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Improved Assistance for Asian and Latin American Developing Countries: Regulation No. 443/92

INTRODUCTION

The European Community (EC or Community) has provided financial and technical assistance to numerous Asian and Latin American (ALA) developing countries since 1976.¹ During the last decade, grants for the development of ALA countries were issued pursuant to a 1981 regulation providing for aid to non-associated developing countries (1981 Regulation).² On February 22, 1991, the Council of the European Communities (Council) passed Regulation No. 443/92 on Financial and Technical Assistance to, and Economic Cooperation with, the Developing Countries in Asia and Latin America (1992 Regulation).³ The 1992 Regulation drastically expanded the ALA aid program by adopting policies promoting democracy, human rights, environmental protection, and the role of women.⁴

Part I of this Comment provides the relevant background by describing the 1981 Regulation and examining the 1992 Regulation. Part II contrasts the substantive provisions of the 1992 Regulation with the EC's earlier developing countries assistance program. Part III discusses the potential effect of this new aid program. This Comment concludes that the 1992 Regulation must be consistently and fairly applied to remain truthful to its stated policy objectives.

I. ALA AID BACKGROUND

A. *The 1981 Regulation: No. 442/81*

The 1981 Regulation provided a system for aid to non-associated developing countries.⁵ The Regulation was established pur-

¹ See Council Regulation 443/92 of 25 February 1992 on Financial and Technical Assistance to, and Economic Cooperation with, the Developing Countries in Asia and Latin America, *pmb.*, 1991 O.J. (L 52) 1 [hereinafter Regulation No. 443/92].

² See Council Regulation 442/81 of 17 February 1981 on Financial and Technical Assistance to Non-Associated Developing Countries, 1981 O.J. (L 148) 8 [hereinafter Regulation No. 442/81]. Non-associated countries are those not within the EC.

³ See Regulation No. 443/92, *supra* note 1.

⁴ See *id.* at *pmb.*, arts. 1, 5.

⁵ See generally Regulation No. 442/81, *supra* note 2.

suant to Article 235 of the Treaty Establishing the European Economic Community (EEC Treaty),⁶ and it directed assistance toward "the poorest developing countries."⁷ The Community issued assistance in the form of financial grants.⁸

Pursuant to the 1981 Regulation, aid grants were issued for any of three purposes: (1) improving living conditions in the most needy sections of developing countries; (2) developing rural areas and improving food production; and/or (3) providing disaster relief.⁹ Recipients used the funds to cover the costs of projects and programs implemented in their countries.¹⁰ With respect to specialty work needed for projects funded solely by the EC, preference was given to firms from EC Member States, the recipient country, and other developing countries.¹¹

The funds provided pursuant to the 1981 Regulation were fixed under the EC's general budget.¹² Articles 12 through 14 of the 1981 Regulation established procedures to issue grants.¹³ According to these procedures, the European Commission (Commission) submitted a draft financing decision to a committee comprising representatives of Member States (Committee).¹⁴ This Committee, upon a qualified majority vote,¹⁵ decided whether to

⁶ *Id.* at pmb.; see also TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY [EEC TREATY] art. 235. Article 235 of the EEC Treaty provides:

If action by the Community should prove necessary to attain . . . one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the [European] Commission and after consulting the European Parliament, take the appropriate measures.

EEC TREATY art. 235.

⁷ Regulation No. 442/81, *supra* note 2, at art. 2.

⁸ *Id.* at art. 5.

⁹ *Id.* at art. 3.

¹⁰ *Id.* at art. 6. Article 6 provides that "[a]id may cover expenditure on imports and local expenditure required to carry out projects and programmes." *Id.*

¹¹ *Id.* at art. 7.

¹² *Id.* at art. 9.

¹³ *Id.* at arts. 12-14.

¹⁴ *Id.* at arts. 11, 12. The committee for aid to non-associated developing countries was "set up at the Commission under the chairmanship of a Commission representative and composed of representatives of the member states." *Id.* at art. 11(1).

¹⁵ *Id.* at art. 13. Article 13 provides for the following voting procedures: "Within one month the Committee shall decide by a qualified majority as laid down in the first indent of Article 148(2) of the [EEC] Treaty." *Id.* Article 148(2) of the EEC Treaty provides:

Where the Council is required to act by a qualified majority, the votes of its members shall be weighted as follows:

Belgium	5
Denmark	3

approve the draft financing decision.¹⁶ If the Committee approved the proposal, the Commission would implement it. If the Committee disapproved, the Commission could refer the proposal to the Council, which could approve it and thereby allow the Commission to take action.¹⁷

The Commission issued substantial grants under the 1981 Regulation.¹⁸ It tailored appropriations to the specific need of the recipient nation.¹⁹ Through 1989, the Commission issued ECU 2.418 billion in grants to forty-four developing countries.²⁰

Asia and Latin America are especially needy regions. Of the forty-four developing countries that received assistance through 1989, nineteen were Asian and nineteen were Latin American.²¹ By 1989, the EC budget contained specific headings for appropriations to Asian and Latin American developing countries.²² It became evident that more could be done for developing countries within these regions.

Germany	10
Greece	5
Spain	8
France	10
Ireland	3
Italy	10
Luxembourg	2
Netherlands	5
Portugal	5
United Kingdom	10

For their adoption, acts of the Council shall require at least:

—54 votes in favour where this Treaty requires them to be adopted on a proposal from the Commission,

—54 votes in favour, cast by at least 8 members, in other cases.

EEC TREATY art. 148(2).

¹⁶ Regulation No. 442/81, *supra* note 2, at art. 12(1).

¹⁷ *Id.* at art. 14.

¹⁸ See, e.g., Commission Decision on Aid to Developing Countries, *reported in* Financing Decisions, Bull. EC 12-1988, 130-31 [hereinafter December 1988 Commission Decision]. For example, in December 1988, over ECU 125 million in grants were approved for Bangladesh, El Salvador, India, Thailand, the Philippines, China, Costa Rica, Guatemala, Honduras, Nicaragua, Panama, and Peru. *Id.*

¹⁹ See Council Guidelines for 1989 for Financial and Technical Assistance to Asian and Latin American Developing Countries, *reported in* Guidelines for 1989, Bull. EC 12-1988, 131 [hereinafter 1989 Guidelines]; see also, e.g., December 1988 Commission Decision, *supra* note 18, at 130-31. In December 1988, for example, the Commission granted aid to Bangladesh for renovating foodgrain stores, Thailand for fruit and vegetable production in its north-east region, and China for a maize and sunflower research development project. December 1988 Commission Decision, *supra* note 18, at 130-31.

²⁰ See Adopted by the Commission on 22 June, 1990, Bull. EC 6-1990, 98-99. This figure represents EC commitments from 1976 through 1989. *Id.*

²¹ See *id.*

²² 1989 Guidelines, *supra* note 19, at 131.

B. *History of Regulation No. 443/92*

In May 1990, in response to a Commission report on the condition of the EC's assistance program, the Commission issued a communication on guidelines for cooperation with ALA developing countries (Communication).²³ The Communication suggested several new areas of concern for future development programs.²⁴ Specifically, the Commission proposed that assistance and cooperation address environmental issues, human and structural development concerns, and needs of the rural sectors.²⁵

The Commission incorporated the Communication's suggestions into a proposed regulation for assistance to ALA developing countries in April 1991 (First Proposal).²⁶ In accordance with the Communication, the Commission's First Proposal placed emphasis on human rights and democracy, and required that all grants for projects or programs include consideration of any potential environmental impact.²⁷

Parliament endorsed the Commission's First Proposal on September 10, 1991.²⁸ Parliament, however, sent the proposal back to the Commission with several amendments.²⁹ These amendments emphasized promotion of human rights, equal rights for women, more stringent environmental requirements, and concern for food products and anti-drug programs.³⁰

The Commission adopted the amended proposal (Amended Proposal) on October 9, 1991.³¹ The Commission then submitted

²³ Commission Communication on Guidelines for Cooperation with the Countries of Latin America and Asia, COM(90)176, reported in Cooperation With the Countries of Asia and Latin America, Bull. EC 5-1990, 76 [hereinafter May Communication]; see also Cooperation With the Countries of Asia and Latin America, reported in Cooperation With the Countries of Asia and Latin America, Bull. EC 5-1990, 76. The Commission officially adopted the May Communication on June 12, 1990. See Cooperation With the Countries of Asia and Latin America, Bull. EC 6-1990, 98.

²⁴ See May Communication, *supra* note 23.

²⁵ *Id.*

²⁶ See generally Proposal for a Council Regulation on Financial and Technical Assistance to and Economic Cooperation With, the Developing Countries in Asia and Latin America, Apr. 22, 1991, COM(91)104 final [hereinafter First Proposal].

²⁷ See Economic Cooperation With Asia and Latin America, Bull. EC 4-1991, 52-53.

²⁸ See *EEC/Asia and Latin America: European Parliament Debates New Assistance Package*, 1991 Eur. Rep., Sept. 11, 1991, available in LEXIS, Europe Library, Allur File.

²⁹ *Id.*

³⁰ *Id.*

³¹ See generally Amended Proposal for a Council Regulation on Financial and Technical

the Amended Proposal to the Council for a vote.³² On February 25, 1992, the Council passed Regulation No. 443/92 on Financial and Technical Assistance to, and Economic Cooperation with, the Developing Countries in Asia and Latin America.³³

II. THE NEW REGULATION: NO. 443/92

A. *Preamble and Articles 1-3*

The policy behind the assistance program is provided in the Preamble to the 1992 Regulation: implementation of mutually advantageous assistance and cooperation through expanded trade and increased financing.³⁴ The Council specifically provided ECU 2.75 billion for the first five years following implementation of the 1992 Regulation.³⁵

The 1992 Regulation illustrates the EC's intent to promote, or at least protect, human rights through assistance and cooperation.³⁶ Article 1 provides for support of human rights, as well as democratization, environmental protection, trade liberalization, and cultural strengthening.³⁷ To insure cooperation, Article 2 contains provisions for increased support to countries most committed to promoting these ideals.³⁸ Article 2 further provides for the possible suspension or termination of assistance for persistent violations of these ideals.³⁹

Assistance to, and Economic Cooperation with, the Developing Countries in Asia and Latin America, Oct. 9, 1991, COM(91)364 final [hereinafter Amended Proposal].

³² See Regulation No. 443/92, *supra* note 1, at pmb1.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at pmb1., arts. 1, 2.

³⁷ *Id.* at art. 1. Article 1 provides in part: "[T]he Community shall attach the utmost importance to the promotion of human rights, support for the process of democratization, good governance, environmental protection, trade liberalization and strengthening the cultural dimension. . . ." *Id.*

³⁸ *Id.* at art. 2. Article 2 states, in part: "Aware that respect for, and the exercise of human rights and fundamental freedoms and democratic principles are preconditions for real and lasting economic and social development, the Community shall give increased support to the countries most committed to these principles. . . ." *Id.*

³⁹ *Id.* Article 2 further provides: "In the case of fundamental and persistent violations of human rights and democratic principles, the Community could amend or even suspend the implementation of cooperation with the States concerned by confining cooperation to activities of direct benefit to those sections of the population in need." *Id.*

B. *Financial and Technical Assistance: Articles 4–6*

Articles 4 through 6 of Regulation No. 443/92 illustrate the policy behind the assistance program.⁴⁰ Article 4, for example, provides that assistance will be directed at the poorest section of ALA developing countries.⁴¹ Areas of particular concern are defined as those in which resources of strategic importance to the recipient country and/or the international community are difficult to mobilize.⁴² These resources include domestic, economic, and human resources.⁴³

Article 5 of Regulation No. 443/92 was adopted from Article 4 of Parliament's Amended Proposal, and it sets out provisions concerning the ideals enumerated in the Preamble and Articles 1 through 3 of the 1992 Regulation.⁴⁴ Article 5 declares protection of the environment and natural resources to be a long-term priority.⁴⁵ Ten percent of all assistance monies granted must be used for projects addressing the environment and natural resources, with particular attention paid to tropical forests.⁴⁶ Furthermore, consideration is given to the environmental impact of all assistance projects.⁴⁷

Article 5 delineates further objectives of the 1992 Regulation. These objectives include protecting and enhancing the role of women, spreading democracy, improving living conditions of ethnic minorities, increasing food assistance and child protection, combatting drugs, and engendering regional cooperation among developing countries.⁴⁸ Article 6 sets out similar objectives with regard to assistance for "more advanced" ALA developing countries.⁴⁹

⁴⁰ See *id.* at arts. 4–6.

⁴¹ *Id.* at art. 4.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Compare Amended Proposal, *supra* note 31, at art. 4 with Regulation No. 443/92, *supra* note 1, at art. 5.

⁴⁵ Regulation No. 443/92, *supra* note 1, at art. 5.

⁴⁶ *Id.* In part, Article 5 provides: "10%, being the weighed average of the necessary financial resources of the aid, for the period 1991 to 1995, shall be set aside for projects specifically aimed at protecting the environment, in particular tropical forests." *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at art. 6. The heightened concern for human rights, democracy, and the environment is unique to the 1992 Regulation. Although the Commission was able to implement some of these ideals prior to the 1992 Regulation, such objectives were completely absent from any prior regulation for assistance to developing countries.

C. *Economic Cooperation: Articles 7 and 8*

Economic cooperation is intended to serve the mutual interests of the EC and its beneficiaries through development of business and technology.⁵⁰ This development will increase the developing country's potential to "make the most of the prospects opened up by the growth of international trade," and will thereby result in an eventual benefit to the EC.⁵¹

Article 8 provides three types of economic cooperation.⁵² The first is directed at improving the recipient nation's scientific and technological potential, and at improving the economic and social environment.⁵³ This will be accomplished by training schemes directed at executives, economic decision-makers, and instructors in the economic, technical, and scientific fields.⁵⁴ The second type of economic cooperation is intended to improve the institutional structure "to make the economic, legislative, administrative, and social climate more conducive to development."⁵⁵ The third is "support for undertakings" by means of trade promotions, training, and technical assistance.⁵⁶

D. *Implementing Procedures: Articles 9 through 18*

The procedures for determining assistance contained in the 1992 Regulation are largely the same as those in the 1981 Regulation.⁵⁷ The 1992 Regulation requires the Commission to implement the program, assisted by a committee comprising representatives of the Member States.⁵⁸ The Commission must provide a draft proposal to the committee, which then votes.⁵⁹ If the committee accepts the measures, the Commission will adopt them.⁶⁰ Otherwise, the Commission will send the proposal to the

⁵⁰ *Id.* at art. 7.

⁵¹ *Id.*

⁵² *Id.* at art. 8.

⁵³ *Id.* at art. 8(1).

⁵⁴ *Id.*

⁵⁵ *Id.* at art. 8(2).

⁵⁶ *Id.* at art. 8(3).

⁵⁷ Compare Regulation No. 443/92, *supra* note 1, at art. 15, with Regulation No. 442/81, *supra* note 2, at arts. 11-14.

⁵⁸ Regulation No. 443/92, *supra* note 1, at art. 15.

⁵⁹ *Id.*

⁶⁰ *Id.*

Council.⁶¹ If the Council either votes affirmatively or fails to act within one month, the Commission may adopt the measures.⁶²

III. EFFECTIVENESS OF THE NEW REGULATION

The EC has provided aid to ALA developing countries in increasing amounts since 1976. The 1992 Regulation prescribes increased funds and more particularized aid for these countries, while addressing humanitarian concerns. The EC, however, must ensure fair and consistent application of the regulation to fulfill its stated objectives.

By conditioning new assistance programs and continuing cooperation on progress in the fields of human rights and environmental protection, the EC took advantage of its superior bargaining position. The 1992 Regulation, however, articulated a policy that had already been implemented unofficially for years. For example, hints of the EC's resolve to promote democratic ideals were seen in November 1991 when the EC united with other donor nations in delaying aid to Kenya until it undertook political and economic reforms.⁶³

A shortcoming of the present program is the lack of uniformity in administration resulting from the discretion in addressing human rights abuses in recipient countries. Sanctions for abuses could range from a warning to total termination of aid.⁶⁴ This latitude could potentially allow for inconsistency in applying the regulation's stated policies. For example, when in its best interest, the EC could use lighter sanctions against certain countries while coming down full force on others with whom it has little or no political interest.

The EC received criticism for such inconsistent application of its policies in November 1991, when it terminated assistance to

⁶¹ *Id.*

⁶² *Id.* Other provisions regarding economic cooperation include: Article 9, providing that assistance shall take the form of grants, and when possible, the grants shall be for periods of five years; Article 10, reiterating budgetary allotments; and Article 11, requiring that systematic efforts be made to seek financial contribution partners. *Id.* at arts. 9-11. Subsequent articles contain no novel provisions.

⁶³ *EC to Use Billions in Aid to Spur Third World Democracy*, Reuter Library Report, Nov. 28, 1991, available in LEXIS, Nexis Library, Lbyrpt File. The EC "[united] with other donors in Paris this week to delay fresh aid to one-party Kenya until it undertakes political and economic reforms." *Id.*

⁶⁴ *See id.* "The EC's response would be graded according to the level of a country's human rights abuse or blocking of progress toward a fully democratic system. These would range from a quiet diplomatic word to suspension of an aid programme." *Id.*

Haiti subsequent to a 1991 coup.⁶⁵ While discontinuing aid to Haiti, the EC continued to cooperate with Indonesia, which was accused of persistent human rights abuses.⁶⁶ Objective criteria for sanctions would help to insure against these double standards.

An additional concern regarding sanctions is that they result in punishing the needy citizens of the developing countries. Article 2 of the 1992 Regulation, however, addresses this concern by stating that sanctions may only exclude participation of the recipient state in benefit projects.⁶⁷ Although Article 2 offers no protection where funding is absolutely discontinued, the interests of the true beneficiaries are protected when the lesser sanctions are implemented.

CONCLUSION

By adopting Regulation No. 443/92, the Council for the European Communities provided for increased funds and more particularized assistance to Asian and Latin American developing countries. Adoption of the 1992 Regulation also provided for the protection of human rights, the environment, and the democratic form of government. By conditioning aid on improvements in these areas, the EC used its power in a way that could have a significant positive global impact. To avoid criticism and remain honest, however, the EC must ensure fair and consistent implementation of the program.

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⁶⁵ *Id.* Portugal questioned the standards used in making such determinations. *Id.*

⁶⁶ *Id.*

⁶⁷ Regulation No. 443/92, *supra* note 1, at arts. 4–6.