COUNCIL REGULATION (EC) No 1990/2006

of 21 December 2006

on the implementation of Protocol No 4 on the Ignalina nuclear power plant in Lithuania to the Act of accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia "Ignalina Programme"

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the 2003 Act of accession, and in particular Article 56 thereof and Protocol No 4 thereto,

Having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities[1] ("the Financial Regulation"),

Having regard to Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of the Financial Regulation[2],

Having regard to the proposal from the Commission,

Whereas:

(1) The European Union has committed to continue to provide adequate additional European Community assistance to Lithuania's effort to decommission the Ignalina nuclear power plant also after Lithuania's accession to the Union for the period until 2006 and beyond. This commitment was made formally in Protocol No 4 on the Ignalina nuclear power plant in Lithuania, annexed to the 2003 Act of Accession.

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[1] OJ L 248, 16.9.2002, p. 1.

[2] OJ L 357, 31.12.2002, p. 1. Regulation as last amended by Commission Regulation (EC, Euratom) No 1248/2006 (OJ L 227, 19.8.2006, p. 3).

(2) Bearing in mind this expression of Union solidarity, Lithuania committed to close Unit 1 of the Ignalina nuclear power plant before 2005 and Unit 2 by 31 December 2009 and to the subsequent decommissioning of these units. An assistance programme with a budget of EUR 285 million has been put in place to cover the period 2004-2006.

(3) The decommissioning of the Ignalina nuclear power plant with two 1500 MW RBMK-type reactors inherited from the former Soviet Union is of an unprecedented nature and represents an exceptional financial burden for Lithuania not commensurate with the size and economic strength of the country. The decommissioning will continue beyond the Community's current Financial Perspectives.

(4) According to Protocol No 4 the Ignalina Programme for 2004-2006 will be seamlessly continued and extended beyond 2006 in accordance with the procedure laid down in Article 56 of the 2003 Act of Accession and this extended programme will be based on the same elements and principles as the 2004-2006 programme.

(5) It is therefore necessary to adopt rules for the implementation of the additional Community assistance for the period 2007-2013 to address the consequences of the closure and decommissioning of the Ignalina nuclear power plant.

(6) According to Protocol No 4 for the period of the next Financial Perspectives, the overall average appropriations under the extended Ignalina Programme shall be appropriate. Programming of these resources will be based on actual payment needs and absorption capacity.

(7) Protocol No 4 provides for different implementation routes for assistance to meet the above mentioned aims, including the direct delivery of assistance to Lithuania through a national administration body, accredited for full decentralisation, under which annual programmes have been implemented in the period 2004-2006. Consequently, Lithuania has an appropriate national implementation structure for the purpose of implementing measures under Protocol No 4 through a national agency in line with the delegation of budget-implementation tasks under Articles 53(2) and 54(2)(c) of the Financial Regulation.

(8) International decommissioning funds managed by the European Bank for Reconstruction and Development (EBRD) have been in place for a number of years. Through the Phare programme in particular, the Community is the main contributor to these funds.

(9) Consequently, provision should be made for a contribution from the general budget of the European Union to fund the decommissioning of the Ignalina nuclear power plant over the period from 2007 to 2013.

(10) The financial assistance may continue to be made available as a Community contribution to the Ignalina International Decommissioning Support Fund managed by the EBRD.

(11) The Ignalina Programme also includes measures to support plant personnel in maintaining a high level of operational safety at the Ignalina nuclear power plant in the periods prior to the closure and during the decommissioning of the reactor units.

(12) The tasks of the EBRD include managing the public funds allocated to the programmes for decommissioning nuclear power plants and monitoring the financial management of these programmes so as to optimise the use of public money. In addition, the EBRD carries out the budget tasks entrusted to it by the Commission in line with the requirements of Article 53(7) of the Financial Regulation.

(13) The decommissioning of the Ignalina nuclear power plant will be carried out in line with the legislation on the environment, particularly Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment[1].

(14) A financial reference amount, within the meaning of point 38 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management[2], is included in this Regulation for the entire duration of the programme, without thereby affecting the powers of the budgetary authority as defined by the Treaty establishing the European Community,

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1 OJ L 175, 5.7.1985, p. 40. Directive as last amended by Directive 2003/35/EC of the European Parliament and of the Council (OJ L 156, 25.6.2003, p. 17).

2 OJ C 139, 14.6.2006, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down detailed rules for the implementation over the period 2007-2013 of Protocol No 4 on the Ignalina nuclear power plant in Lithuania, annexed to the 2003 Act of Accession.

These rules shall ensure that the Ignalina Programme will be seamlessly continued and extended, in accordance with Article 3 of Protocol No 4.

Article 2

The Ignalina Programme shall cover, *inter alia*, measures to support the decommissioning of the Ignalina nuclear power plant without deterioration of nuclear safety, measures to support the nuclear safety authorities in safety assessment and licensing of decommissioning projects, measures for environmental upgrading in line with the acquis and for modernising conventional production capacity to replace the production capacity of the two reactors at the Ignalina plant and other measures which stem from the decision to close and decommission this plant and which contribute to the necessary restructuring, upgrading of the environment and modernisation of the energy production, transmission and distribution sectors in Lithuania as well as to enhancing security of supply and energy efficiency in Lithuania.

The Ignalina Programme shall also include measures to support plant personnel in maintaining a high level of operational safety at the Ignalina nuclear power plant in the periods prior to the closure and during the decommissioning of the reactor units.

Article 3

1. The financial reference amount necessary for implementation of the Ignalina Programme provided for in Article 2 for the period from 1 January 2007 to 31 December 2013 shall be EUR 837 million at current prices.

2. The annual appropriations shall be authorised by the budgetary authority within the limits of the financial framework.

3. The amount of the appropriations allocated to the Ignalina Programme may be reviewed in the course of the period from 1 January 2007 to 31 December 2013 to take account of the progress made with implementation of the programme and to ensure that the programming and allocation of the resources are based on actual payment needs and absorption capacity.

Article 4

The contribution under the Ignalina Programme may, for certain measures, amount to up to 100 % of the total expenditure. Every effort shall be made to continue the co-financing practice established under the pre-accession assistance and the assistance given over the period 2004-2006 for Lithuania's decommissioning effort as well as to attract co-financing from other sources, as appropriate.

Article 5

1. Measures under the Ignalina Programme shall be decided and implemented in accordance with the provisions laid down in Articles 53(2) and 54(2)(c) of the Financial Regulation.

2. Financial assistance for measures under the Ignalina Programme, or parts thereof**,** may be made available as a Community contribution to the Ignalina International Decommissioning Support Fund**,** managed by the EBRD.

3. Measures and financial assistance under the Ignalina Programme shall be approved in line with Article 4 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[1].

Article 6

1. Public aid from national, Community and international sources for:

   – environmental upgrading in line with the acquis and measures to modernise the Elektrėnai thermal power plant in Lithuania as the key replacement for the production capacity of the two reactors at the Ignalina nuclear power plant, and

   – decommissioning the Ignalina nuclear power plant

shall be compatible with the rules concerning the internal market, as defined in the Treaty.

2. Public aid from national, Community and international sources in support of Lithuania's efforts to address the consequences of the closure and of the decommissioning of the Ignalina nuclear power plant may, on a case by case basis, be considered to be compatible with the Treaty rules concerning the internal market, in particular public aid for enhancing the security of energy supply.

Article 7

Without prejudice to Article 1 of Protocol No 4, the safeguard clause referred to in Article 37 of the 2003 Act of Accession shall apply until 31 December 2012 if energy supply is disrupted in Lithuania.

Article 8

1. The Commission may have an audit carried out of the use made of the assistance, either directly by its own staff or by any other qualified outside body of its choice. Such audits may be carried out throughout the lifetime of the agreement and for a period of five years from the date of payment of the balance. Where appropriate, the audit findings may lead to recovery decisions by the Commission.

2. Commission staff and outside personnel authorised by the Commission shall have appropriate rights of access, particularly to the beneficiary's offices and to all the information, including information in electronic format, needed in order to conduct such audits.

The Court of Auditors shall enjoy the same rights, especially of access, as the Commission.

Furthermore, in order to protect the Community's financial interests against fraud and other irregularities, the European Anti-Fraud Office (OLAF) may carry out on-the-spot checks and inspections under this programme in accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections

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[1] OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities[1].

3. For the Community action financed under this Regulation, the term irregularity in Article 1(2) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests[2] shall mean any infringement of a provision of Community law or any breach of a contractual obligation resulting from an act or omission by an economic operator which has, or would have, the effect of prejudicing the general budget of the European Communities or budgets managed by the European Communities by an unjustified item of expenditure or budgets managed by other international organisations on behalf of the European Communities.

4. The agreements between the Community and the EBRD on making Community funds available to the Ignalina International Decommissioning Support Fund shall provide for appropriate measures to protect the financial interests of the Community against fraud, corruption and other irregularities and to enable the Commission, OLAF and the Court of Auditors to carry out on-the-spot checks.

Article 9

The Commission shall ensure the implementation of this Regulation and shall report at regular intervals to the European Parliament and the Council. It shall carry out a mid-term review, as provided for in Article 3.

Article 10

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

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

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1 OJ L 292, 15.11.1996, p. 2.
2 OJ L 312, 23.12.1995, p. 1.

Done at Brussels, 21 December 2006.

For the Council

The President

J. KORKEAOJA