



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 02.06.1999
COM(1999) 265 final

98/0101 (COD)

OPINION OF THE COMMISSION

pursuant to Article 251 (2) (c) of the EC Treaty,
on the European Parliament's amendments
to the Council's common position regarding the

proposal for a
EUROPEAN PARLIAMENT AND COUNCIL REGULATION (EC)

**modifying Council Regulation (EC) No 2236/95 laying down general rules for
the granting of Community financial aid in the field of trans-European networks**

AMENDING THE PROPOSAL OF THE COMMISSION

pursuant to Article 250 (2) of the EC Treaty

1. BACKGROUND

On 18 March 1998, the Commission adopted a proposal for a Council Regulation amending Council Regulation (EC) No 2236/95 laying down general rules for the granting of Community financial aid in the field of trans-European networks (COM (1998) 172 final). The proposal was sent to the Council and Parliament on 11 May 1998.

The Economic and Social Committee delivered its opinion on 9 September 1998.

The Committee of the Regions delivered its opinion on 27 November 1998.

After receiving the opinion of Parliament which was adopted on 19 November 1998, the Commission sent the Council a modified proposal on 4 December 1998 [COM(98) 723 final].

The Council adopted their common position by unanimity on 21 December 1998.

The coming into force of the Amsterdam Treaty on 1 May 1999 and the consequent change from co-operation procedure to co-decision procedure required the Commission to reconfirm its original proposal, the Parliament to reconfirm its first reading and the Council to reconfirm its common position.

The Commission reconfirmed the original proposal by letter dated 3 May 1999. The Council confirmed its common position by letter dated 4 May 1999, and the European Parliament confirmed its first reading at its sitting on 4 May 1999.

Finally on 6 May 1999 the European Parliament adopted their second reading.

2. PURPOSE OF THE COMMISSION PROPOSAL

Objective of the proposal

In the framework of its proposal relating to the Agenda 2000 exercise, the Commission submitted a proposal in order to amend Council Regulation n°2236/95 on financial rules for granting aid to TENs. The amendments, based on the experience gained so far, aim to improve the functioning of the existing regulation and can be summarised as follows :

- Introduction of a Multi-annual Indicative Programme (MIP) indicating the overall level of TEN-support which the large infrastructure projects can expect to receive in the period 2000-2006, together with the possibility of multi-annual budgetary commitments.

- Use of a modest share of the TEN-budget for participation in risk-capital funding of TEN-infrastructure.
- Increase in the intervention ceiling for Community support from 10% to 20% of a project's total costs in exceptional circumstances for projects with a strong trans-European interest or environmental dimension.
- Inclusion in the financial statement attached to the Commission proposal of a total budget for the period 2000-2006 of just under € 5.5 billion.

3. OPINION OF THE COMMISSION ON THE AMENDMENTS PROPOSED BY PARLIAMENT

3.1. General Comment

The Amendments of the European Parliament's Second reading embrace most of the new initiatives the Commission has introduced in the proposal. The multi-annual indicative programming, which is very important to long term financial planning for large infrastructure projects, and the possibility for the Commission to use a modest share of the TEN-budget (1-2%) to engage in risk-capital funding of TEN infrastructure have been endorsed by the Parliament. The possibility of increasing the level of community support from 10% to 20% has been endorsed by the Parliament, but only for projects concerning Satellite Navigation Systems and only as from 1 January 2003. These new instruments will prove useful in bringing more private capital into TEN-projects.

The Parliament has rejected the possibility of multi-annual budgetary commitments and has introduced a figure of € 4,6 billion as financial reference amount for the period 2000-2006, which is below the Commission's original proposal.

The Commission accepts all of the European Parliament's 21 amendments. The amendments reflect the compromise reached between the European Parliament and the Council in discussion leading up to the vote of the European Parliament on 6 May 1999.

3.2. European Parliament's amendments from second reading

Amendment 1 (recital 4)

Amendment 1 introduces the possibility of using 1% of the TEN budget for risk-capital participation from the beginning, and increasing this to 2% following a review of the functioning of this instrument. The amendment is in line with the

Commission's original proposal and part of the compromise between EP and Council.

Amendment 2 (art. 4.1 (e) in reg. 2236/95)

This amendment reflects the intentions of amendment 1 and specifies in detail that the risk-capital participation can be increased to 2% as from 2003 following a review to be presented to the European Parliament and the Council by the Commission. The amendment is in line with the Commission's original proposal and part of the compromise between EP and Council.

Amendment 3 (art. 4.1 (f) in reg. 2236/95)

This amendment allows all the different support forms to be combined including risk-capital participation, to maximise stimulus of the TEN-budget resources. The amendment text corrects an error in the Commission's original proposal.

Amendment 4 (art. 4.2(a)) new

This amendment pre-allocates at least 55% of the TEN-transport budget to railways (including combined transport) and a maximum of 25% to roads. The Commission is generally against pre-allocations to specific modes, but can accept this amendment as it reflects the allocations applied in the period 1995-99.

Amendment 5 (art. 4.2(b)) new

This amendment asks the Commission to promote recourse to private sources of financing. The Commission shall investigate where appropriate the possibility for using public financing instead. This is in line with the original Commission proposal to promote recourse to private sources of financing and part of the compromise between EP and Council.

Amendment 6 (art. 5.3 in reg. 2236/95), new paragraph

This amendment allows the Commission to increase the support level to 20% for Satellite Navigation Systems as from 1 January 2003, following a review. This is in line with the original Commission proposal to increase the support level to 20% and part of the compromise between EP and Council.

Amendment 7 (art 5 (a)) new

Amendment 7 specifies the rules for the multi-annual indicative programme. The changes introduced by the Council in their common position and the changes in this amendment are in line with the original Commission proposal and part of the compromise between EP and Council.

Amendment 8 (6.1 (a)) new

This amendment states that the Commission shall ensure conformity of its decisions to grant aid with the priorities laid down in the guidelines. As the Guidelines already are the basis for the yearly allocation of TEN-support, this amendment is acceptable to the Commission.

Amendment 9 (art. 8) new

This amendment widens the possible applicants for financial support to include also public and private undertakings or bodies directly concerned. This is a consequence of the Amsterdam Treaty, which allows support to projects in the TEN Guidelines if they have the support of the member states regardless of the status of the promoter. The amendment is in line with the Commission's original proposal.

Amendment 10 (art. 10 in reg. 2236/95)

Amendment 10 sets out rules for the Commission on how to grant aid to project within the multi-annual programme and for projects outside the MIP. The changes introduced are in line with the Commission's original proposal.

Amendment 11 (art. 11.7. in reg. 2236/95)

This amendment states that the Commission shall establish a framework for the procedures, timetable and amounts for payments of the different forms of intervention. The amendment is in line with the Commission's original proposal.

Amendment 12 (art. 13.2a) new

Amendment 12 states that if it is not duly justified to the Commission why a project has not started within 2 years, the Commission will cancel the decision. The amendment reintroduces the text of the Commission's original proposal.

Amendment 13 (new recital)

This new recital explains the committee procedure laid down in art. 17. The recital states that the committee procedures to be followed using this regulation, will take account of the current general rules for committee procedures including possible future modifications. This formulation is acceptable to the Commission and part of the compromise between the EP and the Council.

Amendment 14 (art. 18. in reg. 2236/95)

This amendment specifies the financial framework for this regulation to be € 4600 million in the period 2000-2006. The figure is below the Commission's original proposal, but acceptable to the Commission as part of the compromise between the EP and the Council.

Amendment 15 (art. 19. in reg. 2236/95) new

This amendment states that the Commission shall submit a comprehensive report to the EP and Council, after which the two institutions will decide if the regulation will be continued after 2006. This revision clause is in line with the current revision clause of regulation 2236/95 and in line with the Commission's original proposal.

Amendment 16 (Annex Point 1, third paragraph and point 2) new

This amendment proposes changes to the annex introduced by the Council on the

functioning of the risk-capital instrument. The amendment takes into account the possibility of increasing the amount to be used for risk-capital as introduced in art. 4.1.(e). Further the amendment states that the Community contribution ranks *pari passu* in terms of risk with other investors in a risk-capital fund. The Commission can accept these changes, as they are in line with the Commission's original intentions concerning risk capital.

Amendment 17 (art. 12.1. third indent)

This amendment specifies how the member states shall take the necessary measures to help the Commission to recover any amounts lost as a result of irregularities including interest payment. The text of this amendment is similar to the text in the current regulation 2236/95 and part of the Commission's original proposal.

Amendment 18 (art. 2.2 in reg. 2236/95)

This amendment proposes to delete art. 2.2. of the current regulation 2236/95, which means that projects other than projects financed by member states can be supported under this regulation. The change is a consequential change due to the change in art. 155 of the new Treaty, allowing support also to projects not co-financed by the member states.

Amendment 19 (art. 12.6 in reg. 2236/95)

This amendment states that the usual control measures shall also apply for public or private undertakings or bodies directly concerned. The control measures shall be carried out in co-operation between the Commission and the member states as appropriate. The change is a consequential change due to the change in art. 155 of the new Treaty, allowing support also to projects not co-financed by the member states.

Amendment 20 (art. 12.7)

This amendment states that all supporting documents regarding expenditure on a project must be available at least 5 years following the last payment in respect of the project. The change is a consequential change due to the change in art. 155 of the new Treaty, allowing support also to projects not co-financed by the member state.

Amendment 21 (annex, point 1, second paragraph)

Amendment 21 opens the possibility of using risk-capital funding for projects not co-financed by the member states. The change is a consequential change due to the change in art. 155 of the new Treaty, allowing support also to projects not co-financed by the member states.

CONCLUSION

The Commission accepts all 21 amendments proposed by the European Parliament in its second reading. The amendments reflect a compromise between the Council and the Parliament, which has been found during several triilogue meetings, where also the Commission, participated. The final compromise text includes most of the modifications proposed by the Commission in its original proposal. In particular:

a) The € 4,6 billion agreed upon is a considerable increase in the budget compared to the € 2.3 billion budget for the period 1995-99. This increase will definitely help to speed up the implementation of the trans-European networks. The Commission will be able to make a considerable contribution to the works of the Essen priority projects, which are now going into the main construction phase.

b) The introduction of multi-annual indicative programming (MIP) is a major step forward as an appropriate instrument for providing long-term financing for big long-term projects. The MIP will give a higher certainty to project promoters on level of TEN-support to expect over the period 2000-2006.

c) The investment of TENs money (1-2% of the budget) in risk capital funds, with the aim of catalysing the development of such funds and consequently gaining access to the potential very large resources of long term funding from pension funds and insurance companies for the financing of TEN infrastructure projects. This will especially be interesting for public-private partnership projects.

d) Another improvement included is the possibility of financing up to 20% of the satellite navigation systems including the necessary € 500 million for Galileo from the TENs budget. That component is essential in order to demonstrate that this vital genuinely trans-European project can be financed.

Amended proposal for a

EUROPEAN PARLIAMENT AND COUNCIL REGULATION (EC)

Modifying Council Regulation (EC) No. 2236/95 laying down general rules for the granting of Community financial aid in the field of trans-European networks (Com (98) 172 final 98/0101 (SYN))

Common position of the Council

Amended proposal

(Amendment 1)

Recital 4

(4) Whereas it is appropriate to limit risk-capital participation to investment funds with a priority focus on providing risk capital for trans-European network projects to 1 % of the financial reference amount for the period 2000-2006 in order to gain experience with this new form of financing; whereas it is appropriate to examine its possible future extension in the light of the comprehensive report the Commission will present before the end of 2006 on the experience gained with the application of the mechanisms under this Regulation;

(4) Whereas it is appropriate to allow risk-capital participation to investment funds with a priority focus on providing risk capital for trans-European network projects up to 1 % of the overall amount for the period 2000-2006 in order to gain experience with this new form of financing; whereas this limit may be increased up to 2% following a review of the functioning of this instrument; whereas it is also appropriate to examine its possible future extension;

(Amendment 18)

Article 2(2) (Regulation (EC) No 2236/95)

Article 2(2) is deleted.

(Amendment 2)

Article 4(1)(e), 1st subparagraph (Regulation (EC) No 2236/95)

(c) 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 under Article 18.

(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 under Article 18. In accordance with the procedure specified in Article 17, this limit may be increased up to 2% as from 2003 in the light of a review, to be presented to the European Parliament and the Council by the Commission, of the functioning of this instrument.

(Amendment 3)

Article 4(1)(f) (Regulation (EC) No 2236/95)

(f) Community assistance under points (c) to (d) shall be combined, where appropriate, in order to maximise the stimulus provided by the budgetary resources deployed, which shall be used in the most economical way.

(f) Community assistance under points (a) to (e) shall be combined, where appropriate, in order to maximise the stimulus provided by the budgetary resources deployed, which shall be used in the most economical way.

(Amendment 4)

Article 4(2a) (new) (Regulation (EC) No 2236/95)

In Article 4 the following paragraph 2a is inserted:

"2a. The funding for transport infrastructure projects throughout the period referred to in Article 18 should be used in such a way that at least 55% is devoted to railways (including combined transport) and a maximum of 25% to roads."

(Amendment 5)

Article 4(2b) (new) (Regulation (EC) No 2236/95)

In Article 4, the following paragraph 2b is inserted:

"2b. The Commission shall specifically promote recourse to private sources of financing for projects funded under this Regulation where the multiplier effect of Community financial instruments can be maximised in public-private partnerships. Each case shall be examined individually by the Commission, with account taken where appropriate of a possible alternative financed solely with public resources. The support of each Member State concerned

shall be required for each project in accordance with the Treaty."

(Amendment 6)

Article 5(3), new subparagraph (Regulation (EC) No 2236/95)

In Article 5(3) the following subparagraph is inserted:

"Exceptionally, in the case of projects concerning satellite positioning and navigation systems as provided for in Article 17 of Decision No 1692/96/EC⁽¹⁾, the total amount of Community aid under this Regulation may reach 20% of the total investment cost as from 1 January 2003 following a review.

(¹) OJ L 228, 9.9.1996, p. 1."

(Amendment 7)

Article 5a (1) to (4) (Regulation (EC) No 2236/95)

1. Without prejudice to the application of Article 6 and in order to improve the efficiency of the Community's action, the Commission may, in accordance with the procedure set out in Article 17, elaborate by sector an indicative multiannual programme for granting budgetary resources under Article 18 (hereinafter called "programme") on the basis of the guidelines referred to in Article 129c of the Treaty. The programme shall be based on applications for financial aid under Article 8 and reflect inter alia information provided by Member States, in particular the information set out in Article 9.

2. A programme shall exclusively be composed of projects of common interest and/or coherent groups of projects of common interest, as previously identified within the framework of the guidelines referred to in Article 129c (1) of the Treaty, in specific fields having substantial financial needs over a long period.

3. For each project or group of projects referred to in paragraph 2 the programme shall establish the indicative global amounts and the financial plans including envisaged annual amounts for the granting of financial aid for the programme's time-period. No more than 75% of the budgetary resources under Article 18 shall be used for the purposes of indicative multi-annual programmes.

4. The programme shall serve as a reference for the annual decisions allocating the budgetary resources under Article 18

1. Without prejudice to the application of Article 6 and in order to improve the efficiency of the Community's action, the Commission may, in accordance with the procedure set out in Article 17, elaborate by sector an indicative multiannual programme (hereinafter called "programme") on the basis of the guidelines referred to in Article 155 of the Treaty. The programme will be based on applications for financial aid under Article 8 and reflect inter alia information provided by Member States, in particular the information set out in Article 9.

2. A programme shall exclusively be composed of projects of common interest and/or coherent groups of projects of common interest, as previously identified within the framework of the guidelines referred to in Article 155 (1) of the Treaty, in specific fields having substantial financial needs over a long period.

3. For each project or group of projects referred to in paragraph 2 the programme will establish the indicative amounts for the granting of financial aid, subject to the annual decisions of the budgetary authority. No more than 75% of the budgetary resources under Article 18 shall be used for the purposes of indicative multi-annual programmes.

4. The programme shall serve as a reference for the annual decisions allocating Community aid for projects within the

within the annual budgetary appropriations. The Commission shall regularly inform the Committee referred to in Article 17 of the progress of programmes and any decisions taken by the Commission in allocating the budgetary resources under Article 18.

The programme shall be reviewed, at least at mid-term and in the year 2005 or in the light of the effective progress of the project(s) or group(s) of projects, and if necessary revised, in accordance with the procedure set out in Article 17. In its opinion on a programme, the Committee shall also deliver an opinion on the parameters of any review. The proper functioning of the programme, in particular in relation to the role of the Committee referred to in Article 17, shall be included as part of the mid-term review.

The programme shall also give an indication of other sources of financing for the projects concerned, in particular from other Community instruments and the European Investment Bank.

annual budgetary appropriations. The Commission shall regularly inform the Committee referred to in Article 17 of the progress of programmes and any decisions taken by the Commission in allocating Community aid for projects. The supporting documents accompanying the Commission's preliminary draft budget shall include a report concerning progress in the implementation of each multiannual indicative programme in accordance with the Financial Regulation.

The programme must be reviewed, at least at mid-term or in the light of the effective progress of the project(s) or group(s) of projects, and if necessary revised, in accordance with the procedure set out in Article 17.

The programme shall also give an indication of other sources of financing for the projects concerned, in particular from other Community instruments and the European Investment Bank.

(Amendment 8)

Article 6(1a) (new) (Regulation (EC) No 2236/95)

In Article 6 the following paragraph 1a is inserted:

"1a. In its implementation of this Regulation, the Commission shall ensure the conformity of its decisions on granting Community aid with the priorities laid down in the guidelines for the different sectors established pursuant to Article 155 (1) of the Treaty. This shall include their conformity with any requirements which may be laid down in those guidelines in terms of a percentage of total Community aid."

(Amendment 9)

Article 8 (Regulation (EC) No 2236/95)

Article 8 is replaced by the following :

Article 8

Submission of applications for financial aid

Applications for financial aid shall be submitted to the Commission by the Member State(s) concerned or, with the agreement of the Member State(s), by the public or private undertakings or bodies directly concerned. The Commission shall establish the agreement of the Member State(s) concerned.

(Amendment 10)

Article 10 (Regulation (EC) No 2236/95)

The Commission shall decide to grant financial aid under this Regulation

In accordance with Article 274 of the Treaty, the Commission shall decide to grant

according to its assessment of the application in accordance with the selection criteria. In the case of projects identified in the relevant indicative multiannual programme established pursuant to Article 5a, the Commission shall take the annual decisions to grant aid within the indicative financial allocations provided for in that programme. In the case of other projects, decisions to grant aid shall be taken in accordance with the procedure specified in Article 17. The Commission shall notify its decision directly to the beneficiaries and to the Member States.

financial aid under this Regulation according to its assessment of the application in accordance with the selection criteria. In the case of projects identified in the relevant indicative multiannual programme established pursuant to Article 5a, the Commission shall take annual decisions to grant aid within the indicative financial amounts provided for in that programme. In the case of other projects, measures shall be adopted in accordance with the procedure specified in Article 17. The Commission shall notify its decision directly to the beneficiaries and to the Member States.

(Amendment 11)

Article 11(7) (Regulation (EC) No 2236/95)

7. The Commission shall determine, following the procedure set out in Article 17, the procedures, timetable and amounts for payments of interest-rate subsidies, guarantee premium subsidies and support in the form of risk capital participation, for investment funds or comparable financial undertakings with a priority focus on providing risk capital for trans-European network project.

7. Following the procedure set out in Article 17, the Commission shall establish a framework for the procedures, timetable and amounts for payments of interest-rate subsidies, guarantee premium subsidies and support in the form of risk capital participation, for investment funds or comparable financial undertakings with a priority focus on providing risk capital for trans-European network projects.

(Amendment 17)

Article 12(1), 3rd indent (Regulation (EC) No 2236/95)

Article 12(1) third indent is replaced by the following:

"- recover any amounts lost as a result of irregularity including interest on account of late repayment in accordance with the rules adopted by the Commission. Except where the Member State(s) and/or the implementing public authority provide proof that they were not responsible for the irregularity, the Member State shall be liable in the alternative for reimbursement of any sums unduly paid."

(Amendment 19)

Article 12(6) (Regulation (EC) No 2236/95)

Article 12(6) is replaced by the following:

6. In the case of Community aid granted to public or private undertakings or bodies directly concerned, the control measures shall be carried out by the Commission in cooperation with the Member States as appropriate."

(Amendment 20)

Article 12(7) (Regulation (EC) No 2236/95)

Article 12(7) is replaced by the following:

"7. The responsible bodies and authorities and public or private undertakings or bodies directly concerned shall keep available for the Commission all the supporting documents regarding expenditure on any project for a period of five years following the last payment in respect of the project."

(Amendment 12)

Article 13(2a) (new) Regulation (EC) No 2236/95

2a. Except in cases duly justified by the Commission to the Committee referred to in Article 17, aids granted to projects which have not started within two years following the date of their expected start, as indicated in the decision granting assistance, will be cancelled by the Commission.

2a. Except in cases duly justified to the Commission, aids granted to projects which have not started within two years of their expected start, as indicated in the decision granting assistance, will be cancelled by the Commission.

(Amendment 13)

New Recital (Article 17) (Regulation (EC) No 2236/95)

The following Recital is added in order to explain the committee procedures laid down in Article 17:

"Whereas Council Decision 87/373/EEC lays down the procedures for the exercise of powers conferred on the Commission by the Council for the implementation of acts which it adopts; whereas the procedures laid down in this Regulation should take account of possible modifications of existing arrangements laid down by inter-institutional agreement or by Decision 87/373/EEC;"

(Amendment 14)

Article 18, 1st paragraph (Regulation (EC) No 2236/95)

The financial reference amount for the implementation of this Regulation for the period 2000 - 2006 shall be one EURO. The annual appropriations shall be authorised by the budgetary authority within the limits of the financial perspective.

The financial framework for the implementation of this Regulation for the period 2000 - 2006 shall be EUR 4 600 million. The annual appropriations shall be authorised by the budgetary authority within the limits of the financial perspective.

(Amendment 15)

Article 19 (Regulation (EC) No 2236/95)

Before the end of 2006 the Commission shall submit to the European Parliament and the Council a comprehensive report on the experience gained with the mechanisms under this Regulation, in particular the mechanism under Article 4(1)(e), and the Council, acting in accordance with the procedure laid down in the third paragraph of Article 129d of the Treaty, shall examine whether and under which conditions the measures provided for in this Regulation will be continued or amended after the end of the period referred to in Article 18.

Before the end of 2006 the Commission shall submit to the European Parliament and the Council a comprehensive report on the experience gained with the mechanisms under this Regulation for granting Community aid, in particular the mechanisms and provisions foreseen in Article 4. The European Parliament and the Council, acting in accordance with the procedure laid down in the first paragraph of Article 156 of the Treaty, shall examine whether and under which conditions the measures provided for in this Regulation will be continued or amended after the end of the period referred to in Article 18.

(Amendment 21)

Annex (1), 2nd paragraph, 2nd indent

- at least partially finance by the Member States concerned within the meaning of Article 2 (2) of the Regulation.

Deleted

(Amendment 16)

Annex point (1), 3rd paragraph and point (2)

Community aid for investment funds or comparable financial undertakings, if granted in the form of a risk-capital participation, shall be granted, in principle, only if the Community contribution ranks *pari passu* with other investors in the fund.

Community aid for investment funds or comparable financial undertakings, if granted in the form of a risk-capital participation, shall be granted, in principle, only if the Community contribution ranks *pari passu* in terms of risk with other investors in the fund.

2. Limits for intervention and maximum investment

Contributions under Article 4(1)(e) of the Regulation shall not exceed 1% of the total budgetary appropriations for trans-European networks until the end of 2006.

2. Limits for intervention and maximum investment

Contributions under Article 4(1)(e) of the Regulation shall not exceed 1% of the overall amount for the period mentioned in Article 18. However this limit may be increased in accordance with the said Article 4(1)(e).

COM(1999) 265 final

DOCUMENTS

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01 06 09 15.

Catalogue number : CB-CO-99-265-EN-C

Office for Official Publications of the European Communities
L-2985 Luxembourg