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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.4.2009  
COM(2009) 195 final

2009/0058 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**amending Regulation (EC) No 1717/2006 establishing an Instrument for Stability**

## EXPLANATORY MEMORANDUM

- (1) As part of the reform of external action financial instruments for 2007-2013, replacing more than 30 different legal instruments with seven new ones, Regulation (EC) No 1717/2006 of 15 November 2006 (the Regulation) established the Instrument for Stability (hereinafter the IfS) to enable the Community to give a consistent and integrated response to crises and impending crises, by means of a single legal instrument with simplified decision-making procedures.
- (2) The review of the implementation of the Regulation under Article 25 may include legislative proposals where the Commission has concluded, on the basis of the review, that certain amendments to the Regulation are necessary. This is the case for the IfS.
- (3) When the IfS Regulation was adopted on 15 November 2006, the Council and the Commission issued a joint statement in which they agreed that *“nothing in this Regulation shall be construed as prejudging positions taken in Case 91/05. Until such time as the Court of Justice rules on that case the Commission will not seek to take measures under Article 3(2)(i). The Council and Commission agree that in the context of the review of the Regulation establishing an instrument for stability provided for in Article 25 of that Regulation, the scope of Article 3(2)(i) will be revised as necessary, on the basis of a Commission proposal, in the light of the judgment of the Court of Justice in Case C-91/05 (Commission v. Council)”*.<sup>1</sup>
- (4) On 20 May 2008, the European Court of Justice annulled Council Decision 2004/833/CFSP of 2 December 2004 implementing Joint Action 2002/589/CFSP with a view to a EU contribution to ECOWAS in the framework of the Moratorium on Small Arms and Light Weapons (hereinafter ‘the ECOWAS case’).<sup>2</sup> The Court found that measures against the proliferation of small arms and light weapons may be implemented by the Community under its development policy.
- (5) On the basis of the joint statement made by Council and Commission, it is therefore necessary to propose a revision of Article 3(2)(i) in order to bring it in line with the case law of the Court. For the same reason, Article 4(1)(a) on action in support of the fight against the illicit trafficking needs to be revised in order to refer explicitly to “small arms and light weapons”.
- (6) Article 17 of the Regulation excludes partners from developed countries outside the EU and the EEA from participating in actions in support of pre- and post-crisis capacity building (crisis preparedness) under Article 4(3) of the Regulation. Thus partners who are eligible to participate in crisis response measures under Article 3 of the Regulation are precluded from participating in crisis preparedness under Article 17. This is inconsistent and poses a serious setback to the attainment of objectives of Article 4(3). It is therefore proposed to open up participation in the award of procurement or grant contracts under Article 4(3) to participation on a global basis, as is already the case for measures under Article 3 according to Article 17(4), so as to align the provisions on participation and rules of origin for assistance to crisis response with those concerning crisis preparedness.

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<sup>1</sup> Council document 14010/06 ADD 1, 27.10.2006.

<sup>2</sup> ECJ, Case C-91/05 (ECOWAS).

- (7) Article 24 of the Regulation specifies that no more than 7% of the overall reference amount shall be allocated to measures falling under Article 4(1). However, the share of the financial envelope intended for measures under Article 4(1) has proven to be inadequate and needs to be increased, as the areas covered by Article 4(1) are numerous and, even with multi-purpose programmes, only a few can be handled effectively with the scarce resources available. Developing effective actions in the area of critical infrastructure, public health risks and global responses to trans-regional threats requires more substantial measures to allow real impact, visibility and credibility. In addition, developing trans-regional actions which are complementary to national and regional envelopes requires an appropriate level of funding to reach a critical mass. The budgetary allocations so far (EUR 9 million in 2007, EUR 10 million in 2008, and EUR 13 million in 2009) and the limit of 7% in Article 24 of the Regulation do not allow these objectives to be met. It is therefore proposed to increase the maximum share for measures under Article 4(1) from 7% to 10%.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**amending Regulation (EC) No 1717/2006 establishing an Instrument for Stability**

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,

Acting in accordance with the procedure referred to in Article 251 of the Treaty,<sup>3</sup>

Whereas:

- (1) Regulation (EC) No 1717/2006 of the European Parliament and of the Council of 15 November 2006 establishing an Instrument for Stability<sup>4</sup> was designed with the objective of enabling the Community to give a consistent and integrated response to crisis and impending crisis, using a single legal instrument with simplified decision-making procedures.
- (2) The review under Article 25 of Regulation (EC) No 1717/2006 concludes that it is appropriate to propose certain amendments to the Regulation.
- (3) Regulation (EC) No 1717/2006 needs to be brought into line with the judgment of the Court of Justice of the European Communities (Grand Chamber) of 20 May 2008 (Case C-91/05) establishing that measures to combat the proliferation, illicit use of and access to small arms and light weapons may be implemented by the Community under its development policy, and thus under Regulation (EC) No 1717/2006.
- (4) The pursuit of the objectives set out in Article 4(3) and consistency should be improved by allowing participation in the award of procurement or grant contracts under Article 4(3) on a global basis, as is already the case for measures under Article 3, so as to bring the provisions on participation and rules of origin for assistance to crisis response into line with those on crisis preparedness.
- (5) The share of the financial envelope provided for in Article 24 for measures under Article 4(1) has proven to be inadequate and should be increased. The areas covered are numerous, and even with multi-purpose programmes only a few can be handled

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<sup>3</sup> Opinion of the European Parliament delivered on XXXX 2009 (not yet published in the Official Journal) and Council Decision of XXXX 2009.

<sup>4</sup> OJ L 327, 24.11.2006, p. 1.

effectively with the scarce resources available. Developing effective actions in the area of critical infrastructure, public health risks, and global responses to trans-regional threats requires more substantial measures to allow real impact, visibility and credibility. In addition, developing trans-regional actions which are complementary to national and regional envelopes requires an appropriate level of funding to reach a critical mass. The maximum percentage allocated under the overall financial envelope for measures falling under Article 4(1) should be raised from 7% to 10% in order to allow the objectives set out in Article 4(1) to be further met.

- (6) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity 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

HAVE ADOPTED THIS REGULATION:

#### *Article 1*

Regulation (EC) No 1717/2006 is amended as follows:

- (1) In Article 3(2), point (i) is replaced by the following:

“(i) support for measures to combat, within the framework of Community cooperation policies and their objectives, the illicit use of and access to small arms and light weapons; such support could also include survey activities, victim assistance, raising public awareness and the development of legal and administrative expertise and good practice.”

- (2) In Article 4(1), point (a) is replaced by the following:

“(a) strengthening the capacity of law enforcement and judicial and civil authorities involved in the fight against terrorism and organised crime, including illicit trafficking of people, drugs, firearms, small arms and light weapons, explosive materials and in the effective control of illegal trade and transit.”

- (3) In Article 17, paragraphs 4 and 5 are replaced by the following:

“4. In the case of Exceptional Assistance Measures and Interim Response Programmes referred to in Article 6, and in the case of measures adopted in pursuit of the objectives referred to in Article 4(3), participation in the award of procurement or grant contracts shall be open on a global basis.

5. In the case of measures adopted in pursuit of the objectives referred to in Article 4(1) and (2), participation in the award of procurement or grant contracts shall be open, and rules of origin shall extend, to any natural or legal person of a developing country or of a country in transition, as defined by the OECD, and to natural or legal persons of any other country eligible under the relevant strategy.”

- (4) Article 24 is replaced by the following:

“*Article 24*

## **Financial envelope**

The financial envelope for implementation of this Regulation over the period 2007 to 2013 is EUR 2 062 000 000. Annual appropriations shall be authorised by the budgetary authority within the limits of the financial framework.

In the period 2007 to 2013:

- (a) no more than 10 percentage points of the financial envelope shall be allocated to measures falling under Article 4(1);
- (b) no more than 15 percentage points of the financial envelope shall be allocated to measures falling under Article 4(2);
- (c) no more than 5 percentage points of the financial envelope shall be allocated to measures falling under Article 4(3).”

### *Article 2*

#### *Entry into force*

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

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

Done at Brussels, [...]

*For the European Parliament*  
*The President*  
[...]

*For the Council*  
*The President*  
[...]