

Proposal for a Council Regulation concerning pre-accession financial assistance for Turkey

(2001/C 240 E/16)

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(Submitted by the Commission on 25 April 2001)

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) The conditions to be fulfilled by the candidate countries wishing to join the European Union were set out at the Copenhagen European Council of June 1993.

(2) The Helsinki European Council of December 1999 stated that Turkey is a candidate country destined to join the Union on the basis of the same criteria applied to the other candidate countries and that, building on the existing European Strategy, Turkey, like other candidate countries, will benefit from a pre-accession strategy to stimulate and support its reforms.

(3) The Nice European Council of December 2000 welcomed the progress made in the implementation of the pre-accession strategy for Turkey.

(4) As Turkey does not yet fulfil the political criteria of Copenhagen, the Community has called on it to improve and promote its democratic practices and respect for fundamental human rights and more closely to involve civil society in that process.

(5) The cornerstone of the pre-accession strategy is the Accession Partnership, drawn up on the basis of previous European Council conclusions while containing priorities on which accession preparation must concentrate in the light of the political and economic criteria and the obligations of a Member State.

(6) For Turkey, the legal base for the establishment of the Accession Partnership and the single framework for co-ordinating all sources of pre-accession financial assistance are provided in Council Regulation (EC) No 390/2001 of 26 February 2001 on assistance to Turkey in the framework of the pre-accession strategy, and in particular on the establishment of an Accession Partnership ⁽¹⁾.

(7) The principles, priorities, intermediate objectives and conditions for the Accession Partnership with Turkey are contained in Council Decision 2001/235/EC of 24 March 2001 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey ⁽²⁾. As for the other candidate countries, assistance for Turkey from the European Union shall be focused on the priorities arising from the Accession Partnership.

(8) Community assistance will be applied mainly through institution-building and investments to promote compliance with the Community acquis.

(9) The Community will undertake specific actions to promote the development of civil society in Turkey.

(10) Cross-border co-operation, particularly in the context of the borders between Turkey and the European Union, between Turkey and other candidate countries and between Turkey and other countries in the region, will also be the subject of specific actions.

(11) The Community will co-finance Turkish participation in Community programmes and agencies.

(12) Community assistance shall be subject to compliance with the undertakings contained in the EC-Turkey Agreements and the conditions laid down in Council Regulation (EC) No 390/2001 of 26 February 2001, Council Decision 2001/235/EC and this Regulation.

(13) The Commission shall implement the assistance in accordance with the Financial Regulation applicable to the general budget of the European Union ⁽³⁾.

(14) 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 ⁽⁴⁾.

⁽²⁾ OJ L 85, 24.3.2001, p. 13.

⁽³⁾ OJ L 356, 31.12.1977, p. 1, as last amended by Council Regulation (EC) No 2673/1999 of 13 December 1999 (OJ L 326, 18.12.1999, p. 1).

⁽⁴⁾ OJ L 269, 19.10.1999, p. 45.

⁽¹⁾ OJ L 58, 28.2.2001, p. 1.

(15) As well as natural and legal persons from the Member States and Turkey, participation in tenders shall be open to natural and legal persons from the other candidate countries and from countries benefiting from the financial and technical measures to accompany (MEDA) the reform of economic and social structures in the framework of the Euro-Mediterranean partnership ⁽¹⁾ and the assistance for Albania, Bosnia and Herzegovina, Croatia, Federal Republic of Yugoslavia and Former Yugoslav Republic of Macedonia (CARDS) ⁽²⁾ and, where specific types of expertise are required, from the countries of Eastern Europe and Central Asia under the provision of assistance to the partner States in Eastern Europe and Central Asia ⁽³⁾. For reasons of symmetry, similar provisions will need to be introduced in the assistance programmes for the other candidate countries.

(16) The Commission shall establish guidelines for the programming and implementation of the assistance according to the management procedure.

(17) The Commission will be assisted in the implementation of the Community assistance by the committee set up under Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to certain countries of central and eastern Europe ⁽⁴⁾. The measures will 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 ⁽⁵⁾.

(18) Management of pre-accession assistance shall gradually be decentralised to Turkey, taking account of its management and financial control capacities, so that it can be more closely involved in the pre-accession assistance process.

(19) The current diverse sources of financial assistance for Turkey should be regrouped so that, whilst Turkey remains eligible under Council Regulation (EC) No 1488/96, Council Regulation (EC) No 764/2000 of 10 April 2000 regarding the implementation of measures to intensify the EC-Turkey Customs Union ⁽⁶⁾ and Council Regulation (EC) No 257/2001 of 22 January 2001 regarding the implementation of the measures to promote economic and social development in Turkey ⁽⁷⁾, shall be repealed.

(20) Annual reports on the implementation of the assistance programme shall be established and an evaluation report will be submitted by the end of 2005 for a review to be carried out before 30 June 2006.

(21) In the financial perspective 2000-2006, the pre-accession financial assistance was doubled for the candidate countries; in the light of the Helsinki European Council, subject to the normal budgetary procedures the aim should be that this principle be applied for Turkey and continue to apply during the remaining period of the current financial perspective.

(22) The Treaty does not provide for powers other than those of Article 308 for the adoption of this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The Community shall provide pre-accession financial assistance to Turkey to support the priorities defined in the Accession Partnership for Turkey.

Article 2

The assistance:

- shall be in the form of grants;
- shall be implemented by financing programmes or projects aimed at the fulfilment of the accession criteria and in accordance with the programming and implementation principles set out in guidelines to be adopted by the Commission in accordance with the procedure referred to in Article 9(2);
- may take the form of services, supplies and works;
- in the case of investment, may not cover the purchase of either land or buildings.

Article 3

1. A financial contribution to each programme or project may be required from the recipients of the assistance. The contribution shall depend on the nature of the programme or project. In exceptional cases, for programmes or projects aimed at the promotion of civil society development, the contribution may be in kind.

2. Assistance shall cover expenditure relating to programming support, communication and information activities and the monitoring, inspection, audit and evaluation of programmes and projects.

3. The assistance may either be independent or in the form of co-financing with the Member States, the European Investment Bank, third countries or multi-lateral bodies.

⁽¹⁾ OJ L 189, 30.7.1996, p. 1, as last amended by Council Regulation (EC) No 2698/2000 of 27 November 2000 (OJ L 311, 12.12.2000, p. 1).

⁽²⁾ OJ L 306, 7.12.2000, p. 1.

⁽³⁾ OJ L 12, 18.1.2000, p. 1.

⁽⁴⁾ OJ L 375, 23.12.1989, p. 11, as last amended by Council Regulation (EC) No 2666/2000 of 5 December 2000 (OJ L 306, 7.12.2000, p. 1).

⁽⁵⁾ OJ L 184, 17.7.1999, p. 23.

⁽⁶⁾ OJ L 94, 14.4.2000, p. 6.

⁽⁷⁾ OJ L 39, 9.2.2001, p. 1.

4. Opportunities may be sought for co-financing with other donors, particularly Member States.

5. The Community may contribute to the costs related to the management structures of the assistance.

Article 4

Financing of the programmes and projects shall be subject to compliance with the commitments contained in the EC-Turkey Association Agreement, the Customs Union Decision and all other related agreements and decisions, and the conditions laid down, in Article 4 of Regulation (EC) No 390/2001 of 26 February 2001, in the Accession Partnership with Turkey and in this Regulation.

Article 5

1. The Commission shall implement the Community assistance in accordance with the rules of transparency and the Financial Regulation applicable to the general budget of the European Communities, in particular Article 114 thereof.

2. Prior appraisal of programmes and projects shall take account, inter alia, of the following factors:

- (a) their effectiveness and viability;
- (b) cultural, social, gender and environmental aspects;
- (c) conservation and protection of the environment on the basis of the principles of sustainable development;
- (d) institutional development necessary to achieve programme and project goals;
- (e) experience gained from programmes and projects of the same kind.

Article 6

1. Project selection, tendering and contracting by Turkey will be subject to ex-ante approval by the Commission.

2. The Commission may, however, decide, on the basis of a case-by-case analysis of national and sectoral programme/project management capacity, financial control procedures and structures regarding public finance, to waive the ex-ante approval requirement referred to in paragraph 1 and confer on implementing agencies in Turkey management of assistance on a decentralised basis. Such a waiver will be subject to:

- (a) the minimum criteria for assessing the ability of implementing agencies in Turkey to manage assistance and the minimum conditions applicable to such agencies set out in the Annex;
- (b) specific provisions concerning, inter alia, invitations to tender, scrutiny and evaluation of tenders, the award of

contracts and the implementation of Community public procurement directives, to be laid down in financing agreements with Turkey.

Article 7

1. Assistance of more than EUR 2 000 000 will be made available through financing decisions taken by the Commission in accordance with the procedure referred to in Article 9(2). For that purpose, the Commission shall submit to the Committee referred to in Article 9, a financing proposal describing the programmes and/or projects to be implemented.

The Commission shall inform the Committee referred to in Article 9, at least one week beforehand, of any financing decisions it intends to take regarding programmes and projects of less than EUR 2 000 000.

2. The Commission may approve, without seeking the opinion of the Committee referred to in Article 9, additional grants needed to cover expected or actual overruns on the programmes or projects, provided that the overrun is not more than 20 % of the initial grant set in the financing decision.

3. 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 in accordance with the procedures laid down by the Commission under the rules in force, and in particular those of the Financial Regulation applicable to the general budget of the European Union.

4. In order to ensure effective protection of the financial interest of the Community, the Commission may undertake on-the-spot checks and inspections in accordance with Council Regulation No 2185/96/EC of 11 November 1996 concerning monitoring and on-the-spot checks carried out by the Commission to protect the financial interest of the European Communities against fraud and other irregularities⁽¹⁾.

5. The application of Article 15 paragraph 3 of Commission Regulation 2222/2000/EC of 7 June 2000 laying down financial rules for the application of Council Regulation (EC) No 1268/1999 on Community support for pre-accession measures for agriculture and rural development in the applicant countries of central and eastern Europe in the pre-accession period⁽²⁾ is foreseen, including the communication of individual cases of irregularity and the establishment of a system for the management of information in this field.

6. Where programmes and projects are the subject of financing agreements between the Community and Turkey, such agreements shall stipulate that the payment of taxes, duties or any other charges is not to be covered by the assistance.

⁽¹⁾ OJ L 292, 15.11.1996, p. 2.

⁽²⁾ OJ L 253, 7.10.2000, p. 5.

7. Participation in invitations to tender and contracts shall be open, on equal terms to all natural and legal persons from the Member States, the candidate countries for accession to the European Union and countries which are recipients under Regulation (EC) No 1488/96 and Regulation (EC) No 2666/2000.

Participation by countries, which are recipients under Regulation (EC) No 99/2000, shall also be authorised by the Commission, on a case-by-case basis, if the programmes or projects concerned require specific forms of expertise specifically available in such countries.

In the case of co-financing, the participation of undertakings from third countries in invitations to tender and contracts may be authorised by the Commission on a case-by-case basis.

8. The provisions referred to in paragraph 7 will apply to the origin of supplies.

Article 8

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

Article 9

1. The Commission shall be assisted by the Committee provided for in Article 9(1) of Regulation (EC) No 3906/89.

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period provided for in Article 4 of Decision 1999/468/EC shall be three months.

Article 10

Each year, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the implementation of the assistance. The report shall contain information on the programmes and projects financed during the year, as well as information on the results of monitoring and evaluation. This information could be included in the report to which reference is made in Article 10 of Regulation (EC) No 3906/89.

Article 11

Regulations (EC) Nos 764/2000 and 257/2001 are hereby repealed. However, they shall remain applicable to programmes and projects for which the procedures leading to the Commission financing decision have been started, but not yet been completed, at the time of entry into force of this Regulation.

Article 12

1. At the end of Article 7(1) of Regulation (EC) No 3906/89, the words 'and Turkey, Cyprus and Malta' are added.

2. At the end of Articles 7(9) and 7(10) of Council Regulation (EC) No 555/2000 of 13 March 2000 on the implementation of operations in the framework of the pre-accession strategy for the Republic of Cyprus and the Republic of Malta⁽¹⁾, the words 'and other candidate countries for accession to the European Union' are added.

3. The following paragraph is added to Article 7 of Council Regulation (EC) No 1267/1999 establishing an instrument for structural policies for pre-accession⁽²⁾: '8. Natural and legal persons from Cyprus, Malta and Turkey can participate in invitations to tender and contracts on the same terms that applies to all natural and legal persons from the Member States and the beneficiary countries'.

4. The following paragraph is added to Article 3 of Council Regulation (EC) No 1268/1999 on Community support for pre-accession measures for agriculture and rural development in the applicant countries in central and eastern Europe in the pre-accession period⁽³⁾: '3. Natural and legal persons from Cyprus, Malta and Turkey can participate in invitations to tender and contracts on the same terms that apply to all natural and legal persons from the Member States and the beneficiary countries'.

Article 13

The Council will review this Regulation before 1 January 2006. To that end, the Commission shall submit to the Council before 1 July 2005 an evaluation report on the Regulation and, as appropriate a proposal to amend it.

Article 14

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.

⁽¹⁾ OJ L 68, 16.3.2000, p. 3.

⁽²⁾ OJ L 161, 26.6.1999, p. 73.

⁽³⁾ OJ L 161, 26.6.1999, p. 87.

ANNEX

MINIMUM CRITERIA AND CONDITIONS FOR DECENTRALISING MANAGEMENT TO IMPLEMENTING AGENCIES IN TURKEY (ARTICLE 6)**1. Minimum criteria for assessing the ability of implementing agencies in Turkey to manage assistance**

The following criteria shall be applied by the Commission in assessing which implementing agencies in Turkey are able to manage assistance on a decentralised basis:

- (a) there should be a well-defined system for managing the funds with full internal rules of procedure, clear institutional and personal responsibilities;
- (b) the principle of separation of powers must be respected so that there is no risk of conflict of interest in procurement and payment;
- (c) adequate personnel must be available and assigned to the task. They must have suitable auditing skills and experience, language skills and be fully trained in implementing Community programmes.

2. Minimum conditions for decentralising management to implementing agencies in Turkey

Decentralisation to Turkey with ex post control by the Commission may be considered for an implementing agency where the following conditions are met:

- (a) demonstration of effective internal controls including an independent audit function and an effective accounting and financial reporting system which meets internationally accepted audit standards;
- (b) a recent financial and operational audit showing effective and timely management of Community assistance or national measures of similar nature;
- (c) a reliable national financial control system over the implementing agency;
- (d) procurement rules which are endorsed by the Commission as meeting requirements of Title IX of the Financial Regulation applicable to the general budget of the European Union;
- (e) commitment by the National Authorising Officer to bear the full financial responsibility and liability for the funds.

This approach shall not prejudice the right of the Commission and the Court of Auditors to check the expenditure.
