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NOTE

From:	General Secretariat of the Council
To:	Delegations
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Subject:	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

1. Delegations will find in the Annex the second revision of the above-mentioned proposal.

2. New text is **bold underlined**, deletions are ~~strikethrough~~.

2018/0251 (NLE)

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 COUNCIL OF THE EUROPEAN UNION,

Having regard to the 2003 Act of Accession, and in particular Article 3 of Protocol No 4 attached thereto,

Having regard to the proposal from the European Commission,

Whereas:

(1) In accordance with Protocol No 4 of the 2003 Act of Accession on the Ignalina nuclear power plant [1] Lithuania committed itself to the closure of Unit 1 and Unit 2 of the Ignalina nuclear power plant by 31 December 2004 and 31 December 2009 respectively, and to the subsequent decommissioning of those units.

(2) In line with its obligations under the Act of Accession and with Union assistance, Lithuania shut down the two units within the respective deadlines and made significant progress towards their decommissioning. Further work is necessary in order to continue the decrease of the level of radiological hazard. Based on the available estimates, additional financial resources are required for this purpose post 2020.

1 OJ L 236, 23.9.2003, p. 944.

(3) The activities covered by this Regulation should comply with applicable Union and national law. The decommissioning of the nuclear power plant covered by this Regulation should be carried out in accordance with the legislation on nuclear safety, namely Council Directive 2009/71/Euratom [2] and waste management, namely Council Directive 2011/70/Euratom [3]. The ultimate responsibility for nuclear safety and for the safety of spent fuel and radioactive waste management remains with Lithuania.

(4) Recognising that the premature shutdown and consequent decommissioning of the Ignalina nuclear power plant with two 1 500 MW RBMK type reactor units inherited from the Soviet Union was of an unprecedented nature and represented for Lithuania an exceptional financial burden not commensurate with the size and economic strength of the country, Protocol No 4 stated that the Union assistance under the Ignalina programme is to be seamlessly continued and extended beyond 2006, for the period of the next Financial Perspectives ~~**and that the overall average appropriations under the extended Ignalina programme shall be appropriate, and that programming of these resources will be based on actual payment needs and absorption capacity**~~.

(5) This Regulation lays down a financial envelope for the nuclear decommissioning assistance programme of the Ignalina nuclear power plant in Lithuania (the '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 management [4], for the European Parliament and the Council during the annual budgetary procedure.

(6) Regulations (EU, Euratom) 2018/… of the European Parliament and of the Council [the new FR] [5] (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.

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2 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).

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).

4 OJ L123, 12.5.2016, p. 1-14.

5 [full title; OJ reference].

(7) In accordance with the Financial Regulation, Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council [6], Council Regulations (Euratom, EC) No 2988/95 [7], Regulation (Euratom, EC) No 2185/96 [8] and Regulation (EU) 2017/1939 [9], the financial interests of the Union are to be protected through proportionate measures, including the prevention, detection, correction and investigation of irregularities and 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 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 illegal activities affecting the financial interests of the Union as provided for in Directive (EU) 2017/1371 of the European Parliament and of the Council [10]. 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 and the European Court of Auditors (ECA) and to ensure that any third parties involved in the implementation of Union funds grant equivalent rights.

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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, 23.12.1995, 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 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).

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 L 198, 28.7.2017, p. 29).

(8) This Regulation does not prejudge 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.

(9) The financing pursuant to this Regulation should concentrate on activities implementing the safety objectives of the decommissioning, while the ultimate responsibility for nuclear safety should remain with Lithuania.

(10) The Programme should also ensure dissemination of knowledge, experience and lessons learnt on the decommissioning process in the Union, **in coordination and synergy with the other relevant Union programme for decommissioning activities in Bulgaria and Slovakia;** 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 program should furthermore ensure international comparisons of decommissioning projects.**

(11) The decommissioning of the Ignalina nuclear power plant 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.

(12) An effective monitoring and control of the evolution of the decommissioning process should be ensured by the Commission and Lithuania 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 Lithuania. This includes effective measurement of progress and performance, and the enacting of corrective measures where necessary.

(13) Pursuant to paragraph 22 and 23 of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making [11], there is a need to evaluate this Programme on the basis of 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.

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11 OJ L 123, 12.5.2016, p. 1.

(14) It should be possible to review the amount of the appropriations allocated to the Programme as well as the programming period based on the results of the mid-term evaluation report.

(15) Actions co-financed under this Regulation should be identified within the boundaries defined by the decommissioning plan submitted by Lithuania under the Council Regulation 2013/1369/EU [25] and its revised versions, if any. This plan defined the scope of the programme, the decommissioning end-state and end-date; it covers the decommissioning activities, their associated schedule, costs and required human resources. When relevant, Lithuania should submit updated versions of the plan to the Commission for its consideration in preparing the work programmes.

(16) The programme should be conducted with a joint financial effort of the Union and Lithuania. [A maximum Union co-financing threshold should be established in line with the co-financing practice established under the predecessor programmes. Taking into account the practice of comparable Union programmes and the strengthened Lithuanian economy, from the inception of the Ignalina decommissioning programme until the end of the implementation of the activities financed under this Regulation, the Union co-financing rate should be no higher than 80 % of eligible costs. The remaining co-financing should be provided by Lithuania and sources other than the Union budget, notably from international financial institutions and other donors.]

(17) Regulation (EU) No 1369/2013 [12] should therefore be repealed.

(18) 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.

(19) The Programme falls within the scope of the Lithuanian National Programme under the Council Directive 2011/70/Euratom.

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12 Council Regulation (EU) No 1369/2013 of 13 December 2013 on Union support for the nuclear decommissioning assistance programme in Lithuania (OJ L 346, 20.12.2013, p.7).

(20) 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 Council [13].

(21) 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].

[]

(23) 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.

HAS ADOPTED THIS REGULATION:

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13 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).

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation establishes the nuclear decommissioning assistance programme of the Ignalina nuclear power plant in Lithuania ('the Programme').

It lays down the objectives of the Programme, the budget for the period 2021 – 2027, the forms of 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 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;

Article 3

Programme objectives

1. The general objective of the Programme is to assist Lithuania in implementing Ignalina nuclear power plant decommissioning, with specific emphasis on managing the ~~radiological~~ safety challenges of the decommissioning of the Ignalina nuclear power plant, whilst ensuring broad dissemination to all EU Member States of knowledge thereby generated on nuclear decommissioning.

2. The Programme has the specific objective to carry out the dismantling and decontamination of the Ignalina equipment and reactor shafts in accordance with the decommissioning plan, **including management of radioactive waste from decommissioning** continue with the safe management of the decommissioning and legacy waste and disseminate the generated knowledge among EU Member-States and stakeholders.

3. The detailed description of the specific objective is set out in the Annex I. The Commission may modify, by means of implementing acts, the Annex I, in accordance with the examination procedure referred to in Article 12(2).

Article 4

Budget

1. The financial envelope for the implementation of the Programme for the period 2021 - 2027 shall be [EUR 552 000 000] in [current prices].

   Actions for accomplishing the specific objective to disseminate the generated knowledge among EU stakeholders shall be financed under the JRC decommissioning and waste management programme.

2. The amount referred to in paragraph 1 may cover expenses, beyond actions described in Annex 1, related to the technical and administrative assistance for the implementation of the Programme, such as preparatory, monitoring, control, audit and evaluation activities including corporate information technology systems. All these expenses will be documented.

3. Budgetary commitments for actions extending over more than one financial year may be broken down over several years into annual instalments.

Article 5

Implementation and forms of 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.

CHAPTER II

ELIGIBILITY

Article 6

Eligible actions

Only actions implementing the objectives referred to in Article 3 and in Annex I shall be eligible for funding.

Article 7

Co-financing rates

Every effort should be made to continue co-financing practise as established under the pre-accession assistance and the assistance provided over the previous Multiannual Financial Programmes for the decommissioning efforts of Lithuania, as well as to attract co-financing from other sources as appropriate.

The overall maximum Union co-financing rate applicable under the Programme shall be no higher than [80%]. The remaining financing shall be provided by Lithuania and additional sources other than the Union budget.

CHAPTER III

PROGRAMMING, MONITORING, EVALUATION AND CONTROL

Article 8

Work programme

1. The Programme shall be implemented by a multiannual work programme referred to in 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 multiannual work programme shall reflect the decommissioning plan that shall serve as baseline for programme monitoring and evaluation.

2a. The multiannual work programme specifies the current state, the objectives, expected results, related performance indicators and timeline for the use of funds.

Article 9

Monitoring and reporting

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

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, proportionate reporting requirements 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 and present it to the European Parliament and to the Council.

4. A Committee with monitoring and information functions shall be co-chaired by a representative of the Commission and the Programme Coordinator.

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.

CHAPTER IV

TRANSITIONAL AND FINAL PROVISIONS

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 (EU) No 1369/2013 is repealed.

Article 15

Transitional provisions

1. This Regulation shall not affect the continuation or modification of the actions under Regulation (EU) No 1369/2013, 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 Programme and the measures adopted under its predecessor, Regulation (EU) No 1369/2013.

3. If necessary, appropriations may be entered in the budget beyond 2027 to cover the expenses provided for in Article 4(2), to enable the management of actions not completed by 31 December 2027.

Article 16

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 2021.

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

Done at Brussels,

For the Council

The President

ANNEX I

1. The general objective of the Programme is to assist Lithuania in implementing Ignalina nuclear power plant decommissioning, with specific emphasis on managing the radiological safety challenges of the decommissioning of the Ignalina nuclear power plant. With the removal of spent fuel assemblies from the reactor buildings completed, the next major safety challenges to be tackled by the Programme are the dismantling of the reactors' core and the continued management of decommissioning and legacy waste.

2. In the financing period starting as of 2021, the programme will assist the following activities included in the decommissioning plan submitted by Lithuania under Council Regulation 2013/1369/EU, and its revised versions, if any:

   (a) dismantling and decontamination of the reactor shafts top and bottom zones in accordance with the decommissioning plan; progress has to be measured by the quantity and type of materials removed as well as through earned value;

   (b) the design for the dismantling and decontamination of the reactor shafts central zones (graphite cores); progress has to be measured through earned value; this objective shall be accomplished before 2027 when the relevant authorisations will be granted to carry out the actual dismantling and decontamination that is scheduled after 2027;

   (c) safe management of the decommissioning and legacy waste up to interim storage or to disposal (depending on the waste category), including the completion of the waste management infrastructure where necessary. This objective has to be accomplished in accordance with the decommissioning plan; progress has to be measured by the quantity and type of waste safely stored or disposed of, as well as through earned value;

   (d) 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.

3. The decommissioning plan of the Ignalina nuclear power plant established the Programme work breakdown structure (so called Ignalina NPP Decommissioning Activity and Projects Decomposition Hierarchical Structure). The first level of the work breakdown structure is made of the following six items:

(i) P.0 'Enterprise activity organisation';

(ii) P.1 'Decommissioning preparation';

(iii) P.2 'Facility dismantling/demolition and site restoration';

(iv) P.3 'Spent Nuclear Fuel handling';

(v) P.4 'Waste handling';

(vi) P.5 'Post-operation programme'.

Item P.0 'Enterprise activity organisation' covers the enterprise management, surveillance and quality assurance, radiation and ecological monitoring, physical security, engineering support for enterprise activities.

Item P.1 'Decommissioning preparation' covers provision of preliminary conditions for decommissioning (such as equipment inventory and radiological characterisation), modification of infrastructure, isolation of systems and equipment, decontamination of process systems, equipment and facilities.

Item P.2 'Facility dismantling/demolition and site restoration' covers dismantling of reactors, dismantling of process equipment/systems and waste pre-treatment, demolition of facilities, and site restoration.

Item P.3 'Spent Nuclear Fuel handling' covers spent nuclear fuel handling and storage.

Item P.4 'Waste handling' covers treatment and conditioning of radioactive waste.

Item P.5 'Post-operation programme' covers operation and maintenance of facilities, energy resources, water supply, sewage and water purification.

4. Key radiological safety challenges in the financing period 2021-2027 are tackled through activities under items P.1, P.2 and P.4. In particular the dismantling of the reactors' cores is covered under item P.2. Lesser challenges are tackled under item P.3, while items P.0 and P.5 cover decommissioning support activities.

5. Accordingly, when preparing the multiannual work programme, the Commission in close cooperation with Lithuania will consider distributing the available amounts as per the priorities identified in Table 1, without prejudice to Article 7.

Table 1

#	**Item**	**Priority**
P.0	Enterprise activity organisation	II
P.1	Decommissioning preparation	I
P.2	Facility dismantling/demolition and site restoration	I
P.3	Spent Nuclear Fuel handling	II
P.4	Waste handling	I
P.5	Post-operation programme	III

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

– develop ties and exchanges among Union stakeholders (e.g. Member States, safety authorities, utilities and decommissioning operators);

– 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 Union synergies.

Those activities are Union funded at 100%**, under the JRC decommissioning and waste management programme** of eligible costs.

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

7. The ~~**final**~~ disposal of spent fuel and radioactive waste in a deep geological repository is excluded from the scope of the Programme, and has to be developed by Lithuania in its national programme for the management of spent fuel and radioactive waste as required by Council Directive 2011/70/Euratom.

ANNEX II

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.

(3) Knowledge dissemination:

(a) number of ties and exchanges among Union stakeholders on nuclear decommissioning [knowledge products created and their outreach with annual objectives by type meeting the milestones of the Programme.]

(4) Transparency:

(a) Rate of actions resulting from calls for tenders.