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COUNCIL REGULATION (EC) No 2500/2001

of 17 December 2001

concerning pre-accession financial assistance for Turkey and amending Regulations (EEC) No 3906/89, (EC) No 1267/1999, (EC) No 1268/1999 and (EC) No 555/2000

(OJ L 342, 27.12.2001, p. 1)

Amended by:

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► <u>M1</u> Council Regulation (EC) No 769/2004 of 21 April 2004	L 123	1	27.4.2004
► <u>M2</u> Council Regulation (EC) No 850/2005 of 30 May 2005	L 141	1	4.6.2005
► <u>M3</u> Council Regulation (EC) No 2112/2005 of 21 November 2005	L 344	23	27.12.2005

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COUNCIL REGULATION (EC) No 2500/2001

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concerning pre-accession financial assistance for Turkey and amending Regulations (EEC) No 3906/89, (EC) No 1267/1999, (EC) No 1268/1999 and (EC) No 555/2000

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 ⁽¹⁾,

Having regard to the Opinion of the European Parliament ⁽²⁾,

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 are to concentrate in the light of the political and economic criteria and the obligations of a Member State.
- (6) For Turkey, the legal basis for the establishment of the Accession Partnership and the single framework for coordinating 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 ⁽³⁾.
- (7) The principles, priorities, intermediate objectives and conditions for the Accession Partnership with Turkey are contained in Decision 2001/235/EC ⁽⁴⁾. As is the case for the other candidate countries, assistance for Turkey from the European Union is to be focused on the priorities arising from the Accession Partnership.
- (8) It is appropriate that Community assistance be applied mainly through institution-building and investments to promote compliance with the Community acquis.
- (9) The Community should undertake specific actions to promote the development of civil society in Turkey.
- (10) Cross-border cooperation, particularly in the context of the borders between Turkey and the European Union, between

⁽¹⁾ OJ C 240 E, 28.8.2001, p. 115.

⁽²⁾ Opinion delivered on 25 October 2001 (not yet published in the Official Journal).

⁽³⁾ OJ L 58, 28.2.2001, p. 1.

⁽⁴⁾ OJ L 85, 24.3.2001, p. 13.

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Turkey and other candidate countries and between Turkey and other countries in the region, is also to be the subject of specific actions.

- (11) The Commission should ensure that the pre-accession assistance is coordinated with the Member States' bilateral assistance and with funding from the European Investment Bank (EIB), other financial instruments for cross-border cooperation (PHARE, MEDA, TACIS, CARDS, Interreg) and other institutional financial institutions.
- (12) The Community should co-finance Turkish participation in Community programmes and agencies.
- (13) Community assistance should be subject to compliance with the undertakings contained in the EC-Turkey Agreements and the conditions laid down in Regulation (EC) No 390/2001, Decision 2001/235/EC and this Regulation.
- (14) The Commission should implement the assistance in accordance with the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities ⁽¹⁾.
- (15) 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 ⁽²⁾.
- (16) Participation in tenders should be open, as well as to natural and legal persons from the Member States and Turkey, 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 ⁽³⁾ and from the assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia (CARDS) ⁽⁴⁾. Such participation should also be open, where specific types of expertise are required, to natural and legal persons from the countries of eastern Europe and central Asia under the provision of assistance to the partner States in eastern Europe and central Asia ⁽⁵⁾. For reasons of symmetry, similar provisions should be introduced in the assistance programmes for the other candidate countries.
- (17) Management of pre-accession assistance should gradually be decentralised to Turkey, taking account of its management and financial control capacities, provided that *ex post* control of assistance is carried out and the Turkish authorities undertake to carry out the same controls and apply the same guarantees as those laid down in the relevant Community rules.
- (18) Annual reports on the implementation of the assistance programme should be established and an evaluation report submitted.
- (19) 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.

⁽¹⁾ OJ L 356, 31.12.1977, p. 1. Regulation as last amended by Regulation (EC) No 762/2001 (OJ L 111, 20.4.2001, p. 1).

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

⁽³⁾ Regulation (EC) No 1488/96 (OJ L 189, 30.7.1996, p. 1). Regulation as last amended by Regulation (EC) No 2698/2000 (OJ L 311, 12.12.2000, p. 1).

⁽⁴⁾ Regulation (EC) No 2666/2000 (OJ L 306, 7.12.2000, p. 1).

⁽⁵⁾ Regulation (EC, Euratom) No 99/2000 (OJ L 12, 18.1.2000, p. 1).

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- (20) 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 10(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

The beneficiaries of this assistance may include not only the Turkish State but also provincial and local authorities, business support organisations and agencies, cooperatives and civil society, in particular organisations representing the social partners, associations, foundations, non-profit-making organisations and non-governmental organisations.

Article 4

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 Commission shall adopt detailed provisions on information and publicity so as to ensure that Community funding for measures financed by this Regulation enjoys a high profile.

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

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

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

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7. The Commission, in cooperation with the Member States, shall ensure sound coordination with the other providers of funds concerned, in particular the EIB.

Article 5

Financing of the programmes and projects shall be subject to compliance with the commitments contained in the EC-Turkey Association Agreement, Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union ⁽¹⁾ and all other related agreements and decisions, and the conditions laid down in Article 4 of Regulation (EC) No 390/2001, in the Accession Partnership with Turkey and in this Regulation.

Article 6

1. The Commission shall implement the Community assistance in accordance with the rules of transparency and the Financial Regulation, 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 prompt viability;
- (b) cultural, social and gender 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.

▼M2*Article 6a*

The Commission may, within the limits established in Article 54 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽²⁾, decide to entrust tasks of public authority, and in particular budget implementation tasks to the bodies listed in Article 54(2) of that Regulation. The bodies defined in Article 54(2)(c) of that Regulation may be entrusted with tasks of public authority if they are of recognised international standing, comply with internationally recognised systems of management and control, and are supervised by a public authority.

▼B*Article 7*

1. Project selection, tendering and contracting by Turkey shall 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 shall 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;

⁽¹⁾ OJ L 35, 13.2.1996, p. 1. Decision as amended by Decision No 2/1999 of the EC-Turkey Association Council (OJ L 72, 18.3.1999, p. 36).

⁽²⁾ OJ L 248, 16.9.2002, p. 1.

▼B

- (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 8

1. Assistance of more than EUR 2 000 000 shall be made available through financing decisions taken by the Commission in accordance with the procedure referred to in Article 10(2). For that purpose, the Commission shall submit to the Committee referred to in Article 10, a financing proposal describing the programmes and/or projects to be implemented.

The Commission shall inform the Committee referred to in Article 10, 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 10, 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.

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

5. Article 15(3) of Commission Regulation (EC) No 2222/2000 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⁾ shall apply, 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.

▼M1

7. Participation in invitations to tender and contracts shall be open on equal terms to all natural and legal persons from the Member States coming within the scope of the Treaties, from candidate countries for accession to the European Union and countries benefiting from assistance in accordance with Council Regulation (EC) No 1488/96 of 23 July 1996 on financial and technical measures to accompany (MEDA) the reform of economic and social structures in the framework of the Euro-Mediterranean partnership⁽³⁾ and in accordance with Council Regulation (EC) No 2666/2000 of 5 December 2000 on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia⁽⁴⁾. The contracting authority may, in duly substantiated

⁽¹⁾ OJ L 292, 15.11.1996, p. 2.

⁽²⁾ OJ L 253, 7.10.2000, p. 5.

⁽³⁾ OJ L 189, 30.7.1996, p. 1. Regulation as last amended by Regulation (EC) No 2698/2000 (OJ L 311, 12.12.2000, p. 1).

⁽⁴⁾ OJ L 306, 7.12.2000, p. 1. Regulation as amended by Regulation (EC) No 2415/2001 (OJ L 327, 13.12.2001, p. 3).

▼ M1

cases and on a case-by-case basis, authorise the participation of natural and legal persons from third countries in invitations to tender and contracts. ► **M3** Eligibility for participation in tendering procedures under this Regulation shall be further determined in accordance with the rules of eligibility, and the derogations therefrom, set out in Council Regulation (EC) No 2112/2005 of 21 November 2005 on access to Community external assistance ⁽¹⁾. ◀

Supplies shall, within the scope of the Treaties, originate in the Member States, in candidate countries for accession to the European Union or in countries benefiting from assistance pursuant to Regulation (EC) No 1488/96 and pursuant to Regulation (EC) No 2666/2000. In duly substantiated cases and on a case-by-case basis, the contracting authority may give derogation from this requirement. ► **M3** Participation in contractual procedures implemented through an international organisation or co-financed with a third country is further defined in Regulation (EC) No 2112/2005. ◀

▼ M3

8. The origin of supplies and materials purchased under this Regulation shall be further defined in accordance with the rules of origin, and the derogations therefrom, set out in Regulation (EC) No 2112/2005.

▼ B*Article 9*

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

Article 10

1. The Commission shall be assisted by the Committee provided for in Article 9(1) of Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to certain countries of central and eastern Europe ⁽²⁾.

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

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.

Article 11

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 and the programming for the following financial year, as well as information on the results of monitoring and evaluation, accompanied if necessary by proposals for changes in the management of the assistance, to ensure maximum efficiency. This information could be included in the report to which reference is made in Article 10 of Regulation (EEC) No 3906/89. The report shall be submitted not later than 30 September of the following year.

⁽¹⁾ OJ L 344, 27.12.2005, p. 23.

⁽²⁾ OJ L 375, 23.12.1989, p. 11. Regulation as last amended by Regulation (EC) No 2666/2000.

▼B*Article 12*

1. Regulation (EC) No 3906/89 is hereby amended as follows:
 - the words ‘and Turkey, Cyprus and Malta’ shall be added at the end of Article 7(1).
2. 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⁾ is hereby amended as follows:
 - the words ‘and other candidate countries for accession to the European Union’ shall be added at the end of Article 7(9);
 - the words ‘or any other candidate country for accession to the European Union’ shall be added at the end of Article 7(10).
3. The following paragraph shall be added to Article 7 of Council Regulation (EC) No 1267/1999 of 21 June 1999 establishing an instrument for structural policies for pre-accession ⁽²⁾:

‘8. Natural and legal persons from Cyprus, Malta and Turkey may 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.’
4. The following paragraph shall be added to Article 3 of Council Regulation (EC) No 1268/1999 of 21 June 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 may 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 shall 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.

▼ C1

ANNEX

**MINIMUM CRITERIA AND CONDITIONS FOR DECENTRALISING
MANAGEMENT TO IMPLEMENTING AGENCIES IN TURKEY
(ARTICLE 7)**

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. Such personnel 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 Communities;
- (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.