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COVER NOTE

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| From: | Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director |
| date of receipt: | 8 July 2016 |
| To: | Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union |
| No. Cion doc.: | C(2016) 4178 final |
| Subject: | COMMISSION DELEGATED REGULATION (EU) .../... of 8.7.2016 Supplementing Regulation (EU) No 1316/2013 of the European Parliament and of the Council establishing the Connecting Europe Facility |

Delegations will find attached document C(2016) 4178 final.

Encl.: C(2016) 4178 final



Brussels, 8.7.2016
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COMMISSION DELEGATED REGULATION (EU) .../...

of 8.7.2016

**Supplementing Regulation (EU) No 1316/2013 of the European Parliament and of the
Council establishing the Connecting Europe Facility**

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 21(3) of Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility (CEF) empowers the Commission to adopt delegated acts detailing the transport funding priorities to be reflected in the work programmes referred to in Article 17 for the duration of the CEF for eligible actions under Article 7(2).

In this respect, the Commission adopted Delegated Regulation (EU) No 275/2014 of 7 January 2014, which entered into force on 20 March 2014, and on the basis of which it established the CEF transport work programmes and launched the 2014 and 2015 calls for proposals to select projects of common interest for CEF funding.

On 11 June 2014, the European Parliament introduced an action for annulment of the Delegated Regulation with the EU Court of Justice alleging that the Commission exceeded the power conferred on it by the CEF Regulation in so far as it added a new Part VI to Annex I of this Regulation instead of adopting a separate delegated act. The EP did not question the substance of the Commission Delegated Regulation.

In its judgement of 17 March 2016 (Case C-286/14) the Court annulled Commission Delegated Regulation (EU) No 275/2014 and ordered that its effects be maintained until the entry into force, with a reasonable period, which may not exceed six months from the date of delivery of the judgment, of a new act intended to replace it.

Therefore, in order to comply with the Court judgement, the Commission needs to adopt a new Delegated Regulation which supplements Regulation (EU) No 1316/2013 by detailing the funding priorities to be reflected in the work programmes. .

The proposed delegated act details the transport funding priorities deriving from Articles 7(2), 10 and 11 of the CEF Regulation.

According to Article 21(3), the priorities must be reflected in the work programmes referred to in Article 17. According to Article 17(3), the Commission shall adopt the multiannual work programmes in the transport sector for projects of common interest as listed in Part I of Annex I. Therefore, the transport funding priorities falling in the scope of the latter are to be covered by multiannual work programmes, and the other priorities by annual work programmes. The delegated act reflects this distinction.

Finally, considering that Article 21(3) of the CEF Regulation refers to the transport specific objectives of Article 4(2) of that Regulation, it is appropriate to refer to those objectives for the purpose of this delegated act and to classify the funding priorities accordingly. Part IV of annex I of the CEF Regulation sets out indicative percentages for the distribution of the transport budgetary resources to the transport specific objectives as referred to in Article 4(2).

In the light of the above, this delegated act details the transport funding priorities to be financed under the multi-annual and the annual work programmes.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Commission has consulted Member States' experts, in the presence of experts of the European Parliament, in an ad hoc meeting on 15 June. The draft Delegated act was shared with Member States' experts, the European Parliament and the Council on 8 June 2016. The Commission services stated the conclusions drawn from the discussions in the minutes of the meeting, including how they took the experts' views into consideration.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The delegated act supplements Regulation (EU) No 1316/2013 to include a detailed list of transport funding priorities to be reflected in the transport work programmes for the duration of the Connecting Europe Facility for eligible actions under Article 7(2) of that Regulation.

COMMISSION DELEGATED REGULATION (EU) .../...

of 8.7.2016

Supplementing Regulation (EU) No 1316/2013 of the European Parliament and of the Council establishing the Connecting Europe Facility

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010¹, and in particular Article 21 thereof,

Whereas:

- (1) On 7 January 2014 the Commission adopted Delegated Regulation (EU) No 275/2014² establishing transport funding priorities for the purpose of the multiannual and annual work programmes.
- (2) By its judgement of 17 March 2016 in Case C-286/14 *European Parliament v. Commission* the Court of Justice of the European Union annulled Commission Delegated Regulation (EU) No 275/2014 and ordered that the effects of that Regulation be maintained until the entry into force, within a reasonable period, which may not exceed six months from the date of delivery of the judgment, of a new act intended to replace it.
- (3) According to Article 21(3) of Regulation (EU) No 1316/2013, the transport funding priorities should take into account the eligible actions contributing to projects of common interest in accordance with Regulation (EU) No 1315/2013 of the European Parliament and of the Council³ listed under Article 7(2) of Regulation (EU) No 1316/2013.

¹ OJ L 348, 20.12.2013, p. 129.

² Commission Delegated Regulation (EU) No 275/2014 of 7 January 2014 amending Annex I to Regulation (EU) No 1316/2013 of the European Parliament and of the Council establishing the Connecting Europe Facility (OJ L 80/2014 of 19.3.2014, p. 1)

³ Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU (OJ L 348, 20.12.2013, p. 1).

- (4) The eligible actions listed in Article 7(2) of Regulation (EU) No 1316/2013 are further detailed in Articles 10 and 11 of that Regulation providing the maximum applicable funding rates for those actions. It is therefore appropriate to refer to the actions as listed in those Articles in order to detail the transport funding priorities.
- (5) Projects of common interest as listed in Part I of Annex I to Regulation (EU) No 1316/2013 are eligible to the multiannual work programmes referred to in Article 17(3) of that Regulation. Projects not listed in Part I of Annex I but eligible as per Article 7(2) of that Regulation are eligible to the annual work programmes.
- (6) Pursuant to Article 4(2) of Regulation (EU) No 1316/2013 laying down the specific transport sectoral objectives, and considering that Article 21(3) of that Regulation empowers the Commission to adopt delegated acts in accordance with its Article 26 detailing, for the transport sector, the funding priorities to be reflected in the work programmes, this Delegated Regulation sets out such priorities to be reflected in multi-annual or annual work programmes in accordance with Article 17(3) of the said Regulation.
- (7) Considering that financial instruments are to receive Union contribution under the annual work programmes, it is appropriate to include hereby a corresponding priority.
- (8) Programmes support actions listed in Article 5(2)(b) of Regulation (EU) No 1316/2013, consisting of technical and administrative assistance expenses incurred by the Commission for the management of the Connecting Europe Facility and capped at 1 % of the financial envelope, will not be covered by the work programmes. However the programme support actions contributing to projects of common interest as provided for in Article 7(2) and referred to in Article 5(2)(a) of Regulation (EU) No 1316/2013 will be covered by the work programmes and are included hereby with a corresponding priority.
- (9) All resources referred in Article 5(1)(a) of Regulation (EU) No 1316/2013, including the resources transferred from the Cohesion Fund will be covered under the same work programmes. According to Article 11 of that Regulation, the resources transferred from the Cohesion Fund will be subject to specific calls for proposals.
- (10) In order to allow for the timely adoption of the implementing acts provided for in Article 17(3) of Regulation (EU) No 1316/2013 to ensure legal continuity of the Connecting Europe Facility –Transport sector –programme, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation establishes the funding priorities to be reflected in the multiannual and annual work programmes referred to in Article 17 of Regulation (EU) No 1316/2013 for the duration of the Connecting Europe Facility for eligible actions under Article 7(2) of that Regulation, as set out in the Annex.

Article 2

This Regulation shall enter into force on the first day following that of 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, 8.7.2016

For the Commission
The President
Jean-Claude JUNCKER