I

(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],

[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.

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;