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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 3359/90

of 20 November 1990

for an action programme in the field of transport infrastructure with a view to the completion of an integrated transport market in 1992

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 75 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 completion of an integrated transport market calls for a Community action programme aimed at the harmonious development of transport infrastructure in the Community;

Whereas the setting up of rapid and efficient links between all regions of the Community is an essential condition for reinforcing its economic and social cohesion;

Whereas it is necessary to take account of both the interests of users and the demands of environmental protection, safety and the rational use of energy;

Whereas Community action through the structural Funds, the European Investment Bank (EIB) and the other financial instruments can contribute to the building of transport infrastructure works of Community interest;

Whereas specific financial support for transport infrastructure projects can provide an essential stimulus to the promotion and launching of projects of Community interest;

Whereas the intervention of private-sector capital can contribute to the implementation of transport infrastructure projects and whereas the 'Declaration of European interest' procedure, would help to channel private-sector capital towards major projects of European interest;

Whereas it is necessary to ensure that the various projects are properly coordinated and their financing efficiently programmed; whereas it is therefore appropriate for financial support to be granted in the framework of a multi-annual action programme;

Whereas it is important to define the scope of such a programme, in particular by its direct objectives and the projects to be carried out;

Whereas the value to the Community of the projects to be assisted ought to be established on the basis of objective criteria;

Whereas Community assistance is necessary to carry out the projects and especially in their launch phase,

HAS ADOPTED THIS REGULATION:

Article 1

The Community shall identify transport infrastructure projects of Community interest within the framework of the action programme defined below and aimed at meeting one of the following objectives:

— the elimination of bottlenecks,

— the integration of areas which, geographically, are either landlocked or situated on the periphery of the Community,

— the reduction of costs associated with transit traffic in cooperation with any third countries concerned,

— the improvement of links on land/sea routes,

— the provision of high-quality links between the major urban centres, including high-speed rail links.

(1) OJ No C 270, 19. 10. 1988, p. 6 and OJ No C 170, 5. 7. 1989, p. 10.
(2) OJ No C 326, 19. 12. 1988, p. 57 and OJ No C 175, 16. 7. 1990, p. 217.
(3) OJ No C 23, 30. 1. 1989, p. 8.

Article 2

The Community contribution to the execution of the projects in the action programme may take the form in particular of :

— financial support using appropriations earmarked for the purpose in the general budget of the European Communities, within the framework of the financial prospects relating to the period covered by that programme,

— financial support under other financial instruments, where these apply,

— a declaration of the European interest of the project by the Commission, in compliance with the conditions set out in the Annex, following consultation with the Member States directly concerned by the project. The Commission shall inform the European Parliament and the Council.

Decisions conferring the declaration of European interest shall be published in the *Official Journal of the European Communities.*

Article 3

Community action shall concern studies and the following major projects, it being understood that the specific individual projects to which reference is made in other Articles are components of these major projects :

1. contribution to the high-speed rail network :
   — links : Paris — London — Brussels — Amsterdam — Cologne and connecting lines to other Member States,
   — links :
     (a) Seville — Madrid — Barcelona — Lyons — Turin-Milan — Venice and from there to Tarvisio and Trieste ;
     (b) Oporto — Lisbon — Madrid ;
2. the Alpine transit route (Brenner route) ;
3. contribution to the combined transport network of Community interest ;
4. international trans-Pyrenean road links (Somport) ;
5. the road link with Ireland (A5/A55 North Wales coast road) and the improvement of the Dublin-Belfast cross-border railway line ;
6. the Scanlink ;
7. the strengthening of land communications in Greece.

Article 4

The eligibility of transport infrastructure projects for financial support shall be assessed on the basis of the following criteria :

— the benefit and greatest usefulness of the project to international Community traffic, assessed by its contribution to the objectives set out in Article 1. Among the factors which must be included are :
  — the importance of present or potential intra-Community international traffic,
  — the importance of exchanges between the Community and third countries on the route involved in the project,
  — the extent of the project's contribution to the creation of a homogeneous and balanced network within the Community framework, geared to existing and future transport needs,

— the socio-economic return on the project,

— the project's consistency with the other Community measures taken under the common transport policy or other Community policies and with the other national measures given priority in national transport infrastructure plans and programmes,

— particular difficulties in raising finance,

— inability of national or regional authorities to carry out the project alone.

Article 5

1. Community financial support may be granted for feasibility studies or preparatory work for infrastructure projects, for related schemes and for the development of a part or the whole of a project.

2. Community financial support specifically for transport infrastructure projects may take the form of subsidies or exceptionally in duly justified cases any other form appropriate to the financial requirements of the project.

3. Where a specific project forming part of one of the major projects provided for in Article 3 is already being granted non-repayable support from the Community budget, that project may not be granted any other non-repayable support but only aid in the form of loans.

4. Non-repayable support from the Community budget may not exceed 25 % of the total cost of the project or of that part of the project granted assistance. This support may be increased to a maximum of 50 % in the case of studies prior to construction work.

5. A project may be granted Community financial support only if the obligations under Community law concerning public procurement are met in full.

Article 6

1. In respect of the specific financial support referred to in the first indent of Article 2, grant applications shall be sent to the Commission via the Member States.

Each application shall include the background information necessary and in particular:

— an itemized list of forecast expenditure,

— a schedule of work and financial commitments,

— information necessary for the evaluation of the Community interest of the project,

— a general summary of the environmental impact assessment carried out in accordance with Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (1).

The Member States shall provide the Commission with any further information it considers necessary for assessing a project.

2. Where the financial instruments referred to in the second indent of Article 2 are used, the rules and the procedures proper to each shall be followed.

Article 7

1. Each year, the Commission shall send the European Parliament and the Council a communication describing the projects in respect of which applications have been received pursuant to Article 6 and which are eligible, under the action programme and in the light of the objectives laid down in Article 1, for financial support using the specific appropriations referred to in Article 2.

2. The communication referred to in paragraph 1 shall include at least the following background information:

— the main grounds for the eligibility of the project under Articles 1, 3 and 4,

— the size and nature of the financial support proposed,

— the background information set out in the second subparagraph of Article 6 (1).

Article 8

The Commission shall decide on the grant of financial support in accordance with the procedure laid down in Article 9. Financial support shall be granted in accordance with Article 5; the amount shall take account of the interest of projects as assessed on the criteria set out in Article 4.

Article 9

The Commission shall be assisted by the Transport Infrastructure Committee set up by Article 9 of Decision 78/174/EEC (2).

The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner described in that Article. The chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If the Council has not acted within three months of the matter being referred to it, the proposed measures shall be adopted by the Commission.

Article 10

1. Where a project which has received financial support has not been carried out as planned, or where the conditions imposed are not fulfilled, the financial support may be reduced or cancelled if the Commission so decides after considering the explanations given by the beneficiary.

Any sum paid incorrectly shall be repaid to the Community by the beneficiary within 12 months of the date of notification of such decision.

2. Without prejudice to checks carried out by the Member States in accordance with national laws, regulations or administrative provisions, and without prejudice to the auditing carried out by the Court of Auditors in accordance with Article 206a of the Treaty, on-the-spot checks or enquiries in respect of projects receiving financial support shall be carried out by the competent authorities of the Member State concerned and by representatives of the Commission, or other persons authorized for this purpose by the latter. The Commission shall determine deadlines for the performance of checks and inform the Member States in advance in order to receive all necessary assistance.

3. The purpose of these on-the-spot checks or enquiries relating to operations receiving financial support is to ascertain:

(a) the conformity of administrative practices with Community rules;

(b) the existence of supporting documents and whether they correspond to the projects receiving financial support;

(c) the conditions under which operations are executed and checked;

(d) the conformity of the projects carried out with the conditions subject to which financial support was granted.

(1) OJ No L 175, 5. 7. 1985, p. 40.
(2) OJ No L 54, 25. 2. 1978, p. 16.

4. The Commission may suspend payment of aid in respect of an operation if a check reveals irregularities or a substantial change in the nature or conditions of the project for which the Commission's approval has not been sought.

5. The Commission shall in due course, after the completion of projects that have received financial support, carry out detailed analyses of their consequences for transport and for the economy generally.

Article 11

Not later than 31 December 1991, the Commission shall submit to the European Parliament and to the Council a report on the experience gained in the implementation of this Regulation and Regulations (EEC) No 3600/82 [1], (EEC) No 3620/84 [2], (EEC) No 4059/86 [3], (EEC) No 4070/87 [4] and (EEC) No 4048/88 [5].

Article 12

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities.*

It shall expire on 31 December 1992.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 20 November 1990.

For the Council

The President

C. VIZZINI

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(1) Council Regulation (EEC) No 3600/82 of 30 December 1982 on the granting of limited support in the field of transport infrastructure (OJ No L 376, 31. 12. 1982, p. 10) (finanical year 1982).

(2) Council Regulation (EEC) No 3620/84 of 19 December 1984 on a specific measure in the field of transport infrastructure (OJ No L 333, 21. 12. 1984, p. 58) (financial years 1983 and 1984).

(3) Council Regulation (EEC) No 4059/86 of 22 December 1986 on the granting of financial support to transport infrastructure projects (OJ No L 378, 31. 12. 1986, p. 24) (financial year 1985).

(4) Council Regulation (EEC) No 4070/87 of 22 December 1987 on the granting of support to transport infrastructure projects (OJ No L 380, 31. 12. 1987, p. 33) (financial years 1986 and 1987).

(5) Council Regulation (EEC) No 4048/88 of 19 December 1988 on the granting of financial support to transport infrastructure projects (OJ No L 356, 24. 12. 1988, p. 5) (financial years 1988 and 1989).

ANNEX

Conditions for conferral of the Declaration of European interest

The conditions for conferring the 'Declaration of European interest' are as follows:

— The product must be well defined. This implies that the results of feasibility studies are known and show that the product is viable.

— The project will be submitted to the Commission either directly or through the intermediary of a Member State. Member States directly affected by the project will be consulted by the Commission.

— The Commission will examine the project to ensure that it complies with the relevant Community policies. In particular the implementation procedure must comply with the provisions of the Treaty and of secondary legislation, notably in competition, public procurement and environmental matters. The Commission will also ascertain that the project complies with Community rules and policies applicable in the field concerned.

— The product must draw to a large extent on private funding and comply with the objectives and criteria laid down by the Commission's programmes in the sectors concerned. The Commission will identify the advantages to the Community in the light of not only technical and financial but also socio-economic criteria. Among other things, an assessment will be provided of the impact of the project on Community competitiveness and of its effects, particularly in terms of employment and production levels, on the countries and regions concerned.