

Proposal for a Council Regulation concerning the European Agency for Reconstruction

(2000/C 337 E/10)

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(Submitted by the Commission on 8 June 2000)

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) Assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia has been implemented essentially under Council Regulation (Euratom, EC) No 2185/96 ⁽¹⁾, as last amended by Regulation (EC) No 2454/1999 ⁽²⁾, and under Council Regulation (EEC) No 3906/89 ⁽³⁾, as last amended by Regulation (EC) No 1266/1999 ⁽⁴⁾.
- (2) Regulation (EC) No 1628/96 as amended by Regulation (EC) No 2454/99 set up the European Agency for Reconstruction, for which it was the legal basis.
- (3) On [date of adoption of CARDS] the Council adopted Regulation [CARDS] which lays down a single legal framework for assistance to those countries and repeals Regulation (EC) No 1628/96.
- (4) The provisions governing the creation and operation of the European Agency for Reconstruction should therefore be adapted to Regulation [CARDS] and incorporated in a new Regulation.
- (5) The Treaty does not provide, for the adoption of this Regulation, powers other than those under Article 308,

HAS ADOPTED THIS REGULATION:

Article 1

1. The Commission may delegate to an agency implementation of the assistance provided for in Article 1 of Regulation

⁽¹⁾ OJ L 204, 14.8.1996, p. 1.

⁽²⁾ OJ L 299, 20.11.1999, p. 13.

⁽³⁾ OJ L 375, 23.12.1989, p. 11.

⁽⁴⁾ OJ L 161, 26.6.1999, p. 68.

[CARDS], initially in Kosovo and also in other parts of the Federal Republic of Yugoslavia (FRY) when conditions permit.

The European Agency for Reconstruction, hereinafter referred to as the 'Agency', shall be set up to that end with the aim of implementing the assistance referred to in the first subparagraph.

2. Any decision to extend the Agency's activities to parts of the FRY other than Kosovo, including decisions on the arrangements for determining the bodies referred to in Article 1(2) of Regulation [CARDS], shall be taken by the Council acting by a qualified majority on a proposal from the Commission. In the light of that decision, the Agency may establish other operational centres.

Article 2

1. To achieve the objective laid down in Article 1, the Agency shall carry out the following duties, within the bounds of its powers and in accordance with the decisions taken by the Commission:

- (a) gathering, analysing and communicating information to the Commission on:
 - (i) damage, the requirements for reconstruction and the return of refugees, and related initiatives taken by governments, local or regional authorities and the international community;
 - (ii) the urgent requirements of the communities concerned, taking account of the various population displacements and the possibilities for the return of those displaced;
 - (iii) the priority sectors and geographical areas requiring urgent assistance from the international community;

(b) preparing draft programmes for the reconstruction of Kosovo and the return of its refugees and submitting them to the Commission with a view to their adoption in accordance with Article 8(2) of Regulation [CARDS];

(c) implementing the assistance referred to in Article 1, wherever possible in cooperation with the local population and where necessary by drawing on the services of operators selected by tender. The Commission may accordingly make the Agency responsible for all operations required to implement the programmes, including:

- (i) drawing up terms of reference;
- (ii) preparing and evaluating invitations to tender;
- (iii) signing contracts;
- (iv) concluding financing agreements;
- (v) awarding contracts, in accordance with the provisions of this Regulation;
- (vi) evaluating projects;
- (vii) checking project implementation;
- (viii) effecting payments.

2. Without prejudice to any operations cofinanced in the framework of the responsibilities entrusted to the Agency under Article 1, the Agency may implement reconstruction programmes and programmes for the return of refugees which the Member States and other donors entrust to it, *inter alia* under the arrangements for cooperation established by the Commission with the World Bank, international financial institutions and the European Investment Bank (EIB).

Such implementation shall be subject to the following conditions:

- (a) the financing must be provided in full by the other donors;
- (b) the financing must cover any associated administrative costs;
- (c) the duration of these tasks must be compatible with the deadline for winding up the Agency set in Article 13.

Article 3

The Agency shall have legal personality. It shall enjoy in each of the Member States the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and be a party to legal proceedings. The Agency shall be non-profit-making.

The operational centre of the Agency, which shall have a considerable degree of management autonomy, shall be established initially in Pristina in order to embark on the reconstruction work in Kosovo, drawing on the Agency's general services located at its seat in Thessaloniki.

Article 4

1. The Agency shall have a Governing Board composed of one representative from each Member State and two representatives of the Commission.

2. The Member State representative shall be appointed by the Member State concerned, paying due regard to experience and qualifications relevant to the Agency's activities.

One of the two Commission representatives shall be a Member of the Commission.

3. The term of office of representatives shall be thirty months.

4. The Governing Board shall be chaired by a Commission representative. It shall usually be chaired by the Member of the Commission. The Chairman shall not vote.

5. The EIB shall appoint a non-voting observer.

6. The Governing Board shall adopt its rules of procedure.

7. The Commission and Member State representatives on the Governing Board shall each have one vote.

Governing Board decisions shall be adopted by a two-thirds majority.

8. The Governing Board shall determine by unanimous decision the rules governing the languages used by the Agency.

9. The Governing Board shall be convened by the Chairman every month. It shall also be convened at the request of the Agency's Director or at least a simple majority of its members.

10. On the basis of a draft submitted by the Agency's Director and in consultation with the Commission, the Governing Board shall examine by 30 November of each year at the latest the preliminary draft annual work programme for the following year. The work programme shall be adopted at the beginning of each operating year. It may be adjusted as necessary during the year by the same procedure to take account, *inter alia*, of programmes adopted by the Commission.

Measures included in the annual work programme shall be accompanied by an estimate of the necessary expenditure.

11. The Governing Board shall lay down the principles necessary for implementing the reconstruction programmes. On a proposal from the Director, the Board shall decide on the main issues relating to the Agency's activities, including:

- (a) the draft programmes to be submitted to the Commission;
- (b) methods of evaluating and properly implementing the projects;
- (c) proposals for programmes by other donors for possible implementation by the Agency;
- (d) setting the multiannual contractual framework with the provisional authority responsible for the administration of Kosovo, for implementation of the assistance referred to in Article 1(3) of Regulation [CARDS] and adopted in accordance with Article 8(2) of the same Regulation;

(e) finalisation, any adjustments to, and implementation of projects;

(f) whether representatives of the countries and organisations delegating implementation of their programmes to the Agency should be present as observers on the Governing Board.

12. The Governing Board shall lay down the principles governing the award of contracts by calls for tender.

13. The Governing Board shall present a draft annual report to the Commission by 31 March each year at the latest on the Agency's activities in the previous year and how they were financed.

The Commission shall adopt the annual report and submit it to the European Parliament and the Council.

Article 5

1. The director of the Agency shall be appointed by the Governing Board on a proposal from the Commission for a term of office of thirty months. The term of office may be terminated by the same procedure.

The Director shall be responsible for:

(a) preparation and organisation of the work of the Governing Board and, in particular, preparation of the Agency's draft work programme;

(b) day-to-day administration of the Agency;

(c) preparation of the statement of revenue and expenditure and execution of the Agency's budget;

(d) preparation and publication of the reports specified in this Regulation;

(e) all staff matters;

(f) implementation of the annual work programme referred to in Article 4(10);

(g) implementation of the Governing Board's decisions and guidelines laid down for the Agency's activities.

2. The Director shall be accountable to the Governing Board for his activities and shall attend its meetings.

3. The Director shall be the legal representative of the Agency.

4. The Director shall hold the power of Appointing Authority.

5. The Director shall present a quarterly activity report to the European Parliament.

Article 6

1. Estimates of all the Agency's revenue and expenditure shall be prepared for each financial year, which shall

correspond to the calendar year, and shall be shown in the Agency's budget, which shall include an establishment plan.

2. The revenue and expenditure shown in the Agency budget shall be in balance.

3. The Agency's revenue shall comprise, without prejudice to other types of income, a subsidy from the general budget of the European Union, payments made as remuneration for services performed and funding from other sources.

4. The budget shall also include details of any funds made available by the recipient countries themselves for projects receiving financial assistance from the Agency.

Article 7

1. The Director shall establish each year a draft budget for the Agency covering administrative expenditure and the proposed operational programme for the following financial year, and shall submit it to the Governing Board.

2. On this basis, the Governing Board shall adopt a draft budget for the Agency by 15 February of each year at the latest, and shall submit it to the Commission.

3. The Commission shall assess the draft budget of the Agency having regard to the priorities it has established and the overall financial guidelines for reconstruction assistance for Kosovo.

It shall establish on this basis and within the proposed limits of the overall amount to be made available for aid to Kosovo, the annual contribution to the Agency budget to be included in the preliminary draft of the general budget of the European Union.

4. The Governing Board, after receiving the opinion of the Commission, shall adopt the budget of the Agency together with the work programme at the beginning of each financial year, adjusting it to the various contributions granted to the Agency and to funds from other sources. The budget shall also specify the number, grade and category of staff employed by the Agency during the financial year in question.

Article 8

1. The Director shall implement the budget of the Agency.

2. The Commission's Financial Controller shall be responsible for financial checks.

3. By 31 March each year at the latest, the Director shall submit to the Commission, the Governing Board and the Court of Auditors the detailed accounts of all revenue and expenditure from the previous financial year.

The Court of Auditors shall examine the accounts in accordance with Article 248 of the Treaty. It shall publish a report on the Agency's activities every year.

4. On a recommendation from the Council, the European Parliament shall give a discharge to the Director in respect of the implementation of the Agency's budget.

Article 9

The Governing Board, having received the agreement of the Commission and the opinion of the Court of Auditors, shall adopt the Agency's Financial Regulation, specifying in particular the procedure to be used for drawing up and implementing the Agency's budget, in accordance with Article 142 of the Financial Regulation applicable to the general budget of the European Communities.

Article 10

The Agency's staff shall be subject to the rules and regulations applicable to officials and other servants of the European Communities. The Governing Board, in agreement with the Commission, shall adopt the necessary implementing rules.

The Agency's staff shall consist of a strictly limited number of officials assigned or seconded by the Commission or Member States to carry out management duties. The remaining staff shall consist of other employees recruited by the Agency for a period strictly limited to its requirements.

Article 11

The Governing Board shall decide on the Agency's accession to the Interinstitutional Agreement on internal investigations by the European Anti-Fraud Office (OLAF). It shall adopt the provisions necessary for the conduct of internal investigations by OLAF.

Financing decisions and any implementing instrument or contract arising therefrom shall expressly provide that the Court of Auditors and OLAF may, if necessary, carry out on-the-spot checks on recipients of Agency funds and on the intermediaries distributing them.

Article 12

1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question.

2. In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to laws of the Member States, make good any damage caused by the Agency or its servants in the performance of their duties.

The Court of Justice shall have jurisdiction in disputes relating to compensation for any such damage.

3. The personal liability of servants towards the Agency shall be governed by the relevant provisions applying to the staff of the Agency.

Article 13

Once the Commission considers that the Agency has fulfilled the mandate described in Article 1, it shall submit to the Council a proposal for the winding up of the Agency. In any event, at least six months before this Regulation expires, the Commission shall submit a proposal to the Council on the status of the Agency.

Article 14

The translation services necessary for the operation of the Agency shall, as a rule, be provided by the Translation Centre of the bodies of the European Union.

Article 15

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

It shall apply until 31 December 2004.

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