COUNCIL DECISION

of 9 March 1987

empowering the Commission to borrow under the New Community Instrument for the purpose of promoting investment within the Community

(87/182/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

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

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas the Community's investment financing facilities should continue to operate, with a view to correcting structural shortcomings in the production system and increasing the pace of economic growth so as to slow down the disturbing trend of unemployment;

Whereas loan applications already approved by the Commission account for over two thirds of the borrowing authorized by the Council in Decision 83/200/EEC (4);

Whereas, within the framework of this Decision, action under the New Community Instrument, as last defined by Decision 83/200/EEC, should be concentrated in favour of small and medium-sized enterprises;

Whereas such action will help to achieve the Community's objectives regarding the reduction of regional disparities;

Whereas it is vital in order to strengthen the Community's technological base and industrial competitiveness to encourage the innovative capacity and commercial dynamism of undertakings;

Whereas investment by small and medium-sized undertakings involving the application of new technologies and innovation has features which raise special financing problems;

Whereas special financing arrangements should consequently be provided for to deal with such problems, in particular by extending the financing base and by encouraging the supply of equity funding from financial intermediaries;

Whereas the New Community Instrument must make a contribution to the implementation of the Integrated Mediterranean Programmes;

Whereas the Commission should therefore be empowered to borrow amounts enabling it to grant loans of up to 750 million ECU in principal;

Whereas the European Investment Bank (hereinafter referred to as the 'Bank') has stated that it is willing to contribute to the implementation of this measure, and to take responsibility for managing the cash holdings for carrying out the lending operations, it being understood that the discharge and audit procedures shall be exclusively those provided for in the Bank's Statute in respect of all its operations,

HAS DECIDED AS FOLLOWS:

Article 1

The Commission shall be empowered to borrow, on behalf of the European Economic Community under the New Community Instrument, amounts enabling it to grant loans of up to the equivalent of 750 million ECU in principal.

Article 2

The proceeds of the borrowings referred to in Article 1 shall be on-lent to finance investment projects that contribute to the industrial adjustment and the competitiveness of the Community, in particular by means of the application of new technologies and innovation.

These projects, to be carried out in Community territory, must be such that they serve the Community's priority objectives relating to the financing of investment by small and medium-sized undertakings in industry and other productive sectors taking into account *inter alia* their regional impact and the need to combat unemployment.

Article 3

The Commission shall decide whether or not projects are eligible in accordance with the following priorities and guidelines:

— the investment projects of small and medium-sized enteerprises in industry and other productive sectors, in particular with a view to the application of new technologies and innovation and to improving the rational use of energy shall be eligible; the projects of small enterprises shall have priority;

(1) OJ No C 163, 3. 7. 1985, p. 4.
(2) OJ No C 343, 31. 12. 1985, p. 126.
(3) OJ No C 303, 25. 11. 1985, p. 12.
(4) OJ No L 112, 28. 4. 1983, p. 26.

— projects and their implementation shall comply with the provisions of the Treaty and of secondary legislation, in particular provisions relating to competition, and with the rules and requirements of the relevant Community policies.

Article 4

Loans shall generally be granted through the agency of financial intermediaries. In certain limited cases, however, they may be made directly to the recipients.

Whatever the procedure for granting loans, capital and interest payments may be deferred. Loans may also be used to finance intangible assets such as patents, licences, know-how, and research and development expenditure directly linked to the investment concerned.

Where they are granted through the agency of a financial intermediary, that intermediary may, with the agreement of the Bank pass the loan on to undertakings either in the form of a loan or in the form of equity capital. In both cases, the intermediary shall be responsible for the service of the loan and associated risk.

Article 5

Connected borrowing and lending transactions shall be expressed in the same monetary units.

Lending terms as regards the reimbursement of the principal and the rate and payment of interest shall be those applied by the Bank, in accordance with its Statute in respect of loans from its own resources, and shall be fixed in such a way that, overall, they cover the costs and expenses incurred in concluding and performing both the borrowing and the lending side of the transactions.

Article 6

The terms of borrowings shall be negotiated by the Commission in the best interests of the Community, having regard to the conditions on capital markets and in accordance with the constraints imposed by the duration and other financial aspects of the loans to be granted. The borrowed funds shall be entrusted to the Bank, which shall manage them in a manner to be agreed with the Commission, under the terms of the cooperation agreement referred to in Article 7.

Where borrowings are expressed, payable or reimbursable in the currency of a Member State, they may be concluded only with the agreement of the competent authorities of that State.

Article 7

A mandate shall be given to the Bank to grant and administer loans in pursuance of this Decision. To this end, a cooperation agreement shall be drawn up between the Bank and the Commission. The Bank shall carry out transactions under this mandate on behalf of, for and at the risk of the Community.

The Commission shall decide, in accordance with Article 3, whether projects are eligible. Where the Commission gives a favourable decision, the Bank shall decide whether and on what terms to grant the loans, in accordance with its usual criteria and with the procedures laid down in its Statute.

Loan procedure as provided for in this Decision shall be as follows :

— loan applications shall be transmitted simultaneously to the Commission and to the Bank either directly or through a Member State,

— the Commission and the Bank shall sign the loan contracts,

— the Bank shall inform the Commission of the allocation of the loans.

Article 8

The Commission shall inform the European Parliament and the Council of the rate of utilization of the borrowings. To this end the Bank shall forward to the Commission any data required for the European Parliament and the Council to be fully informed.

Article 9

The Commission shall annually inform the European Parliament and the Council of receipts and expenses resulting from borrowing and lending transactions and present at the same time an assessment of the functioning of the New Community Instrument in all these respects.

Article 10

The financial control and audit of the Commission's accounts shall be carried out in accordance with the Financial Regulation applicable to the general budget of the European Communities.

The lending transactions and management of cash holdings shall be covered by the discharge and audit procedures provided for in the Bank's Statute in respect of all its operations and exclusively by these procedures.

Done at Brussels, 9 March 1987.

For the Council

The President

M. EYSKENS