COUNCIL REGULATION (EEC) No 1302/78

of 12 June 1978

on the granting of financial support for projects to exploit alternative energy sources

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,

Having regard to the opinion of the European Parliament (1),

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

Whereas under Article 2 of the Treaty the Community has as its task to promote the harmonious development of economic activities throughout the Community, a continuous and balanced expansion and an increase in stability;

Whereas the Council adopted on 17 December 1974 and 13 February 1975 resolutions concerning the objectives of Community energy policy and measures for achieving them;

Whereas in the present energy situation greater exploitation of alternative energy sources in the Community will reduce dependence with regard to energy and diversify energy supply, and is likely to contribute to the attainment of these objectives;

Whereas on 22 August 1975 the Council adopted a Decision establishing an energy research and development programme (3);

Whereas financial support should be granted after the research stage for projects for exploiting alternative energy sources, in view of the financial risks involved in new techniques and technologies and the high capital cost of such projects;

Whereas support for such projects, which would be undertaken following studies and research giving favourable indications as to their industrial and commercial viability, will help to strengthen confidence in the exploitation of these energy sources and to encourage their use in the Community;

Whereas these projects concern in particular the exploitation of geothermal fields, the liquefaction and gasification of solid fuels, and the exploitation of solar energy, wave energy, tidal energy and wind energy;

Whereas the various areas for exploiting alternative energy sources offer common characteristics which justify the granting of financial support according to common principles; whereas the special character of each of them, however, necessitates appropriate implementing provisions;

Whereas the execution of such projects could result in the development in the Community of an industry possessing the relevant skills with potential markets of some importance outside the Community;

Whereas the granting by the Community of the benefits envisaged must not affect conditions of competition in a manner incompatible with the principles embodied in the relevant provisions of the Treaty;

Whereas, in view of the need to limit such support to that which is strictly essential, the Community must have at its disposal every means of assessing, case by case, the possible benefits to it of such projects and their conformity with the objectives of the Community energy policy;

Whereas, to this end, the beneficiaries should assume obligations towards the Community in return for the benefits received;

Whereas the Treaty does not provide the specific powers necessary for these purposes,

HAS ADOPTED THIS REGULATION:

Article 1

Under the conditions laid down in this Regulation, the Community may grant financial support for demonstration projects to exploit alternative energy sources in the Community which by their nature may serve as examples and which prior studies and research have shown to offer prospects of industrial and commercial viability.

(1) OJ No C 299, 12. 12. 1977, p. 50.
(2) OJ No C 287, 30. 11. 1977, p. 7.
(3) OJ No L 231, 2. 9. 1975, p. 1.

For the purposes of this Regulation alternative energy sources means any potential source of energy, with the exception of nuclear energy and fossil fuels exploited by conventional means.

Article 2

1. All projects within the meaning of Article 1 must relate to the exploitation of alternative energy sources using new techniques or technologies capable of providing encouragement for the establishment of other installations of the same type.

2. Projects may relate to the following areas :

— exploitation of geothermal fields ;

— liquefaction and gasification of solid fuels ;

— exploitation of solar energy ;

— exploitation of wave, tidal and wind energy.

This list is not exhaustive nor does it reflect priorities.

Article 3

The provisions for implementing this Regulation for the various alternative sources of energy shall be adopted by the Council acting unanimously on a proposal from the Commission.

Article 4

Responsibility for projects shall devolve upon a natural person or a legal person constituted in accordance with the laws in force in the Member States.

If the creation of a legal entity with the capacity to carry out a project involves additional costs for the participating undertakings, the project may be carried out simply by cooperation between natural or legal persons. In that case, such persons shall be jointly and severally liable for the obligations resulting from Community support.

Article 5

Support for a project may take the form of a Community financial contribution to the project, repayable on the terms laid down by the implementing provisions of this Regulation, from the appropriations provided for this purpose in the general budget of the European Communities, and taking into account any other Community or national financial assistance for the project.

Such support shall constitute only a minority share of the total financing of the project.

Article 6

1. Every project submitted for consideration by individuals or undertakings in the Community further to an invitation to tender published in the *Official Journal of the European Communities* shall be examined by the Commission. When examining each project the Commission shall take into consideration the information specified in the implementing provisions to this Regulation which must be provided by the applicants.

2. The Commission shall decide whether to grant or refuse support for projects after consulting an Advisory Committee on the management of the projects concerned, composed of representatives of the Member States. The Commission's decision shall be communicated to the Council and the Member States forthwith and shall apply upon expiry of a period of 20 working days if during that period no Member State has referred the matter to the Council. At the request of a Member State, the Council shall rule on the Commission's decision, acting unanimously in the case of the first set of projects and by a qualified majority in the case of subsequent projects.

Article 7

The benefits granted by the Community must not affect the conditions of competition in a manner incompatible with the principles embodied in the relevant provisions of the Treaty.

Article 8

1. The Commission shall negotiate and conclude the contracts necessary for the implementation of projects selected pursuant to Article 6. To that end the Commission shall draw up a model contract setting forth the rights and obligations of each party and in particular the procedures for any repayment of amounts of financial support.

2. The person or persons responsible for implementing a project in receipt of Community support shall send to the Commission, each year or at its request, a report on the fulfilment of contractual obligations towards the Commission and in particular the progress of work on the project and the expenditure incurred in carrying it out.

3. The Commission shall have access at all times to the accounts relating to the project. It may have checks carried out on the spot and using documentary evidence, as a means of monitoring the performance of the contract and in particular the progress and implementation of projects.

4. Where the extent of financial support from the Community and the size of the project so warrant, the Commission may participate as an observer in meetings of the bodies responsible for the management of projects if the contract so provides.

Article 9

The Commission shall report periodically on the application of this Regulation to the European Parliament and to the Council, which shall both express an opinion on the report.

Article 10

This Regulation shall apply for five years.

The Council, acting on a proposal from the Commission, shall decide whether it should be extended or amended.

Article 11

This Regulation shall enter into force following the decision taken by the Commission, or by the Council in the event of appeal, on the first series of projects in accordance with Article 6, and following the adoption by the Council of a Regulation fixing by unanimity the maximum amount of aid to be made available under the relevant implementing Regulations, and the corresponding project programmes.

However, Article 6 shall enter into force on the day following 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, 12 June 1978.

For the Council

The President

K. OLESEN