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(Acts whose publication is obligatory)

**REGULATION (EC) No 491/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 10 March 2004
establishing a programme for financial and technical assistance to third countries in the areas of
migration and asylum (AENEAS)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 179(1) and 181a thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, underlined the need for a comprehensive approach to migration addressing political, human rights and development issues in third countries and regions and called for greater coherence between the internal and external policies of the European Union. It stressed the need for more efficient management of migration flows at all their stages and the fact that partnership with third countries would be a key element for the success of such a policy, with a view to promoting co-development.
- (2) The European Council of Seville on 21 and 22 June 2002 highlighted the integration of immigration into the Union's relations with third countries and the importance of intensified cooperation with third countries for the management of migration, including the prevention and combating of illegal migration and trafficking in human beings.
- (3) In its conclusions of 18 November 2002, the Council asked the Community to consider making appropriate assistance available to third countries for implementing the clause on joint management of migratory flows and compulsory readmission in cases of illegal immigration to be included in any future cooperation, association or equivalent agreement.

- (4) Improved management of migratory flows, especially certain aspects of migration such as the emigration of highly skilled nationals and the movement of refugees between neighbouring countries, is also a matter of major concern for the development of some countries.
- (5) The Community's external cooperation and development programmes and policies contribute indirectly to dealing with the main factors causing migratory pressure. More specifically, since the Tampere European Council, the Commission has been trying to incorporate migration-related concerns into the programming of the Community's external aid in order to give direct support to third countries in their efforts to deal with the problems arising from legal, illegal or forced migration.
- (6) To underpin this programming, the budgetary authority entered specific appropriations in the general budgets of the European Union from 2001 to 2003 for the financing of preparatory actions carried out in partnership with third countries and regions in connection with issues of migration and asylum.
- (7) Taking account of those preparatory actions, and referring to the Commission Communication on integrating migration issues in the European Union's relations with third countries, it is considered necessary to endow the Community from 2004 with a multiannual programme designed to provide a specific additional response to the needs of third countries in their efforts to manage more effectively all aspects of migratory flows, and in particular to stimulate third countries' readiness to conclude readmission agreements, and to assist them in coping with the consequences of such agreements.
- (8) To ensure the consistency of the Community's external action, operations financed under this new instrument should be specific and complementary to operations financed under other Community development cooperation instruments.

⁽¹⁾ OJ C 32, 5.2.2004, p. 49.

⁽²⁾ Opinion of the European Parliament of 4 December 2003 (not yet published in the Official Journal) and decision of the Council of 19 February 2004.

- (9) In its conclusions on migration and development of 19 May 2003, the Council affirmed the need for greater coordination between these separate but interrelated policy areas. The Conclusions highlighted a number of areas of potential synergy where the European Union could focus its activities in support of both policy fields.
- (10) The issues arising from migration call for effective, flexible and in some cases prompt decision-making with a view to financing Community operations.
- (11) The implementation of this programme will benefit from the evaluation of the preparatory actions.
- (12) 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 ⁽¹⁾.
- (13) This Regulation lays down, for the entire duration of the programme, a financial framework constituting the prime reference, within the meaning of point 33 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure ⁽²⁾, for the budgetary authority during the annual budgetary procedure.
- (14) Since the objectives of the proposed action, namely to promote, within the framework of a comprehensive approach to migration, a more efficient management of migration flows in close cooperation with the third countries concerned, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or impact of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (15) The protection of the Community's financial interests and the fight against fraud and irregularities form an integral part of this Regulation. In particular, contracts concluded pursuant to this Regulation should authorise the Commission to carry out the measures provided for in Council Regulation (EC, Euratom) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities ⁽³⁾.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

OBJECTIVES AND ACTIONS

Article 1

1. The Community hereby establishes a cooperation programme (hereinafter referred to as 'the programme') which aims to give specific and complementary financial and technical aid to third countries in order to support their efforts to improve the management of migratory flows in all their dimensions.
2. The programme is particularly, but not exclusively, intended for those third countries actively engaged in preparing or implementing a readmission agreement initialled, signed or concluded with the European Community.
3. The programme shall finance appropriate actions which bring together, in a coherent and complementary way, the general principles of Community cooperation and development policy and national and regional Community cooperation and development strategies regarding the third countries concerned and which supplement the actions — in particular in the fields of management of migratory flows, return and reintegration of migrants in their country of origin, asylum, border control, refugees and displaced people — provided for in the implementation of those strategies and financed from other Community instruments in the field of cooperation and development. The actions financed on the basis of the programme shall be consistent with the Community efforts which contribute to addressing the root causes of migration.
4. The respect of democratic principles and the rule of law, as well as of human and minority rights and fundamental freedoms, constitutes an essential element for the application of this Regulation. If necessary, and as far as possible, the actions financed under this Regulation shall be associated with measures aimed at strengthening democracy, human rights and the rule of law.

Article 2

1. The programme aims to promote cooperation between the Community and third countries by contributing in the third countries concerned, and in partnership with those countries, to the following objectives:
 - (a) the development of their legislation in the field of legal immigration, in particular as regards admission rules, the rights and status of persons admitted, equal treatment of legal residents, integration and non-discrimination as well as measures to combat racism and xenophobia;
 - (b) the development of legal migration, in accordance with an analysis of the demographic, economic and social situation in the countries of origin and in the host countries and of the host countries' reception capacity, as well as the raising of public awareness of the advantages of legal migration and the consequences of illegal migration;

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

⁽²⁾ OJ C 172, 18.6.1999, p. 1. Agreement as amended by Decision 2003/429/EC of the European Parliament and of the Council (OJ L 147, 14.6.2003, p. 25).

⁽³⁾ OJ L 292, 15.11.1996, p. 2.

- (c) the development of their legislation and national practices as regards international protection, with a view to their complying with the provisions of the Geneva Convention of 1951 on the status of refugees and of the Protocol of 1967 and other relevant international instruments, to ensuring observance of the principle of 'non refoulement' and to improving the capacity of the third countries concerned which receive asylum seekers and refugees;
- (d) the establishment in the third countries concerned of an effective and preventive policy in the fight against illegal migration, including the fight against trafficking in human beings and smuggling of migrants, and the development of relevant legislation;
- (e) the readmission, in full respect of the law, and durable reintegration, into the third country concerned of persons who have illegally entered or remained on the territory of Member States or of persons who have unsuccessfully applied for asylum in the European Union or benefited from international protection there.
2. In order to achieve these objectives, the programme may in particular support the following actions:
- (a) setting-up of information campaigns, and provision of legal advice, on the consequences of illegal immigration, trafficking in human beings and smuggling of migrants, and clandestine employment in the European Union;
- (b) dissemination of information and legal advice on the possibilities of working legally in the European Union, both on a short and long-term basis, and on the procedures to be followed to this end;
- (c) development of actions aimed at maintaining links between local communities in the country of origin and their legal emigrants and facilitating the contribution of migrants to the social and economic development of communities in their country of origin, including facilitating the use of remittances for productive investments and development initiatives, as well as providing support to microcredit programmes;
- (d) facilitation of dialogue and exchange of information between the institutions of the third country and the nationals of that country who are considering emigrating;
- (e) support for capacity-building in the field of drafting, implementing and ensuring the effectiveness of national legislation and management systems as regards asylum, migration and the fight against criminal activities, including organised crime and corruption, connected with illegal immigration, and development of the training of staff working in the areas of migration and asylum;
- (f) evaluation, and possible improvement, of the institutional and administrative framework and of the capacity to implement border controls as well as improvement in the management of border controls, including by means of operational cooperation;
- (g) capacity-building in the areas of security of travel documents and visas, including their conditions of issue, identification and documentation of illegal migrants, including own nationals, and detection of false documents and visas;
- (h) introduction of systems for data collection; observation and analysis of migratory phenomena; identification of the root causes of migratory movements and the definition of measures aimed at tackling them; facilitation of the exchange of information on migratory movements, in particular on migratory flows towards the European Union;
- (i) development of regional and subregional dialogue on asylum and migration, including illegal migration;
- (j) assistance in the negotiation by the third countries concerned of their own readmission agreements with relevant countries;
- (k) support for capacity-building in the third countries concerned in the fields of reception conditions and protection capacity for asylum seekers, of readmission and the durable reintegration of returnees and of resettlement programmes;
- (l) support for targeted socioeconomic reintegration of returnees into their country of origin, including training and capacity-building aimed at facilitating their integration into the labour market.

Article 3

With a view to pursuing the objectives and actions laid down in Article 2, the programme may support, including, *inter alia*:

1. measures necessary for the identification and preparation of actions, including, *inter alia*:
 - (a) feasibility studies;
 - (b) the exchange of technical know-how and experience between Member States, third countries, European organisations and bodies and international organisations;
 - (c) general studies concerning the Community's action within the scope of this Regulation;
2. implementation of projects:
 - (a) technical assistance to help implement the actions, including from expatriate and local staff;
 - (b) training and other services;
 - (c) purchasing and/or providing any product or equipment, supplies and investment expenditure strictly necessary for the implementation of the actions, including, in exceptional circumstances and when duly justified, the purchasing or leasing of premises;
3. measures for the monitoring, auditing and evaluation of actions;
4. activities to explain the objectives and results of these actions to the general public;

5. actions, including technical assistance, to assess for the benefit of either the Community or third countries the implementation of these operations.

The necessary measures shall be taken to emphasise the Community character of the assistance provided under this Regulation.

CHAPTER II

PROCEDURES FOR THE IMPLEMENTATION OF THE PROGRAMME

Article 4

- Partners eligible for financial support under the programme may include regional and international organisations and agencies (in particular, UN agencies), as well as non-governmental organisations or other non-State actors, federal, national, provincial and local governments, their departments and agencies, institutes, associations and public and private operators, both in the European Union and in the third countries concerned, with the emphasis being placed on partnership between them.
- Operations financed by the Community pursuant to this Regulation shall be implemented by the Commission.

Article 5

Without prejudice to the institutional and political environment in which the partners referred to in Article 4 operate, the following factors shall in particular be considered when determining a body's suitability for Community funding:

- its experience in the matters referred to in Article 2(1) and especially with actions in the areas of asylum and migration;
- its commitment to defending, respecting and promoting human rights and democratic principles in a non-discriminatory manner;
- its administrative and financial management capacities;
- its technical and logistical capacity in relation to the planned action;
- the results, where relevant, of any previous actions carried out, in particular those financed by the Community, the Member States and international organisations.

CHAPTER III

PROCEDURES FOR THE IMPLEMENTATION OF OPERATIONS

Article 6

- The financial framework for the implementation of this Regulation for the period from 1 January 2004 to 31 December 2008 is set at EUR 250 million, of which EUR 120 million is for the period until 31 December 2006.

For the period following 31 December 2006, the amount shall be deemed to be confirmed if it is consistent for this phase with the financial perspectives in force for the period commencing in 2007, in light of information made available pursuant to Article 10(2) and (3).

- The annual appropriations shall be authorised by the budgetary authority within the limits of the financial perspectives.
- The Community co-financing of an action under the programme shall not exceed 80 %, without prejudice to other applicable provisions of Regulation (EC, Euratom) No 1605/2002 ⁽¹⁾ (hereinafter referred to as the Financial Regulation) and, in particular, Article 169 thereof. It shall be exclusive of any other financing by another programme financed by the general budget of the European Union.
- Community funding under this Regulation shall be awarded in accordance with the provisions of the Financial Regulation. The financing decisions and contracts arising therefrom shall be subject to financial control by the Commission and to audits by the Court of Auditors.
- The Commission shall take any necessary initiative with a view to ensuring proper coordination with other donors.

Article 7

- The Commission shall ensure overall consistency and complementarity with other relevant Community policies, instruments, actions and programmes.
- In order to strengthen consistency and complementarity between actions financed by the Community and those financed by Member States with the aim of guaranteeing optimal effectiveness of these actions, the Commission shall take all necessary coordination measures.

Article 8

- The Commission shall be responsible for the management and implementation of the programme.
- The Commission shall manage the programme in accordance with the Financial Regulation and Commission Regulation (EC, Euratom) No 2342/2002 ⁽²⁾ laying down detailed rules for the implementation of the Financial Regulation, in particular as regards procurement and grants.

⁽¹⁾ Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, 16.9.2002, p. 1).

⁽²⁾ OJ L 357, 31.12.2002, p. 1.

3. To implement the programme, the Commission shall, in accordance with the procedure referred to in Article 9(2), produce an annual work programme. In accordance with the objectives and criteria of this Regulation, the work programme shall establish the priorities for the actions to be supported in terms of potential geographic and thematic areas of intervention, the specific objectives, the anticipated results as well as the indicative amount. As far as possible, a general balance between these priorities shall be sought for the establishment of the work programme. The Commission may consult other interested parties in relation to the work programme.

4. The work programme must be consistent with and complementary to the Country Strategy Papers and the Regional Strategy Papers and the development cooperation programmes drawn up in the framework of the Community policy for cooperation and development.

5. The Commission shall adopt the list of selected projects in accordance with the procedure referred to in Article 9(2).

Article 9

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its Rules of Procedure.

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

Done at Strasbourg, 10 March 2004.

For the European Parliament
The President
P. COX

For the Council
The President
D. ROCHE

CHAPTER IV

REPORTING

Article 10

1. The Commission shall constantly monitor and regularly evaluate the implementation of the programme.
2. The Commission shall submit a preliminary interim evaluation report to the European Parliament and the Council on the implementation of the programme by 31 December 2006 at the latest, and a final report by 31 December 2010 at the latest. In addition, the Commission shall communicate to the budgetary authority, at the same time as the preliminary draft general budget of the European Union is presented, the state of implementation of the programme.
3. At the request of the Member States or the European Parliament, in particular in the context of the negotiations on the future financial perspectives, the Commission may also evaluate the results of the Community's actions and programmes under this Regulation.

CHAPTER V

FINAL PROVISIONS

Article 11

The programme established by this Regulation shall operate from 1 January 2004 to 31 December 2008.

Article 12

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