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COMMISSION DECISION

of 07/02/2006

conferring management of aid provided under PHARE and CARDS to an Implementing Agency in Croatia

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to certain countries of Central and Eastern Europe¹, as last amended by Regulation (EC) No 769/2004²,

Having regard to 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 Macedonia³,

Having regard to Council Regulation (EC, Euratom) No 1605 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (hereafter: the Financial Regulation)⁴, and in particular Articles 53 and 164 thereof,

Having regard to Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (hereafter: the Implementing Rules)⁵ and in particular Article 35 thereof,

Having regard to Council Regulation (EC) No 1266/1999 of 21 June 1999 on co-ordinating aid to the applicant countries in the framework of the pre-accession strategy and amending Regulation (EEC) No 3906/89⁶, and in particular Article 12 thereof,

¹ OJ L 375 of 23.12.1989, p. 11

² OJ L123 of 27.04.2004, p. 1-3

³ OJ L306 of 07.12.2000, p. 1

⁴ OJ L 248/1 of 16.9.2002

⁵ OJ L 357 of 31.12.2002 as amended by Commission Regulation (EC, Euratom) No 1261/2005 of 20 July 2005, OJ L 201, 2.8.2005 p. 3

⁶ OJ L161 of 26.06.1999, p. 68

Whereas:

- (1) Council Regulation (EEC) No 3906/89 lays down the rules and conditions for the granting of economic aid to certain countries of Central and Eastern Europe,
- (2) Council Regulation (EC) No 2666/2000 lays down the rules and conditions on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia to support participation in the stabilisation and association process.
- (3) The Financial Regulation states that the Commission may decide to entrust management of certain actions to the authorities of beneficiary third countries.
- (4) The National Authorising Officer of Croatia has submitted to the European Commission on 25 May 2005 a request to decentralise project selection, tendering, contracting and payment for the management of PHARE pre-accession financial assistance for Croatia under the Decentralised Implementation System (DIS) by the Central Financing and Contracting Unit of Croatia (CFCU), subject to continued ex-ante approval by the European Commission.
- (5) The Croatian authorities have since 2004 repeatedly requested to further decentralise project selection, tendering, contracting and payment for the management of CARDS financial assistance for Croatia under the Decentralised Implementation System (DIS), in accordance with article 8.1.2 of the Special Conditions of the CARDS Financing Agreement 2003 signed on 2 September 2003 and of the CARDS Financing Agreement 2004 signed on 29 November 2004 by the Central Financing and Contracting Unit of Croatia (CFCU), subject to continued ex-ante approval by the European Commission.
- (6) Pursuant to Council Regulation (EC) No 1266/1999 and Article 35 of the Implementing Rules of the Financial Regulation, the Commission services have assessed the national and sectoral programme/project management capacity, control procedures and structures regarding public finance in Croatia and have confirmed that for the Central Financing and Contracting Unit of Croatia, provisions set out in paragraph 1 of the annex to Council Regulation (EC) No 1266/1999 are complied with.
- (7) The Commission services have also assessed that Croatia is in a position to apply the criteria established in Article 164 of the Financial Regulation.
- (8) The recommendations of this assessment are attached in Annex I to this Decision. In response to the Commission's assessment, the National Authorizing Officer of Croatia confirmed by letter of 15 December 2005 that Croatia accepts those recommendations, that there are no substantial differences between CARDS and PHARE procurement procedures and at the same time confirmed the necessary work-load analysis and adaptation of staff and procedures to allow for a decentralised management of CARDS projects.
- (9) It is therefore appropriate to confer the management of aid on a decentralised basis to the Central Financing and Contracting Unit of Croatia, maintaining the ex-ante approval requirement by the Commission referred to in Article 12 (1) of Council Regulation (EC) No 1266/1999 of 21 June 1999 and Article 165 of the Financial Regulation. This Decision should apply to those types of Community grant assistance

where the responsible Commission authorising officer has been satisfied by the Croat authorities that an effective system for internal control of management operations for these types of Community grant assistance is in place.

- (10) The national and sectoral programme/project management capacity, financial control procedures and structures regarding public finance assessed by the Commission are based on the Memorandum of Understanding on the establishment of the National Fund between the Government of Croatia and the European Commission concluded on 05 May 2005 and described in the application by the National Authorising Officer. The Commission has established that for the Central Financing and Contract Unit (CFCU), the conditions set out in paragraph 1 of the annex to Council Regulation (EC) No 1266/1999 and article 164 of the Financial Regulation for decentralising with the prior ex ante approval by the Commission are complied with. Management of aid on a decentralised basis shall therefore be conferred to the Central Financing and Contract Unit (CFCU).
- (11) The Implementing Agency shall continue to apply the procurement rules for external actions laid down in the Financial Regulation as referred to in the respective Financing Agreements.

HAS DECIDED AS FOLLOWS:

Article 1

The management of PHARE and CARDS financial assistance to the Republic of Croatia is conferred on a decentralised basis to the following Implementing Agency: the Central Financing and Contracting Unit (CFCU) of Croatia.

The ex-ante approval requirement referred to in Article 12 (1) of Council Regulation (EC) No 1266/1999 of 21 June 1999 is hereby maintained. Therefore prior approval by the Commission is required for all project selection, tendering and contracting.

For the implementation of the projects, the provisions of the Memorandum of Understanding on the establishment of the National Fund between the Government of Croatia and the European Commission concluded on 05 May 2005 shall be applied.

Article 2

For PHARE, this Decision shall apply to projects agreed between the Commission and Croatia after its entry into force, unless otherwise specified in subsequent Commission Decisions governing such actions.

For CARDS, this Decision shall apply to a number of projects agreed between the Commission and Croatia in the CARDS Financing Agreement 2003 (signed on 2 September 2003) and in the CARDS Financing Agreement 2004 (signed on 29 November 2004). The list of projects will be subsequently agreed between the Commission's Authorising Officer by Sub-Delegation and the Croatian authorities.

Article 3

A number of actions to improve the procedures and structures for management of operations have been identified in the Commission's report⁷ on the assessment of the national and sectoral programme/project management capacity, financial control procedures and structures regarding public finance.

As this Decision is conditional upon those actions being complied with, Croatia will provide the Commission at regular intervals with reports on the implementation of the decentralised system and progress towards fulfilment of the conditions referred to in Annex I in accordance with the deadlines specified in Annex I.

The Commission services will prepare an interim consolidated report on Croatia's compliance with these conditions and a final report once full compliance with Annex I has been established.

At any time during the implementation of this decentralisation Decision, should the Commission's Authorising Officer by Delegation consider that the obligations of Croatia under this Decision are no longer met, he/she shall immediately desist from granting the prior approvals referred to in Article 1 until such time as these obligations have been met.

He/she shall subsequently bring the matter to the attention of the Commission on the basis of a duly substantiated report. The member of the Commission responsible may thereupon propose to revoke the Decision to confer management of aid.

Any amounts unduly paid as a result of non-compliance with this Decision shall be recovered by the Commission.

Croatia shall inform and obtain prior approval from the Commission on any substantial change in the national and sectoral programme/project management capacity, financial control procedures and structures regarding public finance described in the application by the National Authorising Officer.

Article 4

In case of irregularity or fraud, the rules and measures set out in Annex II to this Decision shall apply.

Article 5

The National Authorising Officer of Croatia will be informed of this Commission Decision and any amendment by letter.

⁷ DG Enlargement "Final Audit Report on the Request by the Republic of Croatia for the Conferral of Management of Aid under Decentralisation Management" of 22 November 2005

Done at Brussels, [...]

For the Commission

[...]

Member of the Commission