

Proposal for a Regulation of the European Parliament and of the Council concerning Community cooperation with Asian and Latin American countries and amending Council Regulation (EC) No 2258/96

(2002/C 331 E/02)

COM(2002) 340 final — 2002/0139(COD)

(Submitted by the Commission on 2 July 2002)

EXPLANATORY MEMORANDUM

1. Introduction

The proposed Regulation is aimed at providing a new legal framework for Community cooperation with the countries of Latin America and Asia. The new Regulation will replace Regulation (EEC) No 443/92 adopted on 25 February 1992.

The proposed Regulation is not intended to provide political or strategic orientations with respect to the beneficiary regions. It lays down instead clear and simple rules and procedures for effective programming and decision-making for the purposes of Community cooperation with the partner countries.

The rules being the same for both regions, the Commission has decided to submit a proposal for a single Regulation.

2. The objectives of Community cooperation

The objectives of cooperation are defined in a broad way, to make it possible to intervene in all areas of cooperation covered by the agreements between the Community and the partner countries and under the policy and cooperation guidelines adopted in the relevant forums.

It is during the programming exercise that sectors and cooperation activities will be precisely defined, according to the characteristics and needs of each partner country or region. The proposed Regulation does not prejudice these choices. It should be flexible enough to answer the priorities of the moment.

In general terms, cooperation and assistance under the proposed Regulation will have to take account of the objectives of development policy as defined in Article 177 of the Treaty, and further developed in the Conclusions of the Development Council and in the joint statement of the Council and the Commission of 10 November 2000, which in turn reflect the Millennium Development Goals adopted at the 55th Session of the UN General Assembly. Community cooperation and assistance will also support the priorities set out in the agreements between the European Community and the beneficiary countries, and in the Commission Communication on Asia of 4 September 2001 and in the conclusions of the EU-LAC Summit held in Madrid on 17 May 2002, which constitute the overall strategic framework for relations with Asia and Latin America respectively.

In this context, the proposed Regulation, when setting out the broad objectives of assistance, refers in particular, to sustainable development, to poverty reduction, to the integration of the partner countries in the world economy, to trade and investment, to regional integration and to strengthening the links between the partner regions and the European Union. Similarly, the modernisation and improvement of institutional capacities is included as an essential principle of cooperation. This will contribute, in particular, to the promotion of democratic principles, of the rule of law and of human rights as well as to the improvement of the fight against terrorism, drug trafficking and organised crime.

3. Programming

Within the framework of the reform of the management of external aid, the Commission considers a key objective to strengthen multiannual programming in order to reflect the political objectives and the priorities of the EU.

The proposed Regulation establishes clear principles for programming: a strategy paper will serve as a basis for establishing multiannual indicative programmes, which will in turn make it possible to draw up annual action plans. These principles are of general application, except in particular cases.

The establishment of a rigorous and coherent programming system will improve the effectiveness of aid, link Community cooperation better to reform programmes pursuing short and medium term objectives and ensure its complementarity with the assistance provided by other donors.

4. Comitology

In accordance with the criteria established in Council Decision 1999/468/EC, the Committee provided for in the proposed Regulation will act according to the management procedure provided for in Article 4 of the aforementioned decision.

The strengthening of the programming and definition of a strategic framework will enable Member States, within the management committee, to provide their opinion on priorities and strategic cooperation guidelines.

The guidelines on the reform of external aid recommend that the contribution of the committees should concentrate on the programming phase, rather than on specific projects. Indeed, it is during the programming phase that the crucial questions of policy and strategy have to be addressed.

Thus strategy papers, multiannual programmes and annual action plans will be referred to the Committee for its opinion.

This proposal is consistent with the provisions adopted in this matter by the Council under the MEDA and CARDS Regulations.

The new simplified framework for the adoption of strategy papers, multiannual indicative programmes and annual action plans is expected to result in a significant reduction in the overall number of financing decisions approved by the Committee and adopted by the Commission, thereby releasing resources for redeployment on priority tasks, including ensuring effective and timely delivery of external assistance.

5. Access to public procurement

With regard to the participation in public tenders, the proposed Regulation provides for the untying of aid at the regional level, in accordance with the Commission Decision of 11 April 2001 and the statement of the Commission at the OECD/DAC meeting of 25/26 April 2001. It also provides for the participation of the candidate countries.

Specific provisions allow other countries to participate, on a case-by-case basis, in particular, for the purposes of cofinancing and of regional cooperation in Asia.

In accordance with the aforementioned statement of the Commission of 25 April 2001, the participation of other countries in the procurement of services and products for the fight against communicable diseases such as AIDS, tuberculosis and malaria is also authorised on a case by case basis.

With regard to the untying of assistance for the less developed countries, the proposed Regulation provides for aid to be untied for the categories and within the limits envisaged in the recommendation of the DAC.

This is consistent both with the commitment made by the Commission to explore ways of implementing the DAC's recommendations and with the objective of increasing the effectiveness of aid by allowing broader competition. Moreover, the possibility of allowing operators from certain Central Asian countries currently receiving Community assistance under the TACIS programme to take part in public tendering for assistance to the less developed countries will contribute to strengthening regional cooperation. Untying aid is of course based on the principle of reciprocity.

6. Reconstruction and rehabilitation, aid to uprooted people

With a view to simplifying and reducing the number of legal bases, the proposed Regulation encompasses aid activities for uprooted people. It also introduces the possibility of financing rehabilitation activities. This will make it possible to handle issues relating to the transition between relief, rehabilitation and development in a more coherent way.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 179(1) thereof,

Having regard to the proposal from the Commission,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

- (1) The Community has since 1992 been pursuing a policy of financial, technical and economic cooperation with the countries of Asia and Latin America in the framework of Council Regulation (EEC) No 443/92 of 25 February 1992 on financial and technical assistance to, and economic cooperation with, the developing countries in Asia and Latin America⁽¹⁾. This policy should be continued and intensified.
- (2) Agreements between the Community and the countries and regions of Asia and Latin America define domains of cooperation for each country and subregion.
- (3) The Heads of State and Government of the European Union, of Latin America and of the Caribbean, meeting in Rio de Janeiro in June 1999, adopted an action plan defining a broad range of cooperation activities with a view to developing a strategic partnership. They updated and consolidated this action plan at their second summit, which was held in Madrid on 17 May 2002.
- (4) The Commission communication of 4 September 2001 'Europe and Asia: a strategic framework for enhanced partnerships'⁽²⁾ sets out an overall framework for relations with Asia. The core objective is to strengthen the European Union's political and economic presence

across the region and raise it to a level commensurate with the growing global weight of an enlarged European Union. The Council fully endorsed that communication in conclusions adopted on 27 December 2001.

- (5) The Heads of State and Government of the European Union and the Commission reached a consensus at the 55th Session of the United Nations General Assembly and adopted the United Nations Millennium Declaration setting out the Millennium Development Goals. In striving to reach these goals, the Community will be guided by the principles and objectives of the development policy defined by the Council and the Commission in their joint statement of 10 November 2000.
- (6) The members of the World Trade Organisation (WTO) committed themselves at the 4th Ministerial Conference in Doha to mainstreaming trade in development strategies and to providing trade-related technical and capacity-building assistance to help developing countries take part in new trade negotiations and implement their results.
- (7) The Commission plans to support the preparation and implementation of a new generation of economic reforms in the countries of Asia and Latin America, in line with the Council Resolution of 18 May 2000 on economic reforms and structural adjustment in developing countries. In so doing, it will ensure proper coordination with other donors, in particular Member States and the Bretton Woods Institutions.
- (8) Without prejudice to the decisions which will be taken during the programming phase, it is necessary to define the broad objectives of Community cooperation in order to allow the implementation of activities in all the sectors covered by the agreements concluded with the beneficiary countries and the pursuit of the priorities defined in the European Union's strategic guidelines with respect to Latin America and Asia.

⁽¹⁾ OJ L 52, 27.2.1992, p. 1.

⁽²⁾ COM(2001) 469 final.

- (9) In order to simplify and rationalise the rules governing cooperation, this Regulation should incorporate both operations related to rehabilitation and reconstruction and those concerning aid to uprooted people. Regulation (EC) No 2130/2001 of the European Parliament and of the Council of 29 October 2001 on operations to aid uprooted people in Asian and Latin American developing countries ⁽¹⁾ should therefore be repealed and Council Regulation (EC) No 2258/96 of 22 November 1996 on rehabilitation and reconstruction operations in developing countries ⁽²⁾ should be amended accordingly.
- (10) Community cooperation should be governed by a strategic framework and by annual and multiannual programming as defined in the Commission communication of 16 May 2000 'Reform of the Management of External Assistance' and referred to in the Council's conclusions of 10 November 2000. This will place Community cooperation in a medium-term context and make it possible to ensure that it complements and remains consistent with that of the Member States.
- (11) To promote economic relations within the two regions and in conformity with the OECD Development Assistance Committee's (DAC) recommendation of 26 April 2001 on untying official development aid to the least developed countries and the Commission declaration annexed to it, provision should be made for opening up participation in invitations to tender and contracts, on a regional basis, to Asian and Latin American partner countries, taking into account the content of the above-mentioned declaration in the field of services and products essential in the fight against HIV/AIDS, tuberculosis and malaria. In addition, participation in invitations to tender and contracts for Community cooperation with the least developed countries eligible under this Regulation is fully opened up for the categories specified in that recommendation.
- (12) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽³⁾.
- (13) This Regulation establishes a financial framework for the period 2003 to 2006 which is to be the principal point of reference for the budgetary authority, within the meaning of point 33 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and

the Commission on budgetary discipline and improvement of the budgetary procedure ⁽⁴⁾.

- (14) The protection of the Community's financial interests and the fight against fraud and irregularities form an integral part of this Regulation. In particular, agreements and contracts concluded pursuant to this Regulation should authorise the Commission to carry out the measures provided for in 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 ⁽⁵⁾.
- (15) In view of the establishment under this Regulation of a new framework for cooperation, it is necessary to repeal Regulation (EEC) No 443/92. At the same time, to avoid any disruption in the action of the Community, it is important to provide for transitional measures,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, PURPOSE, AND UNDERLYING PRINCIPLES

Article 1

This Regulation establishes a framework for the implementation of a Community policy of cooperation through the financing of projects and programmes, hereinafter referred to as 'Community cooperation', with the Asian and Latin American (ALA) countries, hereinafter referred to as the 'Asian partners' and 'Latin American partners', listed in Annex I.

Article 2

1. Community cooperation under this Regulation shall be pursued with the overall objectives of strengthening the relationship between the Community and its Asian and Latin American partners, reducing poverty, promoting sustainable development and contributing to prosperity, security and stability.

2. Without prejudice to the eligibility of the sectors included in agreements with the partner countries, Community cooperation shall in particular:

- (a) foster the sustainable economic and social development of partner countries, and their smooth and gradual integration into the world economy;

⁽¹⁾ OJ L 287, 31.10.2001, p. 3.

⁽²⁾ OJ L 306, 28.11.1996, p. 1.

⁽³⁾ OJ L 184, 17.7.1999, p. 23.

⁽⁴⁾ OJ L 172, 18.6.1999, p. 1.

⁽⁵⁾ OJ L 292, 15.11.1996, p. 2.

- (b) strengthen the institutional and legislative framework, in particular to underpin democratic principles, the rule of law and respect and protection for human rights and fundamental freedoms;
- (c) promote economic and trade cooperation, strengthen investment relations, and foster the integration of Asian and Latin American countries into the multilateral trading system and the implementation of WTO agreements;
- (d) support the fight against organised crime, money-laundering, terrorism, drugs, illegal migration and trafficking in human beings, and measures aiming at confidence-building and conflict prevention;
- (e) favour regional integration and cooperation in Asia and Latin America, and support the development of closer relations between Asian and Latin American partners and the European Union, so as to enable mutually beneficial exchanges, notably between economic, social, cultural, educational, technological and scientific entities;
- (f) support rehabilitation, reconstruction and aid to uprooted people, with particular attention to the transition between emergency and development.

3. Community cooperation shall follow a sector-wide approach wherever possible. In this context, it shall support sectoral policies and economic reform programmes, through the most appropriate instruments, including budgetary support, subject to strict monitoring and conditionality. In exceptional circumstances, where such policies and programmes are not yet in place, budgetary support may also be provided for specific and clearly identified measures, subject to strict monitoring and conditionality.

Article 3

Respect for the principles of democracy and the rule of law and for human and minority rights and fundamental freedoms is an essential element for the application of this Regulation. Failure to respect these principles may give grounds for the adoption of appropriate measures.

CHAPTER II

PROCEDURES FOR THE IMPLEMENTATION OF COOPERATION ACTIVITIES

Article 4

1. As a general rule, the framework for the programming and identification of Community cooperation activities under this Regulation shall consist of:

- (a) strategy papers;
- (b) multiannual indicative programmes;
- (c) annual action plans.

2. Strategy papers for Asian and Latin American partner countries, regions or subregions shall be established for a period of five to seven years.

They shall define the long-term objectives for cooperation and identify the strategic priorities and the specific fields of action. They shall be revised if circumstances so require.

A separate three-year strategy paper covering the whole of Asia and Latin America shall be drawn up for crises involving uprooted people.

3. Three-year multiannual indicative programmes based on the strategy papers shall be drawn up for each country, region or subregion eligible for Community cooperation.

They shall contain a description of sectoral and cross-cutting priorities, specific objectives and expected results.

They shall give indicative amounts (overall and for each priority sector) and set out criteria for funding the programme concerned.

They shall reflect the priorities identified and agreed with the Asian and Latin American partners concerned. They shall be updated as necessary.

4. Annual action plans based on the multiannual programmes shall be drawn up for each country, region or subregion eligible for Community cooperation.

They shall set out, as precisely as possible, for a given operational year, the aims being pursued, the fields of action and the budget provided.

They shall contain a list of cooperation activities to be financed by the Community. They shall specify the maximum amount of the Community financial contribution for each project and programme.

5. In particular situations, specific cooperation measures not covered by annual action plans may be approved.

Article 5

- 1. Community financing shall be in the form of grants.
- 2. Community financing may be used to cover in particular expenditure for preparing, implementing, monitoring, checking and evaluating projects and programmes and for information on cooperation activities.

3. Community financing may be used for cofinancing, which should be sought whenever feasible, particularly when it can lever other funding to contribute to the objectives set in Article 2.

4. Community financing may not be used to pay taxes, duties or charges.

5. Community financing may cover investment expenditure, including the purchase of real estate, when the latter is necessary for the direct implementation of the operation and provided that ownership is transferred to the recipient's local partners or the ultimate beneficiaries of the operation once the latter has come to an end.

Article 6

1. The Commission shall implement Community cooperation in accordance with the budgetary and other procedures in force, in particular those laid down in the Financial Regulation applicable to the general budget of the European Communities.

2. In taking financing decisions under this Regulation, the Commission shall have regard to the principles of sound financial management laid down in the Financial Regulation.

Article 7

The financial reference amount for the implementation of Community cooperation under this Regulation for the period 2003 to 2006 shall be EUR 2 523 million for cooperation with Asia and EUR 1 270 million for cooperation with Latin America.

Annual appropriations shall be authorised by the budgetary authority within the limits of the financial perspective.

Article 8

In addition to national and federal governments, partners eligible for financial support under this Regulation may include regional and international organisations (including United Nations agencies), non-governmental organisations, national, provincial and local administrations and agencies, community-based organisations, and public or private institutes and operators.

Article 9

1. Participation in invitations to tender and contracts shall be open on equal terms to all natural and legal persons from the Member States, candidate countries for accession to the European Union and, for the purposes of cooperation activities in their respective regions, from the Asian and Latin American partners.

2. The Commission may, on a case-by-case basis, extend participation to natural and legal persons of other developing countries and, in the case of programmes fostering regional

cooperation and integration in Asia, of the Asian countries and territories listed in Annex II.

3. In the event of cofinancing, the Commission may authorise participation in invitations to tender and contracts by natural and legal persons of the other financing countries on a case-by-case basis, provided that reciprocity is granted.

4. The Commission may also open up, on a case-by-case basis, its procurement of services and sanitary products essential to the fight against communicable diseases such as HIV/AIDS, tuberculosis and malaria to natural and legal persons of other countries.

5. In addition, natural and legal persons of any third country shall be eligible to participate in invitations to tender and contracts for projects and programmes in favour of the countries listed in Annex I, which are classified as least developed in the OECD/DAC list of aid recipients, in the following areas: sectoral and multisectoral programme assistance, investment project aid, import and commodity support, commercial services contracts, and assistance to non-governmental organisations. In these cases, the participation of undertakings from third countries shall only be admissible if reciprocity is granted.

This provision applies only to activities with a value of more than SDR 700 000 or, in the case of investment-related technical cooperation, SDR 130 000. Free-standing technical cooperation and food aid are not covered by this provision.

Article 10

Any agreement or contract concluded pursuant to this Regulation shall expressly provide for monitoring and financial control by the Commission, including the European Anti-Fraud Office (OLAF), and audits by the Court of Auditors, if necessary on the spot. They shall authorise the Commission to carry out on-the-spot checks and inspections in accordance with Regulation (Euratom, EC) No 2185/96.

CHAPTER III

DECISION MAKING PROCEDURE

Article 11

1. The strategy papers, multiannual indicative programmes and annual action plans referred to in Article 4 shall be adopted in accordance with the procedure referred to in Article 12(2). Decisions on annual action plans are to be considered financing decisions for the projects and programmes specified in those annual action plans.

Amendments to decisions referred to in the first subparagraph shall be adopted in accordance with the same procedure, except where amendments do not exceed 20 % of the global amount allocated to the annual action plan or do not substantially change the nature of the projects or programmes contained in the annual action plan. In that case, the amendments will be adopted by the Commission, which shall inform the committee set up in Article 12(1).

2. Financing decisions on projects and programmes not covered by annual action plans and amounting to or exceeding EUR 5 million shall be individually adopted in accordance with the procedure referred to in Article 12(2).

Amendments to those decisions shall be adopted in accordance with the same procedure, except where amendments do not exceed 20 % of the amount allocated to the projects and programmes or do not substantially change the projects or programmes in question. In the latter case, amendments will be adopted by the Commission, which shall inform the committee set up in Article 12(1).

Financing decisions below EUR 5 million and amendments thereto shall be adopted by the Commission, which shall inform the committee set up in Article 12(1).

Article 12

1. The Commission shall be assisted by a committee, referred to as 'the ALA Committee', composed of representatives of the Member States and chaired by a representative of the Commission.

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be 30 days.

3. The Committee shall adopt its rules of procedure.

4. The Committee may examine any other question concerning this Regulation which is submitted to it by the Chairman, whether or not at the request of the representative of a Member State, and in particular any question relating to the programming or general implementation of measures or to cofinancing.

CHAPTER IV

COORDINATION, REPORTING AND FINAL PROVISIONS

Article 13

1. In the interests of the consistency, efficiency and complementarity of Community cooperation, the Member States and the Commission shall organise, including on the spot, a frequent and regular exchange of information on the operations they intend to implement. They shall keep each other informed about their programme strategy, priority sectors, evaluations and their ongoing and future cooperation.

2. The Commission may, in liaison with the Member States, take any initiative necessary to ensure proper coordination and

cooperation with international financial institutions, United Nations agencies and other donors.

3. The necessary measures shall be taken to emphasise the Community character of cooperation activities carried out under this Regulation.

Article 14

Every year the Commission shall submit, in its annual report on Community external assistance to the European Parliament and the Council, information on the operations financed under this Regulation.

Article 15

The Commission shall take the measures necessary to ensure effective and continuous monitoring of the implementation of Community cooperation activities under this Regulation.

Every five years the Commission shall submit to the European Parliament and the Council an evaluation report, together with suggestions regarding the future of this Regulation and, where necessary, proposals for amending it.

Article 16

1. Regulations (EEC) No 443/92 and (EC) No 2130/2001 are hereby repealed.

2. In Article 1(2) of Regulation (EC) No 2258/96, the words 'the countries of Latin America and Asia' are deleted.

3. Without prejudice to paragraphs 1 and 2, Regulations (EEC) No 443/92, (EC) No 2130/2001 and (EC) No 2258/96 shall remain applicable to projects and programmes for which the procedures leading to the Commission financing decision have been started but have not yet been completed at the time of entry into force of this Regulation.

4. Strategy papers, multiannual indicative programmes, annual action plans and projects adopted by the Commission under Regulation (EEC) No 443/92 with the favourable opinion of the Committee set up in Article 15 thereof shall be deemed to have been adopted in accordance with this Regulation.

Article 17

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.

ANNEX I

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|-------------------------------------|-------------|
| Afghanistan | Argentina |
| Bahrain | Bolivia |
| Bangladesh | Brazil |
| Bhutan | Chile |
| Burma/Myanmar | Colombia |
| Cambodia | Costa Rica |
| China | Cuba |
| East Timor | Ecuador |
| India | El Salvador |
| Indonesia | Guatemala |
| Iran | Honduras |
| Iraq | Mexico |
| Korea, Democratic People's Republic | Nicaragua |
| Laos | Panama |
| Malaysia | Paraguay |
| Maldives | Peru |
| Mongolia | Uruguay |
| Nepal | Venezuela |
| Oman | |
| Pakistan | |
| Philippines | |
| Saudi Arabia | |
| Sri Lanka | |
| Thailand | |
| Vietnam | |
| Yemen | |

ANNEX II

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|----------------------|
| Brunei Darussalam |
| Chinese Taipei |
| Hong Kong |
| Korea, Republic of |
| Kuwait |
| Japan |
| Macao |
| Qatar |
| Singapore |
| United Arab Emirates |
