



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 31.07.1996

COM(96) 425 final

95/0165 (SYN)

Re-examined proposal for a

COUNCIL REGULATION (EC)

**ON REHABILITATION AND RECONSTRUCTION OPERATIONS
IN DEVELOPING COUNTRIES**

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

EXPLANATORY MEMORANDUM

(concerning the amendments requested by Parliament on second reading under the cooperation procedure - amendments accepted and amendments not incorporated by the Commission)

Re-examined proposal for a Council Regulation (EC) on rehabilitation and reconstruction operations in developing countries

Interinstitutional reference: 95/0165 (SYN).

Cooperation procedure second reading Article 189c(d)

BACKGROUND

On 26 June 1995 the Commission presented to the Council and Parliament a proposal for a regulation on rehabilitation and reconstruction operations in developing countries (COM(95) 291 final).

The proposal for a Council regulation on rehabilitation and reconstruction operations in developing countries, based on Article 130w of the Treaty, is subject to the cooperation procedure (Article 189c of the Treaty).

In accordance with this cooperation procedure, on 15 December 1995 Parliament delivered its opinion following its first reading.

On 29 January this year the Council adopted a common position which the Commission did not accept.

On 21 May 1996 Parliament delivered its opinion following its second reading and adopted a total of 19 amendments (PE 166.050). In accordance with Article 189c(d), the Commission presented a re-examined proposal containing the amendments it had accepted.

The re-examined proposal is intended to lay down the detailed procedures for administering the budget headings for financing rehabilitation and reconstruction procedures in the developing countries and rehabilitation programmes in southern Africa.

COMMENTS ON THE AMENDMENTS ADOPTED BY PARLIAMENT AT SECOND READING

(a) Analysis of the amendments accepted/rejected.

The amendments adopted at second reading can be put into four categories.

The Commission adopted the following amendments in their entirety **because they constitute acceptable changes**: No 1, 1st part; 3, 1st part; 4, 1st and 4th parts; 5, 2nd and 4th parts; 6, 2nd part; 10, 2nd part; 16, 1st part - (a),(b), and (c) and 2nd part - 1st, 2nd and 3rd paragraphs. **The Commission, however, considers that the content of amendment No 10, 2nd part, would be more appropriate to the recitals than the body of the Regulation.**

The Commission accepted the substance of the following amendments, but in another form, **since the substance constituted an acceptable change but the Commission preferred other wording for these points**: No 1, 2nd part; 3, 2nd part; 4, 2nd and 3rd parts; 5, 1st part; 6, 1st part; 7, 1st and 2nd parts; 10, 1st part; 13.

The Commission did not incorporate the following amendments:

- **either because they did not correspond to the objectives set, or resources available, for rehabilitation or because they imposed an excessive constraint on management**: No 2; 5, 3rd part; 8; 9; 12; 14; 15; 17, 2nd part; 18; 19
- **or because they are unacceptable for institutional reasons**: No 10, 1st part; 11; 16, 2nd part 4th paragraph; 17, 1st part.

(b) The Commission's position and grounds for that position

Account being taken of the Commission position proposed for the remainder of the amendments, as indicated under (a), the Commission **rejects** all the amendments mentioned in the preceding paragraph for the following reasons:

No 2: this amendment is a reference to Southern Africa's past situation and does not correspond to the present context and foreseeable prospects for this area.

No 5, 3rd part: this amendment concerns training and education schemes to counter the effects of fighting within the country and destabilization policies, but measures of this kind are already provided for in the text (mine clearance and social reintegration) and under other operations.

No 8: this amendment limits financing to essential expenditure, but in the rehabilitation stage it may be necessary to cover all operating expenditure.

No 9: this amendment makes financial contributions from local operating partners a priority objective in certain cases, but these contributions should be sought in the light of various factors relating to each operation.

No 10, 1st part: the purpose of this amendment is to arrange coordination between the Community and the Member States and at international level by methods which are not practicable in that no attempt is made to identify the various levels of, and participants in, the coordination.

No 11, 1st part: the purpose of this amendment is to delete the reference to procedures other than the budgetary procedure, but other procedures, such as the decision-making one, have to be observed.

No 12: this amendment includes evaluation measures in the context of checks, but evaluation must not be confused with checks and in any event it is specifically dealt with elsewhere.

No 14: this amendment stipulates that participation in invitations to tender may be extended to other countries of the region, but it is preferable to extend participation to all developing countries.

No 15: this amendment stipulates that goods and services may originate in other countries of the region, but it is preferable to allow them to originate in any developing country.

No 16, 2nd part, 4th paragraph: this amendment calls for the Committee meetings to be held in public and for its minutes to be transmitted for information, but this is not possible for interinstitutional reasons, such as incompatibility with committee procedures and rules.

No 17, 1st part: an observer from Parliament's Committee on Development and Cooperation would be present at the Committee meetings, but this is not possible for interinstitutional reasons, in particular incompatibility with committee procedures and rules.

No 17, 2nd part: wide-ranging consultations would be held at all levels to establish general guidelines for implementing rehabilitation operations. This would be impracticable since the general guidelines will be established as part of the Commission's cooperation policy, which involves ongoing dialogue with the various partners.

No 18: this amendment calls for details concerning implementation to be given in the summary, but this is not possible in practical terms, although the various partners in the rehabilitation operations will be mentioned.

No 19: specific reasons would have to be given for financing rehabilitation operations from budget headings when the beneficiary countries could obtain funding from the EDF or under the financial protocols. Budget headings for rehabilitation were established in order to provide additional financing for countries which are undergoing rehabilitation and as a rule already have other funding available. The reasons stem from the special large-scale requirements of this category of country, examined when the general guidelines are drawn up, and cannot be given for each separate operation, since this would defeat the object of the headings.

Re-examined proposal for a
COUNCIL REGULATION (EC) No /96
of

on rehabilitation and reconstruction operations
in developing countries

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130w thereof,

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

Acting in accordance with the procedure laid down in Article 189c of the Treaty⁽²⁾,

Whereas the Commission, in its communication of 12 May 1993 to the European Parliament and the Council on a special rehabilitation support programme in developing countries, highlighted the specific nature and scale of the rehabilitation and reconstruction aid needed by developing countries that have suffered serious destruction through war, civil disorder or natural disaster;

Whereas the conclusions of the Council (Development) of 2 December 1993 on rehabilitation aid define the principal objectives, conditions and criteria for such aid and emphasize the need for close coordination between the Commission and the Member States when planning and implementing it;

Whereas the Commission must ensure coherence and continuity in humanitarian aid, rehabilitation and development operations;

Whereas in its resolution of 16 November 1993⁽³⁾ the European Parliament emphasized the scale of the developing countries' need for rehabilitation aid and proposed the establishment of a specific financial framework with considerable financial resources for that purpose in the general budget of the European Communities;

Whereas the European Parliament stressed the need to position rehabilitation operations in a medium-term or long-term development plan;

Whereas Parliament also noted that high priority needed to be accorded to the speed and efficiency of aid;

¹ OJ No C 235, 9.9.1995, p. 11.

² Opinion of the European Parliament of (not yet published in the Official Journal),
Common position of the Council of (not yet published in the Official Journal) and
Decision of the European Parliament of (not yet published in the Official Journal).

³ OJ C 329, 6.12.1993, p. 77.

Whereas the budgetary authority included in the budget headings for the financing of rehabilitation operations in southern Africa (B7-3210) and for rehabilitation and reconstruction operations in developing countries (B7-6410);

Whereas procedures should be established for the administration of such operations,

HAS ADOPTED THIS REGULATION:

Article 1

1. The Community shall carry out rehabilitation and reconstruction operations in the developing countries referred to in paragraph 2 which have suffered serious damage through war, civil disorder or natural disaster with priority being given to the least developed among them. Operations of limited duration, **to be launched as quickly as possible**, shall be designed to help re-establish a working economy and the institutional capacities needed to restore social and political stability to the countries concerned and meet the needs of the people affected. The operations must progressively take over from humanitarian action and pave the way for the resumption of medium-term and long-term development aid. **They must in particular permit refugees, displaced persons and demobilized troops to return home and help the entire population resume normal civilian life in their countries and regions of origin.**

2. The countries to benefit from this Regulation shall be the African, Caribbean and Pacific countries, the Mediterranean countries, the countries of Latin America and Asia and the developing countries of the Caucasus and Central Asia.

Article 2

1. When deciding on operations, account should be taken wherever possible of the existence of a minimal level of security and a real commitment to a transition process respecting democratic values and fundamental freedoms.

2. The priorities for operations under this Regulation shall be: the relaunch of production on a lasting basis, the physical and operational rehabilitation of basic infrastructure, including mine clearance, the reintegration **into society of refugees, displaced persons and demobilized troops** and the restoration of the institutional capacities needed in the rehabilitation period, especially at local level. **Resources may also be earmarked for the development of economic activity, particularly by setting up SMEs and promoting regional economic integration.**

Article 3

The cooperation partners eligible for financial support under this Regulation shall be regional and international organizations and **specialized non-governmental organizations which, according to their expertise and capacities, can make a contribution to the operations referred to in Articles 1 and 2**, national, provincial and local government departments and agencies, community-based organizations, institutes and public and private operators.

Article 4

1. The instruments to be employed in the course of the operations referred to in Article 1 shall include studies, technical assistance, training or other services, supplies and works, along with audits and evaluation and monitoring missions.
2. Community financing may cover both investment, with the exception of the purchase of buildings, and recurring costs (including administrative, maintenance and operational costs), taking account of the fact that the project must aim to have the recurring costs taken over by the beneficiaries.
3. A financial contribution from the partners defined in Article 3 shall be sought for each cooperation operation. The contribution requested shall be within the means of the partners concerned and shall depend on the nature of the operation. In specific cases where the partner is an NGO or a community-based organization, a contribution in kind may be made.
4. Opportunities may be sought for cofinancing with other providers of funds, especially with Member States.
5. The necessary measures shall be taken to emphasize the Community character of the aid provided under this Regulation.
6. In order to achieve the objectives of coherence and complementarity referred to in the Treaty and with the aim of guaranteeing optimal efficiency of the totality of these actions, the Commission will take all necessary coordination measures, notably:
 - (a) the establishment of a system for the systematic exchange and analysis of information on actions financed or for which financing is foreseen by the Community and the Member States;
 - (b) on-the-spot coordination of these actions by means of regular meetings and exchange of information between the representatives of the Commission and Member States in the beneficiary country.
7. The Commission, in conjunction with the Member States, may take any initiatives necessary for ensuring good coordination with the other providers of funds, in particular those forming part of the United Nations system.

Article 5

Financial support under this Regulation shall be in the form of grants.

Article 6

1. The Commission shall appraise, decide and administer operations covered by this Regulation according to 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.
2. Project and programme appraisal shall take into account the following factors:

those laid down in the Financial Regulation applicable to the general budget of the European Communities.

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

- effectiveness and viability of operations,
- cultural, social, gender and environmental aspects,
- institutional development necessary to achieve project goals,
- experience gained from operations of the same kind.

3. Decisions relating to grants of more than ECU 2 million for individual operations financed under this Regulation shall be taken under the procedure laid down in Article 7.

The Commission shall inform the Committee referred to in Article 7 succinctly of any financing decisions it intends to take with regard to projects and programmes of less than ECU 2 million in value. The information shall be made available not later than one week before the decision is taken.

4. The Commission is authorized to approve, without seeking the opinion of the Committee referred to in Article 7, any extra commitments needed for covering expected or real cost overruns in connection with the operations, provided that the overrun or additional requirement is less than or equal to 20% of the initial commitment fixed by the financing decision.

Where the additional commitment referred to in the previous subparagraph is less than ECU 4 million, the Committee referred to in Article 7 shall be informed of the decision taken by the Commission. Where the said additional commitment is more than ECU 4 million but less than 20%, the Committee's opinion shall be sought.

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

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

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

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

Article 7

1. The Commission shall be assisted by an advisory committee made up of representatives from the Member States and chaired by a representative of the Commission, depending on the recipient country or region concerned, as follows:

- (a) for the African, Caribbean and Pacific countries, the EDF Committee set up by Article 21 of Internal Agreement 91/401/EEC on the financing and administration of Community aid under the fourth Lomé Convention, adopted on 16 July 1990 by the representatives of the governments of the Member States, meeting within the Council;
- (b) for the Mediterranean countries, the MED Committee set up by Article 6 of Council Regulation (EEC) No 1762/92 on the implementation of the Protocols on financial and technical cooperation concluded by the Community with Mediterranean non-member countries;
- (c) for the Asian and Latin American countries, the ALA Committee set up by Article 15 of Council Regulation (EEC) No 443/92 on financial and technical assistance to, and economic cooperation with, the developing countries in Asia and Latin America.

2. The Commission representative shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask 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 8

An exchange of views shall take place, once a year, on the basis of a presentation by the Commission's representative of the general guidelines for the operations to be carried out in the year ahead, in the framework of a joint meeting of the committees referred to in Article 7(1).

Article 9

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

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

The report shall also include a summary of the conclusions of any independent evaluations of specific operations.

The Commission shall inform the Member States, at the latest one month after its decision, of the operations and projects that have been approved, and shall indicate their amounts, character, recipient country and partners.

Article 10

The Commission shall regularly assess operations financed by the Community in order to establish whether the objectives of the operations have been achieved and to provide guidelines for improving the effectiveness of future operations. The Commission shall submit to the Committee referred to in Article 7 a summary of the assessments made, which the latter may, if necessary, examine. Assessment reports shall be made available to any Member States requesting them.

Article 11

This Regulation shall enter into force on the third day following that of its publication in the Official Journal of the European Communities **and shall apply from 1 January 1997.**

Three years after this Regulation enters into force, the Commission shall submit to the European Parliament and the Council an overall assessment of operations financed by the Community under this Regulation, together with suggestions regarding the future of this Regulation and, where necessary, proposals for amending it.

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

Done at Brussels,

For the Council
The President

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DOCUMENTS

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