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EXPLANATORY MEMORANDUM

The European Council has repeatedly underlined its strong preference for accession by a reunited Cyprus. As yet a comprehensive settlement has not been reached.

“The Comprehensive Settlement of the Cyprus Problem” as finalized by UN Secretary-General Kofi Annan was approved by the Turkish Cypriot electorate at the separate simultaneous referenda on 24 April 2004. Following the outcome of the referenda the Council stated on 26 April 2004:

“The Turkish Cypriot community have expressed their clear desire for a future within the European Union. The Council is determined to put an end to the isolation of the Turkish Cypriot community and to facilitate the reunification of Cyprus by encouraging the economic development of the Turkish Cypriot community. The Council invited the Commission to bring forward comprehensive proposals to this end, with particular emphasis on the economic integration of the island and on improving contact between the two communities and with the EU. The Council recommended that the 259 million euro already earmarked for the northern part of Cyprus in the event of a settlement now be used for this purpose.”

The attached draft proposal for a Council Regulation takes up the invitation of the Council and establishes an instrument of financial support for encouraging the economic development of the Turkish Cypriot community. In view of the political situation and with a view to allocating the financial support in the most efficient and rapid way it provides that assistance be supplied directly to the beneficiaries.

The legislative financial statement for this Regulation will present an amount of €6 million for 2004, mainly dedicated to feasibility studies for the implementation of the financial support over the years 2005 (€114 million) and 2006 (€139 million). A part of the assistance will be used to finance the support expenditure linked to the implementation.

The present package is aiming at facilitating the reunification of Cyprus by encouraging the economic and social development with particular emphasis on the economic integration of the island, through alignment with the *acquis*, and by improving contacts between the two communities and with the EU. Besides reconciliation and confidence building measures, it will cover, *inter alia*, the promotion of social and economic development, development of the infrastructure, and people to people contacts. Most of the activities will be therefore similar to pre-accession activities. Due to the isolation of the Turkish Cypriot community over the last years, the activities will have a strong focus on helping with *acquis* approximation, especially as regards investments to comply with European norms, *inter alia*, in the environmental and transport areas.

Proposal for a

COUNCIL REGULATION

establishing an instrument of financial support for encouraging the economic development of the Turkish Cypriot community

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,

Whereas:

- (1) The European Council has repeatedly underlined its strong preference for accession by a reunited Cyprus. As yet, a comprehensive settlement has not been reached.
- (2) The Council of 26 April 2004, considering that the Turkish Cypriot community has expressed their clear desire for a future within the European Union, recommended that the funds earmarked for the northern part of Cyprus in the event of a settlement should be used to put an end to the isolation of that community and to facilitate the reunification of Cyprus by encouraging the economic development of the Turkish Cypriot community, with particular emphasis on the economic integration of the island and on improving contact between the two communities and with the EU.
- (3) Following the accession of Cyprus, the application of the *acquis* is suspended pursuant to Article 1 (1) of Protocol No 10 of the Act of Accession 2003 in the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control (hereafter “the Areas”).
- (4) Pursuant to Article 3 (1) of Protocol No 10, nothing in this Protocol shall preclude measures with a view to promoting the economic development of the Areas.
- (5) With a view to allocating the financial support in the most efficient and rapid way, it is desirable to provide that assistance can be supplied directly to the beneficiaries.
- (6) In accordance with Article 2 of Council Decision 1999/468² laying down the procedures for the exercise of implementing powers conferred on the Commission,

¹ OJ C

² OJ L 184, 17.7.1999, p. 23.

measures for the implementation of this Regulation should be adopted by use of the advisory procedure provided in Article 3 of that Decision.

- (7) Implementing this Regulation contributes, as set out above, to the achievement of Community objectives, but the Treaty does not provide, for the adoption of this Regulation, powers other than those referred to in Article 308,

HAS ADOPTED THIS REGULATION:

Article 1
Overall objective and Beneficiaries

1. The Community shall provide assistance to the Turkish Cypriot community with particular emphasis on economic development, on the economic integration of the island and on improving contacts between the two communities and with the EU in order to facilitate the reunification of Cyprus.
2. Assistance shall benefit *inter alia* local authorities, cooperatives and representatives of the civil society, in particular organisations of the social partners, business support organisations, public agencies, public administrations, local or traditional communities, associations, foundations, non-profit organisations, non-governmental organisations, and natural and legal persons.

Article 2
Objectives

Assistance shall be used to support *inter alia*:

- progressive alignment with and preparation for implementation of the *acquis communautaire*
- the promotion of social and economic development including restructuring, in particular concerning rural development, human resources development and regional development
- the development and restructuring of infrastructure, in particular in the areas of energy and transport, the environment, telecommunications and water supply
- reconciliation, confidence building measures, and support to civil society
- bringing the Turkish Cypriot community closer to the Union, through *inter alia* information of the European Union's political and legal order, promotion of people to people contacts and scholarships for studies in Member States other than Cyprus.

Article 3
Management of Assistance

1. The Commission shall be responsible for administering the assistance.

2. The Commission shall be assisted by the Committee provided for in Article 9 (1) of Council Regulation (EEC) No 3906/893, composed of representatives of the Member States and chaired by a representative of the Commission.
3. The Committee shall give its opinion on draft financing decisions, where they are in excess of €5 million. The Commission may approve, without seeking the opinion of the Committee, financing decisions on supporting activities falling under Article 4 (3) of this Regulation, and amendments to financing decisions complying with the objective of the programme and not exceeding 15 % of the financial envelope.
4. Where, in accordance with paragraph 3, the Committee is not consulted on financing decisions, the Commission shall inform it no later than one week after the decision is taken.
5. For the purposes of this Regulation, the advisory procedure laid down in Article 3 of Decision 1999/468/EC shall apply, in compliance with Article 7 (3) thereof.

Article 4 Types of Assistance

1. Assistance under this Regulation may, *inter alia*, finance procurement contracts, grants, including interest rate subsidies, special loans, loan guarantees and financial assistance.
2. Assistance may be financed in full by the budget where it is justified and necessary to achieve the objectives of this Regulation
3. Assistance may also be used to cover in particular the costs for supporting activities such as preliminary and comparative studies, training, activities linked to preparing, appraising, managing, implementing, monitoring, controlling and evaluation of assistance, activities linked to information and visibility purposes as well as costs for supporting staff, renting of premises and supply of equipment.

Article 5 Implementation of Assistance

1. Actions under this regulation shall be implemented according to the rules set down in Title IV of part 2 of Council Regulation 1605/2002. All individual legal commitments relating to assistance under this Regulation shall be concluded no later than three years following the date of the budgetary commitment.
2. The Commission may, within the limits established in Article 54 of Regulation 1605/2002, decide to entrust tasks of public authority, and in particular implementation tasks, to the bodies listed in Article 54 (2) of this Regulation. The selection criteria for the bodies listed in Article 54 (2) c) are the following:

³ OJ L 375, 23.12.1989, p.11.

⁴ OJ L 248, 16.9.2002, p. 1.

- internationally recognized standing,
 - compliance with internationally recognized systems of management and control, and
 - supervision by a public authority of a Member State or by an international organisation/institution.
3. Actions under this Regulation may be implemented by shared management according to the rules set down in Title I and II of part 2 of Council Regulation 1605/2002.

Article 6
Protection of Community's financial interests

1. The Commission shall ensure that, when actions financed under this Regulation are implemented, the financial interests of the Community are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and by the recovery of the amounts unduly paid and, if irregularities are detected, by effective, proportional and dissuasive penalties, in accordance with Council Regulations (EC, Euratom) No 2988/95⁵ and (Euratom, EC) No 2185/96⁶, and with Regulation (EC) No 1073/1999 of the European Parliament and of the Council⁷.
2. For the Community actions financed under this Regulation, the notion of irregularity referred to in Article 1, paragraph 2 of Regulation (EC, Euratom) No 2988/95 shall mean any infringement of a provision of Community law or any breach of a contractual obligation resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, by an unjustified item of expenditure.
3. Any agreements with the beneficiaries must expressly provide for the Commission and the Court of Auditors to have the power of audit, on the basis of documents and on the spot, over all contractors and subcontractors who have received Community funds. Those agreements shall also expressly authorise the Commission to carry out on-the-spot checks and inspections in accordance with the procedural provisions of Council Regulation (EC, Euratom) No 2185/96.
4. All contracts resulting from the implementation of assistance shall ensure the right of the Commission and the Court of Auditors as provided for in paragraph 3, during and after the implementation of contracts.

⁵ OJ L 312, 23.12.1995, p.1.

⁶ OJ L 292, 15.1.1996, p.2.

⁷ OJ L 136, 31.5.1999, p.1.

Article 7
Participation in tenders and contracts

1. Participation in the award of procurement or grant contracts financed under this Regulation shall be open to
 - all natural or legal persons of Member States of the European Union, including those residing or established in the Areas,
 - all natural or legal persons who are nationals of, or legally established on the territory of another Member State of the European Economic Area,
 - all natural or legal persons who are nationals of, or legally established on the territory of Candidate Countries for Accession to the European Union.
2. Participation in the award of procurement or grant contracts financed under this Regulation shall be open to all natural or legal persons who are nationals of, or legally established on the territory of, any other country than those referred to in paragraph 1 in cases where reciprocal access to their external assistance has been established.
3. Participation in the award of procurement or grant contracts financed under this Regulation shall be open to international organisations.
4. All supplies and materials purchased under a contract financed under this Regulation must originate from the Community, the Areas or a country eligible according to paragraphs (1) to (2) above.
5. The Commission may, in duly substantiated cases and on a case-by-case basis, authorise the participation of natural and legal persons from other countries or the use of supplies and materials of different origin.

Article 8
Reporting

Each year the Commission shall send to the European Parliament and the Council a report on the implementation of Community assistance under this instrument. The report shall contain information on the actions financed during the year and on the findings of monitoring work, and shall give an assessment of the results achieved in the implementation of the assistance.

Article 9
Event of a settlement

In the event of a comprehensive settlement of the Cyprus problem, the Council shall, on the basis of a proposal from the Commission, decide unanimously on the necessary adaptations to the present Regulation.

Article 10
Entry into force

This regulation shall enter into force on the third day following 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 Council
The President