I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 3245/81
of 26 October 1981
setting up a European Agency for Cooperation

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Whereas, in order to implement Community financial and technical cooperation with the developing countries, and in particular with the ACP States, the Commission has set up overseas delegations and provided them with staff; whereas it has furthermore put the staff directly at the disposal of the States in receipt of Community aid;

Whereas, in order to ensure that the said financial and technical cooperation is implemented efficiently, the Commission has been called upon to recruit and administer such staff, lay down rules for the administration of local staff and organize training schemes for nationals of the developing countries;

Whereas, in order to help the Commission fulfil these tasks, there should be set up, within the framework of the European Communities, a European Agency for Cooperation acting in conformity with Community law; whereas it is desirable to specify the conditions under which certain general provisions shall apply;

Whereas such Community action is required for the achievement of the aim described above; whereas, however, the necessary specific powers have not been laid down in the Treaty,

(1) OJ No C 129, 3. 6. 1978, p. 4.
(2) OJ No C 140, 5. 6. 1979, p. 142.

HAS ADOPTED THIS REGULATION:

Article 1

A European Agency for Cooperation, hereinafter referred to as 'the Agency', is hereby set up.

Article 2

1. The Agency shall be non-profitmaking. It shall enjoy in the Member States the most extensive legal capacity accorded to legal persons.

2. The headquarters of the Agency shall be in Brussels.

Article 3

The aim of the Agency shall be to assist the Commission:

1. with a view to the recruitment, installation and administration of staff:

   (a) placed at the disposal of Commission delegations, which are established in developing countries, linked to the Community by comprehensive preferential cooperation agreements and which have the task of helping the Commission to implement such agreements, or

   (b) who are called upon to undertake technical assistance or cooperation tasks financed by the Community in favour of the developing countries referred to in (a);

2. with a view to the laying down of rules for administering locally-recruited staff for the delegations referred to in point 1 (a), or in the context of the tasks referred to in point 1 (b), and

3. with a view to participation in the execution of the programmes for scholarships and traineeships granted to nationals of developing countries, referred to in point 1 (a), both as regards following the progress of training schemes and as regards the social aspects.

Article 4

The Agency shall be administered by an administrative board and a director.

Article 5

1. The administrative board shall consist of not less than five and not more than 13 members designated by the Commission and chosen from among the members of its staff on the basis of their duties in the Commission departments.

2. The term of office of members of the administrative board shall be five years. It shall be renewable. Upon the expiry of their term of office or in the event of their resignation, members shall remain in office until their appointments are renewed or until they are replaced.

3. The administrative board shall elect its chairman, a deputy chairman, an administrator-delegate and a secretary from among its members.

4. Members of the administrative board shall not be paid for the duties they perform.

Article 6

1. The administrative board shall meet, when convened by the chairman or deputy chairman, as often as the interests of the Agency require and at least once a year.

2. Any member of the administrative board who is unable to attend a meeting may be represented by another member who is specially authorized to attend the meeting in question. A member may represent only one other member.

3. If the chairman is unable to attend, the administrative board shall be chaired by the deputy chairman or, if the latter is unable to attend, by the administrator-delegate.

4. The administrative board shall have a quorum when five members are present.

Decisions of the administrative board shall be adopted by a simple majority of those voting. In the event of a tie the chairman shall have the casting vote.

Article 7

1. The administrative board shall ensure the administration of the Agency.

2. It shall decide whether to accept any legacy, donation or subsidy from other Community sources.

Article 8

1. The director of the Agency shall be appointed by the Commission on the basis of a list of candidates submitted by the administrative board.

2. The director shall be appointed for a maximum period of five years. His term of office shall be renewable.

Article 9

1. The director shall carry out the decisions of the administrative board and shall be responsible for the day-to-day running of the Agency. He shall be the legal representative of the Agency.

2. The director shall prepare and organize the work of the administrative board. He shall participate in an advisory capacity in the work of the administrative board.

3 The director shall be accountable to the administrative board for the execution of his duties.

Article 10

1. By 31 March of each year at the latest, the director shall prepare a general report on the activities, financial situation and future prospects of the Agency and shall submit it to the administrative board.

2. After its adoption by the administrative board, the report shall be forwarded to the Commission and to the members of the Committee referred to in the second subparagraph of Article 12 (2).

Article 11

The Agency's revenue shall comprise:

1. the subsidies posted under specific entries in the budget of the European Communities;
2. the subsidies authorized by the Commission from the resources of the European Development Fund, and
3. any other possible resources.

Article 12

1. The administrative board shall draw up a draft estimate of revenue and expenditure of the Agency for

each calendar year and send it to the Commission. The draft estimate submitted must be in balance. An establishment plan showing the appointed staff of the delegations referred to in Article 3 (1) (a) shall be attached to the draft.

2. The Commission shall send the draft estimate to the EDF Committee and to the corresponding Committees for the operations in respect of which the intervention of the Agency is or will be necessary.

For the purpose of examining the draft estimate, these Committees shall form themselves into a single Committee composed of representatives of the Governments of the Member States and chaired by a representative of the Commission.

At the meeting at which the draft estimate is examined the Committee shall hold an exchange of information and views on general questions relating to the Agency.

The examination of the draft estimate and the exchange of information and views shall form the subject of reports setting out the main conclusions of the Committee and the basic positions adopted by the representatives of the Governments of the Member States.

3. Taking account of the report on the examination of the draft estimate by the Committee referred to in the second subparagraph of paragraph 2, the Commission shall adopt the draft estimate of revenue and expenditure of the Agency and send it to the budget authority with the preliminary draft budget of the European Communities and the aforementioned report so that an examination can take place during the budgetary procedure.

4. The Commission shall adopt the estimate of revenue and expenditure of the Agency before the beginning of the financial year, adjusting it to the subsidies granted by the budget authority.

5. If so requested by a Member State or by the Commission, the chairman may convene the Committee referred to in the second subparagraph of paragraph 2 during the year to examine new facts concerning general questions relating to the Agency.

Article 13

1. Within the framework of the Financial Regulation applicable to the general budget of the European Communities and of the other financial regulations applicable, the provisions concerning the Agency's relations with the Commission and the internal administrative and financial arrangements applicable to the Agency shall be the subject of implementation measures adopted by the Commission and published in the *Official Journal of the European Communities.*

2. The implementation measures referred to in paragraph 1 shall lay down *inter alia* the principles governing the financial administration and the execution of the estimate of revenue and expenditure, the auditing of revenue and expenditure, the conclusion of contracts, the keeping of accounts and the inventory of movable and immovable assets.

Article 14

The general terms of recruitment and of employment and the general system of remuneration, allowances and additional payments for the staff referred to in Article 3 (1) and for the staff of the Agency's headquarters shall be determined by specific provisions adopted by the Commission after the Committee referred to in the second subparagraph of Article 12 (2) has delivered its opinion.

Article 15

1. The administrative board shall by 31 March each year send the administrative accounts retracing all the revenue and expenditure for the preceding financial year and the financial statement of the Agency to the Commission and to the Court of Auditors.

The Court of Auditors shall examine them in accordance with Article 206a of the Treaty.

2. The Court of Auditors shall communicate to the Commission, not later than 15 July, any observations which it considers should appear in the annual report provided for in Article 206a of the Treaty. The Commission shall forward its replies to the Court of Auditors not later than 31 October.

The Court of Auditors shall send its annual report, together with the Commission's replies not later than 30 November to the European Parliament, to the Council and to the Commission and shall ensure its publication in the *Official Journal of the European Communities*.

A discharge shall be given to the administrative board in respect of the financial administration of the Agency under the procedure laid down in Article 206b of the Treaty.

3. The Financial Controller of the Commission shall be responsible for checking the commitment and payment of all expenditure and the recording and recovery of all revenue of the Agency.

Article 16

Members of the administrative board, the director, the staff and all other persons participating in the activities of the Agency shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy.

Article 17

The Agency and its staff shall enjoy the privileges and immunities corresponding to those provided for in

Chapters I and V of the Protocol on the privileges and immunities of the European Communities.

Article 18

1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question.

The Court of Justice of the European Communities shall have jurisdiction in all disputes between the Agency and its staff within the limits and on the conditions laid down in the general terms of recruitment and employment applicable to the said staff.

2. In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by the Agency or its staff in the performance of their duties.

The Court of Justice of the European Communities shall have jurisdiction in disputes relating to compensation for any such damage.

Article 19

1. Any Member State, any member of the administrative board and any third party directly and personally involved may refer to the Commission for examination any act of the Agency, whether express or implied.

2. Referral shall be made to the Commission within 30 days of the day on which the party concerned first became aware of the act in question.

3. If an act of the Agency which has been referred to the Commission is, at the request of a Member State, being examined simultaneously in the Committee referred to in the second subparagraph of Article 12 (2), the Commission shall not take a decision unless the Committee has expressed its opinion.

The Committee shall express its opinion within 90 days of the matter being referred to it.

The Commission shall forthwith inform the party concerned of the date of referral to the Committee and the date on which the Committee expressed or should have expressed its opinion.

4. The Commission shall take a decision within 30 days of referral of the matter to it or, where appropriate, of the date on which the Committee referred to in the second subparagraph of Article 12 (2) expressed or should have expressed its opinion.

5. If no decision has been taken by the Commission within 30 days, the case shall be deemed to have been dismissed.

Article 20

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

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

Done at Luxembourg, 26 October 1981.

For the Council
The President
CARRINGTON