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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 851/98**of 20 April 1998****amending Regulation (EC) No 1628/96 relating to aid for Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 235 thereof,

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

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

Whereas Regulation (EC) No 1628/96 ⁽³⁾ deals with economic development, the restoration of civil society and cooperation between the Republics of former Yugoslavia in accordance with the regional approach, as well as with repair work and the renovation of infrastructure whilst pressing ahead with political and economic reforms;

Whereas, given the exceptional circumstances in the countries covered by this Regulation, the need for more flexible procedures is recognized in order for the Commission to accelerate implementation of projects under Regulation (EC) No 1628/96, in order thereby to deliver more efficiently the assistance of the Community to this region; whereas the Commission has declared its intention to increase the effectiveness of reconstruction aid in Bosnia and Herzegovina and to speed up implementation of aid programmes for the return of refugees and displaced persons, by appointing a delegate with special authority who would assume responsibility locally for all Commission activities in this field, enjoy largely autonomous powers to act and take decisions and be assisted by a strong management team and supported by specially recruited technical assistance and monitoring teams;

Whereas a disparity persists between the amount of appropriations made available by the budgetary authority and the unsatisfactory level of implementation owing to an inadequate legislative framework, which results in a lack of visibility for the European Union, the biggest donor;

Whereas Article 9 of Regulation (EC) No 1628/96 provides that service contracts not exceeding ECU 200 000 may be awarded by private treaty, and it is considered that the circumstances in the region justify specific provisions for the award of technical assistance contracts not exceeding ECU 400 000 by private treaty, especially for technical support and monitoring of projects;

Whereas, according to Article 116 of the Financial Regulation, works and supply contracts may be awarded by geographically or otherwise restricted tendering procedures in certain exceptional situations and subject to certain conditions;

Whereas most of the infrastructure projects by their very nature have a strong local component justifying, for reasons of speed and efficiency, award procedures limited to one of the beneficiary countries;

Whereas the particular characteristics of the local market may not allow recourse to this procedure or if this procedure does not lead to the award of a contract, a private treaty with international contractors could be justified;

Whereas projects facilitating the return of refugees should benefit from restricted tendering procedures in order to shorten the delays to a strict minimum;

Whereas in these circumstances and in the context of this Regulation, Article 116 of the Financial Regulation may in particular be applied by the Commission to the above cases;

⁽¹⁾ OJ C 100, 2. 4. 1998, p. 21.

⁽²⁾ Opinion delivered on 2 April 1998 (not yet published in Official Journal).

⁽³⁾ OJ L 204, 14. 8. 1996, p. 1. Regulation as amended by Regulation (EC) No 2240/97 (OJ L 307, 12. 11. 1997, p. 1).

Whereas Article 10 of Regulation (EC) No 1628/96 provides that financing decisions exceeding ECU 2 million need approval of the Committee provided for in Article 12 of the said Regulation; whereas this amount has to be increased to ECU 5 million in order to increase expediency;

Whereas there should be coherence between the approach of the Council and that of the Commission, and therefore, Community assistance should be implemented in close cooperation between the Council and the Commission, and in this respect, close coordination between the Council and the Commission, and when appropriate with the High Representative, is desirable to establish a common view on the fulfilment of commitments under the peace agreements and/or towards regional stability;

Whereas it is of particular importance that, when the Commission provides assistance, after consultation with the Central Government and the High Representative, by way of financial agreements and in the form of programmes and cooperation schemes, to regional and local government bodies including municipalities, the Commission is also assisted by the Committee referred to in Article 12 of Regulation (EC) No 1628/96;

Whereas, insofar as the High Representative exercises the functions of the Central Government in accordance with the powers accorded to him, he shall be eligible for such assistance;

Whereas, in order to increase transparency of Community aid and to ensure that the greatest possible synergies are achieved between the Community's projects and those of the Member States in the context of the objective of decentralization, regular meetings should be held locally between the Commission and representatives of the Member States, to consult, exchange information and coordinate activities,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1628/96 is amended as follows:

1. the following sentence shall be added to Article 9:

'When service contracts take the form of technical assistance, they may be awarded by private treaty for operations not exceeding ECU 400 000 especially to prepare, monitor or evaluate Community aid.'

2. the following Article shall be inserted:

Article 9a

In the context of this Regulation, Article 116 of the Financial Regulation may in particular be applied by the Commission in the following cases:

- works contracts not exceeding ECU 3 million, as well as supply contracts not exceeding ECU 1 million, may be awarded by procedures limited to one of the beneficiary countries covered by this Regulation, and in cases of contracts exceeding ECU 400 000, subject to prior publication or information on a local basis,
- in extraordinary circumstances, where the particular characteristics of the local market do not allow recourse to the procedures referred to in the first indent or where these procedures do not lead to the award of a contract, works contracts not exceeding ECU 3 million and supply contracts not exceeding ECU 1 million may be awarded by private treaty to natural or legal persons in accordance with Article 9 of this Regulation,
- works contracts, aimed at facilitating the return of refugees, rebuilding infrastructure and other individual or collective facilities damaged in the fighting, or the integration or reintegration of refugees, displaced persons and former soldiers into working life, exceeding ECU 3 million and not exceeding ECU 10 million, may be awarded by restricted invitations to tender.'

3. Article 10 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

'1. Financing decisions exceeding ECU 5 million shall be adopted in accordance with the procedure provided for in Article 12(2). The Committee provided for in Article 12 shall be informed of projects involving financing of ECU 5 million or less; as far as projects between ECU 2 million and 5 million are concerned, the Committee provided for in Article 12 shall be informed in advance. It should, in particular, receive prior information and be fully informed as regards contracts awarded under the procedures referred to in the second indent of Article 9a. The Commission shall provide, on a monthly basis, a list of all legal and natural persons having benefited from contracts awarded by the Commission under this Regulation.

The Commission shall provide information and consult regularly, at a monthly conference held locally with representatives of the Member States in the recipient countries, on proposed projects and shall coordinate them with the relevant programmes of the Member States.'

(b) the following paragraph shall be added:

'3. The procedures referred to in the first paragraph of this Article, as well as in Article 12(2), shall also apply when the Commission provides assistance to regional and local government bodies directly eligible for Community assistance by way

of financial agreements and in the form of contributions to programmes and cooperation schemes as referred to in Article 4. The Commission should do so after consultation with the Central Government as well as, in the case of Bosnia, the High Representative. Such assistance may also be provided to the High Representative, insofar as he exercises the functions of the Central Government in Bosnia in accordance with the powers accorded to him.';

4. in Article 13 the following paragraph shall be added:

'4. The Commission will invite once per year, and for the first time not later than one month after the adoption of this Regulation, by publication in the Official Journal and via the Internet, expressions of interest from eligible natural or legal persons wishing to

participate in the implementation of Community assistance under this Regulation. Expressions of interest shall be registered in a database which shall be kept up to date and which shall form part of the information resources which the Commission shall consult before awarding contracts.'

Article 2

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

It shall apply until 31 December 1999.

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

Done at Luxembourg, 20 April 1998.

For the Council

The President

J. CUNNINGHAM
