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COUNCIL REGULATION (EC) No 975/1999

of 29 April 1999

laying down the requirements for the implementation of development cooperation operations which contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms

(OJ L 120, 8.5.1999, p. 1)

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laying down the requirements for the implementation of development cooperation operations which contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms

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 laid down in Article 189c of the Treaty ([2]),

(1) Whereas procedures should be laid down for the implementation of development cooperation operations which contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms;

(2) Whereas the Council has adopted simultaneously with this Regulation, Council Regulation (EC) No 976/1999 of 29 April 1999 laying down the requirements for the implementation of Community operations, other than those of development cooperation, which, within the framework of Community cooperation policy, contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms in third countries ([3]);

(3) Whereas Community policy in the sphere of development cooperation contributes to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms;

(4) Whereas Article F.2 of the Treaty on European Union stipulates that the Union respects fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law;

(5) Whereas Community action to promote human rights and democratic principles is guided by belief in the universality and indivisibility of human rights, principles that underpin the international system for the protection of human rights;

(6) Whereas Community action to promote human rights and democratic principles is rooted in the general principles established by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights;

(7) Whereas the Community recognises the interdependence of all human rights and whereas progress in economic and social development and in the achievement of civil and political rights should be mutually supportive;

(8) Whereas human rights within the meaning of this Regulation should be considered to encompass respect for international humanitarian law, also taking into account the 1949 Geneva

([1]) OJ C 282, 18.9.1997, p. 14.

([2]) Opinion of the European Parliament of 19 November 1997 (OJ C 371, 8.12.1997, p. 74), Council Common Position of 25 January 1999 (OJ C 58, 1.3.1999, p. 17) and Decision of the European Parliament of 14 April 1999 (not yet published in the Official Journal).

([3]) See page 8 of this Official Journal.

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Conventions and the 1977 Additional Protocol thereto, the 1951 Geneva Convention relating to the Status of Refugees, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and other acts of international treaty or customary law;

(9) Whereas the resolution on human rights, democracy and development adopted by the Council and the Member States, meeting within the Council, on 28 November 1991 sets out guidelines, procedures and practical measures aimed at promoting civil and political freedoms alongside economic and social rights, by means of a representative political system based on respect for human rights;

(10) Whereas Community action to promote human rights and democratic principles is the product of a positive and constructive approach in which human rights and democratic principles are seen as a matter of common interest for the Community and its partners, and as a subject for dialogue that can produce measures to promote respect for these rights and principles;

(11) Whereas this positive approach should be reflected in the implementation of measures in support of democratisation, the strengthening of the rule of law and the development of a pluralist and democratic civil society and in confidence-building measures aimed at preventing conflicts, supporting peace initiatives and addressing the issue of impunity;

(12) Whereas the financial instruments used to support positive action in individual countries should be used in a manner consistent with geographical programmes and integrated with other development instruments to maximise their impact and effectiveness;

(13) Whereas it is also necessary to ensure that these operations are consistent with the European Union's foreign policy as a whole, including the common foreign and security policy;

(14) Whereas these operations should in particular focus on those discriminated against or suffering from poverty or disadvantage, children, women, refugees, migrants, minorities, displaced persons, indigenous peoples, prisoners and victims of torture;

(15) Whereas Community support for democratisation and observance of the principles of the rule of law within a political system respecting the individual's fundamental freedoms helps fulfil the objectives laid down in the agreements concluded by the Community with its partners, in which respect for human rights and democratic principles is an essential element of relations between the parties;

(16) Whereas the quality, impact and continuity of operations should in particular be safeguarded by providing for multiannual programmes to promote human rights and democratic principles in partnership with the authorities of the country concerned, taking account of its specific needs;

(17) Whereas efficient and consistent action requires the specific characteristics of action on human rights and democratic principles to be taken into consideration and to be reflected in the establishment of flexible, transparent and rapid decision-making procedures for the financing of operations and projects in this field;

(18) Whereas the Community needs to be able to respond rapidly to emergencies or situations of particular importance in order to enhance the credibility and effectiveness of its commitment to the promotion of human rights and democratic principles in countries where such situations arise;

(19) Whereas the procedures for the award of assistance and the evaluation of projects in particular should take account of the special nature of the recipients of Community support in this field, namely the non-profit nature of their activities, the risks run by members who are in many cases volunteers, the some-

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times hostile environment in which they operate and the limited room for manoeuvre afforded by their own resources;

(20) Whereas the development of civil society must involve the emergence and organisation of new players and whereas in this context the Community may be required in beneficiary third countries to provide financial support to partners who have no previous experience in this area;

(21) Whereas decisions to fund projects to promote human rights and democratic principles must be taken impartially, without racial, religious, cultural, social or ethnic discrimination between bodies receiving Community support and persons or groups targeted by the projects supported, and must not be guided by political considerations;

(22) Whereas procedures should be established for the implementation and administration of aid for the promotion of human rights and democratic principles financed from the Community's general budget;

(23) 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 ([1]), 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,

HAS ADOPTED THIS REGULATION:

CHAPTER I

Objectives

Article 1

The purpose of this Regulation is to lay down the procedures for the implementation of Community operations which, within the framework of Community development cooperation policy, contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms.

The operations referred to in this Regulation shall be implemented in the territory of developing countries or shall be directly related to situations arising in developing countries.

Article 2

Within the limits of Article 1, and consistent with the European Union's foreign policy as a whole, the European Community shall provide technical and financial aid for operations aimed at:

1. promoting and defending the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and other international instruments concerning the development and consolidation of democracy and the rule of law, in particular:

   (a) the promotion and protection of civil and political rights;

   (b) the promotion and protection of economic, social and cultural rights;

   (c) the promotion and protection of the human rights of those discriminated against, or suffering from poverty or disadvantage, which will contribute to reduction of poverty and social exclusion;

   (d) support for minorities, ethnic groups and indigenous peoples;

([1]) OJ C 102, 4.4.1996, p. 4.

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(e) supporting local, national, regional or international institutions, including NGOs, involved in the protection, promotion or defence of human rights;

(f) support for rehabilitation centres for torture victims and for organisations offering concrete help to victims of human rights abuses or help to improve conditions in places where people are deprived of their liberty in order to prevent torture or ill-treatment;

(g) support for education, training and consciousness-raising in the area of human rights;

(h) supporting action to monitor human rights, including the training of observers;

(i) the promotion of equality of opportunity and non-discriminatory practices, including measures to combat racism and xenophobia;

(j) promoting and protecting the fundamental freedoms mentioned in the International Covenant on Civil and Political Rights, in particular the freedom of opinion, expression and conscience, and the right to use one's own language;

2. supporting the processes of democratisation, in particular:

(a) promoting and strengthening the rule of law, in particular upholding the independence of the judiciary and strengthening it, and support for a humane prison system; support for constitutional and legislative reform; support for initiatives to abolish the death penalty;

(b) promoting the separation of powers, particularly the independence of the judiciary and the legislature from the executive, and support for institutional reforms;

(c) promotion of pluralism both at political level and at the level of civil society by strengthening the institutions needed to maintain the pluralist nature of that society, including non-governmental organisations (NGOs), and by promoting independent and responsible media and supporting a free press and respect for the rights of freedom of association and assembly;

(d) promoting good governance, particularly by supporting administrative accountability and the prevention and combating of corruption;

(e) promoting the participation of the people in the decision-making process at national, regional and local level, in particular by promoting the equal participation of men and women in civil society, in economic life and in politics;

(f) support for electoral processes, in particular by supporting independent electoral commissions, granting material, technical and legal assistance in preparing for elections, including electoral censuses, taking measures to promote the participation of specific groups, particularly women, in the electoral process, and by training observers;

(g) supporting national efforts to separate civilian and military functions, training civilian and military personnel and raising their awareness of human rights;

3. support for measures to promote respect for human rights and democratisation by preventing conflict and dealing with its consequences, in close collaboration with the relevant competent bodies, in particular:

(a) supporting capacity-building, including the establishment of local early warning systems;

(b) supporting measures aimed at balancing opportunities and at bridging existing dividing lines among different identity groups;

(c) supporting measures facilitating the peaceful conciliation of group interests, including support for confidence-building measures relating to human rights and democratisation, in order to prevent conflict and to restore civil peace;

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(d) promoting international humanitarian law and its observance by all parties to a conflict;

(e) supporting international, regional or local organisations, including the NGOs, involved in preventing, resolving and dealing with the consequences of conflict, including support for establishing *ad hoc* international criminal tribunals and setting up a permanent international criminal court, and support and assistance for the victims of human rights violations.

Article 3

Community support for these aims may include the financing of:

1. campaigns to increase awareness, inform and train the agencies involved and the general public;

2. the measures needed for the identification and preparation of projects, namely:

   (a) identification and feasibility studies;

   (b) the exchange of technical know-how and experience between European organisations and bodies in third countries;

   (c) the costs arising from tendering procedures, in particular the evaluation of tenders and the preparation of project documents;

   (d) the financing of general studies concerning the Community's action within the scope of this Regulation;

3. the implementation of projects:

   (a) technical assistance and expatriate and local staff to help implement the projects;

   (b) purchasing and/or delivering any product or equipment strictly necessary for the implementation of operations, including, in exceptional circumstances, and when duly justified, the purchasing or leasing of premises;

   (c) where appropriate, actions for the purpose of highlighting the Community character of the operations;

4. measures to monitor, audit and evaluate Community operations;

5. activities to explain the objectives and results of these measures to the general public in the countries concerned and administrative and technical assistance for the mutual benefit of the Commission and the beneficiary.

CHAPTER II

Procedures for the implementation of aid

Article 4

1. The partners eligible for financing under this Regulation are regional and international organisations, non-governmental organisations, national, regional and local authorities and official agencies, community-based organisations and public or private-sector institutes and operators.

2. Operations financed by the Community under this Regulation shall be implemented by the Commission either at the request of a partner referred to in paragraph 1 or on its own initiative.

Article 5

To be eligible for Community aid, the partners referred to in Article 4(1) must have their main headquarters in a third country eligible for Community aid under this Regulation or in a Member State of the Community. Such headquarters must be the effective decision-making centre for all operations financed under this Regulation. Exceptionally, the headquarters may be in another third country.

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Article 6

Without prejudice to the institutional and political environment in which the partners referred to in Article 4(1) operate, the following factors shall in particular be considered when determining a body's suitability for Community funding:

(a) its commitment to defending, respecting and promoting human rights and democratic principles in a non-discriminatory manner;

(b) its experience in the field of promoting human rights and democratic principles;

(c) its administrative and financial management capacities;

(d) its technical and logistical capacity in relation to the planned operation;

(e) the results, where relevant, of any previous operations carried out, in particular those financed by the Community;

(f) its capacity to build up a working relationship with other elements of civil society in the third country concerned and to direct assistance to local organisations accountable to civil society.

Article 7

1. Aid shall not be allocated to the partners referred to in Article 4(1) unless they undertake to comply with the allocation and implementation conditions which are laid down by the Commission and to which they shall be contractually bound.

2. Activities aided by the Community shall be implemented in accordance with the objectives laid down in the Commission financing decision.

3. Community financing under this Regulation shall take the form of grants.

4. Where operations financed under this Regulation are the subject of financing agreements between the Community and the recipient countries, such agreements shall stipulate that taxes, charges and customs duties are not to be borne by the Community.

Article 8

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

2. Supplies shall originate in the Member States or the recipient country. They may originate in other countries in exceptional and duly justified cases.

Article 9

1. In the interests of consistency and complementarity and in order to maximise the overall effectiveness of operations, the Commission, in close cooperation with the Member States, may take any coordination measures necessary.

2. In any case, for the purposes of paragraph 1, the Commission shall encourage:

(a) the introduction of a system for the exchange and systematic analysis of information on operations financed or considered for financing by the Community and the Member States;

(b) the coordination of the implementation of operations on the spot by means of regular meetings for the exchange of information between the representatives of the Commission and the Member States in the recipient country;

(c) the promotion of a coherent approach in relation to humanitarian assistance and, whenever possible, the integration of the protection of human rights within humanitarian assistance.

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CHAPTER III

Procedures for the implementation of operations

Article 10

The financial reference amount for the implementation of this Regulation during the period 1999 to 2004 shall be EUR 260 million.

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

Article 11

The Commission shall plan, appraise, decide upon and administer, monitor and evaluate operations under this Regulation in accordance with the budgetary and other procedures in force. It shall lay down the conditions for allocating, mobilising and implementing aid under this Regulation.

Article 12

1. The following shall be adopted by the Commission according to the procedure laid down in Article 13(2):

— decisions on operations for which financing under this Regulation exceeds EUR 1 million and any modification to such operations leading to an increase of more than 20 % in the sum initially agreed,

— programmes intended to provide a coherent framework for action in a given country or region or in a specific field where the scale and complexity of the needs identified are such that they seem likely to continue.

2. The Commission shall notify the committee referred to in Article 13 of financing decisions that it intends to take concerning projects and programmes costing less than EUR 1 million. Notice shall be given at least a week before the decision is taken.

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Article 13

1. The Commission shall be assisted by a Human Rights and Democracy Committee, hereinafter referred to as 'the Committee'.

2. Where reference is made to this Article, Articles 5 and 7 of Decision 1999/468/EC [1] shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

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Article 14

1. The Commission may finance emergency measures up to a maximum of EUR 2 million. Emergency measures shall be deemed necessary in cases of urgent and unforeseeable need arising from the sudden suspension of the democratic process or the emergence of a state of crisis or exceptional and imminent danger affecting all or part of the population of a country and posing a grave threat to the fundamental rights and freedoms of the individual.

2. Where operations fulfil these conditions, the Commission shall act after consulting the Member States by the most efficient means. Five working days shall be allowed to the Member States in which to

[1] Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p. 23).

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put forward any objections. If there are any objections, the committee, referred to in Article 13, shall examine the question at its next meeting.

3. The Commission shall inform the committee referred to in Article 13, at its next meeting, of all emergency measures financed under these provisions.

Article 15

The committee may examine any general or specific issues concerning Community aid in the field and should also play a useful role as a means for improving the coherence of the human rights and democratisation actions of the European Union towards third countries. Once a year it will examine the planning for the following financial year or discuss general guidelines for operations under this Regulation to be undertaken in the year ahead.

Article 16

1. The Commission shall regularly evaluate operations financed by the Community under this Regulation in order to establish whether they have achieved their objectives and to produce guidelines for improving the effectiveness of subsequent operations. The Commission shall submit to the committee a summary of the evaluation exercises carried out that it might, if necessary, examine. The evaluation reports shall be available to the Member States on request.

2. At the request of the Member States, the Commission may, with them, also evaluate the results of the Community's operations and programmes under this Regulation.

Article 17

All contracts or financing agreements concluded under this Regulation shall provide in particular that the Commission and the Court of Auditors may conduct checks on the spot and at the headquarters of the partners referred to in Article 4(1) in accordance with the usual procedures established by the Commission under the rules in force, and in particular those of the Financial Regulation applicable to the general budget of the European Communities.

Article 18

1. Within a month of its decision, the Commission shall notify the Member States of operations and projects approved, indicating the sums, the nature of the operation, the recipient country and the partners involved.

2. At the close of each financial year, the Commission shall submit an annual report to the European Parliament and to the Council with a summary of the operations financed in the course of that year.

The summary shall contain information concerning the partners with which the operations referred to in Article 1 have been implemented.

The report shall also include a review of any external evaluation exercises which may have been conducted and may, if appropriate, propose specific operations.

Article 19

Three years after this Regulation enters into force, the Commission shall submit to the European Parliament and to the Council an overall assessment of the operations financed by the Community under this Regulation, which may be accompanied by appropriate proposals concerning the future of this Regulation.

Article 20

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

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It shall apply until 31 December 2004.

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