COUNCIL REGULATION (EC) No 213/96

of 29 January 1996

on the implementation of the European Communities investment partners financial instrument for the countries of Latin America, Asia, the Mediterranean region and South Africa

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130w thereof,

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

Acting in accordance with the procedure of Article 189c of the Treaty (2),

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

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

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 a European Communities Investment Partners (ECIP) financial instrument, the creation of joint ventures between the Community and countries of Latin America, Asia and the Mediterranean region and was continued and extended for a further three year trial period from 1 January 1992 by Regulation (EEC) No 319/92 (3);

Whereas the Court of Auditors delivered an opinion in December 1993 pursuant to Article 9 (3) of Regulation (EEC) No 319/92 on the implementation of ECIP, which concluded that it meets a real need of which the market takes no or only inadequate account, and made specific recommendations for improvements in its management;

Whereas the European Parliament and the Council have considered the results of the independent appraisal forwarded to them in March 1994 in conformity with Article 9 (2) of Regulation (EEC) No 319/92 which concluded that ECIP has met its principal objective of promoting mutually beneficial investment by Community and local operators in EC/local joint ventures in the countries of Asia, Latin America and the Mediterranean, and that the ECIP instrument should be further continued and reinforced;

Whereas the Council adopted on 25 February 1992 Regulation (EEC) No 443/92 on financial and technical assistance to, and economic cooperation with, the developing countries in Asia and Latin America (4) and on 29 June 1992 Regulation (EEC) No 1763/92 concerning financial cooperation in respect of all Mediterranean non-member countries (5);

Whereas the continuation and extension of the instrument is therefore necessary 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 Council on 19 April 1994 concluded that to encourage Community investments in SMEs in South Africa, advantages equivalent to the ECIP or its follow-up instrument could be granted to South Africa, and that specific financing of this instrument would be provided to that end;

Whereas it is necessary to take account of democracy and human rights issues, and to promote investments which improve working conditions, in particular for women, do not exploit employees and exclude unacceptable practices such as forced labour and slavery;

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, the Mediterranean region and South Africa through financial institutions specializing in development;

(1) OJ No C 287, 15. 10. 1994, p. 7.
(2) Opinion of the European Parliament of 28 October 1994 (OJ No C 323, 21. 11. 1994, p. 497), Council Common Position of 22 May 1995 (OJ No C 160, 26. 6. 1995, p. 8) and Decision of the European Parliament of 28 November 1995 (OJ No C 339, 18. 12. 1995).
(3) OJ No L 35, 12. 2. 1992, p. 1.
(4) OJ No L 52, 27. 2. 1992, p. 1.
(5) OJ No L 181, 1. 7. 1992, p. 5. Regulation as amended by Regulation (EC) No 1735/94 (OJ No L 182, 16. 7. 1994, p. 6).

Whereas a financial reference amount, within the meaning of point 2 of the Statement of 6 March 1995 by the European Parliament, Council and Commission has been inserted in this Regulation for the entire duration of the programme, without the budget authority's powers as defined in the Treaty being thereby affected,

HAS ADOPTED THIS REGULATION:

Article 1

1. As part of its economic cooperation with the countries of Latin America, Asia, the Mediterranean region, and South Africa, the Community shall operate for the period 1995-1999 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 including tripartite operations with other developing countries to promote regional integration.

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

Article 2

The European Communities Investment Partners (ECIP) financial instrument, 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; however, where the operation relates to the preparation of a privatization, or a Build Operate and Transfer (BOT) or a Build Operate and Own (BOO) scheme in infrastructure, utilities or environmental services where an eligible country government or public agency is the beneficiary this facility may be increased to 100 % of the cost of the operation up to a ceiling of ECU 200 000 (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, within which pre-feasibility travel costs of ECU 10 000 maximum may be financed by grant (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 and grants 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 of a local company with a licensing agreement (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 9, 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 the action is successful, however, the Community contribution may be more than 50 % and up to 100 % of the cost for SMEs.

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 SMEs; 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 interest-free advance finance will be provided as regards the costs of training, technical assistance and management expertise, and, for SMEs only, the costs of training, technical assistance and management expertise provided by external sources or by the European partner to the joint venture shall be eligible for grant finance under this facility.

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 188c 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.

Participation in the equity or equity loans shall in principle be acquired or provided by the financial institutions on their own behalf. However, in exceptional cases,

— where the financial institution cannot intervene in its own name for regulatory or legal reasons or because of its statutes; or

— where the Community's direct financial participation is necessary to reinforce in a decisive manner the capacity of the promoters to raise other financial resources which could not normally be moblilized due to the particular political situation or to specific legal obstacles in the host country of the joint venture;

the Commission may authorize a financial institution to hold a direct participation on the Community's behalf.

Only projects with a particular development or environmental impact or significance for technology transfer shall qualify for such direct participation.

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 actions 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 to the Community's rules of sound financial management.

4. Equity loan and advance repayments, the realization of participations, and interest and dividend payments will be accounted for by recovery orders and paid back to the general budget of the European Communities. This will be done on an annual basis after the annual audit provided for in Article 10 (3), in reconciliation with the budget accounts as at 31 December of that year and the amounts involved will be reported in the progress report for that year provided for at Article 10 (1). All assets held by the financial institution are to be paid back to the Community if the institution 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 investment and the quality and good repute of the promoters;

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

— impact on the local economy;

— creation of added value;

— 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 and improvement of their working conditions;

— creation of local jobs with conditions of work 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 final financing decision shall be taken by the Commission, which shall verify compliance with the criteria set out in paragraph 1 and compatibility with Community policies, in particular development cooperation policy, 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 regions which benefit from Community development cooperation measures or which have concluded regional or bilateral cooperation or association agreements with the Community, and South Africa.

Article 8

The financial reference amount for the implementation of this programme, for the period 1995-1999, is ECU 250 million.

Annual appropriations shall be authorized by the budgetary authority within the limit of the financial perspective.

Article 9

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 15 of Regulation (EEC) No 443/92 or by the Committee referred to in Article 7 (1) of Regulation (EEC) No 1763/92, and these Committees shall also deal, for the purposes of ECIP, with matters related to South Africa, in the absence of a specific Committee.

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

— the choice of financial institutions 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;

— revision of the amounts and/or financing conditions under each facility and the aggregate amount available under Facilities 2, 3 and 4 as laid down in Article 2 in a way consistent with other provisions of this Regulation.

4. With regard to the matters mentioned in paragraph 3, 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 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.

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

It 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 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. 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 10;

— any other information which the Commission wants to submit to it.

6. In order to ensure consistency of cooperation and to improve complementarity between operations, the Commission and the European Investment Bank shall exchange any relevant information on financing that they envisage granting.

7. The Commission will ensure that due account is taken of relevant information concerning the implementation of ECIP as well as comparable instruments of the Community such as JOPP, Alinvest, Medinvest, and others as appropriate, in order to establish a coordinated approach to promote private investment in developing countries.

Article 10

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 and their economic impact, notably total investment, the number of joint ventures and jobs created as well as 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 before the end of 1998.

This report must permit an assessment of the implementation of the principles of good financial management, economy and a cost/benefit analysis of the instrument.

3. Without prejudice to the responsibilities of the Commission and the Court of Auditors as laid down in the Financial Regulation applicable to the General Budget of the European Communities, the Commission shall obtain each year an independent financial audit of the financial institutions and of the Facility 1 beneficiary organizations, as regards the ECIP funds that they have received. The Commission shall make specific provision in the framework and specific financing agreements for anti-fraud measures, in particular a mechanism for the recovery of advances which are not fully justified after such audit.

4. Use of external technical assistance may be made, as appropriate, on condition that the technical assistance financed is directly linked to the special nature of the ECIP instrument and is of direct benefit to the Alamed countries and South Africa. The costs of such technical assistance shall be limited to 5 % of the budgetary credits available, not including the fees paid to the financial institutions which shall be imputed to the credits allocated to each individual action financed.

Article 11

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities* and shall expire on 31 December 1999.

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

Done at Brussels, 29 January 1996.

For the Council

The President

S. AGNELLI