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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels,
C(200.)

Draft

COMMISSION DECISION

of [...]

concerning the grant of assistance from the Cohesion Fund to a project concerning *[title of the project--stage of a project-group of projects-group of stages of projects-group of projects and stages of projects]*:

in *[the Member State concerned]*

CCI

(ONLY THE ... TEXT IS AUTHENTIC)

Draft

COMMISSION DECISION

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concerning the grant of assistance from the Cohesion Fund to a project concerning [title of the project--stage of a project-group of projects-group of stages of projects-group of projects and stages of projects]:

in [the Member State concerned]

CCI

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1164/94 of 16 May 1994 establishing a Cohesion Fund,¹ and in particular Article 10(6) thereof,

Whereas:

- (1) On [...] *[the Member State concerned]* submitted an application for assistance from the Cohesion Fund established by Regulation (EC) No 1164/94 for a project concerning [...].
- (2) That project is eligible under Article 3(1) of Regulation (EC) No 1164/94 in that it

To be inserted in case of an environmental project, stage of project or group of projects

[contributes to the achievement of the objectives set out in Article 174 of the Treaty concerning the environment]

To be inserted in case of a transport infrastructure project, stage of project, group of projects

[concerns a transport infrastructure project of common interest supported by [the Member State concerned] and identified in the guidelines adopted by 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 network², as amended by Decision No 1346/2001/EC³]

¹ OJ L 130, 25.5.1994, p. 1. Regulation lastly amended by Regulation (EC) No 1265/1999, OJ L 161, 26.6.1999, p.62.

² OJ L 228, 9.9.1996, p. 1.

³ OJ L 185, 6.7.2001, p. 1.

- (3) *In case of cofinancing of a project or group of projects less than EUR 10 million after due motivation presented by the Member State.*

[Explanation of the special circumstances justifying the grant of assistance for a project or a group of projects whose total cost is less than EUR 10 million. See article 10(3) of Regulation (EC) 1164/94.]

- (4) Where appropriate, the estimated amount of the revenue generated by the project should be taken into account in determining the actual rate of Community assistance, pursuant to Article 7(1) and (2) of Regulation (EC) No 1164/94. The polluter-pays principle should also be applied when determining the rate of Community aid, pursuant to Article 7(1) of Regulation (EC) No 1164/94.
- (5) Article 77(3) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities⁴ provides that the legal commitments entered into for actions extending over more than one financial year are to be subject to a time limit for implementation in compliance with the principle of sound financial management.
- (6) Commission Regulation (EC) No 16/2003 of 6 January 2003 laying down special detailed rules for implementing Council Regulation (EC) No 1164/94 as regards eligibility of expenditure in the context of measures part-financed by the Cohesion Fund⁵ sets out the eligibility rules for expenditure in the framework of measures part-financed by this Decision.
- (7) Under Article 12 of Regulation (EC) No 1164/94, *[the Member State concerned]* is responsible in the first instance for the financial control of the project, without prejudice to the responsibility of the Commission for implementing the general budget of the European Communities
- (8) Pursuant to Article 13 of Regulation (EC) No 1164/94 and to Articles B and F of Annex II thereto, the Commission and *[the Member State concerned]* are to ensure that the project is evaluated and monitored systematically.
- (9) *In case the designation of a project manager is necessary*

[The designation of a project manager is a necessary condition for the implementation of the project].

- (10) In the event of failure to comply with the provisions on financial implementation, eligibility, monitoring or evaluation, and notably in the event of severe irregularities, the assistance granted should be suspended or reduced in accordance with Article H of Annex II to Regulation (EC) No 1164/94 and Article 17 of Regulation (EC) No 1386/2002⁶.
- (11) Pursuant to Article 14 of Regulation (EC) No 1164/94 *[the Member State concerned]* is to ensure that adequate publicity is given to assistance from the Cohesion Fund.

⁴ OJ L 248, 16.9.2002, p. 5.

⁵ OJ L 2, 7.1.2003, s. 7.

⁶ OJ L 201, 31.07.2002, p. 5.

HAS ADOPTED THIS DECISION:

Article 1

[*The project*] [*The group of projects*] concerning [...] to be carried out in [*the Member State concerned*], as described in Annex I, hereinafter “the project”, shall benefit from Cohesion Fund assistance under the terms and conditions set out in the present decision.

or

The stage concerning [...] and forming part of the [*project*] [*group of projects*] concerning [...] in [*the Member State concerned*], as described in Annex I hereinafter “the project”, shall benefit from Cohesion Fund assistance under the terms and conditions set out in the present decision.

Article 2

1. Assistance from the Cohesion Fund shall cover expenditure on the project in respect of which legally binding commitments have been made in [*the Member State concerned*] and for which the requisite funds have been specifically allocated. That expenditure shall relate to the works described and scheduled in Annex I to this Decision.
2. In accordance with Article 11(3) of Regulation (EC) No 1164/94, expenditure incurred before [*date of receipt of the application*] shall not be eligible for assistance from the Cohesion Fund. Expenditure relating to the project shall be eligible until [*the date of completion of the works mentioned in annex I plus 12 months*].
3. The financing plan for the project, based on the schedule of estimated expenditure, is set out in Annex II to this Decision.

Article 3

1. The maximum expenditure that may be taken into account for the purpose of calculating assistance shall be EUR [...].
2. The rate of Community assistance granted to the project shall be []%. This rate takes into account, where appropriate, the application of the polluter-pays principle and the estimated revenue likely to be generated by the project.
3. If a subsequent evaluation shows that the revenue generated by this project is likely to vary by 10% or more, by comparison with the initial estimate, the rate shall be reviewed and adjusted accordingly.
4. The maximum amount of assistance from the Cohesion Fund shall be EUR [...].

Article 4

1. Commitments and payments of Community assistance granted to the project shall be made in accordance with Article 11 of Regulation (EC) No 1164/94 and with Articles C and D of Annex II thereto .
2. The first instalment of assistance shall be EUR [...] and shall be committed from the budget for 2[...]. The remainder of the assistance shall be committed subsequently in the light of progress in implementing the project
3. The amount of the first advance payment shall be EUR [..]
4. The interim payments shall be made according to progress in implementing the project and shall be subject to the fulfilment of the conditions set out in Article D of Annex II to Regulation (EC) No 1164/94.
5. The total amount of the payments of the advance and the interim payments for all instalments may not exceed 80% of the total assistance granted *[90% for important projects committed in annual instalment and in justified cases]*.

Article 5

1. Pursuant to Article 8(1) of Regulation (EC) No 1164/94, the project shall be carried out in accordance with the Treaties, instruments adopted pursuant thereto and the Community policies, including those concerning the protection of the environment, transport, the trans-European networks, competition and public procurement.
2. This Decision shall not prejudice the right of the Commission to commence infringement proceedings under Article 226 of the Treaty.

Article 6

The eligibility of the expenditure shall be determined in accordance with the provisions of Regulation (EC) No 16/2003.

Article 7

Payments shall be made on the basis of the certified statements of expenditure submitted to the Commission in accordance with Article 8 of Regulation (EC) No 1386/2002.

Article 8

The financial control of the project shall be undertaken in accordance with Article G of Annex II to Regulation (EC) No 1164/94 and in accordance with Regulation (EC) No 1386/2002.

Article 9

The project shall be monitored and evaluated systematically in accordance with Article 13 of Regulation (EC) No 1164/94, Articles B and F of Annex II thereto and with Annex III to this Decision.

[Article...]

In case of designation of a project manager

[[The Member State concerned] or the body responsible for the implementation of the project shall notify the Commission of the body selected to undertake the duties of project manager set out in Annex IV to this Decision.]

Article 10

[the Member State concerned] shall in accordance with Commission Decision No 96/455/EC⁷ ensure adequate publicity for the project, with a view to making the general public aware of the role played by the Community in financing it and to informing potential beneficiaries and professional bodies of the possibilities it offers.

Article 11

Failure to comply with this Decision may lead to the reduction, suspension or cancellation of assistance in accordance with Articles G and H of Annex II to Regulation (EC) No 1164/94 and in accordance with Chapter VII of Regulation (EC) No 1386/2002.

Article 12

This Decision shall only be modified once on request of [in *[the Member State concerned]* on the basis of an appropriate justification.

Article 13

This Decision is addressed to [the Kingdom of Spain] [the Hellenic Republic] [Ireland] [the Portuguese Republic].

Done at Brussels, [...]

For the Commission
Michel BARNIER
Member of the Commission

⁷ OJ L 188, 27.7.1996, p. 47.

ANNEX I
INFORMATION SHEET

Project No

- 1. PROJECT TITLE**

- 2. AUTHORITY MAKING THE APPLICATION**
 - 2.1. Name:**
 - 2.2. Address:**

- 3. AUTHORITY RESPONSIBLE FOR IMPLEMENTATION**
 - 3.1. Name:**
 - 3.2. Address:**
 - 3.3. Name of concession holder, appointee or other body or bodies involved in implementing the project under the responsibility or on behalf of the implementing body**
 - 3.4. *In case of a group of projects*
[Authority responsible for the co-ordination and control of the group of projects]**

- 4. PAYING AUTHORITY**

- 5. INTERMEDIATE BODY OR BODIES (OTHER THAN PAYING AUTHORITY) TO WHICH THE IMPLEMENTING BODY DECLARES EXPENDITURE)**

- 6. LOCATION**
 - 6.1. Member State:**
 - 6.2. Region:**
 - 6.3. Location in urban/rural areas**

[Location of the project is a) urban, b) rural, c) not geographically delimited]

7. DESCRIPTION

7.1. Physical description

7.2. Intervention by category and subcategory in accordance with section 2 of Annex IV to Regulation (EC) No 1386/2002

7.3. Main monitoring indicators to be indicated

7.4. Unit of measurement of indicator

8. OBJECTIVES

9. WORK SCHEDULE

	Commencement	Completion
		(12 months is added to this date in order to set the date mentioned in article 2)

10. ECONOMIC AND SOCIAL COST-BENEFIT ANALYSIS

11. ENVIRONMENTAL IMPACT ANALYSIS

11.1. Environmental Impact analysis

11.2. Effects on the environment

[the project a) has the environment as its main focus, b) is environment-friendly, c) is environmentally neutral]

12. TOTAL COST (IN EUROS)

1. Total cost:

Total eligible costs (after ...):

Rate of assistance:

Cohesion Fund assistance:

2. *In the case of a group of projects, provide an indicative breakdown of the costs of each project in the group.*

ANNEX II
FINANCING PLAN

(Based on the expenses forecasts of the beneficiary Member State)

FINANCING PLAN

Project:
No:

T I T L E
N u m b e r

Year	Public Expenditure or equivalent that meets the eligibility criteria for the Cohesion Fund								<i>Euro</i>
	TOTAL [1] = [2] + [4] + [8]	Cohesion Fund		National Authorities				Other [8]	Community Loans (for information purposes only) [13]
		[2]	% [3] = [2]/[1]	Total [4] = [6] + [7]	% [5] = [4]/[1]	Central [6]	Other [7]		
1999								:	:
2000								:	:
2001								:	:
2002								:	:
2003								:	:
2004								:	:
2005								:	:
2006								:	:
Total [9]								:	:

ANNEX III
MONITORING AND EVALUATION

In accordance with Article 13 of Regulation (EC) No 1164/94 and Articles B and F of Annex II thereto, [*the Member State concerned*] and the Commission shall ensure that the implementation of the project is duly monitored and evaluated.

In order to carry out those obligations, in [*the Member State concerned*] may request a Community contribution from the Commission as technical support.

I. MONITORING

1. Monitoring refers to the use of a system of information in order to trace the progress made in implementing the project. Monitoring shall use financial and physical indicators, which enable actual progress towards completion of the project to be compared with the financing plan set out in Annex II and the schedule for implementation set out in Annex I.
2. The implementation of the project shall be monitored by means of:
 - (a) the Monitoring Committee set up by each Member State concerned;
 - (b) reports;
 - (c) sample checks.

II. MONITORING COMMITTEE

3. In accordance with Article 13(6) of Regulation (EC) No 1164/94 and Article F(3) of Annex II thereto, [the Monitoring Committee set up to monitor projects financed by the Cohesion Fund in (Spain/Greece/Portugal/Ireland)] [a Monitoring Committee is established and] shall be responsible for monitoring the project which is the subject of this Decision. The Committee shall review its implementation at regular intervals and, where necessary, propose any adjustments required.

To be inserted in case of creation of a new monitoring committee (major project)
[The composition of the Monitoring Committee, including the appointment of its chairman, its operation and the frequency of its meetings, shall be adopted [decided] by joint agreement between [the Member State concerned] and the Commission, [not later than three months after the notification of this Decision].]

4. The Committee shall:
 - (a) monitor the implementation of the project and ensure that it achieves the objectives laid down for it and is implemented in accordance with the financing plan and work schedule laid down in Annexes I and II to this Decision;
 - (b) as a result of its monitoring, propose once a revision and adjustments of the financing plan and the work schedule and any amendments to this Decision

- (c) where appropriate, propose the measures required to ensure that the project achieve the objectives laid down for them;
- (d) give its opinion on the draft annual reports on implementation referred to in paragraph 6;
- (e) ensure publicity for the project;
- (f) ensure that Community policies are complied with, especially environmental policy;
- (g) assume any additional responsibilities jointly agreed by the Commission and the Member State.
- (h) The documents required for meetings of the Committee should, in principle, be available three weeks in advance.

III. REPORTS

5. In accordance with Article F(4) of Annex II to Regulation (EC) No 1164/94, a report on the project described in Annex I to this Decision shall be drawn up for each Monitoring Committee.

The report shall contain the following information:

- (a) progress of the project (using physical and financial indicators);
 - (b) details of any changes made to the original plan for implementation;
 - (c) adjustments to the estimated schedule for completion of the remaining works and, in particular, the date when the works are expected to be completed;
 - (d) an outline of the main technical and legal problems encountered and the measures taken to solve them;
 - (e) information on public procurement;
 - (f) an outline of the measures taken to ensure publicity for the project.
6. A final report shall be submitted to the Commission within six months of the physical completion of the project and shall be drawn up in accordance with Article F(4) of Annex II to Regulation (EC) No 1164/94.

Payment of the balance of Community assistance shall be subject to approval by the Commission of the final report.

IV. EVALUATION

7. An assessment of the project may be carried out during its implementation at the request of the Member State or on the initiative of the Commission in order to assess whether the project is proceeding towards completion in accordance with the

objectives originally laid down and to propose adjustments to take account of problems encountered during implementation.

8. An ex-post assessment of the impact of the project may be carried out by an assessor appointed by joint agreement between the Member State and the Commission once the project has been completed.

ANNEX IV

PROJECT MANAGEMENT

1. A professional project manager shall be appointed for the project.

The professional project manager shall be a company linked by contract with the beneficiary of the Community grant and complying with specifications covering the various functions defined in this Annex. The project manager appointed may carry out under his sole and entire responsibility the tasks assigned to him within the context of a specific structure set up to implement certain investment projects or programs.

2. The project manager shall normally be appointed not later than three months after the adoption of this Decision, and in any case, before the Commission makes the first interim payment. The project management contract shall be awarded through a tender procedure on the basis of the missions of the project manager indicated in point 3.

3. The project manager shall be responsible for the following functions:

– Before tender and during tender phase the project manager shall be responsible for:⁸

(a) preparation of detailed tender documents and comprehensive performance specifications and standards, or, if the tender documents are already prepared or are prepared by another body, detailed analysis of the tender documents in order to avoid errors or omissions and to minimise unforeseen work.

(b) detailed analysis of tenders and, if applicable, of design alternatives;

(c) pre-award resolution of the remaining technical and commercial queries;

– After tender and during the construction phase the project manager shall be responsible for:

(a) definition of a project planning system identifying physical and financial indicators and targets and critical activities;

(b) definition of a reporting and information system in order to permit effective financial and physical monitoring of the progress of works;

(c) supervision of the implementation of works, monitoring progress and reporting regularly on implementation (physical, financial progress report);

(d) monitoring the quality of implementation and defining the criteria and methodology for quality control, including the inspection of equipment necessary for the correct execution of the project;

⁸ The project manager may be the same as the designer; in which case he will also be in charge of engineering studies.

- (e) safety checks;
 - (f) acceptance procedure and invoice checking;
 - (g) checking all the contractor's design drawings for compliance with specifications and good engineering practice;
 - (h) if problems are encountered, negotiating with the contractor to find appropriate solutions under the terms of the contract or, in the case of major discrepancies, proposing decisions to the owner;
 - (i) in the case of a project for which the contract has been already awarded when this Decision is approved, the project manager shall first examine the technical specifications and assess the progress of the project, in order to identify possible problems and to suggest appropriate solutions to the owner.
4. The organisation of the project management function shall be appropriate to the characteristics of the project and the project management team must have all the engineering and management skills necessary for the fulfilment of the various activities listed in paragraph 3. If appropriate, the project manager may consider a central project management team, a sub-project team and/or site teams.

To avoid conflicts of interest, the project management company or related companies may not act as the constructor for this or related projects.

5. The project manager shall participate at meetings of the Monitoring Committee established for the project and shall provide any relevant information to the Committee on the progress of the project.

He shall therefore prepare reports for that purpose.

The Monitoring Committee may be briefed at technical meetings, which the project manager shall attend. These meetings shall be organised either on the initiative of the authorities of the Member State or on the initiative of the Commission. During these meetings the Commission may ask for all the relevant information or document concerning the implementation of the project.

6. Any disagreement between the project manager and the technical services of the owner concerning the areas of responsibility defined in paragraph 3 that cannot be settled at technical level must be settled by the owner or, failing this, by the relevant higher authority.

Such cases of disagreement shall be reported to the Commission through the Monitoring Committee.