COMMON POSITION (EC) No 6/2007

adopted by the Council on 22 March 2007

with a view to adopting Regulation (EC) No …/2007 of the European Parliament and of the Council of … laying down general rules for the granting of Community financial aid in the field of the trans-European transport and energy networks

(2007/C 103 E/03)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 156 thereof,

Having regard to the Commission proposal,

Having regard to the opinion of the European Economic and Social Committee ([1]),

After consulting the Committee of the Regions,

Acting in accordance with the procedure provided for in Article 251 of the Treaty ([2]),

Whereas:

(1) The European Council of 15 and 16 March 2002 held in Barcelona underlined in its conclusions that strong and integrated energy and transport networks are the cornerstone of the European internal market and that better use of the existing networks and the completion of missing links will make it possible to increase effectiveness and competitiveness and to guarantee an appropriate level of quality and a reduction in saturation points and, therefore, better long-term viability. These needs fall within the framework of the strategy adopted by the Heads of State and Government at the European Council of 23 and 24 March 2000 held in Lisbon, which has been regularly referred to since then.

(2) The European Council of 12 and 13 December 2003 held in Brussels approved European action for growth, calling on the Commission to redirect expenditure, if necessary, towards investments in physical capital, in particular investments in the infrastructure of the trans-European networks, the priority projects of which represent essential elements to strengthen the cohesion of the internal market.

(3) Delays in the completion of effective trans-European connections, in particular cross-border sections, are likely to seriously handicap the competitiveness of the Union, the Member States and peripheral regions which would not, or would no longer, be able to profit fully from the beneficial effects of the internal market.

(4) In Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network ([3]), the cost of completing the trans-European transport network between 2007 and 2020 was estimated at EUR 600 billion. The investments necessary for the priority projects within the meaning of Annex III to that Decision alone account for almost EUR 160 billion for the period 2007-2013.

(5) To achieve these goals, both the European Parliament and the Council have put forward the need to strengthen and adapt existing financial instruments through an increase in the level of Community co-financing by providing for the possibility of applying a higher Community co-financing rate, in particular for projects characterised by their cross-border nature, their transit function, or by the crossing of natural barriers.

(6) In accordance with the Communication from the Commission to the European Parliament and the Council on the 'promotion of inland waterway transport (NAIADES)' and having regard to the sustainable nature of inland waterways, inland waterways projects should receive special attention.

(7) In its Resolution of 8 June 2005 on policy challenges and budgetary means of the enlarged Union 2007-2013 ([4]), the European Parliament underlined the strategic importance of transport networks for the completion of the internal market and for closer relations with candidate, pre-candidate and 'ring of friends' countries. Moreover, it also expressed its willingness to examine innovative financing instruments such as loan guarantees, European concessions, European loans and an interest relief fund.

(8) With the amounts allocated to the trans-European networks in the transport and energy sectors (hereinafter referred to as TEN-T and TEN-E respectively) in accordance with the multiannual financial framework 2007-2013, it is impossible to meet all the needs arising in connection with the implementation of the priorities set out in Decision No 1692/96/EC for TEN-T and Decision No 1364/2006/EC ([5]) for TEN-E. In order to complement

([1]) OJ C 234, 22.9.2005, p. 69.
([2]) Opinion of the European Parliament of 26 October 2005 (OJ C 272 E, 9.11.2006, p. 405), Council Common Position of 22 March 2007 and Position of the European Parliament of … (not yet published in the Official Journal).
([3]) OJ L 228, 9.9.1996. Decision as last amended by Council Regulation (EC) No 1791/2006/EC (OJ L 363, 20.12.2006, p. 1).
([4]) OJ C 124 E, 25.5.2006, p. 373.
([5]) Decision No 1364/2006/EC of the European Parliament and of the Council of 6 September 2006 laying down guidelines for trans-European energy networks (OJ L 262, 22.9.2006, p. 1).

national sources of financing, both public and private, it is therefore appropriate to focus these resources on certain categories of projects which will provide the greatest added value for the networks as a whole, in particular the cross-border sections, including the motorways of the sea, and projects aimed at removing bottlenecks, such as natural barriers, so as to guarantee the continuity of TEN-T and TEN-E infrastructure. In order to facilitate the coordinated implementation of certain projects, European Coordinators may be designated in accordance with Article 17a of Decision No 1692/96/EC.

(9) Taking into account that the remaining TEN-T investment in priority projects is estimated at about EUR 250 billion and that the European financial reference amount of EUR 8 013 million for transport for the period 2007-2013 only represents a tiny part of the necessary budget for completion of the priority projects, the Commission should, with the help of European Coordinators where appointed, carry out actions to support and coordinate Member States' efforts to finance and complete the planned TEN-T, in line with the timetable laid down. The Commission should implement the provisions concerning European Coordinators referred to in Decision No 1692/96/EC. It should also study and intend to solve, together with the Member States, the long-term financial problem of building and operating the whole TEN-T, bearing in mind that the building period comprises at least two seven-year budget periods and the expected life of the new infrastructure is at least a century.

(10) Decision No 1364/2006/EC identifies the objectives, priorities for action and projects of common interest to develop TEN-E, including the priority projects, and assigns appropriate priority to projects declared to be of European interest. The investments necessary to make it possible for all the Member States to take part fully in the internal market and to complete interconnections with neighbouring countries are about EUR 28 billion between 2007 and 2013 for the priority projects alone.

(11) The European Council of 12 and 13 December 2003 also called on the Commission to continue studying the need to create a specific Community guarantee instrument intended to cover certain post-construction risks in the framework of TEN-T projects. With regard to energy, the European Council called on the Commission, to redirect expenditure, if necessary, towards investments in physical capital in order to stimulate growth.

(12) Council Regulation (EC) No 2236/95 of 18 September 1995 laying down the rules for the granting of Community financial aid in the field of the trans-European networks [1] already represents real progress, since it permits a higher financing rate of 20 % for projects declared as having priority. It nevertheless remains conditional on implementation rules which require simplification and an overall budget with limited resources. It appears therefore necessary to complement national public financing and private financing by increasing Community aid in terms of both its amount and the rates of assistance, with a view to strengthening the leverage effect of the Community funds, thus making it possible to carry out the priority projects selected.

(13) By means of this Regulation, it is appropriate to establish a programme determining the general rules for the granting of Community financial aid in the field of TEN-T and TEN-E. That programme, which must be carried out in conformity with Community law, in particular as regards the environment, should contribute to the reinforcement of the internal market and have a stimulating effect on the competitiveness of and growth in the Community.

(14) Community financial aid under the budget for the trans-European networks should, in addition to focusing on the projects or parts of projects presenting the greatest European added value, be such as to encourage the players to accelerate the implementation of the priority projects under Decisions Nos 1692/96/EC and 1364/2006/EC. It should also make it possible to finance the other European infrastructure projects of common interest defined in those Decisions.

(15) Community financial aid is granted with the aim of developing investment projects in TEN-T and TEN-E, of providing firm financial commitments, of mobilising institutional investors and of prompting the formation of financing partnerships between the public and private sectors. In the energy sector, the financial assistance is mainly intended to help to overcome the financial obstacles which can arise at the time of project preparation and pre-construction development, and should be concentrated on the cross-border sections of priority projects and on interconnections with neighbouring countries.

(16) In its Communication to the European Parliament and the Council of 4 July 2005 on the deployment of the European rail signalling system ERTMS/ETCS, the Commission emphasised the importance of rapid and coordinated migration to that system in order to ensure the interoperability of the TEN-T. To this end, targeted and temporary Community support is needed, both for track-side equipment and for onboard equipment.

(17) For certain projects, the Member States concerned may be represented by international organisations. For certain projects, the Commission may entrust implementation to joint undertakings within the meaning of Article 171 of the Treaty. These special situations necessitate extending the concept of beneficiary of the Community financial contribution for the purposes of this Regulation.

[1] OJ L 228, 23.9.1995, p. 1. Regulation as last amended by Regulation (EC) No 1159/2005 of the European Parliament and of the Council (OJ L 191, 22.7.2005, p. 16).

(18) To respond to the specific requirements of each project and to increase the efficiency and value of the Community financial aid, this aid may take several forms: grants for studies and works, grants for availability payments, interest rate rebates, loan guarantees or participation in risk capital funds. Regardless of its form, the Community financial aid should be granted in accordance with the provisions of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ([1]) and its implementing rules, except where this Regulation explicitly departs from those rules. The issuance of loan guarantees and participation in risk capital funds should be based on market principles and aim at self-financing in the longer term.

(19) For the implementation of Community financial support for large-scale projects phased over several years, it is advisable to allow a commitment from the Community on a multiannual basis, differentiating by project financed and by commitment appropriations authorised annually. Only firm, attractive financial commitments binding on the Community over the long term will make it possible to reduce the uncertainties connected with the completion of these projects and to mobilise both public and private investors. The projects included in the multiannual programme represent the highest priorities in the development of TEN-T as referred to in Decision No 1692/96/EC and require continuing Community action to ensure their smooth and efficient completion.

(20) It is appropriate to encourage public-private forms of financing, whether institutional or contractual, which have proved to be effective, by means of legal guarantees which are compatible with competition law and the internal market, and to disseminate good practice among the Member States.

(21) Close attention should be paid to the effective coordination of all Community measures having an impact on the trans-European networks, in particular financing from the Structural Funds and from the Cohesion Fund and the operations of the European Investment Bank (hereinafter referred to as the EIB).

(22) This Regulation lays down, for the entire duration of its implementation, a financial envelope constituting the prime reference amount, within the meaning of point 37 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management ([2]), for the budgetary authority during the annual budgetary procedure.

(23) 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 ([3]).

(24) In the light of developments in each component of TEN-T and TEN-E and of their intrinsic characteristics, and with a view to more effective management, it is advisable to provide for several separate Regulations for the fields covered to date by Regulation (EC) No 2236/95.

(25) By means of this Regulation, general rules should be laid down for the granting of Community financial aid in the field of the TEN-T and TEN-E in accordance with Community law and policies concerning, in particular, competition, environmental protection, health, sustainable development, public procurement and the effective implementation of the Community policies on interoperability.

(26) Since the objective of this Regulation, namely the implementation of TEN-T and TEN-E, cannot be sufficiently achieved by the Member States, and can, by reason of the need for coordination of national measures, 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 that objective,

HAVE ADOPTED THIS REGULATION

CHAPTER 1

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation defines the conditions, methods and procedures for granting Community financial aid to projects of common interest in the field of the trans-European transport and energy networks under Article 155(1) of the Treaty.

Article 2

Definitions

For the purposes of this Regulation:

1. 'project of common interest' means a project or a part of a project identified as being of common interest for the Community in the field of transport in the framework of Decision No 1692/96/EC or in the field of energy in the framework of Decision No 1364/2006/EC;

([1]) OJ L 248, 16.9.2002, p. 1. Regulation as amended by Regulation (EC, Euratom) No 1995/2006 (OJ L 390, 30.12.2006, p. 1).
([2]) OJ C 139, 14.6.2006, p. 1.
([3]) OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

2. 'priority project' in the field of transport means a project of common interest located on an axis, or any other project, listed in Annex III to Decision No 1692/96/EC or in the field of energy a project of common interest considered to be a priority for the Community in the framework of Decision No 1364/2006/EC;

3. 'project of European interest' in the field of energy means a mature project located on a priority axis referred to in Decision No 1364/2006/EC and which is of a cross-border nature or which has a significant impact on cross-border transmission capacity;

4. 'part of a project' means any activity that is independent financially, technically or over time and which contributes to the completion of a project;

5. 'cross-border section' means the cross-border sections referred to in Article 19b of Decision No 1692/96/EC and cross-border sections which ensure, via a third country, the continuity of a priority project between two Member States;

6. 'bottleneck' in the field of transport means obstacles to speed and/or capacity which make it impossible to guarantee the continuity of transport flows;

7. 'beneficiary' means one or more Member States, international organisations or joint undertakings, within the meaning of Article 171 of the Treaty, or public or private undertakings or bodies having complete responsibility for a project and proposing to invest their own resources or funds provided by third parties with a view to carrying out a project;

8. 'studies' means activities needed to prepare project implementation, including preparatory, feasibility, evaluation and validation studies, and any other technical support measure, including prior action to define and develop a project fully and decide on its financing, such as reconnaissance of the sites concerned and preparation of the financial package;

9. 'works' means the purchase, supply and deployment of components, systems and services, the carrying out of construction and installation works relating to a project, the acceptance of installations and the launching of a project;

10. 'project cost' means the total cost borne by a beneficiary of studies or works directly related to and necessary for carrying out a project;

11. 'eligible cost' means the part of the project cost taken into consideration by the Commission for the calculation of Community financial aid;

12. 'loan guarantee instrument' means a guarantee issued by the EIB in favour of a stand-by liquidity facility provided to projects of common interest in the field of transport. It covers the debt service risks due to demand shortfalls and the resulting unforeseen loss of revenue during the initial operating period of the project. The loan guarantee instrument is used only for projects whose financial viability is based, in whole or in part, on revenues, tolls or other income paid by or on behalf of the users or beneficiaries;

13. 'availability payment schemes' means financing schemes for infrastructure projects, built and operated by a private investor who receives periodic payments after the construction phase for the infrastructure service provided. The payment level depends on the degree of attainment of the contractually-agreed performance levels. Availability payments are made throughout the duration of a contract between the authority awarding the contract and the project promoter and serve to cover the construction, financing, maintenance and operational costs.

CHAPTER II

ELIGIBLE PROJECTS, FORMS AND METHODS OF FINANCIAL AID, COMBINATION OF FINANCING

Article 3

Eligibility of projects and applications for Community financial aid

1. Only projects of common interest shall be eligible to receive Community financial aid under this Regulation.

The eligibility of applications for Community financial aid for such projects is conditional on compliance with Community law.

2. In the field of transport only, eligibility shall also be subject to a commitment by the applicant for Community financial aid and, where appropriate, by the Member States concerned, to make a financial contribution to the project submitted, mobilising private funds if necessary.

3. Transport-related projects involving a cross-border section or a part of such a section shall be eligible to receive Community financial aid if there is a written agreement between the Member States concerned or between the Member States and third countries concerned relating to the completion of the cross-border section. Exceptionally, when a project is necessary to link to the network of a neighbouring Member State or a third country but does not actually cross the border, the written agreement referred to above shall not be required.

Article 4

Submission of applications for Community financial aid

Applications for Community financial aid shall be submitted to the Commission by one or more Member States or, with the agreement of the Member States concerned, by international organisations, joint undertakings, or public or private undertakings or bodies.

The methods for submitting applications for financial aid shall be established in accordance with Article 9(1).

Article 5

Selection of projects

1. Projects of common interest shall be awarded Community financial aid in relation to their contribution to the objectives and priorities defined in the framework of Decisions No 1692/96/EC and No 1364/2006/EC.

2. In the field of transport, special attention shall be given to the following projects:

(a) priority projects;

(b) projects to eliminate bottlenecks, in particular in the framework of priority projects;

(c) projects submitted or supported jointly by at least two Member States, in particular those involving cross-border sections;

(d) projects contributing to the continuity of the network and the optimisation of its capacity;

(e) projects contributing to the improvement of the quality of service offered on TEN-T and which promote, *inter alia* through action relating to infrastructure, the safety and security of users and ensure interoperability between national networks;

(f) projects relating to the development and deployment of traffic management systems in rail, road, air, maritime, inland waterway and coastal transport which ensure interoperability between national networks;

(g) projects contributing to the completion of the internal market; and

(h) projects contributing to the re-balancing of transport modes in favour of the most environmentally-friendly ones, such as inland waterways.

3. In the field of energy, particular attention shall be given to projects of European interest that contribute to:

(a) the development of the network so as to strengthen economic and social cohesion by reducing the isolation of the less-favoured and island regions of the Community;

(b) the optimisation of the capacity of the network and the completion of the internal energy market, in particular projects concerning cross-border sections;

(c) the security of energy supply, diversification of sources of energy supplies and, in particular, interconnections with third countries;

(d) the connection of renewable energy resources; and

(e) the safety, reliability and interoperability of interconnected networks.

4. A decision to grant Community financial aid shall take into account, *inter alia*:

(a) the maturity of the project;

(b) the stimulating effect of Community intervention on public and private funding;

(c) the soundness of the financial package;

(d) socio-economic effects;

(e) environmental consequences;

(f) the need to overcome financial obstacles; and

(g) the complexity of the project, for example that which arises from the need to cross a natural barrier.

Article 6

Forms and methods of Community financial aid

1. Community financial aid for projects of common interest can take one or more of the following forms:

(a) grants for studies or works;

(b) in the field of transport, grants for works in the framework of availability payment schemes;

(c) interest rate rebates on loans given by the EIB or other public or private financial institutions;

(d) a financial contribution to the provisioning and capital allocation for guarantees to be issued by the EIB on its own resources under the loan guarantee instrument. The duration of such guarantees may not exceed five years after the date the project goes into operation. Exceptionally, in duly justified cases, a guarantee may be granted for up to seven years. The contribution from the general budget of the European Union to the loan guarantee instrument may not exceed EUR 500 million. The EIB shall contribute an equal amount. The Community exposure to the loan guarantee instrument, including management fees and other eligible costs, shall be limited to the amount of the Community contribution to the loan guarantee instrument and there shall be no further liability on the general budget of the European Union. The residual risk inherent in all operations shall be borne by the EIB. The main terms, conditions and procedures of the loan guarantee instrument are laid down in the Annex;

(e) risk capital participation for investment funds or comparable financial undertakings with a priority focus on providing risk capital for trans-European network projects and involving substantial private sector investment; such risk-capital participation shall not exceed 1 % of the budgetary resources set out in Article 18;

(f) a financial contribution to the project-related activities of joint undertakings.

2. The amount of Community financial aid granted in the forms referred to in paragraph 1(a), (b), (c) and (f) shall take account of the criteria laid down in Article 5 and shall not exceed the following rates:

(a) studies: 50 % of the eligible cost, irrespective of the project of common interest concerned;

(b) works:

(i) priority projects in the field of transport:

— a maximum of 20 % of the eligible cost;

— a maximum of 30 % of the eligible cost for cross-border sections, provided that the Member States concerned have given the Commission all necessary guarantees regarding the financial viability of the project and the timetable for carrying it out;

(ii) projects in the field of energy: a maximum of 10 % of the eligible cost;

(iii) projects in the field of transport other than priority projects: a maximum of 10 % of the eligible cost;

(c) the European Rail Traffic Management System (ERTMS):

(i) track-side equipment: a maximum of 50 % of the eligible cost of studies and works;

(ii) on-board equipment:

— a maximum of 50 % of the eligible cost of developing and making prototypes for the installation of ERTMS on existing rolling stock, provided that the prototype is certified in at least two Member States;

— a maximum of 50 % of the eligible cost of series equipment for the installation of ERTMS on rolling stock; however, the Commission shall set in the framework of the multiannual programme a maximum amount of aid per traction unit;

(d) road, air, inland waterway, maritime traffic and coastal traffic management systems: a maximum of 20 % of the eligible cost of works.

3. Acting in accordance with the procedure referred to in Article 15(2), the Commission shall adopt implementation measures for the instruments referred to in paragraph 1(c) and (e) of this Article.

Article 7

Other financial aid and instruments

1. EIB operations shall be compatible with the granting of financial aid under this Regulation.

2. The Commission shall coordinate and ensure the coherence of projects co-financed in the framework of this Regulation with related actions benefiting from other Community contributions and financial instruments as well as EIB operations.

CHAPTER III

PROGRAMMING, IMPLEMENTATION AND CONTROL

Article 8

Multiannual and annual work programmes

1. Acting in accordance with the procedure referred to in Article 15(2), the Commission shall apply the criteria laid down in Article 5 and the objectives and priorities defined in the framework of Decisions No 1692/96/EC and No 1364/2006/EC when establishing multiannual and annual work programmes.

2. A multiannual work programme in the field of transport shall apply to priority projects and to road, air, rail, inland waterway and coastal and maritime traffic management systems. The amount of the financial envelope shall lie within a range of 80 % — 85 % of the budgetary resources referred to in Article 18 reserved for transport.

3. The annual work programme in the field of transport shall apply the criteria for the granting of financial aid to projects of common interest not included in the multiannual programme.

4. The annual work programme in the field of energy shall apply the criteria for the granting of financial aid to projects of common interest.

5. The multiannual work programme shall be reviewed at least at mid-term and, if necessary, revised in accordance with the procedure referred to in Article 15(2).

Article 9

Granting of Community financial aid

1. Following every call for proposals based on the multiannual or annual work programmes referred to in Article 8(1), the Commission, acting in accordance with the procedure referred to in Article 15(2), shall decide on the amount of financial aid to be granted to the projects or parts of projects selected. The Commission shall specify the conditions and methods for their implementation.

2. The beneficiaries and the Member States concerned shall be informed by the Commission of any financial aid to be granted.

Article 10

Financial provisions

1. Budgetary commitments may be divided into annual instalments. Each year the Commission shall commit the annual instalments taking into account the state of progress of the projects or project phases receiving financial aid, the estimated needs and the budget available.

The indicative timetable for the commitment of the individual annual instalments shall be communicated to the beneficiaries and the Member States concerned.

2. Community aid may cover only project-related expenditure incurred by the beneficiaries or by third parties responsible for the implementation of a project.

Expenditure shall be eligible from the date on which an application for aid is lodged. Expenditure resulting from projects included in the multiannual programme may be eligible as from 1 January of the current year, starting from 1 January 2007.

VAT shall not be an eligible cost, except for non-refundable VAT.

3. Payments shall be made in the form of pre-financing, where appropriate divided into several payment instalments, intermediate payments and payment of the balance.

The payment methods shall be defined in such a way as to take into account in particular the multiannual implementation of infrastructure projects.

The pre-financing, or where appropriate the first instalment thereof, shall be paid when the financial aid is granted.

Any intermediate payments shall be made on the basis of payment applications, subject to compliance with Article 13.

Payment of the balance shall be made after acceptance of the final report concerning the project submitted by the beneficiary and certified by the Member States concerned. The final report shall detail in particular all the expenditure actually incurred.

4. In the case of availability payment schemes, the first pre-financing payment shall be made within a period of up to three years following the granting of Community financial aid upon certification by the Member States of the start of the project and upon submission of the respective public-private partnership contract. Further pre-financing payments may be made upon certification by the Member States of the progress of the project.

Payment of the balance shall be made after the start of the operational phase of the project upon verification that the infrastructure has been delivered, certification by the Member States that the expenses claimed have actually been incurred and proof of a total amount of availability payments equalling the amount of the Community financial aid.

Where no payment of the availability payment is due because of a failure to deliver the infrastructure, the Commission shall recover the pre-financing payments it has made.

Article 11

Member States responsibilities

1. Within the sphere of their responsibility, the Member States shall make every effort to implement the projects of common interest which receive Community financial aid granted under this Regulation.

2. The Member States shall undertake the technical monitoring and financial control of projects in close cooperation with the Commission and shall certify the reality and the conformity of the expenditure incurred in respect of projects or parts of projects. The Member States may request the participation of the Commission during on-the-spot checks.

3. The Member States shall inform the Commission of the measures taken under paragraph 2 and, in particular, shall supply a description of the control, management and monitoring systems set up to ensure that projects are successfully completed.

Article 12

Compatibility with Community law and Community policies

Projects financed under this Regulation shall be carried out in conformity with Community law and shall take into account any relevant Community policies, in particular those relating to competition, the protection of the environment, health, sustainable development, public procurement and interoperability.

Article 13

Cancellation, reduction, suspension and discontinuance of aid

1. After appropriate examination and after having informed the beneficiaries and Member States concerned in order that they may present their observations within a given time, the Commission:

(a) shall cancel, except in duly justified cases, financial aid granted for projects or parts of projects which have not been started in the two years following the start date of the project established in the conditions governing the granting of aid;

(b) may suspend, reduce or discontinue the financial aid:

  (i) in the event of an irregularity committed in the implementation of the project or part of a project with regard to the provisions of Community law; and

  (ii) in the event of failure to comply with the conditions governing the financial aid, in particular if a major change affecting the nature of a project or procedures for implementation has been made without the approval of the Commission;

(c) may, taking account of all relevant factors, request the reimbursement of the financial aid granted if, within four years of the finishing date established in the conditions governing the granting of aid, the implementation of the project or part of a project receiving the financial aid has not been completed.

2. The Commission may recover all or part of the sums already paid:

(a) where this is necessary, notably following cancellation, discontinuation or reduction of the financial aid or a request for reimbursement of financial aid; or

(b) in the event of cumulation of Community aid for a part of a project.

Article 14

Protection of the Community's financial interests

1. The European Anti-Fraud Office (OLAF) may undertake on-the-spot site controls and checks in accordance with 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 ([1]).

2. The conditions governing the granting of Community financial aid may, in particular, provide for monitoring and financial checks to be undertaken by the Commission or any representative authorised by it, and for audits to be undertaken by the Court of Auditors, where appropriate on the spot.

3. The Member State concerned and the Commission shall immediately exchange all relevant information concerning the results of the checks undertaken.

CHAPTER IV

FINAL PROVISIONS

Article 15

Committee procedure

1. The Commission shall be assisted by a committee.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. The Committee shall adopt its rules of procedure.

4. The EIB shall designate a representative to the committee who shall not take part in the voting.

Article 16

Evaluation

1. The Commission and the Member States, assisted by the beneficiaries, may undertake an evaluation of the methods of carrying out projects as well as the impact of their implementation, in order to assess whether the objectives, including those relating to environmental protection, have been attained.

2. The Commission may request a beneficiary Member State to provide a specific evaluation of projects financed under this Regulation or, where appropriate, to supply it with the information and assistance required to undertake an evaluation of such projects.

([1]) OJ L 292, 15.11.1996, p. 2.

Article 17

Information and publicity

1. Every two years the Commission shall submit a report to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the activities undertaken under this Regulation. The report shall contain an evaluation of the results achieved with Community financial aid in the different fields of application with regard to the original objectives, as well as a chapter on the substance and implementation of the current multiannual programme. The report shall also contain information on the sources of funding for each project.

2. The Member States concerned and, where appropriate, beneficiaries shall ensure that suitable publicity is given to aid granted under this Regulation in order to inform the public of the role of the Community in the implementation of the projects.

Article 18

Budgetary resources

1. The financial envelope for the implementation of this Regulation for the period 2007-2013 shall be EUR 8 168 000 000, of which EUR 8 013 000 000 shall be for TEN-T and EUR 155 000 000 shall be for TEN-E.

2. The annual appropriations shall be authorised by the budgetary authority within the limits of the multiannual financial framework.

Article 19

Revision clause

Before the end of 2010, the Commission shall submit to the European Parliament and to the Council a general report on the experience gained with the mechanisms provided for by this Regulation for the granting of Community financial aid.

Acting in accordance with the procedure provided for in the first subparagraph of Article 156 of the Treaty, the European Parliament and the Council shall decide if, and under what conditions, the mechanisms provided for by this Regulation are to be maintained or amended beyond the period referred to in Article 18 of this Regulation.

Article 20

Entry into force

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

It shall apply as from 1 January 2007.

Actions underway in the field of transport and energy on the date of application of this Regulation shall continue to be subject to Regulation (EC) No 2236/95 in the version in force on 31 December 2006.

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

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*
…	…

ANNEX

MAIN TERMS, CONDITIONS AND PROCEDURES OF THE LOAN GUARANTEE INSTRUMENT REFERRED TO IN ARTICLE 6(1)(D)

The EIB shall be a risk-sharing partner and shall manage the Community contribution to the loan guarantee instrument on behalf of the Community. More detailed terms and conditions for implementing the loan guarantee instrument, including its monitoring and control, shall be laid down in a cooperation agreement between the Commission and the EIB, taking into account the provisions laid down in this Annex.

LOAN GUARANTEE INSTRUMENT FOR TEN-TRANSPORT PROJECTS	
Community contribution	1. Without prejudice to the adjustment procedure from 2010 onwards as set out in paragraph 2, the contribution from the general budget of the EU to the loan guarantee instrument shall be made available to the EIB in accordance with the following schedule: 2007 EUR 10 million; 2008 EUR 35 million; 2009 EUR 60 million; 2010 EUR 80 million; 2011 EUR 105 million; 2012 EUR 110 million; 2013 EUR 100 million. 2. In years 2007 to 2009 the Commission shall pay EIB the annual amounts as scheduled above. From 2010 onwards EIB shall request the transfer of sums up to the cumulated amount indicated in the schedule to the trust account. The request shall be issued by 31 December of the preceding year and shall be supported by a forecast of the need for the scheduled Community contribution. This forecast shall serve as the basis for a demand-based adjustment of the annual payments indicated above, which shall be decided in accordance with the procedure referred to in Article 15(2).
Trust account	1. The EIB shall set up a trust account to hold the Community contribution and revenues resulting from the Community contribution. 2. The interest earned on the trust account and other revenues resulting from the Community contribution, such as guarantee premiums, interest and risk margins on sums disbursed by the EIB, shall be added to the resources of the trust account, unless the Commission decides, in accordance with the procedure referred to in Article 15(2), that they are to be returned to the TEN-T budget line. 3. Sums drawn for capital allocation shall be reimbursed to the trust account after the amounts disbursed by the EIB under the loan guarantee instrument are fully reimbursed.
Use of the Community contribution	The EIB shall use the Community contribution: — to carry out, for each eligible project, the expected loss provisioning and capital allocation, in accordance with the relevant rules of the EIB and a risk assessment performed by the EIB under its applicable structured finance facility policy; — to cover any non-project-related eligible cost associated with the establishment and administration of the loan guarantee instrument. These costs shall be defined in the management agreement between the Commission and the EIB.

LOAN GUARANTEE INSTRUMENT FOR TEN-TRANSPORT PROJECTS	
Risk sharing	1. The Community contribution shall be used by the EIB to carry out, for each eligible project, the expected loss provisioning and capital allocation. 2. The expected loss provisioning shall cover the expected loss of a project. The part of the Community contribution covering the statistically expected loss provisioning for each eligible operation shall be paid from the trust account to the EIB, thus covering a percentage of the risk. This percentage shall be variable and depend on the risk grading of the operation as well as its maturity. 3. The capital allocation shall cover the unexpected loss of a project. The part of the Community contribution corresponding to the capital allocation shall be earmarked in the trust account for each underlying operation. This amount may be claimed by the EIB in the event of the call of the guarantee issued by EIB under loan guarantee instrument, thus covering an additional percentage of its risk. 4. The risk-sharing pattern resulting from the above mechanism shall be reflected in an appropriate sharing between the trust account and the EIB of the risk margin charged by the EIB to its counterpart under the underlying loan guarantee instrument operation.
The EIB guarantee	1. The loan guarantee instrument shall consist of an EIB guarantee for a stand-by liquidity facility to be provided to an eligible project in terms consistent with the loan guarantee instrument. 2. If the stand-by liquidity facility providers are entitled to call the EIB guarantee under the terms of the loan guarantee instrument, the EIB shall pay out all sums due to the stand-by liquidity facility providers and become creditor to the project. 3. Once the EIB has become creditor to a project, the 'EIB's rights under the loan guarantee instrument shall rank behind the debt service of the senior credit facility and ahead of equity and related financings. 4. The stand-by liquidity facility should not exceed 20 % of the total amount of the senior debt committed at financial close.
Pricing	The pricing of guarantees under the loan guarantee instrument, based upon the risk margin and the coverage of all administrative project-related costs of the guarantee instrument, shall be determined in accordance with relevant usual rules and criteria of the EIB.
Application procedure	Applications for risk coverage under the loan guarantee instrument shall be addressed to the EIB in accordance with the EIB's standard application procedure.
Approval procedure	The EIB shall carry out risk, financial, technical and legal due diligence and shall decide the issuance of a guarantee under the loan guarantee instrument in accordance with its usual rules and criteria, including, *inter alia*, the quality of individual proposals, the creditworthiness of the borrowers, acceptable terms and conditions and market demand.

LOAN GUARANTEE INSTRUMENT FOR TEN-TRANSPORT PROJECTS	
Duration of the loan guarantee instrument	1. The Community contribution to the loan guarantee instrument shall be committed at latest by 31 December 2013. The actual approval of guarantees is to be finalised by 31 December 2014. 2. In the event of termination of the loan guarantee instrument during the current financial framework any balances on the trust account, other than funds committed and funds needed to cover other eligible costs and expenses, shall be returned to the TEN-T budget line. If the loan guarantee instrument is not extended into the next financial framework, any remaining funds shall be returned to the revenue side of the general budget of the EU. 3. Funds allocated to the loan guarantee instrument may be called upon until the last guarantee expires or until the last subordinated debt has been reimbursed, whichever is earlier.
Reporting	Annual reporting methods on the implementation of the loan guarantee instrument shall be agreed between the Commission and the EIB.

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

On 20 July 2004 the Commission sent a proposal for a Regulation of the European Parliament and the Council laying down general rules for the granting of Community financial aid in the field of trans-European transport and energy networks and amending Council Regulation (EC) No 2236/95.

The European Parliament adopted its first reading opinion on 26 October 2005.

The European Economic and Social Committee delivered its opinion on 22 September 2005.

As the budgetary resources set out in the Commission initial proposal exceeded the amounts agreed in the financial framework 2007-2013 on TENs, the Commission gave a modified proposal on 24 May 2006 (COM(2006) 245 final). The modified proposal took into account the main amendments proposed by the EP in its first reading.

The Presidency negotiated informally with the European Parliament rapporteur in order to reach an agreement on a Common Position that could be accepted by the Parliament without amendments.

On 6 December 2006 The President of the Budgets Committee at the European Parliament, Mr LEWANDOWSKI, wrote a letter (16218/06) to the President of the Coreper, informing of the agreement of its committee on the Presidency compromise as set out in document 12777/2/06 REV 2. If the text of the Common Position is adopted accordingly, Mr LEWANDOWSKI informed of his intention to recommend the Plenary session of the Parliament to approve it without amendments.

On 11 December 2006 the Council reached a political agreement on the Presidency compromise as set out in document 12777/2/06/ REV 2. The Commission issued a declaration to be included in the minutes of the Council when the Common Position will be adopted.

II. OBJECTIVE

This Regulation strengthens and adapts existing financial instruments through an increase in the level of Community co-financing by providing for the possibility of applying a higher Community co-financing rate, in particular for projects characterised by cross-border nature, their transit function, or by the crossing of natural barriers. The regulation should allow a better use of the existing networks, a removal of bottlenecks and the completion of missing links that will make possible to increase effectiveness and competitiveness and to guarantee an appropriate level of quality and reduction of saturation points and, therefore, better long-term viability.

III. ANALYSIS OF THE COMMON POSITION

1. General observations

The Common Position was agreed on the basis of informal tripartite negotiations, following a series of meetings between the Presidency in office, the rapporteur and the representatives of the Commission.

IV. CONCLUSIONS

The Council considers that, as a whole, the Common Position is in line with the fundamental objectives of the Commission's amended proposal and considers that a good compromise has been reached with the European Parliament in the course of the informal negotiations.