

COUNCIL REGULATION (EC) No 1266/1999

of 21 June 1999

on coordinating aid to the applicant countries in the framework of the pre-accession strategy and amending Regulation (EEC) No 3906/89

THE COUNCIL OF THE EUROPEAN UNION,

finance infrastructure in the transport and environment fields;

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

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

Having regard to the opinion of the European Parliament⁽²⁾,

- (1) Whereas the Luxembourg European Council advocated a substantial increase in pre-accession aid so as to include, in addition to the PHARE programme, aid to agriculture and for structural measures;
- (2) Whereas Council Regulation (EC) No 622/98 of 16 March 1998 on assistance to the applicant countries in the framework of the pre-accession strategy and in particular on the establishment of Accession Partnerships⁽³⁾ provides that those partnerships are to comprise a single framework for the priority areas and all available resources for pre-accession assistance;
- (3) Whereas Regulation (EC) No 1268/1999⁽⁴⁾ set up an agricultural instrument for application mainly in areas such as modernising the structure of agricultural holdings, improving processing and distribution structures, developing inspection activities and rural development;
- (4) Whereas the structural instrument created by Regulation (EC) No 1267/1999⁽⁵⁾, is intended to

- (5) Whereas the PHARE programme set up by Regulation (EEC) No 3906/89⁽⁶⁾, will in future focus on the essential priorities linked to adoption of the *acquis communautaire*, i.e. building up the administrative and institutional capacities of the applicant countries and financing investments designed to help them comply with Community law as soon as possible;
- (6) Whereas it is important to ensure that Community operations under the three pre-accession instruments achieve optimum economic impact;
- (7) Whereas paragraph 17 of the conclusions of the Luxembourg European Council on 12 and 13 December 1997 provides that financial support to the countries involved in the enlargement process will be based, in the allocation of aid, on the principle of equal treatment, independently of the time of accession, with particular attention being paid to the countries with the greatest need;
- (8) Whereas the above instruments should remain distinct but there must be coordination between operations under them as well as with operations funded by the European Investment Bank, the European Bank for Reconstruction and Development, the Community's other financial instruments and the other international financial institutions;
- (9) Whereas it is necessary to provide for reciprocal information and cooperation between the Commission and the candidate countries for on the spot control and verification to ensure

⁽¹⁾ OJ C 140, 5.5.1998, p. 26 and OJ C 329, 27.10.1998, p. 13.

⁽²⁾ Opinion delivered on 6 May 1999 (not yet published in the Official Journal).

⁽³⁾ OJ L 85, 20.3.1998, p. 1.

⁽⁴⁾ See page 87 of this Official Journal.

⁽⁵⁾ See page 73 of this Official Journal.

⁽⁶⁾ OJ L 375, 23.12.1989, p. 11. Regulation as last amended by Regulation (EC) No 753/96 (OJ L 103, 26.4.1996, p. 5).

efficient protection of the financial interests as well as to combat fraud and other irregularities;

- (10) Whereas management of pre-accession assistance should gradually be decentralised to the applicant countries themselves, taking account of their management and financial control capacities, so that they can be more closely involved in the pre-accession aid process;
- (11) Whereas the Commission should submit regular reports on pre-accession aid to the applicant countries,

HAS ADOPTED THIS REGULATION:

Article 1

Coordination and coherence between assistance granted in the framework of the pre-accession strategy under the agricultural and rural development instrument (hereinafter 'the Agricultural Instrument'), the Structural Instrument and PHARE shall be ensured in accordance with this Regulation.

Article 2

Measures to support agriculture and rural development as set out in Article 2 of the Agricultural Instrument set up by Regulation (EC) No 1268/1999 shall be financed in accordance with the provisions of that Regulation.

Article 3

Investment projects in the following areas shall be financed from the pre-accession aid Structural Instrument set up by Regulation (EC) No 1267/1999 and in accordance with the provisions thereof:

- environmental measures enabling the beneficiary countries to comply with the requirements of Community environmental law and with the objectives of the Accession Partnerships,

- transport infrastructure measures which promote sustainable mobility, and in particular those that constitute projects of common interest based on the criteria of Decision No 1692/96/EC⁽¹⁾ and those which enable the beneficiary countries to comply with the objectives of the Accession Partnerships; this includes interconnection and interoperability of national networks as well as with the trans-European networks together with access to such networks.

Article 4

1. Funding under the PHARE programme shall be carried out in accordance with Regulation (EEC) No 3906/89.

2. Regulation (EEC) No 3906/89 is hereby amended by adding a new paragraph 3 to Article 3 to read as follows:

'3. For applicant countries with accession partnerships with the European Union, funding under the PHARE programme shall focus on the main priorities for the adoption of the *acquis communautaire*, i.e. building up the administrative and institutional capacities of the applicant States and investment, except for the type of investments financed in accordance with Regulations (EC) No 1267/1999(*) and (EC) No 1268/1999(**). PHARE funding may also be used to finance the measures in the fields of environment, transport and agricultural and rural development which form an incidental but indispensable part of integrated industrial reconstruction or regional development programmes.

(*) OJ L 160, 26.6.1999, p. 73.

(**) OJ L 160, 26.6.1999, p. 87.'

Article 5

Aid for schemes or measures financed in the framework of pre-accession aid may be granted from one only of the instruments referred to in this Regulation.

Article 6

Financing of the schemes or measures provided for in this Regulation shall be subject to compliance with the

(1) OJ L 228, 9.9.1996, p. 1.

undertakings contained in the Europe Agreements as recalled in Regulation (EC) No 622/98 and with the conditions laid down in the Accession Partnerships, as well as to the relevant provisions of Regulations (EEC) No 3906/89, (EC) No 1267/1999, (EC) No 1268/1999 and of this Regulation.

Article 7

Beneficiary States shall contribute to the financing of investments.

Article 8

Schemes or measures financed under the three instruments referred to in Articles 2, 3 and 4 shall be decided in accordance with the provisions laid down in the relevant Regulation relating to that instrument.

Article 9

1. The Commission shall be responsible for coordinating operations under the said three instruments, and in particular for establishing the pre-accession aid guidelines for each country. It shall be assisted for this purpose by the committee set up by Article 9 of Regulation (EEC) No 3906/89.

2. The Commission shall inform the committee referred to in paragraph 1 about the indicative financial allocations for each country and per pre-accession instrument, about action it has taken pursuant to Article 10, and about decisions taken pursuant to Article 12. Such decisions shall be communicated to the Court of Auditors.

Article 10

The Commission shall ensure coordination and coherence between operations undertaken pursuant to this Regulation under the Commission budget, operations funded by the European Investment Bank or other financial instruments of the Community, and operations funded by international financial institutions.

Article 11

1. The Commission shall implement the Community aid in accordance with the rules of transparency and the Financial Regulation applicable to the general budget of the European Communities, in particular Article 114 thereof.

2. Pre-accession aid shall also cover expenditure relating to the monitoring, inspection and evaluation of operations.

3. Financing decisions and any contracts or implementing instruments resulting therefrom shall expressly provide for inspection by the Commission and the Court of Auditors to be carried out on the spot, if necessary.

Article 12

1. Project selection, tendering and contracting by applicant countries shall be subject to *ex-ante* approval by the Commission.

2. The Commission may, however, decide, on the basis of a case-by-case analysis of national and sectorial programme/project management capacity, financial control procedures and structures regarding public finance, to waive the *ex-ante* approval requirement referred to in paragraph 1 and confer on implementing agencies in applicant countries management of aid on a decentralised basis. Such a waiver shall be subject to:

- the minimum criteria for assessing the ability of implementing agencies in applicant countries to manage aid and minimum conditions applicable to such agencies set out in the Annex to this Regulation;
- and specific provisions concerning, *inter alia*, invitations to tender, scrutiny and evaluation of tenders, the award of contracts and the implementation of Community public procurement directives, which shall be laid down in financing agreements with each beneficiary country.

3. The Commission shall adopt rules governing inspection and evaluation.

Article 13

The Commission shall present an annual report on the overall pre-accession aid for each country to the European Parliament and to the Council.

Article 14

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, 21 June 1999.

For the Council
The President
G. VERHEUGEN

ANNEX

MINIMUM CRITERIA AND CONDITIONS FOR DECENTRALISING MANAGEMENT TO IMPLEMENTING AGENCIES IN APPLICANT COUNTRIES (ARTICLE 12)**1. Minimum criteria for assessing the ability of implementing agencies in applicant countries to manage aid**

The following criteria shall be applied by the Commission in assessing which implementing agencies in partner countries are able to manage aid on a decentralised basis:

- (i) there should be a well-defined system for managing the funds with full internal rules of procedure, clear institutional and personal responsibilities;
- (ii) the principle of separation of powers must be respected so that there is no risk of conflict of interest in procurement and payment;
- (iii) adequate personnel must be available and assigned to the task. They must have suitable auditing skills and experience, language skills and be fully trained in implementing Community programmes.

2. Minimum conditions for decentralising management to implementing agencies in applicant countries

Decentralisation to applicant countries with *ex post* control by the Commission may be considered for an implementing agency where the following conditions are met:

- (i) demonstration of effective internal controls including an independent audit function and an effective accounting and financial reporting system which meets internationally accepted audit standards;
- (ii) a recent financial and operational audit showing effective and timely management of Community assistance or national measures of similar nature;
- (iii) a reliable national financial control system over the implementing agency;
- (iv) procurement rules which are endorsed by the Commission as meeting requirements of Title IX of the Financial Regulation applicable to the general budget of the European Communities;
- (v) Commitment by the National Authorising Officer to bear the full financial responsibility and liability for the funds.

This approach shall not prejudice the right of the Commission and the Court of Auditors to check the expenditure.
