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►B REGULATION (EC) No 1382/2003 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 22 July 2003

on the granting of Community financial assistance to improve the environmental performance of the freight transport system (Marco Polo Programme)

(OJ L 196, 2.8.2003, p. 1)

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REGULATION (EC) No 1382/2003 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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on the granting of Community financial assistance to improve the environmental performance of the freight transport system (Marco Polo Programme)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71(1) and Article 80(2) thereof,

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

Having regard to the opinion of the European 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]),

Whereas:

(1) The European Council held at Göteborg on 15 and 16 June 2001 declared that shifting the balance between the modes of transport is at the heart of the sustainable development strategy.

(2) If no decisive action is taken, total road freight transport in Europe is set to grow by about 50 % by 2010. The effect would be a growth of international road freight of about 12 billion tonne-kilometres per year.

(3) In its White Paper, 'European transport policy for 2010: time to decide', the Commission proposed to take measures which should make the market shares of the modes of transport return, by 2010, to their 1998 levels. This will prepare the ground for a shift of balance from 2010 onwards.

(4) It is necessary to establish a programme, hereinafter referred to as the 'Marco Polo Programme', or 'the Programme', to reduce road congestion and to improve the environmental performance of the freight transport system within the Community and to enhance intermodality, thereby contributing to an efficient and sustainable transport system. To achieve this objective, the Programme should support actions in the freight transport, logistics and other relevant markets. These actions should contribute to maintaining the distribution of freight between the various modes of transport at 1998 levels by helping to shift the expected aggregate increase in international road freight traffic to short sea shipping, rail and inland waterways or to a combination of modes of transport in which road journeys are as short as possible.

(5) The Marco Polo Programme will feature three types of action: firstly, modal shift actions, which should focus on shifting as much cargo as possible under current market conditions from road to short sea shipping, rail and inland waterways; secondly, catalyst actions, which should change the way non-road freight transport is conducted in the Community; and thirdly, common learning actions, which should enhance knowledge in the freight logistics sector and foster advanced methods and procedures of cooperation in the freight market.

([1]) OJ C 126 E, 28.5.2002, p. 354.
([2]) OJ C 241, 7.10.2002, p. 37.
([3]) OJ C 278, 14.11.2002, p. 15.
([4]) Opinion of the European Parliament of 24 September 2002 (not yet published in the Official Journal), Council Common Position of 25 April 2003 (OJ C 153 E, 1.7.2003, p. 252) and Decision of the European Parliament of 3 July 2003 (not yet published in the Official Journal).

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(6) Actions must involve the territory of at least two countries. If these two countries are Member States or other countries participating in the Marco Polo Programme under the conditions laid down in this Regulation, the Programme will re-imburse the costs incurred by the participating undertakings within the limits laid down in the Regulation.

(7) In order to reflect the European dimension of the actions, cooperation should be encouraged between undertakings established in different countries, in the form of a consortium submitting an action.

(8) Applicants should be able to submit new or, where appropriate, existing projects which best match current market needs. Suitable projects should not be discouraged by any over-rigid definition of allowable actions. In particular, the flexibility given to the Commission, assisted by the Committee set up under Article 12(1), for the selection of projects should enable projects which are efficient but under the minimum indicative subsidy threshold to be eligible for Community financial assistance.

(9) There may be cases in which the benefits of developing an existing service may be at least equal in terms of additional modal shift, quality and environmental and viability advantages to those of starting up a new service involving considerable expense.

(10) To be transparent, objective and clearly delimited, aid for the launch of modal shift actions should be based on cost savings for society brought about by use of short sea shipping, rail and inland waterways, or a combination of modes of transport, instead and in place of road transport alone. For this reason, the Commission has set an indicative amount of financial assistance of EUR 1 for each shift of 500 tonne-kilometres of road freight.

(11) Considering, on the one hand, the importance of the internalisation of external, particularly environmental, costs, acknowledged both in the White Paper 'European transport policy for 2010: time to decide' and in the conclusions of the Göteborg European Council, and on the other hand, the speed at which the transport market is changing, it should be possible to take account of future work on developing methods to internalise external costs, regularly evaluate the development of external cost differentials and propose any necessary adjustment to the indicative amount of financial assistance accordingly.

(12) The results of the catalyst and common learning actions of the Programme should be adequately disseminated, in order to ascertain replication, publicity and transparency.

(13) During the selection procedure and during the lifetime of the project, it is necessary to ensure that the project chosen makes a real contribution to the common transport policy and does not cause unacceptable distortions of competition. The Commission should therefore evaluate the implementation of this Regulation. It should present, not later than 31 December 2006, an assessment report on the results of the Marco Polo Programme, accompanied if necessary by a proposal for the amendment of this Regulation.

(14) Since the objective of the Marco Polo Programme cannot be sufficiently achieved by the Member States and can therefore, by reason of the scope of the Programme, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

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(15) 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 ([1]).

(16) A financial reference amount, 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 is inserted in this Regulation for the entire duration of the Programme, without the powers of the budgetary authority as defined by the Treaty being affected thereby.

(17) In order to administer funding under this Regulation in the most expedient and speedy way, this Regulation should enter into force as soon as possible after its adoption,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

OBJECTIVE, DEFINITIONS AND SCOPE

Article 1

Objective

This Regulation establishes a financing instrument, hereinafter referred to as the 'Marco Polo Programme', or 'the Programme', the objective being to reduce congestion, to improve the environmental performance of the transport system and to enhance intermodal transport, thereby contributing to an efficient and sustainable transport system, for the period from 1 January 2003 to 31 December 2010 in order to achieve, by the end of the Programme, a traffic shift of the expected yearly aggregate increase of international road freight traffic, measured in tonne-kilometres, to short sea shipping, rail and inland waterways or to a combination of modes of transport in which road journeys are as short as possible.

Article 2

Definitions

For the purposes of this Regulation:

(a) 'action' shall mean any project related to the logistics market, executed by undertakings, which contributes to reducing congestion in the road freight transport system and/or to improving the environmental performance of the transport system by optimising transport to and from intermodal transport chains, in the territories of the Member States;

(b) 'modal shift action' shall mean any action directly and immediately shifting freight from road to short sea shipping, rail, inland waterways or a combination of modes of transport in which road journeys are as short as possible, without being a catalyst action;

(c) 'catalyst action' shall mean any innovative action aimed at overcoming Community-relevant structural barriers in the market for freight transport which impede the efficient functioning of the markets, the competitiveness of short sea shipping, rail, or inland waterways, and/or the efficiency of transport chains making use of these modes; for the purpose of this definition, 'structural market barrier' shall mean any non-regulatory, factual and non-temporary impediment to the proper functioning of the freight transport chain;

(d) 'common learning action' shall mean any action aimed at improving cooperation for structurally optimising working methods

([1]) OJ L 184, 17.7.1999, p. 23.

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and procedures in the freight transport chain, taking into account the requirements of logistics;

(e) 'accompanying measure' shall mean any measure which seeks to prepare for or to support current or future actions, *inter alia* dissemination activities and project monitoring and evaluation, and the collection and analysis of statistical data. Measures devoted to the commercialisation of products, processes or services, marketing activities and sales promotion are not 'accompanying measures';

(f) 'preparatory measure' shall mean any action in preparation for a catalyst action, such as technical, operational or financial feasibility studies and equipment tests;

(g) 'consortium' shall mean any arrangement by which at least two undertakings execute together and share the risk concerning an action;

(h) 'undertaking' shall mean any entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed;

(i) 'ancillary' shall mean necessary, but subordinate, to achieve the goals of 'modal shift actions' or 'catalyst actions';

(j) 'tonne-kilometre' shall mean the transport of a tonne of freight, or its volumetric equivalent, over a distance of one kilometre;

(k) 'close third country' shall mean any non-Member State of the European Union or candidate country for accession to the European Union with a common border with the European Union or with a coastline on a closed or semi-closed sea neighbouring on the European Union.

Article 3

Scope

1. The Marco Polo Programme shall cover modal shift actions, catalyst actions and common learning actions:

(a) involving the territory of at least two Member States, or

(b) involving the territory of at least one Member State and the territory of a close third country.

2. Where an action involves the territory of a third country, costs arising in the territory of that country shall not be covered by the Programme, except in the circumstances mentioned in paragraphs 3 and 4.

3. The Programme shall be open to participation by countries which are candidates for accession. Participation will be governed by the conditions laid down in the Association Agreements with those countries, and on the basis of the rules laid down in the decision of the Association Council for each country concerned.

4. The Programme shall also be open to participation by the EFTA and EEA Member States on the basis of supplementary appropriations in accordance with procedures to be agreed with those countries.

CHAPTER II

ELIGIBLE APPLICANTS AND ACTIONS

Article 4

Eligible applicants

1. As a general rule, projects shall be submitted by a consortium of two or more undertakings, established in at least two different Member States or in at least one Member State and one close third country.

2. Undertakings established outside the Community or outside one of the participant countries referred to in Article 3(3) and (4) which may be associated with the project may under no circumstances receive Community funding under the Programme.

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Article 5

Modal shift action

1. Modal shift actions, including, where appropriate, the additional modal shift brought about by the development of an existing service, shall be eligible for funding under the Programme provided that the following conditions are satisfied:

(a) the modal shift action is expected to lead to an actual, substantial, measurable and sustainable modal shift of freight transport from road to short sea shipping, rail, inland waterways or a combination of modes of transport in which road journeys are as short as possible;

(b) according to a realistic business plan, the modal shift action will be viable on its own after a maximum of 36 months of Community funding;

(c) the modal shift action will not lead to distortions of competition in the relevant markets, in particular between alternative modes of transport to road transport alone or within each mode, to an extent which damages the common interest;

(d) when the action requires reliance on services provided by third parties not part of the consortium, the applicant submits proof of a transparent, objective and non-discriminatory procedure for selection of the relevant services.

2. Community financial assistance for modal shift actions shall be limited to a maximum of 30 % of the total expenditure necessary to achieve the objectives of the action and incurred as a result of the action. Such expenditure shall be eligible for Community financial assistance to the extent to which it relates directly to the implementation of the action. Ancillary infrastructure expenditure shall also be eligible for Community financial assistance, as long as it remains marginal, up to a maximum of 30 %. Expenditure incurred on or after the date of the submission of an application under the selection procedure shall be eligible for Community financial assistance provided that final approval for Community funding is given. A contribution towards the costs of movable assets shall be contingent on the obligation to use such assets for the duration of the assistance, principally for the action, as defined by the subsidy agreement.

3. The Community financial assistance under paragraph 2 determined by the Commission on the basis of the tonne-kilometres shifted from road to short sea shipping, rail, inland waterways or a combination of modes of transport in which road journeys are as short as possible shall initially be set at EUR 1 for each shift of 500 tonne-kilometres of road freight. This indicative amount could be adjusted, in particular, in accordance with the quality of the project or the real environmental benefit obtained.

In accordance with the procedure referred to in Article 12(2), the Commission may re-examine, from time to time as necessary, the developments concerning the items on which this calculation is based and, if necessary, adapt the amount of Community financial assistance accordingly.

4. Community financial assistance for modal shift actions shall be granted on the basis of subsidy agreements. As a rule, the maximum duration of these agreements shall be 38 months.

Community financial assistance shall not be renewable beyond the stipulated maximum period of 38 months.

5. The minimum indicative subsidy threshold per modal shift action shall be 250 million tonne-kilometres of modal shift or, in proportion to the indicative amount per euro of subsidy, EUR 500 000.

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Article 6

Catalyst actions

1. Catalyst actions shall be eligible for funding under the Programme provided that the following conditions are satisfied:

(a) the catalyst action will achieve its objectives within a period of a maximum of 48 months, and stay viable after that period, as forecast by a realistic business plan;

(b) the catalyst action is innovative on a European level, in terms of logistics, technology, methods, equipment, products or services rendered;

(c) the catalyst action is expected to lead to an actual, measurable and sustainable modal shift from road to short sea shipping, rail, inland waterways, or a combination of modes of transport in which road journeys are as short as possible. The catalyst action is expected to lead to a reduction of congestion in road transport and not to a shift between short sea shipping, rail and inland waterways;

(d) the catalyst action proposes a realistic plan setting out the specific stages by which it seeks to achieve its objectives and identifies the need for Commission steering assistance;

(e) the catalyst action will not lead to distortions of competition in the relevant markets, in particular between modes of transport alternative to road transport alone or within each mode, to an extent which damages the common interest;

(f) when the action requires reliance on services provided by third parties not part of the consortium, the applicant submits proof of a transparent, objective and non-discriminatory procedure for selection of the relevant services.

2. In the framework of the objectives of the Commission White Paper 'European transport policy for 2010: time to decide', catalyst actions implementing new concepts, such as that of 'motorways of the seas', deserve special attention.

Catalyst actions on the transport market should preferably use the trans-European networks as defined in Decision No 1692/96/EC ([1]), or the pan-European transport corridors and areas.

3. The results and methods of catalyst actions shall be disseminated in order to help achieve the objectives of this Regulation.

4. Community financial assistance for catalyst actions shall be limited to a maximum of 35 % of the total expenditure necessary to achieve the objectives of the action and incurred as a result of the action, including preparatory measures. Such expenditure shall be eligible for Community financial assistance, to the extent to which it relates directly to the implementation of the action. Expenditure for ancillary measures related to infrastructure works needed to achieve the aims of the action shall also be eligible for Community financial assistance, as long as it remains marginal, up to a maximum of 35 %. Expenditure incurred on or after the date of the submission of an application under the selection procedure shall be eligible for Community financial assistance provided that final approval for Community funding is given. A contribution towards the costs of movable assets shall be contingent on the obligation to use such assets for the duration of the assistance, principally for the action, as defined by the subsidy agreement.

5. Community financial assistance for catalyst actions shall be granted on the basis of subsidy agreements, with appropriate provisions for steering and monitoring. As a rule, the maximum duration of these agreements shall be 50 months.

([1]) OJ L 228, 9.9.1996, p. 1. Decision as last amended by Decision No 1346/2001/EC (OJ L 185, 6.7.2001, p. 1).

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Community financial assistance shall not be renewable beyond the stipulated maximum period of 50 months.

6. The political priority targets which will be taken into consideration in the selection procedure for such actions shall be established in accordance with the procedure referred to in Article 12(2).

The Commission, assisted by the Committee set up under Article 12(1), may review the political priority targets from time to time.

7. The minimum indicative subsidy threshold per catalyst action shall be EUR 1,5 million.

Article 7

Common learning actions

1. Common learning actions shall be eligible for funding under the Programme provided that the following conditions are satisfied:

(a) the action will lead to the improvement of commercial services in the market and lasts for a maximum of 24 months;

(b) the action is innovative on a European level;

(c) the action will not lead to distortions of competition in the relevant markets, in particular between modes of transport alternative to road transport alone or within each mode, to an extent which damages the common interest;

(d) the common learning action proposes a realistic plan setting out the specific stages by which it seeks to achieve its objectives and identifies the need for Commission steering assistance.

2. The results and methods of common learning actions shall be disseminated in order to help achieve the objectives of this Regulation.

3. Community financial assistance for common learning actions shall be limited to a maximum of 50 % of the total expenditure necessary to achieve the objectives of the action and incurred as a result of the action. Such expenditure shall be eligible for Community financial assistance, to the extent to which it relates directly to the implementation of the action. Expenditure incurred on or after the date of the submission of an application under the selection procedure shall be eligible for Community financial assistance provided that final approval for Community funding is given. A contribution towards the costs of movable assets shall be contingent on the obligation to use such assets for the duration of the assistance, principally for the action, as defined by the subsidy agreement.

4. Community financial assistance for common learning actions shall be granted on the basis of subsidy agreements, with appropriate provisions for steering and monitoring. As a rule, the maximum duration of these agreements shall be 26 months.

Community financial assistance shall not be renewable beyond the stipulated maximum period of 26 months.

5. The political priority targets which will be taken into consideration in the selection procedure for such actions shall be established in accordance with the procedure referred to in Article 12(2).

The Commission, assisted by the Committee set up under Article 12(1), may review the political priority targets from time to time.

6. The minimum indicative subsidy threshold per common learning action shall be EUR 250 000.

Article 8

Detailed rules

The Commission shall issue detailed rules for the procedure for submission, selection, execution, dissemination and individual reporting and verification requirements concerning actions under the Programme in accordance with the procedure referred to in Article 12(2).

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Article 9

State aid

Community financial assistance for the actions defined by the Programme shall not exclude those actions being granted State aid at national, regional or local level, insofar as such aid is compatible with the State-aid arrangements laid down in the Treaty and within the limits established for each type of action in Article 5(2), Article 6(4) and Article 7(3) respectively.

CHAPTER III

SUBMISSION AND SELECTION OF ACTIONS

Article 10

Submission of actions

Actions shall be submitted to the Commission according to the detailed rules issued under Article 8. The submission shall contain all the elements necessary to enable the Commission to make its selection in accordance with Article 11.

Article 11

Selection of actions — Granting of financial assistance

Submitted actions shall be evaluated by the Commission. The Commission shall decide whether to grant financial assistance under this Regulation taking into account, for the selection of the action, the objective referred to in Article 1, and the conditions referred to in Articles 5, 6 or 7, as appropriate. The selection shall take into account the relative environmental merits of the proposed actions and their contribution to reducing road congestion. This decision shall be taken in accordance with the procedure referred to in Article 12(2).

The Commission shall inform the beneficiaries and the Member States of its decision.

CHAPTER IV

FINAL PROVISIONS

Article 12

Committee

1. The Commission shall be assisted by a committee.

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

Article 13

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Funding

The financial framework for the implementation of the Marco Polo Programme, for the period 1 January 2003 to 31 December 2006, shall be EUR 100 million.

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

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Article 14

Reserve for accompanying measures and programme evaluation

Up to 5 % of the budget provided for in this Regulation shall be set aside for accompanying measures and independent evaluation of the implementation of Articles 5, 6 and 7.

Article 15

Evaluation

1. The Commission shall inform the Committee at least once a year concerning the financial execution of the Programme and give an update of the status of all actions financed under the Programme.

2. By 31 December 2006 at the latest, the Commission shall present to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions an evaluation report on the results of the Marco Polo Programme, having regard to its objective, and accompanied if necessary by a proposal for the amendment of this Regulation.

Article 16

Entry into force

This Regulation shall enter into force on the 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.