I

(Acts whose publication is obligatory)

REGULATION (EC) No 1655/1999 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 July 1999 amending Regulation (EC) No 2236/95 laying down general rules for the granting of Community financial aid in the field of trans-European networks

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the first paragraph of Article 156 thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Having regard to the opinion of the Committee of the Regions [3],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [4],

(1) Whereas experience with the application of Regulation (EC) No 2236/95 [5] has demonstrated that a number of amendments need to be made thereto;

(2) Whereas it is necessary to facilitate the financing of certain projects by including, among the possible forms of aid, a contribution to the formation of risk capital; whereas it is desirable to use the financial resources provided under Regulation (EC) No 2236/95 in order to maximise the contribution from private finance;

(3) Whereas a layer of risk capital in the financial package of a project may contribute to putting public-private partnerships in trans-European network projects on their way; whereas the supply of risk capital for trans-European networks, particularly during their early stages, is limited;

(4) Whereas it is appropriate to allow risk capital participation in investment funds with a priority focus on providing risk capital for trans-European network projects up to 1 % of the overall amount for the period 2000 to 2006 in order to gain experience with this new form of financing; whereas this limit may be increased up to 2 % following a review of the functioning of this instrument; whereas it is also appropriate to examine its possible future extension;

(5) Whereas it is desirable, in order to increase transparency and to meet expectations for projects or groups of projects having important financial needs for a long period, that indicative multiannual programmes in specific sectors or fields should be drawn up; whereas those programmes should indicate the total and annual amount of support which could be allocated for a given period to such project or groups of projects, and which should serve as a reference for the annual decisions to grant financial aid within the yearly budgetary appropriations, when they conform to the relevant indicative multiannual programmes; whereas, however, the annual amounts indicated in these programmes do not amount to budgetary commitments;

(6) Whereas projects or groups of projects should be able to benefit from successive financial assistance decisions;

(7) Whereas, in the application for financial support for a project, a detailed breakdown of estimates is needed concerning the sources of contributions from the Community and from national, regional and local government bodies, as well as the extent of financial contributions from the private sector;

(8) Whereas financial aids granted should be cancelled except in duly justified cases if the actions concerned have not been started by a given date;

(9) Whereas it is necessary to include the activities of the European Investment Fund among the Community financial instruments with which action under Regulation (EC) No 2236/95 is required to be coordinated;

[1] OJ C 175, 9.6.1998, p. 7 and OJ C 27, 2.2.1999, p. 18.
[2] OJ C 407, 28.12.1998, p. 120.
[3] OJ L 93, 6.4.1999, p. 29.
[4] Opinion of the European Parliament of 19 November 1998 (OJ C 379, 7.12.1998, p. 186), Council Common Position of 21 December 1998 (OJ C 49, 22.2.1999, p. 4) and Decision of the European Parliament of 6 May 1999 (not yet published in the Official Journal). Council Decision of 7 June 1999.
[5] OJ L 228, 23.9.1995, p. 1.

(10) Whereas the Commission should be able to require beneficiaries to provide evaluations of projects supported under Regulation (EC) No 2236/95 or the necessary information to allow the Commission to undertake its own evaluation;

(11) Whereas Council Decision 87/373/EEC [1] lays down the procedures for the exercise of powers conferred on the Commission by the Council for the implementation of acts which it adopts; whereas the procedures laid down in this Regulation should take account of possible modifications of existing arrangements laid down by interinstitutional agreement or by Decision 87/373/EEC;

(12) Whereas given the importance of the trans-European networks, it is appropriate to include in Regulation (EC) 2236/95 a financial framework within the meaning of point 1 of the Declaration by the European Parliament, the Council and the Commission of 6 March 1995, of EUR 4 600 million for its implementation for the period 2000 to 2006;

(13) Whereas it is appropriate that the Council examines whether to continue or to amend the measures under Regulation (EC) No 2236/95 in the light of the comprehensive report submitted by the Commission before the end of 2006;

(14) Whereas, throughout the transitional period from 1 January 1999 to 31 December 2001, all references to the euro should be read as references to the euro as a monetary unit as referred to in Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro [2];

(15) Whereas Regulation (EC) No 2236/95 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2236/95 is hereby amended as follows:

1. Article 2(2) shall be deleted.

2. Article 3 shall be deleted.

3. Article 4 shall be replaced by the following:

'*Article 4*

Forms of aid

1. Community aid for projects may take one or several of the following forms:

(a) co-financing of studies related to projects, including preparatory, feasibility and evaluation studies, and other technical support measures for these studies. Community participation may in general not exceed 50 % of the total cost of a study.

In exceptional, duly substantiated cases, at the initiative of the Commission and with the consent of the Member States concerned, Community participation may exceed the limit of 50 %;

(b) subsidies of the interest on loans granted by the European Investment Bank or other public or private financial bodies. As a general rule, the duration of subsidy shall not exceed five years;

(c) contributions towards fees for guarantees for loans from the European Investment Fund or other financial institutions;

(d) direct grants to investments in duly justified cases;

(e) risk-capital participation for investment funds or comparable financial undertakings with a priority focus on providing risk capital for trans-European network projects and involving substantial private-sector investment; such risk-capital participation shall not exceed 1 % of the budgetary resources under Article 18. In accordance with the procedure specified in Article 17, this limit may be increased up to 2 % as from 2003 in the light of a review, to be presented to the European Parliament and the Council by the Commission, of the functioning of this instrument.

Further modalities of implementation of this risk-capital participation are laid down in the Annex.

The participation may be made directly into the fund or comparable financial undertaking or into an appropriate coinvestment vehicle managed by the same fund managers;

(f) Community assistance under points (a) to (e) shall be combined where appropriate, in order to maximise the stimulus provided by the budgetary resources deployed, which shall be used in the most economical way.

2. The forms of Community aid referred to under points (a) to (e) shall be used selectively to take account of the specific characteristics of the various types of network involved and to ensure that such aid does not cause distortions of competition between undertakings in the sector-concerned.

3. The funding for transport infrastructure projects throughout the period referred to in Article 18 should be used in such a way that at least 55 % is devoted to railways (including combined transport) and a maximum of 25 % to roads.

4. The Commission shall specifically promote recourse to private sources of financing for projects funded under this Regulation where the multiplier effect of Community financial instruments can be maximised in public-private partnerships. Each case shall be examined individually by the Commission, with account taken where appropriate of a possible alternative financed solely with public resources. The support of each member State concerned shall be required for each project in accordance with the Treaty.'

[1] OJ L 197, 18.7.1987, p. 33.
[2] OJ L 139, 11.5.1998, p. 1.

4. In Article 5(3) the following subparagraph shall be inserted:

'Exceptionally, in the case of projects concerning satellite positioning and navigation systems as provided for in Article 17 of Decision No 1692/96/EC (*), the total amount of Community aid under this Regulation may reach 20 % of the total, investment cost as from 1 January 2003 following a review.'

(*) OJ L 228, 9.9.1996, p. 1.

5. The following Article shall be inserted:

'*Article 5a*

Community indicative multiannual programme

1. Without prejudice to the application of Article 6 and in order to improve the efficiency of the Community's action, the Commission may, in accordance with the procedure set out in Article 17, elaborate by sector an indicative multiannual programme (hereinafter called "programme") on the basis of the guidelines referred to in Article 155 of the Treaty. The programme will be based on applications for financial aid under Article 8 and reflect *inter alia* information provided by Member States, in particular the information set out in Article 9.

2. The programme shall exclusively be composed of projects of common interest and/or coherent groups of projects of common interest, as previously identified within the framework of the guidelines referred to in Article 155(1) of the Treaty, in specific fields having substantial financial needs over a long period.

3. For each project or group of projects referred to in paragraph 2 the programme will establish the indicative amounts for the granting of financial aid subject to the annual decisions of the budgetary authority. No more than 75 % of the budgetary resources under Article 18 shall be used for the purposes of indicative multiannual programmes.

4. The programme shall serve as a reference for the annual decisions allocating Community aid for projects within the annual budgetary appropriations. The Commission shall regularly inform the Committee referred to in Article 17 of the progress of programmes and any decisions taken by the Commission in allocating Community aid for projects. The supporting documents accompanying the Commission's preliminary draft budget shall include a report concerning progress in the implementation of each multiannual indicative programme in accordance with the Financial Regulation.

The programme must be reviewed, at least at mid-term or in the light of the effective progress of the project(s) or groups) of projects, and if necessary revised, in accordance with the procedure set out in Article 17.

The programme shall also give an indication of other sources of financing for the projects concerned, in particular from other Community instruments and the European Investment Bank.

5. In case substantial changes in the implementation of the project(s) or the groups) of projects take place, the Member State concerned will inform the Commission without delay.

Modifications to the indicative global amounts established by the programme for the project(s) or groups) of projects, which may be necessary following these changes, shall be decided in accordance with the procedure of Article 17.'

6. In Article 6 the following paragraph 1a shall be inserted:

'1 a. In its implementation of this Regulation, the Commission shall ensure the conformity of its decisions on granting Community aid with the priorities laid down in the guidelines for the different sectors established pursuant to Article 155(1) of the Treaty. This shall include their conformity with any requirements which may be laid down in those guidelines in terms of a percentage of total Community aid.'

7. Article 8 shall be replaced by the following:

'*Article 8*

Submission of applications for financial aid

Applications for financial aid shall be submitted to the Commission by the Member States concerned or, with the agreement of the Member State(s), by the public or private undertakings or bodies directly concerned. The Commission shall establish the agreement of the Member States concerned.'

8. Article 9(1)(a), eighth indent, shall be replaced by the following:

'— a financial plan listing, in euro or in national currency, all the components of the financial package, including the financial aid requested from the Community, in its different forms as mentioned in Article 4, and from local, regional or national government bodies, as well as from private sources, and the aid already granted;'

9. Article 9(2) shall be replaced by the following:

'2. Applicants shall supply the Commission with any relevant additional information which it requires, such as the parameters, guidelines and hypotheses on which the cost/benefit analysis is based..'

10. Article 10 shall be replaced by the following:

'*Article 10*

Grant of financial aid

In accordance with Article 274 of the Treaty, the Commission shall decide to grant financial aid under this Regulation according to its assessment of the application in accordance with the selection criteria. In the case of projects identified in the relevant indicative multiannual programme established pursuant to Article 5a, the Commission shall take the annual decisions to

grant aid within the indicative financial amounts provided for in that programme. In the case of other projects, measures shall be adopted in accordance with the procedure specified in Article 17. The Commission shall notify its decision directly to the beneficiaries and to the Member States.'

11. Article 11(7) shall be replaced by the following:

'7. Following the procedure set out in Article 17, the Commission shall establish a framework for the procedures, timetable and amounts for payments of interest-rate subsidies, guarantee premium subsidies and support in the form of risk capital participation, for investment funds or comparable financial undertakings with a priority focus on providing risk capital for trans-European network projects.'

12. In Article 12:

(a) the introductory phrase to paragraph 1 shall be replaced by the following:

'1. In order to guarantee successful completion of projects financed by this Regulation, Member States and the Commission, each in its field of competence, shall take the necessary measures to:'.

(b) the third indent of paragraph (1) shall be replaced by the following:

'— recover any amounts lost as a result of irregularity, including interest on account of late repayment in accordance with the rules adopted by the Commission. Except where the Member States) and/or the implementing public authority provide proof that they were not responsible for the irregularity, the Member State shall be liable in the alternative for reimbursement of any sums unduly paid.'

(c) paragraph 6 shall be replaced by the following:

'6. In the case of Community aid granted to public or private undertakings or bodies directly concerned, the control measures shall be carried out by the Commission in cooperation with the Member States as appropriate.'

(d) paragraph 7 shall be replaced by the following:

'7. The responsible bodies and authorities and public or private undertakings or bodies directly concerned shall keep available for the Commission all the supporting documents regarding expenditure on any project for a period of five years following the last payment in respect of the project.'

13. In Article 13, the following paragraph shall be inserted:

'2 a. Except in cases duly justified to the Commission, aids granted to projects which have not started within two years following the date of their expected start, as indicated in the decision granting assistance, will be cancelled by the Commission.'

14. Article 14 shall be replaced by the following:

'*Article 14*

Coordination

The Commission shall be responsible for coordination and coherence between the projects and the programmes referred to in Article 5a(1) undertaken under this Regulation and projects undertaken with the help of contributions from the Community budget, the European Investment Bank, the European Investment Fund and other Community financial instruments.'

15. Article 15 shall be replaced by the following:

'*Article 15*

Appraisal, monitoring and evaluation

1. The Member States and the Commission shall ensure that the implementation of projects under this Regulation is subject to effective monitoring and evaluation. Projects may be adapted according to monitoring and evaluation results.

2. In order to ensure that Community aid is used efficiently, the Commission and the Member States concerned shall systematically monitor progress with projects, where appropriate with the cooperation of the European Investment Bank or other appropriate bodies.

3. On receipt of an application for aid, and before approving it, the Commission shall carry out an appraisal in order to assess the project's conformity with the conditions and criteria laid down in Articles 5 and 6. Where necessary, the Commission shall invite the European Investment Bank or other appropriate bodies to contribute to this appraisal.

4. The Commission and the Member States shall assess the manner in which the projects and the programmes have been carried out and evaluate the impact of their implementation, in order to assess whether the original objectives can be, or have been, achieved. This evaluation shall, *inter alia*, cover the impact of projects on the environment, regard being had to the Community laws in force. The Commission may, after consultation of the Member State concerned, also require the beneficiary to provide a specific evaluation on projects or groups of projects supported under this Regulation, or to provide it with the information and the assistance required to evaluate such projects.

5. Monitoring shall be carried out, where appropriate, by reference to physical and financial indicators. The indicators shall relate to the specific character of the projects and its objectives. They shall be arranged in such a way as to show:

— the stage of the project reached in relation to the plan and the operational objectives originally laid down,

— the progress achieved on the management side and any related problems.

6. In vetting individual applications for assistance, the Commission shall take into account the findings of appraisals and evaluations made in accordance with this Article.

7. Procedures for evaluation and monitoring, as provided in paragraphs 4 and 5, shall be established in the Decisions approving the projects and/or in the contractual provisions relating to the financial aid.'

16. Article 16(1) shall be replaced by the following:

'1. The Commission shall submit an annual report on the activities carried out under this regulation to the European Parliament, the Council, the Economic and Social Committee and to the Committee of the Regions for their appraisal. This report shall contain an evaluation of the results achieved with Community aid in different fields of application, in terms of original objectives, as well as a chapter on the substance and implementation of current multiannual programmes, especially an account of the revisions provided in Article 5a'

17. Article 18 shall be replaced by the following

'*Article 18*

Budgetary resources

The financial framework for the implementation of this Regulation for the period 2000 to 2006 shall be EUR 4 600 million.

The annual appropriations shall be authorised by the budgetary authority within the limits of the financial perspective.'

18. Article 19 shall be replaced by the following:

'*Article 19*

Revision clause

Before the end of 2006 the Commission shall submit to the European Parliament and the Council a comprehensive report on the experience gained with the mechanisms under this Regulation for granting Community aid, in particular the mechanisms and provisions laid down in Article 4. The European Parliament and the Council, acting in accordance with the procedure laid down in the first paragraph of Article 156 of the Treaty, shall examine whether and under which conditions the measures provided for in this Regulation will be continued or amended after the end of the period referred to in Article 18'

19. Throughout the text, the term 'ecu' shall be replaced by 'euro'.

20. The text appearing in the Annex to this Regulation shall be added.

Article 2

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities*.

Point 19 of Article 1 shall apply from 1 January 1999.

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

Done at Brussels, 19 July 1999.

For the European Parliament	*For the Council*
The President	*The President*
J. M. GIL-ROBLES	T. HALONEN

ANNEX

'ANNEX

Implementation modalities referred to in Article 4(1)(e)

1. *Conditions for a Community contribution to risk capital*

Applications for financial assistance under Article 4(1)(e) of the Regulation shall include the following information, satisfactory to the Committee referred to in Article 17 thereof, as a basis for decisions to grant assistance:

— an information memorandum containing the main provisions of the statutory documentation of the fund including its legal and management structure,

— its detailed investment guidelines including information on target projects,

— information on the involvement of private investors,

— information on geographical coverage,

— information on the financial viability of the fund,

— information on the rights of the investors to take remedial action in the event that the undertakings given to them are not honoured by the fund,

— information on the exit policies of the fund and arrangements for the termination of the fund,

— rights of representation in the committees of investors.

Before the decision to grant assistance, the intermediary investment fund or other comparable financial institution must undertake to invest not less than a sum equivalent to two and a half times the Community contribution, into projects previously identified as projects of common interest in accordance with Article 155(1) first subparagraph, first indent of the Treaty.

Community aid for investment funds or comparable financial undertakings, if granted in the form of a risk-capital participation, shall be granted, in principle, only if the Community contribution ranks *pari passu* in terms of risk with other investors in the fund.

Recipient investment funds or comparable financial undertakings have to follow sound financial principles.

2. *Limits for intervention and maximum investment*

Contributions under Article 4(1)(e) of the Regulation shall not exceed 1 % of the overall amount for the period mentioned in Article 18. However this limit may be increased in accordance with the said Article 4(1)(e).

Community assistance under the said Article 4(1)(e) shall not exceed 20 % of the total capital of an investment fund or comparable financial undertaking.

3. *Management of the Community contribution*

The management of the Community contribution will be ensured by the European Investment Fund (EIF). The detailed terms and conditions for implementing Community assistance under Article 4(1)(e) of the Regulation, including its monitoring and control, shall be laid down in a Cooperation Agreement between the Commission and the EIF, taking into account the provisions laid down in this Annex.

4. *Other provisions*

The provisions applying to appraisal, monitoring and evaluation as specified in the Regulation shall apply in full to Article 4(1)(e) thereof, including the provisions on conditions for Community aid, on financial control and the reduction, suspension and cancellation of assistance. This shall, *inter alia*, be ensured by appropriate provisions in the Cooperation Agreement between the Commission and the EIF and appropriate agreements with investee funds or comparable financial undertakings stipulating the necessary controls at the level of individual projects of common interest. Appropriate arrangements will be made to allow the Court of Auditors to exercise its mission in particular in order to verify the regularity of payments made.

Payments under Article 4(1)(e) shall be governed by Article 11(7) thereof, notwithstanding Article 11(6) thereof. After the end of the investment period or earlier as the case may be, any balances resulting from a return of invested capital or distribution of profits and capital gains and any and all other distributions due to investors shall be returned to the Community budget.

All decisions to provide risk-capital participations under Article 4(1)(e) of the Regulation shall be submitted to the Committee referred to in Article 17 thereof.

The Commission will report regularly to the said Committee on the implementation of risk capital participations under Article 4(1)(e) of the Regulation.

Before the end of 2006, the Commission shall in the framework of Article 15 of the Regulation provide an evaluation of actions carried out under Article 4(1)(e) thereof, in particular on its utilisation, its effects on the implementation of the trans-European network projects supported and the involvement of private investors in the projects financed.'