



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.01.1997  
COM(97) 1 final

95/0164 (SYN)

Re-examined proposal for a

COUNCIL REGULATION (EC)

**ON HIV/AIDS-RELATED OPERATIONS IN**

**DEVELOPING COUNTRIES**

(presented by the Commission pursuant to Article 189 c (d)  
of the EC Treaty)

## EXPLANATORY MEMORANDUM

(concerning the amendments by Parliament at second reading under the cooperation procedure - amendments accepted by the Commission and those rejected)

**Subject: Re-examined proposal for a Council Regulation (EC) on HIV/AIDS-related operations in developing countries**

**Institutional reference: 95/0164 (SYN)**

**Cooperation procedure, second reading Article 189c(d)**

On 26 June 1995 the Commission presented a proposal to the Council and to Parliament for a Regulation on HIV/AIDS-related operations in developing countries (COM (95) 293 final)

The proposed Council Regulation on HIV/AIDS-related operations in developing countries, based on Article 130w of the Treaty, is subject to the cooperation procedure (Article 189c of the Treaty).

According to the cooperation procedure, Parliament expressed its opinion upon first reading on 9 May 1996.

The Council adopted a common position on 27 June 1996 but this was not endorsed by the Commission.

On 12 November 1996 Parliament delivered an opinion upon second reading and adopted a total of 26 amendments (PE 166.406).

Pursuant to Article 189c(d), the Commission is now presenting a re-examined proposal incorporating the amendments it has accepted.

The aim of the re-examined proposal is to lay down procedures for administering the budget heading for funding operations relating to HIV/AIDS and other sexually transmitted diseases in developing countries.

## COMMENTS ON THE AMENDMENTS ADOPTED BY PARLIAMENT UPON SECOND READING

### 1. ANALYSIS OF THE AMENDMENTS ACCEPTED/REJECTED

The amendments adopted upon second reading fall into three categories:

#### 1.1 Those introducing an acceptable change which the Commission has accepted in their entirety:

These are: Amendment No 1 which includes other sexually transmitted diseases within the scope of the Regulation, No 2 which stresses that the operations to be financed under the budget heading should be of an innovative nature, the first part of No 11 highlighting the need to promote better screening methods, No 18 providing for a study of ways to give people affected by HIV/AIDS better access to care, Nos 6 and 25 which stipulate deletion of the financial reference, No 26 on opening up invitations to tender and contracts to other developing countries and the first part of No 28 which repeats the text from the Commission's proposal on the type of Committee invited to deliver an opinion on projects (advisory Committee).

#### 1.2 Those introducing a change which is acceptable in substance but for which the Commission prefers other wording, i.e. the wording of the common position.

These are: Amendment No 5 (need for a considerable increase in resources and setting-up of an action programme), No 7 (treatment of STD), No 9 (treatment of STD), second part of No 11 (reference to the peoples of the developing countries), No 12 (promoting use of condoms), No 13 (taking account of HIV/AIDS in other projects), No 14 (promoting measures to emancipate women in all spheres of the health sector, including sexual health, and increasing male awareness), No 15 (promoting dialogue with the religious authorities), No 16 (treatment of STD), No 17 (improving care facilities and the availability of medicines for the treatment of STD), No 19 (regional and international medical cooperation), second part of No 20 (publicity campaigns on freedom from discrimination), No 21 (reference to women's organizations as parties in cooperation), No 27 (exception to the origin rules for supplies).

#### 1.3 Those which are unacceptable and which the Commission has not adopted as they are incompatible with the objectives or resources of the HIV/AIDS programme or impose excessive management constraints:

These are: Amendment No 10 (reference to the media, specific groups and increasing the awareness of women's partners not appropriate here), first part of No 20 (inappropriate reference to refugees and migrants), No 22 (submission of the cost of evaluation/audit as part of the budgetary procedure) No 23 (financial contribution from local partners), No 24 (annual submission of the results of attempts to secure cofinancing), last part of No 28 (Committee meetings in public and publication of the minutes),

No 29 (extensive consultation regarding the annual general guidelines). The latter five amendments concern institutional or administrative matters.

**2. THE COMMISSION'S POSITION AND GROUNDS FOR THAT POSITION:**

While taking account of the Commission's position proposed for the remainder of the amendments, as given under point 1, the Commission rejects the amendments referred to under points 1.2 and 1.3 above for the following reasons (of form or substance):

**Amendment No 7** - Article 1(1)(a)

This amendment highlights the need to treat sexually transmitted diseases. However, this is already taken into account in Article 2(1)(b) of the common position.

**Amendment No 9** - Article 2(1) - introduction

This amendment refers to the treatment of STD, but this reference features already in Article 2(1)(b) of the common position.

**Amendment No 10** - Article 2(1)(a)

This amendment refers to highlighting the involvement of the media and opinion leaders and spells out particular vulnerable groups. This is inappropriate in a legal basis and might also stigmatise the groups of people it refers to. The reference to women's "partners" in the context of this paragraph does not belong here.

**Amendment No 11** - Article 2(1)(b)

Second part: The purpose of this amendment is to add a reference to the population of developing countries, which is superfluous as the whole legal basis addresses them already.

**Amendment No 13** - Article 2(1)(d)

The intention of this amendment is to add the need to take account of AIDS in development projects of a general nature, but this is inappropriate as it has the effect of shifting the emphasis to operations whereas priority should be given to taking account of the problem at policy or strategy level.

**Amendment 16** - Article 2(2) - introduction

The amendment here referring to the treatment of STD is unnecessary because it is already taken into account in Article 2(1)(b) of the common position.

**Amendment 17** - Article 2(2)(a)

This amendment refers to the availability of medicines and the provision of care facilities. It is unnecessary as these concepts are already covered by the general wording of Article 2(2)(a) of the common position on the strengthening of health services.

**Amendment No 19 - Article 2(2)(c)**

The Commission rejects this amendment as specific reference to exchanges in the context of medical cooperation is already made in the wording of Article 2(2)(c) on better training for medical and paramedical staff.

**Amendment No 20 - first part**

This amendment spells out potentially vulnerable groups and is therefore inappropriate because it might stigmatise them.

**Amendment No 22 - Article 4(1)**

This amendment referring to presentation of the estimate of the annual cost of evaluation and audit before the first reading of the budget is not feasible in practice. The reference to training programmes moreover is too restrictive in its wording.

**Amendment No 23 - Article 4(3)a (new)**

This amendment introducing the idea of financial contributions from local partners is inappropriate as it takes no account of the special circumstances of the poorest countries or most disadvantaged population groups for whom projects should include support for operating costs on a long-term basis.

**Amendment No 24 - Article 4(7a) (new)**


This amendment, which requires the Commission to submit the results of its attempts to secure cofinancing each year, is too binding and incompatible with the objective of the heading which, unlike NGO cofinancing, is not to seek cofinancing systematically.

**Amendment No 28 - Article 8**

Second part: this part of the amendment on making meetings of the Committee public and publishing the agendas and meetings of Committee meetings is incompatible with the "comitology" rules.

**Amendment No 29 - Article 9**

This amendment on wider consultation for the presentation of the general guidelines is impractical. The general guidelines form part of the development cooperation policy which the Commission conducts with its various partners and includes permanent dialogue via delegations on the spot.



**RE-EXAMINED PROPOSAL FOR A  
COUNCIL REGULATION (EC) No**

**of**

**on operations concerning HIV/AIDS  
and sexually transmitted diseases  
in developing countries**

**THE COUNCIL OF THE EUROPEAN UNION,**

Having regard to the Treaty establishing the European Community, and in particular Article 130w thereof,

Having regard to the proposal from the Commission,<sup>1</sup>

Acting in accordance with the procedure referred to in Article 189c of the Treaty,<sup>2</sup>

---

<sup>1</sup> OJ No C 252, 28.9.1995, p. 4.

<sup>2</sup> Opinion of the European Parliament of 9 May 1996 (OJ No C 152, 27.5.1996, p. 36), Council common position of 27 June 1996 (OJ No C 264, 11.9.1996, p. 21) and Decision of the European Parliament of 12 November 1996 (not yet published in the Official Journal).

Whereas the budgetary authority decided, in the framework of the 1988 budget, to create a budget heading designed to support the fight against the HIV/AIDS epidemic whereby it would seek to develop innovative measures, not merely measures complementing those already implemented at other levels;

Whereas the Commission, in its communication of 7 January 1994 to the Council and the European Parliament on HIV/AIDS in the developing countries, outlined the policy principles and strategic priorities needed to enhance the effectiveness of action by the Community and the Member States in that field;

Whereas HIV/AIDS is no longer an emerging epidemic, but has become pandemic throughout the world, and is evolving with different social and political implications, depending on the regions and/or countries in question, and thus requires an appropriate structural and multisectoral response which is beyond the financial and human resources of most developing countries;

Whereas the Council, in its Resolution of 6 May 1994, emphasized the gravity of the HIV/AIDS epidemic and the need to step up efforts to give more support to the developing countries' national strategies; whereas it identified, as priorities for such support, strategies aimed at more effective prevention of transmission based on education, the promotion of sexual and reproductive health and transfusion safety, along with strategies to help the HIV-positive and the sick, in particular by strengthening health systems and combating discrimination and social exclusion;

Whereas the European Parliament and the EC-ACP Joint Assembly, in their respective Resolutions adopted on 14 April 1986 and 15 February 1993, also underlined the need to take greater account of causes and factors such as poverty in the spread of the epidemic, and of the economic and social consequences of HIV/AIDS, notably through measures designed to enhance the status of women and help local communities care for families and individuals affected by the pandemic;

Whereas both the European Parliament and the Council have called for increased Community involvement in this field;

Whereas, in its resolution of 15 November 1995 on the communication from the Commission to the Council and the European Parliament on the AIDS policy of the Community and the Member States in the developing world,<sup>1</sup> the European Parliament called for a considerable increase in resources and for a detailed action programme to stem the spread of the epidemic and to alleviate the social and economic repercussions;

Whereas the effectiveness of programmes to support national strategies to combat HIV/AIDS depends on improved coordination of aid both at European level and with other donors and UN agencies, in particular UNAIDS, and on the use of flexible procedures tailored to the specific nature of the activities and the partners concerned; whereas the European Parliament and Council Resolutions call for efforts in that direction;

Whereas administrative rules and procedures should be established for cooperation in the field of HIV/AIDS,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. The Community shall implement a programme to assist the developing countries (hereinafter referred to as "the programme") in their efforts to minimize the spread of the HIV/AIDS epidemic and help them cope with its impact on health and social and economic development.

The programme shall be directed primarily at the poorest and least developed countries and the most disadvantaged sections of the population of developing countries.

The Community shall give priority to pursuing the following aims:

- (a) reducing the transmission of HIV/AIDS and the spread of other diseases capable of being transmitted sexually or perinatally;
- (b) reinforcing health and social services so that they can cope with the growing demands of the spreading epidemic;

---

<sup>1</sup> OJ No C 323, 4.12.1995, p. 45.



- (c) helping governments and communities to assess the epidemic's impact on different economic sectors and social groups, and to define and implement strategies to cope with it;
- (d) developing scientific understanding of the epidemic and of the impact of measures, with a view to improving their quality, while excluding basic research;
- (e) combating discrimination against, and the social and economic exclusion of, persons infected with HIV/AIDS.

2. To attain the objectives referred to in paragraph 1, the Community shall support a series of measures which shall take into account the following fundamental policy principles, namely, they shall:

- (a) be adapted to the risk arising from the socio-economic environment and to the requirements of vulnerable groups as determined by individual behaviour and socio-economic and demographic factors;
- (b) be gender-specific;
- (c) be based on respect for the rights of the individual and provide social training for the persons concerned;
- (d) increase the motivation of individuals and communities and enable them to assume their responsibilities and become more self-reliant;
- (e) be integrated into health, education and other policies;
- (f) be adapted to the various stages of development of the epidemic;
- (g) encourage both political and financial commitment by governments to respond to HIV/AIDS.

## Article 2

The measures to be taken to achieve the priority objectives mentioned in Article 1 shall support strategies developed at international, regional and national level with the beneficiary countries and shall include, as regards each objective:

- (1) reducing the transmission of HIV/AIDS and the spread of other diseases capable of being transmitted sexually or perinatally through:
  - (a) information and education on sexual and reproductive health and rights as regards reproduction; special attention shall be given to making the measures especially adapted and accessible to the target groups, notably people in high-risk environments and the most socially and economically vulnerable individuals and communities; in particular women and young people. Such measures shall also include dialogue with the religious communities which continue to reject a mass anti-AIDS publicity campaign;
  - (b) greater efficiency in reducing the transmission of HIV and sexually transmitted diseases (STD), *inter alia* through the promotion of better screening and treatment methods for such diseases;
  - (c) improving the availability and use of different means and methods of protection, notably condoms, and the safety of blood transfusions and other forms of injection;
  - (d) support for the inclusion of the HIV/AIDS issue in development policies and strategies;
  - (e) support for measures that aim to increase women's power of decision in all areas of sexuality and reproductive health, to enable them to encourage the widespread use of different means and methods of protection against HIV/STD infection and transmission, act accordingly and protect the health of unborn children, and to increase male awareness of and responsibility for these issues;

- (2) reinforcing health and social services so that they can cope with the growing demands of the spreading epidemic through:
- (a) strengthening health services, particularly primary health services, by taking steps to increase national, regional and local capacity to develop preventive activities and care and to improve access for the most vulnerable;
  - (b) a study with a view to setting up an EU-inspired solidarity instrument to improve the treatment of people affected by HIV in the poorest countries. For this purpose, the best financial approach for securing North-South equality of treatment should be identified in conjunction with the UN agencies, NGOs concerned and pharmaceutical laboratories, and in cooperation with the health care systems of the developed countries, in particular those of the Union;
  - (c) strengthening capacity with regard to blood transfusion and nosocomial safety;
  - (d) improved training for medical and paramedical personnel;
  - (e) improved notification and statistical systems for epidemiological monitoring;
- 3) helping governments and communities to assess the epidemic's impact on different economic sectors and social groups and to draw up and implement strategies to cope with it through:
- (a) technical back-up to help governments analyse the social and economic impact of the epidemic and develop and implement suitable strategies in the sectors concerned;
  - (b) technical and financial support to enable NGOs and local communities to optimize their contribution to prevention and care, notably through help with the formation of networks intended to improve the effectiveness of efforts and to reinforce the information, coordination and collaboration of all protagonists;
  - (c) encouragement of participation by local communities in developing local strategies for information, sex education programmes and funding.

- (4) developing scientific understanding of the epidemic and of the impact of measures, with a view to improving their quality, while excluding basic research, through:
- (a) the development of scientific training through better monitoring of programmes based on relevant indicators, and the strengthening of applied medical, sociological, and anthropological research;
  - (b) support for the exchange of information on experience gained;
- (5) combating discrimination against, and the social and economic exclusion of, persons infected with HIV/AIDS by:
- (a) promoting respect for the rights of the individual, and in particular rights as regards reproduction;
  - (b) encouraging non-discrimination and combating the stigma attaching to those living with the virus, in particular by public information campaigns and the setting-up of an appropriate legislative framework.

### Article 3

The agents of cooperation eligible for financial support under this Regulation include:

- national, regional and local government departments and agencies,
- local authorities and other decentralized bodies, including traditional social structures,
- regional organizations and international organizations,
- research institutes and universities,
- local communities and the private sector, including NGOs, women's groups and grassroots associations able to contribute whatever expertise they have to the design, implementation and monitoring of the priority strategies in the HIV/AIDS field described in Article 2.

#### Article 4

1. The instruments to be employed in the course of the activities referred to in Article 2 shall include studies, technical assistance, training or other services, supplies and works, as well as audits and evaluation and monitoring missions. Priority shall be given to enhancing national capacity, particularly through training with a view to long-term viability.
2. Community financing may cover both investment expenditure, excluding the purchase of real estate, and, since the project must, as far as possible, aim at medium-term viability, recurring expenditure (which includes administrative expenditure, maintenance and running costs).
3. A financial contribution from the partners referred to in Article 3 shall be sought for each cooperation operation. Their contribution will be requested within the limits of the possibilities available to the parties concerned and depending on the nature of the operation concerned.
4. Opportunities may be sought for cofinancing with other fund providers, and especially with Member States.
5. The necessary measures shall be taken to emphasize the Community character of the aid provided under this Regulation:
6. In order to achieve the objectives of consistency and complementarity referred to in the Treaty and with the aim of guaranteeing optimum effectiveness of all these operations, the Commission may take all necessary coordination measures, including:
  - (a) the establishment of a system for the systematic exchange and analysis of information on the operations financed and those which the Community and the Member States propose to finance;
  - (b) on-the-spot coordination of the implementation of operations through regular meetings and exchange of information between representatives of the Commission and of the Member States in the recipient country.

7. In order to obtain the greatest possible impact globally and nationally, the Commission, in liaison with the Member States, shall take any initiative necessary for ensuring proper coordination and close collaboration with the recipient countries and the providers of funds and other international agencies involved, in particular those forming part of the United Nations system, and more specifically UNAIDS.

#### Article 5

Financial support under this Regulation shall take the form of grants.

#### Article 6

1. The Commission shall be responsible for appraising, deciding and administering the operations covered by this Regulation 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. Decisions relating to grants of more than ECU 2 million for individual operations financed under this Regulation shall be adopted in accordance with the procedure laid down in Article 8.

The Commission shall inform the Committee referred to in Article 8 succinctly of the financing decisions which it intends to take with regard to projects and programmes of less than ECU 2 million in value. The information shall be made available not later than one week before the decision is taken.

3. The Commission shall be authorized to approve, without recourse to the opinion of the Committee provided for in Article 8, any supplementary commitments needed for covering expected or real cost overruns in connection with the operations, where the overrun or additional requirement is less than or equal to 20% of the initial commitment fixed by the financing decision.

4. All financing agreements or contracts concluded under this Regulation shall provide for the Commission and the Court of Auditors to conduct on-the-spot checks according to the usual procedures laid down by the Commission under the rules in force, in particular those in the Financial Regulation applicable to the general budget of the European Communities.

5. Where operations are the subject of financing agreements between the Community and the recipient countries, such agreements shall stipulate that the payment of taxes, duties or any other charges is not to be covered by the Community.

6. Participation in invitations to tender and the award of contracts shall be open on equal terms to all natural and legal persons of the Member States, the recipient country and other developing countries. It may be extended, in duly justified exceptional cases, to other third countries.

7. Supplies shall originate in the Member States, the recipient country or other developing countries. In duly justified exceptional cases supplies may originate elsewhere, particularly in cases where application of the origin rule would entail disproportionate costs for the recipient countries.

8. Particular attention will be given to:

- the pursuit of cost-effectiveness and sustainable impact in project design;
- the clear definition and monitoring of objectives and indicators of achievement for all projects.

9. The assistance provided under this Regulation shall complement and reinforce assistance provided under other instruments of development cooperation.

#### Article 7

1. The Commission shall be assisted by an advisory committee made up of representatives from the Member States and chaired by a representative of the Commission, which shall be, depending on the recipient country or region:

- (a) in the case of the ACP countries, the EDF Committee set up by Article 21 of Internal Agreement 91/401/EEC on the financing and administration of Community aid under the fourth Lomé Convention, adopted on 16 July 1990 by the representatives of the Member States meeting within the Council;<sup>1</sup>

---

<sup>1</sup> OJ No L 229, 17.8.1991, p. 288.

- (b) in the case of the Mediterranean countries, the MED Committee set up by Article 6 of Council Regulation (EEC) No 1762/92 on the implementation of the Protocols on financial and technical cooperation concluded by the Community with Mediterranean non-member countries;<sup>1</sup>
- (c) in the case of Asian and Latin American countries, the ALA Committee set up by Article 15 of Council Regulation (EEC) No 443/92 on financial and technical assistance to, and economic cooperation with, the developing countries in Asia and Latin America.<sup>2</sup>

2. The Commission representative shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chair may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition each Member State shall have the right to ask to have its position recorded in the minutes. The Commission shall take the utmost account of opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

#### Article 8

An exchange of views shall take place once a year on the basis of a presentation by the representative of the Commission of the general guidelines for the operations to be carried out in the year ahead, in the framework of a joint meeting of the Committees referred to in Article 8(1):

#### Article 9

1. After each budget year, the Commission shall submit an annual report to Parliament and the Council, summarizing the operations financed in the course of that year and evaluating the implementation of this Regulation over that period.

The summary shall in particular provide information about those with whom contracts have been concluded.

---

<sup>1</sup> OJ No L 181, 1.7.1992, p. 1.

<sup>2</sup> OJ No L 52, 27.2.1992, p. 1.



2. The Commission shall regularly assess operations financed by the Community with a view to establishing whether the objectives aimed at by such operations have been achieved and to provide guidelines for improving the effectiveness of future operations. The Commission shall submit to the Committee referred to in Article 8 a summary of the assessments made which, if appropriate, may be examined by the Committee. The assessment reports shall be made available to any Member States requesting them.

3. The Commission shall inform the Member States, at the latest one month after its decision, of the operations and projects approved, stating their cost and nature, the recipient country and partners.

#### Article 11.

Three years after this Regulation enters into force, the Commission shall submit to Parliament and the Council an overall assessment of operations financed by the Community under this Regulation, together with suggestions regarding the future of this Regulation and, where necessary, proposals for amending it.

#### Article 12

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.

Done at Luxembourg,

For the Council  
The President

---

ISSN 0254-1475

COM(97) 1 final

# DOCUMENTS

EN

11 05

---

Catalogue number : CB-CO-97-001-EN-C

ISBN 92-78-14193-3

---

Office for Official Publications of the European Communities

L-2985 Luxembourg