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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2454/1999

of 15 November 1999

amending Regulation (EC) No 1628/96 relating to aid for Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia, in particular by the setting up of a European Agency for Reconstruction

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament [1],

Whereas:

(1) Further to United Nations Security Council Resolution No 1244 of 10 June 1999, a programme of reconstruction including measures to help resettle refugees and revitalise Kosovo's economy is urgently needed;

(2) The European Council at its meeting on 3 and 4 June 1999 confirmed the European Union's desire to play a leading role in the reconstruction efforts in the region, especially in Kosovo, and called upon the Commission to draw up, as a matter of priority, proposals regarding the organisation of the reconstruction assistance envisaged and in particular the appropriate means and mechanisms for putting such a programme in place, including the setting up of an agency to be responsible for implementing the Community's reconstruction programmes;

(3) The Stability Pact underlines in particular the European Union's role in bolstering democratic and economic institutions in the region;

(4) The objectives relating to this region involve reconstruction, revitalisation and economic, social and institutional development;

(5) Aid programmes necessary for the reconstruction of Kosovo cannot be implemented unless the appropriate means and mechanisms are in place;

(6) Regulation (EC) No 1628/96 [2] sets out, *inter alia*, objectives, mechanisms and instruments for the reconstruction of the regions it covers, including Kosovo;

(7) Regulation (EC) No 1628/96 should be amended to take account of the specific requirements for Kosovo's reconstruction, which will demand the rapid implementation of numerous small-scale projects, measures to support returning refugees and the assistance of experts covering a wide range of fields; provisions should therefore be laid down for setting up and running a European Agency for reconstruction (hereinafter referred to as the 'Agency') that can be charged by the Commission with implementing the reconstruction programmes;

(8) Reconstruction efforts must be united with those for the people of Kosovo;

(9) Provision should be made for the States covered by the PHARE programmes and the States of South-East Europe to be involved in the tendering procedures and contracts;

(10) Coordination of the assistance for the reconstruction with the European Investment Bank, the international financial institutions, the United Nations/High Commissioner for Refugees and the non-governmental organisations concerned should be ensured;

(11) The measures necessary for the implementation of Regulation (EC) No 1628/96 being management measures within the the meaning of Article 2 of Council Decision No 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [3], such measures should be adopted in accordance with the management procedure provided for in Article 4 of that Decision;

(12) The authority put in charge of the provisional administration of Kosovo should be consulted on the implementation of the reconstruction programmes;

[1] Opinion delivered on 27 October 1999 (not yet published in the Official Journal).

[2] OJ L 204, 14.8.1996, p. 1. Regulation as last amended by Regulation (EC) No 851/98 (OJ L 122, 24.4.1998, p. 1).

[3] OJ L 184, 17.7.1999, p. 23.

(13) The reconstruction programmes should be managed in accordance with effective and flexible rules and procedures ensuring rapid implementation;

(14) The reconstruction programmes should be managed locally and so the operational centre of the Agency should be established initially in Pristina, making use of the general services located at the seat in Thessaloniki;

(15) The Agency will pursue its activities initially in Kosovo; it is for the Council, acting on a proposal from the Commission, to take any decision on extending the Agency's activities to other regions of the Federal Republic of Yugoslavia (FRY), when the conditions have been met;

(16) The Agency's mandate should allow it to manage the programmes of other donors contributing to the reconstruction of the region, in particular in the context of the cooperation established with the appropriate financial institutions;

(17) For the sake of effectiveness, the Agency requires a special financial regulation that allows a rapid response while at the same time ensuring full managerial accountability and transparency in management;

(18) The Agency should adopt the internal rules relating to investigations by the European Anti-Fraud Office (OLAF);

(19) The Agency is being set up for the purposes of reconstruction, and a proposal will be made to wind it up once that objective has been achieved;

(20) Provision should be made for the Commission to submit a report on the implementation of this Regulation, together with any appropriate proposals, particularly with a view to establishing a unified regulatory framework for assistance to the region;

(21) Regulation (EC) No 1628/96 should be extended until 31 December 2004,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1628/96 is hereby amended as follows:

1. Article 4(1) shall be replaced by the following:

   '1. The aim of the projects, programmes and cooperation schemes shall be to underpin the reconstruction process, to encourage the return of refugees, reconciliation and regional economic cooperation and to create the economic and social conditions that will lay the foundations for development.';

2. In Article 6 the following paragraph 3 shall be added:

   '3. The Commission shall ensure that reconstruction assistance is coordinated with the European Investment Bank (EIB), the international financial institutions and the Office of the United Nations High Commissioner for Refugees. The Commission shall rely wherever necessary on the competence of the international financial institutions.';

3. In Article 8, the first subparagraph of paragraph 1 shall be replaced by the following:

   '1. The operations referred to in this Regulation may cover expenditure relating to the importation of goods and services, the local expenditure necessary to complete the projects and programmes and co-financing (in forms including interest-rate subsidies) of investment projects financed by loans from the EIB or the international financial institutions, where the latter are involved. Taxes, duties and charges and the acquisition of movable property shall be excluded from Community financing.';

4. Article 9 shall be amended as follows:

   (a) The first two paragraphs shall be replaced by the following:

   'Participation in invitations to tender and contracts shall be open on equal terms to all natural and legal persons in the Member States and States which are recipients under this Regulation or countries benefiting from the PHARE programme, and States of south-east Europe.';

   (b) The third paragraph shall be replaced by the following:

   'The following shall be considered to be legal persons of a Member State, a recipient State or a State which benefits from the PHARE programme and States of south-east Europe: legal persons who are established in accordance with the legislation of a Member State, a recipient State or a State which benefits from the PHARE programme and States of south-east Europe and who have their central administration or principal establishment in the territories in which the Treaty establishing the European Community applies, in the recipient States or in the States which benefit from the PHARE programme and States of south-east Europe, or who have their registered office there, where their activity has an actual and continuous link with the economy of the said territories or States.';

5. Article 10 shall be amended as follows:

(a) the following subparagraph shall be inserted in paragraph 1:

'By derogation from the first two subparagraphs, with regard to the assistance provided for in Article 4 and implementation by the Agency as referred to in Article 14, precise annual programmes shall be adopted by the Commission in accordance with the procedure laid down in Article 12(2). Those programmes shall define the main objectives, guidelines and priorities for Community support and the projects and corresponding financial allocations. Programming shall in particular aim at ensuring consistency with the programming of the EIB and other international financial institutions.';

(b) the following paragraphs shall be added:

'4. Assistance to the High Representative for Bosnia and Herzegovina may include the financing of projects provided for in the budget of the Office of the High Representative.

5. Assistance for the reconstruction of Kosovo can be implemented on the basis of financing agreements or contracts concluded with the bodies referred to in Article 3, following consultation with the provisional authority responsible for administering Kosovo. Assistance may also be provided for that authority.';

6. The following sentence shall be added to the third subparagraph of Article 11:

'This Annex shall not apply to contracts awarded by invitation to tender in connection with the operations of the Agency referred to in Article 14.';

7. Paragraphs 1, 2 and 3 of Article 12 shall be replaced by the following:

'1. The Commission shall be assisted by a management committee composed of the representatives of the Member States and chaired by the representative of the Commission.

2. Where reference is made to this paragraph, the management procedure provided for in Article 4 of Decision 1999/468/EC (*) shall apply.

3. The period provided for in Article 4(3) of Decision 1999/468/EC shall be laid down as one month.

(*) OJ L 184, 17.7.1999, p. 23.';

8. Article 14 shall become Article 27 and the last subparagraph thereof shall be replaced by the following:

'It shall apply until 31 December 2004.';

9. The following Articles shall be inserted:

'*Article 14*

The reconstruction and refugee return programmes referred to in the third subparagraph of Article 10(1) will initially target Kosovo and when conditions are right may also target other parts of the FRY. The Commission may delegate their implementation to an agency.

A European Agency for Reconstruction, hereinafter referred to as the "Agency", shall be set up to that end with the aim of implementing the abovementioned programmes for reconstruction and assistance to returning refugees.

Any decision to extend the Agency's activities to parts of the FRY other than Kosovo, which shall include the arrangements for identifying the bodies referred to in Article 3, shall be taken by the Council acting by a qualified majority on a proposal from the Commission. In the light of that decision, the Agency may establish other operational centres.

Article 15

1. To achieve the objective referred to in Article 14, the Agency shall carry out the following duties, within the bounds of its powers and in accordance with the decisions taken by the Commission:

(a) gathering, analysing and communicating information to the Commission on:

— war damage, the requirements for reconstruction and the return of refugees and related initiatives by the government, local or regional authorities and the international community,

— the urgent requirements of the communities concerned, taking account of the various population displacements and possibilities for their return,

— the priority sectors and geographical areas requiring urgent assistance from the international community;

(b) preparing draft programmes for the reconstruction of Kosovo and the return of its refugees and submitting them to the Commission with a view to their adoption in accordance with Article 12(2) of this Regulation;

(c) implementing the programmes provided for in the third subparagraph of Article 10(1), to the extent possible in cooperation with the local population and where necessary drawing on the services of operators selected by calls for tender. The Commission may accordingly make the Agency responsible for all operations required to implement the programmes, notably:

(i) drawing up the terms of reference,

(ii) preparing and evaluating invitations to tender,

(iii) signing contracts,

(iv) concluding financing agreements,

(v) awarding contracts, in accordance with the provisions of this Regulation,

(vi) evaluating projects,

(vii) monitoring project implementation,

(viii) effecting payments.

2. Without prejudice to any operations co-financed in the framework of the responsibilities entrusted to the Agency under Article 14, the Agency may implement reconstruction programmes and programmes for the return of refugees which the Member States and other donors entrust to it, particularly in the framework of the cooperation established by the Commission with the World Bank, the international financial institutions and the EIB.

This implementation shall be subject to the following conditions:

(i) the finance must be fully provided by those other donors,

(ii) the finance must cover any running costs which arise,

(iii) the duration of these tasks must be compatible with the deadline for winding up the Agency set in Article 25.

Article 16

The Agency shall have legal personality. It shall enjoy in all Member States the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and be a party to legal proceedings. The Agency shall be non-profit-making.

The operational centre of the Agency with a considerable degree of management autonomy shall be established initially in Pristina in order to embark on the reconstruction work in Kosovo using the Agency's general services located at its seat in Thessaloniki.

Article 17

1. The Agency shall have a governing board composed of one representative from each Member State and two representatives of the Commission.

2. The Member State representatives shall be appointed by the Member States concerned, paying due regard to experience and qualifications relevant to the Agency's activities.

One of the two Commission representatives shall be a Member of the Commission.

3. The term of office of representatives shall be thirty months.

4. The Governing Board shall be chaired by the Commission, usually a member of the Commission. The Chairman shall not vote.

5. The EIB shall appoint a non-voting observer.

6. The Governing Board shall adopt its rules of procedure.

7. The Commission and the Member State representatives on the Governing Board shall each have one vote.

Governing Board decisions shall be adopted by a two-thirds majority.

8. The Governing Board shall lay down the language arrangements for the Agency unanimously.

9. The Governing Board shall be convened by its Chairman every month. It shall also be convened at the request of the Agency's Director or of at least a simple majority of its members.

10. On the basis of a draft submitted by the Agency's Director, the Governing Board, in consultation with the Commission, shall examine by 30 November of each year at the latest the preliminary draft annual work programme for the following year. The work programme shall be adopted at the beginning of each operating year. The programme may be adapted as necessary during the year by the same procedure to take account, *inter alia*, of programmes adopted by the Commission.

The projects included in the annual work programme shall be accompanied by an estimate of the necessary expenditure.

11. The Governing Board shall lay down the principles necessary for implementation of the reconstruction programmes. On a proposal by the Director, it shall decide upon the main issues relating to the Agency's activities, e.g.:

(a) the draft programmes to be submitted to the Commission;

(b) methods of evaluating and properly implementing the projects;

(c) proposals for programmes by other donors for possible implementation by the Agency;

(d) setting the multiannual contractual framework with the provisional authority responsible for the administration of Kosovo, to implement the aid decided on in the framework of the programmes referred to in Article 10;

(e) finalisation, any adjustments to, and implementation of projects;

(f) whether representatives of the countries and organisations delegating implementation of their programmes to the Agency should be present as observers on its Governing Board.

12. The Governing Board shall lay down the principles governing the award of contracts by calls for tender on the basis of the principles in the Annex.

13. The Governing Board shall present a draft annual report to the Commission, by 31 March each year at the latest, on the activities of the Agency for the previous year and on how they were financed.

The Commission shall adopt the annual report and submit it to the European Parliament and the Council.

Article 17a

The translation services necessary for the operation of the Agency shall, as a rule, be provided by the translation centre of the bodies of the European Union.

Article 18

1. The Director of the Agency shall be appointed by the Governing Board, on a proposal from the Commission, for a term of office of thirty months. The term of office may be terminated by the same procedure.

The Director shall be responsible for:

(a) the preparation and organisation of the work of the Governing Board and, in particular, for the preparation of the Agency's draft work programme;

(b) the day-to-day administration of the Agency;

(c) the preparation of the statement of revenue and expenditure and execution of the Agency's budget;

(d) the preparation and publication of the reports specified under this Regulation;

(e) all staff matters;

(f) implementing the annual work programme referred to in Article 17(10);

(g) implementing the Governing Board's decisions and guidelines laid down for the Agency's activities.

2. The Director shall be accountable to the Governing Board for his activities and shall attend its meetings.

3. The Director shall be the legal representative of the Agency.

4. The Director shall hold the power of Appointing Authority.

5. The Director shall present a quarterly activity report to the European Parliament.

Article 19

1. Estimates of all the revenue and expenditure of the Agency shall be prepared for each financial year and shall be shown in the budget of the Agency, which shall include an establishment plan, and each financial year shall correspond to the calendar year.

2. The revenue and expenditure shown in the budget of the Agency shall be in balance.

3. The revenue of the Agency shall comprise, without prejudice to other types of income, a subsidy from the general budget of the European Union, payments made as remuneration for services performed and funding from other sources.

4. The budget shall also include details of any funds made available by the recipient countries themselves for projects benefiting from financial assistance from the Agency.

Article 20

1. The Director shall establish each year a draft budget for the Agency covering running costs and the proposed operational programme for the following financial year, and shall submit it to the Governing Board.

2. On this basis, the Governing Board shall, by 15 February at the latest, annually adopt a draft budget for the Agency and submit it to the Commission.

3. The Commission shall assess the draft budget of the Agency, having regard to the priorities it has established and to the overall financial guidelines for reconstruction assistance for Kosovo.

It shall establish on this basis, and within the proposed limits of the overall amount to be made available for aid to Kosovo, the annual contribution for the budget of the Agency to be included in the preliminary draft of the general budget of the European Union.

4. The Governing Board, after receiving the opinion of the Commission, shall adopt the budget of the Agency together with the work programme at the beginning of each financial year, adjusting it to the various contributions granted to the Agency and to funds from other sources. The budget shall also specify the number, grade and categories of staff employed by the Agency during the financial year in question.

Article 21

1. The Director shall implement the budget of the Agency.

2. The Commission's Financial Controller shall be responsible for financial checks.

3. By 31 March each year at the latest, the Director shall submit to the Commission, the Governing Board and the Court of Auditors the detailed accounts of all revenue and expenditure from the previous financial year.

The Court of Auditors shall examine these accounts in accordance with Article 248 of the Treaty. It shall publish a report on the Agency's activities every year.

4. On a recommendation from the Council, the European Parliament shall give a discharge to the Director in respect of the implementation of the budget of the Agency.

Article 22

The Governing Board, having received the agreement of the Commission and the opinion of the Court of Auditors, shall adopt the Agency's Financial Regulation, which will in particular specify the procedure to be used for drawing up and implementing the Agency's budget, in accordance with Article 142 of the Financial Regulation applicable to the general budget of the European Union.

Article 23

The Agency's staff shall be subject to the rules and regulations applicable to officials and other servants of the European Communities. The Governing Board in agreement with the Commission, shall adopt the necessary implementing rules.

The Agency's staff shall consist of a strictly limited number of officials assigned or seconded by the Commission or Member States to carry out management duties. The remaining staff shall consist of other employees recruited by the Agency for a period strictly limited to its requirements.

Article 24

The Governing Board shall decide on the Agency's accession to the Interinstitutional Agreement concerning internal investigations by the European Anti-Fraud Office (OLAF) (**). It shall adopt the provisions necessary for the conduct of internal investigations by OLAF.

Financing decisions and any implementing contract or instrument arising therefrom shall expressly provide that the Court of Auditors and OLAF may, if necessary, carry out on-the-spot checks on recipients of the Agency's funds and on the intermediaries distributing them.

Article 25

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

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

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

3. The personal liability of servants towards the Agency shall be governed by the relevant provisions applying to the staff of the Agency.

Article 26

1. The Commission shall submit to the Council before 30 June 2000 a progress report on the implementation of this Regulation; it may if appropriate make proposals, notably with a view to establishing a unified regulatory framework for assistance to Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia.

2. Once the Commission considers that the Agency has fulfilled the mandate described in Article 14, it shall put to the Council a proposal for the winding up of the Agency. In any event, at least six months before this Regulation expires, the Commission shall submit a proposal to the Council on the status of the Agency.

(**) OJ L 136, 31.5.1999, p. 15.'

Article 2

This Regulation shall enter into force on the day following that of 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 Brussels, 15 November 1999.

For the Council

The President

T. HALONEN