



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.2.2004
COM(2004) 141 final

2001/0226 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to the second subparagraph of Article 251 (2) of the EC Treaty

concerning the

common position of the Council on the adoption of a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 2236/95 laying down general rules for the granting of Community financial aid in the field of trans-European networks

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1- BACKGROUND

Date of transmission of the proposal to the European Parliament and the Council: 03.12.2001
(document COM(2001) 545 final – 2001/0226 (COD))

Date of transmission of the revised (I) proposal: 12.03.2002
(document COM(2002) 134 final – 2001/0226 (COD))

Date of the opinion of the European Economic and Social Committee: 20.03.2002

Committee of the Regions decided not to give an opinion on the proposal. 25.03.2002

Date of the opinion of the European Parliament, first reading: 02.07.2002

Date of transmission of the amended proposal: 24.01.2003
(document COM(2003)38 final – 2001/0226 (COD)):

Date of transmission of the revised (II) proposal: 02.10.2003
(document COM(2003)561 final – 2001/0226 (COD)):

Date of adoption of the political agreement: 25.11.2003
(by unanimity)

Date of adoption of the common position: 24.02.2004

2- OBJECTIVE OF THE COMMISSION PROPOSAL

The objective of the proposal is to increase the maximum rate of support for Trans-European Energy priority projects (TEN-E) and Transport priority projects (TEN-T) which fall into the category of cross-border and/or cross natural barriers projects. Maximum rate of support is proposed to be increased from 10% to 20%, in order to have a leverage effect on these projects, by speeding up their implementation and facilitating the setting up of PPP (Public Private Partnerships). The proposal relies on the conclusions and recommendations in the

report by the High-Level Group chaired by Mr Karel Van Miert which worked on the TEN-T guidelines, leading to the parallel proposal to amend Decision No 1692/96/EC¹ on the guidelines for the trans-European transport network. The report by the High-Level Group warned the Commission of the risk that the cross-border projects will not be carried out in time unless Community aid provides a sufficient incentive to mobilise and coordinate public and private capital. Cross-border connections of this kind are essential for exchanges between Member States and for the connectivity along the major trans-European routes. The "border effect" often results in lighter local traffic, which tends to make the cross-border projects less profitable than schemes located at the heart of the national networks. As a result, the gap to be filled by public financing is greater. Paradoxically, this tendency to neglect cross-border projects has an adverse effect on the profitability of the investments made by the Member States in the sections in their own country, denying them the benefit of economies of scale.

Accordingly, the proposal targets, in particular, sections priority projects which show a high trans-European added value but, at the same time, that present low financial profitability.

3- COMMENTS ON THE COMMON POSITION

3.1 General

In order to better understand the contents of the common position, it is necessary to recall the rather complex "life cycle" of the proposal, which includes in fact four consecutive proposals, which aim remains the same but which content is – to some extent - different.

- First Commission's proposal (COM(2001) 545) – adopted in October 2001
- First revised Commission's proposal (COM(2002) 134) – adopted in March 2002. The revision's aim was to include energy networks in the scope of the proposal.
- Modified Commission's proposal after the first EP reading (COM(2003) 38) – adopted in January 2003
- Second revised Commission's proposal presented to unblock the situation in the Council (COM(2003) 561). In this context, although the scope of the proposal remains the same, the Commission had to abandon some of the amendments accepted after the first EP reading in order to facilitate a political agreement in the Council.

Therefore, the Council Common Position is based – partly – on the contents of the second Commission's revised proposal (COM(2003) 561) and partly on the previous Commission's proposals, whereas the first reading of the EP was based on the first Commission's proposal (COM(2001) 545). It is – to some extent – rather difficult to identify in the text of the Common Position of the Council, the amendments accepted by Commission after the first reading of the EP, as some of them have not been kept in the last Commission proposal (COM(2003) 561), or their wording has significantly changed.

Furthermore, it must be recalled that the Council has not given its opinion on the EP amendments.

¹ COM(2003) 564

3.2 The fate of the amendments

3.2.1 *Amendments accepted in the amended proposal and in the common position*

Amendments 1, 4, 8, 9, 11, 13 were accepted in part or in principle and they were subject to reformulation or additions.

Amendments 1, 7, 10 were rejected.

The following amendments – relating to recitals - have been dropped from the last Commission proposal (COM (2003) 561):

- the second part of amendment 4 relating to “sustainable mobility” was not included in Commission proposal (COM(2003) 561).

- Amendment 5 that made reference on delays that face projects in the Alps and Pyrénées, and amendment 6 that made a specific reference on GALILEO were not included Commission proposal (COM(2003) 561).

3.2.1.1 Amendment 1 (Recital 6)

A reference on the priority to be given in financing TEN-Energy is accepted in principle, but redrafted.

3.2.1.2 Amendment 4 (Recital 5)

A reference on Public-Private-Partnerships as a financing tool is made with a different formulation.

3.2.1.3 Amendments 8 and 13 (art 5§ 3.c)

The scope of the common position remains similar – in essence - to the one adopted by the EP and proposed by the Commission in its modified proposal. Projects concerned by an increased rate of support are:

- priority projects of the Energy network;
- cross-border and cross natural section of priority projects;
- those which aim is to promote safety and environmentally friendly modes.

In addition, the reference to Decision 1692/96, requested by the EP is kept in the common position. Nevertheless, the scope has been widened with respect to the text adopted by the EP as all modes (and not only rail) are now concerned, but it remains broadly in line with the last Commission proposal (COM(2003) 561).

The rate of co-financing for cross-border or cross natural priority projects as well as for priority projects in the energy sector is 20%, in accordance with the one proposed by the Commission in its modified proposal after the EP first reading.

3.2.1.4 Amendment 9 (article 13 § 4 new)

The introduction of stricter rules in financing projects to comply with sound and efficient management, introduced by the EP (amendment 9) is kept with a slightly different formulation, based on the one proposed by the Commission in its proposal Commission proposal (COM (2003) 561).

3.2.1.5. Amendment 10 (Art 17§3) committee

The Common Position does not follow the Commission's proposal – shared by the EP - that plans to set up an advisory procedure for the committee. It maintains the regulatory procedure as it is presently used, but agrees on the presence of an EIB representative (as observer) in the Committee (art 17§2)

3.2.1.6 Amendment 11 (Art18§2)

Although the Common Position does not follow amendment 11 on the increase of the financial framework for the period 2001-2006, it keeps the second alinea relating to a stricter assessment of the use of funds (article 18§2 new)

3.2.2 *Amendments appearing in the amended proposal but not in the common position*

3.2.2.1 The Common Position does not follow the request made by amendment 4 which concerned cross-border projects with acceding countries included (which could benefit from the maximum rate of support) as it considers this clause as null and void from the 1st May 2004 onwards, due to the entering of most of the acceding countries in the Union.

3.2.2.2 The Common Position does not follow amendment 7 on the increase of the financial framework for the implementation of Regulation No 2236/95

3.3 New provisions introduced by the Council

3.3.1. Following the Commission proposal (COM(2003) 561), the Council introduced the possibility of financing TENs based on a multiannual legal commitment (whereas the budgetary one remains annual) giving projects promoters a strong guarantee that they will receive funding from the Community throughout the implementation phase.

4- CONCLUSION

The Commission supports the Council Common Position – despites some changes with respect to its last proposal - as it largely follows the lines of the amended proposal. The main change relate to the maximum rate of support. The Council Common Position keeps this maximum rate of cofinancing at 20% whereas the Commission proposed 30% in its (COM(2003) 561). The 20% rate was nevertheless also the rate agreed by the EP in the first reading.

5- DECLARATIONS

A. Council and Commission declaration

The Council and the Commission confirm that over the period 2000-2006 this regulation has no impact on the total allocated to the TEN's.

B. Council declarations

1. The Council underlines that this regulation does not prejudice the next negotiation on the financial perspectives.
2. The Council notes the Commission's cost estimate of the "cross-border sections" (excluding motorways of the sea) referred to in Article 1² is EUR 15 bn for the period 2007-13. Consequently, if all these cross-border sections would benefit from the maximum rate of 20 %³, the estimated budgetary cost would amount to EUR 430 M€⁴ annually.
3. The Council notes the following Commission declaration:

"The presentation by the Commission to the TEN-T Finance Committee of a proposal for the supplementary financial assistance shall be accompanied by:

 - a) a financial analysis by the promoter of the project, which demonstrates that supplementary financial assistance is essential for the implementation of the project;
 - b) a reassessment of the project by the Commission, together with the EIB, in agreement with the Regulation, which shall inter alia verify the project's economic viability, financial profitability and direct or indirect socio-economic effects, given the proposed supplementary financial assistance, and the financial analysis provided by the promoter."

² Precise reference foreseen

³ precise figure foreseen on the basis of the rate to be agreed

⁴ precise figure foreseen on the basis of the rate to be agreed