COMMISSION DECISION

of 3 December 2001

approving the single programming document for Community structural assistance under Objective 2 in parts of Berlin in Germany

(notified under document number C (2001) 3852)

(Only the German text is authentic)

(2002/397/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds [1], and in particular Article 15(5) thereof,

After consulting the Committee on the Development and Conversion of Regions and the Committee pursuant to Article 147 of the Treaty,

Whereas:

(1) Articles 13 *et seq*. of Title II of Regulation (EC) No 1260/1999 lay down the procedure for preparing and implementing single programming documents.

(2) Article 15(1) and (2) of Regulation (EC) No 1260/1999 provides that, after consultation with the partners referred to in Article 8 of the Regulation, the Member State may submit to the Commission a development plan which is treated as a draft single programming document, and which contains the information referred to in Article 16 of the Regulation.

(3) Under Article 15(5) of Regulation (EC) No 1260/1999, on the basis of the regional development plan submitted by the Member State and within the partnership established in accordance with Article 8 of that Regulation, the Commission is to take a decision on the single programming document, in agreement with the Member State concerned and in accordance with the procedures laid down in Articles 48 to 51.

(4) The German Government submitted to the Commission on 23 June 2000 an acceptable draft single programming document for the parts of the *Land* of Berlin fulfilling the conditions for Objective 2 pursuant to Article 4(1) and those qualifying for transitional support under Objective 2 pursuant to Article 6(2) of Regulation (EC) No 1260/1999. The draft contains the information listed in Article 16 of the Regulation, and in particular a description of the priorities selected and an indication of the financial contribution from the European Regional Development Fund (ERDF) and the European Social Fund (ESF).

(5) The date of submission of the draft which was considered acceptable by the Commission constitutes the date from which expenditure under the plan is eligible. Under the first subparagraph of Article 30(2) of Regulation (EC) No 1260/1999, as an acceptable plan was submitted on 23 June 2000, the date from which expenditure under the plan is eligible is 23 June 2000. Under the second subparagraph of Article 30 of the Regulation, it is necessary to lay down the final date for the eligibility of expenditure.

(6) The single programming document has been drawn up in agreement with the Member State concerned and within the partnership.

(7) The Commission has satisfied itself that the single programming document is in accordance with the principle of additionality.

(8) Under Article 10 of Regulation (EC) No 1260/1999, the Commission and the Member State are required to ensure, in a manner consistent with the principle of partnership, coordination between assistance from the Funds and from the EIB and other existing financial instruments.

[1] OJ L 161, 26.6.1999, p. 1.

(9) The financial contribution from the Community available over the entire period and its year-by-year breakdown are expressed in euro. The annual breakdown should be consistent with the relevant financial perspective. Under Article 7(7) of Regulation (EC) No 1260/1999, the Community contribution has already been indexed at a rate of 2 % per year. Under Article 7(7) and Article 44(2) of the Regulation, the Community contribution may be reviewed at mid-term, and not later than 31 March 2004, to take account of the effective level of inflation and the allocation of the performance reserve.

(10) Provision should be made for adapting the financial allocations of the priorities of this single programming document within certain limits to actual requirements reflected by the pattern of implementation on the ground, in agreement with the Member State concerned,

HAS ADOPTED THIS DECISION:

Article 1

The single programming document for Community structural assistance in the parts of Berlin eligible under Objective 2 and in those qualifying for transitional support under Article 2 pursuant to Article 6(2) of Regulation (EC) No 1260/1999 for the period 1 January 2000 to 31 December 2006 is hereby approved. European Regional Development Fund resources shall be available to regions qualifying for transitional support from 1 January 2000 to 31 December 2005.

Article 2

1. In accordance with Article 19 of Regulation (EC) No 1260/1999, the single programming document includes the following elements:

(a) the strategy and priorities for the joint action of the Structural Funds and the Member State; their specific quantified targets; the *ex ante* evaluation of the expected impact, including on the environmental situation, and the consistency of the priorities with the economic, social and regional policies and the employment strategy of Germany;

the priorities are as follows:

1. making businesses, especially small and medium-sized ones, more competitive;

2. infrastructure measures;

3. protection and improvement of the environment;

4. technical assistance;

(b) a summary description of the measures planned to implement the priorities, including the information needed to check compliance with the State aid rules under Article 87 of the Treaty;

(c) the indicative financing plan specifying for each priority and each year the financial allocation envisaged for the contribution from each Fund and indicating separately the funding planned for the regions receiving transitional support in respect of Objective 2 and the total amounts of eligible public or equivalent expenditure and estimated private funding in the Member State. The total contribution from the Funds planned for each year for the single programming document is consistent with the relevant financial perspective;

(d) the provisions for implementing the single programming document including designation of the managing authority, a description of the arrangements for managing the single programming document and the use to be made of global grants, a description of the systems for monitoring and evaluation, including the role of the Monitoring Committee and the arrangements for the participation of the partners in that Committee;

(e) the *ex ante* verification of compliance with additionality and information on the transparency of financial flows;

(f) information on the resources required for preparing, monitoring and evaluating the assistance.

2. The indicative financing plan puts the total cost of the priorities selected for the joint action by the Community and the Member State at EUR 1 179 189 000 for the whole period and the financial contribution from the Structural Funds at EUR 384 449 000.

The resulting requirement for national resources of EUR 384 727 000 from the public sector and EUR 410 013 000 from the private sector can be partly met by Community loans from the European Investment Bank and other lending instruments.

Article 3

1. The procedure for granting the financial assistance, including the financial contribution from the Funds for the various priorities included in the single programming document, is set out in the financing plan annexed to this Decision.

2. The indicative initial estimated breakdown among the Structural Funds of the total Community assistance available is as follows:

— ERDF: EUR 244 125 000

— ESF: EUR 140 324 000

3. During implementation of the financing plan, the total cost or Community financing of a given priority may be adjusted in agreement with the Member State by up to 25 % of the total Community contribution to the single programming document throughout the programme period, up to a maximum of EUR 30 million, without altering the total Community contribution referred to in paragraph 1.

Article 4

This Decision is without prejudice to the Commission's position on aid schemes falling within Article 87(1) of the Treaty that are included in this assistance and which it has not yet approved. Submission of the application for assistance, the programme complement or a request for payment by the Member State does not replace the notification required by Article 88(3) of the Treaty.

Community financing of State aid falling within Article 87(1) of the Treaty, granted under aid schemes or in individual cases, requires prior approval by the Commission under Article 88(3) of the Treaty, except where the aid falls under the *de minimis* rule or is exempted under an exemption regulation adopted by the Commission under Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 (now 87 and 88) of the Treaty establishing the European Community to certain categories of horizontal State aid [2]. In the absence of such exemption or approval, aid is illegal and subject to the consequences set out in the procedural regulation for State aid, and its part-financing would be treated as an irregularity within the meaning of Articles 38 and 39 of Regulation (EC) No 1260/1999.

Consequently, the Commission will not accept requests for interim and final payments under Article 32 of the Regulation for measures being part-financed with new or altered aid, as defined in the procedural regulation for State aid, granted under aid schemes or in individual cases, until such aid has been notified to and formally approved by the Commission.

Article 5

The date from which expenditure shall be eligible is 23 June 2000. The closing date for the eligibility of expenditure shall be 31 December 2008. This date is extended to 30 April 2009 for expenditure incurred by bodies granting assistance under Article 9(i) of Regulation (EC) No 1260/1999. The closing date for the eligibility of expenditure in the regions receiving transitional support shall be 31 December 2007.

Article 6

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 3 December 2001.

For the Commission

Michel BARNIER

Member of the Commission

[2] OJ L 142, 14.5.1998, p. 1.