



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.04.1999

COM(1999) 206 final

97/0191/A (SYN)

Re-examined proposal for a

COUNCIL REGULATION (EC)

**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**

(presented by the Commission pursuant to Article 189 c (d)  
of the EC Treaty)

## EXPLANATORY MEMORANDUM<sup>1</sup>

1. The Commission's proposal of 24 July 1997<sup>2</sup> fulfils its undertaking to propose a legal basis for a number of budget headings, and in particular to provide a financial framework for appraising, deciding, managing, monitoring and evaluating operations to defend and promote human rights and democratic principles under the human rights headings of Chapter B7-70 "European Initiative for Democracy and the Protection of Human Rights". To underline the need for a consistent unified approach encompassing all "human rights" headings, the Commission opted for Article 130w as the legal basis for its proposal.

Arguing that this legal basis did not cover operations outside developing countries, Coreper decided in November 1997 to split the proposal into two separate acts:

- one based on Article 130w (cooperation procedure) concerning the developing countries;
- the other based on Article 235 (assent procedure) concerning operations in other third countries.

When informed of developments in the matter, the Commission felt it could endorse such an approach in order to obtain a solution. However, such a solution must encompass all the budget headings concerned and create a unified system with a single committee to safeguard the possibility of a uniform approach that lay behind the proposal in the first place.

Informed by the Council on 4 August that the initial proposal had been split in two, Parliament opted to begin by examining the draft Regulation based on Article 130w. This Article is governed by the cooperation procedure, which takes longer than the Article 235 procedure. It was decided that the Committee on Development and Cooperation (rapporteur: Mr Torres Couto) would lead the examination of the draft, while the External Relations Committee prepared a report (rapporteur: Mr Galeote Quecedo) on the draft Regulation based on Article 235.

On 17 December 1998 Parliament delivered its opinion<sup>3</sup> at first reading on the proposal based on Article 130w. Approved at the Development Committee's meeting of 25 November, Mr Torres Couto's report was adopted with 36 amendments at Parliament's plenary session on 17 December.<sup>4</sup>

Of the 36 amendments proposed by Parliament, the Commission accepted 23 in whole or in part in the amended proposal which it adopted on 20 January 1999. Of these, ten were included in the Council common position adopted on 25 January.<sup>5</sup>

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<sup>1</sup> The additions, amendments or deletions in the text refer to the amended proposal for a Council Regulation (COM(1999)13 final) adopted by the Commission on 20 January 1999. Additions and amendments are underlined and given in bold in the text. Deletions have been crossed through.

<sup>2</sup> COM(97) 357 final - OJ No C 282, 18.9.1997, p. 14.

<sup>3</sup> Not yet published in the Official Journal.

<sup>4</sup> ~~Two further amendments have also been considered, one excluding operations to finance political parties (amendment 37 to Article 4(1)) and the other (amendment 38), proposed by Mr Galeote Quecedo, inserting a reference in Article 3(4) concerning administrative and technical assistance benefiting both the Commission and the recipient. Only the latter has been taken on board.~~

<sup>5</sup> OJ No C 58, 1.3.1999, pp. 17-25.

On 14 April, Parliament adopted a recommendation for second reading of the draft Regulation based on Article 130w which contains 28 amendments.

2 – The Commission is able to accept 13 of the amendments proposed by Parliament (besides those already included in the Council common position) either in whole or subject to amendments or adjustments~~a significant proportion of the amendments proposed in whole or in substance~~. The amendments fall into three groups.

(a) ~~Four~~six amendments reflect ~~or further clarify~~ the position taken by the Commission in its initial proposal, namely:

- the replacement of a type IIIa regulatory committee with an advisory committee [~~amendment 2434~~]
- the deletion of the limit on the Regulation's application (31 December 2004) [~~amendment 2936~~]
- the deletion of Article ~~109a~~ and ~~the corresponding~~ recital 23 concerning the financial reference amount (EUR ~~260250~~ million for the period 1999-2004) [~~amendments 78 and 2128~~]
- ~~the reference to "administrative and technical assistance benefiting both the Commission and the recipient" [~~amendments 17 and 38~~]~~

The Commission accepts the amendments concerning the period of the Regulation's application and the financial reference amount ~~and administrative and technical assistance~~ in the form proposed. However, the amendment concerning the committee procedure is unacceptable as it stands in so far as the fourth subparagraph of paragraph 2 and paragraph 2a are concerned:

- The reference to an interinstitutional agreement or a new act in the matter of committee procedures ("comitologie") has no place in a normative act (paragraph 2a).
- Nor does the reference to the Commission's keeping Parliament informed of the work of the Committee belong in an article concerning the choice of committee. The Commission could, in a spirit of cooperation, undertake to provide Parliament with regular verbal updates on the Committee's work.
- As for the Committee's proceedings taking place in public, the desire for transparency should not mean that absolutely all the Committee's proceedings take place in public: confidential discussions are needed when choosing projects to protect the Committee from pressure or manipulation. Basing opinions on a series of pre-established criteria should satisfy the need for transparency.

However, the introduction in Article ~~1413~~ of the need to report to Parliament on emergency operations is fully justified, provided it does not involve prior consultations inconsistent with a rapid response to the emergency (~~amendment 2633~~).

The amendments adding the words "and constitute the very foundations of European integration" to the end of the fifth recital (amendment 5) and relating to visibility (insertion of a reference in the Preamble: amendment 6), initiatives against the death penalty [amendment 13], small scale operations promoting grassroots democracy and the commitment of partners to propagating, respecting and promoting democratic principles and human rights [amendment 18]~~f~~

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<sup>6</sup> ~~The reference in that amendment to "ideological allegiance" or "links to political, social or other organisations" is not acceptable.~~

are also acceptable. ~~Other amendments affecting the wording and not the scope of the Regulation can be accepted in form or substance (amendments 5, 11, 15, 22, 24, 27 and 29).~~

(b) However, ~~one~~<sup>three</sup> proposal is fundamentally unacceptable because it undermines the Commission's administrative and executive powers:

- ~~The introduction of an interinstitutional advisory working party to be systematically consulted beforehand on any measures within the brief of the Committee [amendments 1520 and 2532] undermines the Commission's institutional role by interfering with its administrative and executive powers. On an operational level, this proposal would render the Regulation unworkable. Moreover, Parliament does not have the power to create such bodies simply by including references to them in budget commentaries: such a decision would require an arrangement between the Council, the Commission and Parliament.~~
- Changing the special procedure in Article 14 for emergency measures in Article ~~1244~~ [amendment ~~2330~~] would place emergency measures under the normal procedure in Article ~~1342~~ and so render the emergency procedure in Article ~~1443~~ meaningless.

Other proposals are not acceptable for specific reasons:

- Stiffening the requirements relating to the programming of measures; the Council common position broadly satisfies Parliament's requests made at first reading as the reference to programming is now included in the key provisions, i.e. Article 11 which defines the Commission's duties with regard to implementation of the Regulation and Article 15 which requires an annual programming review. The Commission, therefore, can accept the other amendments relating to programming only on condition, as it stated at first reading, that reference is made to the concept in articles where its inclusion is directly justified. For that reason it considers the following inappropriate:
  - Amendment 15 which proposes a reference to programming in Article 4. There is no reason for it to appear here as this Article defines partners and ways of determining their eligibility and, therefore, the reference added to Article 11 is adequate;
  - Amendment 17 which proposes stiffening the programming requirements by reference to a multiannual plan in Article 15.
- Though universally applicable, the concept of good governance cannot be placed on the same footing as fundamental rights and democratic principles, which are legally defined, or the Treaty of Maastricht from which the wording of the title and the provisions have been taken word for word. Only amendments 2 and 8 which proposed including this reference in the first recital and in Article 1, respectively, are acceptable provided that it is done in a separate sentence.

Other minor amendments are not acceptable either for reasons of substance or form in that they are redundant (amendments 11 and 16), they contravene the Financial Regulation (amendment 19), they water down the significance of the experience criterion in project evaluation (amendment 18) or they are unclear and open to different interpretations (amendment 14).

(c) A number of amendments are acceptable subject to amendments or adjustments in their wording or position in the text should be clarified and adjusted to facilitate the application of the Regulation and respect the role of each institution.

~~This is particularly true of amendments relating to the programming of measures in various articles of the Regulation. Though acceptable in principle, this request would nullify Article 10 by reducing programming to a clear and definitive list of measures for the coming financial year. This would undermine the Commission's administrative and executive powers and be impracticable.~~

As for evaluating all measures, the need for serious and comprehensive evaluation should not lead to impractical requirements that jeopardise the efficient management of projects submitted to the Commission (amendment 28).

Nor should arrangements for coordination with the Member States and Parliament be so restrictive that they prevent the Commission from implementing the budget. The same goes for on-the-spot coordination in third countries with a view to avoiding needless duplication by exchanging information on measures implemented by the Community and bilateral measures. There are no grounds for involving Parliament, or indeed the Council, in this activity (amendment 20).

As regards determining recipient organisations' eligibility, Parliament's concern that they should undertake to propagate, respect and promote democratic principles and human rights through their actions and for this undertaking to be made a fundamental condition, rather than a criterion, for access to Community funding must nevertheless be expressed in a totally unambiguous manner (amendment 13) while watering down the criterion of recipient organisations' experience, as Parliament has requested in amendment 17, can only be considered in exceptional circumstances. Even if ~~the emphasis on small organisations with no prior experience is understandable where developing countries are concerned. That said, the principle of equal opportunities cannot~~ ~~should not~~ be allowed to override the quality and feasibility of measures.

~~Though universally applicable, the concept of good governance cannot be placed on the same footing as fundamental rights and democratic principles, which are legally defined, or the Treaty of Maastricht from which the wording of the title and the provisions have been taken word for word. A separate reference could be made in the first recital and Article 1.~~

Amendment 1238 concerning administrative and technical assistance benefiting both the Commission and the recipient is to be viewed in the context of the recent discussions between the Commission and Parliament based on the investigation in the Commission into the charging against operating appropriations of expenditure on technical and administrative assistance linked to the implementation of Community programmes or measures. That said, this amendment provides for a budget limit which includes other types of expenditure than the above which would have the effect of jeopardising activities conducted for the direct benefit of third countries. To avoid any misunderstanding, therefore, the limit should be put in paragraph 5 just in front of the part of the sentence referring to "administrative and technical assistance benefiting both the Commission and the recipient". With this change, the Commission would be able to approve the amendment in conjunction with the financial statement annexed to the proposal. This statement covers both Regulations and will be updated once details of the 1999 budget are available. It will also be updated with regard to the human resources assigned to the management of the budget headings covered by the two Regulations, which will have to be increased.

Re-examined proposal for a

**COUNCIL REGULATION (EC) No .../..**

**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,

Acting in accordance with the procedure laid down in Article 189c of the Treaty,

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; whereas procedures should also be laid down for the implementation of development cooperation operations which contribute to good governance;

Whereas the Council has adopted simultaneously with this Regulation, Regulation No ..., 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;

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;

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 law;

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 and constitute the very foundations of European integration;

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;

Whereas the Community recognises the interdependence of all human rights, and that progress in economic and social development and in the achievement of civil and political rights are mutually supportive;

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 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;

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;

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;

Whereas this positive approach should be reflected by 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 by confidence-building measures aimed at preventing conflicts, supporting peace initiatives and addressing the issue of impunity;

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;

Whereas it is also necessary to ensure that these operations are coherent with the European Union's foreign policy as a whole, including the common foreign and security policy.

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;

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;

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;

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

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

Whereas the procedures for the award of assistance and the evaluation of projects in particular should, with due regard for the Financial Regulation and budget transparency, 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 sometimes hostile environment in which they operate and the limited room for manoeuvre afforded by their own resources;

Whereas the development of civil society naturally leads to the emergence and organisation of new players; whereas the Community may therefore be called on to provide financial support to partners in the beneficiary third countries who can show no previous experience in the field concerned;

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;

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,

HAS ADOPTED THIS REGULATION:

## *CHAPTER 1*

### 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. Its purpose is also to lay down the procedures for the implementation of Community operations which, within the framework of Community development cooperation policy, contribute to good governance.

The operations referred to in this Regulation shall be implemented, within the framework of Community development cooperation policy, in the territory of developing countries or shall be directly related to situations connected with them.

#### *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 the 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) the protection and promotion of the rights of minorities, ethnic groups, indigenous peoples, refugees and displaced persons;
  - (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 in favour of the abolition of 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) promoting 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 to confidence-building measures relating to human rights and democratisation, in order to prevent conflict and to restore civil peace;
  - (d) promoting international humanitarian law and its observance by all parties to a conflict;
  - (e) supporting international, regional or local organisations, including 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, together with support and assistance for victims of human rights violations.

### *Article 3*

Community support for these aims may include the financing of:

1. education, information and training for the agencies involved and public opinion, including that of the countries concerned;
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. and within limits set annually by the budgetary authority,** administrative and technical assistance benefiting both the Commission and the recipients.

## *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. Partners shall undertake to propagate, respect and promote democratic principles and human rights through their actions, without discrimination. With a view to actively involving those concerned, the Community shall take a particular interest in those - frequently small scale - activities which encourage grassroots democracy.
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.

#### *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) where appropriate, its experience in the field of promoting human rights and democratic principles;
- (b) its administrative and financial management capacities;

- (c) its technical and logistical capacity in relation to the planned operation;
- (d) the results, where relevant, of any previous operations carried out, in particular those financed by the Community;
- (e) 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 laid down by the Commission, 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 beneficiary 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 beneficiary 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. For the purposes of the previous paragraph, the Commission shall in particular 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) 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.
3. The Commission shall likewise encourage, in close cooperation with the Member States, the promotion of a coherent approach in relation to humanitarian assistance and, whenever possible, integrate the protection of human rights into humanitarian assistance.

### CHAPTER III

#### Procedures for the implementation of aid

##### *Article 10*

The Commission shall be responsible for programming, appraising, deciding upon and administering, monitoring and evaluating operations under this Regulation in accordance with the budgetary and other procedures in force, and in particular those laid down in the Financial Regulation applicable to the general budget of the European Communities. It shall lay down the conditions for allocating, mobilising and implementing aid under this Regulation.

##### *Article 11*

1. The following shall be approved according to the procedure laid down in Article 12(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;
  - any programme 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 12 of financing decisions that it intends to take concerning projects and programmes costing less than EUR 1 million. Notice shall be given at least one week before the decision is taken.

##### *Article 12*

1. The Commission shall be assisted by an advisory committee, hereinafter referred to as the Human Rights and Democracy Committee, composed of representatives of the Member States and chaired by the representative of the Commission.
2. The representative of the Commission shall submit to the Committee a proposal containing 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, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition each Member State shall have the right to have its position recorded in the minutes. The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

##### *Article 13*

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. The Member States shall be allowed five working days in which to put forward any objections. If there are any objections, the Committee, referred to in Article 12, shall examine the question at its next meeting.
  3. The Commission shall inform the Committee referred to in Article 12, at its next meeting, of all emergency measures financed under these provisions.
- 3a. The Commission shall also inform the European Parliament of emergency measures.

#### *Article 14*

The Committee referred to in Article 12 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 discuss the programme proposed for the coming financial year or the general guidelines for operations to be undertaken in the year ahead under this Regulation.

#### *Article 15*

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 referred to in Article 12 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 16*

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) according to 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 17*

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. Each year the Commission shall submit an annual report to the European Parliament and to the Council. This report shall contain at least the following information:

- (a) a summary of the operations financed in the course of the previous financial year;
- (b) the programme proposed for the current financial year;
- (c) a summary of evaluations conducted pursuant to Article 15 of this Regulation;
- (d) information on the agencies with which the operations referred to in Article 1 have been implemented.

*Article 18*

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 19*

This Regulation shall enter into force on the third 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,

*For the Council*

*The President*

## FINANCIAL STATEMENT

### 1. TITLE OF OPERATION

The implementation of:

- development cooperation operations which contribute to the general objective of developing and consolidating democracy and the rule of law and respecting human rights and fundamental freedoms;
- Community operations, other than those of development cooperation, which, within the framework of Community cooperation policy, contribute to the general objectives of developing and consolidating democracy and the rule of law and respecting human rights and fundamental freedoms in third countries.

### 2. BUDGET HEADING(S) INVOLVED

The budget headings concerned in 1999 are:

<i>Heading</i>	<i>Title</i>	<i>Budget</i>		<i>Breakdown between the two Regulations</i>
		Commitment appropriations	Payments	
Chapter B7-70	European initiative for democracy and the protection of human rights			
<b><u>B7-700</u></b>	Support for democracy in central and eastern Europe, including the Republics formerly part of Yugoslavia	15.000.000		Art. 235
<b><u>B7-701</u></b>	Support for democracy in the New Independent States and Mongolia	10.000.000		Art. 235
B7-7020	Human rights and democracy in the developing countries, particular the ACP countries	17.000.000		Art. 130w
B7-7021	Human rights and democracy in Southern African countries	4.000.000		Art. 130w
B7-7022	Special programme for democracy and good governance in Nigeria	4.000.000		Art. 130w
<b><u>B7-703</u></b>	Democratisation process in Latin America	12.625.000		Art. 130w
<b><u>B7-704</u></b>	Subsidies for certain activities of organisations pursuing human rights objectives	15.000.000		Art. 235/Art.130w
<b><u>B7-705</u></b>	MEDA programme for democracy	10.075.000		Art. 235
<b><u>B7-706</u></b>	Support for the activities of international criminal tribunals and for the setting-up of a Standing International Criminal Tribunal	3.300.000		Art. 235/Art.130w
<b><u>B7-707</u></b>	Human rights and democracy in Asian countries	5.000.000		Art. 130w
<b><u>B7-709</u></b>	Support for, and supervision of, electoral processes	2.000.000		Art. 235/Art. 130w



	TOTAL	98.000.000		Art 235: 35.075.000 Art.130w: 42 625 000 Art. 235/Art.130w: 20 300 000
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#### B7-700

This heading is intended to support the development of democracy and of the rule of law and the development of civil society in the countries of central and eastern Europe, **including the Republics formerly part of Yugoslavia (Slovenia, Croatia, Serbia, Montenegro, the Former Yugoslav Republic of Macedonia and Bosnia-Herzegovina)**. **It is intended to finance measures to support the peace process, calm tensions and develop democracy by, *inter alia*, the promotion of free and independent media in the countries concerned.** The heading is also intended to ~~cover~~ provide support - involving NGOs of a regional nature as extensively as possible, and targeting women's associations in particular - for measures taken by associations actively campaigning for the restoration of democracy in civil life in the countries concerned of central and eastern Europe, including the Republics formerly part of Yugoslavia.

#### B7-701

This heading is intended to cover the implementation of a programme to support democracy and the rule of law, and the transposition of internationally recognised human rights, rights for the protection of minorities and indigenous peoples and to develop civil society in the independent states of the former Soviet Union and Mongolia in the framework of the European Parliament resolution of 15 July 1993. **It also covers assistance in the rebuilding of the infrastructure necessary for public and democratic life, with the broadest possible involvement of non-governmental organisations. Finally, it helps support significant measures in the areas of raising voter awareness, voter education and support for independent media.**

#### B7-7020

This item is intended to cover support for operations promoting human rights and democracy, notably those relating to the exercise of public authority, the development of civil society and conflict prevention, in strict association with the development policies of the European Union in favour of the developing countries, **in particular the ACP countries. It also covers financing to support the rights of minorities and vulnerable groups and the provision of technical expertise on issues related to electoral processes, good governance, the promotion of equality between women and men, the rule of law and the respect of human rights.**

#### B7-7021

**This item is intended to finance a contribution by the European Union in Southern African countries to operations promoting human rights and democracy, notably those relating to the exercise of public authority, the development of civil society, the promotion of equality between women and men and conflict prevention to help reinforce democracy in the countries of that region.** Human rights and democracy in Southern African countries.

#### B7-7022

This is intended to support non-governmental organisations seeking to promote democracy, peace and respect for human rights in Nigeria, in particular pro-democracy groups, women's organisations, trade unions and local groups as well as churches and human rights organisations. ~~Special Programme for Democracy and Good Governance in Nigeria.~~

#### B7-703

This heading is intended to cover the financing of special activities to contribute to the process of democratisation in Latin America, including Haiti and Cuba, particularly in assisting the re-integration into civilian life of those who have fought in civil wars in Central America. It is also intended to provide support for democratically elected authorities which are victims of attempted coups d'état and in which the European Community still has confidence.

#### B7-704

This heading is intended to cover financing of the activities of organisations pursuing humanitarian aims and promoting human rights in third countries. It also covers support for the establishment and maintenance of rehabilitation centres for victims of torture and to other organisations offering concrete help to victims of human rights abuses. This aid is allocated for projects to be undertaken in third countries and in the European Union in the form of grants, notably in support of organisations which assist children who are victims of human rights violations or provide legal advice or aid to persons or associations in need thereof. Aid under this item is targeted, *inter alia*, at: Community and international initiatives aimed at abolishing the death penalty in all countries; training for those called upon to teach others about human rights (judges, lawyers, civil servants, those responsible for the training of police and security forces, teachers, etc.); reinforcing respect for the rights of the child; the promotion and protection of women's rights, including action to combat trafficking in women; reinforcing respect for ethnic minorities and the rights of indigenous peoples worldwide; support for organisations which specialise in caring for refugees; training and education in human rights with organisations specialising in the subject; initiatives seeking to establish an international criminal court.

#### B7-705

This heading is designed to support the development of democracy, of the constitutional state and of civil society in the countries covered by the MEDA programme.

#### B7-706

This heading is intended to help improve the functioning of the UN International War Crimes Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda by funding operating expenditure incurred in gathering evidence (missions, investigations, travel by witnesses, exhumations, etc.) and preparations for the setting-up of an international criminal court ~~a Standing International Criminal Tribunal.~~

#### B7-707

This heading is intended to contribute to support in Asian countries for operations promoting human rights and support the development of democracy, notably those relating to the exercise of public authority, the development of the constitutional state and of civil society and conflict prevention in the countries of Asia. It covers the financing of activities to promote democracy in Asia, especially in the People's Republic of China

and in the territory of Macao, as well as of those activities connected with monitoring respect for human rights, particularly in Hong Kong, Macao, the autonomous region of Xinjiang and Inner Mongolia, of those related to the promotion of freedom of the media, and of those intended to raise awareness of European Union measures in the field of democracy and human rights. It also covers support for the activities of non-governmental organisations involved in the protection and promotion of human rights in Tibet.

#### B7-709

This heading is intended to finance activities in support of the electoral process in third countries. It may be used in particular to finance measures to build up the capacity necessary to carry out effective election observation operations, notably setting up structures for the training of personnel, including the establishment of a pool of specialist professionals, monitoring access to the media during election campaigns, evaluation of the European Union's participation in international election observation missions and continued monitoring of the post-electoral situation. ~~Support for, and supervision of, electoral processes.~~

### **3. LEGAL BASIS**

It is proposed that the Council Regulation establishing 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, be based on Article 130w of the Treaty.

It is proposed that the Council Regulation establishing 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, be based on Article 235 of the Treaty.

### **4. DESCRIPTION OF OPERATION**

#### **4.1 General objective**

To contribute to the implementation of operations to develop and consolidate democracy and the rule of law, including good governance, and respect for human rights and fundamental freedoms.

#### **4.2 Period covered and arrangements for renewal**

The operation is of indefinite duration.

## **5. CLASSIFICATION OF EXPENDITURE OR REVENUE**

### **5.1 Non-compulsory expenditure**

### **5.2 Differentiated appropriations**

### **5.3 Type of revenue involved: Not applicable**

## **6. TYPE OF EXPENDITURE OR REVENUE**

– 100% subsidy

– subsidy for joint financing with other sources in the public and/or private sector

## **7. FINANCIAL IMPACT**

### **7.1 Method of calculating total cost of operation (relation between individual and total costs)**

The total cost of Chapter B7-70 in 1999 is the sum of the individual budget headings listed above (see point 2).

As stated in Agenda 2000, the overall allocation for external assistance programmes should rise no faster than the GDP of the EU Member States.

~~The indicative amount will be proposed during the negotiations on the new financial perspectives for the period 2000-2006. It may be reviewed in the light of the outcome of these negotiations to take account of the balance agreed between the areas of cooperation deemed priorities in the Commission communications on Agenda 2000 and the new financial perspectives.~~

### **7.2 Itemised breakdown of cost (p.m.)**

### **7.3 Operational expenditure for studies, experts etc. included in Part B of the budget**

### **7.4 Schedule of commitment and payment appropriations: Not applicable (p.m.)**

## **8. FRAUD PREVENTION MEASURES**

Recipients of financial assistance under Chapter B7-70 must sign a cofinancing agreement with the Commission. Though each Directorate-General has its own model, all these agreements contain standard anti-fraud provisions. By way of example, the draft contract for headings managed by DG IA/A2 contains the following clauses:

“I, the undersigned.....position:.....representing.....which has submitted a grant application to the European Commission, acting on behalf of the European Community.

Hereby:

(....)

3. "Agree to an audit being carried out by the Commission and the Court of Auditors on the utilisation of the amounts granted as required by the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities, last amended by Council Regulation 2444/97 of 22 September 1997."

ANNEX B:

## Section "II. AUDIT

"In the event of an audit, the contractor must be in a position to produce the supporting documents listed below. These documents must be kept for up to five years after the expiry of the agreement with the Commission.

### 2.1 Personnel

For each person, time sheets certifying the number of days worked (for each month).

### 2.2 Subsistence allowances

Receipts signed by the beneficiary (in addition, the number of months/days must be consistent with the time sheets/travel tickets).

### 2.3 Travel

For air travel: original flight tickets and boarding passes. For local travel: original tickets (train, bus, ...) ; taxi receipts. For car travel: internal document (with signature) stating the date of travel, the destination and purpose, the number of kilometres done, the rate per kilometre.

### 2.4 Seminars and meetings

Hotel bills, receipts signed by beneficiaries of allowances, all invoices relating to the various expenses incurred.

### 2.5 Publications and reports

All invoices relating to the various expenses incurred. For mailing expenses, if no invoice can be obtained from the post office, an internal document showing the number of documents sent and the cost of stamps is admissible.

### 2.6 Equipment

Offers from suppliers consulted, and invoices. For equipment purchase by another organisation than the final user (e.g. equipment bought by an EU-based NGO on behalf of a local partner), a receipt acknowledging that the equipment was transferred to the final user must be attached to the final request for payment.

### 2.7 Supplies and consumables

Invoices and, where necessary, internal documents justifying the use made of those supplies and consumables.”

The Commission’s authorised agents may visit organisations while operations are under way to check that everything is going smoothly and that funding is being used properly. The reports of such missions provide the budget heading’s administrators with a detailed knowledge of the recipient organisation’s capacities and the management of the project’s finances.

DG XX and/or the Court of Auditors may also carry out inspections at the site of the project and the headquarters of recipient organisations.

Administrators of Chapter B7-70 headings are responsible for examining the intermediate and final financial reports that all recipient organisations have to present before receiving the next tranche of funding. In principle, this method enables misuse of funds to be avoided and offers guarantees as to the proper execution of the project’s activities.

## **9. ELEMENTS OF COST-EFFECTIVENESS ANALYSIS**

### **9.1 Specific and quantified objectives; target population**

– Specific objectives: links with general objective

1. promoting and defending the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and the 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) the protection and promotion of the rights of minorities, ethnic groups, indigenous peoples, refugees and displaced persons;
  - (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 in favour of the abolition of 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) promoting 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 the 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 to confidence-building measures relating to human rights and democratisation, in order to prevent conflict and to restore civil peace;
    - (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, together with support and assistance for victims of human rights violations.

- Target population: distinguish for any individual objectives; indicate the end-beneficiaries of the Community's financial contribution and the intermediaries involved.

## 9.2 Grounds for the operation

- Need for Community financial aid, with particular regard for the principle of subsidiarity

The Community's international legal personality endows it, in international relations, with the capacity to exercise rights and assume obligations across the entire spectrum of objectives laid down in the Treaty. Action is taken in accordance with the United Nations Charter and the Universal Declaration of Human Rights supplemented by the two international pacts on civil and political rights and economic, social and cultural rights. It is also based on the requirements of the main international and regional instruments for the protection of human rights. The priorities espoused by the international community in the final declaration and the action programme of the World Conference on Human Rights (Vienna, June 1993) created a framework for action that is one of the European Union's main points of reference.

Building on this foundation, the Treaty on European Union has strengthened Community action in the field of human rights and democratic principles by specifying that Community policy in the sphere of development cooperation "shall contribute to the general objectives of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms." The Community's human-centred development aid policy is closely tied to the enjoyment of fundamental rights and freedoms, the recognition and application of democratic principles, the consolidation of the rule of law and good governance. This approach - set out in the resolution on human rights, democracy and development adopted on 28 November 1991 by the Council and the Member States meeting within the Council - is founded on open and constructive dialogue with the governments of the countries concerned and the implementation of positive measures to raise awareness of and promote human rights and democracy. It is aimed at strengthening the link between development aid, human rights and democratic principles, the rule of law and good governance.

- Choice of ways and means

\* advantages over possible alternatives (comparative advantages)

Chapter B7-70 is one of the few instances of direct cooperation between the Commission and civil society inside and outside the Community. The gathering of these headings into a single chapter in 1994 helped ensure that spending outside the Community on human rights and democratisation was managed with the requisite consistency and transparency. The inter-departmental Human Rights Coordination Group has helped establish guidelines, identify terms of reference and common criteria for selecting projects and harmonise procedures.

This approach enables greater account to be taken of the realities of the countries and regions concerned and the priorities of governmental and non-governmental partners and ensures that proposed operations are relevant to the situation on the ground. Its main advantages are a flexibility enabling it to adapt to the needs of the target group, the interweaving of the



thematic and geographical approaches, the innovative nature of schemes which receive small-scale funding under Chapter B7-70 but may, if successful, be developed on a larger scale using technical assistance or development aid resources. This system also helps ensure the continuity of action while offering scope for the development of a medium- to long-term strategic approach.

\* explanatory reference to similar Community or national operations

The trend towards the harmonisation of selection and financing procedures within Chapter B7-70 both simplifies the selection of schemes and facilitates relations between the Commission and recipient organisations. This makes it easier to gauge the impact of measures financed under this chapter and keep operations in line with the priorities laid down by the inter-departmental group.

Community action is distinguished from similar initiatives at national level by the fact that it projects a European identity rooted in the Member States' shared commitment. In operational terms, the Commission's worldwide network of delegations and offices constitutes a particularly effective tool for the assessment, monitoring and evaluation of projects. It also helps focus the Commission's international efforts and maximise the impact. Other donors consider Commission funding a solid guarantee of the quality of a project and the trustworthiness of the recipient organisation.

- Main factors of uncertainty which could affect the specific results of the operation

Uncertainty and risk are intrinsic to the schemes backed. Some take place against a background of extreme tension or conflict. The subjects covered are sensitive and activities may be seriously impeded or interrupted by opposition from the authorities or social factions.

### **9.3 Monitoring and evaluation of the operation**

- Performance indicators selected
  - \* output indicators (measuring activities used)
  - \* impact indicators (measuring performance against objectives)

All projects are evaluated in terms of the technical, logistical, administrative and financial capacity of the organisations presenting them. Evaluation can be broken down as follows:

1. conformity with the general objectives of the Union and the budget, chapter and heading concerned,
2. achievement of the project's objectives,
3. cost-effectiveness,
4. quality of the organisation,
5. relevance to the situation on the ground,
6. impact and spin-offs of the project,
7. visibility of the Union's contribution.

At the end of the contract, all recipients must present a report on a project's activities and spending before the file can be closed. These reports are examined in the light of the original work plan, objectives and budget. Criteria include cost-effectiveness, spin-offs and the visibility of Community support. Any irregularity for which the organisation is unable to provide an explanation may lead to the dispatch of an on-the-spot inspection mission by the unit or, where appropriate, Financial Control and/or the Court of Auditors.

Various annual reports take stock of the use of these financial resources. The issues are covered horizontally by the reports on the implementation of measures intended to promote observance of human rights and democratisation (1992, 1993, 1994, 1995) and the reports on the implementation of operations to promote human rights and democratisation and the reports on the implementation of the resolution adopted on 28 November 1991 by the Council and the Member States meeting within the Council on human rights, democracy and development (1992, 1993 and 1994). The general report on the activities of the European Communities provides general information on the execution of the various budget headings. These are supplemented by the reports on the use of the individual headings of Chapter B7-70.

## 10. ADMINISTRATIVE EXPENDITURE (SECTION III, PART A OF THE BUDGET)

### 10.1 Effect on the number of posts

NB. The posts come under Directorates-General I, IA, IB and VIII and the Joint Relex Service for the management of Community aid to non-member countries

Type of post		Staff to be assigned to managing the operation		source		Duration
		Permanent posts	Temporary posts	Existing resources in the DG or department concerned	Additional resources	
Officials or temporary staff	A	8		8		
	B	5		5		
	C	3	3	6		
Other resources						
TOTAL		16	3	19		

### 10.2 Overall financial impact of additional human resources

None

(euros)

	Amounts	Method of calculation
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Officials		
Temporary staff		
Other resources (indicate budget heading)		
TOTAL		

10.3 Increase in other administrative expenditure as a result of the operation

Budget heading	Amounts	Method of calculation
A-25532510		<b>2 representatives per Member State for two days twice a year at a rate of EUR 700 per day</b>
	84 000	

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