

COUNCIL REGULATION (EC) No 389/2006

of 27 February 2006

establishing an instrument of financial support for encouraging the economic development of the Turkish Cypriot community and amending Council Regulation (EC) No 2667/2000 on the European Agency for Reconstruction

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

Whereas:

- (1) The European Council has repeatedly underlined its strong preference for accession by a reunited Cyprus. As yet, a comprehensive settlement has not been reached.
- (2) The Council of 26 April 2004, considering that the Turkish Cypriot community had expressed their clear desire for a future within the European Union, recommended that the funds earmarked for the northern part of Cyprus in the event of a settlement should be used to put an end to the isolation of that community and to facilitate the reunification of Cyprus by encouraging the economic development of the Turkish Cypriot community, with particular emphasis on the economic integration of the island and on improving contact between the two communities and with the EU.
- (3) Following the accession of Cyprus, the application of the *acquis* is suspended pursuant to Article 1(1) of Protocol No 10 of the Act of Accession 2003 in the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control (hereinafter referred to as 'the areas').
- (4) Pursuant to Article 3(1) of Protocol No 10, nothing in the Protocol precludes measures with a view to promoting the economic development of the areas.
- (5) Measures to be financed under this Regulation are of an exceptional and transitional nature and are intended, in particular, to prepare and facilitate, as appropriate, the full application of the *acquis communautaire* in the areas following a solution to the Cyprus problem.
- (6) With a view to allocating the financial support in the most efficient and rapid way, it is desirable to provide that assistance can be supplied directly to the beneficiaries.
- (7) In order to supply assistance in accordance with the principles of sound financial management, the Commission should be in a position to delegate to the European Agency for Reconstruction implementation of assistance under this Regulation. Therefore, Council Regulation (EC) No 2667/2000 on the European Agency for Reconstruction ⁽¹⁾ needs to be amended accordingly.
- (8) The development and restructuring of infrastructure, in particular in the areas of energy and transport, the environment, telecommunications and water supply should take account of island-wide planning, where appropriate.
- (9) In the implementation of actions financed under this Regulation, the rights of natural and legal persons, including the rights to possessions and property, should be respected.
- (10) Nothing in this Regulation is intended to imply recognition of any public authority in the areas other than the Government of the Republic of Cyprus.
- (11) In accordance with Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽²⁾, measures for the implementation of this Regulation should be adopted by use of the management procedure provided for in Article 4 of that Decision.

⁽¹⁾ OJ L 306, 7.12.2000, p. 7. Regulation as last amended by Regulation (EC) No 2068/2004 OJ L 358, 3.12.2004, p. 2).

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

(12) Implementing this Regulation contributes, as set out above, to the achievement of Community objectives, but the Treaty provides for no powers, other than those referred to in Article 308 thereof, for the adoption of this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Overall Objective and Beneficiaries

1. The Community shall provide assistance to facilitate the reunification of Cyprus by encouraging the economic development of the Turkish Cypriot community with particular emphasis on the economic integration of the island, on improving contacts between the two communities and with the EU, and on preparation for the *acquis communautaire*.

2. Assistance shall benefit *inter alia* local bodies, cooperatives and representatives of civil society, in particular organisations of the social partners, business support organisations, bodies carrying out functions in the general interest in the areas, local or traditional communities, associations, foundations, non-profit organisations, non-governmental organisations, and natural and legal persons.

3. The granting of such assistance shall not imply recognition of any public authority in the areas other than the Government of the Republic of Cyprus.

Article 2

Objectives

Assistance shall be used to support *inter alia*:

— the promotion of social and economic development including restructuring, in particular concerning rural development, human resources development and regional development,

— the development and restructuring of infrastructure, in particular in the areas of energy and transport, the environment, telecommunications and water supply,

— reconciliation, confidence building measures, and support to civil society,

— bringing the Turkish Cypriot community closer to the Union, through *inter alia* information on the European Union's political and legal order, promotion of people to people contacts and Community scholarships,

— preparation of legal texts aligned with the *acquis communautaire* for the purpose of these being immediately applicable upon the entry into force of a comprehensive settlement of the Cyprus problem,

— preparation for implementation of the *acquis communautaire* in view of the withdrawal of its suspension in accordance with Article 1 of Protocol No 10 to the Act of Accession.

Article 3

Management of Assistance

1. The Commission shall be responsible for administering the assistance.

2. The Commission shall be assisted by the Committee provided for in Article 9(1) of Regulation (EEC) No 3906/89⁽¹⁾, composed of representatives of the Member States and chaired by a representative of the Commission.

3. The Committee shall give its opinion on draft financing decisions, where they are in excess of EUR 5 million. The Commission may approve, without seeking the opinion of the Committee, financing decisions on supporting activities falling under Article 4(3) of this Regulation, and amendments to financing decisions complying with the objective of the programme and not exceeding 15 % of the financial envelope of such a financing decision.

4. Where, in accordance with paragraph 3, the Committee is not consulted on financing decisions, the Commission shall inform it no later than one week after the decision is taken.

5. For the purposes of this Regulation, the management procedure laid down in Article 4 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) thereof.

Article 4

Types of Assistance

1. Assistance under this Regulation may, *inter alia*, finance procurement contracts, grants, including interest rate subsidies, special loans, loan guarantees and financial assistance.

⁽¹⁾ Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to certain countries of Central and Eastern Europe (OJ L 375, 23.12.1989, p. 11). Regulation as last amended by Regulation (EC) No 2257/2004 (OJ L 389, 30.12.2004, p. 1).

2. Assistance may be financed in full by the budget where it is justified and necessary to achieve the objectives of this Regulation.

3. Assistance may also be used to cover in particular the costs for supporting activities such as preliminary and comparative studies, training, activities linked to preparing, appraising, managing, implementing, monitoring, controlling and evaluation of assistance, activities linked to information and visibility purposes as well as costs for supporting staff, renting of premises and supply of equipment.

Article 5

Implementation of Assistance

1. Actions under this Regulation shall be implemented according to the rules set down in Title IV of part 2 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities⁽¹⁾. All individual legal commitments relating to assistance under this Regulation shall be concluded no later than three years following the date of the budgetary commitment.

2. Without prejudice to any decision taken in accordance with Article 2(5) of Regulation (EC) No 2667/2000, the Commission may, within the limits established in Article 54 of Regulation (EC, Euratom) No 1605/2002, decide to entrust tasks of public authority, and in particular implementation tasks, to the European Agency for Reconstruction or other bodies listed in Article 54(2) of that Regulation. The selection criteria for the bodies listed in Article 54(2)(c) are the following:

- internationally recognised standing,
- compliance with internationally recognised systems of management and control, and
- supervision by a public authority of a Member State or by an international organisation/institution.

3. Actions under this Regulation may be implemented by shared management according to the rules set down in Title I and II of part 2 of Regulation (EC, Euratom) No 1605/2002.

⁽¹⁾ OJ L 248, 16.9.2002, p. 1.

Article 6

In Article 2 of Regulation (EC) No 2667/2000 the following paragraph shall be added:

'5. The Commission may entrust the Agency with the implementation of assistance for encouraging the economic development of the Turkish Cypriot community within the framework of Council Regulation (EC) No 389/2006 of 27 February 2006 establishing an instrument of financial support for encouraging the economic development of the Turkish Cypriot community and amending Regulation (EC) No 2667/2000 on the European Agency for Reconstruction (*).

(*) OJ L 65, 7.3.2006, p. 5.'

Article 7

Protection of Rights of Natural and Legal Persons

1. The Commission shall ensure that in the implementation of actions financed under this Regulation the rights of natural or legal persons including the rights to possessions and property shall be respected. In this context, the Commission shall act in accordance with the case law of the European Court of Human Rights.

2. In order to allow the Member States to convey to the Commission any information on possible violations of property rights, the Commission shall submit any draft financing decision which might affect property rights to the Committee referred to in Article 3(2) two months before the financing decision is to be taken.

Article 8

Protection of Community's financial interests

1. The Commission shall ensure that, when actions financed under this Regulation are implemented, the financial interests of the Community are protected against fraud, corruption and any other irregularities in accordance with Council Regulation (Euratom, EC) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests⁽²⁾ and Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities⁽³⁾, and with Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)⁽⁴⁾.

⁽²⁾ OJ L 312, 23.12.1995, p. 1.

⁽³⁾ OJ L 292, 15.11.1996, p. 2.

⁽⁴⁾ OJ L 136, 31.5.1999, p. 1.

2. For the Community actions financed under this Regulation, the notion of irregularity referred to in Article 1(2) of Regulation (Euratom, EC) No 2988/95 shall mean any infringement of a provision of Community law or any breach of a contractual obligation resulting from an act or omission by an economic operator, which has, or would have, by an unjustified item of expenditure, the effect of prejudicing the general budget of the Communities or budgets managed by them.

3. Any agreements with the beneficiaries shall expressly provide for the Commission and the Court of Auditors to have the power of audit, on the basis of documents and on the spot, over all contractors and subcontractors who have received Community funds. Those agreements shall also expressly authorise the Commission to carry out on-the-spot checks and inspections in accordance with the procedural provisions of Regulation (Euratom, EC) No 2185/96.

4. All contracts resulting from the implementation of assistance shall ensure the rights of the Commission and the Court of Auditors as provided for in paragraph 3, during and after the implementation of contracts.

Article 9

Participation in tenders and contracts

1. Participation in the award of procurement or grant contracts financed under this Regulation shall be open to:

- all natural or legal persons of Member States of the European Union,
- all natural or legal persons who are nationals of, or legally established on the territory of another Member State of the European Economic Area,
- all natural or legal persons who are nationals of, or legally established on the territory of Candidate Countries for Accession to the European Union.

2. Participation in the award of procurement or grant contracts financed under this Regulation shall be open to all natural or legal persons who are nationals of, or legally established on the territory of, any other country than those referred

to in paragraph 1 in cases where reciprocal access to their external assistance has been established.

3. Participation in the award of procurement or grant contracts financed under this Regulation shall be open to international organisations.

4. All supplies and materials purchased under a contract financed under this Regulation must originate from the Community customs territory, the areas, or a country eligible under paragraphs (1) and (2).

5. The Commission may, in duly substantiated cases and on a case-by-case basis, authorise the participation of natural and legal persons from other countries or the use of supplies and materials of different origin.

Article 10

Reporting

Each year the Commission shall send to the European Parliament and the Council a report on the implementation of Community assistance under this instrument. The report shall contain information on the actions financed during the year and on the findings of monitoring work, and shall give an assessment of the results achieved in the implementation of the assistance.

Article 11

Event of a settlement

In the event of a comprehensive settlement of the Cyprus problem, the Council shall, on the basis of a proposal from the Commission, decide unanimously on the necessary adaptations to this Regulation.

Article 12

Entry into force

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

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

Done at Brussels, 27 February 2006.

For the Council
The President
U. PLASSNIK