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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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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.