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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)

Corrected by:

►**C1** Corrigendum, OJ L 8, 11.1.2014, p. 31 (1368/2013)

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COUNCIL REGULATION (EURATOM) No 1368/2013

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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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 203 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament [1],

Whereas:

(1) According to the Protocol concerning the conditions and arrangements for admission of the Republic of Bulgaria and Romania to the European Union [2], Bulgaria committed itself to the closure of units 1 and 2 and units 3 and 4 of the Kozloduy nuclear power plant by 31 December 2002 and 31 December 2006 respectively, and to the subsequent decommissioning of those units. In line with its obligations, Bulgaria shut down all units concerned within the respective deadlines.

(2) According to Protocol No 9 on unit 1 and unit 2 of the Bohunice V1 nuclear power plant in Slovakia [3] 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. In line with its obligations, Slovakia shut down all units concerned within the respective deadlines.

(3) In line with their obligations under the Accession Treaty and with Union assistance, Bulgaria and Slovakia have closed the Kozloduy and Bohunice V1 nuclear power plants and have made significant progress towards their decommissioning. Further work is necessary in order to continue the progress with the actual decontamination, dismantling, management of spent fuel and radioactive waste operations and to implement the steady process towards the decommissioning end state in accordance with the respective decommissioning plans, whilst ensuring that the highest safety standards are applied. Based on the available estimates, completion of the decommissioning work will require substantial additional financial resources.

(4) The premature shutdown and consequent decommissioning of the Bohunice VI nuclear power plant with two WWER 440 V 230 type units with an overall capacity of 880 MW has resulted, besides social and energy implications, in a significant financial burden of direct and indirect costs for Slovakia.

[1] Opinion of 19 November 2013 (not yet published in the Official Journal).
[2] OJ L 157, 21.6.2005, p. 29.
[3] OJ L 236, 23.9.2003, p. 954.

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(5) The premature shutdown and consequent decommissioning of four WWER 440 V 230 type units of the Kozloduy nuclear power plant with an overall capacity of 1 760 MW has imposed a heavy long-term burden on Bulgarian citizens in terms of energy, economic, environmental and social implications.

(6) The Union has committed to assist Bulgaria and Slovakia in addressing the exceptional financial burden imposed by the decommissioning process. Since the pre-accession period, Bulgaria and Slovakia have received substantial financial support from the Union, notably through the Kozloduy and Bohunice programmes established for the period 2007 - 2013. The Union financial support under those programmes will end in 2013.

(7) Following the request for further funding from Bulgaria, Lithuania and Slovakia, provision has been made in the Commission proposal for the next multi-annual financial framework for the period 2014-2020: 'A Budget for Europe 2020' for an amount of EUR 700 million from the general budget of the Union for nuclear safety and decommissioning. ►C1 From this, the amount of EUR 860 million in 2011 prices, which is approximately EUR 969 million in current prices, ◄ is foreseen for a new programme to further support the decommissioning of the Bohunice V1 units 1 and 2, the Ignalina units 1 and 2 and the Kozloduy units 1 to 4 for the period from 2014 to 2020.

(8) The amount of the appropriations allocated to the Kozloduy and Bohunice programmes, as well as the programming period and the distribution of funds amongst the Kozloduy, Bohunice and Ignalina programmes may be reviewed based on the results of the mid-term and the final evaluation reports.

(9) The support pursuant to this Regulation should ensure the seamless continuation of decommissioning and concentrate on measures to implement the steady process towards the decommissioning end state, whilst ensuring that the highest safety standards are applied, as such measures bring the greatest Union added value, while the ultimate responsibility for nuclear safety remains with the Member States concerned. This Regulation does not 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 (TFEU).

(10) This Regulation is without prejudice to the rights and obligations of the Member States concerned under the Accession Treaties, in particular under the Protocols referred to in recitals 1 and 2.

(11) The decommissioning of the nuclear power plants covered by this Regulation should be carried out with recourse to the best available technical expertise, and with due regard to the nature and technological specifications of the units to be shut down, in order to ensure the highest possible efficiency, thus taking into account international best practices.

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(12) The activities covered by this Regulation and the operations which they support should comply with applicable Union and national law. The decommissioning of the nuclear power plants covered by this Regulation should be carried out in accordance with the legislation on nuclear safety, namely Council Directive 2009/71/Euratom ([1]), waste management, namely Council Directive 2011/70/Euratom ([2]), and the environment, in particular Directive 2009/31/EC of the European Parliament and of the Council ([3]) and Directive 2011/92/EU of the European Parliament and of the Council ([4]).

(13) The activities covered by this Regulation and the operations which they support should be based on an up–to–date decommissioning plan covering the decommissioning activities, their associated schedule, costs and required human resources. The costs should be established according to internationally recognised standards for the estimation of decommissioning costs, such as, for example, the International Structure for Decommissioning Costing jointly published by the Nuclear Energy Agency, the International Atomic Energy Agency and the European Commission.

(14) An effective control of the evolution of the decommissioning process should be ensured by the Commission in order to assure the highest Union added value of the funding allocated under this Regulation, although the final responsibility for the decommissioning rests with the Member States concerned. This includes the measurement of effective performance and the assessment of corrective measures during the programme concerned.

(15) The financial interests of the Union should be protected through proportionate measures throughout the expenditure cycle, including the prevention, detection and investigation of irregularities, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, penalties.

(16) Since the objectives of this Regulation, in particular as regards the provisions for adequate financial resources for the continuation of safe decommissioning, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale or effects of the action, be better achieved at Union level,

([1]) 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).

([2]) 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).

([3]) Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006 (OJ L 140, 5.6.2009, p. 114).

([4]) Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012, p. 1).

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the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(17) Certain measures under the Kozloduy and Bohunice programmes may require a high level of financing from the Union, which may, in well–founded exceptional cases, amount to the full amount of the funding. However, every effort should be made to continue the co-financing practice established under the pre-accession assistance and the assistance provided over the period 2007-2013 for the decommissioning efforts of Bulgaria and Slovakia, as well as to attract co-financing from other sources as appropriate.

(18) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission as regards the adoption of annual work programmes and detailed implementation procedures. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ([1]).

(19) Council Regulation (Euratom) No 549/2007 ([2]) and Council Regulation (Euratom) No 647/2010 ([3]) should be repealed.

(20) Due account was taken of the Court of Auditors' Special report No 16/2011 on EU financial assistance for the decommissioning of nuclear plants in Bulgaria, Lithuania and Slovakia, its recommendations and the reply from the Commission,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation establishes a programme for the implementation of Union financial support for measures connected with the decommissioning of units 1 to 4 of the Kozloduy nuclear power plant in Bulgaria (the 'Kozloduy programme') and units 1 and 2 of the Bohunice V1 nuclear power plant in Slovakia (the 'Bohunice programme') (together, 'the Kozloduy and Bohunice programmes').

([1]) 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).

([2]) Council Regulation (Euratom) No 549/2007 of 14 May 2007 on the implementation of Protocol No 9 on Unit 1 and Unit 2 of the Bohunice V1 nuclear power plant in Slovakia to the Act concerning the conditions of accession to the European Union of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ L 131, 23.5.2007, p. 1).

([3]) Regulation (Euratom) No 647/2010 of the Council of 13 July 2010 on financial assistance of the Union with respect to the decommissioning of Units 1 to 4 of the Kozloduy Nuclear Power Plant in Bulgaria (Kozloduy Programme) (OJ L 189, 22.7.2010, p. 9).

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Article 2

Objectives

1. The general objective of the Kozloduy and Bohunice programmes is to assist the Member States concerned in implementing the steady process towards the decommissioning end state of Kozloduy units 1 to 4 and Bohunice V1 units 1 and 2 in accordance with their respective decommissioning plans, whilst maintaining the highest level of safety.

2. Within the funding period, the main specific objectives of the Kozloduy and Bohunice programmes are:

(a) in respect of the Kozloduy programme:

(i) performing dismantling in the turbine halls of units 1 to 4 and in auxiliary buildings, to be measured by the number and type of systems dismantled;

(ii) dismantling of large components and equipment in the reactor buildings of units 1 to 4, to be measured by the number and type of systems and equipment dismantled;

(iii) safely managing the decommissioning waste in accordance with a detailed waste management plan, to be measured by the quantity and type of safely conditioned waste;

(b) in respect of the Bohunice programme:

(i) performing dismantling in the turbine hall and auxiliary buildings of reactor V1, to be measured by the number and type of systems dismantled;

(ii) dismantling of large components and equipment in the V1 reactor buildings, to be measured by the number and type of systems and equipment dismantled;

(iii) safely managing the decommissioning waste in accordance with a detailed waste management plan, to be measured by the quantity and type of safely conditioned waste.

3. The Kozloduy and Bohunice programmes may also include measures to maintain a high level of safety at the units under decommissioning, including support with respect to the nuclear power plants' personnel.

Article 3

Budget

1. ►C1 The financial envelope for the implementation of the Kozloduy and Bohunice programmes for the period from 2014 to 2020 shall be EUR 518 442 000 in current prices. That amount shall be distributed between the Kozloduy and Bohunice programmes as follows:

(a) EUR 293 032 000 for the Kozloduy programme for the period from 2014 to 2020;

(b) EUR 225 410 000 for the Bohunice programme for the period from 2014 to 2020. ◄

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This Regulation does not prejudge in any way financial commitments under future multi-annual financial frameworks.

2. The Commission shall review the performance of the Kozloduy and Bohunice programmes and assess the progress of those programmes against the milestones and target dates referred to in Article 7 by the end of 2017 within the framework of the mid-term evaluation referred to in Article 9. Based on the results of that assessment, the amount of the appropriations allocated to the Kozloduy and Bohunice programmes, as well as the programming period and distribution of funds amongst the Kozloduy and Bohunice programmes and the Ignalina programme as established in Council Regulation (Euratom) No 1369/2013 ([1]), may be reviewed to take account of the progress made in the implementation of those programmes and to ensure that the programming and allocation of the resources are based on actual payment needs and absorption capacity.

3. The financial allocation for the Kozloduy and Bohunice programmes may also cover expenses pertaining to preparatory, monitoring, control, audit and evaluation activities which are required for the management of each programme and for the achievement of their objectives. In particular, expenses pertaining to studies, meetings of experts, information and communication actions, including corporate communication of the political priorities of the Union as far as they are related to the general objectives of this Regulation, and expenses linked to IT networks focusing on information processing and exchange, together with all other technical and administrative assistance expenses incurred by the Commission for the management of the Kozloduy and Bohunice programmes may be covered.

The financial allocation for the Kozloduy and Bohunice programmes may also cover the expenses of technical and administrative assistance necessary to ensure the transition between those programmes and the measures adopted under Regulations (Euratom) No 549/2007 and (Euratom) No 647/2010.

Article 4

Ex ante conditionalities

1. By 1 January 2014, Bulgaria and Slovakia shall take the appropriate measures to fulfil the following *ex ante* conditionalities:

(a) comply with the Euratom Treaty's *acquis* in the area of nuclear safety, in particular regarding the transposition into national law of Directives 2009/71/Euratom and 2011/70/Euratom;

(b) establish, in a national framework, a financing plan identifying the full costs and the envisaged funding sources required for the safe completion of decommissioning of the nuclear reactor units, including management of spent fuel and radioactive waste, in accordance with this Regulation.

([1]) Council Regulation (Euratom) No 1369/2013 of 13 December 2013 on Union support for the nuclear decommissioning assistance programme in Lithuania, and repealing Regulation (EC) No 1990/2006 (See page 7 of this Official Journal).

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(c) submit to the Commission a revised detailed decommissioning plan, broken down to detail the level of decommissioning activities, including a schedule and corresponding costs structure based on internationally recognised standards for the estimation of decommissioning costs.

2. Bulgaria and Slovakia shall provide the Commission with the necessary information on the fulfilment of the *ex ante* conditionalities referred to in paragraph 1 at the latest by the time of the budgetary commitment in 2014.

3. The Commission shall assess the information referred to in paragraph 2 when preparing the 2014 annual work programme referred to in Article 6(1). If the Commission is of reasoned opinion that an infringement under Article 258 TFEU for non-compliance with the *ex ante* conditionality set out in paragraph 1(a) has occured or that the *ex ante* conditionalities set out in paragraph 1(b) or 1(c) are not fulfilled satisfactorily, a decision on suspension of all or part of the Union financial assistance shall be taken in accordance with the examination procedure referred to in Article 11(2). Such decision shall be reflected in the adoption of the 2014 annual work programme. The amount of the suspended assistance shall be defined following the criteria set out in the implementing acts referred to in Article 7.

Article 5

Forms of implementation

1. The Kozloduy and Bohunice programmes shall be implemented by one or several of the forms provided for in Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council [1], in particular, by grants and procurements.

2. The Commission may entrust the implementation of the Union financial assistance under the Kozloduy and Bohunice programmes to the bodies set out in Article 58(1)(c) of Regulation (EU, Euratom) No 966/2012.

Article 6

Annual work programmes

1. At the beginning of each year, the Commission shall adopt, by means of implementing acts, a joint annual work programme for the Kozloduy and Bohunice programmes specifying, in respect of each programme, the objectives, expected results, related performance indicators and timeline for the use of funds under each annual financial commitment, in accordance with the examination procedure referred to in Article 11(2).

2. At the end of each year, the Commission shall establish a progress report on the implementation of the work carried out in the previous years. That progress report shall be transmitted to the European Parliament and to the Council and shall be a basis for the adoption of the next joint annual work programme.

[1] Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

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Article 7

Detailed implementation procedures

By 31 December 2014, the Commission shall adopt, by means of implementing acts, detailed implementation procedures for the Kozloduy and Bohunice programmes for their entire duration, in accordance with the examination procedure referred to in Article 11(2). Those implementing acts shall define in more detail, in respect of those programmes, the objectives, expected results, milestones, target dates, as well as the corresponding performance indicators. They shall also contain the revised detailed decommissioning plans as referred to in Article 4(1)(c) that shall serve as baseline for the monitoring of the progress and the timely achievement of the expected results.

Article 8

Protection of the financial interests of the Union

1. The Commission shall take appropriate measures to ensure that, when actions financed under this Regulation are implemented, the financial interests of the Union are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by the recovery of amounts wrongly paid and, where appropriate, by effective, proportionate and dissuasive penalties.

2. The Commission or its representatives and the Court of Auditors shall have the power of audit, both on the basis of documents and on–the–spot, over all grant beneficiaries, contractors and subcontractors who have received Union funds.

The European Anti-Fraud Office (OLAF) may carry out on–the–spot checks and inspections on economic operators concerned directly or indirectly by Union funding, in accordance with the procedures laid down in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council [1] and in Council Regulation (Euratom, EC) No 2185/96 [2], with a view to establishing whether fraud, corruption or any other illegal activity has occurred affecting the financial interests of the Union in connection with a grant agreement, grant decision or a contract concerning Union funding.

3. Without prejudice to paragraphs 1 and 2, cooperation agreements with third countries and international organisations, grant agreements, grant decisions and contracts resulting from the implementation of this Regulation shall contain provisions expressly empowering the Commission, the Court of Auditors and OLAF to conduct the audits, on–the–spot checks and inspections referred to in those paragraphs, in accordance with their respective competences.

[1] 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).

[2] 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).

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Article 9

Mid-term evaluation

1. By 31 December 2017, a mid-term evaluation report shall be established by the Commission, in close cooperation with the Member States, on the achievement of the objectives of all the measures related to the Kozloduy and Bohunice programmes, at the level of results and impacts, the efficiency of the use of resources and its Union added value, with a view to adopting a decision amending or suspending those measures. The evaluation shall also address the scope for modification of the specific objectives and detailed implementation procedures described in Article 2(2) and Article 7 respectively.

2. The mid-term evaluation shall take account of progress against performance indicators as referred to in Article 2(2).

3. The Commission shall communicate the conclusions of the evaluation referred to in paragraph 1 to the European Parliament and to the Council.

Article 10

Final evaluation

1. The Commission shall conduct, in close cooperation with the Member States, an *ex-post* evaluation on the effectiveness and efficiency of the Kozloduy and Bohunice programmes, as well as the effectiveness of financed measures in terms of impacts, use of resources and added–value for the Union.

2. The final evaluation shall take account of progress against performance indicators as referred to in Article 2(2).

3. The Commission shall communicate the conclusions of the evaluation referred to in paragraph 1 to the European Parliament and to the Council.

Article 11

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 12

Transitional provision

This Regulation shall not affect the continuation or modification, including the total or partial cancellation, of the projects concerned, until their closure, or of financial aid awarded by the Commission on the basis of Regulations (Euratom) No 549/2007, (Euratom) No 647/2010 or any other legislation applying to that assistance on 31 December 2013, which shall continue to apply to the actions concerned until their closure.

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Article 13

Repeal

Regulations (Euratom) No 549/2007 and (Euratom) No 647/2010 are hereby repealed with effect from 1 January 2014.

Article 14

Entry into force

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

It shall apply from 1 January 2014.

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