

I

(Information)

COUNCIL

COMMON POSITION (EC) No 17/95

Adopted by the Council on 18 December 1995

with a view to adopting Council Regulation (EC) No .../96 of amending Regulation (EEC) No 1973/92 establishing a financial instrument for the environment (LIFE)

(96/C 134/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 130s (1) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,Having regard to the opinion of the Economic and Social Committee ⁽²⁾,Having regard to the opinion of the Committee of the Regions ⁽³⁾,Acting in accordance with the procedure laid down in Article 189c of the Treaty ⁽⁴⁾,

Whereas the financial instrument for the environment, LIFE, is being implemented in phases; whereas the first phase ends on 31 December 1995;

Whereas the first paragraph of Article 14 of Regulation (EEC) No 1973/92 ⁽⁵⁾ provides that the Commission

should make proposals for any adjustments to be made with a view to improvements to be brought forward for continuing the action beyond the first phase;

Whereas, given the positive contribution of LIFE to the attainment of the objectives of Community policy on the environment, a second phase for a period of four years ending on 31 December 1999 should be set in motion;

Whereas the experience gained with LIFE during the first phase has highlighted the need to concentrate efforts by specifying more clearly the areas of activity able to benefit from Community financial aid, to improve the management procedures and to define more clearly the selection and evaluation criteria for these activities;

Whereas the efficiency and transparency of the application procedures for LIFE and of the procedures for the information of the public and potential beneficiaries should be improved;

Whereas preparatory actions should concern the promotion of joint transnational action, cooperation and know-how transfer, between government bodies (local, regional or national) and/or non-government bodies and/or socio-economic factors;

Whereas the additional protocols to the Europe Agreements between the European Communities and their Member States, of the one part, and certain Central

⁽¹⁾ OJ No C 184, 18. 7. 1995, p. 12.⁽²⁾ OJ No C 18, 22. 1. 1996, p. 15.⁽³⁾ OJ No C 100, 2. 4. 1996, p. 115.⁽⁴⁾ Opinion of the European Parliament of 17 November 1995 (OJ No C 323, 4. 12. 1995, p. 158). Council common position of ... (not yet published in the Official Journal) and decision of the European Parliament of ... (not yet published in the Official Journal).⁽⁵⁾ OJ No L 206, 22. 7. 1992, p. 1.

and East European countries, of the other part, provide for the participation of those countries in Community programmes, in particular in the field of the environment;

Whereas, given that the abovementioned Central and East European countries should themselves meet the costs involved by their participation, the Community may decide, if appropriate for specific cases and in conformity with the rules applicable to the general budget of the European Communities and the relevant Association Agreements, on a supplement to the national contribution of the country concerned;

Whereas for third countries bordering on the Mediterranean and the Baltic Sea other than the Central and East European countries which have signed Association Agreements with the European Community, there is a need to implement technical assistance activities and demonstration activities;

Whereas a financial reference amount within the meaning of point 2 of the Declaration by the European Parliament, the Council and the Commission of 6 March 1995, is included in this Regulation for the entire duration of the programme, without thereby affecting the powers of the budgetary authority as they are defined by the Treaty,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1973/92 is hereby amended as follows:

1. Articles 1 and 2 shall be replaced by the following:

Article 1

A financial instrument for the environment, hereinafter referred to as "LIFE", is hereby established.

The general objective of LIFE shall be to contribute to the development and, if appropriate, implementation, of Community environment policy and legislation.

Article 2

The areas of activity eligible for financial support from LIFE are:

1. in the Community:

- (a) nature conservation actions:

actions as defined in Article 1(a) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (*) needed to implement Council Directive 79/409/EEC of 2 April

1979 on the conservation of wild birds (**) and Directive 92/43/EEC and, in particular, the Natura 2000 European Network;

- (b) other actions designed to implement Community environment policy and legislation:

- (i) innovative and demonstration actions designed to promote sustainable development in industrial activities;

- (ii) demonstration, promotion and technical assistance actions for local authorities in order to encourage the integration of environmental consideration in land use development and planning with a view to promoting a sustainable development;

- (iii) preparatory actions designed to contribute to implementing Community environment policy and legislation, particularly:

- protection of coastal areas and their rational management,
- reduction of waste, in particular toxic and hazardous waste,
- water protection, including waste water treatment,
- air pollution, acidification, tropospheric ozone;

2. in third countries bordering on the Mediterranean and the Baltic Sea other than the countries of Central and Eastern Europe which have signed Association Agreements with the European Community:

- (a) technical assistance in the establishment of the administrative structures needed in the environmental sector and in the development of environmental policy and action programmes;

- (b) demonstration actions to promote sustainable development;

3. accompanying measures needed to monitor, evaluate or promote the actions undertaken under points 1 and 2 and dissemination of information on the experience and the results obtained of such actions.

(*) OJ No L 206, 22. 7. 1992, p.7.

(**) OJ No L 103, 25. 4. 1979, p. 7. Directive as last amended by Directive 94/24/EC (OJ No L 164, 30. 6. 1994, p. 9).'

2. Article 3 shall be deleted.

3. Articles 7 and 8 shall be replaced by the following:

'Article 7

1. LIFE shall be implemented in phases. The second phase shall start on 1 January 1996 and shall end on 31 December 1999.

The financial reference amount for the implementation of the second phase for the period 1996 to 1999 shall be ECU 450 million.

The annual appropriations shall be authorized by the budgetary authority within the limits of the financial perspective.

2. For the subsequent periods of implementation of LIFE, the reference amount shall fall within the Community financial framework in force.

3. On the basis of a report to be forwarded by the Commission before 30 September 1997 the Council will, before 31 December 1997, examine the reference amount with a view possibly to revising it, in accordance with the procedures laid down in the Treaty, within the framework of the financial perspective and taking into account applications received.

Article 8

1. The amount of resources to be allocated to each of the areas of activity referred to in Article 2 shall be as follows:

- (a) 46 % for actions undertaken under Article 2, point 1(a);
- (b) 46 % for actions undertaken under Article 2, point 1 (b), of which a maximum of 12 % may be allocated to actions undertaken under Article 2, point 1 (b) (iii);
- (c) 5 % for actions undertaken under Article 2, point 2;
- (d) 3 % for actions undertaken under Article 2, point 3.

2. The rate of Community financial support for the actions referred to in Article 2, point 1 and 2 (b) shall be a maximum of 50 % of the eligible cost.

By way of exception, this rate shall be:

- a maximum 30 % of the cost for actions expected to generate significant income. In this case, beneficiaries' contribution to the financing shall be at least as much as the Community support,
- a maximum of 75 % of the cost of actions concerning in the European Union priority natural habitats or priority species as defined in

Directive 92/43/EEC or the species of birds referred to in Directive 79/409/EEC which are in danger of extinction.

3. The rate of Community financial support for the technical assistance actions referred to in Article 2, point 2 (a), and for the accompanying measures referred to in Article 2, point 3, shall be a maximum of 100 % of the cost of these actions.'

4. Article 9 shall be replaced by the following:

'Article 9

(1) Proposals for actions to be financed shall be submitted to the Commission by the Member States. Where actions involve more than one Member State, proposals shall be submitted by the Member State in which the coordinating authority or body is based.

Applications shall be submitted to the Commission before 31 January. The Commission shall decide on these applications before 31 July.

(2) However, the Commission may ask any legal or natural persons established in the Community to submit applications for assistance in respect of measures of particular interest to the Community by means of a notice published in the *Official Journal of the European Communities*.

(3) Applications from third countries shall be submitted to the Commission by the relevant national authorities.

(4) A summary of the main items and of the content of the proposals received in the framework of expressions of interest and applications submitted by third countries shall be submitted to the Member States by the Commission. Upon request, it shall put the original documents at the Member States' disposal to be consulted.

(5) Actions provided for in Article 2, point 1 (a) and their flanking measures shall be subject to the procedure set out in Article 21 of Directive 92/43/EEC; other LIFE actions including, where appropriate, procedures for project selection shall be approved in accordance with the procedure provided for in Article 13 of this Regulation. The Commission shall inform the committees mentioned in Article 21 of Directive 92/43/EEC and Article 13 of this Regulation of the application of criteria and priorities defined in Article 9a.

The actions approved shall give rise:

- for actions to be undertaken in the Community, to an outline decision from the Commission addressed to the Member States concerning proposals which have been accepted and to individual decisions addressed to the beneficiaries concerning specific actions,

- for actions to be undertaken in third countries, to a contract or an agreement setting out the rights and obligations of the partners, as drawn up with the beneficiaries responsible for implementation of the said actions.

6. The amount of financial assistance, financial procedures and controls, as well as all the technical conditions necessary for giving the assistance shall be determined on the basis of the nature and form of the approved action and shall be laid down either in the Commission Decision or in the contract or agreement concluded with the beneficiaries.'

5. The following Articles shall be inserted:

'Article 9a

1. The actions being proposed and referred to in Article 2 shall comply with the provisions of the Treaty and Community legislation and shall meet the following criteria:

(a) general criteria for actions in the European Community:

- the actions shall be of Community interest, making a significant contribution to the implementation of Community environment policy and legislation,
- they shall be carried out by technically and financially sound participants,
- they shall be feasible in terms of the technical proposals, management (timing, budget) and value for money,
- contribution to a multinational approach could be an additional criterion as far as this approach will be likely to have more effective results in terms of feasibility, logic and costs, in comparison with a national approach;

(b) particular criteria for actions in the Community:

- (i) regarding nature conservation actions as defined in Article 2, point 1 (a), these shall be aimed at:
 - the sites proposed by a Member State under Article 4 of Directive 92/43/EEC or,
 - sites classified pursuant to Article 4 of Directive 79/409/EEC, or
 - species mentioned in Directive 92/43/EEC, Annexes II and IV, or in Directive 79/409/EEC, Annex I;

- (ii) regarding industrial activity actions, these shall meet appropriate criteria from among the following:

- providing solutions with a view to solving a problem which arises very often in the Community, or is of great concern to some Member States,
- being technically innovative and representing progress,
- being example-setting and representing progress compared with the current situation,
- being capable of promoting widespread application of practices and technologies conducive to environmental protection,
- aiming at developing and transferring know-how which can be used in identical or similar situations,
- having a potential satisfactory cost-benefit ratio from an environmental point of view;

- (iii) regarding actions in favour of local authorities, these shall meet appropriate criteria from among the following:

- providing solutions with a view to solving a problem which arises very often in the Community, or is of great concern to some Member States,
- proving the innovation of the envisaged actions by means of the methodology applied,
- being example-setting and representing progress compared with the current situation,
- promoting cooperation in the environment field;

- (iv) regarding preparatory actions, these should be preparatory to actions of a more structural nature;

(c) criteria for actions to be implemented in third countries:

- presenting an interest with regard to the Community, notably its contribution to implementing regional and international guidelines and agreements,
- contributing to the realization of an approach favouring sustainable development on the international, national, or regional level,
- providing solutions to environmental problems which are widespread in the region and the relevant sector,

- increasing cooperation on cross-border, transnational, or regional level,
- ensuring feasibility with regard to technical proposals, management (timing, budget) and value for money,
- being carried out by technically and financially sound participants.

2. Applications under Article 2, point 1 (b)(i) and (ii) not meeting the relevant particular criteria set out in paragraph 1 (b)(ii) and (iii) shall not be taken into consideration for granting LIFE financial support.

Article 9b

As regards the requests related to actions referred to in Article 2, point 1(b)(i), (ii) and (iii), the following costs shall be considered non-eligible:

- those created by the studies not specifically addressing the objective aimed at by the financed actions,
- those concerning investments in heavy infrastructure or investments of a non-innovative structural nature,
- those referring to research and technological development activities,
- activities already confirmed on an industrial scale.'

6. Article 10 (1) shall be replaced by the following:

'1. In order to ensure the success of the actions carried out by those receiving Community financial assistance, the Commission shall take the necessary measures to:

- verify that actions financed by the Community have been carried out properly, and in accordance with the provisions of this Regulation,
- prevent and take action against irregularities,
- recover sums improperly received owing to abuse or negligence.'

7. Article 11 (1) shall be replaced by the following:

'1. The Commission may reduce, suspend or recover the amount of financial assistance granted for an action if it finds irregularities including

non-compliance with the provisions of this Regulation or if it transpires that, without Commission approval having been sought, the action has been subjected to a major change which conflicts with the nature or implementing conditions of the action.'

8. Article 12 (1) shall be replaced by the following:

'1. The Commission shall ensure effective monitoring of the implementation of Community-financed actions, including monitoring of compliance with the provisions of this Regulation. The monitoring shall take place on the basis of reports drawn up using the procedures agreed by the Commission and the beneficiary and shall also involve sample checks.'

9. The following Article shall be inserted:

'Article 13a

The LIFE instrument shall be open to the associated Central and East European countries (CEECs) in accordance with the conditions referred to in the additional protocols to the Association Agreements concerning participation in Community programmes (to be concluded or concluded) with those countries, on the basis of additional credits.'

10. Article 14 shall be replaced by the following:

'Article 14

No later than 31 December 1998, the Commission shall submit a report to the European Parliament and to the Council on the implementation of this Regulation and on the use of appropriations and shall make proposals for any adjustment to be made with a view to continuing the action beyond the second phase.

The Council, in accordance with the Treaty, shall decide on the implementation of the third phase as from 1 January 2000.'

Article 2

This Regulation shall enter into force on the 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*

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 11 May 1995 the Commission submitted a proposal for a Regulation ⁽¹⁾ based on Article 130s (1) of the EC Treaty, amending Council Regulation (EEC) No 1973/92 establishing a financial instrument for the environment (LIFE).
2. The European Parliament delivered its opinion ⁽²⁾ at first reading on 17 November 1995.

Following that opinion, the Commission forwarded an amended proposal on 26 January 1996 ⁽³⁾.

The Economic and Social Committee delivered its opinion ⁽⁴⁾ on 25 October 1995. The Committee of the Regions delivered its opinion on 21 September 1995 ⁽⁵⁾.

3. On 18 December 1995, the Council unanimously adopted its common position pursuant to Article 189c of the Treaty.

II. OBJECTIVE

4. The proposal for a Regulation aims, in the light of experience gained during the first three years of implementation of LIFE, to:
 - redefine the areas of activity eligible for funding under LIFE,
 - extend the scope of LIFE to the associated countries of Central and Eastern Europe,
 - clarify the procedures for managing projects by making a distinction between nature protection and other activities,
 - improve the process of selecting projects by defining new eligibility criteria.

III. ANALYSIS OF THE COMMON POSITION

5. General remarks

In the light of the objective set out above, the Council has endeavoured to draw up an instrument which is flexible and efficient enough to make the best use of the resources available, generating benefits which will contribute effectively to the implementation of Community policy and legislation on the environment.

On the basis of the above guidelines the Council was able, in its common position, to incorporate verbatim, in substance, or in part, most of the amendments of the European Parliament which the Commission included in its amended proposal, and also amendment 17.

6. Specific comments

(The references below refer, except where otherwise indicated, to the text of the amended proposal; the references in **bold** refer to the text of the common position).

⁽¹⁾ OJ No C 184, 18. 7. 1995, p. 12.

⁽²⁾ OJ No C 323, 4. 12. 1995, p. 158.

⁽³⁾ OJ No C 92, 28. 3. 1996, p. 7.

⁽⁴⁾ OJ No C 18, 22. 1. 1996, p. 15.

⁽⁵⁾ OJ No C 100, 2. 4. 1996, p. 115.

The following amendments were made by the Council to the Commission's amended proposal and accepted by the Commission:

(i) *points (1) and (2), Articles 1 and 2*

The presentation of eligible activities in these Articles is largely redundant (the general objective is repeated for certain specific activities, the definition of the objective confuses the objective as such with the means for achieving it, conservation activities are defined twice but in terms whose scope is not equivalent, etc.). Thus it is clearer to separate the objective (in Article 1) from the actions, which are listed and, where appropriate, defined in Article 2.

In addition, certain definitions (preparatory, demonstration, technical assistance activities) have not been incorporated because the corresponding selection criteria (Article 9a (1) (b) (ii) and (iii)) already include the concepts which appear in those definitions; furthermore, the sixth recital incorporates the content of the preparatory activities. Similarly, certain areas of activity (for example water) have been included in terms that are more general than those used by the Commission or Parliament. There is thus no substantial divergence as to the nature of the actions eligible.

It should also be noted that the Council did not feel it was necessary to mention the countries of Central and Eastern Europe specifically in connection with particular activities, as the arrangements for their participation in LIFE are governed by Article 13a without any activity being favoured or excluded a priori. Similarly, and taking into account in particular the small proportion of the budget allocated to the activities referred to in Article 2 (2), the Council has not detailed the areas of application of the technical assistance or demonstration activities and thus does not exclude nature conservation from their scope (amendment 15).

Finally, as regards the accompanying measures (Article 2 (3)), the Council felt it more consistent to limit their application to activities undertaken in the second phase.

(ii) *Point 3, Article 7 and point 5, Articles 8 and 8a*

— Article 7: The Council, like Parliament, thought it desirable to mention a financial reference amount, as was done for the first phase of LIFE and in accordance with the interinstitutional declaration of 6 March 1995 on this subject (see also last recital). The Council felt, however, that current budget prospects made it impossible to exceed the amount envisaged by the Commission in its proposal, i. e. ECU 450 million. The Council felt, however, in view of the need which LIFE was to satisfy, that the possibility of re-examining this amount should be envisaged (Article 7 (3)).

— Article 8: The Council has accepted the allocation of resources proposed by the Commission but, for the reasons already mentioned ((i), third paragraph) did not consider it useful to specify the allocation as between nature conservation activities and other activities in paragraph 1(c). On the other hand, in paragraph 1 (b), it seemed consistent to place a ceiling on the amount available for preparatory activities in view of their nature. As regards activities carried out by the countries of Central and Eastern Europe, the Council, like the Commission, has not incorporated amendment 18, second paragraph, as Article 13a governs the arrangements for funding them (see also the eighth recital).

Similarly, the Council has followed the Commission as regards rates of financial support except for the provisions concerning activities proposed by NGOs, as it is the nature of the activity and not its initiator which is relevant for determining the support to be given to it. In essence, the provision relating to the funding of activities in the countries of Central and Eastern Europe (Article 8 (2a)) is set out in Article 13a.

— Article 8a: The Council has not, however, adopted this provision as it runs counter to the objective of simplifying the decision-making process sought in this phase of LIFE, in particular eliminating the reviewable priorities present in the first phase.

(iii) *Point 6, Article 9:*

The Council felt that the provision of Article 9 (2) which appears in Regulation (EEC) No 1973/92, should be kept, in view of the contribution it makes to diversifying the participants.

As regards the dates for submitting and selecting projects (Article 9 (1)), the Council felt that later dates were easier to implement.

In paragraph 4, the distinction between third countries and associated countries has not been retained, as it is not crucial to the provision in question.

Paragraph 6 providing for appropriate flexibility in the terms of the agreement concluded between the Commission and the beneficiary is just as relevant for this phase of LIFE as for the previous one and has thus been retained.

(iv) *Point 7, Article 9a*

Basically, the Council has here endeavoured to clarify, rearrange and strengthen the different criteria adopted, in order to improve the process of selecting projects and thus make a better contribution to the objectives of LIFE.

Here too and for the same reasons as before, the Council (**Article 9a (1) (c)**) did not consider it relevant either to distinguish between the associated countries and other third countries, or to lay down for those countries criteria as numerous and detailed as those applicable to the Community.

As regards nature conservation, the scope of the activities has been enlarged as the species mentioned in Annex IV to Directive 92/43/EEC are now covered (**paragraph 1 (b) (i)**).

The mention of a 'financial contribution by the operator at least equal to the Community aid for projects which generate income' has not been included in **Article 9a** since it already appears in **Article 8 (2) first indent**.

(v) *Point 8, Article 12*

Paragraph 1 has been clarified by adding a reference to the monitoring of compliance with the LIFE Regulation. In **paragraph 2**, the Council has not thought it desirable to specify the content of the reports, which would have been inconsistent with the principle that 'the Commission [which] shall determine [their] form and [their] content.'
