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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 319/92

of 3 February 1992

on the implementation for a trial period of the European Communities Investment Partners financial instrument for countries of Latin America, Asia and the Mediterranean region

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 the Community is implementing financial, technical and economic cooperation with the developing countries of Latin America, Asia and the Mediterranean region;

Whereas in order to strengthen such cooperation, it is necessary, *inter alia,* to encourage mutually beneficial investment, particularly by small and medium-sized undertakings (SMUs);

Whereas the Council has reached a consensus on the importance of the role of the private sector in the development process;

Whereas joint ventures and investment by Community undertakings in developing countries can bring certain benefits for these countries, including the transfer of capital, know-how, employment, the transfer of training and expertise, increased export possibilities and the meeting of local needs;

Whereas a three-year pilot scheme was launched in 1988 to promote, via an European Communities Investment Partners financial instrument (ECIP), the creation of joint ventures between the Community and countries of Latin America, Asia and the Mediterranean region;

Whereas on 18 December 1990 the Council adopted guidelines on new forms of cooperation to benefit Asia and Latin America on the one hand and the Mediterranean region on the other;

Whereas although the results obtained to date have revealed this instrument to have some potential to attain these objectives, it is still necessary to determine the precise role it could play within the range of cooperation facilities with Latin America, Asia and the Mediterranean region;

Whereas the continuation and extension of the instrument for a further three-year trial period from 1 January 1992 is therefore necessary to confirm the utility of this instrument and perfect the way in which it is implemented, in order that full use may be made of the possibilities of mutually beneficial action in the countries of Latin America, Asia and the Mediterranean region;

Whereas the broadest possible participation by undertakings in all Member States should be encouraged;

Whereas all the Member States should be encouraged to participate in the promotion of their investments in the countries of Latin America, Asia and the Mediterranean region through financial institutions specializing in development;

Whereas the objectives and operating criteria of the instrument need to be defined;

Whereas the Treaty does not provide, for the adoption of this Regulation, powers other than those of Article 235,

HAS ADOPTED THIS REGULATION:

Article 1

1. For a three-year trial period starting on 1 January 1992, and as part of its economic cooperation with the countries of Latin America, Asia and the Mediterranean region, the Community shall operate special cooperation schemes aimed at promoting mutually beneficial investment by Community operators, particularly in the form of joint ventures with local operators in the countries eligible.

(1) OJ No C 81, 26. 3. 1991, p. 6.
(2) OJ No C 183, 15. 7. 1991, p. 464.

2. Account being taken of their respective possibilities and needs, SMUs will receive priority in application of the scheme, while large multinational undertakings will be ineligible.

Article 2

The EC Investment Partners financial instrument (ECIP), hereinafter referred to as the 'instrument', shall offer four kinds of financing facility covering:

1. grants for the identification of projects and partners, not exceeding 50 % of the cost of the operation up to a ceiling of ECU 100 000 (Facility No 1);

2. interest-free advances for feasibility studies and other action by operators intending to set up joint ventures or to invest, not exceeding 50 % of the cost up to a ceiling of ECU 250 000 (Facility No 2);

3. capital requirements of a joint venture or a local company with licensing agreements, in order to meet investment risks peculiar to developing countries, through participation in the provision of equity, or by equity loans not exceeding 20 % of the joint venture's capital up to a ceiling of ECU 1 million (Facility No 3);

4. interest-free advances, not exceeding 50 % of the cost up to a ceiling of ECU 250 000, for training, technical assistance or management expertise of an existing joint venture, or joint venture about to be set up, or a local company with licensing agreements (Facility No 4).

The aggregate amount made available under Facilities Nos 2, 3 and 4 may not exceed ECU 1 million per project.

Article 3

1. The financial institutions shall be selected by the Commission, further to the opinion of the Committee defined in Article 8, from among development banks, commercial banks, merchant banks and investment promotion bodies.

2. Financial institutions which have submitted proposals in accordance with the criteria defined in Article 6 will receive fees in accordance with arrangements to be determined by the Commission.

Article 4

1. With regard to Facility No 1 set out in Article 2, financing applications may be submitted either directly to the Commission by the institution, association or body carrying out the identification of partners and projects, or through a financial institution.

2. In the case of Facilities Nos 2, 3 and 4 set out in Article 2, applications may be submitted by the undertakings concerned solely through the financial institutions defined in Article 3. Community funds for the participating undertakings shall be applied for and provided exclusively through the financial institution.

3. With regard to Facility No 2 set out in Article 2, the financial institutions and undertakings shall be required to share the project risk; where this is successful, however, the Community contribution may be more than 50 % of the cost.

4. In the case of Facility No 3 set out in Article 2, the financial institutions shall provide financing at least equal to that provided by the Community. This facility shall be reserved, where the Community is concerned, for SMUs; exceptions will be possible in cases for which specific justification is provided having particular significance for development policy, for instance technology transfer.

5. In the case of Facility No 4 set out in Article 2, the financial institutions shall make a financial contribution to the project of an amount at least equal to that made by the Community.

6. Framework agreements signed by the Commission with the financial institutions shall explicitly stipulate that the Court of Auditors has the power, in accordance with Article 206a of the Treaty, to audit the operations of these institutions with respect to financial projects funded by the general budget of the European Communities.

Article 5

1. Contributions awarded under the instrument shall, depending upon the circumstances and pursuant to Article 2, be either grants or interest-free advances, or participations in the provision of equity or equity loans.

Participations in the capital shall in principle be acquired by the financial intermediaries on their own behalf. However, in exceptional cases, particularly where in view of the legal situation in a Community Member State, or in other cases to be specified, a participation in the capital on behalf of a financial intermediary is impossible, the Commission may instruct a financial establishment to hold a participation on the Community's behalf.

The commercial, industrial, investment and financial decisions of the joint undertakings set up under the instrument shall be taken exclusively by those undertakings.

2. For Facility No 2 set out in Article 2, interest-free advances shall be reimbursed according to the arrangements to be determined by the Commission, on the understanding that the final repayment periods are to be as short as possible and shall in no instance exceed five years. Such advances shall not be refundable where the studies have produced negative results.

3. For Facility No 3 set out in Article 2, participations by virtue of this instrument shall be disposed of at the earliest opportunity once the project becomes viable, having regard to the Community's rules of sound financial management.

4. Loan repayment, the realization of participations and interest and dividend payments will generate renewable funds which will be held on deposit by the financial intermediaries on behalf of the Community and will be managed in accordance with the requirements of the instrument and pursuant to the principles of sound management, security and yield appropriate to the investment. These funds will be allocated for the operations of the instrument or will bear interest at market rates and will be used in such a way as to curtail use of funds from the general budget of the European Communities for operations under the instrument. All assets held by the financial intermediaries are to be paid back to the Community if the intermediary ceases to be associated with the instrument or if the instrument ceases to operate.

Article 6

1. Projects shall be selected by the financial institution or, in the case of Facility No 1 set out in Article 2, by the Commission and the financial institution in the light of the appropriations adopted by the budget authority and on the basis of the following criteria:

(a) the anticipated soundness of the invstment and the quality of the promoters;

(b) the contribution to development in particular in terms of:

— impact on the local economy;
— creation of added value;
— creation of local jobs;
— promotion of local entrepreneurs;
— transfer of technology and know-how and development of the techniques used;
— acquisition of training and expertise by managers and local staff;
— implications for women;
— creation of local jobs in circumstances which do not involve exploiting employees;
— impact on the balance of trade and balance of payments;
— impact on the environment;
— manufacture and supply to the local market of products hitherto difficult to obtain or substandard;
— use of local raw materials and resources.

2. The financial financing decision shall be taken by the Commission, which shall verify compliance with the criteria set out in paragraph 1 and compatibility with the various aspects of Community policies and the mutual benefit to the Community and the developing country concerned.

Article 7

Countries eligible shall be the developing countries of Latin America, Asia and the Mediterranean region which have previously benefited from Community development cooperation measures or which have concluded regional or bilateral cooperation or association agreements with the Community.

Article 8

1. The Commission shall implement the instrument in accordance with this Regulation.

2. In carrying out this task, the Commission shall be assisted, as appropriate, by the Committee set up under Article 11 of Regulation (EEC) No 442/81 [1] or by the Committee set up under Article 6 (1) of Regulation (EEC) No 3973/86 [2].

3. (a) The following shall be adopted under the procedure laid down in paragraph 4:

— the choice of financial intermediaries in the light of their experience and aptitude for making a preliminary selection of the projects in accordance with the criteria set out in Article 6;
— guidelines on direct participation.

(b) Furthermore, the Committee may examine, at the Commission's initiative or at the request of one of its members, any question connected with the implementation of this Regulation, in particular:

— information on the projects funded over the previous year;
— the terms of reference of the independent appraisal provided for in Article 9;
— any other information which the Commission wants to submit to it.

4. With regard to the matters mentioned in paragraph 3 (a), the representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the Chairman may lay down according

[1] OJ No L 48, 21. 2. 1981, p. 8.
[2] OJ No L 370, 30. 12. 1986, p. 5.

to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The Chairmann shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

If the mesures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of one month from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

5. The European Investment Bank shall be entrusted with the administration of the action taken with the countries of the Mediterranean region under the instrument as soon as it states that it is in a position to take on that task.

Article 9

1. The Commission shall send to the European Parliament and to the Council, by 30 April each year at the latest, a progress report showing the projects selected, the appropriations granted and the repayments to the general budget of the European Communities and including annual statistics for the previous year.

2. The Commission shall forward the results of an independent appraisal of the instrument to the European Parliament and the Council by 31 March 1994 at the latest.

3. The Council shall ask the Court of Auditors to deliver an opinion on the implementation of the instrument by 31 December 1993.

Article 10

To enable the instrument to continue after the three-year trial period, a Decision by the Council, acting on a Commission proposal, subsequent to the opinion of the European Parliament and taking into account the conclusions of the independent appraisal referred to in Article 9 (2), will be necessary.

Article 11

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

It shall apply with effect from 1 January 1992.

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

Done at Brussels, 3 February 1992.

For the Council

The President

João PINHEIRO