

COMMISSION DECISION

C(2009)4435 of 19 June 2009

on support for the operational budget of the Office of the High Representative (OHR) in Bosnia and Herzegovina from July 2009 to June 2010 under the IPA-Transition Assistance and Institution Building component for the year 2009

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA)¹, and in particular Article 14(3) thereof,

Whereas:

- (1) Article 2(1) of Regulation (EC) No 1717/2006 of the European Parliament and of the Council of 15 November 2006 establishing an Instrument for Stability² establishes that Community assistance under that Regulation shall be provided only to the extent that an adequate and effective response cannot be provided under related Community instruments for external assistance.
- (2) Regulation (EC) No 1085/2006 lays down the objectives and main principles for pre-accession assistance to candidate and potential candidate countries.
- (3) The Council has established a European Partnership for Bosnia and Herzegovina³. The Commission has adopted on 17 July 2008 a Multi-beneficiary Multi-annual Indicative Planning Document 2008-2010⁴ which presents indicative allocations for the main priorities for multi-beneficiary pre-accession assistance to the countries concerned and which provides, *inter alia*, that support should be given to Interim Civilian Administrations in the Western Balkans.
- (4) The High Representative's mandate as an EU Special Representative is reflected among others in Council Joint Actions 2007/87/CFSP of 7 February 2007⁵, 2007/427/CFSP of 18 June 2007⁶, 2007/748/CFSP of 19 November 2007⁷, 2008/130/CFSP of 18 February 2008⁸ and 2009/181/CFSP of 11 March 2009⁹.
- (5) The Peace Implementation Council decided at its meeting on 25-26 March 2009 to postpone the closure of the Office of the High Representative (OHR). The Peace Implementation Council reached an agreement on 6 April 2009 to provide the OHR with a new 12-month budget [July 2009 – June 2010].

¹ OJ L 210, 31.7.2006, p. 82.

² OJ L 327, 24.11.2006, p. 1.

³ OJ L 80, 19.03.2008, p. 18.

⁴ C(2008)3585, 17.07.2008.

⁵ OJ L 35 of 8.2.2007, p. 35.

⁶ OJ L 159 of 20.6.2007, p. 63.

⁷ OJ L 303, 21.11.2007, p. 38.

⁸ OJ L 43 of 19.02.2008, p. 22.

⁹ OJ L 67, 12.3.2009, p. 88.

- (6) Therefore, the Community should continue to support the operational budget of the Office of the High Representative (OHR) in Bosnia and Herzegovina from July 2009 to June 2010 under the IPA Transition Assistance and Institution Building Component under Priority axis 1: Political criteria. Community support for the operational budget of the OHR from July 2008 to June 2009 has been provided under Commission Decision C(2008)2754.
- (7) This decision meets the requirements of Article 90 of Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation No 1605/2002¹⁰ (hereafter: “Implementing Rules”) and constitutes thus a financing decision within the meaning of Article 75 (2) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities¹¹ (hereafter: “Financial Regulation”);
- (8) The measures provided for by this Decision are in accordance with the opinion of the IPA Committee,

HAS DECIDED AS FOLLOWS:

Article 1

The support for the operational budget of the Office of the High Representative (OHR) in Bosnia and Herzegovina from July 2009 to June 2010 under the IPA Transition Assistance and Institution Building Component for 2009, as set out in the Annex, is hereby adopted.

This programme shall be implemented by centralised management.

Article 2

The maximum amount of Community contribution shall be **EUR 5 927 536**, to be financed through Article 22.020300 – interim civilian administrations in the Western Balkans of the General Budget of the European Communities for 2009.

Done in Brussels, [...]

For the Commission

[...]

Member of the Commission

¹⁰ OJ L 357, 31.12.2002, p. 1.

¹¹ OJ L 248, 16.9.2002, p.1.

ANNEX: SUPPORT FOR THE OPERATIONAL BUDGET OF THE OFFICE OF THE HIGH REPRESENTATIVE (OHR) IN BOSNIA AND HERZEGOVINA FROM JULY 2009 TO JUNE 2010

1. IDENTIFICATION

Beneficiary	Bosnia and Herzegovina
CRIS number	2009/021-478
Year	2009
Cost	EUR 5 927 536
Implementing Authority	European Commission
Final date for concluding the financing agreement	The programme is implemented without a financing agreement
Final dates for contracting	30 November 2010
Final dates for execution	30 November 2011
Sector Code	91010
Budget line(s) concerned	22.020300 Interim Civilian Administrations in the Western Balkans
Programming Task Manager	Unit D3 Regional Programmes, DG Enlargement
Implementation Task Manager	European Commission Delegation to Bosnia and Herzegovina

2. PRIORITY AXES / (MEASURES) / PROJECTS

The objective of assistance to be provided under this programme is to facilitate the smooth operation of the Office of the High Representative (OHR) in Bosnia and Herzegovina as identified in the IPA Multi-beneficiary Multi-annual Indicative Planning Document (MIPD) 2008-2010¹ - *Priority Axe 1 – Section 3.1.3.7 Interim Civilian Administrations.*

Measure 01.61: Interim Civilian Administrations

2.a Priority axes

Background

The mandate of the High Representative is to oversee all civilian aspects of the implementation of the Peace Agreement for Bosnia and Herzegovina, initialled in Dayton on 21 November 1995 and signed in Paris on 14 December in the same year (The General Framework Agreement for Peace or ‘GFAP’). The mandate of the High Representative is set out in Annex 10 of GFAP. It declares him the final authority to interpret the civilian aspects

¹ C(2008)3585, 17.07.2008.

of the Peace Agreement. The Peace Implementation Council (PIC), a group of 55 governments and international organisations which sponsor and direct the peace implementation process, has subsequently elaborated on his mandate.

The High Representative, currently Valentin Inzko, maintains close contact with the parties involved in the peace process, co-ordinates the activities of the international agencies and organisations, co-operates with the European Union Police Mission and issues regular reports. In the event of inertia on the part of the authorities of Bosnia and Herzegovina, he may impose legislation necessary for the implementation of the GFAP, or dismiss local officials who obstruct its implementation.

Since May 2002, all High Representatives have also been appointed as EU Special Representatives underscoring the EU's commitment to Bosnia and Herzegovina. The EU Special Representative's mandate is separate to his mandate as High Representative and reflected *inter alia* in Council Joint Actions 2007/87/CFSP of 7 February 2007², 2007/427/CFSP of 18 June 2007³, 2007/748/CFSP of 19 November 2007⁴, 2008/130/CFSP of 18 February 2008⁵ and 2009/181/CFSP of 11 March 2009⁶.

Since 2006, the PIC Steering Board regularly assessed whether the situation in Bosnia and Herzegovina allows the closure of the OHR. In March 2009, the PIC Steering Board decided that the conditions for closure of the OHR have not been fully met and decided therefore to continue the mandate of the OHR.

In April 2009, the PIC Steering Board Financial Experts approved a total budget of EUR 11 184 030 for the OHR for the period July 2009 to June 2010.

The trend in the OHR has been a year-on-year reduction in staffing, in line with an overall expectation that improvements in Bosnia and Herzegovina would lead to the phasing out of the OHR. The reduction of staff from 238.5 in the period July 2007 to June 2008 to 223 in the period July 2008 to June 2009 reflected continuous efforts to further scale down the OHR, while maintaining necessary operational strength. Any further reduction must now be carefully considered to avoid that the OHR may no longer perform vital tasks because staffing levels in sensitive departments are below critical levels. Staff levels will therefore be reduced by only 10, from 223 to 213.

Basis of EC Support

Between 1996 and 2000, the European Union contributed to the yearly budgets of the OHR under the Common Foreign and Security Policy (CFSP).

On 22 May 2000, the Council of the European Union adopted Regulation (EC) 1080/2000 on support for the establishment and operation of interim civilian administrations in the Balkans (the OHR, the UNMIK Pillar IV in Kosovo and eventually the Special Coordinator of the Stability Pact for South Eastern Europe)⁷. Following the adoption of this Regulation and since the second part of 2000, EC support for the OHR has been provided from the 'first pillar' and by decision of the European Commission.

As of 1 January 2007, Council Regulation (EC) 1080/2000 has been repealed, with the exception of Article 1a, by Regulation (EC) No 1717/2006 of 15 November 2006 establishing

² Amending and extending the mandate of the EUSR, in particular Article 1 (OJ L35/35 of 8.2.2007).

³ Appointing the EUSR, (OJ L159/63 of 20.6.2007).

⁴ Amending and extending the mandate of the EUSR, (OJ L 303/38, 21.11.2007).

⁵ Extending the mandate of the EUSR, (OJ L 43/22 of 19.02.2008).

⁶ OJ L 67, of 11.03, 2009, p. 88.

⁷ OJ L 122, 24.5.2000, p. 27.

an Instrument for Stability⁸. The legal basis for the provision of a Community contribution to the OHR is now Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA)⁹. The Community contribution to the operation of the OHR is foreseen in the IPA Multi-beneficiary Multi-annual Indicative Planning Document for 2008-2010 under section 3.1.3.7 Interim Civilian Administrations.

When the OHR was established, the European Union contribution was 50.6% of the organisation's budget. The Council of the European Union agreed on 9 March 1999¹⁰ to increase this percentage to 53%. This political commitment of the Union continues to be applied.

2.b Description of projects grouped per priority axis and (if relevant) per measure

The objective of this Financing Proposal is to allow the High Representative to fulfil his political mandate in Bosnia and Herzegovina, continuing his work on the civilian aspects of the implementation of the GFAP during the said period. The political mandate of the High Representative is decided by the PIC and its Steering Board, which includes the Commission and several EU Member States. The Steering Board approves the yearly budget of the OHR on the basis of the scale and nature of activities entrusted to the OHR in the period considered. The Steering Board also approves the mid-year budget review of the OHR, including revised allocations for each budget item in the budget period.

The budget of the OHR for this period covers the costs of the operations of the different departments of the organisation. OHR departments perform tasks foreseen for the High Representative under the GFAP and those entrusted to him by subsequent decisions of the PIC. It is proposed to contribute an amount of EUR 5 927 536 of EC funds for the financing of the OHR budget from 1 July 2009 until 30 June 2010, corresponding to the agreed 53% EC share of the operational OHR budget for this period.

A liquidation phase of an additional six months will follow the final closure of the operations of the OHR. The funds for the liquidation phase have already been committed (Commission Decision E/2006/2804 adopted on 15 December 2006). The Commission disbursed 95% of this amount (or EUR 471 534) to the OHR together with the contribution to the Operating Budget for 2007. The OHR ring-fenced the amounts for the Liquidation Budget collected from donors until the PIC finally decides to close the OHR. Funds allocated for liquidation in Commission Decision E/2006/2804 will therefore be used at a later stage than initially foreseen.

The programme will be implemented by means of a direct grant awarded to the Office of the High Representative in Bosnia and Herzegovina, on the basis of Article 168.1(c) of the Implementing Rules¹¹ to the Financial Regulation¹², which provides for the award of direct grants "*to bodies with a de jure or de facto monopoly duly substantiated in the award decision*". The European Union has committed to finance part of the OHR budget until it is completely phased out. To this end, a direct grant agreement will be concluded with the Office of the High Representative in Bosnia and Herzegovina.

2.c Overview of past and on going assistance (EC / IFI / Bilateral and national assistance)

⁸ OJ L 327, 24.11.2006, p.1.

⁹ OJ L 210, 31.7.2006, p. 82.

¹⁰ OJ L 63, 12.3.1999, p. 5

¹¹ OJ L 357, 31.12.2002, p.1.

¹² OJ L 248, 16.9.2002, p.1.

The European Union has supported the Office of the High Representative in Bosnia and Herzegovina since its creation in 1996. EU contributions to the OHR over the years and up to 30 June 2009 have amounted to approximately EUR 139.2 million, partly through CFSP Joint Actions, partly through Commission Decisions adopted on the basis of the Council Regulation (EC) N° 1080/2000 and Council Regulation (EC) N° 1086/2006.

The present proposal is complementary to the EC financial assistance provided to Bosnia and Herzegovina under the annual allocation of the IPA programme.

This proposal is also complementary to the financial assistance provided to the office of the European Union Special Representative (EUSR) in Bosnia and Herzegovina under Council Joint Action 2009/181/CFSP of 11 March 2009. The operations of the EUSR's office are covered through CFSP actions managed by DG RELEX. Following the latest Council Joint Action 2009/181/CFSP of 11 March 2009, an amount of EUR 3.2 million has been committed to cover the operations of the office of the EUSR for the period from 1 March 2009 to 28 February 2010. As has been the case since May 2002, the EUSR will continue to utilise certain operational resources and services of the OHR, such as the services of "double-hatted" staff and the use of space and equipment. The financial and administrative arrangements for this purpose are governed by a Memorandum of Understanding between the OHR and the office of the EUSR, based on which the office of the EUSR contributes an overhead cost to the OHR.

2.d Conditions

The main assumption relating to this Financing Proposal is that, taking into account the situation on the ground, the OHR will continue to operate uninterrupted until 30 June 2010. Should the OHR's mandate come to an end before 30 June 2010, the EC contribution will be reduced pro rata.

2.e Benchmarks

	2009	2010 (cumulative)
Contracts (number)	1	1
Contracting Rate (%)	100%	100%

3. BUDGET (AMOUNTS IN EUR)

3.1. Indicative budget table

	EC – IPA assistance				Total national co-financing * (indicative)		Contributions by other donors		Total (IPA plus National Co-financing plus contributions by other donors)	
	Institution Building	Investment	Total (IB and INV) in EUR	Total in %	EUR	(%)	EUR	(%)	EUR	(%)
Priority axis 01 Political criteria										
Support to the OHR budget for the period from 1 July 2009 to 30 June 2010	5 927 536	0	5 927 536	53%	0	0%	5 256 494	47%	11 184 030	100%
TOTAL	5 927 536	0	5 927 536	53%	0	0%	5256 494	47%	11 184 030	100%

* public and private national and/or international contributions

3.2 Principle of Co-Financing applying to the projects funded under the programme

The total OHR budget approved by the PIC for the period 1 July 2009 to 30 June 2010 amounts to EUR 11 184 030 and covers the final twelve months of operation. The total EC contribution to the OHR under this Financing Proposal amounts to EUR 5 927 536, corresponding to the agreed 53% EC share of the operational OHR budget for the period from 1 July 2009 to 30 June 2010. The funds committed under this Financing Proposal will be disbursed according to the provisions of the contribution agreement to be concluded between the Commission and the OHR.

The other donors to the budget of the OHR (and their percentage contributions of the approved budget are) the United States of America (22%), Japan (10%), Russia (4%), Canada (3.03%), the Organisation of the Islamic Conference (2.5%) and other non-EU countries, including Balkan countries (5.47%).

The Community contribution has been calculated in relation to the total eligible expenditure.

4. IMPLEMENTATION ARRANGEMENTS

4.1 Method of implementation

The programme will be implemented on a centralised basis by the European Commission in accordance with Article 53a of the Financial Regulation¹³ and the corresponding provisions of the Implementing Rules¹⁴.

The Delegation of the European Commission to Bosnia and Herzegovina will be responsible for the implementation of this programme.

4.2 General rules for procurement and grant award procedures

Procurement shall follow the provisions of Part Two, Title IV of the Financial Regulation and Part Two, Title III, Chapter 3 of its Implementing Rules as well as the rules and procedures for service, supply and works contracts financed from the general budget of the European Communities for the purposes of cooperation with third countries adopted by the Commission on 24 May 2007 (C(2007)2034).

Grant award procedures shall follow the provisions of Part One, Title VI of the Financial Regulation and Part One, Title VI of its Implementing Rules.

The Contracting Authority shall also use the procedural guidelines and standard templates and models facilitating the application of the above rules provided for in the “Practical Guide to contract procedures for EC external actions” (“Practical Guide”) as published on the EuropeAid website¹⁵ at the date of the initiation of the procurement or grant award procedure.

5. MONITORING AND EVALUATION

5.1 Monitoring

The Commission may undertake any actions it deems necessary to monitor the programmes concerned.

5.2 Evaluation

Programmes shall be subject to *ex ante* evaluations, as well as interim and, where relevant, *ex post* evaluations in accordance with Articles 57 and 82 of IPA Implementing Regulation¹⁶, with the aim of improving the quality, effectiveness and consistency of the assistance from Community funds and the strategy and implementation of the programmes.

The results of *ex ante* and interim evaluation shall be taken into account in the programming and implementation cycle.

The Commission may also carry out strategic evaluations.

6. AUDIT, FINANCIAL CONTROL AND ANTI-FRAUD MEASURES

The accounts and operations of all parties involved in the implementation of this programme, as well as all contracts and agreements implementing this programme, are subject to, on the one hand, the supervision and financial control by the Commission (including the European Anti-Fraud Office), which may carry out checks at its discretion, either by itself or through an outside auditor and, on the other hand, audits by the European Court of Auditors. This

¹³ OJ L 248, 16.9.2002, p.1.

¹⁴ OJ L 357, 31.12.2002, p. 1.

¹⁵ http://ec.europa.eu/europeaid/work/procedures/implementation/practical_guide/index_en.htm.

¹⁶ Commission Regulation (EC) No 718/2007 of 12 June 2007 (OJ L 170, 29.6.2007, p. 1).

includes measures such as *ex ante* verification of tendering and contracting carried out by the Delegation in the Beneficiary Country.

In order to ensure the efficient protection of the financial interests of the Community, the Commission (including the European Anti-Fraud Office) may conduct on-the-spot checks and inspections in accordance with the procedures foreseen in Council Regulation (EC, Euratom) 2185/96¹⁷.

The controls and audits described above are applicable to all contractors, subcontractors and grant beneficiaries who have received Community funds.

7. NON SUBSTANTIAL REALLOCATION OF FUNDS

The authorising officer by delegation (AOD), or the authorising officer by sub-delegation (AOSD), in line with the delegation of powers conferred upon him by the AOD, in accordance with the principles of sound financial management, may undertake non substantial reallocations of funds without an amending financing decision being necessary. In this context, cumulative reallocations not exceeding 20% of the total amount allocated for the programme, subject to a limit of EUR 4 million, shall not be considered substantial, provided that they do not affect the nature and objectives of the programme. The IPA Committee shall be informed of the above reallocation of funds.

8. LIMITED ADJUSTMENTS IN THE IMPLEMENTATION OF THE PROGRAMME

Limited adjustments in the implementation of this programme affecting elements listed under Article 90 of the Implementing Rules to the Financial Regulation, which are of an indicative nature¹⁸, may be undertaken by the authorising officer by delegation (AOD), or by the authorising officer by sub-delegation (AOSD), in line with the delegation of powers conferred upon him by the AOD, in accordance with the principles of sound financial management without an amending financing decision being necessary.

¹⁷ OJ L 292; 15.11.1996; p. 2.

¹⁸ These essential elements of an indicative nature are, for grants, the indicative amount of the call for proposals and, for procurement, the indicative number and type of contracts envisaged and the indicative time frame for launching the procurement procedures.