

REGULATION (EC) No 67/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 30 November 2009

laying down general rules for the granting of Community financial aid in the field of trans-European networks

(codified version)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) Council Regulation (EC) No 2236/95 of 18 September 1995 laying down general rules for the granting of Community financial aid in the field of trans-European networks ⁽³⁾ has been substantially amended several times ⁽⁴⁾. In the interests of clarity and rationality the said Regulation should be codified.
- (2) Article 155 of the Treaty provides that the Community shall establish a series of guidelines covering the objectives, priorities and broad lines of measures envisaged in the sphere of trans-European networks and that it may support projects of common interest supported by Member States in the sphere of trans-European networks. Under that Article Community aid may be granted to projects of common interest which are identified in the framework of the guidelines.
- (3) General rules should be laid down for the Community financing of trans-European networks, thereby permitting implementation of Article 155.
- (4) Involvement of private capital funding trans-European networks should be increased and the partnership between the public and private sectors developed.
- (5) Community aid may take the form in particular of feasibility studies, loan guarantees or interest rate subsidies.

These subsidies and guarantees relate in particular to financial support from the European Investment Bank or other public or private financial bodies. In certain duly justified cases direct grants to investments may be considered.

- (6) Loan guarantees should be granted on a commercial basis by the European Investment Fund or by other financial organisations. Community financial aid may cover all or part of the premiums paid by the beneficiaries of these guarantees.

- (7) Community aid is chiefly intended to overcome any financial obstacles which may arise during the start-up phase of a project.

- (8) It is necessary to set a limit for Community aid in relation to the total cost of investment. However, a higher rate of Community aid to promote completion of the cross-border connections for the priority projects should be provided.

- (9) The establishment of public-private partnerships (or of other forms of cooperation between the public and private sectors) demands a firm financial commitment from institutional investors which is sufficiently attractive to raise private capital. Granting Community financial aid on a multiannual basis would remove the uncertainties which are slowing down project development. Measures should therefore be taken to grant financial support to the projects selected on the basis of a multiannual legal commitment.

- (10) Community aid should be granted to projects on the basis of how much they contribute to the objectives of Article 154 of the Treaty and the other objectives and priorities covered by the guidelines referred to in Article 155 of the Treaty. Account should also be taken of other aspects such as the stimulative effect on public and private finance, the direct and indirect socio-economic effects of projects, in particular on employment, and the consequences for the environment.

- (11) 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 form of financing. This limit may be increased up to 2 % following a review of the functioning of this instrument. It is also appropriate to examine its possible future extension.

⁽¹⁾ Opinion of 10 June 2009 (not yet published in the Official Journal).

⁽²⁾ Opinion of the European Parliament of 24 November 2009 (not yet published in the Official Journal) and Council Decision of 26 November 2009.

⁽³⁾ OJ L 228, 23.9.1995, p. 1.

⁽⁴⁾ See Annex II.

(12) 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. 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. However, the annual amounts indicated in these programmes do not amount to budgetary commitments.

(13) The Commission must carefully evaluate the potential economic viability of the projects, with the help of cost/benefit analyses and other appropriate criteria, as well as their financial profitability.

(14) Community financial support under Article 155 (1), first subparagraph, third indent, of the Treaty must be compatible with Community policies, in particular on networks and as regards environmental protection, competition and the award of public contracts. Environmental protection should include an environmental impact assessment.

(15) It is necessary to clarify the respective powers and responsibilities of Member States and the Commission with regard to financial control.

(16) The Commission must ensure proper coordination of all Community activities, especially between financing under trans-European networks, and that of the Structural and Cohesion Funds, of the European Investment Fund and of the European Investment Bank, affecting trans-European networks.

(17) Provision should be made for suitable methods of evaluation, follow-up and control of Community aid.

(18) There should be suitable information, publicity and transparency regarding the activities financed.

(19) Given the importance of the trans-European networks, it is appropriate to include in this Regulation a financial framework within the meaning of point 33 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure ⁽¹⁾, of EUR 4 874 880 000 for its implementation for the period 2000 to 2006.

(20) It is appropriate that the Council examines whether to continue or to amend the measures under this Regulation in the light of the comprehensive report submitted by the Commission before the end of 2006.

(21) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽²⁾,

HAVE ADOPTED THIS REGULATION:

Article 1

Definition and Scope

This Regulation defines the conditions and procedures for granting Community aid under Article 155 (1), first subparagraph, third indent, of the Treaty to projects of common interest in the field of trans-European networks for telecommunications infrastructures and to the projects of common interest in the field of trans-European networks for transport and energy infrastructures which are referred to in Article 20, third paragraph, of Regulation (EC) No 680/2007 of the European Parliament and of the Council of 20 June 2007 laying down general rules for the granting of Community financial aid in the field of the trans-European transport and energy networks ⁽³⁾.

Article 2

Eligibility

Community aid may be granted only to projects of common interest (hereinafter referred to as 'projects') identified within the framework of the guidelines referred to in Article 155 (1), first subparagraph, first indent, of the Treaty.

Parts of projects shall also be eligible in so far as they form technically and financially independent units.

Article 3

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 the subsidy shall not exceed five years;

⁽¹⁾ OJ C 172, 18.6.1999, p. 1.

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

⁽³⁾ OJ L 162, 22.6.2007, p. 1.

- (c) contributions towards premiums for loan guarantees 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 19. In accordance with the procedure referred to in Article 18(2), 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. The participation may be made directly into the fund or comparable financial undertaking or into an appropriate co-investment vehicle managed by the same fund managers. Further modalities of implementation of this risk-capital participation are laid down in Annex I.

2. The Community aid referred to in paragraph 1 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.

3. The forms of Community aid referred to in paragraph 1 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.

4. The funding for transport infrastructure projects throughout the period referred to in Article 19 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.

5. 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.

Article 4

Conditions for Community aid

1. Community aid shall be granted, in principle, only if achievement of a project meets financial obstacles.
2. Community aid shall not exceed the minimum considered necessary for the launch of a project.

3. Regardless of the form of intervention chosen, the total amount of Community aid under this Regulation shall not exceed 10 % of the total investment cost. However, the total amount of Community aid may exceptionally reach 20 % of the total investment cost in the following cases:

- (a) projects concerning satellite positioning and navigation systems, as provided for in Article 17 of Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network ⁽¹⁾;
- (b) priority projects on the energy networks;
- (c) sections of the projects of European interest, provided that the projects are started before 2010, identified in Annex III to Decision No 1692/96/EC with the aim of eliminating bottlenecks and/or filling in missing sections, if such sections are cross border or cross natural barriers, and contribute to the integration of the internal market in an enlarged Community, promote safety, ensure the interoperability of the national networks and/or strongly contribute to the reduction of imbalances between modes of transport, in favour of the most environment-friendly modes. This rate shall be differentiated according to the benefits to other countries, in particular neighbouring Member States.

In the case of projects of common interest identified in Annex I to Decision No 1336/97/EC of the European Parliament and of the Council of 17 June 1997 on a series of guidelines for trans-European telecommunications networks ⁽²⁾, the total amount of Community aid granted under this Regulation may reach 30 % of the total investment cost.

4. The financial resources provided for under this Regulation shall not, in principle, be assigned to projects or stages of projects which benefit from other sources of Community funding.

5. In the case of projects referred to in paragraph 3, within the limits of this Regulation, the legal commitment shall be multiannual and the budgetary commitments shall be met in annual instalments.

Article 5

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 referred to in Article 18(2), elaborate by sector an indicative multiannual programme (hereinafter referred to as 'programme') on the basis of the guidelines referred to in Article 155 (1) 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.

⁽¹⁾ OJ L 228, 9.9.1996, p. 1.

⁽²⁾ OJ L 183, 11.7.1997, p. 12.

2. The programme shall be composed exclusively 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 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 19 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 18(1) of the progress of programmes and any decisions taken by the Commission in allocating Community aid for those 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 Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾.

The programme must be reviewed, at least at mid-term or in the light of the effective progress of the projects or groups of projects, and if necessary revised, in accordance with the procedure referred to in Article 18(2).

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. If substantial changes in the implementation of the projects or groups of projects take place, the Member State concerned shall inform the Commission without delay.

Modifications to the indicative global amounts established by the programme for the projects, which may be necessary following these changes, shall be decided in accordance with the procedure referred to in Article 18(2).

Article 6

Project selection criteria

1. Projects shall be assisted according to their degree of contribution to the objectives set out in Article 154 of the Treaty and to the other objectives and priorities defined in the guidelines referred to in Article 155 (1) of the Treaty.

2. 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.

3. Community aid shall be assigned to projects that are potentially economically viable and for which the financial profitability at the time of application is deemed insufficient.

4. The decision to grant Community aid should also take account of:

- (a) the maturity of the project;
- (b) the stimulative effect of community intervention on public and private finance;
- (c) the soundness of the financial package;
- (d) direct or indirect socio-economic effects, in particular on employment;
- (e) the environmental consequences.

5. Especially in the case of cross-border projects, coordination of the timing of different parts of the project shall also be taken into account.

Article 7

Compatibility

The projects financed under this Regulation shall comply with Community law and Community policies, in particular in relation to environmental protection, competition and the award of public contracts.

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.

Article 9

Information required for the assessment and identification of applications

1. Each application for financial aid shall include all the information necessary for the examination of the project according to Articles 4, 6 and 7, and in particular:

- (a) if the application concerns a project:
 - (i) the body responsible for carrying out the project;

⁽¹⁾ OJ L 248, 16.9.2002, p. 1.

- (ii) a description of the project concerned and the type of Community aid envisaged;
 - (iii) the results of the cost/benefit analyses, including the results of the potential economic viability analysis and of the financial profitability analysis;
 - (iv) the position of the project, according to the guidelines, in the field of transport, on the axes and nodes;
 - (v) consistency with regional planning;
 - (vi) a summary description of the environmental impact, based on the assessments 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⁾;
 - (vii) a statement that alternative possibilities of public and private financing, including the European Investment Fund and the European Investment Bank, have been examined;
 - (viii) 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 3(1), and from local, regional or national government bodies, as well as from private sources, and the aid already granted;
- (b) if the application relates to a study, the study's objective and purpose and the methods and techniques envisaged;
 - (c) a provisional timetable of work;
 - (d) a description of the control measures to be operated by the Member State concerned over the use of the funds requested.

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.

3. The Commission may seek any specialist advice it requires in order to assess an application, including the opinion of the European Investment Bank.

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 5, 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

⁽¹⁾ OJ L 175, 5.7.1985, p. 40.

adopted in accordance with the procedure referred to in Article 18(2). The Commission shall notify its decision directly to the beneficiaries and to the Member States.

Article 11

Financial provisions

1. Community aid may cover only project-related expenditure incurred by the beneficiaries or by third parties responsible for the implementation of a project.

2. Expenditure incurred before the date on which the Commission received the application for financial aid shall not be covered.

3. Decisions to grant financial aid taken by the Commission under Article 10 shall be binding as commitments to incur expenditure authorised by the Budget.

4. As a general rule, payments shall be made in the form of advances, intermediate payments and a final payment. The advance, which shall not normally exceed 50 % of the first annual tranche, shall be paid once the application for aid has been approved. Intermediate payments shall be made on the basis of requests for payment, taking account of the progress made in implementing the project or study and, if necessary, taking account of revised financial plans in a rigorous and transparent manner.

5. The payments must take account of the fact the infrastructure projects will be implemented over a period of years and that provision must therefore be made for multiannual financing.

6. The Commission shall make the final payment after approval of the final report on the project or study, submitted by the beneficiary and itemising all the expenditure actually incurred.

7. In accordance with the procedure referred to in Article 18(2), 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.

Article 12

Financial control

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

- (a) verify on a regular basis that projects and studies financed by the Community have been properly carried out;
- (b) prevent irregularities and take action against them;

(c) 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 State 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.

2. Member States shall inform the Commission of the measures taken for these purposes and, in particular, shall notify the Commission of the description of the management and control systems established to ensure the efficient implementation of projects and studies.

3. Member States shall make available to the Commission any appropriate national reports on the control of projects.

4. Without prejudice to any control measures carried out by the Member States in accordance with national laws, regulations and administrative provisions and without prejudice to Article 246 of the Treaty and control measures carried out in accordance with Article 279 of the Treaty, Commission officials or agents may carry out spot checks, including sample checks, in respect of projects financed under this Regulation and may examine the control systems and measures established by the national authorities, which shall inform the Commission of measures taken to that end.

5. Before carrying out an on-the-spot check, the Commission shall give notice to the Member State concerned with a view to obtaining all the assistance necessary. If the Commission carries out on-the-spot checks without giving notice, it shall be subject to agreements reached in accordance with provisions of Regulation (EC, Euratom) No 1605/2002. Officials or agents of the Member State concerned may take part in such checks.

The Commission may require the Member State concerned to carry out an on-the-spot check to verify the correctness of payment applications. Commission officials or agents may take part in such checks, and must do so if the Member State concerned so requests.

The Commission shall ensure that any checks that it carries out are performed in a coordinated manner so as to avoid repeating checks in respect of the same subject matter during the same period. The Member State concerned and the Commission shall immediately exchange any relevant information concerning the results of the checks carried out.

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.

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.

Article 13

Reduction, suspension and cancellation of aid

1. If the implementation of an operation appears not to justify, in whole or in part, the financial aid allocated to it, the Commission shall conduct an appropriate examination of the case, in particular requesting the Member State, or the authorities or bodies designated by it to carry out the operation, to submit their comments within a specified period of time.

2. Following the examination referred to in paragraph 1, the Commission may reduce, suspend or cancel aid in respect of the operation in question if the examination reveals an irregularity or a failure to comply with one of the conditions laid down in the decision granting the aid, and in particular any significant change affecting the nature of, or conditions for carrying out, the project for which the Commission's approval was not sought.

Any undue cumulation shall give rise to the recovery of sums unduly paid.

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

4. Any sum to be recovered for want of due entitlement shall be repaid to the Commission.

5. If, 10 years after the financial aid was awarded, the operation in question has not been completed, the Commission may demand reimbursement of the aid paid, with due regard to the principle of proportionality, taking into account all relevant factors.

Article 14

Coordination

The Commission shall be responsible for coordination and coherence between the projects and the programmes referred to in Article 5 (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.

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 4 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 project and its objectives. They shall be arranged in such a way as to show:

- (a) the stage of the project reached in relation to the plan and the operational objectives originally laid down;
- (b) the progress achieved on the management side and any related problems.

6. In vetting individual applications for aid, 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.

Article 16

Information and publicity

1. The Commission shall submit an annual report on the activities carried out under this Regulation to the European Parliament, the Council, the European 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 for in the second subparagraph of Article 5(4).

2. Beneficiaries shall ensure that suitable publicity is given to aid granted under this Regulation in order to inform the public of the role played by the Community in the implementation of the projects.

They shall consult the Commission on how this should be done.

Article 17

Implementation

The Commission shall be responsible for the implementation of this Regulation.

Article 18

Committee

1. The Commission shall be assisted by a committee (hereinafter referred to as 'the Committee').

The European Investment Bank shall appoint a representative to the Committee who shall not vote.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

Article 19

Funding

The financial framework for the implementation of this Regulation for the period 2000 to 2006 shall be EUR 4 874 880 000.

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

The allocation of funds shall be linked to the qualitative and quantitative level of implementation.

Article 20

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 3.

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 19.

Article 21

Repeal

Regulation (EC) No 2236/95 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex III.

*Article 22***Entry into force**

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

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

Done at Brussels, 30 November 2009.

For the European Parliament
The President
J. BUZEK

For the Council
The President
B. ASK

ANNEX I

Implementation modalities referred to in Article 3 (1)(e)*1. Conditions for a Community contribution to risk capital*

Applications for financial aid under Article 3 (1)(e) shall include the following information, satisfactory to the Committee referred to in Article 18(1), as a basis for decisions to grant aid:

- 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 aid, 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 3 (1)(e) R shall not exceed 1 % of the overall amount for the period referred to in Article 19. However this limit may be increased in accordance with the said Article 3 (1)(e).

Community aid under Article 3 (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 aid under Article 3 (1)(e), 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 this Regulation shall apply in full to Article 3 (1)(e), including the provisions on conditions for Community aid, on financial control and the reduction, suspension and cancellation of aid. 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 3 (1)(e) shall be governed by Article 11(7), notwithstanding Article 11(6). 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 3 (1)(e) shall be submitted to the Committee referred to in Article 18(1).

The Commission will report regularly to the said Committee on the implementation of risk capital participations under Article 3 (1)(e).

Before the end of 2006, the Commission shall in the framework of Article 15 provide an evaluation of actions carried out under Article 3 (1)(e), 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.

ANNEX II

Repealed Regulation with its amendments

Council Regulation (EC) No 2236/95
(OJ L 228, 23.9.1995, p. 1)

Regulation (EC) No 1655/1999 of the European Parliament and of the Council
(OJ L 197, 29.7.1999, p. 1)

Regulation (EC) No 788/2004 of the European Parliament and of the Council
(OJ L 138, 30.4.2004, p. 17)

only Article 1

Regulation (EC) No 807/2004 of the European Parliament and of the Council
(OJ L 143, 30.4.2004, p. 46)

Regulation (EC) No 1159/2005 of the European Parliament and of the Council
(OJ L 191, 22.7.2005, p. 16)

ANNEX III

Correlation Table

Regulation (EC) No 2236/95	This Regulation
Article 1	Article 1
Article 2(1)	Article 2
Article 4(1)(a) to (e)	Article 3(1)(a) to (e)
Article 4(1)(f)	Article 3(2)
Article 4(2)	Article 3(3)
Article 4(3)	Article 3(4)
Article 4(4)	Article 3(5)
Article 5	Article 4
Article 5a	Article 5
Article 6(1)	Article 6(1)
Article 6(1a)	Article 6(2)
Article 6(2)	Article 6(3)
Article 6(3), introductory wording	Article 6(4), introductory wording
Article 6(3), first indent	Article 6(4)(a)
Article 6(3), second indent	Article 6(4)(b)
Article 6(3), third indent	Article 6(4)(c)
Article 6(3), fourth indent	Article 6(4)(d)
Article 6(3), fifth indent	Article 6(4)(e)
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