



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08.09.1995
COM(95) 428 final

94/0065 (SYN)

Re-examined proposal for a
COUNCIL REGULATION (EC)
laying down general rules for the granting of
Community financial aid in the field
of trans-European networks

(presented by the Commission pursuant to Article 189 c (d)
of the EC Treaty)

Explanatory memorandum

I.

Context

On 2 March 1994 the Commission submitted to the Council and Parliament a proposal for a Council Regulation (EC) laying down general rules for the granting of Community financial aid in the field of trans-European networks (COM(94)62 final SYN 94/0065).

Parliament gave its opinion on first reading on 30 November 1994.

In the light of Parliament's opinion, on 17 March 1995 the Commission submitted to the Council an amended proposal for a Council Regulation (COM(95)32 final).

The Council adopted its common position on 31 March 1995.

On 12 July 1995 Parliament approved this common position, to which it proposed 21 amendments.

A summary of the re-examined proposal and of the amendments not included by the Commission is set out below. The amendments not included are set out in the Annex.

II.

A. Re-examined proposal

The Commission has re-examined its proposal on the basis of the amendments proposed by Parliament and has included the following amendments, in letter or spirit:

8th recital (amendment 3)

The inclusion of a reference to extension of the partnership between the public and private sectors emphasizes one of the essential objectives of the Regulation.

Article 2 (amendment 8)

This addition makes it clear that not only enterprises which run services in the public interest but also enterprises which undertake projects considered to be in the public interest may submit projects.

Article 4(1a) (amendment 22)

Here Parliament takes up the idea in the Commission's original proposal that, with the consent of the Member States concerned, the Commission could propose feasibility studies in exceptional cases, for example for transfrontier interconnections. The Community contribution to such studies could, on a proposal from the Commission or the States concerned, be extended to 100% of the total cost of the study if necessary.

Article 5 (second part of amendment 23)

Addition of this paragraph makes it possible to raise the upper limit for the Community contribution from 10% to 30% of the total cost of the project in exceptional cases, particularly for major projects entailing low investment.

Article 18 (amendment 19)

At the time of adoption of the declaration of 6 March 1995 by the three institutions on the incorporation of financial provisions into legislative acts, the Commission stated that it would not include financial provisions in its proposals for legislative acts concerning multiannual programmes not subject to the co-decision procedure.

B. Amendments not included

The following amendments have not been included:

Amendment 1

Article 189c of the Treaty provides for the cooperation procedure with Parliament; this repetition would be tautological.

Amendments 2 and 24

The wording in the common position highlights the transitional nature of this provision by clearly stating the extent and duration of the transition period.

Amendments 4, 10 and first part of 22

The term "feasibility study" covers all forms of preparatory study prior to implementation of a project. There is no need for these additions.

Amendments 5 and 12

The direct and indirect socio-economic effects of projects include the consequences for regional planning. There is no need for this addition.

Amendment 6

The evaluation of the potential economic viability with the help of cost/benefit analyses includes the economic and social aspects. There is no need to mention them explicitly. The "capacity of existing infrastructures" criterion is covered by the guidelines proposed for trans-European networks.

Amendments 7 and 13

An explicit list of Community policies is not essential in this context. In the case of energy and telecommunications policies, the Treaty provides no legal basis for these policies at the moment.

Amendment 8 (first part)

Preparatory studies are "parts of projects", within the meaning of the second subparagraph of Article 2(1). This detail is not essential.

Amendment 11 (second part)

Article 5(4) reflects the "philosophy" of the Regulation, i.e. that the Community support provided for in this Regulation is intended to start up projects and to stimulate funding from the public or private sectors.

Amendment 12

The criteria "consistency with Community regional planning", "trans-frontier nature" and "ability [of the project] to fill gaps in the network" are covered by the guidelines referred to in Article 6(1). There is no need to mention them here.

Amendment 14

It is not essential in this context to specify the "public or private" nature of the body.

Amendment 15

"Social profitability" and "overall physical planning" are too imprecise to serve as assessment criteria.

Amendment 16

Many of the projects are too complex to keep fully within a time limit of six months between receipt of the application and the decision whether to grant aid.

Amendment 17

As is standard practice when implementing internal policies and in line with the Financial Regulation, commitments and payments under this Regulation will be expressed in ECU.

Amendment 18

A consultative committee (procedure 1) would be inappropriate given that the action taken by the Community in this field complements the action taken by the Member States.

Amendment 20

In the common position the Commission accepted the revision clause as a compromise, considering that the regulations on Community funding commonly provide for a five-yearly review.

Amendment 21

The Commission has been advocating deletion of financial provisions from this Regulation (Article 18). Consequently, this renders the recital on this subject superfluous.

Amendment 22 (third part, final part)

In the spirit of the Regulation the financial aid from the Community may not exceed the minimum amount deemed necessary to launch a project. Also, given the limited resources available, there is good reason to place the time limit on the duration of any interest rate subsidy.

Legally, the wording "any other type" of financial aid is too imprecise to serve as a legal basis.

Re-examined proposal for a

COUNCIL REGULATION

**laying down general rules for the granting of
Community financial aid in the field
of trans-European networks**

(Submitted by the Commission pursuant
to Article 189c(d) of the EC Treaty)

Common position

Re-examined proposal

8th recital

8th recital

Whereas involvement of private capital
in funding trans-European networks
should be increased;

Whereas involvement of private capital
in funding trans-European networks
should be increased and the partnership
between the public and private sectors
extended;

Article 2
Eligibility

Article 2
Eligibility

2. Projects shall be eligible if they are
financed by the Member States or by
regional or local authorities or by
bodies working within an
administrative or legal framework
which makes them equivalent to
public entities, in particular public or
private enterprises which run public
services or services in the public
interest.

2. Projects shall be eligible if they are
financed by the Member States or by
regional or local authorities or by
bodies working within an
administrative or legal framework
which makes them equivalent to
public entities, in particular public or
private enterprises which run public
services or services in the public
interest or undertake projects
considered to be in the public interest.

Article 4(1a)

Article 4(1a)

(a) co-financing of studies related to
projects, including preparatory,
feasibility and evaluation studies,
and other technical support
measures for these studies.
Community participation may in
general not exceed 50% of the total
cost of a study.

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projects, including preparatory,
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and other technical support
measures for these studies.
Community participation may in
general not exceed 50% of the total
cost of a study.

In exceptional, duly substantiated
cases, at the initiative of the

In exceptional, duly substantiated
cases, and with the consent of the

Commission and with the consent of the Member States concerned, Community participation may exceed the limit of 50%;

Article 5(3)

3. Regardless of the form of intervention chosen, the total amount of Community aid under this Regulation shall not exceed 10% of the total investment cost.

Article 18

Budgetary resources

The financial reference amount for the implementation of this Regulation is ECU 2 345 million for the period 1995-1999.

Member States concerned, the Commission may propose studies. Community participation in such studies may, if necessary, be extended to 100% of the total cost.

Article 5(3)

3. Regardless of the form of intervention chosen, the total amount of Community aid under this Regulation shall not exceed 10% of the total investment cost.

Where projects are of modest scope and/or entail low investment, the Community financial contribution may exceed the abovementioned 10% limit, if proposed by the Commission and agreed by the Member States concerned, although in such cases it must not exceed an upper limit of 30%.

Article 18

Deleted

ANNEX

European Parliament amendments not included by the Commission

(Amendment 1)
Citation 5

Acting in accordance with the procedure laid down in Article 189c of the Treaty,

Acting in accordance with the procedure laid down in Article 189c of the Treaty and in cooperation with the European Parliament,

(Amendment 2)
Recital 7

Whereas the guidelines referred to in Article 129c(1) of the Treaty, proposed by the Commission, are under consideration by the European Parliament and the Council; whereas, should the decisions adopting these guidelines not have entered into force when this Regulation enters into force, provision should be made on a transitional basis for a possible Community contribution to specific priority projects within the limits of the appropriations available for the financial year 1995 and at the latest until 31 December 1995;

Whereas until such time as the Council and the European Parliament have decided on the guidelines referred to in Article 129c(1) of the Treaty, infrastructure projects which contribute to the achievement of the objectives of Article 129b of the Treaty concerning the establishment and development of trans-European networks may be supported;

(Amendment 4)
Recital 9

Whereas Community aid may take the form in particular of feasibility studies, loan guarantees or interest rate subsidies; whereas these subsidies and guarantees relate in particular to financial support from the European Investment Bank or other public or private financial bodies; whereas in certain duly justified cases direct grants to investments may be considered;

Whereas Community aid may take the form in particular of preparatory, feasibility and technical studies, loan guarantees or interest rate subsidies; whereas these subsidies and guarantees relate in particular to financial support from the European Investment Bank or other public or private financial bodies; whereas in certain cases direct grants to investments may be considered;

(Amendment 5)

Recital 13

Whereas Community aid is to be granted to projects on the basis of how much they contribute to the objectives of Article 129b of the Treaty and the other objectives and priorities covered by the guidelines referred to in Article 129c of the Treaty; whereas account should also be taken of other aspects such as the stimulative effect on public and private finance, the direct and indirect socio-economic effects of projects, in particular on employment, and the consequences for the environment;

Whereas Community aid is to be granted to projects on the basis of how much they contribute to the objectives of Article 129b of the Treaty and the other objectives and priorities covered by the guidelines referred to in Article 129c of the Treaty; whereas account should also be taken of other aspects such as the stimulative effect on public and private finance, the direct and indirect socio-economic effects of projects, in particular on employment, and the consequences for the environment and regional planning;

(Amendment 6)

Recital 14

Whereas the Commission must carefully evaluate the potential economic viability of the projects, with the help of cost/benefit analyses and other appropriate criteria, as well as their financial profitability;

Whereas the Commission must carefully evaluate the potential economic viability of the projects, with the help of cost/benefit analyses involving financial, economic and social perspectives, analyses of the capacity of existing infrastructures and other appropriate criteria;

(Amendment 7)

Recital 15

Whereas Community financial support under Article 129c(1) of the Treaty must be compatible with Community policies, in particular on networks and as regards environmental protection, competition and the award of public contracts; whereas environmental protection includes an environmental impact assessment;

Whereas Community financial support under Article 129c(1) of the Treaty must be compatible with Community policies, in particular with a sustainable common transport policy and as regards energy, telecommunications, environmental protection, competition and the award of public contracts; whereas environmental protection includes an environmental impact assessment of projects;

(Amendment 8)

Article 2(1), second subparagraph and (2), first subparagraph

Parts of projects within the meaning of the first subparagraph shall also be eligible insofar as they form technically and financially independent units.

Parts of projects within the meaning of the first subparagraph shall also be eligible insofar as they form technically and financially independent units, in particular preparatory, feasibility and technical studies.

2. Projects shall also be eligible if they are financed by the Member States or by regional or local authorities or by bodies working within an administrative or legal framework which makes them equivalent to public entities, in particular public or private enterprises which run public services or services in the public interest.

2. Projects shall also be eligible if they are financed by the Member States or by regional or local authorities or by bodies acting within an administrative or legal framework which makes them equivalent to public entities, in particular public or private enterprises which run public services or services in the public interest or undertake projects considered to be in the public interest.

(Amendment 24)

Article 3, first paragraph

Should the decisions adopting the guidelines referred to in Article 129c(1) of the Treaty not yet have entered into force when this Regulation enters into force, specific projects, the financing of which is of a priority nature and which relate in particular to transport infrastructure, may be regarded as eligible within the meaning of this Regulation.

Should the decisions adopting the guidelines referred to in Article 129c(1) of the Treaty not yet have entered into force when this Regulation enters into force, transport infrastructure projects in particular, which contribute to the achievement of the objectives of the creation and development of trans-European networks as set out in Article 129b of the Treaty may be regarded as eligible within the meaning of this Regulation until that date.

(Amendment 22)

Article 4(1)(a) to (d)

(a) co-financing of studies related to projects, including preparatory, feasibility and evaluation studies and other technical support measures for these studies.

Community participation may in general not exceed 50% of the total cost of a study.

In exceptional, duly substantiated cases, at the initiative of the Commission and with the consent of the Member States concerned, Community participation may exceed the limit of 50%;

(a) co-financing of studies related to projects, including preparatory, feasibility, and technical studies and other technical support measures for these studies.

Community participation may in general not exceed 50% of the total cost of a study.

For studies undertaken at the initiative of the Commission and in exceptional, duly substantiated cases, at the initiative of the Commission and with the consent of the Member States concerned, Community participation may be extended to 100% of the total cost;

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- (b) subsidies of the interest on loans granted by the European Investment Bank or other public or private financial bodies. As a general rule, the duration of a subsidy shall not exceed five years;
- (c) contributions towards fees for guarantees for loans from the European Investment Fund or other financial institutions;
- (d) direct grants to investments in duly justified cases;

- (b) subsidies of the interest on loans granted by the European Investment Bank or other public or private financial bodies;
- (c) contributions towards fees for guarantees for loans from the European Investment Fund or other financial institutions;
- (d) direct grants to investments and any other type of financial aid found suitable for the achievement of the same objectives in duly justified cases, in particular in island, landlocked and peripheral regions where the trans-European networks are essential for development;

(Amendments 23 and 11)
Article 5(3) and (4)

4. The financial resources provided for under this Regulation shall not, in principle, be assigned to projects or stages of projects which benefit from other sources of Community funding.

Deleted

(Amendment 12)
Article 6(2) and (3)

2. Community aid shall be assigned to projects that are potentially economically viable and for which the financial profitability at the time of application is deemed insufficient.

2. Community aid shall be assigned to projects that are potentially economically and socio-economically viable, taking account of their direct or indirect effects, in particular on employment.

3. The decision to grant Community assistance should also take account of:

- the maturity of the project;
- the stimulative effect of Community intervention on public and private finance;

3. The decision to grant Community assistance should also take account of:

- the maturity of the project;
- the stimulative effect of Community intervention on public and private finance;

- the soundness of the financial package;
- direct or indirect socio-economic effects, in particular on employment;
- the environmental consequences;
- the soundness of the financial package;
- the environmental consequences;
- consistency with Community regional planning;
- the trans-frontier nature of the project and its ability to fill gaps in the network.

(Amendment 13)
Article 7

The projects financed under this Regulation shall comply with Community law and Community policies, in particular in relation to environmental protection, competition and the award of public contracts.

The projects financed under this Regulation shall comply with Community law and Community policies, in particular with the provisions concerning the common transport policy, energy, telecommunications, environmental protection, competition and the award of public contracts.

(Amendment 14)
Article 8

Applications for financial aid shall be submitted to the Commission by the Member State concerned or by the body directly concerned with the agreement of the Member State.

Applications for financial aid shall be submitted to the Commission by the Member State concerned or by the public or private body directly concerned with the agreement of the Member State.

(Amendment 15)
Article 9(1)(a), indents 3 to 5

- the results of the cost/benefit analyses, including the results of the potential economic viability analysis and of the financial profitability analysis;
- the results of the cost/benefit analyses, including the results of the potential economic viability analysis and of the financial and social profitability analysis;
- the position of the project, according to the guidelines, in the field of transport, on the axes and nodes;
- the position of the project, according to the guidelines, in the field of transport, on the axes and nodes;
- consistency with regional planning;
- consistency with regional planning and overall physical planning;

(Amendment 16)

Article 10

The Commission shall decide to grant financial aid under this Regulation according to its assessment of the applications in accordance with the selection criteria and the procedure specified in Article 17. It shall notify its decision directly to the beneficiaries and to the Member States.

The Commission shall decide to grant financial aid under this Regulation according to its assessment of the applications in accordance with the selection criteria and the procedure specified in Article 17, as far as is possible within six months of receipt of the application. It shall notify its decision directly to the beneficiaries and to the Member States.

(Amendment 17)

Article 11(2a) (new) to (4)

3. Decisions to grant financial aid taken by the Commission under Article 10 shall be binding as commitments to incur expenditure authorized by the Budget.

4. As a general rule, payments shall be made in the form of advances, intermediate payments and a final payment. The advance, which shall not normally exceed 50% of the first annual tranche, shall be paid once the application for aid has been approved. Intermediate payments shall be made on the basis of requests for payment, taking account of the progress made in implementing the project or study and, if necessary, taking account of revised financial plans in a rigorous and transparent manner.

2a. Commitments and payments shall be expressed and made in ECUs.

3. Decisions to grant financial aid taken by the Commission under Article 10 shall be binding as commitments to incur expenditure authorized by the Budget.

4. As a general rule, payments shall be made in the form of advances, intermediate payments and a final payment. The advance, which shall not normally exceed 50% of the first annual tranche, shall be paid once the application for aid has been approved. Intermediate payments shall be made on the basis of requests for payment, taking account of the progress made in implementing the project or study and, if necessary, taking account of revised financial plans in a rigorous and transparent manner, provided at least two-thirds of the expenditure related to the earlier payment has been effected.

(Amendment 18)
Article 17(2) to (4)

2. In implementing this Regulation, the Commission shall be assisted by one Committee that will meet in the appropriate composition according to the sectors treated:

- trans-European networks in the field of transport;
- trans-European networks in the field of telecommunications;
- trans-European networks in the field of energy.

The Committee shall be composed of representatives of the Member States and chaired by a representative of the Commission.

The European Investment Bank shall appoint a representative to the Committee who shall not vote.

3. The representative of the Commission shall submit to the Committee a draft of the measures to be adopted. The Committee shall deliver its Opinion on the draft within a time limit which the Chairman may lay down according to the urgency of the matter. The Opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. When votes are taken within the Committee, the votes of the representatives of the Member States within the Committee shall be weighted as defined in that Article. The Chairman shall not vote.

4. (a) The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

2. In implementing this Regulation, the Commission shall be assisted by one Committee, of a consultative nature, that will meet in the appropriate composition according to the sectors treated:

- trans-European networks in the field of transport;
- trans-European networks in the field of telecommunications;
- trans-European networks in the field of energy.

The Committee shall be composed of representatives of the Member States and chaired by a representative of the Commission.

The European Investment Bank shall appoint a representative to the Committee who shall not vote.

3. The representative of the Commission shall submit to the Committee a draft of the measures to be adopted. The Committee shall deliver its Opinion on the draft within a time limit which the Chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

4. The Opinion shall be recorded in the minutes; each Member State shall have the right to request that its position be included in the minutes.

(b) If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

4a. The Commission shall take full account of the Committee's Opinion. It shall inform the Committee of the way in which it has done so.

If, on the expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

(Amendment 20)
Article 19

Article 19

Deleted

Revision clause

Before the end of 1999, acting in accordance with the procedure laid down in the third paragraph of Article 129d of the Treaty, the Council shall examine whether and under which conditions the measures provided for in this Regulation will be continued after the end of the period referred to in Article 18.

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