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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 443/97

of 3 March 1997

on operations to aid uprooted people in Asian and Latin American developing countries

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 referred to in Article 189c of the Treaty (2),

(1) Having regard to the Convention relating to the Status of Refugees adopted on 28 July 1951 by the United Nations Conference on the Status of Refugees and Stateless Persons, as well as the New York Protocol adopted on 31 January 1967 and other resolutions adopted by the United Nations on refugee policy,

(2) Having regard to the Universal Declaration of Human Rights of 1948, the International Covenant on Economic, Social and Cultural Rights of 1966, the Convention on the Elimination of All Forms of Discrimination against Women of 1979 and the Convention on the Rights of the Child of 1989,

(3) Having regard to the Resolution of the European Parliament of 16 December 1983 on assistance to refugees in developing countries and its subsequent resolutions,

(4) Whereas both the European Parliament and the Council have called for greater effort on the part of the Community in this field;

(5) Whereas the effectiveness of aid programmes for uprooted people (refugees, displaced persons, returnees and demobilized soldiers) is dependent on the coordination of aid at European level and with other aid donors, non-governmental organizations (NGOs) and United Nations agencies;

(6) Whereas there is a need to step up efforts to prevent conflict and to promote peaceful solutions to political conflicts or wars that cause population displacements;

(7) Whereas specialized bodies and agencies and NGOs implementing such operations have gained considerable experience in providing assistance to uprooted people;

(8) Whereas the Community wishes aid for uprooted people to be provided in such a way as to help them move from subsistence to self-sufficiency, namely to make them less dependent, help them reintegrate or re-settle by means of operations to develop self-sufficiency through farming, livestock-rearing, fish-farming, the setting-up of credit systems, basic education and vocational training and decent standards of health and hygiene;

(9) Whereas this type of aid is a prerequisite for development and thus makes a major contribution towards achieving the Community's cooperation policy objectives under Article 130u of the Treaty;

(10) Whereas the budget authority has entered in the budget a heading intended to finance operations to aid uprooted people (refugees, displaced persons, returnees and demobilized soldiers) in developing countries;

(11) Whereas a financial reference amount, within the meaning of point 2 of the declaration of the European Parliament, the Council and the Commission of 6 March 1995 (3), is entered in this Regulation for the period from 1996 to 1999, without affecting the powers of the budgetary authority defined by the Treaty;

(1) OJ No C 237, 12. 9. 1995, p. 19.
(2) Opinion of the European Parliament of 16 February 1996 (OJ No C 65, 4. 3. 1996, p. 215), Council common position of 27 June 1996 (OJ No C 264, 11. 9. 1996, p. 15) and Decision of the European Parliament of 12 November 1996 (OJ No C 20, 20. 1. 1997).

(3) OJ No C 102, 4. 4. 1996, p. 4.

(12) Whereas administrative rules and procedures applicable to cooperation operations to contribute to the self-sufficiency of uprooted people (refugees, displaced persons, returnees and demobilized soldiers) should be laid down,

HAS ADOPTED THIS REGULATION:

Article 1

The Community shall implement a programme of support and assistance to uprooted people referred to in Article 4 to contribute to the urgent requirements not covered by humanitarian aid and for the longer term realization of projects and action programmes aimed at the self-sufficiency and integration or reintegration of such people.

The establishment of democratic structures and the promotion of human rights shall form part of the assistance programmes.

Article 2

In this context, the Community shall support viable projects for subsistence, self-sufficiency and reinsertion into the socio-economic fabric of refugees and displaced persons, returnees and demobilized soldiers. To this end, operations shall cover *inter alia* mine clearance, combating sexual violence, operations to help people recover their property and property rights and aid concerning the judicial settlement of cases where the human rights of displaced persons have been violated, support to local host communities and areas to which refugees return to facilitate acceptance and integration of uprooted people and support for their return and settlement in the countries of origin or in third countries and, where appropriate, shall support reconciliation.

All the groups concerned, together with the local population receiving refugees and displaced persons, shall take part in the assessment of needs and in the implementation of the assistance programmes.

Article 3

Operations carried out under this Regulation shall be complementary to those provided for by other Community instruments governing development cooperation.

Article 4

1. The final beneficiaries of the operations mentioned in Article 2 shall be uprooted people (refugees, displaced persons, returnees and demobilized soldiers) in the developing countries of Asia and Latin America and persons from one of these countries provisionally settled in another developing country and, in duly justified, exceptional cases, in another third country:

(a) refugees as defined in the Convention relating to the Status of Refugees adopted on 28 July 1951 by the United Nations Conference on the Status of Refugees and Stateless Persons;

(b) 'displaced persons': persons who were forced to seek refuge outside their region of origin owing to conflict situations but who do not enjoy refugee status as defined by the 1951 Convention;

(c) 'returnees': persons who were formerly refugees or displaced persons who have returned to their country or region of origin.

2. Aid shall also be available for:

(a) the local population of the host territories particularly affected, whose economic and administrative resources contribute to receiving and assisting refugees and displaced persons and to carrying out longer-term projects designed to bring about their self-sufficiency and integration or reintegration;

(b) former combatants from regular armies and demobilized armed opposition movements, plus their families and, where appropriate, their local communities.

Article 5

Partners in cooperation who may obtain financial support under this Regulation shall be regional and international organizations, including United Nations agencies, non-governmental organizations, national, provincial and local administrations and official bodies, community-based organizations and public or private institutes and operators.

Article 6

1. Community financing of the operations referred to in Article 1 shall cover a period of four years (1996 to 1999).

The financial reference amount for the implementation of this programme for the period 1996 to 1999 shall be ECU 240 million.

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

2. The budget authority shall determine the appropriations available for each financial year taking account of the principles of sound financial management referred to in Article 2 of the Financial Regulation applicable to the general budget of the European Communities.

Article 7

1. The means deployed in implementing operations referred to in Article 1 shall include studies (which, as far

as possible, shall be assigned to experts from the host country), technical assistance, training and other services, supplies, works, and audits and evaluation and monitoring missions.

2. Community financing may also cover investment expenditure, excluding the purchase of real estate, and, in duly justified cases and taking into account the fact that the project must, as far as possible, aim at medium-term viability, recurring expenditure (which includes administrative expenditure, maintenance and running costs) so that maximum use is made of the investments mentioned in paragraph 1, the operation of which temporarily represents a burden for the person associated.

3. A financial contribution from the partners defined in Article 5 shall be sought for each cooperation operation. This contribution will be requested within the limits of the possibilities available to the partners concerned and depending on the nature of the operation. In specific cases and when the partner is either an NGO or a community-based organization, the contribution may be made in kind.

4. Opportunities may be sought for co-financing with other fund providers, and especially with Member States.

5. The necessary measures shall be taken to emphasize the Community character of aid provided under this Regulation.

6. In order to achieve the objectives of consistency and complementarity referred to in the Treaty and with the aim of guaranteeing optimum effectiveness of all these operations, the Commission may take all the necessary coordination measures, including in particular:

(a) the establishment of a system for the systematic exchange and analysis of information on the operations financed and those which the Community and the Member States propose to finance;

(b) on-the-spot coordination of the implementation of operations through regular meetings and exchanges of information between representatives of the Commission and of the Member States in the beneficiary country.

7. The Commission, in liaison with the Member States, may take any initiative necessary for ensuring proper coordination with the other providers of funds concerned, in particular those forming part of the United Nations system, including the High Commissioner for Refugees.

Article 8

Financial aid under this Regulation shall take the form of grants.

Article 9

1. The Commission shall be responsible for appraising, deciding and administering the operations covered by this Regulation in accordance with the budgetary and other procedures in force, in particular those laid down by the Financial Regulation applicable to the general budget of the European Communities.

2. Project and programme appraisal shall take into account the following factors:

— effectiveness and viability of operations,

— cultural, social, gender and environment aspects,

— institutional development necessary to achieve project goals,

— experience gained from operations of the same kind.

3. Decisions relating to grants of more than ECU 2 million for individual operations financed under this Regulation shall be adopted in accordance with the procedure laid down in Article 10.

The Commission shall inform the Committee referred to in Article 10 succinctly of the financing decisions which it intends to take with regard to projects and programmes of less than ECU 2 million in value. This information shall be made available not later than one week before the decision is taken.

4. The Commission shall be authorized to approve, without recourse to the opinion of the Committee provided for in Article 10, any supplementary commitments needed for covering expected or real cost overruns in connection with the operations, where the overrun or additional requirement is less than or equal to 20 % of the initial commitment laid down by the financing decision.

Where the supplementary commitment referred to in the first subparagraph is less than ECU 4 million, the Committee referred to in Article 10 shall be informed of the decision taken by the Commission. Where the supplementary commitment referred to in the first subparagraph is greater than ECU 4 million but less than 20 %, the Committee will be asked to give its opinion.

5. All financing agreements or contracts concluded under this Regulation shall provide for the Commission and the Court of Auditors to conduct on-the-spot checks according to the usual procedures laid down by the Commission under the rules in force, in particular those of the Financial Regulation applicable to the general budget of the European Communities.

6. Where operations are the subject of financing agreements between the Community and the recipient countries or countries of origin, such agreements shall stipulatte that the payment of taxes, duties and other charges is not to be covered by the Community.

7. Participation in invitations to tender and the award of contracts shall be open on equal terms to all natural and legal persons of the Member States and of the recipient country. It may be extended to other developing countries and, in duly justified exceptional cases, to other third countries.

8. Supplies shall originate in the Member States, the recipient country, or other developing countries. In duly justified exceptional cases supplies may originate elsewhere.

Article 10

1. The Commission shall be assisted by the Committee set up under Article 15 of Council Regulation (EEC) No 443/92 of 25 February 1992 on financial and technical assistance to, and economic cooperation with, the developing countries in Asia and Latin America [1].

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 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.

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

Article 11

An exchange of views shall take place once a year on the basis of a presentation by the representative of the Commission on the general guidelines for the operations to be carried out in the year ahead, within the framework of the Committee mentioned in Article 10 (1).

Article 12

After each budget year, the Commission shall submit an annual report to the European Parliament and to the Council, summarizing the operations financed in the course of that year and evaluating the implementation of this Regulation over that period.

The summary shall in particular provide information about those with whom contracts have been concluded.

The report shall also summarize any independent evaluations of specific operations.

The Commission shall inform the Member States, within one month at the latest after taking its decision, of operations and projects approved, with information as to the amounts, nature, recipient countries and partners.

Article 13

The Commission shall regularly assess operations financed by the Community with a view to establishing whether the objectives aimed at by such operations have been achieved and to provide guidelines for improving the effectiveness of future operations. The Commission shall submit to the Committee a summary of the assessments made which, if appropriate, may be examined by the Committee. The assessment reports shall be available to any Member States requesting them.

Article 14

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

It shall apply until 31 December 1999.

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

Done at Brussels, 3 March 1997.

For the Council

The President

M. DE BOER

[1] OJ No L 52, 27. 2. 1992, p. 1.