdens, in particular on Member States. These requirements, where appropriate, can include measurable indicators, as a basis for evaluating the effects of the Programme on the ground.

- (19) The actions under the Kozloduy and Bohunice programmes should be identified within the boundaries defined by the decommissioning plans submitted by Bulgaria and Slovakia under the Council Regulation 2013/1368/Euratom. These plans defined the scope of these programmes, the decommissioning end-states and end-dates; they cover the decommissioning activities, their associated schedule, costs and required human resources.
- (20) Actions under the Kozloduy and Bohunice programmes should be conducted with a joint financial effort of the Union and Bulgaria and Slovakia respectively, in line with the co-financing practice established under the predecessor programmes.
- (21) Council Regulation (Euratom) No 1368/2013²⁷ should be repealed.
- (22) Due account was taken of the Court of Auditors' Special report No 22/2016 on Union financial assistance for the decommissioning of nuclear plants in Bulgaria, Lithuania and Slovakia, its recommendations and the reply from the Commission.
- (23) In order to ensure uniform conditions for the implementation of Article 3 of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council²⁸.

²⁷ Council Regulation (Euratom) No 1368/2013 of 13 December 2013 on Union support for the nuclear decommissioning assistance programmes in Bulgaria and Slovakia, and repealing Regulations (Euratom) No 549/2007 and (Euratom) No 647/2010 (OJ L 346, 20.12.2013, p. 1)

²⁸ 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 powers (OJ L 55, 28.2.2011, p. 13)

- (24) Horizontal financial rules adopted by the European Parliament and the Council on the basis of Article 322 of the Treaty on the Functioning of the European Union 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, and provide for checks on the responsibility of financial actors. [Rules adopted on the basis of Article 322 of the Treaty on the Functioning of the European Union also concern the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, as the respect for the rule of law is an essential precondition for sound financial management and effective Union funding].
- (25) {Reflecting the importance of tackling climate change in line with the Union's commitments to implement the Paris Agreement and the United Nations Sustainable Development Goals, this Programme will contribute to mainstream climate action in the Union's policies and to the achievement of an overall target of [25 %] of the Union budget expenditures supporting climate objectives. Relevant actions will be identified during the Programme's preparation and implementation, and reassessed in the context of its mid-term evaluation. These actions will be within the scope of the final decommissioning plan and will not impose additional financial or other obligations on the respective Member State.}²⁹
- (26) 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.

²⁹ As indicated above in the note, this recital is now in curly brackets, since further work seems to be necessary before a Council position is established on this aspect.

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation establishes the Dedicated Financial Programme for the 'Decommissioning of Nuclear Facilities and Management of Radioactive Waste' (the 'Programme'), with the focus on needs identified on a current basis. For the period of the Multiannual Financial Framework 2021-2027, it shall support:

- (a) the safely decommissioning of the Kozloduy nuclear power plant units 1 to 4 in Bulgaria (Kozloduy programme) and the Bohunice V1 nuclear power plant units 1 and 2 in Slovakia (Bohunice Programme), including the management of radioactive waste, in line with the identified needs of the respective decommissioning plan, and
- (b) the implementation of the decommissioning process and management of radioactive waste of the Commission's own nuclear installations at the Joint Research Centre (JRC) sites, respectively JRC-Geel in Belgium, JRC-Karlsruhe in Germany, JRC-Ispra in Italy and JRC-Petten in the Netherlands (JRC decommissioning and waste management programme).

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

Article 2
Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) 'decommissioning' means administrative and technical measures in accordance with national law which allow the removal of some or all of the regulatory controls from a nuclear facility and which aim at ensuring the long term protection of the public and the environment including the reduction of the levels of residual radionuclides in the materials and on the site of the facility;
- (2) 'decommissioning plan' means the document containing detailed information on the proposed decommissioning and covering the following: the selected decommissioning strategy; the schedule, type and sequence of decommissioning activities; the waste management strategy applied, including clearance; the proposed end state; the storage and disposal of the waste from decommissioning; the timeframe for decommissioning; the cost estimates for the completion of decommissioning; and the objectives, expected results, milestones, target dates, as well as the corresponding key performance indicators, including, as appropriate, earned value based indicators. The plan is prepared by the nuclear facility license holder and is reflected in the multiannual work programmes of the Programme;
- (3) 'Bohunice programme' means the part of the Programme that concerns the nuclear decommissioning of reactor units 1 and 2 of the Bohunice V1 nuclear power plant, located in Jaslovské Bohunice, Slovakia;
- (4) 'Kozloduy programme' means the part of the Programme that concerns the nuclear decommissioning of reactor units 1, 2, 3 and 4 of the Kozloduy nuclear power plant, located in Kozloduy, Bulgaria;
- (5) 'JRC decommissioning and waste management programme' means the part of the Programme that concerns the nuclear decommissioning and radioactive waste management of the Commission's own nuclear installations at the Joint Research Centre (JRC) sites, respectively JRC-Geel located in Belgium, JRC-Karlsruhe located in Germany, JRC-Ispira located in Italy and JRC-Petten located in the Netherlands.

Article 3
Programme objectives

1. The Programme has the general objective to provide funding for decommissioning of nuclear facilities and management of radioactive waste, in line with the identified needs.
2. On the basis of the current needs for the period of 2021-2027, the Programme aims in particular:
 - a) to assist Bulgaria and Slovakia in implementing the Kozloduy decommissioning programme and the Bohunice decommissioning programme, including management and storage of radioactive waste in line with the identified needs of the respective decommissioning plan, with specific emphasis on managing the safety challenges thereof; and
 - b) to support the JRC decommissioning and radioactive waste management programme;whilst the Programme is creating knowledge in the nuclear decommissioning process and in the radioactive waste management resulting from the decommissioning activities.
3. The specific objectives of the Programme are as follows:
 - (a) to carry out the activities included in the respective decommissioning plans, dismantling and decontamination of the Kozloduy and Bohunice reactors, including associated systems, structures and components, auxiliary buildings and safe management of radioactive waste in line with the identified needs of the respective decommissioning plans and human resources support and to pursue their release from regulatory controls;

- (b) to support the decommissioning plan and to carry out the activities in accordance with the national law of the host Member State for the dismantling and decontamination of the Commission's own nuclear installations at the Joint Research Centre (JRC) sites, safe management of associated radioactive waste and, when appropriate, to prepare the optional transfer of the related nuclear liabilities from the JRC to the host Member States. Such transfer shall not be imposed to any host Member State and shall be subject to mutual bilateral agreement between the Commission and the host Member States. This mutual bilateral agreement shall include that all costs of the decommissioning of the Commission's own nuclear installations at the Joint Research Centre (JRC) sites and storage of the associated radioactive waste are paid by the Union and shall fully comply with Council Directive 2011/70/Euratom³⁰;
 - (c) for the JRC to develop ties and exchanges among Union stakeholders on nuclear decommissioning, with a view to ensure dissemination of knowledge and return of experience in all relevant areas such as research and innovation, regulation, training and to develop potential Union synergies.
4. The detailed description of the specific objectives is set out in the Annexes I, II and III. Based on the result of the evaluation referred to in Article 10, the Commission may modify, by means of implementing acts, the Annexes I or II, in accordance with the examination procedure referred to in Article 12(2).

³⁰ 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. 48–56.

Article 4

Budget

1. The financial envelope for the implementation of the Programme for the period 2021 - 2027 shall be [EUR 466 000 000] in [current prices].
2. The distribution of the amount referred to in paragraph 1 shall be broken down in the following categories of expenditure:
 - (a) [EUR 63 000 000] for actions under the Kozloduy programme;
 - (b) [EUR 55 000 000] for actions under the Bohunice programme;
 - (c) [EUR 348 000 000] for actions under the JRC decommissioning and waste management programme, including actions for accomplishing the specific objective defined in Article 3, paragraph 3 (c).
3. Budgetary flexibility may be obtained by re-distributing funds amongst the actions of the Programme, after the evaluations referred to in Article 10 and in accordance with the Financial Regulation, with prioritization on activities contributing towards addressing safety challenges of decommissioning and radioactive waste management.
4. The amount referred to in paragraph 1 may cover expenses related to the activities included in the respective decommissioning plans for the implementation of the Programme, such as preparatory, monitoring, control, audit and evaluation activities including corporate information technology systems.
5. Budgetary commitments for actions extending over more than one financial year may be broken down over several years into annual instalments.

Article 4a

Knowledge dissemination

1. Knowledge created in the implementation process of the Programme shall be disseminated at the Union level.
2. Actions for accomplishing the activity referred to in paragraph 1 shall be financed under the JRC decommissioning and waste management programme. The knowledge structuring and dissemination to Member States shall be coordinated by the JRC.
3. The process of dissemination of knowledge shall be included and defined in the work programme referred to in Article 8.

Article 5

Implementation and forms of Union funding

1. The Programme shall be implemented in direct management in accordance with the Financial Regulation or in indirect management with bodies referred to in Article 62(1)(c) of the Financial Regulation.
2. The Programme may provide funding in any of the forms laid down in the Financial Regulation.

Article 6

Eligible actions

Only actions implementing the objectives referred to in Article 3 and described in Annexes I, II and III shall be eligible for funding.

Article 7
Co-financing rates

The maximum Union co-financing rate applicable over the period referred to in Article 4 shall be no higher than [50%] for the Kozloduy programme and no higher than [50%] for the Bohunice programme, without prejudice to Art. 190 (1) of the Financial Regulation. The remaining co-financing shall be provided by Bulgaria and Slovakia respectively. The activities necessary for the knowledge dissemination as referred to in Article 4a will be funded at 100% by the Union.

Article 8
Work programmes

1. The Bohunice programme and the Kozloduy programme shall be implemented by multiannual work programmes in accordance with Article 110 of the Financial Regulation.
- 1a. The multiannual work programme shall be adopted in accordance with the procedure referred to in Article 12(2).
2. The JRC decommissioning and waste management programme shall be implemented by multi-annual work programmes in accordance with the procedure set out in Article 4 of Commission Decision 96/282/Euratom on the reorganization of the Joint Research Centre.
- 2a. The multiannual work programmes as referred to in paragraphs 1 and 2 shall reflect the decommissioning plans that shall serve as baseline for programme monitoring and evaluation.
3. The multiannual work programmes as referred to in paragraphs 1 and 2 shall specify the current state, the objectives, expected results, related performance indicators and timeline for the use of funds as well as defines the details for knowledge dissemination.

Article 9
Monitoring and reporting

1. Indicators to report on progress of the Programme towards the achievement of the objectives set out in Article 3 are set in the Annex IV.

2. The performance reporting system shall ensure that data for monitoring programme implementation and results are collected efficiently, effectively, and in a timely manner. To that end, reporting requirements proportionate to the overall costs and related programme risks shall be imposed on recipients of Union funds and where relevant Member States.
3. At the end of each year, the Commission shall elaborate a progress report on the implementation of the work carried out in the previous years, including the rate of actions resulting from calls for tenders, and present it to the European Parliament and to the Council.

Article 10

Evaluation

1. Evaluations shall be carried out in a timely manner to feed into the decision-making process.
2. The interim evaluation of the Programme shall be performed once there is sufficient information available about the implementation of the Programme, but no later than four years after the start of the period specified in Article 1. The interim evaluation shall also address the scope for modification of the multiannual work programme referred to in Article 8.
3. At the end of the implementation of the Programme, but no later than five years after the end of the period specified in Article 1, a final evaluation of the Programme shall be carried out by the Commission.
4. The Commission shall communicate the conclusions of the evaluations accompanied by its observations, to the European Parliament and the Council.

Article 11

Audits

Audits on the use of the Union and national contribution carried out by persons or entities, including others than those mandated by the Union Institutions or bodies, shall form the basis of the overall assurance pursuant to Article 127 of the Financial Regulation.

Article 12

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 13

Information, communication and publicity

1. The recipients of Union funding shall acknowledge the origin and ensure the visibility of the Union funding (in particular when promoting the actions and their results) by providing coherent, effective and proportionate targeted information to multiple audiences, including the media and the public.
2. The Commission shall implement information and communication actions relating to the Programme, and its actions and results. Financial resources allocated to the Programme shall also contribute to the corporate communication of the political priorities of the Union, as far as they are related to the objectives referred to in Article 3.

Article 14

Repeal

Regulation (Euratom) No 1368/2013 is repealed.

Article 15

Transitional provisions

1. This Regulation shall not affect the continuation or modification of the actions under Regulation (Euratom) No 1368/2013, which shall continue to apply to the actions concerned until their closure.
2. The financial envelope for the Programme may also cover technical and administrative assistance expenses necessary to ensure the transition between the Kozloduy and Bohunice programmes and the measures adopted under their predecessor, the Regulation (Euratom) No 1368/2013.
3. If necessary, appropriations may be entered in the budget beyond 2027 to cover the expenses provided for in Article 4(3) of this Regulation, to enable the management of actions not completed by 31 December 2027.

Article 16

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 2021.

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

Done at Brussels,

For the Council

The President

1. The main general objective of the Kozloduy programme is to assist Bulgaria in managing the safety challenges of the decommissioning of Kozloduy nuclear power plant units 1-4. The major safety challenges to be addressed by the programmes are:
 - (a) Dismantling and decontamination of the reactors' buildings and components in accordance with the decommissioning plans; progress has to be measured by the quantity and type of materials removed as well as earned value;
 - (b) Safe management of the decommissioning and radioactive waste in line with the identified needs of the respective decommissioning plan, activated materials and dismantling materials including their decontamination up to interim storage or to disposal (depending on the waste category), completion of the waste and material management infrastructure where necessary. This objective has to be accomplished in accordance with the decommissioning plan and necessary RAW management; progress has to be measured by the quantity and type of material released from regulatory control and waste safely stored or disposed as well as earned value;
 - (c) Continue downgrading of radiological hazards; this objective has to be measured through the safety assessments of the activities and the facility, identifying ways in which potential exposures could occur and estimating the probabilities and magnitude of potential exposures. Release of the facilities from regulatory control up to corresponding regulatory free release levels is planned by 2030 in the Kozloduy programme.
2. The main general objective of the programme is complemented by the aim of enhancing the EU added value of the programme through contribution to the dissemination of knowledge (thereby generated) to all EU Member States on the decommissioning process. In the financing period starting as of 2021, the programme has to deliver the following:

- (a) develop ties and exchanges among EU stakeholders (e.g. Member States, safety authorities, utilities and decommissioning operators);
- (b) document explicit knowledge and make it available through multi-lateral knowledge transfers on decommissioning and waste management governance issues, managerial best practices, and technological challenges and decommissioning processes at both operational and organisational level, with a view to develop potential EU synergies.

These activities can be Union funded at a rate of 100%.

Progress is to be measured by the number of knowledge products created.

- 3. The disposal of spent fuel and radioactive waste in a deep geological repository and the preparation thereof is excluded from the financial envelope as defined in Article 4(1) of this Regulation.

1. The main general objective of the Bohunice programme is to assist Slovakia in managing the safety challenges of the decommissioning of Bohunice V1 nuclear power plant units 1 and 2. The major safety challenges to be addressed by the programmes are:
 - (a) Dismantling and decontamination of the reactors' buildings and components in accordance with the decommissioning plans; progress has to be measured by the quantity and type of materials removed as well as earned value;
 - (b) Safe management of the decommissioning and radioactive waste in line with the identified needs of the respective decommissioning plan, activated materials and dismantling materials including their decontamination up to interim storage or to disposal (depending on the waste category), including the completion of the waste and material management infrastructure where necessary. This objective has to be accomplished in accordance with the decommissioning plan and necessary RAW management; progress has to be measured by the quantity and type of material released from regulatory control and waste safely stored or disposed as well as earned value;
 - (c) Continue downgrading of radiological hazards; this objective has to be measured through the safety assessments of the activities and the facility, identifying ways in which potential exposures could occur and estimating the probabilities and magnitude of potential exposures. Release of the facilities from regulatory control up to corresponding regulatory free release levels is planned by 2025 in the Bohunice programme.
2. The main general objective of the programmes is complemented by the aim of enhancing the EU added value of the programme through contribution to the dissemination of knowledge (thereby generated) to all EU Member States on the decommissioning process. In the financing period starting as of 2021, the programme has to deliver the following:
 - (a) develop ties and exchanges among EU stakeholders (e.g. Member States, safety authorities, utilities and decommissioning operators);

- (b) document explicit knowledge and make it available through multi-lateral knowledge transfers on decommissioning and waste management governance issues, managerial best practices, and technological challenges and decommissioning processes at both operational and organisational level, with a view to develop potential EU synergies.

These activities can be Union funded at a rate of 100%.

Progress is to be measured by the number of knowledge products created.

- 3. The disposal of spent fuel and radioactive waste in a deep geological repository and the preparation thereof is excluded from the financial envelope referred to in Article 4(1) of this Regulation.

1. The main general objective of the JRC D&WM programme is to pursue the decommissioning of the Commission's JRC installations in four sites: JRC-Geel in Belgium, JRC-Karlsruhe in Germany, JRC-Ispira in Italy and JRC-Petten in the Netherlands and to safely manage the spent fuel, the nuclear material and radioactive waste. The main general objective of the programme is complemented by the aim of enhancing the EU added value of the programme through the dissemination of knowledge (thereby generated) to all EU Member States on the decommissioning process. Activities financed under this programme in the period 2021-2027 have to deliver the following:

- 1.1. For all sites:

- (a) Safely manage radioactive waste, nuclear material and spent fuel;
- (b) Explore and develop options for the transfer of decommissioning and waste management liabilities to the host Member State, based on the mutual bilateral agreement concluded with the Commission;
- (c) Develop ties and exchanges among EU stakeholders (e.g. Member States, safety authorities, utilities and decommissioning operators);
- (d) Document explicit knowledge and make it available through multi-lateral knowledge transfers on decommissioning and waste management governance issues, managerial best practices, and technological challenges and decommissioning processes at both operational and organisational level, with a view to develop potential EU synergies.

- 1.2. At JRC-Ispira (depending on release of the relevant authorisations by the Italian safety authorities) according to national law:

- (a) Retrieval, treatment and safe storage of the historical waste;
- (b) Retrieval, treatment and safe storage of nuclear material and spent fuel;
- (c) Decommissioning of shut-down facilities.

1.3. At JRC-Karlsruhe (depending on release of the relevant authorisations by the German safety authorities) according to national law:

- (a) Decommissioning of obsolete equipment;
- (b) Minimization of the inventory of radioactive waste, nuclear material and spent fuel;
- (c) Decommissioning of shut-down facilities and the storage of associated radioactive waste;
- (d) Preparatory phases of the decommissioning of building parts.

1.4. At JRC-Petten (depending on release of the relevant authorisations by the Dutch safety authorities) according to national law:

- (a) Minimization of the inventory of radioactive waste, nuclear material and spent fuel;
 - (a1) Retrieval, treatment and safe management of the historical radioactive waste;
- (b) Preparatory phases of the decommissioning of the HFR;
 - (b1) Decommissioning of the HFR facilities and the safe management of associated radioactive waste.

1.5. At JRC-Geel (depending on release of the relevant authorisations by the Belgian safety authorities) according to national law:

- (a) Decommissioning of obsolete equipment;
- (b) Minimization of the inventory of radioactive waste and nuclear material;
- (c) Preparatory phases of the decommissioning of building parts.

Progress has to be measured as appropriate by the quantity and type of safely stored or disposed of waste, by the quantity and type of safely stored or disposed of nuclear material and spent fuel, by the quantity and type of materials removed. The programme progress has to be generally measured by expected results, milestones, target dates, as well as the corresponding key performance indicators, including, as appropriate, earned value based indicators.

2. The main general objective of the programme is complemented by the aim of enhancing the EU added value of the programme through dissemination of knowledge (thereby generated) to all EU Member States on the decommissioning process. In the financing period starting as of 2021, the programme has to deliver the following:

- 2.1. develop ties and exchanges among EU stakeholders (e.g. Member States, safety authorities, utilities and decommissioning operators);
- 2.2. document explicit knowledge and make it available through multi-lateral knowledge transfers on decommissioning and waste management governance issues, managerial best practices, and technological challenges and decommissioning processes at both operational and organisational level, with a view to develop potential EU synergies.

Progress is to be measured by the number of knowledge products created and their outreach.

3. The disposal of spent fuel and radioactive waste in a deep geological repository is included in the scope of the programme, as required by the relevant Council Directive 2011/70/Euratom.

Indicators

- (1) Radioactive waste management:
 - (a) quantity and type of waste safely stored or disposed of with annual objectives by type, meeting the milestones of the Programme.
 - (2) Dismantling and decontamination:
 - (a) quantity and type of materials removed with annual objectives by type, meeting the milestones of the Programme.
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