



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION (EC)

**amending Council Regulation EC N° 1628/96 of 25 July 1996 relating to aid for
Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the
former Yugoslav Republic of Macedonia**

(presented by the Commission)

Explanatory Memorandum

After the signing of the Dayton/Paris peace agreements the Commission undertook, in close co-operation with other major donors, a comprehensive reconstruction effort in Bosnia Herzegovina.

For the period 1996-1999 one billion ECU was earmarked for this purpose as part of a 5,1 billion US \$ reconstruction programme.

In the first half of 1996 the assistance mainly consisted of deliveries of supplies and goods to meet the most basic requirements for restoring life to normal. After that period more medium and long term projects were undertaken to repair damage to infrastructure, including housing, water supply, energy production and transport.

The assistance to Bosnia and Herzegovina is based on two legal instruments: The Phare regulation and Council regulation n° 1628/96 amended by Council regulation n° 2240/97.

The latter regulation has been in force for about 1 ½ years and experience has shown that certain provisions or the lack thereof, are standing in the way of a flexible, effective and quick delivery of the Community's assistance, thereby adding a complication to an already difficult and complex political environment in which the assistance effort has to be carried through.

From various quarters criticism has been aired on the slow pace of the assistance effort. Reasons for delays, some of which are entirely beyond the control of the Commission, are manifold:

- political controversies at the level of the central institutions of Bosnia and Herzegovina have often led to long delays in the decisions on which projects should be carried out on a priority basis.
- the political conditionality, which is being applied as part of the Dayton/Paris provisions concerning the delivery of reconstruction assistance, has in certain cases rightfully led to the suspension of reconstruction projects.
- in order to exercise maximum control over project expenditure and in order to retain full transparency, most of the project preparation and execution have been implemented through a centralised approach.
- the regulatory framework which is the basis for the reconstruction effort involves long lead times for the preparation, publication and evaluation of tenders.

In order to overcome some of the elements which are slowing down the assistance effort and thereby the return of refugees, the Commission has realised that the following remedial actions would be required:

- instead of involving all the time the central government institutions in the decision making process concerning the selection of programmes and projects, the Commission would propose to deal on a more direct basis with regional and local authorities, thereby increasing the flexibility of our assistance effort.

This also allows the Community, in close consultation with the High Representative for Bosnia Herzegovina, to assist those municipalities that support the peace process.

- experience over the past 1 ½ years has shown that for reasons of effectiveness, most of the infrastructure projects should be prepared, executed and monitored through a Sarajevo based presence. Therefore it has been decided to strengthen the Commission presence in Sarajevo and to decentralise some of the reconstruction assistance activities. This new structure is now being put into place.
- as a final part of the required improvement of the effectiveness of the Community's assistance effort, the Commission now proposes a modification of Council regulation 1628/96 as amended by Council regulation 2240/97.

The modification of the existing regulation will not by itself generate a quicker and more effective delivery of our assistance to Bosnia and Herzegovina, but in combination with the other measures taken it should enable the Commission to deal in a more expedient way in the areas for which it is responsible with the special situation in Bosnia Herzegovina.

The Council Regulation n°1628/96 has been modified on 10 November 1997 by Council Regulation n°2240/97. This modification was based on Article 11 of Council Regulation n°1628/96, allowing for modification of the Annex to the Regulation by qualified majority. The Commission has proposed the modification which was adopted in order to streamline tendering procedures. The modification in accordance with Article 11 is limited to any modification to the Annex of the Regulation only.

In order to accelerate project implementation, a set of measures has been identified which entail a modification of Regulation n°1628/96.

Indeed:

- it has appeared that the ceiling of 200.000 ECU for private treaty for service contracts is not sufficient as far as technical assistance contracts are concerned. Preparatory work for infrastructure projects, establishment of bills of quantities and technical proposals based upon examination of damaged bridges or important buildings are regularly more expensive than 200.000 ECU and therefore a threshold of 400.000 ECU is proposed.
- smaller reconstruction projects with almost entirely local components are usually not of interest to international operators, unless they are already established on the spot. Thus procedures aimed at the award of a contract to a 'local contractor' seem

justified, also permitting contracting of international companies, already established in the region.

- in the event that the prevailing conditions impede such or in the event that the procedures have been unsuccessful, it is proposed - under exceptional circumstances- to award these contracts by private treaty to a contractor from one of the Member States. This will allow the Commission to quickly find another contractor in case the initial procedure was not successful or to attract interest of an international company in case the 'local market' is shared by the local operators.

- Article 116 of the Financial Regulation allows for the award of contracts after restricted tendering under specific circumstances. Experience has shown that the major part of the reconstruction projects would qualify for the application of Art 116 but regularly projects facilitating the return of refugees should benefit from restricted tendering procedures up to 10 MECU in order to shorten the delays to a strict minimum in these important cases

- the obligation to consult the Art.12 Management Committee involves quite important delays in the implementation process, which result from preparatory work on the side of the Commission (including translation etc.), fixed dates of the meetings and so on. Therefore, in order to speed up the implementation, it is proposed to increase the threshold from 2 to 5 MECU.

- the existence of two Committees (Phare and Reconstruction) for Community aid already makes the Community action more difficult to implement. But the procedures for handling the Management Committee are also difficult and in view of a streamlined approach the functioning of the Phare Committee is proposed for the Reconstruction Programme.

- Another important obstacle to quick implementation of aid consists in the obligation specified to in the Financial Regulation to conclude Financing Memoranda with the beneficiary country, normally on the level of the Government of the Recipient State. It is understood that the OHR is always consulted. Given the circumstances in the region, the Commission will use the possibility offered by Article 106 paragraph 1 of the Financial Regulation to conclude Financing Memoranda with regional public bodies (municipalities or other institutions of the recipient organisation) and to contribute to programmes and co-operation schemes forwarded by municipalities or regional bodies, in consultation with the Central Government.

It is therefore proposed that:

- Service contracts not exceeding 400.000 ECU for technical assistance shall be awarded by private treaty, especially to prepare, monitor or evaluate Community aid.

- Works and supply contracts not exceeding 3 MECU may be awarded by procedures limited to one of the beneficiary countries. Where the particular characteristics of the local market do not allow recourse to this procedure or where

this procedure does not lead to the award of a contract, works and supply contracts not exceeding 3 MECU shall in exceptional cases be awarded by private treaty to natural or legal persons from the member-states or, exceptionally, states benefiting from the Phare programme.

- With respect to projects facilitating the return of refugees, works and supply contracts exceeding 3 MECU and not exceeding 10 MECU shall be awarded by open tendering procedure or following restricted invitations to tender.
- The threshold for consultation of the Management Committee (the Article 12 Committee) should be increased from 2 MECU to 5 MECU, in order to increase efficiency. Where the measure does not exceed 5 MECU the Article 12 Committee would be informed.
- The Commission should be able to decide to contribute to programmes and co-operation schemes forwarded by municipalities or regional bodies, in consultation with the Central Government, in order to increase flexibility .
- Paragraph 3 of Article 12 of Regulation 1628/96, regarding the procedure to be followed after the Article 12 Committee has delivered its opinion should be amended so that the procedure is the same as that applicable under the Phare Regulation, in order to streamline the procedures.

As regards information of the other institutions (Council and Parliament), by virtue of Article 13, the Commission is already under a quarterly reporting obligation. However, an increase in flexibility necessitates greater transparency and the provision of better and more detailed information on the implementation of Community aid in the region. In order to ensure this the Commission shall increase the monitoring and auditing of projects and programmes and shall contract specific external expertise for this purpose.

This measure will have no direct impact on small and medium size enterprises.

The Council is requested:

- to adopt the proposed regulation

Council Regulation N° XX
amending Council Regulation EC N° 1628/96 of 25 July 1996 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

Having regard to the opinion of the European Parliament

WHEREAS Council Regulation n°1628/96¹ as amended by Council Regulation n°2240/97² deals with economic development, the restoration of civil society and co-operation between the Republics of former Yugoslavia 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 Commission has been invited to propose very substantial measures to simplify procedures and to accelerate implementation of projects under Regulation n°1628/96 in order to deliver more efficiently the assistance of the European Community to this region

WHEREAS Art 11 of Regulation n°1628/96 provides for the implementation of expenditure in accordance with the Financial Regulation applicable to the general budget of the European Communities

¹ OJ, L 204, 14.8.1996, p.1

² OJ, L 307, 12.11.1997, p.1

WHEREAS Art 9 of the Regulation n°1628/96 provides that service contracts not exceeding 200.000 ECU can 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 400.000 ECU 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 in light of the exceptionally difficult situation prevailing in the countries covered by this Regulation, the conditions triggering recourse to restricted tendering procedures are fulfilled;

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 Art 10 of Regulation n°1628/96 provides that financing decisions exceeding 2 million ECU need approval of the Committee provided for in Art 12.

WHEREAS this amount has to be increased to 5 MECU in order to increase expediency

WHEREAS Art 12 paragraph 3 of Regulation n°1628/96 provides specific rules for the decision making process with the Committee

WHEREAS the procedures applying to this Committee should be amended in order to streamline procedures

WHEREAS in order to increase the flexibility of Community assistance, the Commission should also be enabled to contribute to programmes and co-operation schemes forwarded by municipalities or regional bodies, in consultation with the Central Government

HAS ADOPTED THIS REGULATION

Article 1

Regulation n°1628/96, is amended as follows:

a) The following paragraphs 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 400.000 ECU, especially to prepare, monitor or evaluate Community aid.

Works and supply contracts not exceeding 3 million ECU may be awarded by procedures limited to one of the beneficiary countries covered by this regulation.

Where the particular characteristics of the local market do not allow recourse to this procedure or where this procedure does not lead to the award of a contract, works and supply contracts not exceeding 3 million ECU may be - in exceptional circumstances - awarded by private treaty to natural or legal persons from the Member States or exceptionally from the States benefiting from the Phare programme under the conditions specified in this article.

With respect to projects facilitating the return of refugees works and supply contracts exceeding 3 million ECU and not exceeding 10 million ECU shall be awarded by

open tendering procedure or following restricted invitations to tender. The procedures and thresholds established by Article 10 paragraph 1 and 2 are applicable.

b) Article 10 (1) is replaced by the following:

Financing decisions exceeding 5 million ECU 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 operations involving financing of less than 5 million ECU.

c) The following paragraph shall be added to Article 10 as paragraph 3:

The Commission may decide to contribute to programmes and co-operation schemes as referred to in Article 4 forwarded by municipalities or regional bodies, in consultation with the Central Government. The procedures and thresholds established by Article 10 paragraph 1 and 2 are applicable.

d) Paragraph 3 of Article 12 is replaced by the following paragraph:

The Commission shall adopt decisions which shall apply immediately. However, if these decisions are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith. In that event the Commission shall defer application of the measures which it has decided for a period of six weeks.

The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the first subparagraph.

Article 2

This Regulation shall enter into force on the day following 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

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