COMMISSION DECISION

of 13 December 1993

concerning the grant of assistance from the cohesion financial instrument to a project concerning the Adra by-pass in Spain

No CF: 93/11/65/006

(Only the Spanish text is authentic)

(94/404/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 792/93 of 30 March 1993 establishing a cohesion financial instrument [1], and in particular Article 8 (6) thereof,

Whereas Article 1 of Regulation (EEC) No 792/93 establishes a cohesion financial instrument to provide Community support for projects in the fields of the environment and trans-European transport infrastructure networks;

Whereas pursuant to Article 9 of Regulation (EEC) No 792/93 certain provisions of Titles VI and VII of Council Regulation (EEC) No 4253/88 of 19 December 1988 concerning the provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments [2], as amended by Regulation (EEC) No 2082/93 [3], are to apply, *mutatis mutandis;*

Whereas Article 2 of Regulation (EEC) No 792/93 defines the types of measure for which the cohesion financial instrument may provide assistance;

Whereas Article 10 of Regulation (EEC) No 792/93 requires the Member States to ensure that adequate publicity is given to the operations of the financial instrument and that the measures which are described in Annex V to this Decision are undertaken;

Whereas on 4 May 1993 Spain submitted an application for assistance from the cohesion financial instrument for a project concerning the Adra by-pass;

Whereas that application concerns a project which is eligible under the terms of Article 2 of Regulation (EEC) No 792/93;

Whereas the application for assistance contains all the information required by Article 8 (4) of the Regulation and satisfies the criteria set out in Article 8 (3) and (5) of the Regulation;

Whereas the project is a transport infrastructure project of common interest;

Whereas the project forms part of the master plan for a trans-European network concerning roads;

Whereas Article 1 of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities [4], as last amended by Council Regulation (Euratom, ECSC, EEC) No 610/90 [5], states that the legal commitments entered into for measures extending over more than one financial year shall contain a time limit for implementation which must be specified to the recipient in due form when the aid is granted;

Whereas pursuant to Article 9 of Regulation (EEC) No 792/93, the Commission and the Member State will ensure that there is evaluation and systematic monitoring of the project;

Whereas the financial implementation provisions, monitoring and assessment are specified in Annexes III and IV to this Decision; whereas failure to comply with those provisions may result in suspension or reduction of the assistance granted pursuant to Article 9 (3) of that Regulation (EEC) No 792/93 and the provisions contained in Annex VI;

Whereas all the other conditions laid down, have been complied with,

HAS ADOPTED THIS DECISION:

Article 1

The project concerning the Adra by-pass situated in Spain as described in Annex I hereto is hereby approved for the period from 1 January 1993 to 30 October 1994.

[1] OJ No L 79, 1. 4. 1993, p. 74.
[2] OJ No L 374, 31. 12. 1988, p. 1.
[3] OJ No L 193, 31. 7. 1993, p. 20.
[4] OJ No L 356, 31. 12. 1977, p. 1.
[5] OJ No L 70, 16. 3. 1990, p. 1.

Article 2

1. The maximum eligible expenditure to be taken as the basis for this Decision shall be ECU 14 068 388.

2. The rate of Community assistance granted to the project shall be fixed at 85 %.

3. The maximum amount of the contribution from the cohesion financial instrument shall be fixed at ECU 11 958 129.

4. The contribution is committed from the 1993 budget.

Article 3

1. Community assistance shall be based on the financial plan for the project set out in Annex II.

2. Commitments and payments of Community assistance granted to the project shall be made in accordance with Article 9 of Regulation (EEC) No 792/93 and as specified in Annex III.

3. The amount of the first advance payment shall be fixed at ECU 7 972 086.

Article 4

1. Community assistance shall cover expenditure on the project for which legally binding arrangements have been made in Spain and for which the requisite finance has been specifically allocated to works to be completed not later than 30 October 1993.

2. Expenditure incurred before 1 January 1993 shall not be eligible for assistance.

3. The closing date for the completion of national payments on the project is fixed not later than 12 months after the date mentioned in subparagraph 1.

Article 5

1. The project shall be carried out in accordance with Community policies, and in particular with Articles 7, 30, 52 and 59 of the Treaty, as well as with Community law, in particular with the Directives coordinating public procurement procedures.

2. This Decision shall not prejudice the right of the Commission to commence infringement proceedings pursuant to Article 169 of the Treaty.

Article 6

Systematic monitoring and assessment of the project take place in accordance with the provisions set out in Annex IV hereto.

Article 7

The Member State concerned shall ensure adequate publicity for the project as specified in Annex V.

Article 8

Each Annex to this Decision shall form an integral part of it.

Article 9

Failure to comply with the provisions of this Decision or its Annexes may entail a reduction or suspension of assistance in accordance with the provisions set out in Annex VI.

Article 10

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 13 December 1993.

For the Commission
Peter SCHMIDHUBER
Member of the Commission

ANNEX I

SUMMARY SHEET

1. **Project title**

The Adra by-pass

2. **Authority making the application**

2.1. Name: Dirección General de Planificación

2.2. Address: Paseo de la Castellana, 162 — 28071 Madrid

3. **Authority responsible for implementation**

3.1. Name: Dirección General de Carreteras

3.2. Address: Paseo de la Castellana, 67 — 28071 Madrid

4. **Location**

4.1. Member State: Spain

4.2. Region: Andalucía

5. **Brief description**

Conversion of the N-340 highway from Cádiz to Barcelona via Málaga into dual carriageway. Section: the Adra by-pass. The length of the dual carriageway section is 10,020 km, and consists of two carriageways of 7 m in width with 2,5 m-wide outside verges and 1 m-wide inside verges and a 10 m central reserve.

Two overpasses and six underpasses are planned. The underpasses will consist of reinforced concrete frameworks, and the overpasses of two spans of 21, 227 m and decks formed of two girders.

The project includes drainage works, signposting and marking, relaying of utilities, safety and hygiene measures, etc.

6. **Principal objectives**

This type of measure overcomes the following problems:

(a) physical obstacles to traffic flow;

(b) serious noise, vibration and air pollution;

(c) low safety levels;

(d) low traffic speed (estimated at around 40 km/h).

Quantified objectives:

— to provide a better service on a route carrying a daily average of 15 000 vehicles, of which 20 % are heavy goods vehicles,

— to reduce journey time by three minutes,

— to reduce the annual number of accidents by 8.

7. **Work schedule**

Date of commencement: 21 December 1991

Date of completion: 30 October 1993

8. **Economic analysis**

Assuming no speed reduction on the existing road, the internal rate of return is 20 %.

9. **Contribution to trans-European networks**

Adra is situated on the route between La Junquera and Cádiz which runs along the Mediterranean coastline. There is a daily traffic density of about 15 000 vehicles. In addition to being a tourist town, tourist traffic for the Costa del Sol must pass through it.

10. Cost

	(ECU '000) (1)
Total cost:	21 233,510
Expenditure prior to 1 January 1993:	7 155,122
Total eligible cost:	14 068,388
Total assistance applied for from the cohesion financial instrument:	11 958,129

(1) ECU 1 = Pta 154,207.

ANNEX II

FINANCING PLAN

Project: 93/11/65/006

(ECU '000)

Year	Total cost (1)	Public expenditure								Private sector		Community loans
		Total public expenditure		Cohesion instrument		National authorities			Other			
						Total		Central government	Other			
			%		%		%				%	
	1=2+11	2=4+6+10	3=2/1	4	5=4/2	6=8+9	7=6/2	8	9	10	11	12=11/1	13
1993	14 068,388	14 068,388	100	11 958,129	85	2 110,259	15	2 110,259					
1994													
1995													
Total	14 068,388	14 068,388	100	11 958,129	85	2 110,259	15	2 110,259					

(1) Total eligible cost of project.

ANNEX III

FINANCIAL IMPLEMENTING PROVISIONS

1. The financial provisions referred to in Article 9 of Regulation (EEC) No 792/93 shall be implemented as follows:

Community assistance

2. Community assistance shall be expressed as a percentage of eligible expenditure. If the actual expenditure incurred differs from the expenditure initially planned, the Community assistance granted shall be varied to take account of this but may not exceed the maximum amount stated in the Decision. A change of the rate of Community assistance or of the maximum amount of the grant will require a modification of decision according to the procedures described in point 12.

Commitments and payments

3. The Member State shall undertake to ensure that, for the project to which this Decision relates, all public or private bodies involved in the management and implementation of these operations maintain either a separate accounting system or an adequate accounting codification of all transactions concerned which will facilitate the verification of expenditure by the Community and national control authorities.

4. Budgetary commitments and payments shall be made in accordance with Article 9 (4), (5) and (6) of Regulation (EEC) No 792/93.

5. All payments of aid granted by the Commission under this Decision shall be made to the authority designated by the Member State, which shall also be responsible for refunding any overpaid amounts to the Commission. Payments shall be made to a single bank account designated by the Member State. As a general rule, the Commission shall make payments no later than two months after receipt of a valid application.

6. The Member State shall ensure that applications for payment and statements of expenditure actually incurred comply with the financing plan, including the schedule of expenditure, annexed to this Decision, as amended where appropriate, following the procedures laid down in points 12 and 13.

7. In accordance with Article 22 of Council Regulation (EEC) No 4253/88, all commitments and payments shall be in ecus.

8. Statements of expenditure in support of applications for payment shall be denominated in ecus or in national currency.

9. Member States which submit statements of expenditure in ecus shall convert the amounts of expenditure incurred in national currency into ecus using the rate for the month during which the expenditure was booked in the accounts of the authorities responsible for the financial management of projects. Each month the Commission shall inform the Member States of the rate to be used for that purpose.

10. Statements of expenditure in national currency shall be converted into ecus at the rate for the month when they were received by the Commission.

Recovery of undue payments

11. Any sum wrongly paid shall be repaid to the Commission by the authority designated in point 5. Interest on account of late payments shall be charged on sums not repaid in accordance with Article 24 (3) of Council Regulation (EEC) No 4253/88. If the authority designated under point 5 does not repay the amount due to the Community, the Member State shall refund this amount to the Commission.

Procedure for amending the project decision

12. Any amendments to the Decision shall be made in accordance with the following procedures:

    (a) amendments which entail a substantial change in the objectives or characteristics of the project, an increase or reduction in the rate of financing applied or the maximum amount of assistance or a substantial-change in the financing plan or schedule of expenditure shall be made by means of a Commission decision taken in response to a request by the Member State or on the initiative of the Commission, after consultation with the Member State;

    (b) in the case of other amendments, the Member State shall send the Commission a proposal for amendment. The Commission shall make its comments or signify its agreement within 20 working days of receipt of the proposal. The amendments shall be adopted when the Commission has given its agreement.

13. Any change in annual expenditure of less than 10 % of the total expenditure planned for the project shall not be regarded as a substantial change.

Procedure for closing a project

14. The time limits for complying with the legal obligations contracted under this Decision shall be complied with and payments made in accordance with Article 4 of the Decision. These may be amended before they expire in accordance with the procedure in point 12 (b) provided that the extension does not exceed one year. For that purpose, the Member State shall send the Commission a proposal for amendment together with information justifying the amendment. Where the extension exceeds one year, the procedure in point 12 (a) shall apply.

15. If the time limit is not extended, any expenditure incurred after the dates indicated in Article 4 of the Decision shall not be eligible for assistance from the financial instrument.

ANNEX IV

MONITORING AND ASSESSMENT

1. The national body responsible for implementation shall be fully involved in the monitoring and assessment of projects. In order to carry out these obligations, the Member States may request a Community contribution from the Commission as technical support.

A. Monitoring

2. Monitoring means a system of information on the progress made in implementing the project. Monitoring shall use financial and, where appropriate, physical indicators which enable actual progress on completion of the project to be compared with the financing plan in Annex II and the schedule for implementation in Annex I.

3. The implementation of projects shall be monitored by means of:

   — the Monitoring Committee set up by each Member State concerned reports,

   — sample checks.

Monitoring Committee

4. The Monitoring Committee set up to monitor projects financed by the cohesion financial instrument in Spain shall be responsible for monitoring the project which is the subject of this Decision. The Committee shall review its implementation at regular intervals and, where necessary, propose any adjustments required.

   The composition of the Monitoring Committee, including appointment of its chairman, its operation and frequency of meetings, shall be adopted by joint agreement between the Member State and the Commission, not later than three months after the approval of the first project in Spain.

5. The Committee shall:

   (a) monitor the proper implementation of the project and ensure that it achieves the objectives laid down for it in accordance with the plan originally adopted;

   (b) give its opinion on the draft annual reports on implementation referred to in point 6;

   (c) propose, when appropriate, the necessary measure to ensure that the project achieves the objectives laid down for it;

   (d) ensure publicity for the project;

   (e) ensure that Community policies are respected, especially environment policy;

   (f) decide by agreement between the Commission and the Member State any additional responsibilities of the Committee.

   In general, the documents required for meetings of the Committee shall be available three weeks in advance.

Reports

6. In accordance with Article 25 (4) of Regulation (EEC) No 4253/88, annual reports for each complete year of implementation and a final report shall be drawn up for the project which is the subject of this Decision.

   The first annual report on this project shall be submitted to the Commission by the authority responsible no later than 15 months after adoption of the Decision approving the project. The report shall contain the following information:

   — progress of the project,

   — details of any divergence from the implementation plan originally laid down,

   — an outline of the main problems encountered and the measures taken to solve them.

On the basis of the information in the annual reports, the Commission and the Member State may, where necessary, revise the financing plan for the project and make adjustments to it.

The final report, to be submitted six months after physical completion of the project, shall report on the work carried out and its conformity with the Decision approving the project and give an initial appraisal of the chances of achieving the results sought.

Payment of the balance of Community assistance shall be subject to approval of the final report.

Checks

7. Checks may be carried out in accordance with Article 23 (2) of Regulation (EEC) No 4253/88 by both the Member State and the Commission. The Member State and the Commission shall immediately exchange any relevant information concerning the results.

8. For a period of three years following the last payment in respect of the project, the authority responsible for implementation shall keep available for the Commission all the supporting documents regarding expenditure.

9. The Member State shall keep available for the Commission all appropriate national reports concerning the checks carried out.

B. **Assessment**

10. An assessment of the project may be carried out during its implementation at the request of the Member State or on the initiative of the Commission in order to assess whether the project is progressing in accordance with the objectives originally laid down and to propose adjustments to take account of problems encountered during implementation. The Monitoring Committee shall take into account this evaluation.

11. An *ex-post* assessment of the impact of the project may be carried out by an assessor appointed by joint agreement between the Member State and the Commission once the project has been completed.

ANNEX V

INFORMATION AND PUBLICITY

The Member State concerned should ensure that the general public are aware of the role played by the Community in financing the project. The following measures, *inter alia,* should be undertaken with this end in view:

— panels of an appropriate size, to be agreed between the Member State and the Commission, shall mark the project. These panels should indicate that the project in question has been funded by the Cohesion Fund of the European Community at a rate of 80 to 85 %. Appropriate European Community identity symbols should be used on every panel,

— the Member State concerned shall publicize the project using appropriate means, especially audiovisual means. Such publicity shall refer to the objectives and actions and to the benefits to the general public which will derive from the project,

— the Member State concerned shall provide the public with brochures, leaflets and other types of information. They may use Community channels for the distribution of these brochures and leaflets,

— from the outset, the Member State concerned shall ensure transparent and open access to appropriate information requested by the public. With regard to environmental projects the provisions of Council Directive 90/313/EEC [1] have to be respected.

The Member State concerned shall consult the Commission on what initiatives it proposes to take in this respect within two months of adoption of the Decision. It shall also report annually to the Commission on the information and publicity measures undertaken.

ANNEX VI

OBSERVANCE OF THE TERMS AND CONDITIONS OF THE DECISION AND OF OTHER COMMUNITY POLICIES

1. The Member State and the beneficiaries shall ensure that Community finance is used for the purposes intended.

2. Where the Commission considers that for a given project, this requirement or other provisions of the Decision or of Community policies have not been or are not being complied with, it shall conduct suitable examination of the case in particular requesting that the Member State or other authorities designated by it to implement the project submit their comments within specified period of time.

   Following this examination, the Commission may suspend payments of Community funds. In this case, it will notify the authority in the Member State responsible for implementation of the project. This letter of notification shall also state the action to be taken in respect of Community funds already paid out for the project.

3. For projects in respect of which the above steps have been taken, the current and the remaining payments shall be considered suspended totally or in part until the Commission is satisfied that the necessary remedial measures have been taken.

4. If this examination reveals finally that the proper terms and conditions of the Decision and of Community policy have not been complied with, and that corrective measures have not been taken by the Member State, the assistance shall be reduced or cancelled. Provisions concerning the recovery of funds unduly paid are set out in point 11 of Annex III.

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[1] OJ No L 158, 23. 6. 1990, p. 56.