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(Acts whose publication is obligatory)

COUNCIL REGULATION (EURATOM, EC) No 1279/96

of 25 June 1996

concerning the provision of assistance to economic reform and recovery in the New Independent States and Mongolia

THE COUNCIL OF THE EUROPEAN UNION,

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

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Whereas, pursuant to the European Council in Dublin and in Rome in 1990, the Community introduced a technical assistance programme in favour of economic reform and recovery in the former Union of Soviet Socialist Republics;

Whereas Council Regulation (Euratom, EEC) No 2053/93 of 19 July 1993 concerning the provision of technical assistance to economic reform and recovery in the independent States of the former Soviet Union and Mongolia (2) laid down the conditions for the provision of this technical assistance and envisaged such an operation from 1 January 1993 to 31 December 1995;

Whereas such assistance will be fully effective only in the context of progress towards free and open democratic systems that respect human rights, and towards market-oriented economic systems;

Whereas such assistance has already generated significant impact on reform in the New Independent States and Mongolia and further assistance is still required to ensure that this reform becomes sustainable, it is necessary to continue this effort;

Whereas a financial reference amount, within the meaning of point 2 of the declaration by the European Parliament, the Council and the Commission of 6 March 1995, is included in this Regulation for the entire duration of the programme, without thereby affecting the powers of the budgetary authority as they are defined by the Treaty;

Whereas the implementation of the said assistance should enable conditions favourable to private investment to be established;

Whereas it is appropriate to establish priorities for this assistance;

Whereas Community assistance will be all the more effective where it can be implemented on a decentralized basis within each partner country;

Whereas the development of inter-State economic links and trade flows conducive to economic reform and restructuring should be encouraged;

Whereas, in order properly to meet the most acute needs of the New Independent States and Mongolia at the present stage of their economic transformation, it is necessary to permit a limited amount of the financial allocation to be used for small-scale infrastructure projects in the context of cross-border cooperation;

Whereas the development of small and medium-sized enterprises is a priority in all the New Independent States and Mongolia, and it is therefore appropriate to provide equity funding for such companies;

Whereas the dialogue between the social partners should be encouraged;

Whereas the integration of environmental aspects into the programme would guarantee the long-term sustainability of the economic reforms;

Whereas the European Council at its meeting in Rome also stressed the importance of effective coordination by the Commission of the efforts made in the former Union of Soviet Socialist Republics by the Community and its Member States acting individually;

Whereas it is appropriate that the Commission be assisted in the implementation of Community aid by a committee made up of Member States' representatives;

(1) OJ No C 141, 13. 5. 1996.
(2) OJ No L 187, 29. 7. 1993, p. 1.

Whereas the requirements of economic reform and restructuring now in progress, and the effective management of this programme, require a multiannual approach;

Whereas assistance for economic reform and recovery may require specific types of expertise particularly available in the Phare partner countries and in certain other States;

Whereas procedures for tenders shall fully respect the provisions of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities (1) (hereinafter referred to as 'the Financial Regulation');

Whereas the widest possible participation under equal conditions in tenders for supplies, works and services shall be ensured;

Whereas the Commission shall ensure the necessary transparency and rigour when the selection criteria are applied;

Whereas effective competition amongst firms, organizations and institutions interested in participating in the initiatives financed by the programme shall be ensured;

Whereas, to this end, all relevant information on projects shall be provided, using, when appropriate, the most modern means of communication so as to ensure that any firm, organization or institution which may be interested can express its interest in being considered for an invitation to tender;

Whereas, in the selection process, the Commission shall try to diversify between firms, organizations and institutions;

Whereas the continued provision of assistance will contribute to the attainment of the Community's objectives, notably in the context of the partnership and cooperation agreements;

Whereas the Treaties have not provided, for the adoption of this Regulation, powers other than those of Article 235 of the EC Treaty and Article 203 of the EAEC Treaty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A programme to assist economic reform and recovery in the partner States listed in Annex I (hereinafter called 'the partner States') shall be implemented by the Community from 1 January 1996 to 31 December 1999 in accordance with the criteria laid down in this Regulation.

2. Assistance shall be concentrated on sectors and, where appropriate, on geographical areas in which the partner States have already taken concrete measures to promote reform and/or for which they can present a time-schedule. Criteria for implementation of this Regulation are set out in Annex IV which, if appropriate, may be modified according to the procedure laid down in Article 8 (2) and (3).

Article 2

The financial reference amount for the implementation of this prorgramme for the period 1996 to 1999 shall be ECU 2 224 million.

The annual appropriations shall be authorized by the budgetary authority within the limits of the financial perspective.

Article 3

1. The programme referred to in Article 1 shall mainly take the form of technical assistance in support of the economic reform in progress in the partner States for measures aimed at bringing about the transition to a market economy and reinforcing democracy.

It shall also, case by case and in accordance with the procedure set out in Article 8 (2) and (3), cover reasonable costs of supplies required in support of the implementation of the technical assistance. In particular cases, such as nuclear safety programmes, a significant supply element may be included.

The cost of the project in local currency shall be covered by the Community only to the extent strictly necessary.

2. On a case-by-case basis and subject to the procedure referred to in Article 8 (2), assistance may cover costs related to small-scale infrastructure projects in the context of border-crossing facilities referred to in paragraph 10.

3. The programme shall promote industrial cooperation and support the establishment of joint ventures through the funding of equity investment in small and medium-sized companies.

4. The allocation to activities mentioned under paragraphs 2 and 3 shall not exceed 10 % of the annual Technical Assistance for the Commonwealth of Independent States (Tacis) budget.

5. The assistance shall also cover costs related to the preparation, implementation, monitoring, audit and evaluation of the execution of these operations, as well as costs concerning information.

(1) OJ No L 356, 31. 12. 1977, p. 1. Financial Regulation as last amended by Regulation (EC, Euratom, ECSC) No 2335/95 (OJ No L 240, 7. 10. 1995, p. 12).

6. The assistance shall be concentrated in particular in the indicative areas referred to in Annex II taking into account the evolving needs of the beneficiaries. Particular emphasis shall be laid on nuclear safety issues.

7. When designing and implementing programmes, due regard shall be taken of:

— the promotion of equal opportunities for women in the recipient countries,

— environmental considerations.

8. Operations to be financed pursuant to this Regulation shall be selected taking account, *inter alia*, of the recipients' preferences and on the basis of an assessment of their effectiveness in achieving the objectives aimed at by the Community assistance.

9. The assistance shall be implemented on a decentralized basis as far as possible. To this end, the final recipients of Community assistance shall be closely involved in the preparation and execution of the projects, and once the national authorities of the partner States have agreed on sectoral policies and strategies, as well as the geographical concentration areas, the identification and preparation of the measures to be supported shall be carried out directly at regional level wherever possible.

Regular coordination shall be established between the Commission and the Member States, including on-the-spot coordination in their contracts with the partner States, both in the programme-definition and the programme-implementation stage.

10. Assistance may be provided to support measures aimed at promoting inter-State, inter-regional and cross-border cooperation. Particular attention will be paid to border-crossing facilities on borders between the New Independent States and the Union, and the New Independent States and central Europe, as well as to measures on the Finnish-Russian border comparable to those undertaken in this field between the Union and the Phare countries. Moreover, particular attention will be paid to cooperation on the level of large geographical regions between the New Independent States and the Union and the New Independent States and central Europe.

11. When an essential element for the continuation of cooperation through assistance is missing, in particular in cases of violation of democratic principles and human rights, the Council may, on a proposal from the Commission, acting by a qualified majority, decide upon appropriate measures concerning assistance to a partner State.

Article 4

1. Community assistance shall take the form of grants which shall be released in tranches as projects materialize.

2. Financing decisions and may contracts resulting therefrom shall expressly provide for supervision by the Commission and the Court of Auditors to be carried out on the spot, if necessary.

Article 5

1. Indicative programmes covering four-year periods shall be established for each of the partner States in accordance with the procedure provided for in Article 8. These programmes shall define the principal objectives of, and guidelines for, Community assistance in the indicative areas referred to in Article 3 (6) and could include financial estimates. The programmes may be amended in accordance with the same procedure during the period of their application. Before the establishment of indicative programmes, the Commission shall discuss with the Committee referred to in Article 8 the priorities identified with the partner States.

2. Action programmes based on the indicative programmes referred to in paragraph 1 shall be adopted on an annual basis in accordance with the procedure provided for in Article 8 (2) and (3). These action programmes shall include a list of the main projects to be financed within the indicative areas referred to in Article 3 (6). The content of the programmes shall be determined in detail, so as to provide Member States with the relevant information to enable the Committee referred to in Article 8 to deliver its opinion.

Article 6

1. The Commission shall implement operations in accordance with the action programmes referred to in Article 5 (2) and in accordance with Title IX of the Financial Regulation as well as Article 7 of this Regulation.

2. Supply and works contracts shall be awarded by means of open invitations to tender except in the cases provided for in Article 116 of the Financial Regulation.

Open invitations to tender for the award of supply contracts in accordance with Article 114 of the Financial Regulation shall allow for a time limit to submit an offer of not less than 52 days from the date of dispatch of the notice to the *Official Journal of the European Communities.*

Service contracts shall, as a general rule, be awarded by restricted invitations to tender and by private treaty for operations up to ECU 200 000.

Participation in invitations to tender and contracts shall be open on equal terms to all natural and legal persons in the Member States and in the partner States.

Participation by natural and legal persons from the countries benefiting from Phare as well as in specific cases from Mediterranean countries with traditional economic, trade or geographical links may be authorized by the Commission on a case-by-case basis if the programmes or projects concerned require specific forms of assistance specifically available in such countries.

3. Taxes, duties and the purchase of immovable property shall not be funded by the Community.

4. In the case of cofinancing, the participation of third countries concerned in invitations to tender and contracts may be authorized by the Commission, but on a case-by-case basis. In these cases the participation of undertakings from third countries shall be acceptable only if reciprocity is granted.

Article 7

The principles governing the award of contracts by means of tendering, in particular restricted tendering, are contained in the Annex III, which may be modified by the Council, acting by qualified majority on a proposal by the Commission.

The Commission shall present to the Council a report on the implementation of these principles by 31 December 1997.

Article 8

1. The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission, to be known as the 'committee for assistance to the New Independent States and Mongolia' and hereinafter referred to as the 'committee'.

2. 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 to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the EC 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 chairman shall not vote.

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

If the measures 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 a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

4. The committee may examine any other question relating to the implementation of this Regulation which may be put to it by its chairman, including at the request of the representative of a Member State, and, in particular, any question relating to general implementation, the administration of the programme, cofinancing and the coordination referred to in Article 9.

5. The committee shall adopt its rules of procedure by qualified majority.

6. The Commission shall keep the committee regularly informed, supplying specific, detailed information on the contracts awarded for the implementation of the projects and programmes. Moreover, for projects expected to be put out for restricted invitations to tender in accordance with Article 6 (2), the Commission shall, before drawing up short-lists, provide in good time advance information which shall include selection and evaluation criteria so as to facilitate participation by economic operators.

7. The European Parliament shall be kept regularly informed of the implementation of the Tacis programmes.

Article 9

The Commission shall, together with the Member States, ensure the effective coordination of the assistance efforts undertaken in the partner States by the Community and individual Member States on the basis of the information supplied by the Member States.

In addition, coordination and cooperation with the international financial institutions and other donors shall be encouraged.

In the framework of the assistance provided pursuant to this Regulation, the Commission shall promote cofinancing with public or private bodies in the Member States.

Article 10

Each year the Commission shall present a progress report on the implementation of the assistance programme. This report shall include an evaluation of the assistance already provided. The report shall be addressed to the Member States, the European Parliament, the Council and the Economic and Social Committee and the Committee of the Regions.

Article 11

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, 25 June 1996.

For the Council

The President

M. PINTO

ANNEX I

Partner States referred to in Article 1

Armenia
Azerbaijan
Belarus
Georgia
Kazakhstan
Kyrgyzstan
Moldova
Russian Federation
Tajikistan
Turkmenistan
Ukraine
Uzbekistan
Mongolia

ANNEX II

Indicative areas referred to in Article 3 (6)

Assistance shall give priority to the following areas:

1. Human resources development:
   - education, training including managerial and manpower training,
   - restructuring of public administration,
   - employment services and social security advice,
   - strengthening of the civic society,
   - policy and macro-economic advice,
   - legal assistance including approximation of legislation.
2. Enterprise restructuring and development:
   - support for the development of small and medium-sized enterprises,
   - conversion of defence-related industries,
   - privatization and restructuring,
   - financial services.
3. Infrastructure:
   - transport,
   - telecommunications.
4. Energy, including nuclear safety.
5. Food production, processing and distribution.
6. Environment:
   - institutional strengthening,
   - legislation,
   - training.

ANNEX III

Principles governing the award of contracts by means of tendering, in particular restricted tendering

1. All necessary information shall be made available with the 'Invitation to tenderers' to each of the tenderers which have been registered on the short-list or which so request in reply to the publication of a notice of an open tender. This information shall contain, in particular, the evaluation criteria. The technical evaluation of the tender may include interviews with the persons proposed in the tender.

2. The Commission shall chair all evaluation committees and shall appoint a sufficient number of evaluators before the tenders are launched. One evaluator should come from the recipient institution of the beneficiary countries. All evaluators shall sign a declaration of impartiality.

3. The tender is evaluated on the basis of a weighing of technical quality against price. The weighing of the two criteria shall be announced in each invitation to tender. The technical evaluation shall be carried out according, in particular, to the following criteria: organization, time schedule, methods and plan of work proposed for providing the services, the qualifications, experience, skills of the staff proposed for the provision of the services and the use made of local companies or experts, their integration into the project, and their contribution to the sustainability of the project results. Specific experience of the tenderer in Tacis shall not be taken into account.

4. Unsuccessful tenderers shall be informed by letter, including an indication of the reasons for their failure and the name of the successful tenderer.

5. Any natural or legal person involved in the preparation of a project shall be excluded from participation in the project implementation. If any participating tenderer employs such persons, in any capacity, within six months of the termination of their involvement in the tender process, that tenderer may be excluded from participation in the project. Any tenderer included on a short-list shall be excluded from participation in the evaluation of that tender.

6. The Commission shall ensure that all commercially sensitive information relating to a proposed tender remains confidential.

7. Whenever a firm, organization or institution has serious reasons to ask for review of a tender, there will always be the possibility of addressing the Commission. In that event, a reasoned reply should be given to this request.

8. In the cases of award of contracts after restricted invitations to tender as referred to in Article 116 of the Financial Regulation, all written expressions of interest shall be registered by the Commission, which will use this registration when drawing up the short-list.

   In addition, other information, in particular from the Tacis central consultancy register, may be considered when the short-list is drawn up. This register shall be open to all interested firms, organizations and institutions for registration.

9. When drawing up the short-list, the Commission shall be guided by qualification, interest and availability of the firm, organization or institution. The number of firms, organizations and institutions on a short-list shall depend on the size and the complexity of the project and should offer the widest possible choice.

   Firms, organizations and institutions which have expressed their interest in writing in a project shall be informed whether or not they have been included on the short-list.

10. Each year the Commission shall give to the committee a list of the firms, organizations and institutions which have been selected.

11. In highly complex projects, the Commission may suggest to firms, organizations and institutions which have been retained on a short-list the formation of consortia among them. In these cases this suggestion, as well as the complete short-list, shall be transmitted to all firms, organizations and institutions having been retained on it.

12. In restricted tendering there shall be a minimum period of 60 calendar days between the final opinion delivered by the committee and the launching of the tender. Nevertheless, in case of urgency this period may be shortened by the Commission, provided that a detailed explanation is forwarded to the committee.

An invitation to a restricted tender shall allow for a time limit of 60 calendar days from the date of delivery of the letter of invitation. In urgent cases this period may be reduced, but it may never be less than 40 calendar days. In exeptional cases this time limit may be extended by the Commission, provided that a detailed explanation is forwarded to the committee. All changes of time limit must be duly notified to the firms, organizations or institutions concerned.

ANNEX IV

Criteria for the implementation of the Regulation

1. *Cross-border cooperation*

Cross-border cooperation (CBC) shall primarily serve to assist border regions in overcoming their specific development problems stemming from relative isolation in the national economies, to encourage the creation of cooperation networks and the establishment of links between networks on both sides of the border including border-crossing facilities, and accelerate the transformation process in the New Independent States by their integration into cooperation with border regions in the Union or the central and eastern European countries.

CBC may take place along all borders between the Union and the New Independent States, the central and eastern European countries and the New Independent States and the New Independent States amongst themselves, including maritime borders.

CBC includes both measures in the field of technical assistance and infrastructure. Activities in all priority sectors may be financed under this form of cooperation.

2. *Industrial cooperation, equity funding of joint ventures (see Article 3 (3))*

In the framework of the assistance provided pursuant to this Regulation, the promotion of industrial cooperation as referred to in Article 3 (3) shall be implemented by encouraging pilot cooperation projects between EU and New Independent States' companies and direct inter-industry contacts. Any activity in this context shall fully comply with this Regulation, in particular the demand-driven approach and the tendering procedures.

In the case of nuclear-safety programmes, due account shall be taken in procurement of the commitment of the recipient country to the objectives of technical assistance in nuclear safety.

In addition, a specific facility ('Jopp') shall support the establishment of joint ventures through the funding of equity investments in small and medium-sized companies. This facility will operate along the lines and criteria of Jopp.

3. *Contract information*

For the implementation of Article 6, the Commission shall provide upon request to all interested firms, organizations and institutions throughout the Union documentation on the general aspects of the Tacis programme and the ways and specific requirements for participation in the programme.

The information on projects which are going to be tendered shall be made available as soon as possible after the project has been submitted to the Member States in the Tacis Committee. This information shall be made available to every interested firm, organization or institution which registers on the Tacis mailing list.

A publication shall be made available normally on a two-monthly basis to update the above information and to inform firms, organizations and institutions if projects are still open for expression of interest.

4. *Supervision, monitoring and evaluation*

In order to ensure full implementation of Article 3 (5), the Commission shall always ensure effective control over the whole project cycle.

In order to ensure that the Tacis objectives are being achieved to a level that is satisfactory to all parties concerned, an independent monitoring and evaluation (M&E) programme shall be implemented.

In the context of the Tacis programme, monitoring shall consist of preparing/submitting an analytical assessment, carried out at regular intervals in the form of a written detailed summary of Tacis projects in order to indicate the degree to which these have achieved their stated objectives for project management and other involved parties. This shall aim at ascertaining that projects are 'on course' and signal 'early warning' of potential problems to allow adjustments to be made with minimal disruption.

The immediate objective of monitoring shall be to provide a regular reporting mechanism to enable more focused project management decisions to be reached in order to ensure that a project remains on course, thus achieving its objectives.

Evaluation shall consist of an independent objective examination of the background, objectives, activities, means deployed and results with a view to drawing lessons that may be more widely applicable. A number of objective criteria may be used, for example sustainability, impact and lessons learned.

The system shall be set up and implemented via regional offices and a central M&E section at the Commission.

Monitoring offices are to be established and maintained in the New Independent States and staffed by EU experts and local counterpart monitors which cannot be involved in the preparation of any project according to the criteria laid down in Annex III, point 5. These offices shall be responsible for all day-to-day project monitoring and providing specific sectoral, country and regional reports as required. These offices shall cover inter-State as well as sectoral projects. The EU experts will also provide training to the counterpart monitors.

The monitoring offices will interface with all the participants in the programmes, i.e. the Commission (including delegations), coordinating units, project partners and contractors. They shall provide monitoring reports on a systematic and agreed basis to the above participants on projects and prepare regional reports and evaluations as required for the M&E section in the Commission.

The whole programme shall be coordinated by an M&E section established within Tacis services in Brussels. This section shall be responsible for the overall policy and direction of the service and shall provide regular management summaries and evaluation reports on the Tacis programmes to internal services. The European Parliament and the Tacis committee shall be provided every six months with evaluation summaries and on request with full evaluation reports.

5. *Programming*

Before drawing up the indicative programmes referred to in Article 5, the Commission shall inform the committee referred to in Article 8 of the priorities identified with the partner States.

At the beginning of every year the Commission shall provide an indicative timetable for the presentation of the action programmes to the committee referred to in Article 8.

The action programmes shall be established in close cooperation with the partner States. In this respect the coordinating units shall play an important role. These units should be formed by representatives of local government and when necessary they shall be assisted by experts appointed by the Commission. In this case, the Commission will ensure an appropriate selection procedure in order to guarantee their independence, qualifications and a wide representation of the different nationalities.

The action programmes shall encompass the following information:

— link between the indicative and the action programme,

— insertion of the action programme in the reform process under way in the partner State,

— coordination of the action programme with other donors' activities,

— general organization for the implementation and the management of the programme,

— list of projects to be funded.

Whenever possible, the objective, recipient and main components of each project shall be specified in the appendix to the action programmes.

For each project above ECU 1 million, a project sheet shall be attached in the appendix to the action programme. For each project above ECU 3 million, a logical framework matrix shall be attached in the appendix to the action programme.

6. *Coordination*

For the implementation of Article 9, the Commission shall, as a rule and on a quarterly basis, hold in those partner countries where a delegation exists an information meeting on the programmes in order to ensure coordination of Community and bilateral efforts on the spot. Member States shall be informed sufficiently in advance of the coordination meetings on the spot, in order to ensure that these meetings can be thoroughly prepared and a maximum of Member States can be present.

Coordination and cooperation with other donors shall be encouraged. In order, to obtain effective cooperation with the international financing institutions, there shall be regular consultations between the Commission and these institutions on a central as well as a local level (1).

(1) Commission statement (to be published in the *Official Journal of the European Communities*): 'The Commission declares that the European Training Foundation in Turin shall be given a specific role in the implementation of the Tacis programme in the area of vocational training.'

7. *Reporting*

In accordance with Article 10, the Commission shall provide an annual progress report. This report shall include an overview and relevant data on the implementation of the Tacis programme on a per country basis.

Other aspects of operational or administrative nature which might have an important impact on programme implementation shall be included in the progress report.

The report shall upon request be made available to the general public.

Additional reports shall be made available to the European Parliament and to the Tacis committee on a quarterly basis:

(i) list of firms, organizations, institutions and their nationality being awarded contracts in excess of ECU 100 000;

(ii) list concerning the distribution of awarded contracts per country of origin.

The list mentioned under (i) shall be published in the *Official Journal of the European Communities* according to Article 117 of the Financial Regulation.