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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2196/98**of 1 October 1998****concerning the granting of Community financial assistance for actions of an innovative nature to promote combined transport**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 75(1) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the Committee of the Regions ⁽³⁾,

Acting in accordance with the procedure laid down in Article 189c of the Treaty ⁽⁴⁾,

- (1) Whereas the present situation and the expected development of transport in the Community make it necessary to manage the Community's transport resources to optimum effect and hence to promote combined transport;
- (2) Whereas Commission Decision 93/45/EEC of 22 December 1992 concerning the granting of financial support for pilot schemes to promote combined transport ⁽⁵⁾ launched, in 1992, an experimental five-year scheme for the granting of financial assistance for pilot schemes to promote combined transport; whereas that scheme came to an end on 31 December 1996;
- (3) Whereas, therefore, Community action in this area is clearly useful; whereas this experimental scheme should be converted into a proper framework for Community action in the field of combined transport which takes account of the experience gained since 1992;
- (4) Whereas the main objective of Community action in the field of combined transport is to increase the competitiveness of this type of transport in order to

provide alternatives to road transport which are acceptable to the user; whereas financial assistance for projects eligible under this Regulation can therefore be of direct benefit only to Member States and to natural or legal persons established in the Community, and solely in respect of expenditure and costs incurred on Community territory;

- (5) Whereas Member States and natural or legal persons established in the Community should be the only applicants submitting a combined transport project; whereas it is possible, however, for directly concerned third countries and persons established outside the Community to be associated with the submission of a project;
- (6) Whereas combined transport projects should cover commercial services relating to this type of transport; whereas Community financial assistance is consequently granted for innovative operational measures and for feasibility studies relating to them; whereas projects concerning infrastructure networks and research and technological development projects are therefore excluded from the scope of this Regulation;
- (7) Whereas the Community financial assistance referred to in this Regulation should be provided for a limited period;
- (8) Whereas it is advisable to allow applicants to submit projects which best match current market needs; whereas innovation should therefore not be discouraged by an over-rigid definition of innovative projects;
- (9) Whereas it is nevertheless necessary, during the project selection procedure, to ensure that the project chosen makes a real contribution to the common transport policy and does not cause unacceptable distortions of competition;

⁽¹⁾ OJ C 343, 15. 11. 1996, p. 4 and OJ C 364, 2. 12. 1997, p. 5.

⁽²⁾ OJ C 89, 19. 3. 1997, p. 18.

⁽³⁾ OJ C 379, 15. 12. 1997, p. 47.

⁽⁴⁾ Opinion of the European Parliament of 12 June 1997 (OJ C 200, 30. 6. 1997, p. 137), Council common position of 17 March 1998 (OJ C 161, 27. 5. 1998, p. 1) and Decision of the European Parliament of 2 July 1998 (OJ C 226, 20. 7. 1998).

⁽⁵⁾ OJ L 16, 25. 1. 1993, p. 55.

- (10) Whereas a financial reference amount, within the meaning of point 2 of the Declaration by the European Parliament, the Council and the Commission of 6 March 1995⁽¹⁾, is included in this Regulation for the entire duration of the action provided for, without thereby affecting the powers of the budgetary authority as they are defined by the Treaty;
- (11) Whereas the Commission should monitor the progress of projects in order to obtain the desired results; whereas the respective powers and responsibilities of the Member States and the Commission with regard to financial control should be spelt out;
- (12) Whereas the Commission should evaluate the procedures for implementing combined transport projects in order to assess whether the objectives originally set can be or have been attained;
- (13) Whereas the application of this Regulation should be monitored on a regular basis; whereas, to this end, the Commission should, two years after the Regulation enters into force, report on progress to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions;
- (14) Whereas the activities financed should be the subject of appropriate information, publicity and transparency;
- (15) Whereas the purpose of the action covered by this Regulation is to help start up combined transport projects; whereas this Regulation should therefore be of limited duration,

HAS ADOPTED THIS REGULATION:

Article 1

Objective

This Regulation specifies the conditions, detailed rules and procedures for granting Community financial assistance to innovative projects, which contribute to the increased use of combined transport and encourage the transfer of traffic from roads to more environment-friendly modes of transport through:

- (a) increasing the competitiveness of combined transport as compared with exclusively road haulage; or
- (b) promoting the use of advanced technology in combined transport; or
- (c) improving the possibilities of supplying combined transport services.

⁽¹⁾ OJ C 293, 8. 11. 1995, p. 4.

Article 2

Definitions and scope

1. For the purposes of this Regulation:

- 'combined transport' means the transport of goods between Member States where the lorry, trailer, semi-trailer, with or without the tractor unit, swap body or container of 20 feet or more uses the road on the initial or final leg of the journey and, on the other leg, rail or inland waterway or maritime services, on the understanding that the road section is as short as possible,
- 'combined transport action' means any action of an innovative nature aimed at achieving the objectives provided for in Article 1 and selected in accordance with Article 7.

2. Within the territory of the Community, combined transport actions shall primarily be covered by 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⁽²⁾.

These actions may be developed in rail freight corridors.

3. However, combined transport actions may also cover routes situated partly outside Community territory, on the following conditions:

- the action must be carried out in the interests of the common transport policy, as in the case of projects concerning transit third countries in the context of an intra-Community transport operation,
- the action must cover the territory of at least one Member State.

Article 3

Eligible projects

Eligible projects are innovative projects which constitute:

- (a) innovative operational measures;
- (b) feasibility studies which plan and prepare innovative operational measures.

Article 4

Applicants submitting projects

1. Any Member State or any public or private natural or legal person, established within the Community, may submit a project to the Commission.

⁽²⁾ OJ L 228, 9. 9. 1996, p. 1.

Without prejudice to Article 2(3), as a general rule the project should be submitted by two or more public or private natural or legal persons who are nationals of at least two Member States.

When a project is submitted in accordance with the first subparagraph, any third country and any public or private natural or legal person, established outside the Community and directly concerned, may be associated with the submission of that project on the understanding that they receive no Community support under this Regulation.

2. Where the project involves exercising rights of access to the rail infrastructure as provided for in Article 10 of Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways⁽¹⁾, Community financial assistance shall be granted only to railway undertakings which hold a licence within the meaning of Article 2 of Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings⁽²⁾.

Article 5

Eligible expenditure and costs

1. Regarding expenditure and costs in respect of innovative operational measures, Community financial assistance shall be limited to a maximum of 30 %. The eligible expenditure and costs may include *inter alia*:

- (a) the cost of hiring, leasing or amortisation of combinations of vehicles — lorries, trailers, semi-trailers, with or without tractor unit, swap bodies or containers of 20 feet or more;
- (b) the cost of hiring, leasing or amortisation and of making the adjustments necessary to complete the planned action successfully, in respect of rolling stock (including locomotives) and inland waterway and sea vessels subject, with regard to inland waterway vessels, to compliance with the specific rules on structural improvements to inland waterway transport;
- (c) investment expenditure or the cost of hiring, leasing or amortisation in respect of installations permitting transshipment between railways, inland waterways, shipping routes and roads;
- (d) the cost of using rail, inland waterway and maritime infrastructures, with the exception of harbour dues and transshipment costs;
- (e) expenditure relating to the commercial operation of techniques, technologies or equipment previously tested and approved, in particular transport information technology;

⁽¹⁾ OJ L 237, 24. 8. 1991, p. 25.

⁽²⁾ OJ L 143, 27. 6. 1995, p. 70.

- (f) the cost of measures related to staff training and the dissemination of project results, as well as expenses for information and communication action taken in order to make new combined transport services known to the relevant transport industry.

Expenditure and/or costs under (a), (b), (c) and (e) are eligible provided that the beneficiary or beneficiaries of the assistance undertake to keep the equipment for which assistance has been granted on the route concerned throughout the duration of the contract.

2. Community financial assistance in respect of feasibility studies shall be limited to a maximum of 50 %.

3. The Community financial assistance provided for by this Regulation shall directly benefit Member States and the persons referred to in the first subparagraph of Article 4(1), in respect of the expenditure and costs incurred in Community territory.

This assistance shall be granted for a maximum period of three financial years.

4. When examining a project extending beyond Community territory submitted under this Regulation, the Commission shall consider the possibilities of financing the part of the project situated outside the Community by means of other Community budgetary instruments, in order to ensure efficient use of Community resources.

Article 6

Submission of projects

1. Projects for combined transport actions shall be submitted to the Commission. The submission shall contain all the elements necessary to enable the Commission to make its selection in accordance with Article 7.

2. The submission of an innovative operational measures project shall describe the project, taking into account the following elements:

- (a) identification of the project and the applicants submitting it, its general objectives and the financial assistance requested;
- (b) project objectives:
 - customer potential for combined transport,
 - prices and service performance (accessibility, reliability, time gains) in comparison with competing transport services, in particular road transport (at the time of submission and after implementation of the project),
 - envisaged receipts,

- cost factors (particularly elements for evaluating the marginal cost of access to the infrastructure, particularly rail, for the service covered by the action and any further information enabling a judgment to be made as to whether aid towards the costs of infrastructure access is justified),
 - timetable for viability,
 - compatibility and interoperability;
- (c) contribution of the project to the common transport policy:
- benefits to the environment and safety when compared with the existing situation, in particular in terms of the balance between different modes, making it possible, *inter alia*, to develop combined long-distance transport,
 - effects on other competing transport services in the relevant market and possible new entrants,
 - relevance of project results for other natural or legal persons, other routes, or other participants,
 - contribution of the project to the development and use of trans-European transport networks and rail freight freeways;
- (d) project characteristics:
- identification of modes of transport, natural or legal persons involved and cooperation planned,
 - reason for envisaged project (customer requests, congestion, market potential, remoteness of area, etc.),
 - innovative features in comparison with current situation,
 - duration of project,
 - need for assistance and information on the other sources of financing planned for the project as a whole,
 - market conditions, including existing technologies and services, taking account also of other modes;
- (e) financial statement itemising all the costs in ecus and the amount in ecus of aid applied for in respect of each eligible heading.
3. The submission of a feasibility study project must describe the project taking into account the following elements:
- information available on the content of points (a) to (c) of paragraph 2,
 - organisation of tasks, and implementation phases and timetable,
 - broad lines and summary of the study project.
4. The Commission shall forward to the Committee referred to in Article 8 the list of projects submitted to it, accompanied by a summary of eligible projects.

Article 7

Selection of projects — Granting of financial assistance

The Commission shall decide whether to grant financial assistance under this Regulation taking into account, for the selection of the project, the objectives referred to in Article 1, and the information referred to in Article 6(2) and (3) as appropriate, in accordance with the procedure laid down in Article 8.

It shall inform all beneficiaries and all Member States concerned directly of its decision.

Article 8

Committee

1. Where reference is made to the procedure laid down in this Article, the Commission shall be assisted by a Committee composed of the representatives of the Member States and chaired by the representative of the Commission.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. 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. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The Chairman shall not vote.

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

(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.

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.

Article 9

Financial provisions

1. Financial assistance may be granted for expenditure on the implementation of combined transport actions carried out by the beneficiaries or by third parties who have been made responsible for implementation.

2. Financial assistance shall not cover expenditure incurred before the date on which the Commission received the application.

3. Commitments and payments shall be expressed and paid in ecus.

4. As a general rule, payments shall be made in the form of advances and a final payment. The first advance shall be paid once the application for financial assistance has been approved. Subsequent payments shall be made on the basis of requests for payment and taking into account progress with the project.

5. The Commission shall make the final payment after approval of an activity report on the study or other measure submitted by the beneficiary and itemising all the expenditure actually incurred.

6. The Commission shall inform the Member States of the payments made and of the activity reports accepted.

Article 10

Financial reference amount

The financial reference amount for the implementation of the actions provided for in this Regulation, for the period 1 January 1997 to 31 December 2001, is ECU 35 million.

The annual appropriations shall be authorised by the budget authority within the limits of the financial perspective.

Article 11

Financial control

1. Without prejudice to inspections carried out by Member States in accordance with national laws, regulations and administrative provisions, to the provisions of Article 188a of the Treaty, and to inspections carried out under Article 209(c) of the Treaty, officials or other staff of the Commission may visit the sites of supported combined transport actions to carry out spot checks.

2. If the implementation of a combined transport action appears not to correspond, wholly or in part, to the project approved and/or its objectives, the Commission shall conduct appropriate investigations.

3. Following the investigations referred to in paragraph 2, the Commission may reduce, suspend or withdraw financial assistance for the combined transport action if the investigation confirms that there is some irregularity or that the conditions set out in the decision granting the financial assistance have not been met, particularly if there is an important change which affects the nature or conditions of implementation of the combined transport

action and if the beneficiaries had not obtained prior approval from the Commission.

Article 12

Monitoring and evaluation

1. The Commission shall be responsible for the financial execution and implementation of the Regulation. In order to ensure that Community aid is used efficiently, the Commission shall monitor and evaluate the implementation of combined transport actions during and after their completion. On completion of a combined transport action and before final payment, the Commission shall carry out an evaluation of it, taking into account a report by the beneficiary showing how money has been spent and demonstrating the extent to which traffic forecasts have been achieved.

2. Up to 1 % of the budget provided for in this Regulation shall be set aside for independent monitoring and evaluation.

3. The monitoring and evaluation procedures referred to in this Article shall be defined by the contracts, based on the decisions adopted in accordance with Article 7(1).

Article 13

Report

Two years after the entry into force of this Regulation, the Commission shall submit a report on the activities carried out under it to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions. It shall take the utmost account of the comments made by the other institutions and bodies on the report.

The report shall be accompanied, if need be, by appropriate proposals for adjusting the orientation of the actions provided for in this Regulation.

The application of this Regulation shall be evaluated in line with Commission evaluation principles. The result of this evaluation shall be available by 1 October 2001.

Article 14

Publicity

The beneficiaries of Community aid shall ensure that proper publicity is given to the assistance granted under this Regulation to make the public aware of the role played by the Community in implementing combined transport actions. They shall consult the Commission on how this is to be done.

*Article 15***Duration**

The granting of financial assistance for combined transport under this Regulation shall be authorised from 1 January 1997 to 31 December 2001.

*Article 16***Entry into force**

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

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

Done at Luxembourg, 1 October 1998.

For the Council

The President

C. EINEM
