

Regulation (EC) No 1337/2008 of the European Parliament and
of the Council of 16 December 2008 establishing a facility for
rapid response to soaring food prices in developing countries

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EUROPEAN PARLIAMENT AND OF THE COUNCIL

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establishing a facility for rapid response to soaring food prices in developing countries

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 179(1) thereof,

Having regard to the proposal from the Commission,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁽¹⁾,

Whereas:

- (1) The volatility of food prices has put numerous developing countries and their populations in a dramatic situation. This food crisis, accompanied by a financial and energy crisis and environmental deterioration, risks putting additional hundreds of millions of people in extreme poverty, and in circumstances of hunger and malnutrition and calls for increased solidarity with those populations. All the data on the outlook for food markets lead to the conclusion that the high volatility of food prices could continue in the years to come.
- (2) As a complement to the European Union's current development policy instruments, a financing facility for a rapid response to the crisis caused by volatile food prices in developing countries should therefore be established by this Regulation.
- (3) The European Consensus on Development⁽²⁾, adopted by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the Commission on 20 December 2005, states that the European Community (hereinafter referred to as 'the Community') will continue to work to improve food security at international, regional and national level, to which goal this Regulation should contribute.
- (4) The European Parliament adopted on 22 May 2008 a resolution on rising food prices in the European Union and the developing countries, urging the Council to ensure coherence of all food-related national and international policies aiming at implementing the right to food.
- (5) During its meeting of 20 June 2008, the European Council strongly reaffirmed its commitment to achieving a collective Official Development Assistance (ODA) target of 0,56 % of Gross National Income (GNI) by 2010 and 0,7 % of GNI by 2015, as set

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out in the Council conclusions of 24 May 2005, the European Council conclusions of 16 and 17 June 2005 and the European Consensus on Development.

- (6) Acknowledging in its conclusions of 20 June 2008 that high food prices were affecting the situation of the world's poorest populations and putting at risk progress towards the achievement of all Millennium Development Goals (MDGs), the European Council adopted an EU Agenda for Action on MDGs which states that the European Union is committed, in line with the Food and Agricultural Organisation (FAO) Conference Declaration adopted by the FAO High Level Conference on World Food Security on 5 June 2008 (the 'FAO Conference Declaration'), to promote a global partnership for food and agriculture and wishes to play a substantial role in helping to bridge part of the financing gap by 2010 in the areas of agriculture, food security and rural development.
- (7) The European Council also concluded that in this endeavour the European Union will promote a more coordinated and longer-term international response to the current food crisis, in particular in the United Nations (UN) and in international financial institutions, that it welcomes the establishment of the High-Level Task Force on the Global Food Security Crisis (HLTF) established by the UN Secretary-General and is determined to play its full part in implementing the FAO Conference Declaration. In this regard a Comprehensive Framework of Action (CFA) has been adopted by the HLTF, and international organisations and regional organisations have launched their own initiatives. The European Council also concluded that the European Union will support a strong agricultural supply response in developing countries, providing in particular the necessary financing for agricultural inputs and assistance in using market-based risk management instruments, that the European Union will significantly enhance its support to public and private investments in agriculture and more generally encourage developing countries to develop better agriculture policies, especially to support food security and reinforce regional integration and that the European Union will also mobilise resources to finance, beyond food aid, safety nets for poor and vulnerable population groups.
- (8) Financial and material needs to fully address the consequences and causes of the high food prices are very high. The response should come from the international community in its entirety and the Community has endeavoured to contribute its fair share. The European Council of 20 June 2008 welcomed the Commission's intention to come forward with a proposal for a new fund to support agriculture in developing countries, within the framework of the current financial perspectives.
- (9) The Community response strategy should notably aim to strongly encourage a positive short to medium-term supply response from the agricultural sector in developing countries while at the same time also significantly reducing the negative effects of volatility of food prices on the poorest in these countries. A supply-side response is also in the interest of the Community in order to alleviate the current pressure on agricultural prices.
- (10) The Community has at its disposal several instruments focused on development assistance with a long-term perspective, in particular Regulation (EC) No 1905/2006 of the European Parliament and the Council of 18 December 2006 establishing a

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financing instrument for development cooperation⁽³⁾, and the European Development Fund, providing ODA to African, Caribbean and Pacific (ACP) countries and Overseas Countries and Territories (OCTs) (hereinafter referred to as ‘the EDF’), which have recently been programmed in line with eligible countries' medium and long-term development priorities. Large-scale reprogramming under these instruments to respond to a short-term crisis would jeopardise the balance and coherence of the existing cooperation strategies with those countries. The Community also has at its disposal Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid⁽⁴⁾ to provide emergency assistance and Regulation (EC) No 1717/2006 of the European Parliament and of the Council of 15 November 2006 establishing an Instrument for Stability⁽⁵⁾.

- (11) Those instruments, however, have already been mobilised or reprogrammed in 2008 to the fullest possible extent to address the negative effects of the volatile food prices situation in developing countries. To a very limited extent the same could be done in 2009; however, that would be far from being sufficient to respond to the needs.
- (12) As a consequence, it is necessary to adopt a specific financing facility, complementary to existing external financing instruments, to adopt urgent and supplementary measures that address rapidly the consequences in developing countries of the present situation of volatile food prices.
- (13) Assistance under this Regulation should be managed in such a way as to increase the supply of foodstuffs to local populations.
- (14) The measures adopted with this financing facility should help developing countries to boost agricultural productivity in the next seasons, to respond rapidly to the immediate needs of the countries and their population and to take initial steps needed to prevent as far as possible further food insecurity situations, and also contribute to mitigating the effects of the volatile food prices globally, to the benefit of the poorest people, of small-holder farmers and also of European consumers and farmers.
- (15) The very nature of measures provided for under this Regulation calls for the establishment of efficient, flexible, transparent and rapid decision-making procedures for their financing, with strong cooperation between all institutions concerned.
- (16) Coherence and continuity must be ensured between short-term measures aimed at providing relief to the populations most directly and seriously affected by the soaring and/or volatile food prices, and more structural measures intended to prevent the recurrence of the current food crisis.
- (17) It is necessary to provide for the protection of the Community's financial interests in accordance with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests⁽⁶⁾, Council Regulation (Euratom, EC) 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⁽⁷⁾ and Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-fraud Office (OLAF)⁽⁸⁾.

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- (18) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action required, 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 to achieve those objectives.
- (19) 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⁽⁹⁾.
- (20) The different development instruments and this financing facility shall be applied so as to ensure continuity of cooperation in particular as regards the transition from emergency to medium- and long-term response. This Regulation should fit in with a long-term strategy to contribute to food security in developing countries, based on their own needs and plans.
- (21) In order to ensure that the measures provided for in this Regulation are effective and given their urgent nature, this Regulation should enter into force on the day following that of its publication,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1 The Community shall finance measures aimed at supporting a rapid and direct response to the volatile food prices in developing countries, addressing primarily the period between emergency aid and medium- to long-term development cooperation.

2 The measures referred to in paragraph 1 shall benefit developing countries, as defined by the Organisation for Economic Cooperation and Development's Development Assistance Committee (OECD/DAC), and their populations, in accordance with the following provisions.

Those measures shall be adopted in accordance with the procedure referred to in Article 13(2). They shall finance initiatives supporting the purpose and objectives of this Regulation.

3 Whenever feasible the action programmes implemented by entities eligible for funding under Article 4(1) shall be drawn up in consultation with civil society organisations and implementation of projects funded through this financing facility shall involve such organisations.

4 To optimise the utility and impact of this Regulation, resources shall be concentrated on a limited list of high-priority target countries, identified on the basis of the set of criteria laid down in the Annex, and in coordination with other donors and other development partners through relevant needs-assessments made available by specialised and international organisations such as those of the UN system, in consultation with partner countries.

5 To ensure the coherence and effectiveness of Community assistance, where the programme to be implemented is of a regional or cross-border nature, it may be decided, in

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accordance with the procedure referred to in Article 13(2), that populations of other developing countries not belonging to that region can benefit from the programme in question.

6 Where support is to be provided for measures implemented by international organisations, including regional organisations, such organisations shall be selected in accordance with the procedure referred to in Article 13(2) and on the basis of their added value, their comparative advantage and their capacity to implement programmes in a speedy and efficient manner in response to the specific needs of the targeted developing countries in relation to the objectives of this Regulation.

Article 2

Objectives and Principles

1 The primary objectives of the assistance and cooperation under this Regulation shall be to:

- a encourage a positive supply response from the agricultural sector in target countries and regions;
- b support activities to respond rapidly and directly to mitigate the negative effects of volatile food prices on local populations in line with global food security objectives, including UN standards for nutritional requirements;
- c strengthen the productive capacities and the governance of the agricultural sector to enhance the sustainability of interventions.

2 A differentiated approach depending on development contexts and the impact of volatile food prices shall be pursued so that target countries or regions and their populations are provided with targeted, tailor-made and well adapted support, based on their own needs, strategies, priorities and response capacities.

3 Measures supported under this Regulation shall be coordinated with those supported under other instruments, including Regulation (EC) No 1257/96, Regulation (EC) No 1905/2006 and Regulation (EC) No 1717/2006, and the ACP-EC Partnership Agreement⁽¹⁰⁾, so as to ensure continuity of cooperation, in particular as regards the transition from emergency to medium- and long-term response.

4 The Commission shall ensure that measures adopted under this Regulation are consistent with the Community's overall strategic policy framework for the eligible country or countries concerned.

Article 3

Implementation

1 Community assistance and cooperation shall be implemented through a set of decisions to finance supporting measures as described in Article 1, paragraphs (1), (2) and (3), which shall be adopted in accordance with the procedure referred to in Article 13(2). An overall plan for the use of this financing facility, including the list of target countries referred to in Article 1(4) and the balance between eligible entities referred to in Article 4(2) shall be presented by the Commission and adopted in accordance with the procedure referred to in Article 13(2). This overall plan shall receive the opinion of the committee referred to in Article 13(1) before 1 May 2009.

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2 Taking into account the specific country-level conditions, supporting measures that shall be eligible for implementation are:

- a measures to improve access to agricultural inputs and services including fertilisers and seeds, paying special attention to local facilities and availability;
- b safety net measures aiming at maintaining or improving the agricultural productive capacity, and at addressing the basic food needs of the most vulnerable populations, including children;
- c other small-scale measures aiming at increasing production based on country needs: microcredit, investment, equipment, infrastructure and storage; as well as vocational training and support to professional groups in the agriculture sector.

3 The implementation of these supporting measures shall be in line with the Declaration on Aid Effectiveness adopted by the High Level Forum on Aid Effectiveness, held in Paris, on 2 March 2005 (the ‘Paris Declaration on Aid Effectiveness’) and the Agenda for Action adopted by the High Level Forum on Aid Effectiveness, held in Accra, on 4 September 2008 (the ‘Accra Agenda for Action’). It shall be focused on small and medium-sized farms for family and food-producing agriculture, particularly those run by women, and poor populations most affected by the food crisis, avoiding any kind of distortion of local markets and production; agricultural inputs and services shall as far as possible be locally purchased.

4 Administrative support measures which meet the objectives of this Regulation may be financed up to a maximum of 2 % of the amount referred to in Article 12.

Article 4

Eligibility

1 The entities eligible for funding shall be, insofar as their programmes contribute to the objectives of this Regulation:

- a partner countries and regions, and their institutions;
- b decentralised bodies in the partner countries, such as municipalities, provinces, departments and regions;
- c joint bodies set up by the partner countries and regions with the Community;
- d international organisations, including regional organisations, UN bodies, departments and missions, international and regional financial institutions and development banks;
- e Community institutions and bodies, but only for the purposes of implementing the support measures referred to in Article 3(4);
- f EU agencies;
- g the following entities and bodies of the Member States, partner countries and regions and any other third country complying with the rules on access to the Community's external assistance set out in Regulation (EC) No 1905/2006, insofar as they help to achieve the objectives of this Regulation:
 - (i) public or parastatal bodies, local authorities and consortia or representative associations thereof;
 - (ii) companies, firms and other private organisations and businesses;
 - (iii) financial institutions that grant, promote and finance private investment in partner countries and regions;
 - (iv) non-State actors operating on an independent and accountable basis;

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- (v) natural persons.

2 An appropriate balance shall be applied in the allocation of resources between the bodies listed in paragraph 1(d) of this Article and other eligible entities.

Article 5

Types of financing

Community financing may take the following forms:

- (a) projects and programmes;
- (b) budget support, especially sectoral budget support, if the partner country's management of public spending is sufficiently transparent, reliable and effective, and if the conditions for budget support set out in the relevant geographical financing instrument have been met;
- (c) contributions to international or regional organisations and international funds managed by such organisations;
- (d) contributions to national funds set up by partner countries and regions to attract joint financing from a number of donors, or contributions to funds set up by one or more donors for the purpose of the joint implementation of projects;
- (e) co-financing with entities eligible for funding as defined in Article 4;
- (f) funds made available to the European Investment Bank (EIB) or other financial intermediaries on the basis of Commission programmes for the purpose of providing loans (in particular to support investment in and development of the private sector), risk capital (in the form of subordinated or conditional loans) or other temporary minority holdings in business capital, and contributions to guarantee funds in accordance with Article 32 of Regulation (EC) No 1905/2006, to the extent that the financial risk of the Community is limited to these funds.

Article 6

Financing and Management procedures

1 The measures financed under this Regulation shall be implemented in accordance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities⁽¹¹⁾, taking into account where appropriate the crisis-related nature of the measures to be adopted.

2 In the event of co-financing and in other duly justified cases, the Commission may entrust tasks of public authority, and in particular budget implementation tasks, to the bodies referred to in Article 54(2)(c) of Regulation (EC, Euratom) No 1605/2002.

3 In the case of decentralised management, the Commission may decide to use the procurement or grant procedures of the beneficiary partner country or region after verifying that they respect the relevant criteria set out in Regulation (EC, Euratom) No 1605/2002, provided that the conditions set out in Regulation (EC) No 1905/2006 are met.

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4 Community assistance shall in principle not be used for paying taxes, duties or charges in eligible countries.

5 Participation in the appropriate contractual procedures shall be open to all natural and legal persons who are eligible pursuant to the geographical development instrument applicable to the country in which the action takes place, as well as to all natural and legal persons who are eligible pursuant to the rules of the implementing international organisation, care being taken to ensure that equal treatment is afforded to all donors. The same rules shall apply in respect of supplies and materials. Experts may be of any nationality.

Article 7

Budget commitments

Budget commitments shall be made on the basis of decisions taken by the Commission.

Article 8

Protecting the Community's financial interests

1 Any financial agreement resulting from the implementation of this Regulation shall contain provisions ensuring the protection of the Community's financial interests, in particular with respect to irregularities, fraud, corruption and any other illegal activity, in accordance with Regulation (EC, Euratom) No 2988/95, Regulation (Euratom, EC) No 2185/96 and Regulation (EC) No 1073/1999.

2 Agreements shall expressly entitle the Commission and the Court of Auditors to perform audits, including document audits or on-the-spot audits of any contractor or subcontractor who has received Community funds. They shall also expressly authorise the Commission to carry out on-the-spot checks and inspections as provided for in Regulation (Euratom, EC) No 2185/96.

3 All contracts resulting from the implementation of assistance shall ensure the rights of the Commission and the Court of Auditors under paragraph 2 of this Article during and after the performance of the contracts.

Article 9

Visibility of the European Union

Contracts concluded by virtue of this Regulation shall include specific provisions that ensure the appropriate visibility of the European Union in all activities undertaken on the basis of those contracts.

Article 10

Evaluation

1 The Commission shall monitor and review activities implemented under this Regulation, where appropriate by means of independent external evaluations, in order to ascertain whether the objectives have been met and enable it to formulate recommendations with a view to improving relevant future development cooperation operations. Proposals by the

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European Parliament or the Council for independent external evaluations shall be taken into due account.

2 The Commission shall send its evaluation reports to the European Parliament and to the committee referred to in Article 13 for information. Member States may request to discuss specific evaluations in that committee.

3 The Commission shall associate all relevant stakeholders, including non-State actors and local authorities, in the evaluation phase of the Community assistance provided under this Regulation.

Article 11

Reporting

The Commission shall provide the European Parliament and the Council with a report on the implementation of the measures, including, as far as possible, on the main outcomes and impacts of the assistance provided under this Regulation, no later than 31 December 2012. In December 2009 the Commission shall provide the European Parliament and the Council with an initial interim report on the measures undertaken. The reports mentioned in this Article shall pay particular attention to the requirements of the Paris Declaration on Aid Effectiveness and the Accra Agenda for Action.

Article 12

Financial provisions

The total financial reference amount for the implementation of this Regulation over the period 2008-2010 shall be EUR 1 billion.

Article 13

Committee

1 The Commission shall be assisted by the Committee set up by Article 35(1) of Regulation (EC) No 1905/2006.

2 Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3 The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at 10 working days for measures adopted up to 30 April 2009 and 30 days for measures adopted subsequently.

Article 14

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply until 31 December 2010.

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This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 16 December 2008.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

B. LE MAIRE

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ANNEX

Indicative criteria to select target countries and allocate financial resources:

- Poverty levels and real needs of populations
- Food price developments and potential social and economic impact:
 - Reliance on food imports
 - Social vulnerability and political stability
 - Macroeconomic effects of food price developments
- Capacity of country to respond and implement appropriate response measures:
 - Agricultural production capacity
 - Resilience to external shocks.

Indicative financial allocations to countries shall be based on the target country selection criteria and take into account the population size of the target country.

Account will also be taken of other sources of financing available to the target country, at short term, from the donor community, to respond to the food price developments.

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- (1) Opinion of the European Parliament of 4 December 2008 (not yet published in the Official Journal) and Council Decision of 16 December 2008.
- (2) Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: 'The European Consensus' (OJ C 46, 24.2.2006, p. 1).
- (3) OJ L 378, 27.12.2006, p. 41.
- (4) OJ L 163, 2.7.1996, p. 1.
- (5) OJ L 327, 24.11.2006, p. 1.
- (6) OJ L 312, 23.12.1995, p. 1.
- (7) OJ L 292, 15.11.1996, p. 2.
- (8) OJ L 136, 31.5.1999, p. 1.
- (9) OJ L 184, 17.7.1999, p. 23.
- (10) Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (OJ L 317, 15.12.2000, p. 3).
- (11) OJ L 248, 16.9.2002, p. 1.

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