COMMON POSITION (EC) No 23/2000

adopted by the Council on 28 February 2000

with a view to adopting Regulation (EC) No .../2000 of the European Parliament and of the Council of ... on development cooperation with South Africa

(2000/C 128/03)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 179 thereof,

Having regard to the proposal from the Commission [1],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [2],

Whereas:

(1) Since the elections of April 1994 and the establishment of a democratic Government, the Community has turned towards a strategy of support for the policies and reforms undertaken by the South African authorities.

(2) The Council adopted Regulation (EC) No 2259/96 of 22 November 1996 on development cooperation with South Africa [3]; that Regulation expired on 31 December 1999.

(3) The Agreement on trade, development and cooperation between the European Community and the Republic of South Africa stipulates in Chapter VII thereof that financial assistance in the form of grants are to be covered by a special financial facility established under the Community budget, that the Community declares its willingness to maintain its financial cooperation with South Africa at a substantial level, and that it will take the necessary decisions in this respect on the basis of a proposal by the Commission.

(4) The abovementioned Agreement contains in Chapter V thereof provisions on aims, priorities, methods and implementation of development cooperation with South Africa.

(5) In the light of the implementation of Council Regulation (EC) No 2259/96 and of Special Report No 7/98 of the Court of Auditors in respect of the European Community development aid programme regarding South Africa (1986 to 1996) development cooperation with South Africa should be continued subject to adaptations, in particular as regards simplification of procedures, greater focus on sectoral priorities and decentralised decision-making.

(6) Assistance provided under this Regulation should be implemented in coherence with actions of other donors, including multilateral institutions.

(7) 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].

(8) This Regulation lays down, for the entire duration of the programme, a financial framework constituting the principal point of reference, within the meaning of point 33 of the Interinstitutional Agreement between the European Parliament, the Council and the Commission of 6 May 1999 on budgetary discipline and improvement of the budgetary procedure [5] for the budgetary authority during the annual budgetary procedure.

(9) Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests [6] establishes a common legal framework for all the fields of the Communities' own resources and expenditure.

(10) 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 interest against fraud and other irregularities [7] applies to all areas of the Communities' activity without prejudice to the provisions of the Community rules specific to the different policy areas,

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(1) OJ C ...

(2) Opinion of the European Parliament of 5 May 1999 (OJ C 279, 1.10.1999, p. 192), Council common position of 28 February 2000 and decision of the European Parliament of ... (not yet published in the Official Journal).

(3) OJ L 306, 28.11.1996, p. 5.

(4) OJ L 184, 17.7.1999, p. 23.

(5) OJ C 172, 18.6.1999, p. 1.

(6) OJ L 312, 23.12.1995, p. 1.

(7) OJ L 292, 15.11.1996, p. 2.

HAVE ADOPTED THIS REGULATION:

Article 1

Aims

The Community shall implement financial and technical cooperation with South Africa to support the policies and reforms carried out by the South African authorities in a context of policy dialogue and partnership.

The aim of the Community cooperation programme, entitled the 'European programme for reconstruction and development in South Africa' (EPRD), shall be to contribute to South Africa's harmonious and sustainable economic and social development, through programmes and measures designed to reduce poverty and encourage economic growth which benefits the poor, to its continued integration into the world economy, and to consolidate foundations laid for a democratic society and a State governed by the rule of law in which human rights and fundamental freedoms are fully respected.

This will be achieved through support for international targets and policies for sustainable development based on United Nations' conventions and resolutions, thereby contributing to the target of reducing by at least one half the proportion of people living in extreme poverty by 2015.

Article 2

Areas of cooperation

1. Programmes shall focus on the fight against poverty, take into account the needs of the previously disadvantaged communities and integrate gender and environmental dimensions of development. In all these programmes special attention shall be paid to the strengthening of institutional capacities.

2. Development cooperation to be carried out under this Regulation will focus mainly on:

(a) support to policies, instruments and programmes aiming at the continued integration of the South African economy into the world economy and trade, for employment creation, development of the private sector, regional cooperation and integration. In this latter context, special attention will be given to providing support to the adjustment efforts occasioned in the region by the establishment of the free-trade area under the Trade, Development and Cooperation Agreement, especially in the Southern African Customs Union. Promotion of mutual general interest cooperation between the European Union and South African businesses may also be considered;

(b) improvement of living conditions and delivery of basic social services;

(c) support to democratisation, the protection of human rights, sound public management, the strengthening of local governments and the involvement of civil society in the development process.

3. Dialogue and partnership between public authorities and non-governmental development partners and actors will be promoted.

Article 3

Eligibility of cooperation partners

Cooperation partners eligible for financial assistance under this Regulation shall be national, provincial and local authorities and public bodies, non-governmental organisations and community-based organisations, regional and international organisations, institutions and public or private operators. Any other body may be eligible if so designated by both parties.

Article 4

Means, expenses, information on the programme and coordination

1. The means that may be deployed under the cooperation operations referred to in Article 2 shall include in particular studies, technical assistance, training or other services, supplies and works, and also evaluation and monitoring audits and missions.

2. Community financing in local or foreign currency, depending on the needs and nature of the operation, may cover:

(a) government budget expenditures to support reforms and policy implementation in the priority sectors identified through a policy dialogue, using the most appropriate instruments including the form of direct targeted budget support in specific sectors where appropriate conditions (e.g. accountability for, and transparency of, the government budget, sound procurement procedures) are met;

(b) investment and equipment;

(c) in duly justified cases, and in particular where a programme is implemented by a non-government partner, taking into account the fact that the programme has to aim as much as possible at long-term sustainability, recurrent expenditure (including administrative, maintenance and operating costs).

Part of the financing may be channelled towards targeted final beneficiaries (e.g. emerging entrepreneurs) through specialised financial institutions, including the European Investment Bank (EIB), in the form of risk capital or other instruments. The resources made available under this Regulation shall not be used in a manner that will permit unfair competition.

3. A financial contribution from the partners referred to in Article 3 shall in principle be required for each cooperation operation. That contribution will be requested in accordance with the possibilities of the partners concerned and depending on the nature of each operation. It shall be sought in particular in cases where a project is designed as a start-up for an open-ended activity, in order to ensure the sustainability of such projects after Community funding has ceased. It may be in kind. In specific cases where the partner is either a non-governmental organisation or a community-based organisation, the contribution may not be required.

4. The Commission may take any appropriate step to ensure that the Community character of aid provided under this Regulation is made known.

5. Opportunities may be sought for potential co-financing and parallel financing with other donors, particularly the Member States.

6. In order to achieve the objectives of coherence and complementarity referred to in the Treaty and with the aim of guaranteeing optimal effectiveness of the aid, the Commission will take all necessary coordination measures, notably:

(a) the establishment of a system for the systematic exchange of information on actions financed or planned to be financed by the Community, the Member States and the EIB;

(b) on-the-spot coordination of these actions by means of regular meetings and exchange of information between the representatives of the Commission and the Member States in the beneficiary country.

7. The Commission, in liaison with the Member States, will seek to take any steps necessary to ensure adequate coordination with other donors concerned and to encourage an increasingly active role of the beneficiary country in the aid-coordination process.

Article 5

Form of financial support

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

Article 6

Programming

1. Triennial indicative programming shall be carried out in the context of close contacts with the South African Government and taking account of the results of the coordination referred to in Article 4(6) an (7). The indicative programming process will fully respect the principle of recipient-led programming.

2. In order to prepare for each programming exercise, in the context of increased coordination with the Member States, including on-the-spot, the Commission shall draw up a country strategy paper in dialogue with the South African Government. This country strategy paper shall take into account the results of the most recent overall evaluation of operations financed under Regulation (EC) No 2259/96 and under this Regulation and of other regular evaluations of operations. It will be linked to a problem-oriented analysis, and integrate cross-cutting issues such as poverty reduction, gender equality, environment and sustainability. A draft of the triennial indicative programme will be annexed to the country strategy paper. A limited number of sectors of cooperation based on the areas identified in Article 2 of this Regulation will be selected. For these sectors, modalities and accompanying measures will be set out. As far as possible performance indicators will be developed in order to facilitate the implementation of the objectives and its evaluation of impact.

The country strategy paper and the draft triennial indicative programme will be examined, by the committee referred to in Article 8(1), hereafter referred to as the 'committee'.

The committee shall give its opinion in accordance with the procedure in Article 8(2).

3. The triennial indicative programme will be negotiated and signed by the Commission and the South African Government. The final result of the negotiations will be sent to the committee for information. If requested by one or more committee members this document will be discussed by the committee.

4. The committee shall review once a year the functioning, results and continued relevance of the country strategy paper and the triennial indicative programme. If evaluations or other relevant developments so indicate, the committee may invite the Commission to negotiate with the South African Government amendments to the triennial indicative programme.

5. The committee shall once a year, on the basis of a presentation by the Commission, discuss the general guidelines for the operations to be carried out in the year ahead.

Article 7

Procedures

1. The Commission shall be responsible for appraising, taking decisions on and managing operations conducted under this Regulation, in accordance with the budgetary and other procedures in force, notably those laid down in the Financial Regulation applicable to the general budget of the European Union.

2. In the specific case of contribution by the EPRD to regional programmes in the Southern African Development Community area financed from the European Development Fund, this contribution may be utilised following Lomé Convention modalities, provided that the provisions of the Financial Regulation applicable to the general budget of the European Union are respected.

3. In order to ensure transparency and achievement of the objectives referred to in Article 4(6), the Commission shall forward project information sheets to the Member States and their local representatives for all projects as soon as the decision to appraise them has been taken. The Commission shall subsequently update the project information sheets and forward them to the Member States.

4. All financing agreements or contracts concluded under this Regulation shall provide for on-the-spot checks by the Commission and the Court of Auditors in accordance with the usual arrangements established by the Commission pursuant to the rules in force, in particular those laid down in the Financial Regulations applicable to the general budget of the European Union.

The measures taken by the Commission in accordance with the procedure set out in Article 8 shall provide for adequate protection of the financial interests of the Community in conformity with Regulation (EC, Euratom) No 2988/95.

5. Where operations give rise to financing agreements between the Community and South Africa, such agreements shall stipulate that taxes, duties and charges shall not be borne by the Community.

6. Participation in invitations to tender and contracts shall be open on equal terms to all natural and legal persons in the Member States, South Africa and the other ACP States. Participation may be extended to include other countries in duly substantiated cases and in order to ensure the best cost-effectiveness ratio.

7. Supplies shall originate in the Member States, South Africa or the other ACP States. In duly substantiated exceptional cases, they may originate in other countries.

8. Except as otherwise indicated in this Regulation, contracts shall be signed by the South African Government. In addition, if a contract is not covered by a financing agreement, the contract shall be concluded by the Commission.

Article 8

Committee

1. The Commission shall be assisted as appropriate by the geographically-determined committee competent for development.

2. Where reference is made to this paragraph, Articles 4 and 7 of Council Decision 1999/468/EC shall apply, having regard to Article 8 thereof.

The period referred to in Article 4(3) of Decision 1999/468/EC shall be set at one month.

3. The committee shall adopt its Rules of Procedure.

4. In the case of programmes approved by the committee and financed through tranches relating to more than one budget year, the Commission will take yearly subsequent financing decisions, not exceeding the determined maximum expenditure for the approved programme and in the limit of financial resources made available by the budgetary authority, without further communication to the committee.

5. The procedure defined in this Article shall apply to financing decisions which the Commission intends to take concerning projects and programmes of a value of over EUR 3 million. It shall also apply to any adjustment of such an operation involving an increase of more than 20 % in the amount initially agreed, and proposals arising for substantive amendments in the execution of a project for which a commitment has already been made.

6. The Commission shall inform the committee succinctly of financing decisions it intends to take concerning projects and programmes of a value up to EUR 3 million. Such information shall be given at least one week before the decision is taken.

Article 9

Monitoring and evaluation

1. After each financial year the Commission shall submit an annual report on implementation of this Regulation to the European Parliament and the Council. The report shall set out the budget turnout with regard to commitments and payments and the projects and programmes financed in the course of the year. It shall contain statistics on contracts awarded for implementing projects and programmes.

In addition the Commission shall monitor progress against each operation's objectives in terms of outputs and outcomes, using objectively verifiable indicators.

2. The Commission shall regularly evaluate operations financed by the Community to determine whether those operations' objectives have been reached and to establish guidelines for improving the effectiveness of future operations. The Commission shall submit to the committee referred to in Article 8(1) a summary of the evaluations made. The evaluation reports shall be available to any Member State, to the European Parliament and to other interested parties.

3. The Commission shall submit to the European Parliament and the Council a mid-term review by 31 October 2003 at the latest and an overall evaluation of the programme prior to the expiry of this Regulation.

The mid-term review will bear on results of the first triennial programme (2000 to 2002) implemented under this Regulation. If necessary, the Commission will propose amendments to this Regulation, taking into account the implications for South Africa of the new ACP/EU arrangements.

The overall evaluation will make suggestions for the continuation of development cooperation with South Africa.

Article 10

Financial reference amount

1. The financial framework for the implementation of this Regulation for the period from 2000 to 2006 is hereby set at EUR 787,5 million.

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

2. Each year the budgetary description will fix a ceiling within the annual appropriation for technical assistance contract to be concluded by the Commission for the carrying out of joint operations for the mutual benefit of the Community and of the beneficiary.

Article 11

Duration

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

It shall expire on 31 December 2006.

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

Done at ...

For the European Parliament	*For the Council*
The President	*The President*

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 15 March 1999, the Commission submitted to the Council a proposal for a regulation, based on Article 179 of the EC Treaty (ex Article 130w), laying down the objectives and procedures for activities under the current budget heading B7-3 2 0 0 'European programme for reconstruction and development (EPRD)'.

2. The European Parliament delivered its opinion at first reading on 5 May 1999.

3. On 14 July 1999, the Commission transmitted a modified proposal to the Council (COM(1999) 335 final).

4. In the light of the European Parliament's opinion and the Commission's position on it, the Council Working Group has agreed upon a draft common position taking into account certain changes pursuant to the entry into force of the Amsterdam Treaty.

5. On 28 February 2000 the Council adopted its common position in accordance with Article 251 of the EC Treaty.

II. PURPOSE OF THE PROPOSAL

The objective of this proposal is to ensure the continuation of financing activities as provided for in Council Regulation (EC) No 2259/96 after its expiry on 31 December 1999. The budget line of the European Programme for reconstruction and development in South Africa is intended to finance programmes aimed at contributing towards sustainable development, consolidating the foundations for a democratic society and the rule of law as well as improving the situation of the most disadvantaged groups in South African society. It further defines aims and sectors of future intervention in the light of the Trade, Development and Cooperation Agreement (TDCA) with the European Union, signed in July 1999.

III. ANALYSIS OF THE COMMON POSITION

1. *General remarks*

1.1. Although the Council followed largely the approach and objectives of the Commission and supported several amendments proposed by the Parliament, it considered it necessary to make a number of changes to both the substance and the wording of some articles in the proposed regulation.

When drawing up the common position, the Council tried to respect the following principles and guidelines:

— render the wording of the Regulation more precise and thus improve the legal clarity of the text (according to the interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation)[1],

[1] OJ C 73, 17.3.1999, p. 1.

— remove quotes from legal acts or policy documents which were considered to be redundant and to unnecessarily lengthen the text (in particular concerning the Financial Regulation),

— clarify the scope of certain provisions, in particular those relating to programming (Article 6), and avoid formulations which repeated ideas expressed elsewhere in the Regulation,

— modify procedural or administrative proposals that were not in accordance with standard formulations and practices (either of interinstitutional agreements or of similar regulations);

1.2. In its common position the Council has approved the essence and wording of the Commission's proposal with the exceptions referred to under point 2.2 (specific comments). In Article 8 paragraphs 4 to 6 (Comitology procedure) of the draft common position, the Council thought desirable, for the objective of better coherence, to restructure and reformulate some of the paragraphs of the Commission's proposal.

2. ***Specific comments***

2.1. **Legal basis**

The legal basis put forward by the Commission in its proposal, namely Article 179 of the EC Treaty (ex Article 130w), is considered by the Council in its common position as being appropriate in view of the aim and contents of the proposal.

2.2. **Amendments made by the Council to the Commission proposal**

2.2.1. *Comitology (Article 8)*

The Council has decided on the management committee procedure as set out in the Council decision of 28 June 1999 laying down the procedure for the exercise of implementing powers conferred on the Commission. The corresponding recital on Comitology (No 10) has been deleted.

The Council considers that one committee procedure (instead of the two different foreseen in Article 8 paragraphs 2 and 3 of the Commission's proposal) will ensure maximum coordination with Member States activities and thus contribute to necessary complementarity and contribute to a simplified structure. To this end, the Council modified the threshold for financing decisions to be submitted to the Committee from EUR 5 million to EUR 3 million. The Council's objective is to emphasis more discussions on the strategy and programming aspects than on individual programmes and projects.

2.2.2. *Financial envelope (Article 10)*

Pursuant to the Declaration by the European Parliament, the Council and the Commission of 6 March 1995[1] on the incorporation of financial provisions into legislative acts, these acts shall contain a provision in which the legislative authority shall lay down the financial framework for the multiannual programme adopted under the codecision procedure. As a consequence of the seven-year programme, the financial reference amount has been fixed at EUR 787,5 million, 10 % less than the Commission's proposal to take account of the July 1999 Decision of the Budget Council on Category 4 expenditures. Accordingly, a corresponding recital (9) has been inserted (replacing the previous recital 9).

[1] OJ C 102, 4.4.1996, p. 4.

2.3. **European Parliament amendments**

2.3.1. *Parliament amendments adopted by the Council*

From the six amendments proposed by the European Parliament, the Council has been able to accept four either completely (Amendment 2 (first part), 3, 4 (first part)), partly or in substance (Amendment 2 (second part) and 6).

2.3.2. *Parliament amendments not adopted by the Council*

— The Council, together with the Commission, could not accept Amendment 1 because it was considered to change priorities and the balance of activities.

— The second part of Amendment 4 was not retained (Article 4(6)(b)) because the Council and the Commission were of the opinion that coordination on-the-spot did not pose a problem so far.

— Amendment 5 (Article 8(6a)(new)) could not be followed for reasons that publishing motivations and opinions could be detrimental to parties concerned and might put at risk other objectives.

IV. **CONCLUSIONS**

The Council considers that its common position constitutes a balanced text to ensure the continuation, after its expiry on 31 December 1999, of activities financed under Council Regulation (EC) No 2259/96 of November 1996 on development cooperation with South Africa. The programmes financed by the EPRD follow the priorities defined in the framework Agreement on trade, development and cooperation between the EU and South Africa.