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(Resolutions, recommendations and opinions)

RESOLUTIONS

EUROPEAN PARLIAMENT

Control of the budgetary implementation of the Instrument for Pre-Accession Assistance

P6_TA(2009)0237

European Parliament resolution of 22 April 2009 on control of the budgetary implementation of the Instrument for Pre-Accession Assistance (IPA) in 2007 (2008/2206(INI))

(2010/C 184 E/01)

The European Parliament,

— having regard to Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA) [1],

— having regard to Commission Regulation (EC) No 718/2007 of 12 June 2007 implementing Council Regulation (EC) No 1085/2006 establishing an instrument for pre-accession assistance (IPA) [2],

— having regard to the Commission Communication of 8 November 2006 on the IPA Multi-Annual Indicative Financial Framework for 2008-2010 (COM(2006)0672),

— having regard to the Commission Communication of 6 November 2007 on the IPA Multi-Annual Indicative Financial Framework for 2009-2011(COM(2007)0689),

— having regard to the Commission's 2007 Annual IPA Report of 15 December 2008 (COM(2008)0850 and SEC(2008)3026),

— having regard to the Commission Communication of 5 November 2008 on Enlargement Strategy and Main Challenges 2008-2009 and the accompanying 2008 Country Progress Reports (COM(2008)0674 accompanied by SEC(2008)2692 to SEC(2008)2699),

— having regard to the Commission report of 22 July 2008 entitled 'Protection of the Communities' financial interests – Fight against fraud – Annual report 2007' (COM(2008)0475, including SEC(2008)2300),

[1] OJ L 210, 31.7.2006, p. 82.
[2] OJ L 170, 29.6.2007, p. 1.

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— having regard to the Commission's annual report of 27 October 2008 on the Instrument for Structural Policy for Pre-accession (ISPA) 2007 (COM(2008)0671 and SEC(2008)2681),

— having regard to the Commission's 2007 annual report of 22 December 2008 on PHARE, Turkey Pre-Accession, CARDS and Transition Facility (COM(2008)0880 and SEC(2008)3075),

— having regard to the European Court of Auditors' report on the annual accounts of the European Agency for Reconstruction for the financial year 2007, together with the Agency's replies ([1]),

— having regard to the European Court of Auditors' special report No 5/2007 on the Commission's management of the CARDS programme, together with the Commission's replies ([2]),

— having regard to the 2007 Annual Activity Report of the Commission's Director-General for Enlargement ([3]),

— having regard to its previous resolutions on enlargement and, in particular, its resolution of 10 July 2008 on the Commission's 2007 enlargement strategy paper ([4]),

— having regard to its resolution of 10 April 2008 on Croatia's 2007 progress report ([5]),

— having regard to its resolution of 23 April 2008 on the 2007 Progress Report on the former Yugoslav Republic of Macedonia ([6]),

— having regard to its resolution of 21 May 2008 on Turkey's 2007 progress report ([7]),

— having regard to its resolution of 13 January 2009 on Trade and Economic relations with the Western Balkans ([8]),

— having regard to its resolution of 4 December 2008 on the situation of women in the Balkans ([9]),

— having regard to the visit of a fact-finding delegation of its Committee on Budgetary Control to Kosovo ([10]) from 22 to 25 June 2008, and to the relevant mission report ([11]),

— having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ([12]), and in particular Article 53 thereof, and to its implementing rules,

— having regard to Rule 45 of its Rules of Procedure,

— having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on Foreign Affairs (A6-0181/2009),

([1]) OJ C 311, 5.12.2008, p. 42.
([2]) OJ C 285, 27.11.2007, p. 1.
([3]) 31.3.2008, http://ec.europa.eu/atwork/synthesis/aar/doc/elarg_aar.pdf.
([4]) Texts adopted, P6_TA(2008)0363.
([5]) Texts adopted, P6_TA(2008)0120.
([6]) Texts adopted, P6_TA(2008)0172.
([7]) Texts adopted, P6_TA(2008)0224.
([8]) Texts adopted, P6_TA(2009)0005.
([9]) Texts adopted, P6_TA(2008)0582.
([10]) Under United Nations Security Council Resolution 1244(1999).
([11]) http://www.europarl.europa.eu/activities/committees/publicationsCom.do?language=EN&body=CONT.
([12]) OJ L 248, 16.9.2002, p. 1.

A. whereas the IPA is the new financial instrument that replaces the instruments and programmes for candidate and potential candidate countries, namely Phare, SAPARD, ISPA, pre-accession financial assistance for Turkey, and CARDS, and aims to streamline EU funds in a flexible way so as to tailor them to the specific needs and management capacity of those countries,

B. whereas the IPA consists of the following five components covering priorities defined according to the needs of the beneficiary countries, namely:

I. Transition Assistance and Institution Building,

II. Cross-Border Cooperation (CBC),

III. Regional Development,

IV. Human Resources Development,

V. Rural Development,

C. whereas the IPA is a key factor for improving the quality of life of citizens, social standards, infrastructure and regional and cross-border cooperation, and for promoting respect for human rights in candidate and potential candidate countries,

D. whereas the purpose of parliamentary control over the implementation of the budget in the area of enlargement policy is not only to ensure that EU funds have been used in accordance with the governing provisions and with the policies of the EU, but also to assess whether they have been effectively allocated to the priorities identified in the strategy and progress reports for the beneficiary countries and whether they have achieved the desired results in view of common EU interests,

E. whereas it is vital to examine the implementation of the IPA rigorously and at an early stage so as to avoid the problems that were identified belatedly in the implementation of previous pre-accession instruments, bearing in mind that irregularities not taken into consideration in due time will multiply and that it will be very difficult to deal with them later as they will assume the form of permanent malpractices,

F. whereas the fight against corruption and the sectoral reforms (in the judicial, police and public administration sectors) have a bearing not only on good governance and the rule of law but also on the general business climate,

G. whereas the IPA, notably through the review of Multi-Annual Indicative Planning Documents (MIPDs), offers considerable flexibility allowing for adaptation to the evolving needs and managing capacity of the beneficiary countries,

H. whereas, under Article 27 of Regulation (EC) No 1085/2006 ('the IPA Regulation'), the Commission is obliged to submit to the European Parliament and the Council, by 31 December 2010, a mid-term evaluation report on the implementation of the IPA, accompanied if appropriate by a legislative proposal to amend that Regulation,

I. whereas, further to Parliament's request, the Commission has undertaken to carry out already in 2009 a mid-term review of the package of external aid instruments, including the IPA,

J. whereas Parliament should, from now on, communicate with the national parliaments of the beneficiary countries under the IPA,

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General remarks

1. Welcomes the structured dialogue established with the Commission on the implementation of the IPA, and recalls its position in this respect, notably the need to grant all beneficiary countries equal access to the full range of policy tools available under the instrument, to give adequate priority to the fight against corruption and organised crime and to pay increased attention to institutional capacity-building, particularly at parliamentary level, the development of civil society organisations, measures to promote the principle of tolerance and non-discrimination, human development and regional cooperation in key policy areas;

2. Is pleased by the high rate of implementation of IPA commitments in 2007; regrets, however, that the first IPA programmes were only adopted at the end of 2007 and that the actual implementation started only in 2008, due in part to the late adoption of the new instrument and in part to delays on the part of beneficiary countries in setting up the requisite structures and management systems; urges the Commission to push ahead with the implementation of projects and to monitor the allocation of funds and the results obtained so as to ensure that the IPA has a visible impact in the countries concerned;

3. Notes that, due to the late adoption of the IPA Regulation and of Regulation (EC) No 718/2007 ('the IPA Implementing Regulation'), and subsequently of the first Multi-Annual Indicative Financial Framework and the MIPDs, the monitoring, evaluation and reporting on 2007 IPA programmes and projects was limited and has not yet yielded results; stresses that the smooth transition from previous pre-accession instruments to the IPA requires continuity in programming, adequate implementation of projects and execution of payments;

4. Considers that there was satisfactory coherence between the 2007 IPA national programmes and the EU pre-accession policy, as most of the objectives set out in the programmes were in line with the priorities identified in the respective Commission progress reports;

5. Notes that the main focus for the candidate countries lies in the implementation of European standards, namely statistical, environmental and fiscal standards, which is consistent with the EU's enlargement policy; points out however that the importance of the political criteria, notably democratic governance, respect for human rights, freedom of religion, women's rights, minorities' rights and the rule of law, should not be undermined, since their non-fulfilment can lead to complications and delay in negotiations; considers that there should be a better balance between projects earmarked for meeting the political criteria and projects earmarked for the implementation of the *acquis*;

6. Reminds the Commission that the Union's legitimacy and capacity to promote reforms can be greatly enhanced if the IPA targets its assistance to areas of direct benefit for the citizens of the candidate and potential candidate countries, particularly in view of the needs and challenges generated by the global financial crisis;

7. Is consequently of the opinion that the IPA should support the efforts by the beneficiary countries to meet the requirements laid down in the roadmap for visa liberalisation, so that the citizens of the Western Balkans can finally enjoy freedom of movement and participate fully in EU programmes and schemes; welcomes the Commission's intention to further increase the allocation of IPA funds to the Tempus, Erasmus Mundus and Youth in Action programmes;

8. Takes note of the fact that the Commission was in a position to give accreditation for decentralised management to Croatia for Components I to IV and to Turkey for Components I and II towards the end of 2008; encourages the Commission to continue to work intensively with candidate and potential candidate countries so that those countries become able in the near future to manage funds in a decentralised manner and thus get full access to all IPA components; points out, however, that the conferral of management powers is conditional and subject to their effective exercise;

9. Emphasises that the use of the IPA is a shared responsibility between the Commission and the national governments of the candidate and potential candidate countries; calls on the Commission to improve the cooperation and communication between its delegations and the respective authorities, to establish permanent control over the project implementation procedures and to work towards common measures for improving the administrative capacity of beneficiary countries;

10. Stresses the need for transparent and effective IPA management and control, taking into account the specificities of each country's internal audit and control systems as well as best practices in the pre-accession procedures of former candidate countries;

11. Expects the Commission to report every year to Parliament and its responsible Committee on Budgetary Control on payments and implementation of IPA funds, as well as on the remaining funds from ISPA, IPARD and SAPARD, giving details for every recipient country and examples of best practice, and reporting on all problems or irregularities encountered;

12. Notes that horizontal issues, such as environmental impact assessment, good governance, civil society involvement, equal opportunities and non-discrimination, are not sufficiently present and visible in the 2007 IPA projects; invites the Commission to develop, in particular, multi-beneficiary regional or horizontal programmes, notably on the fight against corruption and organised crime, intercultural dialogue and gender equality;

13. Notes that limited funds are allocated for large geographic areas or comprehensive policy areas and that these funds are fragmented into many small projects rather than concentrated in fewer, more visible projects; points out that the annual national programmes should strike a balance between providing an adequate response to the key priorities identified in the progress reports and avoiding over-fragmentation of the funds;

Policy and country-specific observations

14. Highlights the need, as a matter of the utmost importance and urgency, to use the IPA to strengthen in all beneficiary countries the fight against corruption and organised crime with a special focus on money laundering, illegal migration and human trafficking; notes that, although all 2008 progress reports identified corruption as a serious problem and a key priority, not all 2007 IPA programmes take corruption sufficiently into account; suggests that funds should be earmarked for this purpose, as in the cases of Croatia [1] and Montenegro [2], and calls on the Commission to develop a more coherent strategy in this context, building upon the lessons learnt from the last enlargement rounds;

15. Notes that civil society organisations (CSOs) in the beneficiary countries should be more actively involved in the development and initiation of projects; points out that future IPA programmes should tackle the systematic donor dependency of CSOs, so as to avoid the existence of CSOs 'on demand', and should also address the development of some of the CSOs along ethno-political conflict lines, especially in Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia and Kosovo [3]; expects the new Civil Society Facility to tackle many of the problems with regard to the diversity, complexity and fragmentation of EU programmes;

16. Insists that constant support for CSOs in candidate and potential candidate countries is needed in order to create a competitive environment among them and to ensure sustainability in their work for results-oriented IPA implementation and continued activeness in project management;

17. Notes that IPA-funded projects and activities score low in terms of EU visibility 'on the ground' and have not generated 'bottom-up' legitimacy for further EU rapprochement;

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[1] Project 2007/019-247: Improving Anti-Corruption Inter-Agency Cooperation, a EUR 2 500 000 project for strengthening the coordination body within the Ministry of Justice in charge of anti-corruption strategy and raising public awareness of corruption issues.

[2] Project 2007/19300: Fight against organised crime and corruption. This project aims to combat organised crime and corruption by improving the performance and cooperation of the various law enforcement agencies involved. It is linked to the wider Government Anti-Corruption Strategy and Action Plan. EUR 3 000 000 have been earmarked for this project.

[3] Under UN Security Council Resolution 1244(1999).

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18. Considers that education and youth employment as preconditions for long-term stability and development have not been adequately addressed; highlights the need to combat unemployment, especially youth and long-term unemployment, as a cross-cutting issue of great importance; suggests in this regard that the Commission should examine the possibility of making greater use of the flexibility provided for in the IPA so as to allow funding, where appropriate, of measures related to components III to V through the first two components;

19. Notes that regional financial support under the IPA is relatively small in size (approximately 10 % of the total IPA), given in particular that it covers eleven intervention areas in six countries, from education and youth to nuclear safety;

20. Is concerned that the total 2007 IPA allocations for Component II amounted to only EUR 38 800 000 out of a total IPA of EUR 497 200 000 (that is, less than 8 %); points out that this contradicts the Commission's assertion that cross-border cooperation helps reconciliation and good neighbourly relations and is particularly relevant in a region with a recent history of conflict; regrets that effective cooperation has been difficult to establish, in practice, for a number of reasons, including mismatches of structures and procedures between some partners, as well as political difficulties; calls on the beneficiary countries and the Commission, under this component, to pursue further existing cooperation and to develop new cooperation, in line with the objective of fostering good neighbourly relations and promoting economic integration, especially in the fields of the environment, the natural and cultural heritage and the fight against corruption and organised crime;

21. Is also concerned that no 2007 IPA programme submitted by the beneficiary countries directly addressed women's rights or gender equality, although gender issues have been identified as a major challenge both in progress reports and MIPDs; once again calls on the Commission to provide pre-accession funds for strengthening women's rights in the Balkans, in particular through women's NGOs and women's organisations; invites the Commission to earmark IPA funds accordingly, so as to promote gender budgeting in pre-accession policy and to encourage the beneficiary countries to submit relevant project proposals;

22. Emphasises the need to involve more and more non-governmental organisations in the design and implementation of IPA-funded projects so as to ensure that IPA assistance reflects real needs and expectations, to contribute to a greater visibility of IPA projects and to promote the development of a lively and proactive civil society in the beneficiary countries;

23. Invites the European Court of Auditors to submit by the end of 2010 a mid-term special evaluation report on the implementation of the IPA;

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24. Instructs its President to forward this resolution to the Council, the Commission and the European Court of Auditors, as well as to the governments, parliaments and national audit institutions of the beneficiary countries under the IPA.

Wednesday 22 April 2009

Effective enforcement of judgments in the EU: the transparency of debtors' assets

P6_TA(2009)0238

European Parliament resolution of 22 April 2009 on the effective enforcement of judgments in the European Union: the transparency of debtors' assets (2008/2233(INI))

(2010/C 184 E/02)

The European Parliament,

— having regard to Article 65 of the EC Treaty,

— having regard to the Commission's Green Paper of 6 March 2008 on the effective enforcement of judgments in the European Union: the transparency of debtors' assets (COM(2008)0128),

— having regard to the Commission's Green Paper of 24 October 2006 on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts (COM(2006)0618) and Parliament's resolution of 25 October 2007 thereon [1],

— having regard to its resolution of 18 December 2008 with recommendations to the Commission on e-Justice [2],

— having regard to the opinion of the European Economic and Social Committee of 3 December 2008,

— having regard to the opinion of the European Data Protection Supervisor of 22 September 2008,

— having regard to Rule 45 of its Rules of Procedure,

— having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Economic and Monetary Affairs (A6-0252/2009),

A. whereas, in accordance with the principles of subsidiarity and proportionality, the adoption of a Community instrument in the field of judicial cooperation in civil matters having cross-border implications can be considered only if it can be shown that on a national level it is impossible to remove an obstacle preventing the establishment or the functioning of the internal market,

B. whereas late payment and non-payment of debts jeopardise the interests of businesses and consumers, especially where the creditor and the enforcement authorities have no information about the debtor's whereabouts or his or her assets; whereas this is exacerbated by the present economic climate, in which cash-flow is essential to the survival of businesses,

C. whereas the problems of cross-border debt recovery may constitute a serious obstacle to the free circulation of payment orders within the EU and may impede access to justice; whereas, moreover, if judicial decisions cannot be enforced, the doing of justice is undermined together with standards of commercial morality,

D. whereas, in general, debt recovery is a major problem, which is made worse where claims are of a cross-border nature, particularly for small businesses which do not have specialised lawyers or dedicated debt-collection departments at their disposal and are often placed in the invidious position of having to commit staff, scarce financial resources and, above all, time to this problem rather than to productive activities,

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[1] OJ C 263 E, 16.10.2008, p. 655.
[2] Texts adopted, P6_TA(2008)0637.

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E. whereas there are indications that the Late Payments Directive ([1]) is not sufficiently respected or known about; whereas if that Directive were now updated and properly implemented it could have a considerable impact in reducing late payment or non-payment,

F. whereas there are huge divergences under the different systems of national contract and insolvency law as to how creditors may secure their debt at the point of contract, particularly by the use of retention-of-title clauses or other such mechanisms which are sometimes circumvented because of those divergences,

G. whereas the adoption of Community legislation concerning the effective enforcement of judgments must apply to all debtors, without any distinction being made in advance between debtors acting in good or in bad faith,

H. whereas the avoidance, late payment and non-payment of debts is often exacerbated by insufficient care by the parties at the time of their pre-contractual and contractual dealings; whereas there is a need for greater emphasis on commercial awareness and the possible use of 'European-style' optional clauses under the Common Frame of Reference (CFR) which would ensure that parties properly consider these issues at the beginning of their commercial relationship,

I. whereas it has been brought to Parliament's attention that there may be a serious problem in cross-border cases involving recalcitrant debtors, that is to say, persons who could pay their debts or discharge their liabilities but who do not do so or persons in respect of whom there is a risk that they will not pay what they owe even if judgment has been given against them; whereas it appears that such persons often hold substantial assets in different entities, nominees and trusts and successful enforcement cannot be obtained without the requisite information; whereas it is often necessary to obtain such information without alerting the recalcitrant debtor – who will often be in a position to remove assets to another jurisdiction at short notice,

J. whereas it has further been brought to Parliament's notice that certain sovereign States do not honour arbitration awards or judgments handed down by the courts of another State, with the result that 'vulture funds' have emerged which acquire this sovereign debt at a much reduced figure and then seek to make a profit from enforcement; whereas it might arguably be better and fairer to give the original creditors the means to obtain redress themselves,

K. whereas it is argued that there are few States which have no assets at all outside their own borders and that, if the creditor has no prospect of obtaining enforcement in his or her own Member State (only) or in the State concerned, then the only effective redress is through courts abroad, particularly the courts in other Member States of the EU,

L. whereas under the Brussels I Regulation ([2]) each Member State has its own provisional measures shaped and governed by its national law and *ex parte* orders are not the subject of mutual recognition and enforcement under that Regulation; whereas *inter partes* orders are given effect to by a recipient court with the nearest equivalent relief available from that court,

M. whereas provisional measures include:(i) orders for disclosure of information about assets which may be made the subject of measures of execution of a judgment and (ii) orders preserving assets pending enforcement, and (iii) can also take the form of an interim payment order, giving the creditor immediate payment pending resolution of the underlying dispute,

([1]) Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions (OJ L 200, 8.8.2000, p. 35).

([2]) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 12, 16.1.2001, p. 1).

N. whereas the grant of provisional measures should be subject to conditions similar to those applied by the Court of Justice, namely the creditor would have to persuade the court that he has a justifiable claim on the merits (an enforceable right in the shape of a court order or authentic instrument or evidence of the claim making out a prima facie case – *fumus boni juris*), and to demonstrate urgency (a real risk that enforcement of the claim may be frustrated if the measure is not granted (*periculum in mora*)), and whereas the grant of such measures may be made subject to the lodging of security,

O. whereas in small-scale cases, particularly where legal costs could otherwise be prohibitive, justice delayed is justice denied and whereas, in larger-scale cases, it can be the absence of information about assets which proves to be the greatest obstacle; whereas, therefore, recourse to provisional measures orders might well provide a neat solution in both types of cases,

P. whereas, moreover, any Community action to make information available needs also to be considered in the context of these types of cases, in which lack of information causes serious injustice; whereas, unless there is information available to the creditor about the assets of a debtor (and *a fortiori* a recalcitrant debtor) which may be taken in enforcement of a judgment, the creditor will not be able to enforce it,

Q. whereas, in practice, this problem is not confined to cases where there has already been a judgment which has not been honoured: it may also arise before claimants bring their claims,

R. whereas, however, it is absolutely essential that any measures proposed should be proportionate; whereas, moreover, they should not merely replicate what can already be achieved through existing national measures and should be confined to cross-border claims, and unnecessary and inappropriate harmonisation should be avoided,

S. whereas some concern has been expressed that certain of the ideas on the effective enforcement of judgments in the European Union through the transparency of debtors' assets could violate fundamental rights, including the right to privacy (data protection), undermine procedural safeguards and run counter to the constitutional traditions of many Member States,

T. whereas any proposals made must be cost-effective and integrated into other areas of Community policy in order to avoid unnecessary duplication of effort,

1. Welcomes the above-mentioned Commission Green Paper of 6 March 2008, because it contributes to the Lisbon Strategy;

2. States that the lack of transparency in the information required to oblige debtors to fulfil their obligations is contrary to common principles of good faith and pecuniary liability; insists that inadequate knowledge of the national laws on enforcement procedures or their ineffectiveness is likely to slow down completion of a unified internal market and leads to unnecessary costs;

3. Points out that late payment, non-payment and the problem of debt recovery damage the interests of creditor businesses and consumers, reduce confidence in the internal market and undermine legal action;

4. Supports an integrated and effective strategy based on the principles of 'better lawmaking', and considers that the objective to be achieved should be payment that ensures non-discrimination, the protection of sensitive data and legal guarantees with proportionate measures that provide the requisite transparency and significantly reduce processing and management costs;

5. Insists that, besides publicly available information, the creditor should have access to the data required – subject to supervision by, or with the assistance of, a competent authority – in order to initiate the enforcement procedure and recover the debt by procedures readily applicable throughout the internal market;

6. Agrees with the Commission that cross-border debt recovery through enforcement of judicial decisions is a major internal market problem, but considers that the solutions mooted by the Commission need further work in order adequately to address the most difficult problem, that of recalcitrant debtors;

The proposal to draw up a manual of national enforcement laws and practices

7. Observes that such a manual might be laborious and expensive to produce and update, that, for individuals seeking redress, it might be easier to have one regime to deal with, and that in the majority of cases creditors will have to seek advice from lawyers in the relevant foreign jurisdiction; considers that, nevertheless, a streamlined version may be useful in the absence of a workable cross-border regime;

8. Strongly believes that the publication of national directories of foreign lawyers exercising their internal market rights under Directives 77/249/EEC [1] and 98/5/EC [2] would be useful; points out that such national directories could be linked to a Commission website and could be complementary to the manual;

Increasing the information available in, and improving access to, public registers

9. Is opposed to providing unjustified, indiscriminate and arbitrary access to all kinds of data held on population, social security and tax registers, and in favour of an adequate and proportionate framework designed to ensure the effective enforcement of judgments in the European Union;

10. Argues that access to population registers (where they exist) might be useful for tracing hapless private individuals who default on maintenance payments or personal loans, and for avoiding abuses;

11. Considers that, whilst improved access to social security and tax registers has been a successful innovation in certain jurisdictions, it is necessary also to ensure observance of the rules on data protection and confidentiality; points out that this is a sensitive matter to the public; notes, moreover, that there may well be legal problems in using information for a purpose other than the purpose for which it was collected;

12. Observes, in addition, that tax returns and social security records are confidential in many Member States and that the idea of a register, with all the risks which it entails of records going astray, would not be welcomed there and would be regarded as an abuse of executive power;

13. Maintains that, if the proposal were disproportionate to the end sought, it could be open to abuse and could constitute a violation of the right to privacy;

Exchange of information between enforcement authorities

14. Considers that the idea of improved cooperation between public enforcement bodies may be worth exploring further, but points out that such bodies do not exist in all the Member States;

The debtor's declaration

15. Takes the view that a debtor's declaration can usefully form part of the procedure for enforcing a judgment, where it can be backed by sanctions under national law;

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[1] Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ L 78, 26.3.1977, p. 17).

[2] Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ L 77, 14.3.1998, p. 36).

16. Considers that there is no need for Community action in this area, as long as it is not proved that the Member States' existing instruments are not efficient;

Other measures

17. Suggests that consideration could be given to the idea of introducing a form of Community provisional measure additional to those of national courts; considers that this could take the form of a simple, flexible procedure to which effect could be given throughout the EU, thereby avoiding delay and unnecessary expense; takes the view that it would also be effective and fair to non-parties;

18. Proposes that such a measure could apply to arbitration claims as well and could also be taken into account in the context of the forthcoming review of the Brussels I Regulation;

19. Calls on the Commission to treat this matter as a priority and to carry out (a) a detailed appraisal of the problem, (b) a feasibility study of possible Community instruments and (c) an impact assessment of possible Community-law remedies confined to trans-border aspects; considers that the Commission's inquiry should also identify and duly justify the proper legal basis for any Community instrument proposed, which should be limited to cross-border cases and be complementary to and not interfere with the application of purely national remedies in this area;

20. Urges the Commission fully to consider pre-contractual and contractual measures that could be linked with the development of the CFR and any optional instrument deriving therefrom, so as to ensure that parties to European cross-border contracts consider issues of late payment and non-payment when contracting;

21. Eagerly anticipates the review of the Late Payments Directive and urges the Commission to proceed with this as quickly as possible, given the current economic climate;

22. Suggests that a study should be carried out of the divergent national legal approaches to retention of title and other similar mechanisms, with a view to ensuring their mutual recognition;

23. Suggests that a party who has acquired proprietary rights recognised in a court judgment should be able to enforce those rights under the same conditions as the transferor;

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24. Instructs its President to forward this resolution to the Council, the Commission and the parliaments of the Member States.

Wednesday 22 April 2009

Annual report on the deliberations of the Petitions Committee 2008

P6_TA(2009)0239

European Parliament resolution of 22 April 2009 on the deliberations of the Committee on Petitions during the year 2008 (2008/2301(INI))

(2010/C 184 E/03)

The European Parliament,

— having regard to its previous resolutions on the deliberations of the Committee on Petitions,

— having regard to the results of the fact-finding missions undertaken by the Commission in 2008 to Romania, Bulgaria, and France and the corresponding reports and recommendations approved by the Committee,

— having regard to Articles 21 and 194 of the EC Treaty, which confer on all EU citizens and residents the right to petition the European Parliament,

— having regard to Rules 45 and 192(6) of its Rules of Procedure,

— having regard to the report of the Committee on Petitions (A6-0232/2009),

A. recognising the importance of the petitions process and its specific attributes, which enable the responsible committee to seek solutions and explanations for EU citizens who petition Parliament,

B. having regard to the growing number of EU citizens who petition Parliament, together with the efforts by the Committee on Petitions to further expedite its procedures in order to provide a better service for citizens seeking its assistance,

C. whereas several of the recommendations adopted in the 2007 Annual Report are yet to be implemented by Parliament's authorities, such as the request for an urgent improvement of the administrative resources, including linguistic and legal expertise, of its Committee on Petitions in order to increase Parliament's capacity to conduct independent investigations of petitions addressed to it, and, for instance, closer cooperation with SOLVIT in the field of petitions and complaints regarding the internal market, and the establishment of a common EU portal for European citizens,

D. mindful of the fact that, in spite of considerable progress in the development of the structures and policies of the Union during this period, citizens remain directly aware of many shortcomings in the application of the policies and programmes of the Union as they affect them directly, and whereas these are frequently the subject of petitions received,

E. whereas the institution of the 'Citizens' Initiative' under the Treaty of Lisbon will result in even greater public participation in the activities and work of the European Union,

F. whereas, consequently, Parliament has a responsibility to ensure better application of Community law by the individual Member States in the interests of EU citizens and residents, and thus to work in cooperation with Member States to achieve this objective,

G. whereas, however, many Member States remain reluctant to cooperate actively with the responsible committee, in particular by failing to attend meetings of the committee, and whereas this denotes a lack of loyal cooperation with the institution,

H. whereas failure to cooperate actively and in a timely manner with the work of the responsible committee in the interest of the correct application of Community law raises doubts about the desire and intent of the Member State concerned to correctly apply EU policies and objectives and therefore exposes the authorities to measures in the form of sanctions and penalties which are available under the terms of the Treaties as well as to public criticism,

I. recognising, however, that many Member States demonstrate a good level of cooperation and work with Parliament in an effort to respond to the concerns of citizens as expressed through the petitions process,

J. recognising the constructive contribution made to the petitions process by the services of the Commission, which regularly provide, at the request of the responsible committee, preliminary assessments of many petitions received,

K. whereas such cooperation could and should be further enhanced, notably as regards procedures pursuant to Articles 226 and 228 of the EC Treaty in duly justified cases,

L. whereas Parliament has considered that it would be legitimate for it to make use of its powers under Article 230 of the EC Treaty, if this proved necessary in order to put an end to a serious infringement of Community law which has been revealed in the course of examination of a petition and where a significant difference of interpretation persists, despite efforts to resolve it, between Parliament and the Commission, as regards the action required under Community law for the protection of citizens' rights in the case concerned,

M. whereas the infringement procedure does not provide a remedy for petitioners even when a Member State is obliged by the Court of Justice to modify its legislation so as to bring it into conformity with EU legislative acts,

N. whereas the inability to provide a non-judicial remedy directly to EU citizens who have been or have become victims of the lack of proper application of EU law constitutes a basic injustice which requires further consideration by the EU institutions, and in particular by Parliament,

O. whereas, under Article 230 of the EC Treaty, Parliament has the right to bring actions before the Court of Justice under the same conditions as the Council and the Commission and whereas, pursuant to Article 201 of the EC Treaty, Parliament is empowered to exercise control over the activities of the Commission and thus has at its disposal both the legal and the political instruments to respond more effectively to citizens' legitimate concerns,

P. whereas Parliament should review its own procedures in order to facilitate actions, notably under Rule 121 of its Rules of Procedure, before the Court of Justice when the rights of petitioners are at stake,

Q. whereas it should be recalled that, pursuant to Article 6 of the EU Treaty, the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which also constitute a basic element of the Copenhagen criteria for accession to the EU, and whereas Article 7 of the EU Treaty lays down specific procedures which can be initiated for serious and persistent breaches of the principles mentioned, or a clear risk thereof,

R. mindful of the motions for resolutions submitted to plenary in 2008 and adopted by an overwhelming majority of Members, pursuant to Rule 192(1) of Parliament's Rules of Procedure on the basis of petitions received concerning the impact of the Nord Stream gas pipeline under the Baltic Sea and concerning misleading directory companies,

S. whereas increased concerns over energy supply security have resulted in projects for pipelines for natural gas and liquefied natural gas which, especially when they are rushed through without proper evaluation of the risks and alternatives, have raised petitioners' concerns over the lack of consideration given to potentially serious risks to the environment and human health and safety in respect of, notably, projects in the Baltic Sea, Wales and Ireland,

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T. whereas it is evident from the examination of petitions that the lists of projects mentioned in the Annexes to Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment [1], as amended, do not cover a number of important installations and activities which have emerged since the latest amendments to those Annexes, such as re-gasification plants and bio-diesel plants,

U. whereas the many petitions presented in relation to the Natura 2000 network have continued to show that ending loss of biodiversity constitutes a major challenge for the Union and that the Habitats Directive [2] and the Birds Directive [3] constitute basic and indispensable tools for fulfilling the EU's commitment to end biodiversity loss by 2010,

V. whereas the examination of petitions has also shown that the lack of sufficient sources of fresh water is frequently aggravated by other factors such as growing demand for water due to excessive urbanisation and leisure projects, inadequate maintenance of infrastructure and prevention of leakage, intensive use of water by industrial agriculture and a pricing policy which does not encourage the sustainable use of water,

W. mindful of the recommendations made by the Committee on Petitions following visits to Fos-sur-Mer, Cyprus and Romania,

X. bearing in mind the concern expressed by the Committee on Petitions in relation to certain infrastructure projects in the Rila Mountains in Bulgaria, observed during a fact-finding visit in 2008,

Y. whereas although Ann Abraham, the UK Parliamentary and Health Service Ombudsman, addressed the Committee on Petitions in December 2008 and presented it with her findings, which took her four years to complete, the subsequent response by the UK Government in January 2009, involving possible ex gratia payments to those disproportionately affected, cannot be regarded as a proper remedy for the many victims of the debacle,

Z. recognising the positive and constructive cooperation with the European Ombudsman in 2008, the support provided by the Committee on Petitions for the recommendations contained in his Annual Report for 2007 and his Special Reports on complaints 1487/2005/ and 3453/2005/ respectively concerning the use of languages by the Council and the Commission's application of the infringement procedure, and welcoming the modifications to his Statute approved by Parliament,

AA. whereas in 2008 the Committee on Petitions received 1 886 petitions, of which 1 065 were declared admissible and 821 were declared inadmissible; whereas the number of petitions that do not meet the conditions of Rule 191(1) of the Rules of Procedure has significantly risen since the beginning of 2007,

1. Welcomes the involvement and contribution of petitioners at each meeting of the Committee on Petitions, which allows for a direct and open dialogue with European Parliament representatives and continues to encourage individual EU citizens and community associations to come forward with issues which concern the area of activity of the European Union and which affect them directly, believing that this process enables Parliament as an institution to play a significant role in monitoring the application of Community law by the Member States and to better defend and promote the fundamental rights of all EU citizens as defined in the EU Treaty;

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[1] OJ L 175, 5.7.1985, p. 40.
[2] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7).
[3] Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ L 103, 25.4.1979, p. 1).

2. Urges national and regional parliaments, as representatives of EU citizens, to remain vigilant in relation to the way in which Member States apply the Treaties and EU legislative acts, notably as regards issues related to the environment, social and employment rights, the free movement of persons, goods and services, financial services, citizens' fundamental rights including their right to legitimately acquired property, recognition of their professional qualifications and all forms of discrimination, and calls on the EU institutions to communicate effectively with the citizens so that they are aware of their rights and of the duties of the national and local institutions;

3. Emphasises that, in accordance with the principle of subsidiarity, Parliament cannot regard as admissible petitions which seek to appeal against decisions of competent authorities or judicial bodies of Member States and that information to that effect must be communicated in a clear and understandable way to the petitioners; emphasises, moreover, that complaints must fulfil the conditions of Rule 191(1) of Parliament's Rules of Procedure before they can be declared admissible;

4. Calls for those recommendations adopted in the 2007 Annual Report which have not yet been implemented to be implemented within a reasonable timeframe;

5. Calls on the Commission, all Member States and their national, regional and local institutions, together with their Permanent Representatives, to cooperate fully with the responsible committee of the European Parliament when investigating allegations or proposals contained in petitions, on a loyal and constructive basis, with a view to finding solutions to issues raised through the petitions process;

6. Requests that a full review of possible procedures to ensure remedial action for EU citizens be conducted by the responsible bodies in the European Parliament, the Commission and Council, and that a new interinstitutional agreement incorporating reinforced powers for committees of inquiry be negotiated in order to further strengthen the rights of EU citizens;

7. Believes that such a review would complement any eventual implementation of the Lisbon Treaty by providing additional safeguards based on the declared rights and obligations of EU citizens and EU institutions;

8. Recalls that, as emphasised by Parliament in its resolution of 20 April 2004 on the Commission communication on Article 7 of the Treaty on European Union ([1]), respect for and promotion of the values on which the Union is founded and defence of democracy, the rule of law and fundamental rights are a particular responsibility for Parliament as the directly elected representative of European citizens, and further recalls that Parliament expressed the view in that resolution that 'ignoring the possible need for penalties must create the impression that the Union is not prepared or is not in a position to use all the means at its disposal to defend its values';

9. Calls on the Commission, once again, to ensure that greater recognition is given to, and greater emphasis placed on, the petitions process, notably as regards application of the infringement procedures and the requirement to inform the Committee on Petitions directly and officially when decisions are taken to initiate proceedings under Articles 226 and/or 228 which are related to the issues raised in individual petitions;

10. Recalls that Parliament has considered that allegations of serious infringements of Community law which the Committee on Petitions has deemed well founded in the course of the examination of petitions but which the Member State concerned refuses to admit, and which are likely to set a precedent at the national level, should ultimately be examined by the Court of Justice in order to ensure the consistency and coherence of Community law and the reality of the internal market ([2]);

([1]) OJ C 104 E, 30.4.2004, p. 408.

([2]) See Parliament's resolution of 9 March 2005 on the deliberations of the Committee on Petitions during the parliamentary year 2003-2004 (OJ C 320 E, 15.12.2005, p. 161).

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11. Acknowledges that infringement proceedings, even where successful, may not result in any immediate remedy regarding the specific concern raised by individual petitioners, and that this frequently undermines public confidence in the ability of the EU institutions to meet their expectations;

12. Takes the view that, as there are clear indications that the objective of ending biodiversity loss in the EU by 2010 cannot be achieved, urgent action must be taken in order to render the application of the Habitats and Birds Directives more effective, and calls on the Commission to do its utmost to ensure that those directives are applied by the Member States in a manner which is consistent with this objective;

13. Calls for the Commission, in cooperation with Parliament, to promote to Member States the importance of forward thinking – especially in the area of planning approval – in helping to prevent potential breaches of provisions of Community law that have been adopted but are not yet in force;

14. Recognises that, sometimes, it is impossible to find solutions to the complaints raised by petitioners, on account of weaknesses in the applicable Community legislation itself;

15. Is concerned by the large number of petitions received by the Committee on Petitions seeking voting rights for resident 'non'-citizens of Latvia in local elections; recalls that the United Nations (UN) Human Rights Committee, the UN Committee on the Elimination of Racial Discrimination, the Parliamentary Assembly of the Council of Europe, the Congress of Local and Regional Authorities of the Council of Europe, the Commissioner for Human Rights of the Council of Europe, the European Commission against Racism and Intolerance and the Parliamentary Assembly of the Organization for Security and Co-operation in Europe have recommended that non-citizens should be permitted to participate in local elections; urges the European Commission to closely monitor and encourage the regularisation of the status of 'non'-citizens in Latvia, many of whom were born in Latvia;

16. Notes that many petitions received by Parliament from individuals and associations largely concern matters which do not constitute an infringement of Community law and which should therefore be resolved by exhausting all legal avenues of redress existing in the Member States concerned; further notes that, once all appropriate action has been taken at national level, the appropriate appellate body is the European Court of Human Rights;

17. Notes that the 'one-seat petition' signed by 1 500 000 people, which seeks to have the European Parliament meet in one location, has not yet been fully addressed; recommends that the Committee on Petitions deal with this matter as a priority during the next parliamentary term;

18. Therefore calls on responsible legislative committees to bear in mind proposals or suggestions which may from time to time be made by the Committee on Petitions regarding the application by Member States of specific EU legislation, with a view to possible revision or further investigation;

19. Recalls Parliament's request to the Commission to step up its monitoring of the implementation of Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising [1] with regard to misleading business-directory companies and to report to Parliament on the feasibility and possible consequences of extending the scope of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market [2], specifically by replacing the word 'consumer' by the words 'target of the practice';

20. Endorses the Ombudsman's call to the Council to expand the language options of the websites of its Presidencies to include the most widely spoken languages of the European Union, with the aim of ensuring that citizens have direct access to the activities of the Council's Presidencies; refers in this respect to the French Council Presidency, which published its official website in compliance with the Ombudsman's recommendations;

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[1] OJ L 376, 27.12.2006, p. 21.
[2] OJ L 149, 11.6.2005, p. 22.

21. Endorses the Ombudsman's call to the Commission, with reference to the implementation of the Working Time Directive ([1]), to handle complaints by citizens in conformity with principles of good administration in the field of the Commission's discretionary powers regarding the opening of infringement procedures;

22. Welcomes the constructive cooperation between the Ombudsman and the EU within the appropriate institutional framework; endorses the Ombudsman's repeated calls for the adoption of a Code of Good Administrative Behaviour, common to all EU institutions and bodies, as approved by Parliament in its resolution of 6 September 2001 on the European Ombudsman's Special Report to the European Parliament following the own-initiative inquiry into the existence and the public accessibility, in the different Community institutions and bodies, of a Code of Good Administrative Behaviour ([2]); is of the view that the Ombudsman, the Commission and Parliament should develop a common EU portal for the treatment of complaints addressed to the EU institutions;

23. Urges the implementation by all parties of UN Security Council Resolution 550 (1984) on the Cyprus issue, which would lead to the full restoration of property to its legitimate owners in Varosha; suggests that, in the event that there are no visible results by the end of 2009, the committee responsible might consider bringing the issue of the Famagusta petitioners to plenary;

24. Calls on the Romanian authorities to adopt measures to conserve and safeguard Romania's cultural and architectural heritage, pursuant to Article 151 of the EC Treaty, as called for in Parliament's Declaration of 11 October 2007 on the need for measures to protect the Roman Catholic Cathedral of St Joseph in Bucharest, Romania, an endangered historical and architectural monument ([3]); with reference to the problems concerning restitution of property confiscated under the Communist regime, points out that, under Article 295 of the EC Treaty, property ownership is a matter of national competence;

25. Requests the French authorities to prepare an epidemiological assessment to determine the impact on the area close to Fos-Berre, in the immediate vicinity of the incinerator plant under construction at Fos-sur-Mer; recognises that Council Directive 1999/30/EC of 22 April 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air ([4]) does not prohibit the construction of an incinerator in an area already affected by atmospheric pollution, but points out that, under Directive 1999/30/EC and Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management ([5]), measures are to be taken to ensure compliance with European standards on atmospheric pollution;

26. Recalls the recommendations contained in the 2007 Annual Report of the Committee on Petitions with a view to reviewing the administrative procedures for the treatment of petitions, such as, for instance, the transfer of the registration of petitions to the Petitions Committee secretariat, close cooperation with SOLVIT, further enhancement of the petitions database, the development of an EU portal for European citizens, etc; welcomes the drafting by Members of a Code of Good Practice for the treatment of petitions, which would come into force at the beginning of the next parliamentary term;

27. Instructs its President to forward this resolution, and the report of the Committee on Petitions, to the Council, the Commission, the European Ombudsman, the governments and parliaments of the Member States, their committees on petitions and their national ombudsmen or similar competent bodies.

([1]) Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (OJ L 307, 13.12.1993, p. 18).
([2]) OJ C 72 E, 21.3.2002, p. 331.
([3]) OJ C 227 E, 4.9.2008, p. 162.
([4]) OJ L 163, 29.6.1999, p. 41.
([5]) OJ L 296, 21.11.1996, p. 55.

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Gender mainstreaming in the work of committees and delegations

P6_TA(2009)0240

European Parliament resolution of 22 April 2009 on gender mainstreaming in the work of its committees and delegations (2008/2245(INI))

(2010/C 184 E/04)

The European Parliament,

— having regard to Articles 2, 3(2), 13 and 141(4) of the EC Treaty,

— having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the revised European Social Charter and the case-law of the European Court of Human Rights,

— having regard to the work of the Council of Europe's Directorate-General of Human Rights and Legal Affairs, and in particular the Council of Europe's steering committee for equality between women and men,

— having regard to Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions ([1]),

— having regard to its resolution of 13 March 2003 on gender mainstreaming in the European Parliament ([2]),

— having regard to its resolution of 18 January 2007 on gender mainstreaming in the work of the committees ([3]),

— having regard to Rule 45 of its Rules of Procedure,

— having regard to the report of the Committee on Women's Rights and Gender Equality (A6-0198/2009),

A. whereas equality between men and women is a fundamental principle of Community law and whereas, in accordance with Article 2 of the Treaty, its promotion is one of the tasks of the Community,

B. whereas Article 3(2) of the Treaty lays down the principle of gender mainstreaming by stating that, in all its activities, the Community should aim to eliminate inequalities and to promote equality between men and women,

C. having regard to the steady increase in the percentage of female Members of the European Parliament from 17,5 % in 1979 to 31,08 % in 2009,

D. having regard to the low proportion of female Members in top positions in Parliament bodies (for example, chairs or members of the bureaux of committees or delegations),

([1]) OJ L 269, 5.10.2002, p. 15.
([2]) OJ C 61 E, 10.3.2004, p. 384.
([3]) OJ C 244 E, 18.10.2007, p. 225.

E. whereas women are over-represented in Parliament's Directorates-General for Internal Policies and External Policies, where they account for 66.5 % and 66 % of staff respectively; noting, however, the major progress achieved over the last few years in the Directorate-General for Internal Policies, as evidenced by the 2007 Equality – Good Practices Award for the creation of a working environment conducive to equality and gender mainstreaming, together with a major increase in the percentage of women in senior administrative posts (for example, in 2005 the percentage of female heads of unit rose from 5 % to 30 %),

F. whereas the majority of parliamentary committees generally attach importance to gender mainstreaming (for example in the context of their legislative activity, their institutional relations with the Committee on Women's Rights and Gender Equality, the drawing up of a programme of action for equality, etc.), although a minority of committees rarely or never take an interest in the matter,

G. whereas in practice the network for gender mainstreaming in parliamentary committees, consisting of MEPs and staff, has not yet achieved the desired results,

H. whereas the High-Level Group on Gender Equality and Diversity has proposed that a similar network should be established in the interparliamentary delegations for the purpose of gender mainstreaming in the context of EU external relations,

1. Stresses that the call for gender equality must be translated into a practical approach which does not set women against men;

2. Stresses that gender mainstreaming is a positive development for both women and men;

3. Points out that gender mainstreaming involves the reorganisation, improvement, development and assessment of policies to ensure that an equal-opportunity approach is incorporated into all policies at all levels and at all stages by those normally involved in policy-making;

4. Reiterates the need to adopt and apply a gender mainstreaming strategy incorporating specific targets in all Community policies which fall with the purview of parliamentary committees and delegations;

5. Stresses the importance of the task of the High-Level Group on Gender Equality and Diversity and calls on it to continue to encourage and promote this process throughout Parliament, in its relations with the Commission, the Council and other institutions and in cooperation with them;

6. Congratulates the parliamentary committees which have put gender mainstreaming into practice in their work, and calls on the other committees and delegations to do likewise;

7. Calls for the strengthening of the gender mainstreaming network with regard to interparliamentary delegations and election observation missions;

8. Encourages the Secretary-General to prioritise training in gender mainstreaming for officials working at every level in parliamentary committees and delegations; reiterates its call for all Members of Parliament to be provided with equal opportunity training from the beginning of the next Parliament;

9. Continues to encourage networking amongst those officials working in parliamentary committee and interparliamentary delegation secretariats who, in the Directorates-General for Internal Policies and External Policies, are specially trained in gender mainstreaming, so as to ensure regular exchanges of best practice;

10. Stresses the need for the parliamentary committees and delegations to have at their disposal appropriate means of gaining a sound understanding of gender mainstreaming, including indicators, data and statistics broken down by gender, and for budgetary resources to be allocated with an eye to ensuring equality between women and men;

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11. Stresses that the implementation of gender mainstreaming should take account of the specific features of each parliamentary committee or delegation; calls for the committees and delegations to play an active role in the regular assessments carried out under the auspices of the Committee on Women's Rights and Gender Equality on the basis of the questionnaire submitted to the chairs and vice-chairs responsible for gender mainstreaming, including any shortcomings in the work of the committees and delegations as well as the progress made in implementing gender mainstreaming in each committee;

12. Stresses the importance for parliamentary committees and delegations of ensuring that their role and responsibilities in the field of gender mainstreaming are clearly defined;

13. Stresses the importance of effective and coordinated cooperation by the High-Level Group on Gender Equality and Diversity with the gender mainstreaming network within the committees and interparliamentary delegations and with the Committee on Women's Rights and Gender Equality;

14. Calls on the Secretary-General to continue to implement the integrated strategy for combining life in the family and at the workplace and to facilitate the career development of female employees;

15. Urges the political groups to take account of gender equality objectives in selecting staff to fill senior posts;

16. Calls on its Bureau to stress, in its dealings with the parliaments of the Member States, the positive example set by the High-Level Group on Gender Equality and Diversity;

17. Instructs its President to forward this resolution to the Council, the Commission and the Council of Europe.

Interim Trade Agreement with Turkmenistan

P6_TA(2009)0252

European Parliament resolution of 22 April 2009 on the Interim Trade Agreement with Turkmenistan

(2010/C 184 E/05)

The European Parliament,

— having regard to the proposal for a Council and Commission decision (COM(1998)0617),

— having regard to the Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and Turkmenistan, of the other part (5144/1999),

— having regard to Articles 133 and 300(2), first subparagraph, of the EC Treaty,

— having regard to Article 300(3), first subparagraph, of the EC Treaty, pursuant to which the Council consulted Parliament (C5-0338/1999),

— having regard to its resolution of 20 February 2008 on an EU Strategy for Central Asia [1],

— having regard to its position of 22 April 2009 on the above-mentioned proposal [2],

— having regard to Rule 108(5) of its Rules of Procedure,

A. whereas relations between the European Communities and Turkmenistan are currently governed by the Agreement between the European Economic Community and the European Atomic Energy Community and the Union of Soviet Socialist Republics on Trade and Commercial and Economic Cooperation concluded in December 1989; whereas this agreement does not contain a human rights clause,

B. whereas the Interim Agreement on Trade and Trade-related Matters of 2 December 1998, concluded between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and Turkmenistan, of the other part, is now undergoing approval in the Council,

C. whereas a Partnership and Cooperation Agreement (PCA) with Turkmenistan was initialled in May 1997 and signed in 1998; whereas since then 11 Member States have ratified the PCA - France, Ireland, the United Kingdom and Greece still have still to do so - and the 12 new Member States will ratify it by means of a single protocol; whereas Turkmenistan ratified the PCA in 2004,

D. whereas the PCA, once fully ratified, will be concluded for an initial period of 10 years, after which it will be renewed annually, provided that neither of the parties terminates it; whereas the parties may expand or amend the PCA or elaborate further on it, in order to take new developments into account,

E. whereas Turkmenistan plays an important role in the Central Asia region, so that close cooperation between it and the European Union is desirable,

F. whereas the situation in Turkmenistan has improved since the change of president; whereas the regime has indicated its willingness to carry out major reforms; whereas substantive progress is still needed in several key areas, such as human rights, the rule of law, democracy and individual freedoms,

G. whereas the proposed Interim Trade Agreement (ITA) between the European Communities and Turkmenistan stipulates respect for democracy and human rights as a condition for cooperation,

H. whereas the ITA would therefore have the potential to contribute to the advancement of the ongoing democratic reforms in Turkmenistan,

I. whereas the ITA includes a mechanism which allows either party to terminate it by notifying the other party,

1. Notes that after the change of president in Turkmenistan there are signs of an ambition to carry out reforms in key areas; welcomes in particular the creation of a National Institute for Democracy and Human Rights; takes note of the process of revising the Constitution, which aims to strengthen democracy, individual freedoms and the rule of law; notes, further, the revision of the electoral law; welcomes Turkmenistan's accession to international conventions such as the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty and the Convention on the Political Rights of Women; welcomes the reforms of the educational system, aiming at higher quality and more equality for students;

2. Calls on the Turkmenistan Government to move swiftly towards democracy and respect for the rule of law; calls, in particular, for open and democratic elections, freedom of religion, the development of a genuine civil society, the release of all political prisoners and prisoners of conscience, the lifting of restrictions on travel, and access for independent monitors;

[1] Texts adopted, P6_TA(2008)0059.
[2] Texts adopted, P6_TA(2009)0253.

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3. Stresses the need for the European Union to further encourage these developments; underlines that the Turkmenistan Government's activities must be carefully and regularly scrutinised;

4. Asks the Council and Commission to keep it regularly and substantively informed about the human rights situation in Turkmenistan;

5. Deplores the fact that in several areas, particularly human rights and democracy, the situation is still unsatisfactory; draws attention in particular to the need for all political prisoners to be unconditionally released; underlines the importance of the removal of all obstacles to free travel and to free access for independent monitors, including the International Red Cross; calls for further improvements in civil liberties, including for non-governmental organisations; stresses the need to implement reforms at all levels and in all areas of the administration;

6. Underlines the importance of economic and trade relations for the opening-up of Turkmen society and the improvement of the democratic, economic and social situation of Turkmen citizens;

7. Sees the ITA, while at the same time laying down rules governing economic relations, as a possible stepping stone towards steady and sustainable relations between the European Union and Turkmenistan and as a potential lever to strengthen the reform process in Turkmenistan;

8. Underlines that the ITA is not a blank cheque for Turkmenistan; calls, therefore, for strict monitoring and regular reviews of developments in key areas in Turkmenistan and, if appropriate, for a suspension of the agreement if there is evidence that the conditions are not being met; asks for regular updates on the monitoring by the Commission and the Council;

9. Calls on the Council and Commission to include a clear suspensive human rights clause in the PCA; stresses that the United Nations Universal Declaration on Human Rights should be respected; calls on the Council to accept any request from the Parliament to suspend the agreement;

10. Calls on the Council and Commission also to include a revision clause in the PCA; asks to be consulted on any revision of the PCA;

11. Points out that the PCA requires Parliament's assent in order to come into force; whilst the ITA unfortunately does not require its assent, calls for the points raised in this resolution to be taken fully into account, since otherwise its assent to the PCA might be jeopardised; accordingly, intends to base its opinion on the ITA on the answers received from the Council and the Commission in their statements;

12. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States and the Government and Parliament of Turkmenistan.

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A Common Immigration Policy for Europe

P6_TA(2009)0257

European Parliament resolution of 22 April 2009 on a Common Immigration Policy for Europe: Principles, actions and tools (2008/2331(INI))

(2010/C 184 E/06)

The European Parliament,

— having regard to the Communication from the Commission of 17 June 2008 entitled 'A Common Immigration Policy for Europe: Principles, actions and tools' (COM(2008)0359),

— having regard to the Opinion of the Committee of the Regions on A Common Immigration Policy for Europe of 26 November 2008 ([1]),

— having regard to the European Pact on Immigration and Asylum, adopted by the European Council on 15 and 16 October 2008 ([2]),

— having regard to Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (Return Directive) ([3]),

— having regard to Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams ([4]),

— having regard to the proposal for a regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Recast) (COM(2008)0820),

— having regard to the Communication from the Commission of 17 October 2008 entitled 'One year after Lisbon: The Africa-EU partnership at work' (COM(2008)0617),

— having regard to the Communication from the Commission of 13 February 2008 entitled 'Preparing the next steps in border management in the European Union' (COM(2008)0069),

— having regard to the Commission Working Document entitled 'Evaluation and monitoring of the implementation of the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings' (COM(2008)0657),

— having regard to the Joint Africa-EU Strategy and its First Action Plan (2008-2010) - the Strategic Partnership - agreed at the Africa-EU Summit on 8/9 December 2007 in Lisbon ([5]),

— having regard to the Communication from the Commission of 30 November 2006 entitled 'The Global Approach to Migration one year on: Towards a comprehensive European migration policy' (COM(2006)0735),

([1]) OJ C 76, 31.3.2009, p. 34.
([2]) Council document 13440/08.
([3]) OJ L 348, 24.12.2008, p. 98.
([4]) OJ L 199, 31.7.2007, p. 30.
([5]) Council document 7204/08.

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— having regard to the Hague Programme on Strengthening Freedom, Security and Justice in the European Union adopted at the European Council of 4-5 November 2004,

— having regard to the Tampere Programme adopted at the European Council of 15 and 16 October 1999 which established a coherent approach in the field of immigration and asylum,

— having regard to its resolution of 10 March 2009 on 'The Future of the Common European Asylum System' ([1]),

— having regard to its position of 19 February 2009 on the proposal for a directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals ([2]),

— having regard to its resolution of 5 February 2009 on the implementation in the European Union of Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers and refugees: visits by the Committee on Civil Liberties 2005-2008 ([3]),

— having regard to its resolution of 18 December 2008 on the evaluation and future development of the FRONTEX Agency and of the European Border Surveillance System (EUROSUR) ([4]),

— having regard to its position of 20 November 2008 on the proposal for a Council directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment ([5]),

— having regard to its position of 20 November 2008 on the proposal for a Council directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State ([6]),

— having regard to its resolution of 2 September 2008 on the evaluation of the Dublin system ([7]),

— having regard to its position of 23 April 2008 on the proposal for a Council directive amending Directive 2003/109/EC to extend its scope to beneficiaries of international protection ([8]),

— having regard to its resolution of 26 September 2007 on the policy plan on legal migration ([9]),

— having regard to its resolution of 26 September 2007 on policy priorities in the fight against illegal immigration of third-country nationals ([10]),

— having regard to its resolution of 6 July 2006 on strategies and means for the integration of immigrants in the European Union ([11]),

— having regard to the Treaty of Amsterdam pursuant to which powers and responsibilities in the immigration and asylum fields are conferred on the Community and to Article 63 of the EC Treaty,

([1]) Texts adopted, P6_TA(2009)0087.
([2]) Texts adopted, P6_TA(2009)0069.
([3]) Texts adopted P6_TA(2009)0047.
([4]) Texts adopted, P6_TA(2008)0633.
([5]) Texts adopted, P6_TA(2008)0557.
([6]) Texts adopted, P6_TA(2008)0558.
([7]) Texts adopted, P6_TA(2008)0385.
([8]) Texts adopted, P6_TA(2008)0168.
([9]) OJ C 219 E, 28.8.2008, p. 215.
([10]) OJ C 219 E, 28.8.2008, p. 223.
([11]) OJ C 303 E, 13.12.2006, p. 845.

— having regard to Rule 45 of its Rules of Procedure,

— having regard to the report of Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Employment and Social Affairs, the Committee on Culture and Education and the Committee on Women's Rights and Gender Equality (A6-0251/2009),

A. whereas migration into Europe will always be a reality as long as there are considerable differences in wealth and quality of life between Europe and other regions of the world,

B. whereas a common approach on immigration in the EU has become imperative, more so in a common area without internal border controls where action or inaction by one Member State has a direct impact on others and on the EU as a whole,

C. whereas poorly managed migration may disrupt the social cohesion of the countries of destination and may also be detrimental to countries of origin as well as to the migrants themselves,

D. whereas regular migration represents an opportunity from which migrants, their countries of origin (which benefit from their migrants' remittances), and Member States may benefit; whereas, however, progress in the area of regular migration must go hand-in-hand with effective action on combating irregular immigration, recalling notably that such immigration encourages the existence of criminal human trafficking rings,

E. whereas a genuine common migration policy for the Community must be based not only on the fight against irregular migration but also on cooperation with third countries and transit countries and on an appropriate policy for the integration of migrants,

F. whereas Europe's migration policies must comply with the norms of international law, particularly those that concern human rights, human dignity and rights to asylum,

G. whereas the EU is and must continue to be a welcoming environment for those who win the right to remain, be they migrants for reasons of work, family reunification, or study, or persons in need of international protection,

H. whereas migrants have played a vital role in the development of the EU and the European project in recent decades, and it is essential to recognise both their importance and the fact that the Union continues to need migrants' labour,

I. whereas, according to Eurostat, population ageing in the EU will become a reality in the medium term, with the working age population projected to fall possibly by almost 50 million by 2060; whereas immigration could act as an important stimulus to ensure good economic performance in the EU,

J. whereas the growth and jobs aspects of the Lisbon Strategy may be hindered by a shortage of labour, which may prevent the goals from being achieved, and whereas unemployment is currently rising; whereas this shortage may be addressed in the short term by appropriate and structured management of economic immigration,

K. whereas migrants often have to work as casual labourers or in low-skilled jobs, or in jobs for which they are overqualified,

L. whereas the EU should also increase efforts to address problems of labour and skill shortages internally, by tapping into currently underemployed sectors, such as people with disabilities, people at an educational disadvantage, or those who have been long-term unemployed asylum seekers already resident,

M. whereas the number of women immigrants is constantly increasing in the EU, accounting for approximately 54 % of the total number of immigrants,

N. whereas most women immigrants encounter significant problems in integrating and in accessing the labour market due to their low level of education and the negative stereotypes and practices brought from their countries of origin, as well as the negative stereotypes and discrimination that exist in the Member States; whereas, nonetheless, many young women with a high level of education come to the EU to take relatively unskilled jobs,

General Considerations

1. Strongly supports the establishment of a common European immigration policy founded on a high level of political and operational solidarity, mutual trust, transparency, partnership, shared responsibility and joint efforts through common principles and concrete actions, as well as on the values –enshrined in the Charter of Fundamental Rights of the European Union;

2. Reiterates that the management of migration flows must be based on a coordinated approach taking into account the demographic and economic situation of the EU and its Member States;

3. Considers that the development of a common immigration policy could substantially benefit from an increased and regular consultation with representatives of civil society, such as organisations working for and with migrant communities;

4. Regrets that, so far, too little has been done to establish a common legal immigration policy and welcomes the new legislative instruments adopted within the framework of the common European legal immigration policy;

5. Emphasises that a coherent and balanced common European immigration policy adds to the credibility of the EU in its relations with third countries;

6. Reiterates that the effective management of migration requires the involvement of regional and local authorities and a genuine partnership and cooperation with third countries of origin and transit, which often have the impression that decisions are being imposed on them unilaterally; emphasises that such cooperation can only take place when the third country respects international laws on human rights and protection, and is a signatory to the 1951 Geneva Convention relating to the Status of Refugees;

7. Considers that immigration into the EU is not the solution to overcome the challenges faced by developing countries and that a common immigration policy must be flanked with an effective policy for the development of the countries of origin;

8. Welcomes the adoption of the above-mentioned European Pact on Immigration and Asylum and the actions, tools and proposals put forward by the Commission in its above-mentioned Communication on a Common Immigration Policy for Europe: Principles, Actions and Tools; calls on the Council and the Commission on to rapidly move to the implementation stage of these commitments;

9. Welcomes the institutional implications of the Lisbon Treaty, in particular the extension of co-decision and qualified majority voting to all immigration policies, the clarification of EU competence on visas and border controls, the extension of EU competence on asylum as well as the extension of EU competence in respect of legal and irregular migration;

10. Considers that a common immigration policy also necessarily requires the establishment of a common asylum policy, and recalls the above-mentioned resolution on the future of the Common European Asylum System (CEAS) and the Commission proposal for a regulation to establish a European Asylum Support Office;

Prosperity and Immigration

Legal Migration

11. Considers that legal migration continues to be necessary in order to address Europe's demographic, labour market and skills needs owing to the effect of demographic decline and ageing on the economy; it also contributes to the development of third countries through the cycle of exchange of knowledge and know how and through the transfer of migrant remittances; calls for the implementation of secure systems which facilitate these financial transfers to third countries;

12. Considers that regular migration must be the alternative to irregular immigration as it offers a legal, safe and organised entry route to the European Union;

13. Recalls that projections presented by the Commission estimate the need for 60 million migrant workers by 2050 and that this requires the opening-up of channels for legal migration;

14. Stresses the need for a comprehensive assessment of the EU's skills and market needs; considers, however, that each Member State should retain control over the number of persons required for its labour market needs and take into account the principle of Community preference as long as transitional measures apply;

15. Supports the development of national 'Immigration Profiles' with the purpose of giving an integrated picture of the situation of immigration within each Member State at any given moment, with labour market needs being a central aspect of these profiles;

16. Reiterates the need to increase the attractiveness of the EU for highly qualified workers, even through the availability of information on destination and host labour markets, taking account of the implications that this may have on the brain drain in countries of origin; considers that the brain drain can be mitigated through temporary or circular migration, by providing training in the countries of origin in order to preserve occupations in key sectors, particularly education and health, and by signing cooperation agreements with countries of origin; calls on the Member States to refrain from pursuing active recruitment in developing countries suffering from lack of human resources in key sectors, such as health and education;

17. Calls on the Commission and Member States to develop mechanisms, guidelines and other tools to facilitate circular and temporary migration as well as measures, in cooperation with the countries of origin, to offset the loss of human resources, offering concrete support for the training of professionals in key sectors weakened by the exodus of talent;

18. Welcomes the approach initiated by the document on the 'blue card' for a common legal immigration policy, but calls on Member States to make more progress towards common rules on an immigration policy which is not limited to highly skilled workers;

19. Expresses its satisfaction at the adoption of the blue card relating to conditions of entry and residence of third-country nationals for the purposes of highly qualified employment and urges the Commission to present initiatives for other categories of work as soon as possible, also with the aim of further countering irregular immigration and the exploitation of the undocumented immigrants;

20. Calls for new measures to further facilitate the reception of students and researchers and their movement within the EU;

21. Draws attention to the importance of recognising the skills of immigrants, paying particular importance to the formal, non-formal and informal qualifications obtained in their country of origin; considers that this recognition will combat the wastage of skills that is being seen repeatedly among immigrants, notably women, who often end up in jobs for which they are over-qualified;

22. Calls on the Commission to take into account, in future documents on the issue, the question of skills recognition and the incentive for lifelong learning, also ensuring that the Member States provide immigrants with opportunities to learn the language of the host country in order to ensure their social, professional and cultural integration in the European Union and giving them an improved ability to support their children's development; calls also on the Commission to make use of the results of deliberations on the linguistic education of migrant children and the teaching in the Member State of residence of the language and culture of the country of origin, and calls for the framework which will be proposed to respect the principles of subsidiarity and proportionality;

23. Reaffirms that the European Employment and Job Mobility Network (EURES) network is an appropriate tool to ensure a transparent, responsible and effective balance between supply and demand in the labour market; therefore suggests expanding the concept of the EURES network to allow contact between European employers looking for workers with certain qualifications and job-seekers from third countries; proposes that Special Centres (already set up and to be set up) or EU Representations in third countries be used as a platform to extend the EURES network and to guarantee ongoing and expanded advice concerning tools and support for self-employment or recourse to micro-credit; stresses that Europe's need for highly skilled labour should not lead to a brain drain from third countries, with consequent damage to their emerging economies and social infrastructure;

24. Takes the view that immigrants from so-called third countries should be granted the right to mobility within the EU, so that - as legal residents in a Member State – they can take up employment as frontier workers in another Member State without being required to apply for a work permit, and that such immigrants should be granted full freedom of movement as workers following a period of five years' legal residence in a Member State;

25. Stresses the importance of coordination between the local and regional authorities, which have particular responsibility for training, and national and European authorities in managing labour market needs, in accordance with the principle of Community preference; emphasises that this cooperation is essential to effectively implement an immigration policy capable of filling the labour shortage experienced in certain sectors and Member States and to integrate immigrants effectively and appropriately;

26. Calls on the Commission to make more information available in countries of origin on the possibilities of legal migration as well as on the rights and obligations of migrants once they arrive in the EU;

27. Calls on Member States to make satisfactory use of Community funding mechanisms relating to immigration policy so as to create more and better jobs for migrants;

Integration

28. Stresses that integration enhances cultural diversity in the EU and should be based on social inclusion, anti-discrimination and equal opportunities, namely through the possibility of access to health, education, language training and employment; considers that integration policies should be also based on appropriate innovative programmes and acknowledges the key role played by local and regional authorities, trade unions, migrant organisations, professional federations and associations in the integration of migrants;

29. Supports integration efforts by the Member States as well as by regular migrants and beneficiaries of international protection, taking into account respect for the identity and values of the EU and its Member States, including respect for human rights, the rule of law, democracy, tolerance and equality, freedom of opinion and the compulsory schooling of children; recalls that integration is a two-way process which involves adjustments on the part of both the immigrants and the host population as set out in the common basic principles (CBPs) adopted by the Council and may benefit from the exchange of best practices; acknowledges that integration is more difficult to achieve in Member States which are facing significant migratory pressures due to their particular geographical situation, but must nonetheless not be abandoned as an objective; calls on other Member States to contribute towards alleviating such pressures in a spirit of solidarity, facilitating the integration of beneficiaries of international protection who are within the EU Member States, in parallel with the promotion of legal migration;

30. Emphasises that a good integration process is the best tool to eliminate mistrust and suspicion between native citizens and migrants and is fundamental to removing any xenophobic ideas or actions;

31. Encourages the development of mutual learning mechanisms and the exchange of best practice between Member States in order to strengthen the ability of host countries to manage increasing diversity and also a system of common indicators and adequate statistical capacity to be used by Member States to evaluate immigration policy outcomes;

32. Recalls that a key element is the inclusion of migrant organisations who play unique roles in the integration process by giving migrants opportunities for democratic participation; calls on the Members States to facilitate systems for the support of civil society in the integration process through enabling migrants' presence in the host society's civil and political life, enabling participation in political parties, trade unions and the opportunity to vote in local elections;

33. Welcomes the initiative taken by the Commission and the European Economic and Social Committee to improve the coherence of integration policies by launching the European Integration Forum with the participation and involvement of social organisations and immigrants' associations, with the aim of exchanging experiences and drawing up recommendations; calls on the Member States to coordinate their integration efforts by exchanging the best practices contained in their national integration plans;

34. Calls on the Commission to take the necessary measures to ensure financial support for the structural and cultural integration of immigrants, also including the implementation of EU programmes such as Lifelong Learning, Europe for Citizens, Youth in Action and Culture 2007; notes that teachers are in most cases ill-prepared for having large numbers of migrant children in classes and calls for better training for teachers and for adequate financial support;

35. Highlights the fact that school programmes and lifelong learning play an important role in the integration process by developing skills, notably language skills; considers, too, that barrier-free participation in training programmes and lifelong learning should be a right and an opportunity for newly-arrived immigrants;

36. Calls on the Commission and the Member States to continue to promote anti-discrimination policies, including those implemented by the public authorities;

37. Calls on the Member States to respect and support the relevant directives: Council Directives 2000/78/EC ([1]), 2000/43/EC ([2]) and 2004/113/EC ([3]), which seek to combat discrimination;

38. Calls on the Member States to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families adopted by the United Nations General Assembly on 18 December 1990 ([4]);

39. Calls on the Commission to collect gender-related data on immigration into the EU and to arrange for the analysis of those data by the European Institute for Gender Equality in order to highlight further the particular needs and problems of women immigrants and the most appropriate methods of integrating them into the societies of the host countries;

40. Calls on the Member States, when drawing up their integration policies, to allow in the proper way for the gender dimension and for the specific situation and needs of migrant women;

41. Calls on Member States to guarantee respect for the fundamental rights of immigrant women, whether or not their status is legal;

([1]) OJ L 303, 2.12.2000, p. 16.
([2]) OJ L 180, 19.7.2000, p. 22.
([3]) OJ L 373, 21.12.2004, p. 37.
([4]) A/RES/45/158.

42. Calls on the Member States to support information campaigns aimed at migrant women, with a view to informing them about their rights, the possibilities of education and language training, professional training and access to employment, and to prevent forced marriages, female genital mutilation, and other forms of mental or physical coercion;

Security and Immigration

Integrated Border Management

43. Stresses the need for a comprehensive master plan setting out the overall objectives and architecture of the EU's border management strategy, including the details showing how all related programmes and schemes in this area can be better optimised; takes the view that, when considering the architecture of the EU's border management strategy, the Commission should analyse first of all the effectiveness of the existing border management systems of the Member States, in order to bring about the optimal synergies between them and provide additional information regarding the cost-effectiveness of the new proposed systems, Entry/Exit, Electronic System of Travel Authorisation, Automated Border Control and the Registered Traveller Programme, within the framework of EU integrated border management;

44. Emphasises that integrated border management should strike the right balance between ensuring the free movement of a growing number of people across borders and ensuring greater security for EU-citizens; does not deny that the use of data offers clear advantages; is, at the same time, of the opinion that public trust in government action can only be maintained if sufficient data protection safeguards, supervision and redress mechanisms are provided for;

45. Calls for an assessment on the feasibility of an integrated four-tier approach, whereby checks would be carried out systematically at each stage when immigrants are travelling to the Union;

46. Stresses that the EU border strategy should be complemented as well by concrete measures aimed at strengthening the third country borders within the framework of the Africa-EU Partnership and the European Neighbourhood Policy (the Eastern Partnership, EUROMED);

47. Calls for the replacement of current national Schengen visas with uniform European Schengen visas, allowing for equal treatment of all visa applicants; wishes to be informed on the exact timetable and the details of both the policy study and the technical study of the Commission which will analyse the feasibility, the practical implications and the impact of a system requiring third-country nationals to obtain electronic authorisation to travel before travelling to EU territory (Electronic System for Travel Authorisation, ESTA); calls for the improvement of cooperation between Member States' consulates and for joint consular services for visas to be set up gradually;

48. Calls on the Council to adopt arrangements based on solidarity among Member States with a view to sharing the burdens arising from border policing and to coordinate the Member States' national policies;

Irregular migration

49. Considers effective combating of irregular immigration as a crucial part of a comprehensive EU migration policy, and therefore regrets that effective decision-making in this field is hamstrung by the insufficient ability of the Member States to really work together in their mutual interests;

50. Expresses its shock at the human tragedy that is caused by illegal migratory sea routes, notably in the Union's southern maritime borders, where boat people leave the African shores on perilous journeys towards Europe; strongly calls for urgent action to stop this human tragedy once and for all and to reinforce dialogue and cooperation with the countries of origin;

51. Recalls that irregular immigration is often operated by criminal networks which have, so far, proved to be more effective than common European action; is convinced that such networks are responsible for the death of hundreds of people whose lives are lost at sea every year; recalls that, in accordance with international obligations, Member States have a shared responsibility to save lives at sea; calls, therefore, on the Commission and on Council to redouble their efforts in the fight against organised crime, human trafficking and smuggling which occur in various parts of the EU, and particularly to try to dismantle all the networks by tackling not only the people smugglers, who are merely the visible linchpin, but those who, at the top of the ladder, derive the most advantage from these criminal operations;

52. Calls on the Commission to intensify awareness programmes in countries of transit and of origin on the dangers of irregular migration;

53. Welcomes the new Directive on sanctions against employers of illegally staying third-country nationals and considers it an effective tool in curbing the exploitation of migrant workers and to reduce the attractiveness of one of the main pull factors for irregular migration;

54. Urges the Member States not to delay the transposition of the new directive, which lays down penalties for employers who recruit illegal immigrants;

55. Believes it is essential to reinforce the channels of dialogue with the countries of origin and establish cooperation agreements with those countries, with the aim of eliminating the inhuman and catastrophic phenomenon of irregular migration;

56. Considers that, despite repeated increases in its budgetary means at Parliament's insistence, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) is not yet able to provide sufficient co-ordination of control efforts at the Union's external borders owing to its limited mandate and because of a lack of effort in engaging third countries, especially in so far as maritime operations are concerned;

57. Welcomes the Commission's initiative for a proposal to review the mandate of FRONTEX and considers that its reinforcement is urgently required, in particular by extending its coordination capacity and its ability to coordinate permanent missions in areas which face high migratory pressures at the request of the Member States concerned and its ability to engage with third countries; believes that emphasis should also be placed on increasing FRONTEX's risk analysis and intelligence gathering capacity;

58. Considers that FRONTEX requires adequate resources, not just financial ones, if it is to fulfil its mandate in a meaningful manner and calls for the deployment of new technologies to combat irregular migration on Member States to increase the pooling of technical means and on the Commission to bring forward legislative proposals to establish compulsory solidarity on the same basis as that envisaged for the Rapid Border Intervention Teams (RABITs);

59. Calls on FRONTEX and the Commission to carry out a study, with estimates, on the possibility of FRONTEX acquiring its own equipment and on the requirements for the possible upgrade of FRONTEX operations at sea into an EU coast guard without undermining Member States control of their borders;

60. Considers that FRONTEX can only be fully effective if efforts are intensified on complementary actions, such as readmission and cooperation with third countries; calls on the Commission to support FRONTEX in this regard;

61. Supports the establishment of specialised FRONTEX offices to take account and better assess the specific situations in borders of particular sensitivity, especially for the land borders to the East and the maritime borders to the South;

62. Notes that differences in the interpretation of legal terms, the interpretation of the international laws of the sea and differences in national legislation and procedures have all hampered FRONTEX operations; calls for comprehensive studies to be carried out in order to seek a common approach and to sort out conflicting differences between national legislation and procedures;

63. Calls for further and constant cooperation between FRONTEX and national bodies and agencies;

64. Calls for further developments on the concept of a EUROSUR also by improving coordination between Member States;

65. Notes that fishermen, private vessels and private workers at sea often encounter illegal immigrants before a country's naval forces; stresses the need to inform such parties more clearly about their international law obligations to aid immigrants in distress and calls for a mechanism of compensation for lost work as a result of rescue operations;

66. Stresses that there is a clear need for reliable statistics in order to establish concrete tools for fighting irregular migration at EU level and calls on the Commission to take the necessary measures to provide those statistics;

Returns

67. Considers that migrants who are not entitled to international protection or who are staying irregularly on the territory of the Member States have to be required to leave the territory of the European Union; notes, in this regard, the adoption of the Return Directive and calls on Member States, in the context of its transposition, to preserve more favourable provisions already laid down in their domestic law; calls on Member States to ensure that returns are conducted with due regard to the law and the dignity of the persons involved, giving due preference to voluntary return;

68. Calls for a system of Return Counselling Services to be established in closed and open accommodation centres, serving as a contact point for persons wishing to learn more about return assistance;

69. Calls on the Commission to establish monitoring and support for social and professional reintegration mechanisms in countries of origin for migrants having been returned;

70. Calls on Member States to assign priority to gearing their readmission policies to a common policy in preference to bilateral agreements;

71. Calls, with regard to readmission agreements, for Parliament and its competent committees to be kept regularly informed, throughout the discussions with third countries, of progress and any obstacles encountered by negotiators;

72. Calls on the Commission to ensure that Member States only have bilateral readmission agreements with third countries providing full guarantees for the respect of the readmitted persons' human rights and having signed the 1951 Geneva Convention;

73. Calls on the Commission to pursue the effective enforcement of the obligation of third countries to readmit their nationals who are staying irregularly on EU territory, as envisaged in Article 13 of the Cotonou Agreement of 23 June 2000; calls for the strengthening of these provisions during negotiations on the new ACP (African, Caribbean and Pacific States) Agreement;

74. Stresses the need for a genuine European dimension in return policy through the mutual recognition of return decisions; urges more co-operation among Member States in the implementation of returns and the strengthening of the role of FRONTEX in joint return operations;

75. Calls for the strengthening of co-operation, including through consular co-operation, with countries of origin and transit to facilitate readmission procedures, and calls on the Commission to evaluate existing readmission agreements with a view to facilitating their implementation and to draw lessons for the negotiation of future agreements;

76. Calls on the Council to consider enacting legislative provisions with a view to establishing a European 'Laissez Passer' issued to illegally residing third-country nationals with a view to facilitating readmission to third countries; action should be taken to incorporate the European 'Laissez Passer' in the Union's readmission agreements to render it binding on the third countries concerned;

Solidarity and Immigration

Coordination between Member States

77. Deeply regrets the fact that Member States have demonstrated insufficient solidarity in the face of the growing challenge of immigration; calls for an urgent review of the Framework Programme on Solidarity and Management of Migration Flows for the period 2007-2013 ([1]) and its four financial instruments so that they may reflect new realities arising from increasing migratory pressures and be used to address urgent needs, such as in the case of situations of mass migratory influxes;

78. Notes the commitments made by Member States in the above-mentioned European Pact on Immigration and Asylum in relation to the need for solidarity; welcomes in particular the inclusion of a voluntary burden-sharing mechanism which enables the intra-EU reallocation of beneficiaries of international protection from Member States which are faced with specific and disproportionate pressures on their national asylum systems, due in particular to their geographical or demographic situation, to other Member States, and calls on the Member States to implement these commitments; welcomes also the allocation of EUR 5 million in the EU's 2009 budget for this purpose under the European Refugee Fund; insists, however, on the introduction of binding instruments; calls on the Commission to implement this mechanism forthwith and to propose immediately a legislative initiative to establish such a mechanism at European level on a permanent basis;

79. Welcomes the recast of the Dublin regulation and the proposed provisions for a mechanism to suspend Dublin transfers if there are concerns that Dublin transfers could result in applicants not benefiting from adequate standards of protection in the responsible Member States, in particular in terms of reception conditions and access to the asylum procedure, as well as in cases where these Dublin transfers would add to the burden on those Member States which are faced with specific and disproportionate pressures due, in particular, to their geographical or demographic situation; stresses, however, that these provisions would turn out to be a political statement rather than an effective instrument to seriously support a Member State without the introduction of a two-fold binding instrument for all Member States;

80. Welcomes the Commission's proposal for a recast regulation concerning the establishment of 'Eurodac' for the comparison of fingerprints, and reminds Member States of their obligations of fingerprinting and sending data under the current Eurodac Regulation; takes the view that biometric data, such as fingerprints, must be exploited to enhance the effectiveness of border control operations;

Cooperation with third-countries

81. Regrets that cooperation with third countries has not achieved sufficient results, with the notable exception of Spain's co-operation with third countries such as Senegal and other countries in sub-Saharan and north Africa; calls for targeted support for third countries of transit and origin to help them build an effective border management system, involving FRONTEX in border assistance missions in those countries;

82. Reminds the Commission, the Council and the Member States that it is essential to continue the dialogue initiated with countries of origin and transit as a follow-up to the EU-Africa ministerial conferences on migration and development held in Tripoli, Rabat and Lisbon;

([1]) COM(2005)0123.

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83. Calls for implementation of the policy instruments developed within the framework of the 'Global Approach to Migration' ([1]) as well as the 2006 'Rabat Process' on migration and development and the EU Africa Partnership on Migration, Mobility and Employment agreed in Lisbon in December 2007;

84. Stresses the importance of a development policy in third countries of origin or transit as a means of addressing the challenge of immigration at its roots; calls for an improved co-ordination of the Union's immigration and development policies, taking fully into account strategic objectives such as the Millennium Development Goals;

85. Observes, however, that development policy cannot constitute the only alternative to migration, as there can be no development based on solidarity without permanent mobility;

86. Calls for a strengthening of cooperation with the International Organisation for Migration and other international organisations in the establishment of new regional offices in sensitive areas where practical assistance concerning, inter alia, legal migration or voluntary return of immigrants, is required;

87. Stresses the importance of establishing Migration Information and Management Centres, as the one inaugurated in Mali in October 2008; believes that such centres should be able to contribute significantly to tackling migration problems by addressing the concerns of the potential migrants, returning migrants and migrants residing in EU; calls on the Commission to provide the necessary information regarding the projects of setting up other centres within the framework of EU-Africa Partnership and asks the Commission to look into the possibility of creating such centres in the Eastern neighbouring countries;

88. Stresses that all agreements with countries of origin and transit should include chapters on co-operation on immigration and calls for an ambitious policy with third countries on police and judicial co-operation to combat international criminal organisations engaged in human trafficking and to bring the persons concerned to justice, with the engagement of Europol and Eurojust; also calls on the Commission to intensify its support, including financial and technical assistance, in favour of third countries so as to create economic and social conditions discouraging irregular migration, drug activities and organised crime;

89. Calls on the Commission to promote the negotiation of global European agreements such as that signed with Cape Verde, to make progress in the global negotiations it is holding with Morocco, Senegal and Libya, and to promote the conclusion of agreements with immigrants' main countries of origin;

90. Calls for support for third countries in developing their national legislative framework and establishing immigration and asylum systems with full respect for international law, and calls on third countries of transit to sign and respect the 1951 Geneva Convention;

91. Calls on Member States to consider the issue of 'environmental refugees', migrants who cannot currently be regarded as economic migrants and who are also not recognised as refugees as referred to in the 1951 Geneva Convention;

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92. Instructs its President to forward this resolution to the Council, the Commission, and to the governments and parliaments of the Member States.

([1]) COM(2006)0735.

Wednesday 22 April 2009

Green Paper on the future of TEN-T

P6_TA(2009)0258

European Parliament resolution of 22 April 2009 on the Green Paper on the future TEN-T policy (2008/2218(INI))

(2010/C 184 E/07)

The European Parliament,

— having regard to the Commission communication of 4 February 2009 entitled 'Green paper: TEN-T: A policy review' (COM(2009)0044),

— having regard to the Commission communication of 26 November 2008 entitled 'A European Economic Recovery Plan' (COM(2008)0800),

— having regard to the Council conclusions on Greening Transport as adopted by the Transport, Telecommunications and Energy Council at its session on 8-9 December 2008,

— having regard to the Commission Communication of 22 June 2006 entitled 'Keep Europe moving – Sustainable mobility for our continent – Mid-term review of the European Commission's 2001 Transport White Paper' (COM(2006)0314),

— having regard to the Commission Communication 23 January 2008 entitled '2020 by 2020 – Europe's climate change opportunity' (COM(2008)0030),

— having regard to the Commission Communication of 18 October 2007 entitled 'Freight Transport Logistics Action Plan' (COM(2007)0607),

— having regard to the Commission communication of 14 May 2008 on the results of the negotiations concerning cohesion policy strategies and programmes for the programming period 2007-2013 (COM(2008)0301),

— having regard to the Commission Report of 20 January 2009 on the implementation of the Trans-European Transport Network guidelines 2004-2005 (COM(2009)0005),

— having regard to its resolution of 11 March 2009 on the Lisbon Strategy [1],

— having regard to its resolution of 5 September 2007 on Freight Transport Logistics in Europe - the key to sustainable mobility [2],

— having regard to Rule 45 of its Rules of Procedure,

— having regard to the report of the Committee on Transport and Tourism and the opinion of the Committee on Regional Development (A6-0224/2009),

[1] Texts adopted, P6_TA(2009)0120.
[2] OJ C 187 E, 24.7.2008, p. 154.

Wednesday 22 April 2009

A. whereas the political definition of the TEN-T policy as described in 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 network [1] and Decision No 884/2004/EC of the European Parliament and of the Council of 29 April 2004 amending Decision No 1692/96/EC on Community guidelines for the development of the trans-European transport network [2] led to a 'wish list' of 30 priority projects inspired mainly by national interests,

B. whereas the external competitiveness of railway and maritime freight transport as compared with road transport must be improved in order to ensure that balanced use is made of motorways, maritime routes and rail freight corridors,

C. whereas the 30 priority projects led to a proposal of the Commission to provide around EUR 20 000 000 000 in EU funding within the 2007-2013 financial framework to the trans-European transport network as a whole which was finally reduced to around EUR 8 000 000 000, of which only EUR 5 300 000 000 for the 30 priority projects, at the Council's insistence,

D. having regard to the European Union's well-known inability to comply with the rules on TEN-T funding laid down in its Regulation (EC) No 680/2007 of the European Parliament and of the Council of 20 June 2007 laying down general rules for the granting of Community financial aid in the field of the trans-European transport and energy networks [3], which creates uncertainty in planning the funding of projects,

E. whereas it is necessary to strengthen the Commission's ability to pursue major cross-border projects, especially in the rail sector, that require ongoing closer cooperation between the Member States involved and funding over many years, extending beyond the time-frame of the multi-annual financial framework,

F. whereas the annexes to the above-mentioned Commission communication of 14 May 2008 show that around 49 % of appropriations for transport projects are spent on roads, around 31 % on railways and around 9 % on urban transport, but it is not clear precisely which specific projects are co-financed,

1. Recognises that the first attempts at developing an EU transport infrastructure policy, inspired by the 'missing links' of the European Round Table of Industrialists (ERT), were boosted by the Commission communication of 2 December 1992 entitled 'The future development of the common transport policy', with the justification to 'achieve economic growth, competitiveness and employment' and were put on track by former Transport Commissioner Karel Van Miert; notes that Council Regulation (EC) No 2236/95 of 18 September 1995 laying down general rules for the granting of Community financial aid in the field of trans-European networks [4] and Decision No 884/2004/EC tried to be oriented towards the abovementioned aims; and draws attention to the stimulus given to this policy by the Commissioner responsible for energy and transport matters, Vice-President Loyola de Palacio;

2. Considers the reports of the TEN-T Coordinators to be interesting examples for further coordination and integration of a limited choice of important projects; therefore asks the Commission and the Member States to pursue the efforts aimed at the enhancement of the existing priority projects; considers that medium–long term investment should be continued in line with the objective of completing the whole network;

3. Welcomes the early submission of the above-mentioned Commission communication of 4 February 2009, with the aim to review fundamentally the EU transport infrastructure and TEN-T policy, according to challenges relating to current and future transport, cross-border mobility, and financial, economic, regional (including permanently disadvantaged regions), social, safety and environmental challenges;

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[1] OJ L 15, 17.1.1997, p. 1.
[2] OJ L 167, 30.4.2004, p. 1.
[3] OJ L 162, 22.6.2007, p. 1.
[4] OJ L 228, 23.9.1995, p. 1.

4. In this respect, does not see the rationale for introducing the vague notion of a TEN-T conceptual pillar, which would overload the list of priorities; believes that, contrary to the expressed goal of the Commission, a pillar expressly displayed as conceptual will not improve the TEN-T policy's credibility, which will rather be achieved by developing concrete projects;

5. Agrees therefore to develop a more coherent and integrated network approach, reflecting the needs for intermodal connections for citizens and freight; emphasises therefore that priority must be given to rail, ports, sustainable maritime and inland waterways and their hinterland connections or intermodal nodes in infrastructure links with and within new Member States and that particular attention must also be paid to cross-border transport links, as well as to better links with airports and sea ports in the trans-European networks; emphasises that attention should be paid to the different but complementary needs of both passengers and freight; recommends that Member States and regional authorities improve intermediate stations and local interconnections as links to TEN-T in order to minimise the costs associated with being in a peripheral area;

6. Calls on the Commission to provide particular support for priority projects with intermodal links and consistent interoperability that pass through several Member States; points out that connecting economic areas along these priority projects is a national task;

7. Notes with approval that environmentally friendly forms of transport receive a disproportionately large share of consideration in the list of priority projects; calls on the Commission in this connection to ensure that these proportions are preserved in future when projects are implemented;

8. Stresses the need to integrate climate protection and sustainable development for all modes of transport in the European infrastructure policy to comply with the EU targets to reduce CO_2 emissions;

9. Calls on the Commission to urge the Member States to integrate European environmental legislation into decision-making and planning for TEN-T projects, such as Natura 2000, SEA, EIA, Air Quality, Water Framework, Habitat and Bird Directives as well as the Transport and Environmental Reporting Mechanism (TERM)-reports on indicators for transport and environment by the European Environment Agency;

10. Urges the Commission to minimise unclear or contradictory provisions relating to declarations of common interest and the application of environmental legislation; believes, furthermore, that once TEN-T status is granted to projects, the Member States should not abuse the European legislation referred to in paragraph 9 in order to block the implementation of TEN-T projects;

11. Calls on the Commission and the Member States to take into account as relevant factors for European transport infrastructure policy new developments, such as the global financial crisis, demographic change, enlargement, new neighbouring countries, and intensified connections with Eastern and Mediterranean countries;

12. Stresses that, especially in the present context of the economic crisis, the development of TEN-T and the integration of transport in the Union with that of the neighbouring countries is the most reliable means of ensuring both the long-term sustainability of the internal market and economic and social cohesion in the Union;

13. Calls on the Commission to intensify its efforts to improve European coordination of territorial development (Territorial Agenda of the European Union as well as the principle of Territorial Cohesion) and transport planning by taking account of regional accessibility through improved networks between the regions; notes that large differences between mountainous, coastal/island, central, peripheral and other trans-border areas have to be considered, as does the need for better integration of urban mobility systems into the TEN-T;

14. Calls on the Commission to give particular priority to key projects relating to the main rail, road and inland waterway routes to ensure cross-border connections with the new Member States and with third countries;

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15. Suggests in this connection that the European Spatial Development Perspective (ESDP) should be included as a basis for planning and that the available ESPON studies should be included as scientific, planning-oriented background information on transport development;

16. Emphasises the need to incorporate both the objectives of the Lisbon Strategy and those of the Recovery Plan in the development of TEN-T policies, given the key importance of the mobility, accessibility and logistics thereof for EU competitiveness, and to improve territorial cohesion;

17. Calls on the Commission and Member States to integrate green corridors, rail freight networks, European Rail Traffic Management System (ERTMS) corridors, maritime 'highways', such as short sea shipping, existing inland waterways with limited capacity or locks with insufficient capacity, dry ports, logistics platforms, and urban mobility nodes, as well as the projected extension of the TEN-T to the countries of the European Neighbourhood Policy, and Eastern and Mediterranean countries into an intermodal TEN-T concept, based on planned actions in favour of more environmentally friendly, less oil consuming and safer modes, to ensure an optimal use of all modes of transport and promoting the compatibility of connections between the various modes of transport, in particular rail links in ports; moreover, calls for consistency between the current and future TEN–T framework and the legislation proposed on rail freight corridors;

18. Notes that until recently only 1 % of the European infrastructure funds were used for inland waterways according to the latest research; considers that sufficient European support is needed to develop the inland waterway infrastructure in Europe, in order to use the full potential of the inland waterways as a sustainable and reliable mode of transport;

19. Calls on the Commission to seek to ensure that the expansion of rail freight transport is intensified with a view to higher network efficiency and faster transport;

20. Welcomes in this connection the Commission proposal for a regulation of the European Parliament and of the Council concerning a European rail network for competitive freight (COM(2008)0852) and the above-mentioned Commission communication of 18 October 2007;

21. Underlines the importance of enabling information sharing in intermodal transport, in order to promote and support interaction between soft infrastructure and hard infrastructure (information systems such as ERTMS/RIS/ITS/SESAR/Galileo), to improve interoperability, rolling stock (ERTMS hard- and software equipment in trains and noise reduction of freight wagons), green logistics, intermodal connections and nodes, decentralised door-to-door supply chain services and mobility management;

22. Stresses the importance of developing harmonised and standardised Intelligent Transport Systems for the TEN-T in order to have more efficient, fluent, safe and environmentally friendly transport management;

23. Recommends that implementation of the TEN-T be improved by providing better access to information through systems like the TENtec Information System by establishing an open method of coordination involving benchmarking and the exchange of best practices;

24. Focuses on the need to boost the efficiency of existing infrastructure within TEN-T projects in the short term, in particular where the implementation of such projects has already started, in order to make the corridors more viable and efficient and without simply waiting for the long term realisation of very large projects within these corridors;

25. Supports the Green Paper's 'Structural option 3 for the shaping of TEN-T', i.e. a dual layer, consisting of a comprehensive network, based on the current TEN-T maps, and an intermodal 'core network', still to be defined and with rail, sustainable waterways and ports and their connection with logistical centres as priorities;

26. Supports the concept of a 'core network' consisting of a 'geographical pillar' and a 'conceptual pillar', whereby the 'conceptual pillar' contains criteria and objectives enabling projects, corridors and network parts to be identified flexibly over time rather than rigidly at the start of the budgeting period for the entire period; takes the view that it should be possible to expand TEN-T flexibly during the budgeting period in order to adapt to changing market conditions;

27. Recognises the crucial role of Member States, in consultation with their regional and local authorities, stakeholders of civil society and local populations, in deciding, planning and financing transport infrastructure, including European cross-border coordination and cooperation; expects more coherence from the Council between requests for TEN-T projects and decisions on TEN-T budgets; in view of the mid-term review of the EU financial framework and also with regard to the current discussion on the EU Recovery Plan, asks Member States to properly consider the issue of the necessary financial support to the transport infrastructures which are part of the TEN–T network as a priority according to the EU policy so far established;

28. Fully agrees with the Community aim of reducing administrative burden and therefore strongly encourages the Commission to revise the financial frameworks for the TEN-T priority projects with a view to further cutting red tape;

29. Asks the Member States and the Commission to reinforce the coordination of the policies pursued at national level in order to establish consistency in the co-financing and the realisation of the TEN-T programme in accordance with Articles 154 and 155 of the EC Treaty;

30. Emphasises in this regard that the financial crisis puts greater pressure on the European Union, Member States and regions to base decisions concerning transport infrastructure projects on sound cost-benefit assessments, sustainability and the European trans-border added value;

31. Notes, however, that investing in transport infrastructure is one key way of tackling the economic and financial crisis, and therefore calls on the Commission to speed up the infrastructure projects linked to TEN-T and financed under the Structural and/or Cohesion funds; calls on Member States to reassess their investment priorities taking into account this approach, in order to speed up the TEN-T projects under their responsibility, particularly in cross-border sections;

32. Reminds the Commission that EU co-financing for transport infrastructure projects by TEN-T, cohesion, regional funds and the EIB must correspond with the following criteria: economic viability, enhanced competitiveness, promotion of the single market, environmental sustainability, transparency for taxpayers and citizen's involvement (partnership principle); in this respect, emphasises the importance of developing public-private partnerships to finance TEN-T projects and the need to come up with flexible solutions for the problems that arise in works of this scale (geographical and technical difficulties, public opposition, etc.);

33. Calls on the Commission to ensure in this connection that projects assessed under EU financial programmes take account of their possible impact on national financing for other necessary investments which are not supported from EU funds; takes the view, in particular, that the appropriations used by Member States to supplement EU-funded projects should not be allocated at the expense of maintaining or investing in feeder lines; takes the view, rather, that projects should therefore be drawn up and assessed at least partially on the basis of their potential for integrating (and not neglecting) the development and maintenance of the necessary supplementary feeder infrastructure;

34. Underlines the quickly growing investment needs of the European air transport market under the Single European Sky II package as well as the proposed 'total aviation system approach'; therefore calls on the Commission to consider raising the share of the available funding for airports and ATM/ANS when revising the TEN-T budgetary framework;

35. Notes that more research and development is needed on best and most efficient practice in transport infrastructure financing and its positive impact on competitiveness and quantitative and qualitative employment, including public-private partnership experiences in this regard, as has been started already in current Commission studies;

36. Stresses the need to set up a task force within the TEN-T Executive Agency in order to increase the use of public-private partnership to finance some priority project or sections, and to diffuse the solutions as best practice;

37. Stresses that increased reliance on public-private partnerships and the European Investment Bank would be no substitute for a significant portion of budgetary funding for large-scale projects with an intergenerational pay-back period;

38. Favours reconsideration of the TEN-T's budget by the Member States in the context of the mid-term review of the financial perspectives 2009-2010, with a view to reversing the drastic cutting back of other projects and the ambitions to develop railways and waterways that go hand in hand with them;

39. Stresses the need to allocate a percentage of toll revenue from road infrastructure to funding TEN-T projects in order to increase the leverage effect on borrowing;

40. Asks the Commission to set out a selection of examples of regional trans-border rail connections, which have been dismantled or abandoned, favouring especially those which could interconnect with TEN-T;

41. Asks the Commission and the Member States to consider the Eurovelo-Network and Iron Curtain Trail as an opportunity for promoting European trans-border cycling infrastructure networks, supporting soft mobility and sustainable tourism;

42. Asks the Commission, in order to boost the competitiveness of the whole rail TEN network, to propose – by the end of its mandate - a legislative initiative concerning the opening of the rail domestic passenger markets as from 1 January 2012;

43. Regrets the slow pace of implementation of priority projects in border areas, particularly those in the Pyrenees that are vital for the Iberian Peninsula and France;

44. Encourages the Commission to keep the Parliament and the European Council involved in its (multi)annual proposals and choices on co-financing TEN-T projects;

45. Asks the Commission to report to the European Parliament and the Council, for every priority project, regularly and at least once a year, on the state of play of each project, on the reliability of the project's costs, on the feasibility of each project and on the timing of project's implementation;

46. Calls on the Commission and the EIB to submit an annual list of specific co-financed projects to Parliament and Council in the case of regional, cohesion and EIB co-financing of TEN-T projects, as is already the case for TEN-T co-financing;

47. Maintains that, from an ecological and economic point of view, multimodal transport systems, enabling different means of transport to be used on a given route, are in many cases the only viable and sustainable option for the future;

48. Emphasises that, within the newly enlarged Schengen area, the transport infrastructure between Western and Eastern Europe is of immense significance given the economic growth potential - especially in the new Member States - linked to it; calls on the Commission and the Member States to develop and promote transnational road and rail links between Eastern and Western Europe, supporting in particular cross-border transport infrastructure through a specific action programme implemented in cooperation with local, regional and national authorities; also, points out that better interconnection of TEN-T and third country transport networks would improve the position of border areas in particular and bring added value to interregional cooperation and the EU as a whole;

49. Instructs its President to forward this resolution to the Council and Commission and the governments and parliaments of the Member States.

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Deforestation and forest degradation

P6_TA(2009)0306

European Parliament resolution of 23 April 2009 on addressing the challenges of deforestation and forest degradation to tackle climate change and biodiversity loss

(2010/C 184 E/08)

The European Parliament,

— having regard to the Commission Communication of 17 October 2008 entitled 'Addressing the challenges of deforestation and forest degradation to tackle climate change and biodiversity loss' (COM(2008)0645),

— having regard to the decisions taken at the Fifth Ministerial Conference on the Protection of Forests in Europe held in November 2007 in Warsaw, Poland on assessing the effects of climate change on the state of forests and on a policy for a sustainable forest economy,

— having regard to Rule 103(2) of its Rules of Procedure,

A. whereas the EU wishes to limit global warming to 2 °C and to halve biodiversity loss; whereas the Eliasch Review estimates that USD 17-33 billion will be required annually to halve deforestation by 2030,

B. whereas a sustainable forest economy is of vital importance in combating deforestation and is an essential aspect of economic development,

C. whereas deforestation accounts for some 20 % of global greenhouse gas emissions, is a major driver of biodiversity loss and constitutes a serious threat to development and, in particular, to the livelihoods of the poor,

D. whereas deforestation occurs at the alarming rate of 13 million hectares per year, primarily in tropical forests, but also to a certain extent in Europe, especially Central and Eastern Europe,

E. whereas deforestation results in environmental damage which is hard to reverse, such as long-term disruption of water conditions, steppe-formation and desertification, and biodiversity loss, the overall economic costs of which far exceed expenditure on protection and improvement measures,

F. whereas forest degradation takes different forms and is difficult to define, but has major impacts on climate, biodiversity and goods and services,

G. whereas a significant deviation from 'business-as-usual' emissions growth in developing countries, including a reduction in emissions related to deforestation, needs to be achieved in addition to a 25-40 % reduction in industrialised countries by 2020 compared to 1990 to limit global warming to 2 °C, according to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change,

H. whereas reducing deforestation will play an important role as regards not only climate change mitigation but also adaptation to climate change,

1. Stresses the need for more coherence between forest conservation and sustainable management policies and other EU internal and external policies; calls for a quantified evaluation of the impact on forests of EU policies such as energy (especially biofuels), agriculture, sustainable production and consumption, procurement, trade and development cooperation;

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2. Calls on the Commission to present to Parliament and the Council proposals for stringent Community sustainability requirements for all timber and timber products sourced from forests;

3. Calls on the Commission to publish by the end of 2009 a comprehensive study assessing the impact of EU production, consumption and trade in both food and non-food commodities on deforestation and forest degradation; calls for the study to evaluate and specify any negative contribution by different industry sectors and make recommendations for further policy and innovation, in order to reduce such impacts;

4. Points out that problems relating to water conditions must be dealt with carefully in the context of the forest economy, and points to the vital need for joint development of forest and water resources and harmonisation of the relevant EU policies, with a view to restoring and improving the water retention capacity of ecosystems;

5. Welcomes green public procurement (GPP) policies and the promotion of instruments such as eco-labelling and forest certification schemes; calls for the swift adoption and implementation of GPP policies for wood products across the EU; calls on the Member States to base their public procurement policy on high sustainability standards and accordingly to set realistic targets in relation to such standards;

6. Considers that significant financial support must be provided to developing countries to halt gross tropical deforestation by 2020 at the latest, and that demonstration of commitment to this will be decisive in the international negotiations for a comprehensive global post-2012 climate agreement;

7. Recognises that mobilising sufficient funding under a global climate deal will be absolutely crucial for halving and eventually halting global deforestation; supports, in this context, the Commission's proposal to create a Global Forest Carbon Mechanism (GFCM) within the framework of the United Nations Framework Convention on Climate Change, based on a permanent financing scheme; calls on Member States to back up their commitment to halting global deforestation and forest degradation by earmarking a significant part of the auctioning revenues from the EU emissions trading scheme (ETS) for reducing deforestation and forest degradation in developing countries and by focusing the negotiations on funding sources as outlined in the Commission Communication of 28 January 2009 entitled 'Towards a comprehensive climate change agreement in Copenhagen' (COM(2009)0039); calls on Member States to support the Commission's proposal to embrace the funding proposal made by Norway and to allocate part of future revenues from auctioning of Assigned Amount Units to the GFCM;

8. Advocates that the support provided via the GFCM should be performance-based and provided on the basis of verified results in terms of reduction of gross deforestation and forest degradation; stresses that this support should also provide co-benefits in terms of biodiversity protection, increased resilience, and improved livelihoods in forest regions;

9. Emphasises the need to fully respect the rights of local forest people including indigenous peoples' right to free, prior and informed consent to the use of forests customarily used by them; considers it essential that local communities and indigenous peoples are involved in a meaningful and comprehensive way at all stages when measures for reduced emissions from forest degradation and deforestation are being assessed, planned and implemented;

10. Stresses that any mechanism under the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries that is concluded as part of the post-2012 international climate agreement should first and foremost ensure that old-growth forests are protected;

11. Notes that the process of deforestation in Eastern Europe is contributing to the degradation of the natural environment and also affecting, inter alia, quality of life;

12. Notes that forest credits in the carbon market could, in the medium and long term, be part of a mix of policies addressing deforestation, if accurate forest carbon accounting methodologies and reliable monitoring mechanisms can be ensured; stresses that a final decision regarding the inclusion of forest credits in the ETS should be taken following a rigorous analysis of the feasibility of all potential funding mechanisms and an evaluation of the outcome of the Copenhagen Conference of the Parties and of the conclusions drawn from the pilot projects;

13. Recalls that any credits from forest projects that are used to offset greenhouse gas emissions in industrialised countries cannot be double-counted towards the deviation targets from 'business as usual' that developing countries are expected to commit to in the post-2012 international climate agreement;

14. Points out that any system of compensation for reducing deforestation and forest degradation under a future climate regime must take into account not only carbon sinks but also the ecosystem services and social benefits provided by forests;

15. Calls on the EU to promote strong social and environmental standards for reducing emissions from deforestation and degradation (REDD); calls on the EU to advocate REDD mechanisms that go beyond the current Clean Development Mechanism (CDM) project approach and address underlying causes of deforestation, such as poor governance, poverty, corruption and lack of law enforcement, by supporting policy and institutional reform at both local and national levels;

16. Regrets that the Communication, contrary to its title, does not deal with forest degradation; calls on the Commission to develop action plans and pilot projects and to show commitment in its own forestry policy to stopping not only deforestation but also forest degradation (including in the European Union) by also developing and establishing proper monitoring systems in order to obtain appropriate data on soil and biomass in forests;

17. Instructs its President to forward this resolution to the Council and the Commission and to the governments and parliaments of the Member States.

Action plan on urban mobility

P6_TA(2009)0307

European Parliament resolution of 23 April 2009 on an action plan on urban mobility (2008/2217(INI))

(2010/C 184 E/09)

The European Parliament,

— having regard to the Commission Green Paper of 25 September 2007 entitled 'Towards a new culture for urban mobility' (COM(2007)0551),

— having regard to the Commission White Paper of 12 September 2001 entitled 'European transport policy for 2010: time to decide' (COM(2001)0370),

— having regard to the Commission Communication of 18 October 2007 entitled 'Freight Transport Logistics Action Plan' (COM(2007)0607),

— having regard to the Commission Communication of 17 September 2007 entitled 'Towards Europe-wide Safer, Cleaner and Efficient Mobility: The First Intelligent Car Report' (COM(2007)0541),

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— having regard to the Commission Communication of 7 February 2007 entitled 'A Competitive Automotive Regulatory Framework for the 21st Century – Commission's position on the CARS 21 High Level Group Final Report – A contribution to the EU's Growth and Jobs Strategy' (COM(2007)0022),

— having regard to the Commission Communication of 28 June 2006 entitled 'Freight Transport Logistics in Europe – the key to sustainable mobility' (COM(2006)0336),

— having regard to the Commission Communication of 22 June 2006 entitled 'Keep Europe moving – Sustainable mobility for our continent – Mid-term review of the European Commission's 2001 Transport White Paper' (COM(2006)0314),

— having regard to the Commission Communication of 15 February 2006 entitled 'On the Intelligent Car Initiative – Raising Awareness of ICT for Smarter, Safer and Cleaner Vehicles' (COM(2006)0059),

— having regard to the Commission Communication of 11 January 2006 entitled 'On Thematic Strategy on the Urban Environment' (COM(2005)0718),

— having regard to the Commission proposals and guidelines, and the European Parliament positions, on the Structural Funds, the Cohesion Fund and the Seventh Framework Programme for Research,

— having regard to the revised proposal for a Directive of the European Parliament and of the Council on the promotion of clean and energy efficient road transport vehicles (COM(2007)0817),

— having regard to its resolution of 9 July 2008 on 'Towards a new culture of urban mobility' ([1]),

— having regard to its resolution of 19 June 2008 on 'Towards Europe-wide Safer, Cleaner and Efficient Mobility: The First Intelligent Car Report' ([2]),

— having regard to its resolution of 20 February 2008 on 'the input for the 2008 Spring Council as regards the Lisbon Strategy' ([3]),

— having regard to its resolution of 12 October 1988 on 'the protection of pedestrians and the European charter of pedestrians' rights' ([4]),

— having regard to its resolution of 15 January 2008 on 'CARS 21: A Competitive Automotive Regulatory Framework' ([5]),

— having regard to its resolution of 5 September 2007 on 'Freight Transport Logistics in Europe – the key to sustainable mobility' ([6]),

— having regard to its resolution of 12 July 2007 on 'Keep Europe moving – Sustainable mobility for our continent' ([7]),

— having regard to Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe ([8]),

([1]) Texts adopted of that date, P6_TA(2008)0356.
([2]) Texts adopted of that date, P6_TA(2008)0311.
([3]) Texts adopted of that date, P6_TA(2008)0057.
([4]) OJ C 290, 14.11.1988, p. 51.
([5]) OJ C 41 E, 19.2.2009, p. 1.
([6]) OJ C 187 E, 24.7.2008, p. 154.
([7]) OJ C 175 E, 10.7.2008, p. 556.
([8]) OJ L 152, 11.6.2008, p. 1.

— having regard to Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road ([1]),

— having regard to Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways ([2]) (Railway Safety Directive),

— having regard to Directive 2000/40/EC of the European Parliament and of the Council of 26 June 2000 on the approximation of the laws of the Member States relating to the front underrun protection of motor vehicles ([3]),

— having regard to the opinion of the Committee of the Regions of 21 April 2009 on an action plan on urban mobility ([4]),

— having regard to the Commission's announcement of an action plan on urban mobility, publication of which has been postponed several times and for which there is no precise deadline,

— having regard to the legal basis constituted by Articles 70 to 80 of the EC Treaty,

— having regard to Rule 45 of its Rules of Procedure,

— having regard to the report of the Committee on Transport and Tourism and the opinion of the Committee on Regional Development (A6-0199/2009),

A. whereas urban transport constitutes a considerable proportion of all transport, with the legal basis therefore constituted by Articles 70 to 80 of the EC Treaty granting the European Union shared competence with the Member States in that field,

B. whereas numerous European directives and regulations, cross-cutting or modal, have an impact on urban transport and these need to be aligned through a targeted approach to the issue of urban travel,

C. whereas the European 'Climate Plan' adopted by the European Council of 8-9 March 2007 sets the ambitious objectives of a 20 % reduction in energy consumption, a 20 % reduction of greenhouse gas emissions and a 20 % share of renewable energies in overall energy consumption by 2020, and these targets cannot be achieved without a strategy suitably tailored to urban transport,

D. whereas the CIVITAS research and development programme has been a great success, reflecting the importance, for transport-organising local authorities and companies, of European investment in innovative urban transport programmes,

E. whereas the Cohesion Fund and the Structural Funds finance urban mobility programmes, but have the drawback, on the one hand, of lacking any European urban mobility strategy or objectives and, on the other hand, of being unequally allocated across the Union,

F. whereas urban areas are prime intermodal and interconnection poles for Trans-European Transport Networks, which must help achieve their general aims of sustainable European mobility and the sustainable competitiveness of networks of EU towns and cities,

G. whereas urban areas are important centres of business activity and whereas goods transport is vital to satisfy the needs of the population and at the same time faces challenges owing to restricted storage space and limited time-slots for delivery,

([1]) OJ L 315, 3.12.2007, p. 1.
([2]) OJ L 164, 30.4.2004, p. 44.
([3]) OJ L 203, 10.8.2000, p. 9.
([4]) Not yet published in the OJ.

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H. whereas strict compliance with the principle of subsidiarity and the right to local planning autonomy precludes a prescriptive European policy, but allows the Union to adopt an incentive strategy of the same nature as its regional and cohesion policy without imposing top-down solutions,

I. whereas the issue of urban areas cannot be addressed through modal policies, but only by means of an approach centring on users and integrated transport systems,

J. whereas an efficient and sustainable urban transport policy for the benefit of both European citizens and the European economy will only be guaranteed by ensuring fair treatment between the transport of goods and of passengers and between the different modes of transport,

K. whereas urban planning which takes account of the demographic change in society by, for example, locating housing designed for the elderly in city centres and shops close to where people live can contribute significantly to traffic avoidance,

L. whereas there is a need for robust urban travel strategies that optimise the relevant instruments by developing intermodal exchange platforms and integrating various travel systems,

M. whereas there is a need for reliable and more systematic statistics enabling an assessment of local public policies and an exchange of best practices in the field of urban travel,

N. whereas the various techniques applied in urban transport are of economic and technological importance in terms of the European Union's competitiveness and its external trade,

O. whereas the time limits imposed by the forthcoming European legislative elections mean that it must keep to the timetable set for the parliamentary debate on the action plan on urban mobility announced by the Commission,

1. Regrets that the action plan on urban mobility announced by the Commission has not been published and, while approving of separate initiatives, stresses the need for a cohesive approach; decides, therefore, to follow up its own initiative report, fully respecting the principles of subsidiarity and proportionality, by drawing up proposals for a European action plan on urban mobility;

2. Recalls that urban transport is subject to the subsidiarity principle, but nevertheless stresses that local authorities often cannot meet these challenges without European cooperation and coordination, and that the Commission must therefore provide studies and a legal framework, finance research, and promote and disseminate best practices in formats which are accessible to everyone in all EU languages;

3. Asks the Commission to publish a compendium of binding European regulatory provisions in this area and offer regions and cities a common frame of reference to make it easier for them to make choices as regards the planning and implementation of development strategy;

Accelerating European research and innovation in the field of urban mobility

4. Proposes the immediate launch of a programme for the upgrading of statistics and databases on urban mobility by Eurostat, including in particular:

— data on traffic, including 'soft' modes of transport (cycling, walking, etc.),

— statistics on air pollution and noise, accidents, traffic jams and congestion,

— quantitative and qualitative statistics and indicators on transport services and their supply;

5. Suggests that a European internet portal and forum on urban mobility be launched immediately in order to facilitate the exchange and dissemination of information, best practices and innovations, particularly in the field of soft transport;

6. Suggests that an annual European prize be created incorporating the CIVITAS awards into the European mobility week, to reward outstanding and transferable transport initiatives and projects;

7. Proposes that a new generation CIVITAS initiative be developed (CIVITAS IV), around calls for projects covering, inter alia:

— ancillary services relating to intermodal transport (pricing, etc.),

— ergonomics programmes (comfort) for urban transport,

— innovations in terms of intermodal accessibility, not least for persons with reduced mobility (PRMs),

— integrated urban transport information programmes for users, enabling them to optimise their travel and alter trips in response to the vagaries of the network;

8. Proposes that Intelligent Transport Systems (ITS) research and development be stepped up, that it be better co-ordinated with the needs and objectives of urban residents and local authorities and that it be directed towards:

— integrated information management and traffic management systems,

— reduction of nuisance factors and accidents,

— use of new interoperable information and communication technologies, including satellite technologies and NFC [1], through the use of GSM, for the provision of information to users and the issuing of integrated travel tickets,

— safety and security on public transport;

— developing a new generation of urban vehicles;

— innovative solutions for efficient goods transport, particularly goods distribution to retailers in the cities;

9. Calls for national and European funding for ITS applications to be increased so as to enable greater deployment of ITS by local authorities;

Encouraging optimisation of various modes of transport by improving urban scheduling

10. Requests that the integrated approach principle be promoted in a partnership-based governance framework that brings together urban, peri-urban, national and European players and that takes account of transport-related issues such as social integration, noise, safety, competitiveness, environment, etc.; reiterates its request that an integrated approach be compulsory in the programming and choice of Structural Fund projects;

[1] NFC, which stands for *Near Field Communication* is a technology for the exchange of data over very small distances that enables radio-identification.

11. Recommends the introduction of integrated sustainable urban travel plans in conurbations with over 100 000 inhabitants, comprising:

— a mobility diagnosis and mobility indicators and targets, and an assessment of their economic, social and environmental impact,

— a plan for the development and interconnection of transport networks coordinated with the regional transport plan and urban planning policies,

— a plan for the development of soft traffic infrastructure (cycle paths, pedestrian zones, etc.) fully integrated with public transport,

— a masterplan for intermodal car parks and exchange platforms,

— a programme for adapting management of urban mobility networks and their interconnections to the needs of reduced mobility users,

— a masterplan for urban logistics, including the possibility of using public infrastructure for freight transport,

— a procedure for direct participation by the general public;

12. Recommends that a permanent European forum on urban transport governance be created for representative transport-organising authorities, including user and citizens' organisations and professional federations of transport operators, in order to promote the exchange and dissemination of best practices;

13. Proposes that European financing in the field of urban transport be made conditional on the existence of integrated urban mobility plans (urban travel plans);

14. Advocates cooperation between, and the operational integration of, authorities responsible for the organisation of public transport, traffic and parking in European cities of over 250 000 inhabitants, in comparable areas, based on movements of population and goods and in line with local circumstances;

15. Urges transport-organising authorities to set themselves proactive, coherent targets for greenhouse gas emission reductions by means of mobility policies set out in the above mentioned integrated sustainable urban travel plans and to derive from these targets specific performance obligations for public or private transport service operators;

16. Proposes that experiences in the field of tariff integration (including the 'Interoperable Fare Management' project) and the provision of intermodal information and information between transport-organising authorities in EU conurbations be evaluated, in order to facilitate the exchange of best practices;

EU added value: incentivising sustainable mobility in urban areas

17. Advocates the setting-up of an urban mobility observatory within the Commission, but does not wish a new agency to be created;

18. Regrets the fact that during the current aid programming period 2007-2013, only some 9 % (equivalent to EUR 8 000 000 000) of all Structural Fund spending on transport (equivalent to EUR 82 000 000 000) is earmarked for urban transport; considers this proportion too small to be able to meet the challenges of devising appropriate mobility in European cities and environmental and climate protection;

19. Strongly recommends that the possibility be examined, under the financial framework for 2014-2020, of a European financial instrument for urban mobility (integrated programme of the Marco-Polo type) enabling the co-financing of:

— surveys of urban travel plans with a view to encouraging their widespread introduction,

— a proportion of investments in modes of transport that meet the EU's environmental and socio-economic objectives;

and proposes that this financing be allocated as an incentive, on the basis of calls for tender that meet European specifications;

20. Calls for the Commission to draw up a report on zones with access regulations in urban areas in order to assess their impact on mobility, quality of life, emissions and external effects, health and safety, taking into account the need for a system of enforcing criminal and non-criminal cross-border traffic offences;

21. Proposes that an information and urban transport ticketing network for the main urban destinations in the European Union be set up in stations and airports of departure, where these are located in the EU;

22. Recommends that a 'users charter' be drawn up for urban transport, to include pedestrians and cyclists,the distribution of goods and services and covering road sharing, in order to reduce the current disparities;

23. Takes the view that the urban planning model of the 'short journey city' is the best means of ensuring environmentally acceptable and climate-compatible mobility in cities;

24. Encourages the Commission and local authorities to step up and expand their initiatives relating to 'car-free days', as implemented during the annual European car-free day;

25. Calls on the Commission to come up with a harmonised approach towards green zones and the development of a single European green zone sticker as soon as possible in order to prevent the development of different approaches per city or Member State with considerable inconvenience for citizens and companies;

26. Considers that urban mobility initiatives should also seek to establish inter-urban networks in order to link up major cities, ensure their economic development and facilitate the rapid transport of individuals and goods;

Urban transport: an industry and European technologies which should be taken into account in the Lisbon Strategy and the European economic recovery plan

27. Suggests that a European policy be introduced for the standardisation and certification of equipment as regards safety and health, comfort (noise, vibrations, etc.), network interoperability ('busways', tram-train, etc.), accessibility for PRMs or people with child strollers, soft transport and clean-engine technologies (buses, taxis, etc.), on the basis of a carbon audit and an impact analysis of the costs for operators and users;

28. Urges constant care to ensure that all decisions take account of the need to ensure proportionality between costs and benefits and the possibility of subsidising less affluent users;

29. Suggests that guidelines be issued on minimum recommendations for quality of service, evaluation and participation by users and citizens, in the context of the opening-up of urban transport networks to competition under Regulation (EC) No 1370/2007;

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30. Suggests that a significant proportion of the appropriations released by the European Economic Recovery Plan be allocated to the financing of ongoing urban transport and public transport investments and projects that can be financed immediately and implemented before 31 December 2009;

31. Notes that, under the European Economic Recovery Plan, Structural Fund resources for sustainable infrastructure projects are being brought forward; calls on Member States and the regions as a matter of urgency to use a substantial proportion of these resources for climate-compatible urban transport;

32. Calls on the Commission to take note of the proposals contained in this resolution, and of Parliament's wish for it to take the initiative in this area, leading as soon as possible to an action plan;

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33. Instructs its President to forward this resolution to the Council and the Commission and to the governments and parliaments of the Member States.

The Intelligent Transport Systems Action Plan

P6_TA(2009)0308

European Parliament resolution of 23 April 2009 on the Intelligent Transport Systems Action Plan (2008/2216(INI))

(2010/C 184 E/10)

The European Parliament,

— having regard to the Commission Communication of 16 December 2008 entitled 'the Action Plan for the Deployment of Intelligent Transport Systems in Europe' (COM(2008)0886),

— having regard to proposal for a Directive of the European Parliament and the Council laying down the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other transport modes (COM(2008)0887),

— having regard to the Commission White Paper of 12 September 2001 entitled 'European Transport Policy for 2010: time to decide' (COM(2001)0370),

— having regard to the Commission Communication of 8 July 2008 entitled 'Greening Transport' (COM(2008)0433),

— having regard to the Commission Communication of 8 July 2008 entitled 'Strategy for the internalisation of external costs' (COM(2008)0435),

— having regard to the Commission Green Paper of 25 September 2007 entitled 'Towards a new culture of urban mobility' (COM(2007)0551),

— having regard to the Commission Communication of 22 June 2006 entitled 'Keep Europe moving – sustainable mobility for our continent: mid-term review of European Commission's 2001 Transport White Paper' (COM(2006)0314),

— having regard to the Commission Communication of 17 September 2007 entitled 'Towards Europe-wide safer, cleaner and efficient mobility: the first intelligent car report' (COM(2007)0541),

— having regard to the Commission Communication of 7 February 2007 entitled 'A Competitive Automotive Regulatory Framework for the 21st Century – Commission's position on the CARS 21 High Level Group Final Report, A contribution to the EU's Growth and Jobs Strategy' (COM(2007)0022),

— having regard to the Commission Communication of 15 February 2006 entitled 'On the Intelligent Car Initiative: Raising Awareness of ICT for Smarter, Safer and Cleaner Vehicles' (COM(2006)0059),

— having regard to the Commission Communication of 28 June 2006 entitled 'Freight Transport Logistics in Europe – the Key to Sustainable Mobility' (COM(2006)0336),

— having regard to the Commission Communication of 18 October 2007 entitled 'Freight Transport Logistics Action Plan' (COM(2007)0607),

— having regard to the Commission Communication of 11 January 2006 entitled 'On a Thematic Strategy on the Urban Environment' (COM(2005)0718),

— having regard to the proposals and guidelines of the Commission and the positions of the European Parliament on the structural funds, the cohesion fund and the 7th Research Framework Programme,

— having regard to its position of 22 October 2008 on the revised proposal for a directive of the European Parliament and of the Council on the promotion of clean and energy efficient road transport vehicles ([1]),

— having regard to its resolution of 20 February 2008 on the input for the 2008 Spring Council as regards the Lisbon Strategy ([2]),

— having regard to its resolution of 11 March 2008 on sustainable European transport policy, taking into account European energy and environment policies ([3]),

— having regard to its resolution of 15 January 2008 on CARS 21: A Competitive Automotive Regulatory Framework ([4]),

— having regard to its resolution of 19 June 2008 on Towards Europe-wide Safer, Cleaner and Efficient Mobility: The First Intelligent Car Report ([5]),

— having regard to its resolution of 12 July 2007 on keeping Europe moving – sustainable mobility for our continent' ([6]),

— having regard to its resolution of 5 September 2007 on Freight Transport Logistics in Europe – the Key to Sustainable Mobility ([7]),

— having regard to its resolution of 18 January 2007 on European Road Safety Action Programme - mid-tem review ([8]),

— having regard to its resolution of 26 September 2006 on the thematic strategy on the urban environment ([9]),

([1]) Texts adopted, P6_TA(2008)0509.
([2]) Texts adopted, P6_TA(2008)0057.
([3]) Texts adopted, P6_TA(2008)0087.
([4]) OJ C 41 E, 19.2.2009, p. 1.
([5]) Texts adopted, P6_TA(2008)0311.
([6]) OJ C 175 E, 10.7.2008, p. 556.
([7]) OJ C 187 E, 24.7.2008, p. 154.
([8]) OJ C 244 E, 18.10.2007, p. 220.
([9]) OJ C 306 E, 15.12.2006, p. 182.

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— having regard to Rule 45 of its Rules of Procedure,

— having regard to the report of the Committee on Transport and Tourism and to the opinion of the Committee on Regional development (A6-0227/2009),

A. whereas Intelligent Transport Systems (ITS) are advanced applications which use Information and Communication Technologies (ICTs) for transport and providing innovative services on transport modes and traffic management;

B. whereas ITS have great potential for more efficient use of all modes of transport that can meet the needs and the challenges of European transport policy;

C. whereas road traffic congestion affects 10 % of the road network and yearly costs amount to 1 % of EU GDP, road fatalities still amount to 42 953 (2006), far above the intermediate target set to reduce to 25 000 by 2010 and road transport accounts for 72 % of all transport-related CO_2 emissions while 40 % of Europe's CO_2 road transport emissions are due to urban traffic;

D. whereas ITS has proved essential in reducing energy consumption and greening transport;

E. whereas intelligent applications have been developed for different transport modes such as railway transport (ERTMS and TAF-TSI), maritime and inland waterway transport (LRITS, SafeSeaNet, VTMIS, RIS), air transport (SESAR) and land transport, such as livestock transport;

1. Stresses that ITS is a key instrument for using existing infrastructure effectively and for making transport more efficient, safer and secure and environmentally cleaner, thus contributing to the development of sustainable mobility for citizens and the economy;

2. Stresses the positive effect on sustainable development that ITS have in improving the economic performance of all regions, including urban areas, establishing conditions for reciprocal accessibility, increasing local and inter-regional commerce, and developing the European Union's internal market and the employment associated with the activities deriving from the implementation of ITS;

3. Considers that ITSs can improve the living conditions of Europe's citizens, particularly those living in urban areas, and will also contribute to improved road safety, reduce harmful emissions and environmental pollution, increase traffic efficiency, improve access in outlying areas and pursue the priority of reducing traffic;

4. Deplores the delay in setting up a common framework for the implementation of ITSs in the EU and the lack of coordinated deployment of ITS with specific targets due mainly to barriers to interoperability, a lack of efficient cooperation among all actors, and unsolved data privacy and liability issues;

5. Welcomes the Commission Action Plan on ITS('the action plan') as a common framework of actions and programmes with clear deadlines for the delivery of results;

6. Strongly believes that it is necessary to set up an instrument fostering the use of ITS in transport policy; supports a legislative instrument for laying down the framework for the deployment of ITS and requests that the Commission provide better information on the current situation with regard to actions, funding and programming of the action plan in order to ensure that a clear set of actions with deadlines is established in the Directive laying down the framework for the deployment of ITS;

7. Is aware of the limited Community financial aid granted (in 2008) to the EasyWay action, which is a project for Europe-wide ITS deployment on the main Trans-European road network (TERN) corridors in 21 EU Member States led by national road authorities and operators with associated partners from public and private stakeholders;

Horizontal issues

8. Points out that ITS should be deployed across all transport modes and for all travellers in Europe, in a coordinated approach with Galileo applications; strongly supports its immediate deployment in order to enhance intermodality between the public and private sector and within public transport through the improvement of overall information and increased capacity management;

9. Urges the Commission and Members States to address the issue of liability which constitutes a major barrier to the smooth and coherent development of ITS in Europe;

10. Considers that interoperability in the development of ITS is paramount for coherent and effective ITS deployment in Europe; stresses that in case of TERN investment (construction or maintenance), efforts should be made to comply with the necessary deployment of ITS services;

11. As there is already a significant supply on the European ITS market, requests that the Commission defines specifications for the minimum level of ITS applications and services that is achievable by all Member States and necessary for the efficient deployment, implementation and operation of ITS;

12. Considers it important to prepare a market demand assessment evaluating the real need beyond the defined minimum level of ITS applications and services and to strengthen internal market aspects of ITS through standardisation and an appropriate regulatory framework;

13. Stresses the importance of cross-border cooperation both at the technical and administrative level at the EU external borders, which is crucial for the effective implementation of ITS in the EU;

Optimal use of road, traffic and travel data (action no 1)

14. Stresses the need to provide the critical mass of data and information in the following five basic areas as a minimum for effective ITS deployment: real-time traffic and travel information; road network data; public data for digital maps; data for minimum universal traffic information services and multimodal door-to-door journey planners;

15. Calls for minimum universal traffic information services to cover Trans-European network (TEN-T);

16. Stresses that the large-scale adoption and implementation of ITS necessitates adherence to transport service information and timetables for the various modes of transport;

17. Stresses the importance of providing real time information to travellers and for the infrastructure and of making this more accurate, reliable and uniform while respecting Europe's specificities (geographical, cultural and linguistic) and ensuring geographical continuity;

18. Considers it essential for the development of ITS to guarantee the private sector access to road, traffic and travel data while respecting privacy and addressing the issue of intellectual property rights;

Continuity of traffic and freight management ITS services on European transport corridors and conurbations (action no 2)

19. Believes that it is essential to ensure harmonised, interoperable and reliable ITS whilst preserving users' freedom choice on ITS;

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20. Calls on the Commission and the Member States to coordinate and link ITS with EU urban mobility initiatives for more efficient transport mobility and management fluidity and reducing congestion from roads, TEN-T corridors, freight corridors and conurbations;

21. Considers that cross-border cooperation and the development of programmes for the effective deployment and implementation of ITS, such as the EasyWay project, is necessary;

22. Calls on the Commission to indentify priority information, transport equipment and vehicle standards for advancing ITS deployment and measures promoting more harmonised highway infrastructure;

23. Considers it essential that the assessment of the economic cost per vehicle and for the infrastructure deriving from ITS deployment be based on a cost-benefit analysis covering all associated costs (economic, societal and environmental);

ITS for urban mobility (action no 2a)

24. Advocates the development of user information procedures and systems regarding available urban transport services and the state of the networks, making use of GSM technology for example;

25. Calls for research into integrated fare structures coordinated by the authorities of a given region and especially the technical aspects thereof;

26. Urges the development of intermodal technologies providing better access to transport and urban mobility for persons with reduced mobility;

Road safety and security (action no 3)

27. Calls on the Commission and the Member States to prepare for the harmonised deployment and integration of the eCall application in all EU countries by 2010, as soon as the standardisation tests are completed;

28. Considers that ITS applications and deployment should:

— promote the Advance Driving Assistance Systems (ADAS) with sufficient potential to improve road safety, such as Electronic Stability Control (ESC) as well as eCall which alone could save up to 6 500 lives per year in the EU if fully deployed;

— enhance road safety by preventing speeding, drink driving and driving without a seatbelt;

— improve the health and safety conditions by supporting the use of dignified and secure parking places by supplying appropriate services to the lorry drivers by using the truckinform portal [1] and

— improve the security of drivers and loadings in freight transport against theft, robbery and hijacking thus fighting organised crime, especially in cross-border areas and in international freight transport involving third countries;

29. Urges the Commission to continue the process of reducing communication costs so that the communication and information equipment based on telecommunication could be used in a more comprehensive way;

[1] www.truckinform.eu

30. Welcomes the suggested 'eFreight' initiative and urges the Commission to introduce the principle of 'Intelligent Cargo' with a view to achieving a multimodal ITS services approach for freight, focusing on dangerous goods;

31. Calls on the Commission and the Member States to pay the same attention to both passengers and freight, in order to avoid discriminating against passenger traffic, which is particularly damaging for the mobility of persons;

32. Advocates an appropriate regulatory framework on the human machine interface (HMI) and other ITS protocols and stresses the need to address liability issues;

33. Calls on the Commission to address the issue of vulnerable transport users, including people with reduced mobility and to extend the actions on fostering ADAS deployment and others such as ITS and HMI to two-wheelers under the sub-actions proposed in the action plan;

34. Urges the Commission to use TIS potential to the full for the purposes of preventive action against smog and high ozone concentrations and the reduction of noise levels and particle, NO_x and CO_2 emissions;

Integration of the vehicle into the transport infrastructure (action no 4)

35. Stresses the importance of defining a common platform architecture for standardised interfaces and protocols that would facilitate the use of ITS, cooperative systems and specifications for infrastructure-to-infrastructure (I2I), vehicle-to-infrastructure (V2I) and vehicle-to-vehicle (V2V);

36. Calls on the Commission to implement a road map on ITS with common platforms on ITS applications and deployment and with the participation of the private and public sector and to establish the appropriate framework for solving ITS liability issues;

37. Notes that training on ITS applications should be encouraged to enhance users' capacity on transport and facilitate human-machine interaction;

38. Calls on the Commission and Member States to provide an open forum for exchanging information and addressing ITS issues;

Data security, protection and liability issues (action no 5)

39. Emphasises the need to respect privacy and considers that privacy and data security and protection issues from the early phases of the ITS design development should be considered when defining architecture and implementation measures ('Privacy by design');

40. Invites all parties involved in ITS applications to comply with the EC directives on the protection of personal data and privacy on communications (Directives 95/46/EC [1] and 2002/58/EC [2]) and calls on the Commission to ensure the appropriate use of data under ITS applications and deployment;

41. Believes that the use of anonymous data on ITS applications is necessary for the unimpeded deployment of ITS while ensuring privacy and compliance with the EC legal framework on data protection;

European ITS cooperation and coordination (action no 6)

42. Calls upon the Commission and the Member States to develop strong leadership and genuine governance towards the deployment of ITS in Europe;

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[1] OJ L 281, 23.11.1995, p. 31.
[2] OJ L 201, 31.7.2002, p. 37.

43. Encourages the promotion of the development of national and European multimodal door-to-door journey planners, taking due account of public transport alternatives, and their interconnection across Europe;

44. Urges the Commission to better use the EU capabilities from the Global Navigation Satellite System (GNSS) programmes EGNOS and Galileo and enhance multimodal interconnectivity;

45. Stresses, that these technologies should be applied in such a way as to avoid incompatibility between transport modes, and that there should be freedom of choice to use any of these technologies;

46. Calls on the Commission and the Member States to bear in mind that ITS should actively involve local and regional authorities and interested parties operating on European territory in the planning process and the implementation process;

47. Stresses the importance of public-private partnerships (PPP) in implementing ITS and calls on the Commission and the Member States to take active steps to promote and facilitate their use;

48. Calls on the Commission to provide a full explanation of the funding of the action plan and its programming and on the Council to secure sufficient funding;

49. Urges the Member States, in carrying out the mid-term review of structural fund utilisation, to assess and include among the priorities for 2010 - 2013 urban mobility and reduced traffic congestion to be achieved by means of ITS;

50. Points out the need for the significant potential of urban areas to be better defined and exploited, and highlights the role that rural and outlying areas can play in achieving balanced development and medium- and long-term objectives;

51. Considers that it is of vital importance to implement intelligent transport networks in areas with high tourist potential with a view to easing traffic flows, reducing accidents and increasing safety; considers that ITS contribute to the economic development of the regions including outlying regions;

52. Stresses the importance of inter-regional, cross-border and trans-national cooperation in developing and implementing ITS and urges the Commission to develop a system for exchange of good practice widely available in all EU languages, but urges the Member States to ensure that best practices are shared and exchanged among the regions themselves, with the dual objective of securing the transfer of ITS know-how and avoiding internal fragmentation within the system;

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53. Instructs its President to forward this resolution to the Council and the Commission, and to the governments and parliaments of the Member States.

Friday 24 April 2009

Women's rights in Afghanistan

P6_TA(2009)0309

European Parliament resolution on 24 April 2009 on women's rights in Afghanistan

(2010/C 184 E/11)

The European Parliament,

— having regard to its previous resolutions on Afghanistan, in particular that of 15 January 2009 on the budgetary control of EU funds in Afghanistan [1],

— having regard to the joint declaration issued by its Delegation for relations with Afghanistan and the Wolesi Jirga (the lower house of the Afghan Parliament) on 12 February 2009,

— having regard to the Final Declaration of the International Conference on Afghanistan held in The Hague on 31 March 2009,

— having regard to the NATO Summit Declaration on Afghanistan made by the Heads of State and Government participating in the meeting of the North Atlantic Council held in Strasbourg/Kehl on 4 April 2009,

— having regard to the Joint Statement on legislation in Afghanistan issued by the Foreign Ministers of the EU Member States and the United States on 6 April 2009,

— having regard to Rule 115(5) of its Rules of Procedure,

A. whereas Afghanistan is a party to a number of international agreements on human rights and fundamental freedoms, in particular the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Rights of the Child,

B. having regard to the Afghan Constitution of 4 January 2004, in particular Article 22 thereof, which stipulates that 'the citizens of Afghanistan, men and women, have equal rights and duties before the law', and whereas that article is consistent with the international treaties ratified by Afghanistan,

C. having regard to the Afghan Family Code, which, since the late 1970s, has contained a number of provisions which grant women rights in the areas of health and education, and whereas the Code is currently being revised in order to bring it into line with the 2004 Constitution,

D. whereas an Independent Human Rights Commission was set up in June 2002, on the basis of the Bonn agreement of 5 December 2001, and whereas the Commission, under the chairmanship of Sima Samar, plays a key role in defending human rights,

E. whereas the new draft law on the personal status of Shiite women, which was recently approved by both chambers of the Afghan Parliament, places severe restrictions on women's freedom of movement, denying them the right to leave their homes except for a 'legitimate purpose', requires women to submit to the sexual desires of their husbands, thus legitimising 'marital rape', and promotes forms of discrimination against women in the areas of marriage, divorce, inheritance and access to education which are not consistent with international human rights standards, in particularly standards regarding women's rights,

[1] Texts Adopted, P6_TA(2009)0023.

Friday 24 April 2009

F. whereas this draft law, which would affect between 15 and 20 % of the Afghan population, has yet to come into force, since it has not yet been published in the Government Official Journal, although it has already been signed by the President of Afghanistan, Hamid Karzai,

G. whereas, following the criticism it prompted both in Afghanistan and abroad, this draft law has been referred back to the Afghan Ministry of Justice so that the conformity of the text with the undertakings given by the Afghan Government in international agreements on women's rights and human rights in general and in the Constitution can be verified,

H. whereas violence against activists, particularly those defending women's rights, continues to this day, and whereas many activists have been the victims of militants and radical groups, these victims include Sitara Achakzai, an Afghan women's rights defender and member of the Kandahar provincial council, who was killed outside her home; Gul Pecha and Abdul Aziz, who were killed after being accused of immoral acts and condemned to death by a council of conservative clerics; and Malai Kakar, the first woman police officer in Kandahar, who ran the police department responsible for investigating crimes against women in that city,

I. whereas the 23 year-old Afghan journalist Perwiz Kambakhsh was sentenced to death for circulating an article about women's rights under Islam, and whereas, after strong international protests, that sentence was commuted to 20 years' imprisonment,

J. whereas threats and intimidation against women who are active in public life or who work outside the home continue to be reported and confirmed by the UN; and whereas there have been recent reports about the difficulties in increasing the participation of girls in the education system, which is opposed by militants and radicals,

K. whereas a number of cases have been reported in recent years of young women who have deliberately set themselves on fire in order to escape forced marriages or conjugal violence,

1. Calls for the revision of the draft law concerning the personal status of Shiite women in Afghanistan, since it is clear that the substance of that draft law is not consistent with the principle of equality between men and women, as laid down in the Afghan Constitution and in international agreements;

2. Underlines the dangers of adopting legislation which applies only to certain sections of the population and which, by definition, promotes discrimination and injustice;

3. Urges the Afghan Ministry of Justice to repeal all laws which give rise to discrimination against women and which breach the international treaties to which Afghanistan is a party;

4. Regards it as essential for the democratic development of the country that Afghanistan should commit itself to safeguarding human rights in general, and women's rights in particular, given that women play a crucial role in the development of the country and must be able to enjoy their fundamental and democratic rights to the full; reiterates its support for the fight against all forms of discrimination, including on grounds of belief and gender;

5. Points out that the European Union's strategy document on Afghanistan for the period 2007-2013 identifies gender equality and women's rights as key aspects of Afghanistan's national development strategy;

6. Salutes the courage of and expresses its support for the Afghan women who demonstrated in Kabul against the new draft law; condemns the acts of violence perpetrated against them during those demonstrations, and calls on the Afghan authorities to guarantee their protection;

7. Condemns the murders of activists working to promote human rights and the emancipation of Afghan women, in particular the recent assassination of the regional parliamentarian Sitara Achikzai;

8. Is appalled to learn that the Afghan Supreme Court has upheld the 20-year prison sentence which Perwiz Kambakhsh received on a blasphemy charge and calls on President Karzai to pardon Mr Kambakhsh and authorise his release from prison;

9. Calls on the Afghan authorities, including local authorities, to take all possible steps to protect women against sexual violence and other forms of gender-related violence and to bring the perpetrators of such acts to justice;

10. Considers that the advances in the field of equality between men and women achieved as a result of the great efforts made in recent years should on no account be sacrificed to pre-electoral bargaining between parties;

11. Encourages women to stand in the presidential election to be held on 20 August 2009 and insists that Afghan women should be able to participate fully in the decision-making process and that they should also have the right to be elected and to be appointed to senior state positions;

12. Calls on the the Council, the Commission and the Member States to continue to raise the issue of the law on the personal status of Shiite women and any discrimination against women and children, emphasising that they are unacceptable and incompatible with the long-term commitment made by the international community to assisting Afghanistan in its rehabilitation and reconstruction efforts;

13. Calls on the Commission to provide funding and programming assistance directly to the Afghan Ministry of Women's Affairs and to promote gender mainstreaming in all its development policies in Afghanistan;

14. Calls on the United Nations Development Fund for Women (Unifem) to be especially vigilant;

15. Instructs its President to forward this resolution to the Council, the Commission, the Government and Parliament of the Islamic Republic of Afghanistan and to the President of the Independent Human Rights Commission.

Friday 24 April 2009

Support for the Special Court for Sierra Leone

P6_TA(2009)0310

European Parliament resolution of 24 April 2009 on support for the Special Court for Sierra Leone

(2010/C 184 E/12)

The European Parliament,

— having regard to its previous resolutions on this subject, including that of 6 September 2007 on the financing of the Special Court for Sierra Leone [1],

— having regard to the Cotonou Agreement between the European Community and the ACP countries, and the commitment by parties to the Agreement to peace, security and stability, respect for human rights, democratic principles and the rule of law,

— having regard to Rule 115(5) of its Rules of Procedure,

A. whereas the Special Court for Sierra Leone (SCSL) was established in 2000 by the United Nations and the Government of Sierra Leone pursuant to UN Security Council Resolution 1315 to bring to justice those who had committed serious violations of international humanitarian law, notably war crimes and crimes against humanity,

B. whereas the SCSL is setting a number of important precedents in international criminal justice in that it is the first international court to be funded by voluntary contributions, the first to be established in the country where the alleged crimes took place and, in the case of former Liberian President, the first to indict a sitting African head of state for war crimes and crimes against humanity,

C. whereas the mandate of the SCSL will end in 2010, and the Government of Sierra Leone has indicated that it is not in a position to enforce the sentences of the persons convicted by the SCSL,

D. whereas the enforcement of sentences is an essential element of international justice, which plays an important role as regards peace and the further development of the rule of law in the country,

E. whereas it is currently problematic, from a political, security and institutional perspective, for those convicted to serve their sentences in Sierra Leone itself,

F. whereas the SCSL has concluded agreements with states including UK, Sweden and Austria to ensure that some of the convicted persons serve their sentences in these countries, and whereas more agreements are needed to ensure that all persons already convicted, and those that are standing trial and may face convictions, actually serve their sentences,

G. whereas failure to find appropriate detention facilities for persons convicted of the most egregious crimes imaginable would seriously undermine the efforts of the international community to effectively implement the fight against impunity,

H. recalling that the fight against impunity is one of the cornerstones of the European Union's human rights policy and that the international community bears responsibility for supporting the accountability mechanisms put in place,

[1] OJ C 187 E, 24.7.2008, p. 242.

I. whereas other tribunals and courts, such as the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda are facing similar problems, and whether other international bodies such as the International Criminal Court, the Special Tribunal for Lebanon and the Extraordinary Chambers in the Courts of Cambodia are likely to face the same problem in the foreseeable future without a stronger commitment by states to support the enforcement of international justice,

J. whereas international courts and tribunals are all playing important roles for peace and justice in their respective regions, and each is committed to ensuring a lasting legacy and to contributing to the further development of the rule of law in the region in which the crimes were committed,

1. Welcomes the progress made by international courts and tribunals in bringing to trial those responsible for atrocities committed, and believes that these trials send a clear message to leaders around the world and to other war criminals that egregious human rights abuses will no longer be tolerated with impunity;

2. Calls on the Council and the Member States to find a solution together with the SCSL in order to ensure that the persons convicted serve their sentences, since without such a solution the effort of the SCSL and the credibility of the international community, including the Union, will be severely undermined;

3. Calls on all Member States to increase their contribution to the work of the international courts and tribunals as they seek to finalise a sustainable solution for the enforcement of sentences, whether by concluding agreements directly with the said institutions for the enforcement of sentences in the Member States' jurisdictions or by helping them to find alternative solutions to ensure the enforcement of sentences in the regions themselves;

4. Calls on the Member States and other international institutions to provide further financial assistance to the SCSL with a view to enabling those convicted by the SCSL to serve out their sentences in countries that have the capacity to enforce sentences in accordance with international standards but lack the financial means to do so;

5. Considers that a lack of assistance and support will put the work of international courts and tribunals at great risk as they will not be able to ensure that the persons convicted serve the sentences imposed;

6. Calls for a comprehensive study evaluating the work done by international criminal tribunals, drawing lessons from it and putting forward recommendations on how to improve their functioning and future financing;

7. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the EU Member States, the Special Court for Sierra Leone, the International Criminal Court, the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, the Extraordinary Chambers in the Courts of Cambodia, the Special Tribunal for Lebanon, the UN Security Council, the member states of the African Union and the Co-Presidents of the ACP-EU Joint Parliamentary Assembly.

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Humanitarian situation of Camp Ashraf residents

P6_TA(2009)0311

European Parliament resolution of 24 April 2009 on the humanitarian situation of Camp Ashraf residents

(2010/C 184 E/13)

The European Parliament,

— having regard to the Geneva Conventions and notably Article 27 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War,

— having regard to the Geneva Convention of 1951 relating to the Status of Refugees and the 1967 Protocol thereto,

— having regard to the Status of Forces Agreement between the US and Iraqi Governments, signed in November 2008,

— having regard to its resolution of 12 July 2007 on the humanitarian situation of Iraqi refugees [1] and its resolution of 4 September 2008 on executions in Iran [2], which include references to Camp Ashraf residents having legal status as protected persons under the Fourth Geneva Convention,

— having regard to Rule 115(5) of its Rules of Procedure,

A. whereas Camp Ashraf in Northern Iraq was established during the 1980s for members of the Iranian opposition group People's Mujahedin Organisation of Iran (PMOI),

B. whereas in 2003 US forces in Iraq disarmed Camp Ashraf's residents and provided them with protection, those residents having been designated 'protected persons' under the Geneva Conventions,

C. whereas in a letter dated 15 October 2008 the UN High Commissioner for Human Rights urged the Iraqi Government to protect Camp Ashraf residents from forcible deportation, expulsion or repatriation in violation of the non-refoulement principle, and to refrain from any action that would endanger their life or security,

D. whereas following the conclusion of the US/Iraqi Status of Forces Agreement, control of Camp Ashraf was transferred to the Iraqi security forces as of 1 January 2009,

E. whereas, according to recent statements reportedly made by the Iraqi National Security Advisor, the authorities intend gradually to make the continued presence of the Camp Ashraf residents 'intolerable', and whereas he reportedly also referred to their expulsion/extradition and/or their forcible displacement inside Iraq,

1. Urges the Iraqi Prime Minister to ensure that no action is taken by the Iraqi authorities which violates the human rights of the Camp Ashraf residents and to clarify the Iraqi government's intentions towards them; calls on the Iraqi authorities to protect the lives and the physical and moral integrity of the Camp Ashraf residents and to treat them in accordance with obligations under the Geneva Conventions, in particular by refraining from forcibly displacing, deporting, expelling or repatriating them in violation of the principle of non-refoulement;

[1] OJ C 175 E, 10.7.2008, p. 609.
[2] Texts adopted, P6_TA(2008)0412.

2. Respecting the individual wishes of anyone living in Camp Ashraf as regards his or her future, considers that those living in Camp Ashraf and other Iranian nationals who currently reside in Iraq having left Iran for political reasons could be at risk of serious human rights violations if they were to be returned involuntarily to Iran, and insists that no person should be returned, either directly or via a third country, to a situation where he or she would be at risk of torture or other serious human rights abuses;

3. Calls on the Iraqi Government to end its blockade of the camp, to respect the legal status of the Camp Ashraf residents as protected persons under the Geneva Conventions, and to refrain from any action that would endanger their life or security, i.e. to afford them full access to food, water, medical care and supplies, fuel, family members and international humanitarian organisations;

4. Calls on the Council, the Commission and the Member States, together with the Iraqi and US Governments, the UN High Commissioner for Refugees and the International Committee of the Red Cross, to work towards finding a satisfactory long-term legal status for Camp Ashraf residents;

5. Instructs its President to forward this resolution to the Council, the Commission, the Governments and Parliaments of the Member States, the UN High Commissioner for Refugees, the International Committee of the Red Cross, the Government of the United States of America and the Government and Parliament of Iraq.

Protection of the Communities' financial interests – Fight against fraud – Annual report 2007

P6_TA(2009)0315

European Parliament resolution of 24 April 2009 on the protection of the Communities' financial interests and the fight against fraud – Annual report 2007 (2008/2242(INI))

(2010/C 184 E/14)

The European Parliament,

— having regard to its resolutions on previous annual reports of the Commission and the European Anti-Fraud Office (OLAF),

— having regard to the report of 22 July 2008 from the Commission to the European Parliament and the Council entitled 'Protection of the Communities' financial interests – Fight against fraud – Annual report 2007' (COM(2008)0475), including annexes (SEC(2008)2300 and SEC(2008)2301) thereto,

— having regard to the OLAF Activity Report for 2007 ([1]), and to its second report of 19 June 2008 on the application of Council Regulation (Euratom, EC) No 2185/96 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities, as well as to the guidelines replacing the OLAF Vademecum,

— having regard to the Activity Report of the OLAF Supervisory Committee for the period from June 2007 to May 2008 ([2]),

— having regard to the European Court of Auditors' Annual Report on the Implementation of the Budget in the Financial Year 2007 ([3]),

— having regard to Articles 276(3) and 280(5) of the EC Treaty,

([1]) http://ec.europa.eu/atwork/synthesis/aar/doc/olaf_aar.pdf.
([2]) http://ec.europa.eu/anti_fraud/reports/sup-com_en.html.
([3]) OJ C 286, 10.11.2008, p. 1.

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— having regard to Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 amending Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities [1],

— having regard to Rule 45 of its Rules of Procedure,

— having regard to the report of the Committee on Budgetary Control and the opinions of the Committee on Regional Development and the Committee on Agriculture (A6-0180/2009),

Amount of irregularities notified

1. Welcomes the inclusion of a chapter on direct expenditure, but stresses that it expects it to be further improved with more comprehensive data in the following reports;

2. Reiterates its call for the annual reports for the protection of the Communities' financial interests (annual PIF reports) and the corresponding resolutions by Parliament to be included on the Council's agenda, and for the Council subsequently to forward its observations to Parliament and the Commission; is deeply disappointed that the Council has not done yet done so, despite the call by Parliament and the insistence of the Commission;

3. Notes that in the areas of own resources, agricultural expenditure, structural actions and direct expenditure, irregularities notified in 2007 totalled EUR 1 425 million (compared to EUR 1 143 million in 2006); the amounts notified by the Member States to the Commission in 2007 can be broken down as follows:

— Own resources: EUR 377 million (EUR 353 million in 2006),

— Agricultural expenditure: EUR 155 million (EUR 87 million in 2006),

— Structural actions: EUR 828 million (EUR 703 million in 2006),

— Pre-accession funds: EUR 32 million (EUR 14 million in 2006),

— Direct expenditure: EUR 33 million;

4. Welcomes the fact that after last year's parliamentary report, the Commission has defined the differences between an irregularity and fraud in its report; however, the definition of 'suspected fraud' still causes difficulties for the Member States;

General considerations

5. Welcomes the efforts already made by the Member States but stresses once again that they should ensure the adequacy of their financial control mechanisms and emphasises the importance of preventive action by the Member States in order to increase the detection of irregularities before any payment is effectively made to the beneficiaries; underlines the fact that fighting fraud and corruption is an ongoing responsibility of all Member States and also that a concerted effort is needed in order to achieve real improvements;

6. Emphasises the need for greater harmonisation of methods for collecting and using information, with the aim of providing a standardised framework for evaluating more efficiently the risk of fraud as part of an intensified prevention strategy;

[1] OJ L 390, 30.12.2006, p. 1.

7. Welcomes the national management declarations issued by some Member States regarding European funds managed at national level; calls on the other Member States to carry out similar initiatives, and on the Commission to do all in its power to ensure that such national management declarations are introduced throughout the European Union;

Own resources

8. Notes that the estimated amount affected by irregularities rose by 6 %; the products most affected by irregularities were, as in previous years, televisions and cigarettes;

9. Deplores the delay in adopting the proposal for a regulation on mutual administrative assistance for the protection of the financial interests of the European Community against fraud and any other illegal activities (COM(2006)0473) and therefore invites the Council promptly to adopt the regulation;

10. Welcomes the fact that, following its Communication concerning the need to develop a co-ordinated strategy to improve the fight against fiscal fraud (COM(2006)0254), the Commission adopted a Communication on a coordinated strategy to improve the fight against VAT fraud (COM(2007)0758), and follows with special attention both the Commission proposal for a Council directive concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (COM(2009)0028) and the Commission proposal for a Council directive on administrative cooperation in the field of taxation (COM(2009)0029);

11. Insists that new political impetus is needed in order to achieve substantial improvements in cooperation in the fight against VAT fraud;

12. Deplores the fact that since OLAF has no access to the content of the data exchange between the Member States under Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax [1], it cannot provide added value in the field of anti-VAT fraud intelligence, prevention and support of Member States' anti-fraud operations; regrets in this context the fact that OLAF had no case on VAT fraud in 2007;

13. Reminds Member States to be aware of the considerable number of transnational VAT fraud cases;

14. Regrets the increase in cases of fraud involving the origin of products, relating not only to the preferential tariff arrangements, but also to the GATT tariff quotas;

15. Invites the Commission to undertake a specific assessment of the potential for fraud, by product and by country, taking into consideration the possibility of carrying out systematic, targeted and, where appropriate, permanent, checks both in the country of origin and the country of destination, paying particular attention to the phenomenon of carousel fraud;

Agricultural expenditure

16. Recalls that as from 1 January 2007, Member States are obliged to inform the Commission of irregularities involving more than EUR 10 000, the threshold introduced by Commission Regulation (EC) No 1848/2006 of 14 December 2006 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organisation of an information system in this field [2]; observes that the number of cases of irregularities reported was down 53 % (1 548 cases, compared to 3 294 in 2006); points out that this relatively low number of irregularities can be explained by the higher threshold for reporting;

[1] OJ L 264, 15.10.2003, p. 1.
[2] OJ L 355, 15.12.2006, p. 56.

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17. Notes that the estimated amount affected rose by 44 %, an increase relating in part to cases with a significant financial impact which arose or were discovered in previous years, but were reported only in 2007; notes that the sectors most affected were milk and milk products, fruit and vegetables, sugar, rural development, beef and veal;

18. Points out that the milk, fruit and vegetable, sugar and rural development sectors taken together account for about 77 % of the total amount of irregularities and that rural development represents alone about 38 % of all irregularities reported; further notes that the highest amount in irregularities within rural development is reported for the support measure 'forestry' and the highest number of irregularities is reported for the support measure 'agri-environment'; therefore asks OLAF to pay special attention in its next annual report to the irregularities affecting rural development;

19. Points out that the reporting compliance rates, in particular timely reporting, vary greatly between Member States; deplores that for Austria and Sweden the time gap between the detection and the reporting of the irregularities is far beyond the average time gap (1,2 years): 3,4 and 2,3 years respectively;

20. Agrees with the statement of the European Court of Auditors (ECA) at paragraph 5.20 of its above-mentioned annual report that the Integrated Administration and Control System (IACS) continues to be an effective control system which limits the risk of irregular expenditure where properly implemented and if accurate and reliable data are entered into it; advocates extending the application of the system into new areas presently not covered by it; notes however that the quantity and quality of the checks made under it should be stepped up in order to reinforce fraud deterrence;

21. Calls on the Commission to take a firm political decision should the Greek authorities fail to comply with the deadlines set by the action plan for setting up a new operational Land Parcel Identification System-Geographical Information System;

22. Reiterates its call on the Commission to evaluate the efficiency and transparency of monitoring systems relating to payment of farmers in the context of its next annual report;

Structural actions

23. Welcomes the simplified and clarified rules of Council Regulation (EC) No 1083/2006 [1] and the implementing Commission Regulation (EC) No 1828/2006 [2]; however, is concerned by the statement of the ECA at paragraph 6.31 of its above-mentioned annual report that the management and supervisory systems of the Member States as well as the supervision of their operation by the Commission are only partially effective;

24. Acknowledges that irregularities in the use of EU funds relating to mismanagement and sometimes even fraud occur in a large number of Member States; notes that the Member States reported 3 832 irregularities in 2007 (which is an increase of 19.2 % in relation to 2006), that the total financial amount affected in 2007 was about EUR 828 million (equivalent to slightly less than 1.83 % of commitment appropriations), that suspected frauds as a percentage of the total number of reported irregularities represent around 12-15 % in 2007 and that the total irregular amount for the European Regional Development Fund has risen by 48 % in comparison to 2006;

25. Stresses the importance of the Action Plan adopted by the Commission on 19 February 2008 to strengthen supervision under shared management for structural actions, which aims to reduce errors in payment claims from Member States; is confident that this new Action Plan will significantly improve the situation, not least by assisting Member States in developing their ability to check the eligibility of project expenditure; notes that the first progress report relating to this Action Plan presents some positive initial results;

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[1] Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund (OJ L 210, 31.7.2006, p. 25).

[2] OJ L 371, 27.12.2006, p. 1.

26. Endorses the Commission's position in taking corrective action in the event of the detection of irregularities of a serious nature, including the suspension of payments and the recovery of undue or erroneous payments; recalls that the Commission should report four times a year on the progress achieved in the implementation of its Action Plan; nevertheless, calls on the Commission to intensify its efforts to support the Member States in preventing irregularities and transferring the necessary expertise to the competent national and regional authorities;

27. Welcomes the quality of the results achieved in virtually all projects and, in order not to adversely affect the monitoring and proper implementation of the Structural Funds, emphasises the need to draw a distinction between:

— administrative irregularities that must be corrected,

— fraud (that is, 0.16 % of payments made by the Commission between 2000 and 2007) that must be punished;

28. Acknowledges that effective absorption of the Structural Funds has posed significant challenges, especially for the new Member States, as they are called upon to comply with strict and often complex requirements for their utilisation; welcomes, therefore, the efforts made by these Member States to improve their implementation capacity and invites them to step up that work so as to be able to show tangible results within an acceptable timeframe;

29. Calls on the Commission to take account of the administrative cost borne by Member States' national, regional and local administrations in applying the often complex and expensive requirements involved in monitoring and checking co-financed projects;

30. To this end, calls on both the Commission and the Member States to work methodically to provide advice on ways of avoiding irregularities and administrative errors and failings;

31. Urges the Commission to simplify further the management and monitoring procedures of the Structural Funds programmes, which are to some extent responsible for irregularities on the part of the Member States in the implementation of these programmes;

32. Is shocked by the lack of reporting discipline of the Member States after a number of years; finds it unacceptable that six Member States ([1]) still do not use electronic reporting, 14 ([2]) failed to comply with the reporting deadlines and some ([3]) did not classify any of their reported cases of irregularities; urges the Commission to find effective solutions, besides infringement proceedings, to address the situation, and invites the Commission to seriously consider establishing an effective financial sanctions system to be integrated in the future regulations, and to implement it systematically;

33. Stresses that the classification of the irregularity (indicating whether or not it is a case of suspected fraud) is an element of the reporting by the Member States that needs to be strengthened, given that various Member States have yet to provide any classification at all and other Member States have only been able to provide the classification for a limited part of their reported irregularities;

34. Urges the Member States who do not yet use the electronic modules AFIS/ECR for electronic reporting to do so quickly in order to improve their data quality and timeliness of reporting before the end of 2009; notes that the Commission is working on a new web based reporting system, the Irregularity Management System (IMS), to be applied from summer 2009, which will presumably improve reporting discipline;

([1]) France, Ireland, Sweden, Spain, Latvia and Luxembourg; since November 2008 the situation has improved, with Germany and Estonia using an electronic file and no paper notification.
([2]) Timely reporting is especially a problem in Spain, France and the Netherlands.
([3]) Spain, France, Ireland and Luxembourg.

35. Advocates that more efforts need to be undertaken in view of an improved harmonisation of reporting of irregularities, especially as regards the Cohesion Fund;

36. Regrets that notwithstanding the fact that the details of all beneficiaries of EU cohesion policy have to be published by the Managing Authorities under the rules governing the implementation of the Structural Funds 2007-2013 (Commission Regulation (EC) No 1828/2006), the database on the Commission website is incomplete; calls, therefore, on the Commission to work together with the Member States to speed up the flow of information with a view to the operation of a more effective and transparent database; urges, moreover, the Member States and the Commission to comply fully and timeously with this transparency obligation and in particular before June 2009 - the deadline set by Parliament's resolution of 19 February 2008 on transparency in financial matters ([1]);

37. Supports in the framework of the proposed revision of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) ([2]) the request to Member States that they systematically inform OLAF of the follow-up of those cases which were transmitted by OLAF; points out that this could improve the reporting discipline of national courts' judgments on the fraudulent use of Structural Funds;

Pre-accession funds

38. Calls attention to the fact that although the number of irregularities decreased, their financial impact increased by 2,2 times, and the financial impact of suspected fraud increased by three times, largely due to 'non-eligible' expenditures;

39. Notes that the Commission has published a series of detailed, in-depth reports critically assessing the progress in Bulgaria and Romania of judicial reform and the fight against corruption under the Co-operation and Verification mechanisms and a separate report on the management of Community funds in Bulgaria, which highlight the need for sustained political commitment and implementation on the ground if the benchmarks set at the time of accession are to be met in full; notes also that in the case of Bulgaria the Commission has definitively suspended part of the EU funds under the Phare programme because of irregularities discovered through its control and auditing system; therefore calls upon these Member States to take urgent action to implement the specific follow up measures proposed in these reports; finally, supports the efforts so far made by these Member States and calls on them to take all the necessary measures to that end;

40. Has reservations about the fact that according to OLAF there were no suspected fraud cases for ISPA in 2007; notes that Cyprus and Lithuania did not report any cases in 2007;

41. Stresses that the insufficient quality of reported information remains an outstanding problem; observes that reliability of reported information is the worst in Bulgaria and Romania; however, in relative terms Hungarian notifications are the least reliable; notes that timely reporting also causes problems, in particular, in four Member States and in one candidate country ([3]);

42. As there are serious problems with the reliability of reported information and the general compliance rate of the requirements in some EU-12 Member States (that is, the Member States having acceded to the European Union in 2004 and in 2007), which indicates whether the administrative set-up of the reporting mechanism in the beneficiary country is strong or very weak, believes that there will be similar problems concerning the implementation of the Structural and Cohesion Funds; therefore urges the Member States concerned to cooperate with the Commission to find ways to remedy this situation;

Direct expenditure

43. Points out that external aid is a sector which is increasingly affected by irregularities and fraud;

([1]) Texts adopted, P6_TA(2008)0051.
([2]) OJ L 136, 31.5.1999, p. 1.
([3]) Croatia, Hungary, Slovakia, Bulgaria and Poland missed the reporting deadlines.

44. Is concerned about the findings of the OLAF Annual Activity Report, according to which in the external aid area OLAF investigators often encounter a modus operandi typical of organised fraud due to shortcomings in coordination between the different international donor organisations;

45. Requests the Commission to pay attention to the problem of double financing of projects; in particular, requests the Commission, when concluding or amending agreements on the management and implementation of projects by international organisations, to send systematically all their internal and external audits on the use of Community funds to the ECA and to the Internal Auditor of the Commission;

Recoveries

46. Regrets that recovery rates are still low, especially in sectors where Member States manage recoveries; points out that, according to the OLAF report, currently about EUR 3,75 billion in recoveries are still pending;

47. Supports the fact that the recovered amounts stay in the same budget line from where they were unduly paid out;

48. Welcomes the publication of the new central exclusion database for recipients of Community funds who have committed fraud ([1]); points out that it has been operational since 1 January 2009, and asks the Commission for an evaluation report by the beginning of 2010;

49. Points out that a faster and more appropriate recovery procedure is needed; therefore reiterates its call on the Commission to include binding and precautionary elements in future legislation concerning shared management so that irregular payments can be recovered at the end of the recovery procedure;

50. Requests the Commission to explore the possibility of introducing a system of surety, such as by putting a certain amount into a reserve or earmarking it, to speed up the recovery of outstanding amounts;

OLAF's relationship with Europol and Eurojust

51. Notes with satisfaction the signature by Eurojust and OLAF on 24 September 2008 of a Practical Agreement on arrangements of cooperation ([2]) governing modalities for close and increased cooperation and provisions for the exchange of general and personal data; supports the conclusion of a similar agreement with Europol;

52. Feels that it is crucial to create a solid basis for operational and intelligence synergies with Eurojust and Europol, for example by means of a common operational and intelligence team, as this would certainly bring added value to the fight against fraud;

53. Points out also that the currently overlapping competencies of these bodies should be clarified;

OLAF's cooperation with Member States

54. Supports the major aim of the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/1999 concerning investigations conducted by the European Anti Fraud Office (OLAF) (COM(2006)0244) of strengthening OLAF's independence; recalls, however, the importance of interlinking the work and results of OLAF, the Commission's services and the Member States' authorities by effective communication channels avoiding duplication of work and lack of information;

([1]) OJ L 344, 20.12.2008, p. 12.
([2]) OJ C 314, 9.12.2008, p. 3.

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55. Points out that OLAF is the only authority to exercise all the powers of investigation to fight against and to prevent fraud, corruption and any other illegal activity detrimental to the general budget of the EU; therefore stresses that especially in relation to Structural Funds and External Aid with the highest irregularities reported, OLAF's investigative function should be further strengthened;

56. Points out that 'follow-up' cases have steadily increased since 2003, and that in 2007 OLAF cases were mainly closed with financial recovery or judicial follow-up recommendations; concludes that this means that OLAF's investigation results are positive for the Member States and the EU institutions;

57. Notes that OLAF's recommendations are not binding, so that national authorities take the relevant decisions and impose sanctions independently; believes that the establishment of a European Public Prosecutor's office would help to overcome difficulties arising from the cross-border nature of cases;

58. Stresses the need for streamlining legal instruments, since the definitions of fraud, suspicions of fraud and other irregularities are scattered across a number of different legal instruments, in spite of repeated calls by Parliament for a recast of the anti-fraud rules;

59. Notes the qualification problem of Member States in applying Articles 4 and 5 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests ([1]); considers that in case of ambivalence, national courts should ask the Court of Justice for a preliminary ruling;

60. Welcomes the publication of the above-mentioned second report of OLAF on on-the-spot checks and inspections outlining good practices for each stage of checks, as well as the new version of the OLAF Vademecum (guidelines); requests the Commission to send Parliament's competent committee the updated and comprehensive version of OLAF's manual by September 2009;

61. Advocates the need for clearer provisions on procedures and binding time limits for competent authorities in providing the assistance required and generally more binding provisions for cooperation identifying the national authority competent to provide assistance; insists, with a view to solving this problem, on the usefulness of its position of 20 November 2008 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) ([2]);

62. Requests the Commission to take appropriate measures, including infringement proceedings, against those Members States which do not assist its services in carrying out on-the-spot checks as provided for by Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities ([3]);

63. Notes that since extensive judicial follow-up of cases has been observed but admissibility of evidence - by the national courts - collected by OLAF is very limited, the aim is to improve the judicial support for the investigative function of OLAF; considers moreover that Eurojust should be informed when information or final case reports are transmitted to the judicial authorities if they concern serious forms of transnational crime and two or more Member States are involved;

64. Reminds the Commission of Parliament's request to include in the 2008 PIF Report an analysis of the Member States' structures involved in combating irregularities;

65. Deplores the inadequate notification by Member States of action taken on information or final case reports transmitted by OLAF; requests the Member States to ensure that their competent authorities forward a report to OLAF on progress made in acting on the information or recommendations forwarded to them by OLAF;

([1]) OJ L 312, 23.12.1995, p. 1.
([2]) Texts adopted, P6_TA(2008)0553.
([3]) OJ L 292, 15.11.1996, p. 2.

66. Notes that the national audit authorities have considerable competencies in audits regarding EU-funds and they provide the first source of information for both national prosecution authorities and EU institutions; believes therefore that maximising the cooperation and information flow between audit authorities, national prosecution authorities and OLAF would further strengthen the protection of the Communities' financial interests;

67. Notes that according to its above-mentioned position of 20 November 2008 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF), Member States shall systematically inform OLAF on the follow up of those cases which were transmitted by OLAF to them, therefore asks OLAF to report on this issue in its next annual report;

68. Points out that the anti-Fraud coordination service (AFCOS) for OLAF in the Member States which acceded to the EU after 2004 are very important information/contact points for OLAF; however points out that so long as these offices are not independent from the national administration, their functional added value is minimal (especially concerning reporting of irregularities to the Commission); therefore invites the Commission to make a proposal to Parliament's competent committee about making the work of these offices more valuable and also considers it necessary to improve collaboration with the candidate countries;

Tobacco - Agreement with Philip Morris

69. Regrets that the Commission was unable to provide a comprehensive report on the follow-up to Parliament's resolution of 11 October 2007 on the implications of the agreement between the Community, Member States and Philip Morris on intensifying the fight against fraud and cigarette smuggling and progress made in implementing the recommendations of Parliament's Committee of Inquiry into the Community Transit System [1], and in particular paragraph 49 thereof, which explicitly asked the Commission to publish such a report by the end of 2008; expects that the Commission will come forward with this report before the end of the discharge procedure for the financial year 2007;

70. Cannot accept that, whereas under the Philip Morris and Japan Tobacco agreements the Community received USD 1,65 billion for the fight against fraud, instead of setting up a common approach, the Commission sent some 90 % of this money un-earmarked straight to the Ministers of Finance of the Member States; calls on the Council and the Commission to set up a tripartite working group with Parliament to find adequate solutions to make wise and better use of this and similar income of the Union; finds it unacceptable that in times of economic downturn billions of Euro of fines, paid by major companies who violated European competition rules to the detriment of European consumers, are not used by the Union to stimulate the economy to the benefit of the unemployed and /or to help developing countries who will suffer most under the crisis, but instead are simply sent to the national treasuries;

Organised crime

71. Welcomes the publication of the Commission Communication of 20 November 2008 on proceeds of organised crime (COM(2008)0766), which deals with the confiscation and recovery of crime, and agrees with the Commission that confiscation is one of the most effective ways to fight organised crime and that measures should be put in place in order to increase the limited number of confiscation cases and the modest amounts recovered;

72. Underlines that it is essential to have in place expedient and effective mechanisms to freeze and confiscate assets abroad and therefore a recasting of the existing EU legal framework should be considered; stresses that Council Decision 2007/845/JHA should be implemented, as a matter of urgency, in order to ensure that all Member States set up or designate Asset Recovery Offices (AROs);

73. Reiterates its call on the Commission to provide Parliament with a detailed analysis of the system or systems used by organised crime to undermine the Communities' financial interest; finds the yearly Europol Organized Crime Threat Assessment (OCTA) useful, but not sufficient in this respect;

[1] OJ C 227 E, 4.9.2008, p. 147.

74. Deplores the fact that the Convention on the Protection of the European Communities' Financial Interests of 1995 and its protocols of 1996 and 2007 have still not been ratified by the Czech Republic, Hungary, Malta and Poland, that one of the two protocols has not been ratified by Estonia and Italy and that in seven Member States the transposition of the provisions has shortcomings;

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75. Instructs its President to forward this resolution to the Council, the Commission, the Court of Justice, the European Court of Auditors, the OLAF Supervisory Committee and OLAF.

Parliamentary immunity in Poland

P6_TA(2009)0316

European Parliament resolution of 24 April 2009 on parliamentary immunity in Poland (2008/2232(INI))

(2010/C 184 E/15)

The European Parliament,

— having regard to Articles 9 and 10 of the Protocol of 8 April 1965 on the Privileges and Immunities of the European Communities,

— having regard to Article 12(3) of the Act of 20 September 1976 concerning the election of the members of the European Parliament by direct universal suffrage,

— having regard to Article 105 of the Constitution of the Republic of Poland of 2 April 1997,

— having regard to Article 7b of the Polish Law of 9 May 1996 on the performance of the mandate of deputy or senator,

— having regard to Articles 9 and 142 of the Polish Law of 23 January 2004 on elections to the European Parliament,

— having regard to its resolution of 23 June 2005 on the amendment of the decision of 4 June 2003 on the adoption of the Statute for Members of the European Parliament [1],

— having regard to Rules 6, 7 and 45 of its Rules of Procedure,

— having regard to the report of the Committee on Legal Affairs (A6-0205/2009),

A. whereas, in the current parliamentary term, Parliament and its Committee on Legal Affairs, as the committee responsible, have considered requests for waiver of the immunity of Members elected in Poland and have come up against certain difficulties in the interpretation of provisions of law that might be applicable in the case of those Members,

[1] OJ C 133 E, 8.6.2006, p. 48.

B. whereas the responsible committee has been called upon, in particular, to decide on the admissibility of requests for waiver of immunity made directly by private persons to the President of the European Parliament; whereas under Polish law a private person has the right to make a direct request to the Polish Parliament (*Sejm* or *Senat*) to waive the immunity of one of its Members in the case of offences that may be the subject of a private prosecution, and whereas the relevant provisions of Polish law do not seem clearly to take account of all possible scenarios in the case of criminal proceedings relating to offences subject to private prosecution,

C. whereas those provisions also apply to Members of the European Parliament elected in Poland, yet the admissibility of such requests raises difficult questions having regard to the Rules of Procedure, and in particular Rule 6(2) which refers to the 'competent authority',

D. whereas under Rule 7(7) of the Rules of Procedure the responsible committee is competent to verify the admissibility of a request for waiver of immunity, including the question of the competence of the national authority to submit such a request; whereas, however, under the existing provisions the manifest conflict in this regard between the relevant provisions of Polish law and the Rules of Procedure would have to be resolved by regarding as inadmissible requests for waiver of immunity submitted by private persons,

E. whereas the purpose of Rule 6(2) is to guarantee that Parliament receives only requests in proceedings that have received the attention of the authorities of a Member State; whereas it also guarantees for Parliament that requests for waiver of immunity which are received by it comply with national law as regards both substance and procedure, which in turn serves as a further guarantee that, in reaching its decision in its procedures on immunities, Parliament observes both the national law of a Member State and its own prerogatives; whereas the concept of 'authority' is clearly referred to in other provisions of Rules 6 and 7 in the context of the procedures on immunity,

F. whereas to regard requests for waiver of immunity made by private persons as inadmissible would be unsatisfactory in that it could interfere with their rights in judicial proceedings and preclude prosecutors of some offences from being able to request waiver of immunity; whereas this could be regarded as giving rise to unjust and unequal treatment of applicants,

G. whereas, however, it should be for the Member States to make provision for the exercise of such rights with regard to Members of the European Parliament in the light of the rules and procedures governing its functioning,

H. whereas, by letters of 29 September 2004 and 9 March 2005, 25 Member States were invited, pursuant to Rule 7(12), to indicate which authorities are competent to present a request for waiver of a Member's immunity; whereas to date only Austria, Belgium, the Czech Republic, Cyprus, Denmark, Estonia, Finland, Germany, Greece, Hungary, Italy, Lithuania, the Netherlands, Portugal, Slovenia, Sweden and the UK have responded,

I. whereas in its debates the responsible committee also addressed the question of the possible consequences of a waiver of immunity in the case of Members of the European Parliament elected in Poland,

J. whereas, in the event that the Member is found guilty by the court and punished for an intentional offence prosecuted by public prosecution, such waiver might result in the automatic loss of his or her eligibility, which would result in turn in the Member losing his or her seat,

K. whereas this automatism amounts, *de facto*, to an additional penal sanction being adjudged together with conviction,

L. whereas in practice even minor offences might result in a loss of eligibility, despite the requirement that in order for an offence to give rise to ineligibility it must be both publicly prosecuted and committed intentionally,

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M. whereas there is no equivalent provision applicable to Members of the Polish *Sejm* or *Senat*, who do not cease to be eligible for election in such cases,

N. whereas Member States are free to make a provision for the withdrawal of the mandate of a Member of the European Parliament where, as a result, the seat of the Member falls vacant; whereas, however, the principle of equal treatment, as one of the basic principles of EU law, requires that similar situations be treated in similar ways and there is an apparent differentiation in treatment of the Members of Polish *Sejm* and *Senat*, on the one hand, and Members of the European Parliament elected in Poland, on the other, when it comes to loss of eligibility; whereas that loss of eligibility results directly and automatically in the Member concerned losing his or her seat and prevents him or her from being re-elected,

O. whereas this inequality of treatment was brought to the Commission's attention by an oral question presented on behalf of the Committee on Legal Affairs by its Chairman and was debated in the European Parliament; whereas, notwithstanding this, the legal situation remains as it was,

P. whereas equal treatment of Members of the national parliament and Members of the European Parliament should be secured as soon as possible, particularly in view of the coming elections in 2009,

1. Encourages the Commission to look at the discrepancies between the legal situation of Members of the European Parliament elected in Poland and that of Members of the Polish *Sejm* and *Senat*, and to engage as a matter of urgency in contacts with the competent authorities in Poland with a view to identifying how to eliminate the manifest discrimination between the Members of the two Parliaments as regards their eligibility;

2. Separately asks the Republic of Poland to review the current situation in which conditions of eligibility and loss of mandate of Members of two parliamentary assemblies are clearly unequal, and to take steps to put an end to this discriminatory treatment;

3. Calls on the Commission to carry out a comparative study designed to ascertain whether discrepancies in treatment of Members of national parliaments and Members of the European Parliament exist in the Member States which acceded to the European Union on or after 1 May 2004, and to communicate the results of that study to Parliament;

4. Calls on the Member States to respect the rights deriving from EU citizenship, including the right to vote and stand as a candidate in elections to the European Parliament, which is of particular importance in the run-up to the 2009 elections, including the principle of equal treatment of persons in a similar situation;

5. Requests the Member States, and in particular the Republic of Poland, to ensure that procedural measures are put in place in order to ensure that requests for waiver of the immunity of Members of the European Parliament are always transmitted by the 'competent authority' in accordance with Rule 6(2) of the Rules of Procedure in order to guarantee observance of provisions of substantive and procedural national law, including the procedural rights of private persons, as well as Parliament's prerogatives;

6. In order to avoid any doubt, invites the Member States to indicate to Parliament the authorities which are competent to present requests for waiver of a Member's immunity;

7. Reiterates the need for a uniform Statute for Members of the European Parliament and recalls, in this context, the commitment made on 3 June 2005 by the representatives of the Member States meeting within the Council to examine the request by Parliament for a revision of the relevant provisions of the 1965 Protocol on the privileges and immunities of the European Communities as regards the part thereof relating to Members of the European Parliament, in order to reach a conclusion as soon as possible;

8. Instructs its President to forward this resolution to the Council, the Commission, the Court of Justice of the European Communities, the European Ombudsman and the governments and parliaments of the Member States.

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Governance within the CFP

P6_TA(2009)0317

European Parliament resolution of 24 April 2009 on Governance within the CFP: the European Parliament, the Regional Advisory Councils and other actors (2008/2223(INI))

(2010/C 184 E/16)

The European Parliament,

— having regard to Council Regulation (EC) 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy [1],

— having regard to Council Regulation (EC) 657/2000 of 27 March 2000 on closer dialogue with the fishing sector and groups affected by the common fisheries policy [2],

— having regard to Commission Decisions 71/128/EEC, 1999/478/EC and 2004/864/EC,

— having regard to Commission Decision 93/619/EC, renewed in 2005 by Commission Decision 2005/629/EC,

— having regard to Commission Decisions 74/441/EEC and 98/500/EC,

— having regard to Council Decision 2004/585/EC of 19 July 2004 establishing Regional Advisory Councils under the Common Fisheries Policy [3] as amended by Council Decision 2007/409/EC of 11 June 2007 [4],

— having regard to the Communication from the Commission of 17 June 2008 on the review of the functioning of the Regional Advisory Councils (COM(2008)0364),

— having regard to Rule 45 of its Rules of Procedure,

— having regard to the report of the Committee on Fisheries (A6-0187/2009),

A. whereas institutional governance of the Common Fisheries Policy (CFP) involves the Commission, the European Parliament, the Council, the Committee of the Regions, the European Economic and Social Committee, the Advisory Committee on Fisheries and Aquaculture (ACFA), the Scientific, Technical and Economic Committee on Fisheries (STECF), the Sectoral Social Dialogue Committee for Sea Fisheries (SSDC) and the Regional Advisory Councils (RACs),

B. whereas the governance of the CFP also involves the national and regional administrations of the Member States,

C. whereas the Community participates in various Regional Fisheries Organisations, and Fisheries Partnership Agreements are also concluded with third countries,

D. whereas, under the Treaty of Lisbon, Parliament would continue to be excluded from the setting of total allowable catches (TACs) and quotas,

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[1] OJ L 358, 31.12.2002, p. 59.
[2] OJ L 80, 31.3.2000, p. 7.
[3] OJ L 256, 3.8.2004, p. 17.
[4] OJ L 155, 15.6.2007, p. 68.

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E. whereas attendance of members of Parliament at meetings of Regional Fisheries Organisations is currently on an *ad hoc* basis,

F. whereas communication concerning the actual operation of Fisheries Partnership Agreements, including the activities of the Joint Monitoring Committees, could be more satisfactory,

G. whereas STECF was established in 1993, an Advisory Committee for Fisheries was established in 1971 and renamed the Advisory Committee on Fisheries and Aquaculture (AFCA) in 1999, and a Sectoral Social Dialogue Committee for Sea Fisheries was established in 1999, replacing a Joint Committee existing since 1974,

H. whereas all seven RACs are now operational,

I. whereas an Inter-RAC Committee has been established and holds co-ordination meetings with the Commission,

J. whereas the Commission has recently undertaken evaluations of AFCA and of the RACs but none so far of the work of STECF,

K. whereas the evaluation of AFCA has made a number of operational recommendations and suggested various options for its long term future,

L. whereas the evaluation of the RACs has been positive, but the Commission has identified a number of actions, not requiring new legislation, to improve their functioning,

M. whereas all parties are agreed that a stronger dialogue between scientists and fishermen is needed and the RACs have also called for better socio-economic input into decision-taking,

N. whereas certain RACs and members of Parliament have expressed a desire for a more formal relationship,

O. whereas increasing activity on the part of the RACs is hampered by limited funding and the Commission's excessively bureaucratic and inflexible approach to management and financial control regarding the funds allocated to them,

P. whereas the Commission has said that it will listen to the views of Parliament, the Council and the stakeholders before introducing new legal rules,

Q. whereas Commission representatives frequently fail to attend RAC working group meetings,

R. whereas there is, however, already evidence that increased compliance with the rules of the CFP results from the involvement of stakeholders in their creation and implementation,

S. whereas there is a multiplicity of different Community fisheries, each with its own characteristics,

T. whereas consultations are already taking place on the reform of the CFP,

U. whereas RAC recommendations are not always given proper attention, especially when they have not been approved unanimously by the executive committees,

1. Calls for members of its Fisheries Committee to be given observer status at meetings of the Council of Fisheries Ministers;

2. Calls for the Council, the Commission, and Parliament to complete the work required to reach a genuine agreement laying down standard forms of participation for members of Parliament's Committee on Fisheries in regional fisheries management organisations (RFMOs) and other international bodies whose meetings are given over to discussion of subjects affecting the Common Fisheries Policy (CFP), on the understanding that this should in no way detract from their present observer status at meetings for which such an arrangement has been agreed;

3. Also calls on the Council, in agreement with the Commission and Parliament, to allow members of Parliament's Committee on Fisheries to serve on the joint committees set up under Fisheries Partnership Agreements, to enable them to bring the necessary scrutiny to bear on those agreements; points out in addition that the entry into force of the Treaty of Lisbon will entail much greater responsibilities for Parliament, since partnership agreements will have to be approved by the assent procedure;

4. Points to the importance of ensuring that Commission representatives attend RAC working group and executive committee meetings more regularly;

5. Calls on the Commission to notify Parliament of all consultations that are taking place in relation to the CFP and maritime policy;

6. Calls on the Commission to engage in an evaluation of STECF;

7. Notes the outcome of the evaluation of AFCA and that the Commission is awaiting AFCA's own recommendations concerning:

— a clearer definition of its role and objectives, with a representative composition adequately reflecting them and genuinely representative, and improved participation by the newer Member States;

— its working methods in terms of the division of activity between plenary meetings and working groups, their number and remits, and their procedures;

— better formulation of the questions addressed to it;

— improvement of communication and information through use of electronic media, more direct access to data and improved facilities for translation and interpretation;

— adequacy of funding and the best means of sustaining support functions;

8. Stresses the importance of avoiding overlap, particularly with the work of RACs;

9. Points out that the fisheries sector is still not considered to have a sufficient say in the decisions affecting it; points to the differences, in terms of roles and operation, between the ACFA and RACs, inasmuch as the former performs an advisory role extending to the CFP as a whole and covers the entire Community area, whereas the role of RACs is to give specialised advice within their spheres of influence; accordingly considers that the coexistence of the different advisory bodies helps to make for compatibility with maritime and marine policy and integrated coastal zone management;

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10. Calls on the Commission to take the following actions in respect of RACs:

— increase their visibility and encourage participation by a wider range of stakeholders;

— improve their access to scientific evidence and data and liaison with STECF;

— involve them as early as possible in the consultation process;

— provide benchmarks to allow an assessment of the consistency of their advice with CFP objectives and to debrief them on the use made of it;

11. Considers that RACs are currently under-financed for the level of work that they are undertaking; notes that the Commission has issued guidelines concerning financial management but believes that further dialogue is necessary in this regard and that alternatives to the current system should be explored;

12. Believes that wider participation in RACs requires a review of their composition, but that the current balance between the fishing industry and other organisations should not be disturbed;

13. Expresses its disquiet at the fact that some organisations serving in RACs as 'other interest groups' repeatedly take advantage of their presence, even though they might be in the minority, to block decisions supported by a majority of fisheries sector representatives and obstruct decision-taking by consensus;

14. Calls for closer links between the RACs and Parliament, the Committee of the Regions and the European Economic and Social Committee;

15. Calls for technical and political decisions to be separated; political decisions should be taken as part of a regional approach and technical decisions as part of a scientific approach;

16. Requests its Committee on Fisheries, subject to the statutory approval procedures, to:

— appoint member(s) of the Committee as a liaison for each RAC and to report on its activities,

— ensure that at regular intervals and, in particular, when the agenda covers matters on which they are involved in giving advice or making recommendations, RACs are invited to participate in the Committee's work in order to present their advice or recommendations,

— establish a procedure to ensure that its secretariat and those of the RACs and the Inter-RAC Committee remain in regular contact for the purpose of exchanging and gathering information related to their activities, advice, and recommendations,

— host an annual conference involving the RACs and the Commission;

17. Calls on the budgetary authorities to allocate adequate funding for the above;

18. Asks the RACs to keep members of its Fisheries Committee informed of their activities, advice and recommendations and to invite their attendance at meetings;

19. Calls for any future legislation on RACs to afford members of Parliament formal status as active observers at their meetings;

20. Asks the Commission and the Inter-RAC Committee to agree to the attendance of members of Parliament's Fisheries Committee at their coordination meetings;

21. Stresses the importance of the CFP as a means of ensuring the existence of standards, principles and rules that are applicable across all Community waters and to all Community vessels;

22. Asks the Commission to fully accept and respect the advisory role of the RACs and to propose, with a view to the reform of the CFP, their increasing involvement in management responsibilities;

23. Believes also that the coming reform of the CFP should take full advantage of the consolidation of the RACs to achieve an increased decentralisation of the CFP, in order that common measures adopted may be applied in the different zones in line with the specific peculiarities of different fisheries and fishing conditions;

24. Instructs its President to forward this resolution to the Council, the Commission, the Regional Advisory Councils, the Advisory Committee on Fisheries and Aquaculture, the Scientific, Technical and Economic Committee, the Committee of the Regions and the European Economic and Social Committee, the Sectoral Social Dialogue Committee for Sea Fisheries and to the governments and parliaments in the Member States.

Facility providing mid-term financial assistance for Member States' balances of payments

P6_TA(2009)0327

European Parliament resolution of 24 April 2009 on establishing a facility providing medium-term financial assistance for Member States' balances of payments

(2010/C 184 E/17)

The European Parliament,

— having regard to the Commission's proposal of 8 April 2009 for a Council regulation amending Regulation (EC) No 332/2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments (COM(2009)0169),

— having regard to Council Regulation (EC) No 332/2002 of 18 February 2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments [1], and Parliament's position of 6 September 2001 on the proposal for a Council regulation establishing a facility providing medium-term financial assistance for Member States' balances of payments [2],

— having regard to its position of 20 November 2008 [3] on the proposal for a Council regulation amending Regulation (EC) No 332/2002 and its resolution of the same day on establishing a facility providing medium-term financial assistance for Member States' balances of payments [4],

— having regard to Articles 100 and 119 of the EC Treaty,

— having regard to Rule 103(2) of its Rules of Procedure,

[1] OJ L 53, 23.2.2002, p. 1.
[2] OJ C 72 E, 21.3.2002, p. 312.
[3] Texts adopted, P6_TA(2008)0560.
[4] Texts adopted, P6_TA(2008)0562.

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A. whereas the Council has already doubled the ceiling for medium-term financial assistance to EUR 25 000 000 000 from an original EUR 12 000 000 000 on the basis of Articles 119 and 308 of the Treaty by adopting Regulation (EC) No 1360/2008 of 2 December 2008 [1] amending Regulation (EC) No 332/2002,

B. whereas, in conjunction with the arrangements of other international financial institutions, the Community granted a loan to Hungary of EUR 6 500 000 000 and to Latvia of EUR 3 100 000 000, and whereas an additional EUR 2 200 000 000 is committed to Latvia by some individual Member States,

C. whereas the Community has decided to provide medium-term financial assistance to Romania of up to EUR 5 000 000 000 in light of the adverse effects of the global financial crisis on the economic and financial situation in Romania,

D. whereas a case-by-case approach to medium-term financial assistance for Member States is preferable, in order to take into account the specificity of each Member State's situation,

E. whereas the impact of the current global financial and economic crisis should be considered,

F. whereas solidarity needs to be fully exercised towards the Member States that have more recently acceded to the European Union,

G. whereas there is a need for policy to address the specific problems of those Member States' economies against the backdrop of the global financial crisis and a spreading recession in the European Union,

1. Considers the current situation to be further proof of the relevance of the euro in regard to protecting the Member States in the euro area and invites the other Member States to join the euro area it as soon as they fulfil the Maastricht criteria;

2. Requires that the Commission answer Parliament's former calls for an analysis of the effects of the behaviour of banks that removed their assets from the more recently acceded Member States;

3. Calls on the Commission to communicate, as soon as possible, the result of that study to its Committee on Economic and Monetary Affairs;

4. Recognises that, owing to the current global financial and economic crisis, the ceiling for the outstanding amount of loans to be granted to Member States as laid down in Regulation (EC) No 332/2002 should be significantly increased, taking due account of Parliament's calendar; stresses that such an increase would also enhance the ability of the Community to respond more flexibly to further requests for medium-term financial assistance;

5. Welcomes the voluntary agreements between banks and the Member States that more recently acceded to the European Union under which those banks refrain from cutting credit lines (for example, as regards Romania and the Vienna Accord), and encourages further such initiatives;

6. Notes that the significant increase in the loan ceiling makes it possible to maximise the Commission's borrowing potential on capital markets or from financial institutions; notes, furthermore, that there is no specific legal basis for the Community to issue bonds on the global market, but that the Commission is undertaking preparatory work with a view to allowing two or more Member States, jointly, to issue euro-denominated bonds;

[1] OJ L 352, 31.12.2008, p. 11.

7. Calls on the Commission to investigate, together with the European Investment Bank, how the 'credit crunch' in the real economy can be overcome with the help of new innovative financial instruments; points out that a variety of financial instruments could be used to ensure the flexibility of the facility providing medium-term financial assistance for Member States' balances of payments;

8. Notes that raising the loan ceiling would have no budgetary impact because the Commission would acquire the loans on the financial markets and the beneficiary Member States would be required to reimburse them; stresses that the only possible budgetary impact of raising the loan ceiling would be in the event that a Member State were to default on its debt;

9. Welcomes the role attributed by the above-mentioned Commission proposal to the Court of Auditors in case of need;

10. Believes that the conditions attached to the granting of financial assistance should be in line with, and foster the promotion of, the Community's objectives in terms of quality of public spending, sustainable growth and social security systems, full employment, the fight against climate change and energy efficiency;

11. Recalls that Article 100 of the Treaty is applicable to all Member States and invites the Commission to put forward a proposal for a regulation to define the conditions of implementation of that provision; recalls that Article 103 of the Treaty provides that Member States 'shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of another Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project', and that, '[if] necessary, the Council, acting in accordance with the procedure referred to in Article 252, may specify definitions for the application of the prohibition referred to in Article 101 and in this Article';

12. Requests that Parliament be informed of the memorandums of understanding concluded between the Commission and the Member States concerned, which set out the conditions of the loans;

13. Asks the Commission to ensure the coordination of economic policy at Community level during economic downturns and to set up a group of experts together with Parliament, and to prepare a framework and guidelines for the memorandums of understanding concluded between the Commission and the Member States concerned, setting out the conditions of the loans;

14. Recalls that Parliament requested, in its above-mentioned positions of 6 September 2001 and 20 November 2008, that the Council examine, every two years, on the basis of a report by the Commission, after consulting Parliament and after the delivery of the opinion of the Economic and Financial Committee, whether the facility established continues to meet the needs which led to its creation; asks the Council and the Commission whether such reports have been drawn up since the adoption of Regulation (EC) No 332/2002;

15. Instructs its President to forward this resolution to the Council, the Commission, the European Central Bank, the Eurogroup and the governments of the Member States.

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Nanomaterials

P6_TA(2009)0328

European Parliament resolution of 24 April 2009 on regulatory aspects of nanomaterials (2008/2208(INI))

(2010/C 184 E/18)

The European Parliament,

— having regard to the Commission Communication of 17 June 2008 entitled 'Regulatory aspects of nanomaterials' (COM(2008)0366) and the accompanying Commission staff working document (SEC(2008)2036),

— having regard to the Commission Communication of 12 May 2004 entitled 'Towards a European strategy for nanotechnology' (COM(2004)0338),

— having regard to the Commission Communication of 7 June 2005 entitled 'Nanosciences and nanotechnologies: An action plan for Europe 2005-2009' (COM(2005)0243) ('the action plan') and to its resolution of 28 September 2006 ([1]) on the action plan,

— having regard to the Commission Communication of 6 September 2007 'Nanosciences and nanotechnologies: An action plan for Europe 2005-2009. First Implementation Report 2005-2007' (COM(2007)0505),

— having regard to the opinions of the Scientific Committee on Emerging and Newly Identified Health Risks (SCENIHR) on definitions and risk assessment of nanomaterials ([2]),

— having regard to the opinion of the Scientific Committee on Consumer Products (SCCP) on the safety of nanomaterials in cosmetics ([3]),

— having regard to the Commission Recommendation on a code of conduct for responsible nanosciences and nanotechnologies research (COM(2008)0424) ('Code of Conduct'),

— having regard to the opinion from the European Group on Ethics in Science and New Technologies to the European Commission on the ethical aspects of nanomedicine ([4]),

— having regard to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) ([5]),

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([1]) OJ C 306 E, 15.12.2006, p. 426.

([2]) Opinion on 'The scientific aspects of the existing and proposed definitions relating to products of nanoscience and nanotechnologies; 29 November 2007'; http://ec.europa.eu/health/ph_risk/committees/04_scenihr/docs/scenihr_o_012.pdf And accompanying Information by Commission services concerning the SCENIHR Opinion on Scientific Aspects of Existing and Proposed Definitions relating to Products of Nanoscience and Nanotechnologies; http://ec.europa.eu/health/ph_risk/committees/04_scenihr/docs/scenihr_oc_012.pdf Opinion on The Appropriateness of the Risk Assessment methodology in accordance with the technical guidance documents for new and existing substances for assessing the risks of nanomaterials; 21-22 June 2007; http://ec.europa.eu/health/ph_risk/committees/04_scenihr/docs/scenihr_o_010.pdf Modified opinion (after public consultation) on The appropriateness of existing methodologies to assess the potential risks associated with engineered and adventitious products of nanotechnologies; 10 March 2006; http://ec.europa.eu/health/ph_risk/committees/04_scenihr/docs/scenihr_o_003b.pdf Opinion on Risk Assessment of Products of Nanotechnologies; 19 January 2009; http://ec.europa.eu/health/ph_risk/committees/04_scenihr/docs/scenihr_o_023.pdf

([3]) Opinion on Safety of nanomaterials in cosmetic products; 18 December 2007; http://ec.europa.eu/health/ph_risk/committees/04_sccp/docs/sccp_o_123.pdf

([4]) Opinion No 21, 17 January 2007.

([5]) OJ L 396, 30.12.2006, p. 1.

— having regard to Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market ([1]),

— having regard to Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work ([2]) and its daughter directives,

— having regard to Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety ([3]) as well as specific product legislation, in particular Council Directive 76/768/EEC of 27 July 1976 on approximation of laws of the Member States relating to cosmetic products ([4]),

— having regard to Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety ([5]), Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives ([6]), Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs ([7]), Regulation (EC) No 1830/2003 of the European Parliament and of the Council of 22 September 2003 concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms ([8]), and Regulation (EC) No 258/97 of the European Parliament and of the Council of 27 January 1997 concerning novel foods and novel food ingredients ([9]),

— having regard to Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 ([10]),

— having regard to Community environmental legislation, in particular Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control ([11]), Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy ([12]) and Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste ([13]),

— having regard to Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising ([14]),

— having regard to Rule 45 of its Rules of Procedure,

— having regard to the report of the Committee on the Environment, Public Health and Food Safety and the opinion of the Committee on Employment and Social Affairs (A6-0255/2009),

([1]) OJ L 123, 24.4.1998, p. 1.
([2]) OJ L 183, 29.6.1989, p. 1.
([3]) OJ L 11, 15.1.2002, p. 4.
([4]) OJ L 262, 27.9.1976, p. 169.
([5]) OJ L 31, 1.2.2002, p. 1.
([6]) OJ L 354, 31.12.2008, p. 16.
([7]) OJ L 109, 6.5.2000, p. 29.
([8]) OJ L 268, 18.10.2003, p. 24.
([9]) OJ L 43, 14.2.1997, p. 1.
([10]) OJ L 353, 31.12.2008, p. 1.
([11]) OJ L 24, 29.1.2008, p. 8.
([12]) OJ L 327, 22.12.2000, p. 1.
([13]) OJ L 114, 27.4.2006, p. 9.
([14]) OJ L 376, 27.12.2006, p. 21.

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A. whereas the use of nanomaterials and nanotechnologies (hereinafter referred to as 'nanomaterials') promises important advances with multiple benefits in innumerable applications for consumers, patients and the environment, as nanomaterials can provide different or new properties compared to the same substance or material in normal form,

B. whereas the advances in nanomaterials are expected to have significant influence on policy decisions in the fields of public health, employment, occupational safety and health, information society, energy, transport, security and space,

C. whereas despite the introduction of a specific European strategy on nanotechnologies and the subsequent allocation of approximately EUR 3 500 000 000 for research in nanosciences for the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013) (FP7), the European Union is lagging behind its current main competitors – the USA, Japan and South Korea – who account for over half of the investment and two-thirds of the patents filed worldwide,

D. whereas nanomaterials on the other hand potentially present significant new risks due to their minute size, such as increased reactivity and mobility, possibly leading to increased toxicity in combination with unrestricted access to the human body, and possibly involving quite different mechanisms of interference with the physiology of human and environmental species,

E. whereas the safe development of nanomaterials can make an important contribution to the competitiveness of the European Union's economy and to the achievement of the Lisbon strategy,

F. whereas the current discussion about nanomaterials is characterised by a significant lack of knowledge and information, leading to disagreement starting at the level of definitions:

a) concerning the size: approximate indication of the size ('in the order of 100 nm or less') versus a specific size range ('between 1 and 100 nm'),

b) concerning different/new properties: different/new properties due to size effects, including particle number, surface structure and surface activity, as an independent criterion versus using such properties as an additional criterion for the definition of nanomaterials,

c) concerning problematic properties: limitation of the definition of nanomaterials to certain properties (e.g. insoluble or persistent), or not making such limitations,

G. whereas a fully developed set of harmonised definitions is not currently available although a number of international standards are either available or in progress, defining 'nanoscale' as 'having one or more dimensions of the order of 100 nm or less', and often distinguishing between:

— nano-objects, defined as 'discrete pieces of materials with one, two or three external dimensions at the nanoscale', i.e. as materials constituted by isolated objects with very small dimensions,

— nano-structured materials, defined as materials 'having an internal or surface structure at the nanoscale', e.g. exhibiting cavities of small dimensions,

H. whereas there is no clear information about the actual use of nanomaterials in consumer products, for instance:

— while inventories by renowned institutions list more than 800 manufacturer-identified nanotechnology-based consumer products currently on the market, trade associations of the same manufacturers question these figures, on the basis that they are overestimations, without providing any concrete figures themselves,

— while companies happily use 'nano-claims', as the term 'nano' seems to have a positive marketing effect, they are strictly opposed to objective labelling requirements,

I. whereas clear notification requirements on the use of nanomaterials, information to consumers as well as full enforcement of Directive 2006/114/EC are necessary to provide reliable information on the use of nanomaterials,

J. whereas presentations about the potential benefits of nanotechnologies predict an almost infinite diversity of future applications of nanomaterials, but fail to provide reliable information about current uses,

K. whereas there is a major debate about the possibility of assessing the safety of nanomaterials; whereas the scientific committees and Agencies of the European Union point to major deficiencies not only in key data, but even in methods of obtaining such data; whereas the European Union thus needs to invest more into adequate assessment of nanomaterials to close the knowledge gaps and to develop and implement as fast as possible, and, in collaboration with its agencies and international partners, methods of evaluation and an appropriate and harmonised metrology and nomenclature,

L. whereas SCENIHR identified some specific health hazards as well as toxic effects on environmental organisms for some nanomaterials; whereas SCENIHR furthermore found a general lack of high-quality exposure data both for humans and the environment, concluding that the knowledge on the methodology for both exposure estimates and hazard identification needs to be further developed, validated and standardised,

M. whereas current funding for research into the environmental, health and safety aspects of nanomaterials in FP7 is far too low; whereas moreover the evaluation criteria for granting research projects to assess the safety of nanomaterials under FP7 are too restrictive (i.e. they have a narrow innovation bias), and thus do not sufficiently promote the urgent development of scientific methods to assess nanomaterials; whereas it is essential to allocate sufficient resources for research on the safe development and use of nanomaterials,

N. whereas knowledge about potential health and environmental impacts of nanomaterials lags significantly behind the pace of market developments in light of the very rapid developments in the field of nanomaterials, thus raising fundamental questions about the ability of the current regulations to deal with emerging technologies such as nanomaterials in 'real time',

O. whereas, in its resolution of 28 September 2006 on nanosciences and nanotechnologies Parliament had called for investigation of the effects of nanoparticles that are not readily soluble or biodegradable, in accordance with the precautionary principle, before such particles are put into production and placed on the market,

P. whereas the value of the above-mentioned Commission Communication entitled 'Regulatory aspects of nanomaterials' is rather limited due to the absence of information about the specific properties of nanomaterials, their actual uses, and potential risks and benefits, and thus no consideration of the legislative and policy challenges that result from the specific nature of nanomaterials, resulting in only a general legal overview that shows that there are no nano-specific provisions in Community legislation for the time being,

Q. whereas nanomaterials should be covered by a multi-faceted, differentiated and adaptive body of law based on the precautionary principle ([1]), the principle of producer responsibility and the polluter-pays principle to ensure the safe production, use and disposal of nanomaterials before the technology is put on the market, while avoiding systematic recourse to general moratoria or undifferentiated treatment of different applications of nanomaterials,

([1]) Commission Communication of 2 February 2000 on the precautionary principle (COM(2000)0001).

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R. whereas the almost infinite application of nanotechnologies to such diverse sectors as electronics, textiles, biomedicals, personal care products, cleaning products, food or energy makes it impossible to introduce a single regulatory framework at Community level,

S. whereas, in the context of REACH, it has already been agreed that further guidance and advice on nanomaterials, in particular on substance identification, as well as an adaptation of risk assessment methods is needed; whereas a closer look at REACH reveals several further deficiencies to deal with nanomaterials,

T. whereas waste legislation in the absence of nano-specific provisions may not apply correctly,

U. whereas nanomaterials, throughout their whole life cycle, raise major challenges for occupational health and safety, as many workers along the production chain are exposed to those materials without knowing whether the safety procedures implemented and the protection measures taken are adequate and efficient; notes that the number and diversity of workers exposed to the effects of nanomaterials are expected to increase in the future,

V. whereas the significant amendments concerning nanomaterials adopted in a first reading agreement between the Council and the European Parliament in the context of the recast of the cosmetics directive ([1]), and the significant amendments adopted by the European Parliament in the first reading of the review of the regulation on novel food ([2]), respectively, highlight the need to amend relevant Community legislation to address nanomaterials adequately,

W. whereas the current debate about regulatory aspects of nanomaterials is largely limited to expert circles, even though nanomaterials have the potential to bring about far-ranging societal change, which requires wide-ranging public consultation,

X. whereas a broad application of patents to nanomaterials, as well as the excessive cost of patenting and the absence of patent access facilities for very small businesses and small and medium-sized enterprises (SMEs), could stifle further innovation,

Y. whereas the likely convergence of nanotechnology with biotechnology, biology, cognitive sciences and information technology raises serious questions relating to ethics, safety, security and respect for fundamental rights that need to be analysed by a new opinion of the European Group on Ethics in Science and New Technologies,

Z. whereas the Code of Conduct is an essential instrument for safe, integrated and responsible research in nanomaterials; whereas the Code of Conduct must be adopted and respected by all producers intending to manufacture or place goods on the market,

AA. whereas the review of all relevant Community legislation should implement the principle 'no data, no market' for nanomaterials,

1. Is convinced that the use of nanomaterials should respond to the real needs of citizens and that their benefits should be realised in a safe and responsible manner within a clear regulatory and policy framework (legislative and other provisions) that explicitly addresses existing and expected applications of nanomaterials as well as the very nature of potential health, environmental and safety problems;

2. Deplores the absence of a proper evaluation of the *de facto* application of the general provisions of Community law in the light of the actual nature of nanomaterials;

([1]) Position of the European Parliament of 24 March 2009, Texts adopted, P6_TA(2009)0158.
([2]) Position of the European Parliament of 25 March 2009, Texts adopted, P6_TA(2009)0171.

3. Does not agree, before an appropriate evaluation of current Community legislation, and in the absence of any nano-specific provisions therein, with the Commission's conclusions that a) current legislation covers in principle the relevant risks relating to nanomaterials, and b) that the protection of health, safety and the environment needs mostly be enhanced by improving implementation of current legislation, when due to the lack of appropriate data and methods to assess the risks relating to nanomaterials it is effectively unable to address their risks;

4. Considers that the concept of the 'safe, responsible and integrated approach' to nanotechnologies advocated by the European Union is jeopardised by the lack of information on the use and on the safety of nanomaterials that are already on the market, particularly in sensitive applications with direct exposure of consumers;

5. Calls on the Commission to review all relevant legislation within two years to ensure safety for all applications of nanomaterials in products with potential health, environmental or safety impacts over their life cycle, and to ensure that legislative provisions and instruments of implementation reflect the particular features of nanomaterials to which workers, consumers and/or the environment may be exposed;

6. Stresses that such review is not only necessary to adequately protect human health and the environment, but also to provide certainty and predictability to economic operators as well as public confidence;

7. Calls for the introduction of a comprehensive science-based definition of nanomaterials in Community legislation as part of nano-specific amendments to relevant horizontal and sectoral legislation;

8. Calls on the Commission to promote the adoption of a harmonised definition of nanomaterials at the international level and to adapt the relevant European legislative framework accordingly;

9. Considers it particularly important to address nanomaterials explicitly within the scope of at least legislation on chemicals (REACH, biocides), food (foodstuffs, food additives, food and feed products from genetically modified organisms), relevant legislation on worker protection, as well as legislation on air quality, water quality and waste;

10. Calls for the application of a duty of care for manufacturers that wish to place nanomaterials onto the market; and calls on them to adhere to the European code of conduct for responsible nanosciences and nanotechnologies research;

11. Calls specifically on the Commission to evaluate the need to review REACH concerning inter alia:

— simplified registration for nanomaterials manufactured or imported below one tonne,

— consideration of all nanomaterials as new substances,

— a chemical safety report with exposure assessment for all registered nanomaterials,

— notification requirements for all nanomaterials placed on the market on their own, in preparations or in articles;

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12. Calls specifically on the Commission to evaluate the need to review waste legislation concerning inter alia:

— a separate entry for nanomaterials in the list of waste established by Decision 2000/532/EC ([1]),

— a revision of the waste acceptance criteria in landfills in Decision 2003/33/EC ([2]),

— a revision of relevant emission limit values for waste incineration to supplement the mass-based measurements by metrics based on particle number and/or surface;

13. Calls specifically on the Commission to evaluate the need to review emission limit values and environmental quality standards in air and water legislation to supplement the mass-based measurements by metrics based on particle number and/or surface to adequately address nanomaterials;

14. Underlines the importance for the Commission and/or Member States to ensure full compliance with, and enforcement of, the principles of Community legislation on the health and safety of workers when dealing with nanomaterials, including adequate training for health and safety specialists, to prevent potentially harmful exposure to nanomaterials;

15. Calls specifically on the Commission to evaluate the need to review worker protection legislation concerning inter alia:

— the use of nanomaterials only in closed systems or in other ways that exclude exposure of workers as long as it is not possible to reliably detect and control exposure,

— a clear assignment of liability to producers and employers arising from the use of nanomaterials,

— whether all exposure routes (inhalation, dermal and other) are addressed;

16. Calls on the Commission to compile before June 2011 an inventory of the different types and uses of nanomaterials on the European market, while respecting justified commercial secrets such as recipes, and to make this inventory publicly available; furthermore calls on the Commission to report on the safety of these nanomaterials at the same time;

17. Reiterates its call for the provision of information to consumers on the use of nanomaterials in consumer products: all ingredients present in the form of nanomaterials in substances, mixtures or articles should be clearly indicated in the labelling of the product (e.g. in the list of ingredients, the name of such ingredients should be followed by the word 'nano' in brackets);

18. Calls for full enforcement of Directive 2006/114/EC to ensure that that there is no misleading advertising with nanomaterials;

19. Calls for the urgent development of adequate testing protocols and metrology standards to assess the hazard of, and exposure of workers, consumers and the environment to, nanomaterials over their entire life cycle, including in the case of accidents, using a multi-disciplinary approach;

([1]) Commission Decision 2000/532/EC of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste (OJ L 226, 6.9.2000, p. 3).

([2]) Council Decision 2003/33/EC of 19 December 2002 establishing criteria and procedures for the acceptance of waste at landfills pursuant to Article 16 of and Annex II to Directive 1999/31/EC (OJ L 11, 16.1.2003, p. 27).

20. Calls for a major stepping up of the funding of research into the environmental, health and safety aspects of nanomaterials over their life cycle, e.g. via the establishment of a special European Fund within FP7; furthermore calls specifically on the Commission to revise the evaluation criteria under FP7 so that FP7 attracts and funds significantly more research to improve the scientific methodology to assess nanomaterials;

21. Calls on the Commission to promote coordination and exchange between Member States on research and development, risk assessment, guidance development and regulation of nanomaterials by using existing mechanisms (e.g. REACH Competent Authorities Subgroup on Nanomaterials) or by creating additional ones, if appropriate;

22. Calls on the Commission and Member States to propose, as soon as possible, the establishment of a permanent and independent European network responsible for monitoring nanotechnologies and nanomaterials, and a basic and applied research programme on the methodology for this monitoring (particularly metrology, detection, toxicity and epidemiology);

23. Asks the Commission and the Member States to launch an EU-wide public debate on nanotechnologies and nanomaterials and on the regulatory aspects of nanomaterials;

24. Recognises that it is essential to remove the obstacles preventing very small businesses and SMEs in particular from accessing patents and calls at the same time for patent rights to be limited to specific applications or production methods of nanomaterials, and only to be extended to nanomaterials themselves on an exceptional basis, to avoid stifling innovation;

25. Considers that stringent ethical guidelines need to be developed in due time, particularly for nanomedicine, such guidelines being the right to privacy, free and informed consent, the limits set on non-therapeutic human enhancement, whilst offering encouragement to this promising interdisciplinary domain with breakthrough technologies such as molecular imaging and diagnostics, which can offer impressive benefits for the early diagnosis and smart and cost-effective treatment of many diseases; asks the European Group on Ethics in Science and New Technologies to draw up an opinion on this issue, building on its Opinion No 21 of 17 January 2007 on 'Ethical aspects of nanomedicine' and drawing on the ethical opinion issued by EU national ethics bodies as well as the work undertaken by international organisations such as UNESCO;

26. Calls on the Commission and Member States to pay special attention to the social dimension of the development of nanotechnology; furthermore considers that the active participation of the social partners concerned has to be ensured from the earliest possible stage;

27. Calls on the Commission to evaluate the need to review legislation to address nanomaterials that are created as unintended by-products of combustion processes in a cost-effective manner;

28. Instructs its President to forward this resolution to the Council and the Commission, and to the governments and parliaments of the Member States.

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Annual debate on the progress made in 2008 in the Area of Freedom, Security and Justice (AFSJ)

P6_TA(2009)0329

European Parliament resolution of 24 April 2009 on the annual debate on the progress made in 2008 in the Area of Freedom, Security and Justice (AFSJ) (Articles 2 and 39 of the EU Treaty)

(2010/C 184 E/19)

The European Parliament,

— having regard to Articles 2, 6 and 39 of the EU Treaty and Articles 13, 17 to 22, 61 to 69, 255 and 286 of the EC Treaty, which form the main legal bases for the development of the EU and the Community as an area of freedom, security and justice,

— having regard to Oral Questions to the Council (B6-0489/2008) and to the Commission (B6-0494/2008), debated in plenary on 17 December 2008,

— having regard to Rule 108(5) of its Rules of Procedure,

A. whereas ten years after the entry into force of the Treaty of Amsterdam:

— the EU acquis on justice, freedom and security has been growing significantly, thereby confirming the choice made by the Member States to involve the European Union institutions extensively in policy-making in this area so as to ensure freedom, security and justice to Union citizens,

— a majority of Union citizens, according to Eurobarometer periodic surveys, increasingly feel that EU-level actions have an added value compared to those taken solely at a national level, and two thirds of citizens support EU-level actions which promote and protect fundamental rights (including children's rights), as well as the fight against organised crime and terrorism, and only 18 % consider that EU-level actions have had no extra benefit,

B. whereas the positive factors mentioned above cannot offset:

— the persistent legal weakness and complexity of the EU decision-making process, notably in areas such as police and judicial cooperation in criminal matters, which lacks an appropriate democratic and judicial control at EU level,

— the reluctance of a majority of the Member States to strengthen policies linked to fundamental rights and citizens' rights; at the same time it appears increasingly essential to focus not only on cross-border cases, in order to avoid double standards within the same Member State,

— the continuing need to further develop and correctly implement the EU common immigration and asylum policy, which is facing delays in relation to the timetable agreed on in the Hague Programme and the European Pact on Immigration and Asylum,

— the difficulties faced by the Commission in ensuring the timely and correct implementation of much recently adopted Community legislation, together with managing a high volume of correspondence, complaints and a growing infringements case-load,

— the need for a more extensive involvement of the European Parliament and national parliaments in assessing the real impact of EU legislation on the ground,

— the still underdeveloped network of representatives of civil society and stakeholders in each AFSJ policy; it is worth noting that only recently the Ministers of Justice of the Member States decided to build a network aimed at mutually strengthening their national legislation, and the same should be done for the other AFSJ areas,

— the fact that, even between EU agencies, cooperation is developing slowly and the situation risks becoming even more complex with the multiplication of other bodies with operational tasks at EU level,

C. whereas it is necessary to recall:

— the continuing prudent position taken by the Council and by the Commission following the adoption by Parliament of its resolution of 25 September 2008 on the annual debate on the progress made in 2007 in the Area of Freedom, Security and Justice (AFSJ) (Articles 2 and 39 of the EU Treaty) [1], and during the plenary debates in December 2008 on the protection of fundamental rights in the European Union and on progress in the AFSJ,

— the support given by national parliaments to wider inter-parliamentary cooperation notably in the AFSJ, as demonstrated by their contributions to the general debates and on specific occasions such as to the revision of the EU rules on transparency, Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism [2], the new EU-PNR legislation [3], the implementation of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States [4], the assessment of Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers [5] and to the implementation of judicial cooperation in criminal and civil matters,

1. Calls on those Member States which have not ratified the Treaty of Lisbon to do so as soon as possible, as it will overcome the more significant shortcomings in the AFSJ by:

— creating a more coherent, transparent and legally sound framework,

— strengthening the protection of fundamental rights by giving binding force to the Charter of Fundamental Rights of the European Union ('the Charter') and by allowing the EU to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms,

— empowering citizens of the Union and civil society by involving them in the legislative process and granting them greater access to the Court of Justice of the European Communities (ECJ),

— involving the European Parliament and national parliaments in the evaluation of EU policies, thereby making European and national administrations more accountable;

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[1] Texts adopted, P6_TA(2008)0458.
[2] OJ L 164, 22.6.2002, p. 3.
[3] Proposal for a Council framework decision on the use of Passenger Name Record (PNR) for law enforcement purposes (COM(2007)0654).
[4] OJ L 158, 30.4.2004, p. 77.
[5] OJ L 31, 6.2.2003, p. 18.

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2. Calls on the European Council, the Council and the Commission to:

(a) formally involve the newly elected European Parliament in the adoption of the next multiannual AFSJ programme for the period 2010-2014, as this programme, after the entry into force of the Treaty of Lisbon, should be mainly implemented by the Council and Parliament by way of the codecision procedure; given that such a multiannual programme should also go far beyond the suggestions contained in the reports of the Council Future Groups, national parliaments should also be involved as they should play an essential role in shaping the priorities and in implementing them at national level;

(b) focus on the future multiannual programme, and primarily on the improvement of fundamental and citizens' rights, as recently recommended by Parliament in its resolution of 14 January 2009 on the situation of fundamental rights in the European Union 2004-2008 [1], by developing the objectives and principles laid down in the Charter, which the institutions proclaimed in Nice in 2000 and again in Strasbourg on 12 December 2007;

3. Considers it urgent and appropriate that the Commission:

(a) take urgent initiatives to improve the protection of citizens' rights such as data protection, diplomatic and consular protection and freedom of movement and residence;

(b) develop a mechanism to ensure a more extensive involvement of citizens in the definition of the content of citizenship of the Union by developing consultation mechanisms and supporting stakeholder networks;

(c) submit a fully fledged programme of EU measures strengthening the procedural rights of defendants and the necessary safeguards in the pre-trial and post-trial phases, notably when they involve a non-national of the country concerned, and more generally develop screening of EU criminal justice and security measures with regard to the protection of citizens' rights;

(d) collect and disseminate, on a regular basis, all the relevant neutral data on the evolution of the main AFSJ policies such as migratory flows, the evolution of organised crime and in particular of terrorism (see the EU Organised Crime Threat Assessment 2008 (OCTA) and the EU Terrorism Situation and Trend Report 2008 (TE-SAT) by Europol);

(e) present as soon as possible the pending legal instruments on other 'EU blue card' categories of third-country workers such as seasonal workers, intra-corporate transferees and remunerated trainees and on FRONTEX's mandate; in particular, ensure that FRONTEX has adequate resources in order to meet its objectives and keep Parliament fully informed of the negotiations on agreements in the field of immigration with third countries;

(f) establish a European Internal Security Policy, which should complement national security plans so that citizens of the Union and national parliaments have a clear idea of the added value of EU action; in particular, reinforce EU policy regarding the fight against certain types of organised crime such as cybercrime, trafficking in human beings, sexual exploitation of children and corruption, by taking effective action and using all available cooperation tools to achieve measurable results, including action with a view to the adoption of a legislative instrument on the confiscation of financial assets and property of international criminal organisations and on their re-use for social purposes;

(g) continue to implement the principle of mutual recognition of legal decisions in both the civil and criminal justice spheres, at all stages of the judicial procedure, in particular as regards criminal justice, to ensure a EU-wide system of recognition and mutual acceptability of evidence, taking the utmost account of respect for fundamental rights;

[1] Texts adopted, P6_TA(2009)0019.

(h) supplement the development of mutual recognition by a series of measures reinforcing mutual confidence, in particular by developing some approximation of substantive and procedural criminal law and of procedural rights, improving the mutual evaluation of the functioning of justice systems and improving ways of developing mutual confidence within the judicial profession, such as increasing judicial training and supporting networking;

(i) build a transparent and efficient EU external strategy in the AFSJ, based on a credible policy, in particular where the Community has exclusive competence, for example in readmission agreements, external border protection and visa policies (as is the case concerning the US visa waiver issue);

(j) invite the Council to consult Parliament regularly even in the case of international agreements dealing with judicial and police cooperation in criminal matters, as the current refusal by the Council to do so is contrary to the principle of loyal cooperation and of the democratic accountability of the EU; calls on the Commission in particular to present criteria on the development of a proper EU policy regarding agreements with third countries on mutual legal assistance or extradition in criminal matters, taking account of the principle of non-discrimination between EU citizens and the citizens of the third country concerned;

(k) introduce specific legislation granting diplomatic and consular protection for all Union citizens whether or not the Member State in question is represented in the third country's territory;

(l) submit new proposals in order to comply with the ECJ rulings on the protection of fundamental rights in the case of the freezing of assets of natural and legal persons, also with reference to the ECJ rulings relating to the persons listed in the Annexes to the Council Decisions implementing Article 2(3) of Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism [1];

(m) strengthen mutual trust and solidarity between the Member States' administrations by:

— setting out, in cooperation with the Council of Europe, higher standards of quality for both justice [2] and police cooperation;

— strengthening and democratising the mutual assessment mechanisms already provided for in the context of Schengen cooperation and in the fight against terrorism;

— extending the model of mutual evaluation and assistance between the Member States established for Schengen to all AFSJ policies where citizens from other Member States or from third countries are concerned (such as for migration and integration policies but also for implementing anti-terrorism and anti-radicalisation programmes);

(n) establish more extensive coordination and complementarity between the existing and future EU agencies such as Europol, Eurojust, FRONTEX and Cepol, as these bodies should go beyond their embryonic and uncertain cooperation and establish closer links with the corresponding national services by reaching higher standards of efficiency and security and being more accountable and transparent before the European Parliament and national parliaments;

(o) continue to develop and strengthen, on an ongoing basis, the common Union policy on border management, while stressing the need to define, as rapidly as possible, a global architecture for the Union's border strategy, as well as the way in which all related programmes and projects should interact and function as a whole, with a view to optimising the way they interrelate and avoiding duplication or inconsistency;

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[1] OJ L 344, 28.12.2001, p. 70.

[2] European Parliament recommendation to the Council on the quality of criminal justice and the harmonisation of criminal law in the Member States (OJ C 304 E, 1.12.2005, p. 109).

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4. Urges the Commission to make all the necessary efforts with a view to completing the projects concerned and ensuring that the Visa Information System (VIS) and the second-generation Schengen Information System (SIS II) can enter into force as quickly as possible;

5. Recommends that the Commission refrain from prematurely submitting any legislative proposals to introduce new systems - in particular the Entry/Exit System - until the VIS and the SIS II are up and running; advocates evaluating the actual need for such a system, given its evident overlap with the set of systems already in place; believes that it is essential to examine any changes needed to the existing systems and to provide a proper estimate of the actual costs of the entire process;

6. Invites the Commission to include in its proposal for a multiannual programme the recommendations outlined above and those submitted by Parliament in its above-mentioned resolutions of 25 September 2008 and of 14 January 2009, as well as in the following resolutions:

— resolution of 2 April 2009 on problems and prospects concerning European Citizenship ([1]),

— resolution of 27 September 2007 on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ([2]),

— resolution of 10 March 2009 on the next steps in border management in the European Union and similar experiences in third countries ([3]), and

— resolution of 10 March 2009 on the future of the Common European Asylum System ([4]);

7. Instructs its President to forward this resolution to the Council, the Commission and to the governments and parliaments of the Member States.

([1]) Texts adopted, P6_TA(2009)0204.
([2]) OJ C 219 E, 28.8.2008, p. 317.
([3]) Texts adopted, P6_TA(2009)0085.
([4]) Texts adopted, P6_TA(2009)0087.

Conclusions of the G20 Summit

P6_TA(2009)0330

European Parliament resolution of 24 April 2009 on the London G20 Summit of 2 April 2009

(2010/C 184 E/20)

The European Parliament,

— having regard to the Leaders' Statement (Global Plan for Recovery and Reform) issued following the London Group of Twenty (G20) Summit and their declarations on 'Strengthening the financial system' and on 'Delivering resources through the international financial institutions', of 2 April 2009,

— having regard to the progress report on the jurisdictions surveyed by the OECD global forum in implementing the internationally agreed tax standard, which requires exchange of information on requests in all tax matters for the administration and enforcement of domestic tax law, of 2 April 2009,

— having regard to the Presidency Conclusions following the European Council meeting of 19 and 20 March 2009,

— having regard to the Commission communication of 4 March 2009, entitled 'Driving European recovery' (COM(2009)0114),

— having regard to the report by the High-Level Group on Financial Supervision in the EU chaired by Jacques de Larosière, of 25 February 2009,

— having regard to the Commission communication of 29 October 2008, entitled 'From financial crisis to recovery: A European framework for action' (COM(2008)0706),

— having regard to its resolution of 11 March 2009 on the European Economic Recovery Plan ([1]),

— having regard to the Commission communication of 8 April 2009, entitled 'Supporting developing countries in coping with the crisis' (COM(2009)0160),

— having regard to the report by the International Monetary Fund (IMF), entitled 'The Implications of the Global Financial Crisis for Low-Income Countries', of in March 2009,

— having regard to the United Nations Millennium Development Goals (MDGs) and the Member States' commitments to provide aid to tackle hunger and poverty,

— having regard to the report by the UN Environment Programme, entitled 'Out of Crisis - Opportunity', of 16 February 2009, which urged the G20 to take forward the 'Global Green New Deal',

— having regard to the report by the International Labour Organization (ILO) and the International Institute for Labour Studies, entitled 'The Financial and Economic Crisis: A Decent Work Perspective', of 24 March 2009, which urges the G20 to put forward a coordinated stimulus package oriented toward social protection and job creation,

— having regard to Rule 103(4) of its Rules of Procedure,

A. whereas the world is falling deeper into a recession, the effects of which no country and no sector can expect to avoid, and whereas worldwide economic performance is declining fast during 2009 and only slow recovery is expected during 2010, according to even the most optimistic projections,

B. whereas the consequences of the financial crisis for the real economy have given rise to exceptional economic circumstances that require timely, targeted, temporary and proportional measures and decisions with a view to finding solutions to an unprecedented global economic and employment situation,

C. whereas the main challenges to be met in countering the downturn in the international and the European economy are the lack of confidence in the financial and capital markets and rising unemployment, and the contraction of international trade,

D. whereas the current recession should be used as an opportunity to promote the Lisbon-Göteborg goals and the global commitment to fight unemployment and climate change and reduce energy consumption,

E. whereas the Global Plan for Recovery and Reform (Global Plan) encompasses the following aims: (1) to restore confidence, growth and jobs; (2) to repair the financial system to restore lending; (3) to strengthen financial regulation and rebuild trust; (4) to fund and reform the international financial institutions in order to overcome the crisis and prevent future crises; (5) to promote global trade and investment and to underpin prosperity, while rejecting protectionism; and (6) to build an inclusive, environmentally friendly and sustainable recovery,

([1]) Texts adopted, P6_TA(2009)0123.

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F. whereas international coordination is essential to the task of reviving and then rebuilding the global economy,

G. whereas membership of the euro area has been shown to enhance economic stability in the relevant Member States, as a result of their efforts to comply with the Maastricht criteria and the provisions of the Stability and Growth Pact and the shielding of their economies from currency fluctuations,

H. whereas several Member States have encountered severe balance-of-payments problems, and whereas some of those Member States have had to resort to the IMF or the European Union for relief,

I. whereas the MDGs, in particular the eradication of extreme poverty and hunger, must underpin ACP-EU cooperation under the Cotonou Partnership Agreement,

J. whereas, as a result of the financial crisis, some donor countries have reduced their financial contribution to Official Development Assistance (ODA) to developing countries, endangering the efforts to achieve the MDGs,

K. whereas the ACP countries are dependent on exports of commodities that account for over 50 % of their foreign currency revenue, and whereas the financial crisis is resulting in decreasing exports from and remittance flows into many developing countries, reduced access to credit and reduced foreign direct investment, and plummeting commodity prices,

L. whereas offshore centres act in such a way as to allow avoidance and evasion of taxation and financial regulation,

M. whereas growth in international trade is slowing down owing to a lack of credit and finance and to the general slowdown in the world economy,

N. whereas strong multilateral cooperation is needed to ward off the protectionist measures the financial/economic crisis may give rise to,

General remarks

1. Welcomes the G20's Global Plan; notes that the Global Plan is in line with the efforts already made in the European Union to avoid conflicting policies the effect of which is to cancel each other out; welcomes the G20's recognition that a global crisis requires a global solution and an integrated strategy to restore confidence, growth and jobs; considers that such recognition requires a serious follow-up at the next meeting of the G20, which will take place in early autumn 2009;

2. Believes that the task ahead for the world's leaders is not to patch up the present financial and economic system, but to recognise that a new balance must be struck in the regulatory framework which would take into account environmental and social sustainability, opportunity, revived global economic growth and job creation as well as social justice and participation; calls for better and all-encompassing regulation and supervision and for a new regulatory and governance framework to be developed; considers that the G20 should have addressed the problem of global imbalances in trade and finance, which have played a fundamental role in the current economic crisis;

3. Stresses the fact that all the commitments entered into must be respected in full, put in place rapidly and fleshed out, at national and international level, in order to rebuild confidence and maximise effectiveness; takes note of the arrangements by the Financial Stability Board (FSB) and IMF assignment to monitor progress made on the Global Plan and invites them to present their report to Parliament;

4. Stresses that the immediate priority must be to get the real economy moving again, to ensure that the capital markets and lending function properly, to sustain and promote employment, and to protect people from the adverse impact of the crisis, paying special attention to the poorest and most vulnerable;

5. Lauds the G20 for having largely opted for solutions based on loans and guarantees, which will maximise economic effects whilst helping to reduce the long-term impact on government coffers of the package of measures that is worth over USD 1 trillion;

Restoring growth and jobs

6. Welcomes the agreement to provide EUR 832 billion in additional financial resources for the IMF, other financial institutions and trade finance and the commitment to deliver the scale of sustained fiscal effort needed to restore credit, growth and jobs in the world economy whilst ensuring long-term fiscal sustainability; notes, however, that no additional European fiscal stimulus was agreed; recognises that the margin for action is different for each country, but that each needs to act to the limits of its possibilities;

7. Recognises the essential role of central banks in this effort and their rapid reduction of interest rates, and welcomes the G20's commitment to refrain from competitive devaluation of national currencies, which could trigger a vicious circle; welcomes the ECB's successive rate cuts to foster growth, and its prompt provision of short-term financial facilities designed to revive inter-bank lending; draws attention to the need to create conditions that facilitate passing on interest rate cuts to borrowers; calls for every measure to be taken to enable financial markets to function properly again, including urgent moves to restore domestic lending and international capital flows;

8. Notes with concern the rapid increases in public debt and budget deficits; stresses the importance of establishing sound State finances as soon as possible and of ensuring long-term fiscal sustainability in order to avoid imposing too heavy a burden on future generations, noting that, country-by-country this should be considered in the context of total indebtedness;

9. Deplores the fact that global imbalances, which are at the root of the financial crisis, were not addressed at the G20 Summit; points out that if financial crises are to be prevented in the future, the underlying causes have to be addressed (i.e. an excessive US deficit financed by excessive Chinese trade surpluses), which have implications far beyond the realm of banking and financial regulation and institutional governance; considers that an effective multilateral response to the crisis must involve addressing the causes of exchange rate imbalances and commodity price volatility within multilateral frameworks; urges the European Council, therefore, to adopt a common position in order to tackle those issues before the next G20 Summit in New York;

Strengthening financial supervision and regulation

10. Welcomes the common approach to better regulation of the financial sector and improved financial supervision on the basis of greater consistency and systematic cooperation between countries; urges all governments to act in accordance with the commitments they made at the G20 meeting; considers that the decisions taken and commitments made at the G20 Summit represent a minimum and not a maximum; welcomes the fact that the European Union is more ambitious in regard to the scope and requirements of regulation and supervision;

11. Stresses the importance of rebuilding confidence in the financial sector, which is the key to restoring lending to the real economy as well as international capital flows; insists on the need to deal urgently with impaired banking assets which are constraining lending; urges Member State governments and competent authorities to obtain from banks full and transparent disclosure of the impairment of balance sheets, taking into consideration the Commission communication on the treatment of impaired assets in the Community banking sector ([1]), and to act in a coordinated manner whilst respecting competition rules; calls on the G20 governments to disclose how their impaired asset programmes work and what the results are; recommends maximising international cooperation and rejecting financial and regulatory protectionism;

([1]) OJ C 72, 26.3.2009, p. 1.

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12. Welcomes the decision to regulate and oversee all systemically important institutions, markets and instruments (including hedge funds), but believes that further measures are needed to stamp out speculative excesses and that regulation and supervision must include those activities the size of which may individually be judged to be non-systemic, but which collectively represent a potential risk to financial stability; insists on the need to develop efficient cooperation and information-sharing mechanisms between national authorities in order to ensure effective cross-border supervision while maintaining open markets;

13. Approves the G20's decision to adopt the Basel II capital framework and its intention to make efforts to strengthen prudential regulatory standards as soon as possible;

14. Takes the view that principles for cross-border cooperation on crisis management need to be urgently implemented at a high level; in the light of the growing interactions between national financial systems; urges the relevant authorities to cooperate at international level to prepare for and manage financial crises;

15. Welcomes the G20's decision to promote integrity and transparency in the financial markets as well as increased responsibility of financial actors; welcomes the G20 pledge to reform remuneration schemes in a more sustainable way as part of the financial regulatory review and insists on the importance of linking incentives to long-term performance, avoiding incentives that induce irresponsibility and guaranteeing an industry-wide application of the new principles in order to ensure a level playing field; will remain extremely vigilant regarding the effective implementation of the principles relating to pay and remuneration in financial institutions and calls for the adoption of more stringent measures in this area;

16. Welcomes the measures with regard to credit rating agencies that aim to increase transparency and enhance cooperation between national supervisory authorities; remains concerned at the lack of competition in that sector and calls for significantly lower market entry barriers;

17. Welcomes the intention to reach agreement on a single set of accounting standards; deplores the fact that the Financial Accounting Standards Board has amended the definition of 'fair value' for US market players, and urges the Commission to bring IAS 39 into line with the agreement without waiting for a decision by the International Accounting Standards Board;

18. Calls on the next G20 Summit to agree on coordinated and concrete action both to close down all tax and regulatory havens and to close 'onshore' tax and regulatory loopholes which permit widespread tax avoidance even in major financial centres; welcomes the G20 statement regarding bank secrecy and lauds automatic exchange of information as the most effective tool to tackle tax avoidance; recommends that the European Union should adopt its own appropriate legislative framework regarding tax havens and calls on its international partners to do the same;

Strengthening our global financial institutions

19. Fully supports the decision to assign the central role of coordinating the agreed agenda to the newly renamed and expanded FSB; supports the G20's decision to provide the FSB with a stronger institutional basis and enhanced powers; underlines the importance of sharing common principles and ensuring convergence of rules in the financial services area to tackle global market players;

20. Welcomes and fully supports the request made by the EUROLAT Parliamentary Assembly on 8 April 2009 to the EU-LAC countries to act at once to abolish all tax havens on their territory and to work at international level for the abolition of the rest and for sanctions against companies and individuals resorting to their services;

21. Welcomes the G20's plan to reform international financial institutions and calls for those reforms to begin as soon as possible; expects a far-reaching reform of global economic and financial governance, which must promote democracy, transparency and accountability and ensure coherence between the policies and procedures of the international economic and financial institutions, and urges a review of the conditionalities applied to most IMF and World Bank lending;

22. Calls, in addition, for the representation of developing countries in international financial institutions to be improved; welcomes the commitment to an open, transparent and merit-based selection process for appointing the leaders of international financial institutions; urges the European Union, as a consequence, to speak with one voice;

23. Asks the Commission to assess the increase in the IMF's Special Drawing Rights in line with what may become necessary and asks the ECB to evaluate the effects of such an increase on worldwide price stability;

Resisting protectionism and promoting global trade and investment

24. Endorses the G20's pledge to increase the resources available to global financial institutions by USD 850 billion to support growth in emerging markets and developing countries; welcomes the substantial increase in the resources of the IMF, which is the main supplier of financial assistance to countries with balance-of-payments problems, including Member States, and which acts to support growth in emerging markets and developing countries;

25. Welcomes the progress made by the IMF with its new Flexible Credit Line, moving away from its former prescriptive and rigid lending and conditionality framework, as illustrated in a the IMF's report entitled 'The Implications of the Global Financial Crisis for Low-Income Countries' by the following statement: 'In formulating spending policies, priority should be given to protecting or expanding social programmes or bringing forward approved investments, and, in general, to preserving the momentum toward achieving the MDGs';

26. Welcomes the reaffirmed commitment in the Global Plan to the MDGs and the promise to make an additional USD 50 billion available 'to support social protection, boost trade and safeguard development in low income countries'; calls for those funds to be disbursed not only as loans, but also in the form of direct grants where possible, in order to support social protection and boost trade;

27. Deplores the fact that the G20's promises on Aid for Trade and ODA were insufficient; stresses that, although the Global Plan lists financial measures to increase resources for the developing world through the World Bank and IMF, there was no specific commitment to ensure that Aid for Trade represents additional funding;

28. Welcomes the pledge further to promote global trade and investment; is alarmed, however, by the fall in world trade, which threatens a further deepening of the global recession; stresses the importance of reaching a rapid and successful conclusion to the Doha Round which serves to redress the imbalances in the world trading system which have worked to the detriment of developing countries;

29. Rejects any form of protectionism both in the real economy and in the financial sector as a reaction to the economic downturn and falling world trade;

30. Calls on the next G20 Summit also to address the reform of the world trading system and the governance of the WTO in order to promote fair trade, reverse the growing inequalities between North and South, improve coherence between commercial, social and environmental policies and make the WTO more democratic, transparent and accountable;

31. Calls on the Member States to present actions and instruments introduced in response to the crisis in developing countries in order for the European Union to make a coordinated response; calls for the implementation of the actions thus identified to be assessed in the next Monterrey report on financing development;

32. Draws attention to the persistent food crisis, which requires immediate action and reforms to make sure agricultural production is sustainable in developing countries;

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Ensuring a fair and sustainable recovery for all

33. Welcomes the G20's acknowledgement of the importance of a more sustainable global economy; emphasises that a binding agreement on climate change at the forthcoming Copenhagen conference is critical; stresses, however, that the G20 leaders should recognise the broad nature of global sustainability challenges, such as fisheries, forests, and water crises, which most affect people in developing countries;

34. Asks the Commission to launch, in the context of its reflections on the future of the Sustainable Development Strategy, the necessary processes aimed at fully taking into account the implications of climate change for all the existing policies;

35. Stresses the need for the effective implementation of the Climate and Energy Package and more investment in energy from renewable sources, eco-innovation, eco-friendly energy and energy efficiency, which should be a central part of the Energy Action Plan for 2010-2014;

36. Calls on the next G20 Summit to consider the 'Decent work agenda', as proposed by the ILO, which should, in particular, include a commitment to universal respect for human rights at the workplace, core labour standards and the elimination of child labour;

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37. Instructs its President to forward this resolution to the Council, the Commission, the European Central Bank, the governments and parliaments of the Member States, the governments and parliaments of the G20 States, and the International Monetary Fund.

Consolidating stability and prosperity in the Western Balkans

P6_TA(2009)0331

European Parliament resolution of 24 April 2009 on consolidating stability and prosperity in the Western Balkans (2008/2200(INI))

(2010/C 184 E/21)

The European Parliament,

— having regard to the Presidency conclusions of the Copenhagen European Council of 21-22 June 1993,

— having regard to the Declaration made at the EU-Western Balkans summit in Thessaloniki on 21 June 2003,

— having regard to the Commission Communication of 27 January 2006 entitled 'The Western Balkans on the road to the EU: consolidating stability and raising prosperity' (COM(2006)0027),

— having regard to the EU-Western Balkans Declaration, which was unanimously approved by the Foreign Ministers of all the Member States and by the Foreign Ministers of the Western Balkan States in Salzburg on 11 March 2006,

— having regard to the Presidency conclusions of the European Councils of 14 December 2007 and 19-20 June 2008, as well as the Declaration on the Western Balkans annexed thereto, and the conclusions of the General Affairs and External Relations Councils of 10 December 2007, 18 February 2008 and 8-9 December 2008,

— having regard to the Commission Communication of 5 March 2008 entitled 'Western Balkans: Enhancing the European perspective' (COM(2008)0127),

— having regard to the Brdo Statement: New focus on the Western Balkans, issued by the EU Presidency on 29 March 2008, underlining the need to give a fresh impetus to the Thessaloniki agenda and the Salzburg Declaration,

— having regard to the Commission's Enlargement Strategy and individual country progress reports of November 2008,

— having regard to its resolution of 18 December 2008 on development perspectives for peace-building and nation building in post-conflict situations ([1]),

— having regard to its resolution of 13 January 2009 on Trade and Economic relations with the Western Balkans ([2]),

— having regard to Rule 45 of its Rules of Procedure,

— having regard to the report of the Committee on Foreign Affairs and the opinion of the Committee on International Trade (A6-0212/2009),

A. whereas the Western Balkans undeniably form part of Europe, and whereas the future of all the countries of the region lies in being fully integrated Member States of the European Union,

B. whereas the prospect of EU membership and its associated benefits is the primary guarantor of stability and the main driver of reforms for the countries of the Western Balkans, a part of Europe which has in the distant and recent past been plagued by wars, ethnic cleansing and authoritarian rule,

C. whereas the legacy of the wars of the 1990s continues to be a significant impediment to the establishment of lasting security and political stability in the region; whereas this poses new and unique challenges for the EU's enlargement policy and whereas recourse must be had to all Common Foreign and Security Policy (CFSP)/European Security and Defence Policy (ESDP) tools at the disposal of the Union as a part of an overall approach tailored to the needs of post-conflict societies,

D. whereas a number of regional partners of the EU continue to have unresolved issues with their neighbours; whereas the EU and the Western Balkan countries are agreed that good-neighbourly relations and regional cooperation remain key factors in advancing towards EU membership,

([1]) Texts adopted, P6_TA(2008)0639.
([2]) Texts adopted, P6_TA(2009)0005.

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1. Points out that the leverage of the European Union and its ability to function as an agent of stability and a driver of reform in the Western Balkans depend on the credibility of its commitment to allowing those States in the region that fully satisfy the Copenhagen criteria to become full members of the EU; stresses therefore that the Commission and the Member States must maintain a firm commitment to future enlargement encompassing the Western Balkans;

2. Points out the need for the Western Balkan countries to assume ownership of their rapprochement to the European Union; stresses that the integration process must be driven from within and that successful accession depends on the existence of a strong civil society, a low degree of corruption and an overall change-over to knowledge-based economies and societies;

3. Points out that, pending the entry into force of the Lisbon Treaty, the current Treaties would still technically allow for the institutional adjustments necessary for further enlargements; believes nevertheless that ratification of the Lisbon Treaty is of crucial importance;

4. Stresses that Member States must not unduly delay the preparation of the Commission's opinion in respect of potential candidate countries that have submitted an application for membership, and urges the Council and the Commission to deal with recent and forthcoming applications for membership with all due speed;

5. Stresses that the accession process must be based on a fair and rigorous application of the principle of conditionality whereby each country will be judged solely in the light of its capacity to meet the Copenhagen criteria, the conditions of the Stabilisation and Association process and all the benchmarks laid down in relation to a specific stage of the negotiations, and, consequently, that the accession process must not be slowed down or blocked for countries that have satisfied the requirements previously set;

6. Points out that the accession process must maintain a clear regional perspective, and that efforts must be made to avoid a situation whereby differences in the pace of integration result in the erection of new barriers in the region, in particular with regard to the process of visa liberalisation; supports the role of the Regional Cooperation Council in strengthening regional ownership and in serving as the key interlocutor for the EU in all matters concerning regional cooperation in south-east Europe;

7. Calls on the Parliaments of Member States to give their assent promptly to those Stabilisation and Association Agreements which are currently in the process of ratification;

8. Stresses that all parties concerned must make serious efforts to find mutually acceptable solutions to outstanding bilateral disputes between Member States and countries of the Western Balkans and among countries of the Western Balkans themselves; stresses in this context that good-neighbourly relations and acceptance of the respective cultural and historic heritage are extremely important for preserving peace and enhancing stability and security; believes that the opening of accession negotiations with the countries of the Western Balkans and the opening and closing of individual negotiation chapters should not be obstructed or blocked over questions relating to bilateral disputes and that, for this reason, countries should agree on procedures for solving bilateral issues before the start of accession negotiations;

9. Notes, in this respect, the decision by certain Western Balkan countries to lodge complaints or seek advisory opinions from the International Court of Justice on bilateral disputes; takes the view that the EU should make every effort to assist and facilitate a comprehensive and lasting settlement of the pending issues;

10. Considers it necessary to continue to promote inter-ethnic and intercultural dialogue in order to overcome both the burden of the past and tensions in relations between the countries of the Balkan region; believes that civil society organisations (CSOs) and people-to-people contacts (both between Western Balkan countries and between those countries and the EU) are instrumental in advancing reconciliation, facilitating mutual understanding and promoting peaceful inter-ethnic cohabitation; consequently, calls on the Commission to pay greater attention to, and provide increased funding for, initiatives promoting reconciliation, tolerance and dialogue between different ethnic groups, and to support the implementation of inter-ethnic agreements;

11. Lends its full support to the ESDP missions and the EU Special Representatives (EUSRs) deployed in the region, which still have key roles to play in maintaining stability and ensuring progress in the process of building functioning states capable of meeting the Copenhagen criteria; stresses that no ESDP mission or EUSR office may be wound up until their respective mandates have unambiguously been fulfilled;

12. Fully supports the efforts aimed at establishing by 2010 a comprehensive Western Balkans Investment Framework for the coordination of grants and loans offered by the Commission, by international financial institutions and by individual country donors; welcomes the Infrastructure Project Facility (IPF) and points out that IPF projects in the fields of transport, the environment, energy and the social sector should be developed and carried out with a clear regional perspective; stresses the need for closer coordination in order to ensure effective complementarity, coherence and efficiency of assistance in the Western Balkans; believes that these coordinated loan/grant facilities should be directed in particular towards those potential candidate countries which do not have access to funds from all five components of the Instrument for Pre-Accession Assistance ([1]) (IPA); stresses the importance of regional cooperation in the area of best practice as regards access to the pre-accession funds;

13. Recalls that the dispute over gas supplies between Russia and Ukraine in January 2009 caused serious disruptions in the supply of energy to the Western Balkan countries; calls for the diversification of transit routes and better interconnection of the energy networks in the region with the help of EU funding;

14. Recalls that transport infrastructure is important for economic development and social cohesion; consequently, urges the Commission to support the establishment of an adequate intermodal system for transport between the European Union and countries in the Western Balkans area, and, within that area, to promote the free and speedy movement of goods and persons, in particular by developing Pan-European Transport Corridor VII;

15. Welcomes the new Civil Society Facility established under the IPA, and the consequent tripling of funding available to CSOs; urges the Commission to strengthen local ownership of civil society development and to create opportunities for regular interaction and consultation with local CSOs with a view to taking their views and needs into account in the planning and programming stages of assistance under the IPA; urges the Commission to encourage the creation of a regional discussion forum consisting of CSOs, as a means of disseminating best practice as regards access to the pre-accession funds;

16. Further urges the Commission to devote greater attention to the promotion of small to medium-sized and non-urban CSOs in the region, notably by allocating a greater share of its assistance to such organisations, by facilitating the procedures for applying for EU funding, and by reviewing the rules and increasing the co-financing of projects for small and medium-sized CSOs;

17. Stresses the importance of a liberalisation of the Schengen visa regime for the citizens of the countries of the Western Balkans as a means of acquainting the people of the region with the European Union; welcomes the dialogue on visa liberalisation and urges the Council and the Commission to conduct the process in as transparent a manner as possible and with clearly defined benchmarks, in order to facilitate external monitoring and increase public accountability of the process;

([1]) Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA) (OJ L 210, 31.7.2006, p. 82).

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18. Points out that a cumbersome visa procedure, compounded by the understaffing of consulates and embassies in the region, is liable to generate hostility towards the EU among the people of the region, at a time when the Union's popularity is implicitly the biggest stimulus to reform;

19. Encourages the countries of the Western Balkans to accelerate their efforts to fulfil the requirements set out in the individual roadmaps, so as to ensure the removal of the visa regime for their countries as rapidly as possible; believes that the fulfilment of these conditions is crucial to accelerating the process of accession to the European Union; is in this context of the opinion that the IPA should support the efforts made by the beneficiary countries to meet the requirements laid down in the roadmap for visa liberalisation;

20. Fully supports the increased funding and number of scholarships for study and research in the EU available to students and researchers from the Western Balkans under the Erasmus Mundus programme in order to familiarise the people and institutions of the Western Balkan states with the EU agenda and to boost educational skills; urges the beneficiary countries to make all the necessary arrangements, including publicity and information campaigns, in order to allow their citizens to take full advantage of these opportunities; calls on the countries concerned to intensify the preparatory administrative measures in order to meet the entry criteria of the Lifelong Learning programme;

21. Stresses the vital role of education and training in today's knowledge-based economies; in this context, emphasises the need to strengthen and stimulate entrepreneurial and innovative skills at all educational levels;

22. Fully supports the participation of the countries of the Western Balkans in Community programmes and agencies; in particular, points to their participation in the Energy Community Treaty and their envisaged participation in a Transport Community Treaty as model examples of full integration of candidate and potential candidate countries into Community structures and alignment of legislation with the *acquis communautaire* at an early stage of the accession process;

23. Stresses that environmental protection is an important element of sustainable development in the Western Balkan region; therefore calls on the Western Balkan governments to adhere to the principles and targets of the Energy Community of South-East Europe so as to promote sound environmental policies and strategies, particularly in the area of renewable energy, in line with EU environmental standards and the EU's policy on climate change;

24. Supports the inter-parliamentary dialogue at regional level and stresses the importance of fully involving the national parliaments of the countries of the Western Balkans in the process of European integration; believes that the European Parliament and the national parliaments of the Member States have an important role to play in engaging in dialogue and cooperation with the parliaments of the countries of the Western Balkans; believes that the nature of the European Parliament's inter-parliamentary meetings should be improved in order to provide a functional and effective system for organising more focused, practice-oriented debates and workshops;

25. Stresses the importance of working towards a reduction of all tariff and non-tariff barriers to trade within the region and between the Western Balkans and the EU as a key priority for furthering economic development, regional integration and people-to-people contacts; underlines the central role of the Central European Free Trade Agreement (CEFTA) in furthering trade liberalisation in the region, and welcomes the Commission's financial support to the CEFTA secretariat;

26. Expresses its solidarity with the countries of the Western Balkans in the global economic crisis and reaffirms its support for the economic and social consolidation of the region; welcomes, therefore, the recent proposal by the Commission to extend its European Economic Recovery Plan to the Western Balkans and urges it to remain vigilant and, if necessary, to adopt adequate measures in order to guarantee the smooth continuation of the Stabilisation and Association process;

27. Urges continued efforts on the part of the CEFTA parties towards a reduction of all non-tariff barriers and of all tariffs and quotas for trade in agricultural products; calls on the members of the Pan-Euro-Med group to continue working towards a resolution of the outstanding issues that are currently barring an extension of the Pan-Euro-Med diagonal cumulation scheme to the countries of the Western Balkans;

28. Calls on the Council and the Commission to implement all appropriate measures to encourage deeper integration of the countries of the Western Balkans into the world trade and economic system, in particular through WTO accession; underlines that liberalisation of trade must go hand in hand with reducing poverty and unemployment rates, promoting economic and social rights and respecting the environment; calls on the Commission to duly submit in a timely manner, for approval by Parliament, any new proposals aimed at providing exceptional budgetary assistance to Western Balkan states;

29. Calls on the states in the region to attach high priority to the fight against corruption, as corruption seriously hinders societal progress; calls on those states to take all necessary measures to combat organised crime and trafficking in humans and drugs;

30. Urges continued EU support for regional cooperation initiatives in the field of justice and home affairs (JHA) and efforts aimed at legal and judicial harmonisation such as, inter alia, the Police Cooperation Convention for Southeast Europe, the Southeast European Law Enforcement Centre (SELEC) and the Southeast European Prosecutors Advisory Group (SEEPAG); takes note of the ongoing and planned financial assistance to the Prosecutors' Network in South-Eastern Europe (PROSECO) and to the establishment of International Law Enforcement Coordination Units (ILECUs), and urges the Commission to coordinate these projects with the aforementioned initiatives;

31. Urges the Commission to identify priority projects and to clarify the requirements it imposes on the various national and regional institutions with regard to interstate and inter-institutional cooperation in the field of JHA; stresses the importance of developing initiatives in the field of e-justice as a part of EU support for e-governance initiatives in order to improve cooperation and increase transparency in judicial processes and internal administrative systems;

32. Expresses its criticism of the constitutional and/or legal provisions in force in all countries of the former Yugoslavia, which prohibit the extradition of their own nationals facing indictment in other states of the region, and of the legal obstacles which hamper the transfer of serious criminal proceedings between courts in different countries of the region; calls on the Council and the Commission to urge the countries of the region to take steps towards a coordinated abolition of all such prohibitions and legal obstacles;

33. Points out that legal provisions restricting extradition can foster impunity for high-level crimes including crimes against humanity, violations of the laws or customs of war, trans-national organised crime, illicit trafficking and terrorism, and that such provisions are one of the main causes of the widely criticised yet continuing practice of holding trials *in absentia*; supports the efforts of national prosecutors to overcome the above-mentioned legal impediments by means of pragmatic cooperation arrangements; commends the work of the Organization for Security and Co-operation in Europe (OSCE) in promoting increased cooperation, and encourages states in the region to further facilitate mutual legal assistance and extradition while fully respecting human rights standards and the norms of international law;

34. Stresses that full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY), as regards the arrest and extradition of the remaining fugitive indictees, the transfer of evidence and full cooperation before and during the trial process, is an essential requirement of the accession process; urges the Commission to support, jointly with the ICTY, the OSCE and the governments of the region, initiatives aimed at strengthening the capacity and efficiency of national judiciaries engaged in determining accountability for war crimes and other lesser crimes, and ensuring that trials are conducted in an independent and impartial manner and in accordance with the standards and norms of international law;

35. Notes the fundamental role of educational programming and structures in promoting inclusiveness and reducing inter-ethnic tensions; consequently, calls on the Western Balkan governments to improve the quality of education by including civic, human and democratic rights as fundamental European values in the relevant curricula and to put an end to segregation in schools; points out that the teaching of history in schools and universities in the Western Balkans must be based on documented research and must reflect the different perspectives of the various national and ethnic groups in the region if lasting results are to be achieved in promoting reconciliation and improving inter-ethnic relations; fully supports initiatives, such as the Joint History Project of the Center for Democracy and Reconciliation in Southeast Europe, aimed at writing and disseminating joint history-teaching materials that provide a multi-perspective account of Balkan history, and calls on the competent ministries, educational authorities and educational establishments in the region to endorse the use of joint history teaching materials; calls on the Commission to support such initiatives financially and politically;

36. Emphasises the importance of an effective framework for enhancing, protecting and guaranteeing the rights of ethnic and national minorities in a region that has a multi-ethnic character and has witnessed widespread and systematic ethnically motivated violence in the past; calls on the governments of the region to strengthen their efforts aimed at ensuring that all laws in the field of minority and human rights are properly respected in practice and that appropriate action is taken when those laws are infringed; urges that further efforts be made to ensure that initiatives to improve minority inclusion and the situation of disadvantaged minority groups (notably the Roma) are properly financed and implemented;

37. Stresses the need to draw up and implement programmes to promote gender equality and strengthen women's role in society as a guarantee of the democratic spirit and commitment to European values;

38. Points out that greater efforts are needed on the part of the governments of the region in order to guarantee the sustainable return of refugees and internally displaced persons, including the return of property and restitution of temporarily occupied houses, in line with the Sarajevo Declaration issued by the Regional Ministerial Conference on Refugee Returns on 31 January 2005; urges the Council and the Commission to insist that the governments of the region develop and implement programmes for access to housing and social services for returnees, and to strengthen their efforts aimed at combating discrimination against returning minorities; takes the view that these measures should already be in place when the countries in question reach the stage of candidate status and should be resolutely implemented and completed during the accession process;

39. Expresses its concern at the political interference suffered by the media in all Western Balkan states and the intermingling of business, political and media interests as well as the climate of threats and harassment against investigative journalists; calls on the Western Balkan states to fully respect the rights of journalists and independent media as a legitimate power in a democratic European state;

40. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States, the governments and parliaments of Albania, Bosnia and Herzegovina, Croatia, Kosovo, the former Yugoslav Republic of Macedonia, Montenegro and Serbia, the Chairman-in-office of the OSCE, the President of the OSCE Parliamentary Assembly, the Chairman of the Committee of Ministers of the Council of Europe, the President of the Parliamentary Assembly of the Council of Europe, the secretariat of the Regional Cooperation Council, the International Criminal Tribunal for the former Yugoslavia and the secretariat of the Central European Free Trade Agreement.

Friday 24 April 2009

Situation in Bosnia and Herzegovina

P6_TA(2009)0332

European Parliament resolution of 24 April 2009 on the situation in Bosnia and Herzegovina

(2010/C 184 E/22)

The European Parliament,

— having regard to the conclusions of the General Affairs and External Relations Council of 16 June 2003 on the Western Balkans and to the annex thereto entitled 'The Thessaloniki Agenda for the Western Balkans: moving towards European integration', which was endorsed by the Thessaloniki European Council of 19 and 20 June 2003,

— having regard to the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part, signed on 16 June 2008,

— having regard to its resolution of 23 October 2008 on the conclusion of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part [1],

— having regard to the appointment on 11 March 2009 of H.E. Valentin Inzko as the new EU Special Representative in Bosnia and Herzegovina [2],

— having regard to the joint statement on constitutional reform, State property, a population census and the Brčko District, issued in Prud on 8 November 2008 by the leaders of the HDZ BiH, SNSD and SDA parties, and having regard to their subsequent meetings,

— having regard to Rule 103(2) of its Rules of Procedure,

A. whereas the constant deterioration of the political climate in Bosnia and Herzegovina (BiH) is a source of considerable concern for Parliament,

B. whereas the State of BiH, as enshrined in the Dayton Peace Agreement (DPA), is a tangible testimony of the desire to achieve a lasting reconciliation between the different communities, following the brutal conflict of the 1990s,

C. whereas this process of reconciliation is inextricably linked to the country's progress towards European integration, since it is based essentially on the same values as those on which the EU rests,

D. whereas the signing of the above-mentioned EC-BiH Stabilisation and Association Agreement has given a clear message that the promise of EU membership for BiH is real and within the country's reach, provided it complies with the Copenhagen criteria and achieves the necessary reforms outlined in the European Partnership priorities,

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[1] Texts adopted, P6_TA(2008)0522.

[2] Council Joint Action 2009/181/CFSP of 11 March 2009 appointing the European Union Special Representative in Bosnia and Herzegovina (OJ L 67, 12.3.2009, p. 88).

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E. whereas any questioning of the territorial integrity of BiH would not only constitute a violation of the DPA, under which no entity has the right to secede from BiH, but would also run counter to the principles of tolerance and peaceful cohabitation between ethnic communities on which the stability of the whole Western Balkans is founded,

F. whereas, therefore, the international community and the EU will under no circumstances accept or tolerate any partition of BiH,

1. Considers that European integration is in the best interests of the entire population of the Western Balkans; regrets, therefore, the inability of BiH politicians to agree on a common political vision for their country, compromising for reasons of short-sighted nationalism the objective of joining the EU, an objective which would bring peace, stability and prosperity to BiH citizens;

2. Reminds political leaders in BiH that joining the EU means accepting the values and rules on which the EU is based, namely respect for human rights, including the rights of minorities, solidarity, including solidarity between peoples and communities, tolerance, including tolerance of different traditions and cultures, the rule of law, including respect for the independence of the judiciary, and democracy, including acceptance of majority rule and freedom of expression; urges political leaders to abstain from hatred politics, nationalist agendas and secessionism and condemns unilateral withdrawal from reforms;

3. Recalls also that the prospect of EU membership has been offered to BiH as a single country, not to its constituent parts, and that, consequently, threats of secession or other attempts to undermine the sovereignty of the State are completely unacceptable;

4. Urges all relevant authorities and political leaders, in this regard, to focus very much more on reconciliation, mutual understanding and peace-building measures, in order to support the stability of the country and inter-ethnic peace;

5. Reiterates that if BiH seriously wishes to join the EU it should comply with the following requirements:

(a) State institutions must be able to adopt and implement effectively the reforms required in order to join the EU;

(b) the State should therefore establish public institutions based on the rule of law and capable of efficient decision-making; those institutions must be functional, authoritative, independent of political influence and adequately resourced;

6. Believes that the above requirements can be achieved only through a constitutional reform of BiH based on the following criteria:

(a) the State should have sufficient legislative, budgetary, executive and judicial powers to function as a member of the EU, to establish and maintain a functional single market, to promote economic and social cohesion and to represent and defend the interests of the country abroad;

(b) the number of administrative levels involved in managing the country should be proportional to BiH's financial resources and should be based on an efficient, coherent and effective allocation of responsibilities;

(c) the safeguarding of vital national interests within BiH must be compatible with the country's capacity to act;

(d) all minority communities must enjoy the same rights as constituent peoples, and this includes abolishing ethnicity-based limitations on the right to be elected, in keeping with the provisions of the European Convention on Human Rights and the relevant opinions of the European Commission for Democracy through Law (Venice Commission) of the Council of Europe;

7. Underlines, in this context, the need to find a clear solution to the issue of State property, compatible with the constitutional prerogatives of the central State;

8. Reminds BiH politicians that it is their duty to reach an agreement on the above issues and that, were they to fail to reach such an agreement, they would condemn their country and their citizens to stagnation and isolation, at a time when the financial and economic crisis is hitting BiH badly and resulting in considerable job losses;

9. Points out that the constitutional reform of the country and its European perspective should be the subject of a wide-ranging, in-depth debate involving all components of BiH society, and should not be monopolised by the leaders of the main political parties and ethnic communities;

10. Urges the BiH Council of Ministers and Parliamentary Assembly to make greater and more effective efforts to adopt the legislation necessary to meet the requirements of European integration, and encourages the different bodies and authorities in BiH to improve coordination on EU-related issues;

11. Calls for the new Head of the EU Integration Office to be finally appointed and reminds the BiH authorities that the choice of the nominee should be non-partisan and based exclusively on relevant professional experience, proven skills and in-depth knowledge of European affairs;

12. Calls on the BiH authorities to fulfil speedily the requirements set out in the roadmap for visa liberalisation, in order to secure the lifting of the current visa obligations by the end of 2009;

13. Expresses its concern at the political interference in the media in BiH and the intermingling of business, political and media interests; calls on the authorities, in this regard, to fully respect the rights of journalists and the independence of the media;

14. Reiterates at the same time that the international community and its High Representative (HR) Mr Valentin Inzko will act firmly, in line with the HR's mandate, to counter any attempt to undermine the fundamentals of the DPA, notably the peaceful coexistence of different ethnic communities within one single State;

15. Takes the view, therefore, that the Office of the HR should assist the BiH authorities in achieving and properly implementing all of the five objectives and two conditions set by the Peace Implementation Council (PIC), and that, until this is done, the Office should remain in place and ensure the proper implementation of the DPA;

16. Underlines that progress in addressing the five objectives and two conditions set by the PIC is also necessary in order to move forward on the EU agenda;

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17. Regrets the paucity of attention paid by the Council to the deterioration of the political climate in BiH and the lack of determination shown so far by Member States to tackle the situation in the country seriously and in a coordinated fashion;

18. Calls on the Council to endorse the requirements imposed on BiH, as mentioned in this resolution, and to commit itself to promoting their implementation; believes in this context that the Council should grant the new EU Special Representative:

(a) a strong and clearly defined mandate and the necessary human resources to facilitate the adoption of the reforms outlined in this resolution and promote dialogue with civil society on such issues, including by means of targeted public campaigns and by means of activities to endorse intercultural and interreligious dialogue;

(b) the means to bring all the EU's instruments to bear in order to promote real progress in the country, including sanctioning powers (e.g. suspension of EU financial assistance);

(c) full and sustained political support and the authority to ensure overall coordination of EU actors and instruments deployed in BiH, thereby guaranteeing the consistency and coherence of all EU actions, as well as coordination with relevant non-EU international actors engaged in BiH;

(d) the right to update the Political and Security Committee monthly on developments in BiH and to make appropriate recommendations on targeted sanctions;

19. Calls on the EU High Representative for Common Foreign and Security Policy, Mr Javier Solana, and on the Commissioner for Enlargement, Mr Olli Rehn, to take a much more active and visible role in BiH by paying regular visits to the country and promoting more effectively a dialogue with civil society;

20. Congratulates BiH's civil society on displaying more goodwill than their political leaders and being a positive factor for change and reconciliation in the country;

21. Believes, furthermore, that the international military presence in BiH should remain substantial and should be quickly deployable, so as to show the determination of the international community to safeguard the security and integrity of BiH;

22. Reiterates its demands for the immediate arrest of the remaining indictees sought by the International Criminal Tribunal for the former Yugoslavia and for resolute action by the BiH authorities to eradicate the criminal networks succouring those indictees;

23. Calls, finally, for a strengthened dialogue between the EU and the USA and with other relevant international actors, in order to achieve broad support for a coherent approach to BiH and to avert further deterioration of the political situation in the country and the destabilisation of the region; underlines the need for enhanced regional cooperation to further BiH's progress;

24. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of Bosnia and Herzegovina and its entities.

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United Nations Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto

P6_TA(2009)0334

European Parliament resolution of 24 April 2009 on the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto

(2010/C 184 E/23)

The European Parliament,

— having regard to the proposal for a Council decision (COM(2008)0530),

— having regard to the United Nations Convention on the Rights of Persons with Disabilities ('the Convention'), adopted by the United Nations General Assembly on 13 December 2006,

— having regard to the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities ('the Optional Protocol'), adopted by the United Nations General Assembly on 13 December 2006,

— having regard to its resolution of 3 September 2003 on the Communication from the Commission to the Council and the European Parliament 'Towards a United Nations legally binding instrument to promote and protect the rights and dignity of persons with disabilities' ([1]),

— having regard to the Commission Communication of 30 October 2003 entitled 'Equal opportunities for people with disabilities: A European Action Plan' (COM(2003)0650), and to Parliament's resolution of 20 April 2004 thereon ([2]),

— having regard to its resolution of 19 January 2006 on disability and development ([3]),

— having regard to the Commission Communication of 28 November 2005 entitled 'The situation of disabled people in the enlarged European Union: the European Action Plan 2006-2007' (COM(2005)0604), and to Parliament's resolution of 30 November 2006 thereon ([4]),

— having regard to its resolution of 26 April 2007 on the situation of women with disabilities in the European Union ([5]),

— having regard to its resolution of 23 May 2007 on promoting decent work for all ([6]),

— having regard to the Commission Communication of 26 November 2007 entitled 'The situation of disabled people in the European Union: the European Action Plan 2008-2009' (COM(2007)0738),

— having regard to its position of 17 June 2008 on the proposal for a decision of the European Parliament and of the Council on the European Year for Combating Poverty and Social Exclusion (2010) ([7]),

([1]) OJ C 76 E, 25.3.2004, p. 231.
([2]) OJ C 104 E, 30.4.2004, p. 148.
([3]) OJ C 287 E, 24.11.2006, p. 336.
([4]) OJ C 316 E, 22.12.2006, p. 370.
([5]) OJ C 74 E, 20.3.2008, p. 742.
([6]) OJ C 102 E, 24.4.2008, p. 321.
([7]) Texts adopted, P6_TA(2008)0286.

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— having regard to the Resolution of the Council of the European Union and the representatives of the Governments of the Member States, meeting within the Council of 17 March 2008 on the situation of persons with disabilities in the European Union ([1]),

— having regard to its resolution of 20 May 2008 on progress made in equal opportunities and non-discrimination in the EU (the transposition of Directives 2000/43/EC and 2000/78/EC) ([2]),

— having regard to its position of 24 April 2009 on the proposal for a Council decision concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities ([3]),

— having regard to its position of 24 April 2009 on the proposal for a Council decision concerning the conclusion, by the European Community, of the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities ([4]),

— having regard to the reports of the Committee on Employment and Social Affairs and the opinions of the Committee on Women's Rights and Gender Equality (A6-0229/2009 and A6-0230/2009),

— having regard to Rule 103(2) of its Rules of Procedure,

A. whereas all Member States have signed, but so far only seven Member States have ratified, the Convention and the Optional Protocol,

B. whereas the Convention promotes and protects the human rights of all persons with disabilities, including those who require more intensive support,

C. whereas the Optional Protocol provides the possibility for (groups of) persons with disabilities, who claim that parties to the Convention have violated rights provided in the Convention, to submit communications to a Committee,

1. Approves the conclusion by the Community of the Convention and the Optional Protocol;

2. Invites the Commission and the Council, as legal representatives of the Community, to deposit the instrument of ratification with the United Nations before 3 December 2009;

3. Urges all Member States to proceed rapidly to ratification of the Convention in full, to put its content into effect and to create the necessary material infrastructure;

4. Calls on the Member States to accede to and/or ratify the Optional Protocol to give persons with disabilities whose rights have been violated any possibility to fight such violation and to ensure their protection against all forms of discrimination;

5. Urges the Commission to clarify the potential extent of Community competences in respect of the Convention; suggests emphasising the indicative nature of the Community acts listed in the Declarations ([5]); stresses the importance of highlighting in the Declarations the competence of the Community to support the rights and inclusion of persons with disabilities in development cooperation and humanitarian assistance, health and consumer affairs;

([1]) OJ C 75, 26.3.2008, p. 1.
([2]) Texts adopted, P6_TA(2008)0212.
([3]) Texts adopted, P6_TA(2009)0312.
([4]) Texts adopted, P6_TA(2009)0313.
([5]) Declaration of the European Community in application of Article 44(1) of the Convention (Annex 2 to the draft Council decision, Vol. I) and Declaration of the European Community in application of Article 12(1) of the Optional Protocol (Annex 2 to the draft Council decision, Vol. II).

6. Calls on the Commission to use Article 3 of the EC Treaty as a basis for defining the extent of the Community competences in respect of the Convention that are listed in the Declaration of the European Community in application of Article 44(1) of the Convention, set out in Annex 2 to the draft Council decision; stresses the utmost importance of highlighting development cooperation, health and consumer affairs in the application of that Declaration;

Implementation of the Convention and the Optional Protocol

7. Supports the Member States which have started the process of progressive implementation of the Convention and the Optional Protocol, and calls on the remaining Member States to do so;

8. Calls on the Community and the Member States to incorporate all the provisions of the Convention into law, to take the measures and provide financial means necessary for their application within specific deadlines and to set quantitative objectives for this; encourages the Member States to exchange information and best practices on the implementation;

9. Calls on the Member States to apply gender mainstreaming in decisions about policies and measures for women and men, girls and boys with disabilities and in their implementation in all areas, especially regarding integration in the workplace, education and anti-discrimination, and to introduce legislation to protect the rights of women and girls with disabilities in cases of sexual abuse and psychological and physical violence in public and within their home environments and to support the recovery of women and girls with disabilities who have been subjected to such violence;

10. Calls on the Member States and the Community institutions to ensure free access for citizens of the Union and for organisations of persons with disabilities to information about their rights under the Convention and the Optional Protocol, and to ensure dissemination of that information to such citizens and organisations in a form that is accessible to citizens;

11. Underlines the importance of equipping the Commission with all the necessary financial and human resources to enable it to serve as a focal point in respect of matters falling within the Community's competence relating to the implementation of the Convention; calls for the establishment of a procedure that would enable an adequate overview of all European and national policies that have an impact on the implementation of the Convention; requests the Commission to regularly report to Parliament and the Council on the progress of the implementation;

12. Calls on the Member States, in accordance with their system of organisation, to designate one or more focal points within their respective governments for matters relating to the national implementation and monitoring of the Convention and to consider the establishment or designation of a coordination mechanism within the government to facilitate action in different sectors and at different levels, in accordance with Article 33(1) of the Convention; requests that special attention be paid to the establishment of an appropriate independent monitoring mechanism pursuant to Article 33(2) of the Convention and in accordance with the principles relating to the status of national institutions – the Paris Principles – as adopted in UN General Assembly resolution 48/134 of 20 December 1993;

13. Urges the Community and the Member States to promote a well coordinated social dialogue between the interested partners and to actively involve organisations of persons with disabilities in monitoring and implementing the Convention, pursuant to Articles 4 and 33(2) of the Convention;

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14. Instructs its President to forward this resolution to the Council, the Commission, the European Economic and Social Committee and the governments and parliaments of the Member States.

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25th annual report from the Commission on monitoring the application of Community law (2007)

P6_TA(2009)0335

European Parliament resolution of 24 April 2009 on the 25th annual report from the Commission on monitoring the application of Community law (2007) (2008/2337(INI))

(2010/C 184 E/24)

The European Parliament,

— having regard to the 25th annual report from the Commission on monitoring the application of Community law (2007) (COM(2008)0777),

— having regard to the Commission staff working documents (SEC(2008)2854 and SEC(2008)2855),

— having regard to the Commission Communication of 5 September 2007 entitled 'A Europe of results – applying Community law' (COM(2007)0502),

— having regard to the Commission Communication of 20 March 2002 on relations with the complainant in respect of infringements of Community law (COM(2002)0141),

— having regard to its resolution of 21 February 2008 on the Commission's 23rd annual report on monitoring the application of Community law (2005) [1],

— having regard to Rule 45 and Rule 112(2) of its Rules of Procedure,

— having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Petitions (A6-0245/2009),

1. Regrets that, unlike in the past, the Commission has not responded in any way to the issues raised by Parliament in its previous resolutions, in particular the above-mentioned resolution of 21 February 2008; notes the lack of significant improvement with regard to the three fundamental issues of transparency, resources and the length of procedures;

2. Reminds the Commission of requests made in previous years, namely

— to investigate urgently the possibility of a system clearly signposting the various complaints mechanisms available to citizens, which could take the form of a common EU portal or the creation of an on-line one-stop-shop in order to assist citizens;

— to adopt a communication setting out its interpretation of the principle of State liability for breach of Community law, including infringements attributable to the judicial branch, thus enabling citizens to contribute more effectively to the application of Community law;

[1] Texts adopted, P6_TA(2008)0060.

3. Calls on the Commission, therefore:

— to abide by the commitment made in its above-mentioned Communication of 20 March 2002 to publish all its infringement decisions ([1]), given that the publication of those decisions, starting with the registration of a complaint and followed by all subsequent acts, is a vital tool with which to curb political interference in the management of infringements;

— to provide Parliament, as repeatedly requested, with clear, exhaustive data on the resources earmarked for the processing of infringement cases in the various Directorates-General;

— to consider introducing a simplified, less bureaucratic procedure for the issuing of formal notice against a Member State which has failed to fulfil its obligations, in order to take swift advantage of the effectiveness of this measure;

calls on the Commission, moreover, to apply Article 228 of the EC Treaty decisively, in order to ensure that judgments delivered by the Court of Justice are properly enforced;

4. Notes that the Commission, as announced in its above-mentioned Communication of 5 September 2007 ([2]), has, in the annual report under review, described the priority actions it intends to pursue in certain areas of complaint and infringement management; welcomes the statements according to which priority will continue to be given to 'problems having a wide-ranging impact on fundamental rights and free movement' ([3]); stresses the importance of urgent and determined action in these fields, as acts of violence related to racism and xenophobia have become frequent in certain Member States; equally welcomes the priority given to 'infringements where citizens are on a significant scale or repeatedly exposed to direct harm or serious detriment to their quality of life' ([4]); calls on the Commission to speed up the resolution and, where appropriate, closure of those infringement procedures that prevent Member States from investing in infrastructures that could affect the implementation of the European Economic Recovery Plan; calls on the Commission to provide the parliamentary committees responsible with a detailed plan setting out the time-limits and deadlines for the specific actions it intends to launch in these areas;

5. Notes that, of the new cases of infringement in 2007, 1 196 concerned a failure to notify national measures relating to the transposition of Community directives; considers it unacceptable that the Commission should grant itself twelve months ([5]) to deal with simple cases of non-communication of transposition measures by a Member State, and calls on the Commission to take automatic and immediate action in respect of cases of this kind which do not require any analysis or assessment;

6. Considers that there are still no clear procedures in place to effectively pursue a Member State before the Court of Justice for an infringement of Community law which has since been remedied and to obtain reparation for previous failures and omissions; urges the Commission to come forward with new proposals (by the end of 2010) to complete the current infringement procedure in such a way as to take account of this inequitable situation;

([1]) Point 12: 'Commission decisions on infringement cases are published within one week of their adoption on the Secretariat-General's Internet site at the following address: http://europa.eu.int/comm/secretariat_general/sgb/droit_com/index_en.htm#infractions. Decisions to deliver a reasoned opinion to a Member State or to refer a case to the Court of Justice will also be publicised by means of a press release, unless the Commission decides otherwise.'

([2]) Point 3: 'The Commission will describe and explain its action on these priorities in its annual reports, from 2008.'

([3]) COM(2008)0777, p. 9.

([4]) Ibid.

([5]) 'For cases concerning the non-communication of transposition measures transposing directives, the target should be that no more than 12 months elapses from the sending of the letter of formal notice to the resolution of the case or seizure *(sic)* of the Court of Justice' (COM(2007)0502).

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7. Points out that, according to the new working method proposed by the Commission in its 2007 Communication, requests for information and complaints received by the Commission will be directly forwarded to the Member State concerned 'where an issue requires clarification of the factual or legal position in the Member State. (…) The Member States would be given a short deadline to provide the necessary clarifications, information and solutions directly to the citizens or business concerned and inform the Commission' ([1]);

8. Notes that the Commission has launched the 'EU Pilot' project to test the new working method in several Member States, that 15 Member States are taking part in the project, which began in April 2008, and that, once its first year of operation has been assessed, the project could be extended to the other Member States;

9. Points out that it is nevertheless a project operating on a voluntary basis, the features of which have already raised some doubts and specific questions (as mentioned in Parliament's above-mentioned resolution of 21 February 2008);

10. Asks the Commission in particular whether the lack of resources in the Member States is not a worrying sign that there may be genuine problems in monitoring the application of Community law; calls on the Commission, moreover, in its assessment of the project, to check the following issues and report to Parliament on them:

— that complainants have received from the Commission clear, exhaustive explanations concerning the processing of their complaint; that the new method has genuinely helped to resolve their cases and that it has not removed all responsibility from the Commission in its role as 'guardian of the Treaty';

— that the new method has not further delayed the launch of an infringement process the duration of which is already extremely long and indefinite;

— that the Commission has not shown any indulgence towards Member States as regards compliance with the deadlines set by the Commission (10 weeks) and that, on expiry of that period, the Commission has provided the Member State concerned with clear-cut information and time-frames regarding its future action in order to find an early definitive solution for the citizen;

— that the fact that the 'EU Pilot' has been implemented in only 15 volunteer States does not mean that less attention has been paid to dealing with infringements in respect of those countries that have not participated in the project;

11. Asks whether, thanks to the implementation of the EU Pilot project and the subsequent reduction of the workload in relation to dealing with infringements, the Commission is carrying out more systematic and exhaustive checks on the transposition of directives in the national legislative systems;

12. Asks the Commission whether the 'EU Pilot' project has affected the conduct of the package meetings that it holds for Member States involved in the project and for the other non-participating Member States, bearing in mind that such meetings are considered to be the main means of dealing with and resolving infringement procedures;

13. Considers that EU citizens should expect the same level of transparency from the Commission, whether they make a formal complaint or whether they exercise their right to petition under the Treaty; consequently, requests that the Committee on Petitions be provided with regular and clear information on the stages reached in infringement procedures also covered by an open petition, or failing this, that the committee be given access to the relevant Commission database on an equal footing with the Council;

([1]) COM(2007)0502, p. 8.

14. Reminds the Commission that any correspondence which may contain a complaint about a genuine breach of Community law must be registered as a complaint unless it is covered by the exceptional circumstances referred to in point 3 of the annex to the above-mentioned communication of 20 March 2002;

15. Notes that the Commission has declared that a fundamental directive such as Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States [1] has for all practical purposes not been properly transposed in any Member State; notes that the Commission has received more than 1 800 individual complaints in relation to that directive, registering 115 of them as complaints and opening five cases of infringement on the grounds of failure to apply the directive properly [2]; recognises that the Commission has worked with Parliament to useful effect and in a spirit of openness where Directive 2004/38/EC is concerned; endorses the Commission's proposed approach, whereby the directive is to be kept under continuous and exhaustive review, support, in the form of guidelines to be published in the first half of 2009, is to be provided to help Member States apply the directive fully and properly, and infringement proceedings are to be instituted against Member States whose legislation does not conform to the directive; expresses grave concern, however, as to the Commission's ability to perform its role as 'guardian of the Treaty' and the opportunity afforded to Parliament to check the complaint registration policy implemented by the various Commission departments;

16. Urges all Commission departments to keep complainants fully informed of the progress made in the processing of their complaints at the end of each predefined period (letter of formal notice, reasoned opinions, proceedings before the Court or closure of a case), to provide, where appropriate, recommendations on handling the case through alternative dispute settlement mechanisms, to state the reasons for their decisions and to communicate those reasons in detail to complainants in accordance with the principles laid down in the above-mentioned 2002 Communication;

17. Welcomes the gradual phasing-in by the Commission of citizens' summaries, published together with major Commission proposals; recommends making such summaries accessible by using a single access point, and considers it unacceptable that such summaries disappear once the legislative procedure is concluded, which is when they would be most relevant to citizens and businesses;

18. Recalls the commitment on the part of the Council to encourage the Member States to draw up and publish tables illustrating the correlation between directives and domestic transposition measures; insists that such tables are essential to enable the Commission to carry out an effective scrutiny of implementing measures in all Member States;

19. Notes with disappointment that during this parliamentary term no significant progress has been made with regard to the vital role that Parliament should play in monitoring the application of Community law; considers that the prioritisation of infringement procedures by the Commission involves political and not merely technical decisions which are currently not subject to any form of external scrutiny, control or transparency; calls for the related reforms proposed by the Working Party on Reform of the European Parliament, which enhance Parliament's own capacity to monitor the application of Community law, to be promptly implemented; supports in this regard the decision of the Conference of Committee Chairs of 25 March 2009;

20. Calls for greater cooperation between the national parliaments and the European Parliament and their respective Members in order to promote and step up the proper monitoring of European issues at national level, as well as to facilitate the flow of information, especially during the adoption of European legislative acts; considers that members of national parliaments have a valuable role to play in monitoring the application of Community law, thereby helping to strengthen the European Union's democratic legitimacy and bringing it closer to the citizens;

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[1] OJ L 158, 30.4.2004, p. 77.

[2] 'In the thirty months since the Directive has been applicable, the Commission has received more than 1 800 individual complaints, 40 questions from the Parliament and 33 petitions on its application. It has registered 115 complaints and opened five infringement cases for incorrect application of the Directive.' – Report from the Commission to the European Parliament and the Council on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (COM(2008)0840), p. 9.

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21. Recalls the Council's pledge to encourage the Member States to draw up and publish tables illustrating the correlation between directives and national transposition measures; stresses that such tables are essential in order to allow the Commission to monitor implementation measures in all Member States effectively; resolves, in its capacity as co-legislator, to take all necessary measures to ensure that during the legislative process the provisions concerning these tables are not deleted from the texts of Commission proposals;

22. Notes that the national courts play a vital role in applying Community law, and fully supports the Commission's efforts to identify supplementary training courses for national judges, legal professionals, officials and civil servants in the national administrations; underlines that this support is essential in the new Member States, especially as regards access to legal information and legal literature in all the official languages; stresses the need to support improved availability of databases in respect of national court rulings concerning Community law;

23. Encourages the Commission to further examine EU-wide collective redress mechanisms, with a view to completing the initiatives currently under way in the areas of consumer and competition law; considers that such mechanisms could be used by citizens, including petitioners, to improve the effective application of Community law;

24. Calls on the Commission to ensure that greater priority is given to the application of Community law relating to the environment, bearing in mind the worrying trends revealed in its report and the many petitions received in this area, and in this context recommends that enforcement checks be strengthened and that the relevant services be adequately resourced; welcomes the Commission's communication of 18 November 2008 on implementing European Community environmental law (COM(2008)0773) as a first step in this direction;

25. Agrees with the Commission's assessment that more preventive measures should be taken to avoid infringements of Community legislation by Member States; encourages the Commission to accept specific demands made by the Committee on Petitions in order to prevent irreversible damage to the environment; and regrets that the Commission's response is too often that it has to await a final decision by the responsible national authorities before it has any power to act;

26. Instructs its President to forward this resolution to the Council, the Commission, the Court of Justice, the European Ombudsman and the governments and parliaments of the Member States.

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RECOMMENDATIONS

EUROPEAN PARLIAMENT

Profiling, notably on the basis of ethnicity and race, in counter-terrorism, law enforcement, immigration, customs and border control

P6_TA(2009)0314

European Parliament recommendation to the Council of 24 April 2009 on the problem of profiling, notably on the basis of ethnicity and race, in counter-terrorism, law enforcement, immigration, customs and border control (2008/2020(INI))

(2010/C 184 E/25)

The European Parliament

— having regard to the proposal for a recommendation to the Council by Sarah Ludford on behalf of the ALDE Group on the problem of profiling, notably on the basis of ethnicity and race, in counter-terrorism, law enforcement, immigration, customs and border control (B6-0483/2007),

— having regard to international, European and national human rights instruments, in particular to: the International Covenant on Civil and Political Rights (ICCPR); the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR); the Treaty on European Union; the Treaty establishing the European Community (EC Treaty); the Charter of Fundamental Rights of the European Union (the Charter) and the national constitutions of the Member States, and to the rights and guarantees which they confer on individuals in the field of privacy, data protection, non-discrimination and free movement,

— having regard to European data protection measures from the Council of Europe: Article 8 of the ECHR, Council of Europe Convention 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data, Recommendations of the Council of Europe's Committee of Ministers to Member States R(87)15 regulating the use of personal data in the police sector [1], R (97) 18 concerning the protection of personal data collected and processed for statistical purposes [2] and R(2001) 10 on the European Code of Police Ethics [3],

— having regard to EU data protection provisions: Articles 7 and 8 of the Charter, Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [4], and Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters [5],

— having regard to measures against racial discrimination: the International Convention on the Elimination of all forms of Racial Discrimination (ICERD), Article 14 of and Protocol 12 to the ECHR, Article 13 of the EC Treaty and Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [6],

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[1] Adopted by the Committee of Ministers on 17 September 1987 at the 410th meeting of the Minister' Deputies.
[2] Adopted by the Committee of Ministers on 30 September 1997 at the 602nd meeting of the Ministers' Deputies.
[3] Adopted by the Committee of Ministers on 19 September 2001 at the 765th meeting of the Ministers' Deputies.
[4] OJ L 281, 23.11.1995, p. 31.
[5] OJ L 350, 30.12.2008, p. 60.
[6] OJ L 180, 19.7.2000, p. 22.

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— having regard to EU instruments in the field of security and the fight against terrorism, including police and judicial cooperation and exchange of information and intelligence, such as Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences ([1]), Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union ([2]), Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime ([3]) and its implementing Decision 2008/616/JHA of 23 June 2008 ([4]),

— having regard to existing and planned EU databases such as the Schengen Information System, Eurodac and the Visa Information System, to biometric data collection measures such as those for residence permits and passports, and to the Commission's Communication of 30 November 2006 entitled 'Reinforcing the management of the European Union's Southern Maritime Borders' concerning the establishment of a Permanent Coastal Patrol Network for the southern maritime external borders (COM(2006)0733), as well as to proposed surveillance projects such as Eurosur (European borders surveillance system),

— having regard to the proposal to create 'e-borders' as mentioned in the Commission's Communication of 13 February 2008 on 'Preparing the next steps in border management in the European Union', where integrated border management envisaging the creation of automated border controls including a registered traveller programme and an entry-exit system is proposed (COM (2008)0069),

— having regard to the Agreement between the European Union and the United States of America on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the United States Department of Homeland Security (DHS) (2007 PNR Agreement) ([5]) , to the proposal for a Council framework decision on the use of Passenger Name Records (PNR) for law enforcement purposes (COM (2007)0654), as well as to the opinions on that proposal by the European Union Agency for Fundamental Rights (the Fundamental Rights Agency), the European Data Protection Supervisor, the Article 29 Working Party and the Working Party on Police and Justice,

— having regard to relevant national case-law such as the ruling of the German Constitutional Court on *polizeiliche präventive Rasterfahndung* ([6]) and the judgment of the UK House of Lords on the Czech Roma ([7]) and to the case-law of the European Court of Human Rights (ECtHR), in particular Timishev v. Russia ([8]), Nachova and others v. Bulgaria ([9]), D.H and others v. the Czech Republic ([10]) and S. and Marper v. the United Kingdom ([11]), and of the Court of Justice of the European Communities, particularly in *Huber v Germany* ([12]),

— having regard to the report of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin ([13]), to the paper on 'Protecting the right to Privacy in the fight against terrorism' by the Council of Europe Commissioner for Human Rights Thomas Hammarberg ([14]), to General Policy Recommendations No 8 on Combating racism while fighting terrorism ([15]) and No 11 on Combating racism and racial discrimination in policing ([16]) of the European Commission against Racism and Intolerance (ECRI) of the Council of Europe and to the report on 'Ethnic profiling' by the European Union Network of Independent Experts on Fundamental Rights ([17]),

([1]) OJ L 253, 29.9.2005, p. 22.
([2]) OJ L 386, 29.12.2006, p. 89.
([3]) OJ L 210, 6.8.2008, p. 1.
([4]) OJ L 210, 6.8.2008, p. 12.
([5]) OJ L 204, 4.8.2007, p. 18.
([6]) Decision of the German Constitutional Court, BVerfG, 1 BvR 518/02 of 4.4.2006, Absatz-Nr. (1-184).
([7]) House of Lords, 9 December 2004, *R v. Immigration Office at Prague Airport and another (Respondents) ex parte European Roma Rights Centre and others (Appellants)* [2004] UKHL 55, paragraph 101.
([8]) *Timishev v. Russia*, 13 December 2005, nos. 55762/00 and 55974/00, ECHR 2005-XII.
([9]) *Nachova and Others v. Bulgaria* [GC], 26 February 2004, nos. 43577/98 and 43579/98, ECHR 2005-VII.
([10]) *D.H. and others v. the Czech Republic*, 13 November 2007, no. 57325/00.
([11]) *S. and Marper v. the United Kingdom*, 4 December 2008, nos. 30562/04 and 30566/04.
([12]) Judgment of 16 December 2008. Case C-524/06, not yet published in the European Case Reports.
([13]) UN document A/HRC/4/26, 29 January 2007.
([14]) CommDH/Issue Paper (2008)3, Strasbourg 17 November 2008.
([15]) CRI (2004) 26, adopted on 17 March 2004.
([16]) CRI (2007) 39, adopted on 29 June 2007.
([17]) CFR-CDF, Opinion 4.2006, available at http://ec.europa.eu/justice_home/cfr_cdf/doc/avis/2006_4_en.pdf

— having regard to Rule 114(3) and Rule 94 of its Rules of Procedure,

— having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Foreign Affairs (A6-0222/2009),

Profiling and data mining

A. Whereas Member States are making ever greater use of new technologies, via programmes and systems involving the acquisition, use, retention or exchange of information on individuals, as a means of combating terrorism or responding to other threats in the context of the fight against crime;

B. Whereas there is a need to adopt, at European level, a clear definition of profiling, having in mind the specific objective pursued; whereas profiling is an investigation technique made possible by new technologies and commonly used in the commercial sector, but is now also increasingly used as an instrument of law enforcement, notably for the detection and prevention of crime and in the context of border controls;

C. Whereas the practice of profiling, which is often carried out through the automated 'mining' of computer-held data, merits examination and political debate, since it controversially departs from the general rule that law enforcement decisions should be based on an individual's personal conduct; whereas profiling is an investigative technique taking information from various sources about people, which may include their ethnicity, race, nationality and religion, as a basis for trying to identify and potentially take prohibitive measures against those who may be criminal or terrorist suspects, and can be defined as:

'*the systematic association of sets of physical, behavioural or psychological characteristics with particular offences and their use as a basis for making law enforcement decisions*' ([1])

or, making clear the relationship between data-mining and profiling:

'*a technique whereby a set of characteristics of a particular class of person is inferred from past experience, and data-holdings are then searched for individuals with a close fit to that set of characteristics*' ([2]);

D. Whereas ethnic profiling, which has a specifically racial or ethnic basis and thus raises deep concerns about conflict with non-discrimination norms, can be defined as:

'*the practice of using "race" or ethnic origin, religion, or national origin, as either the sole factor, or one of several factors in law enforcement decisions, on a systematic basic, whether or not concerned individuals are identified by automatic means*' ([3])

or

'*the use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin, in control, surveillance or investigation activities*' ([4]);

([1]) Opinion of the European Union Agency for Fundamental Rights of 28 October 2008 on the Proposal for a Council Framework Decision on the use of Passenger Name Record (PNR) data for law enforcement purposes, paragraph 35.
([2]) House of Lords Report: Clarke R, Profiling: A Hidden Challenge to the Regulation of Data Surveillance, 1993, para 33, footnote 41.
([3]) De Schutter, Oliver and Ringelheim, Julie (2008), 'Ethnic Profiling: A Rising Challenge for European Human Rights Law,' *Modern Law Review*, 71(3):358-384.
([4]) European Commission against Racism and Intolerance (ECRI) General policy recommendation No 11, above-mentioned, paragraph 1.

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E. Whereas profiling, whether through data-mining or the practices of police and other agencies, is increasingly used as a tool for law enforcement and border control, and insufficient regard is being given to the evaluation of its effectiveness and to the development and application of legal safeguards to ensure respect for rights of privacy and the avoidance of discrimination;

F. Whereas profiles can be:

i) *descriptive*, when they are based on witness and other information about perpetrators or characteristics of crimes that have been committed, and thus support the apprehension of specific suspects or the detection of current criminal activities that follow the same pattern; or

ii) *predictive*, when they make correlations between observable variables from past events and current data and intelligence in order to draw inferences believed to identify those who may be involved in some future, or as-yet-undiscovered crime ([1]);

G. Whereas data-mining and profiling blur the boundaries between permissible targeted surveillance and problematic mass surveillance in which data are gathered because they are useful rather than for defined purposes, amounting potentially to unlawful interference with privacy;

H. Whereas unjustified travel restrictions and intrusive control practices could negatively affect vital economic, scientific, cultural and social exchanges with third countries; accordingly, underlines the importance of minimising the risk of certain groups, communities or nationalities being subject to discriminatory practices or measures that cannot be objectively justified;

I. Whereas the danger exists that innocent people may be subject to arbitrary stops, interrogations, travel restrictions, surveillance or security alerts because information has been added to their profile by a State agent, and that if the information is not promptly removed this could lead through the exchange of data and mutual recognition of decisions to refusals of visas, travel or border admission, placement on watchlists, inclusion on databases, bans on employment or banking, arrest or loss of liberty or other deprivation of rights, all of which may be without redress;

Legal obligations

J. Whereas law enforcement must always be conducted with respect for fundamental rights, including rights to private and family life, the protection of personal data and non-discrimination; close international cooperation is indispensable in the fight against terrorism and serious crime, but all such cooperation must comply with international law as well as European norms and values on equal treatment and proper legal protection, not least so that the EU does not undermine its credibility as a promoter of human rights within its borders and at international level;

K. Whereas the EU should avoid investigative approaches that could unnecessarily harm diplomatic relations, hamper such international cooperation or damage its image in the world and its credibility as a promoter of international law; whereas European standards for equal treatment, non-discrimination and legal protection should continue to set an example;

L. Whereas both descriptive and predictive profiling may be legitimate investigative tools when they are based on specific, reliable and timely information as opposed to untested generalisations based on stereotypes, and when the actions taken on the basis of such profiles meet the legal tests of necessity and proportionality; whereas, however, in the absence of adequate legal restrictions and safeguards as regards the use of data on ethnicity, race, religion, nationality and political affiliation, there is a considerable risk that profiling may lead to discriminatory practices;

([1]) Report of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, paragraph 33.

M. Whereas, the guidance in the European Code of Police Ethics to the effect that '*police investigations shall as a minimum be based upon reasonable suspicion of an actual or possible offence or crime*', and whereas it is asserted that a likelihood of breach of human rights [1] threatening individuals and society as whole arises in the absence of such reasonable suspicion, when profiling is based on stereotypes or prejudice;

N. Whereas 'predictive profiling', using broad profiles developed through cross-referencing between databases and reflecting untested generalisations or patterns of behaviour judged likely to indicate the commission of some future or as-yet-undiscovered crime or terrorist act raises strong privacy concerns and may constitute an interference with the rights to respect for private life under Article 8 of the ECHR and Article 7 of the Charter [2];

O. Whereas the ECtHR case-law makes clear that derogations from Article 8(2) ECHR are only allowed if they are in accordance with the law and necessary in a democratic society [3], as confirmed in its recent above-mentioned judgment in *S. and Marper v. the United Kingdom*, when it held that '*Blanket and indiscriminate (…) powers of retention of the fingerprints, cellular samples and DNA profiles of persons suspected but not convicted of offences*' was a violation of Article 8 ECHR;

P. Whereas the ECtHR's above-mentioned finding in *S. and Marper v. the United Kingdom*, of a 'risk of stigmatisation' from the fact that persons not convicted of any offence are treated in the same way as convicted criminals in the UK DNA database must also raise questions about the legality of profiling operations based on processing of personal data of persons not found guilty by the courts [4];

Q. Whereas the *Rasterfahndung* programme, in which German police authorities collected personal records from public and private databases of males between 18 and 40 who were current or former students of presumed Muslim faith in an (unsuccessful) attempt to identify terrorist suspects was deemed unconstitutional by the German Constitutional Court in its above-mentioned ruling, which found that data mining is an illegal intrusion into personal data and privacy that cannot be justified as a response to a general threat situation of the kind that has existed continually in regard to terrorist attacks since 9/11, but requires demonstration of a 'concrete danger' such as the preparation or commission of terrorist attacks;

Effectiveness

R. Whereas doubt has been cast on the usefulness of data-mining and profiling in various American studies among which:

(i) A study for the Cato Institute observed:

> '*though data mining has many valuable uses, it is not well suited to the terrorist discovery problem. It would be unfortunate if data mining for terrorism discovery had currency within national security, law enforcement, and technology circles because pursuing this use of data mining would waste taxpayer dollars, needlessly infringe on privacy and civil liberties, and misdirect the valuable time and energy of the men and women in the national security community* [5]';

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[1] Ibid., paragraph 33. See also the report on 'Ethnic Profiling' of the E.U. Network of Independent Experts on Fundamental Rights, above-mentioned, pp. 9-13.

[2] Opinion of the European Agency for Fundamental Rights of 28 October 2008 on the Proposal for a Council Framework Decision on the use of Passenger Name Record (PNR) data for law enforcement purposes, paragraph 4.

[3] For a short overview of the relevant case law see E. Brouwer, Towards a European PNR System?, Study conducted for European Parliament Policy department C, Citizen's rights and constitutional affairs, Document PE 410.649, January 2009, paragraph 5, pp. 16-17.

[4] Judgment of the ECtHR in Case S. and Marper v. the United Kingdom, above-mentioned, paragraph 125.

[5] Cato Institute Policy Analysis No 584, 11 December 2006, "*Effective Terrorism and the limited role of predictive data-mining*" by Jeff Jonas and Jim Harper.

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(ii) A US National Research Council study of data-mining and behavioural surveillance technologies for the Department of Homeland Security concluded that:

'*automated identification of terrorists through data mining…is neither feasible as an objective nor desirable as a goal of technology development efforts* [1]';

S. Whereas the effectiveness of data-mining is weakened by the 'needle in the haystack' problem of analysts having to filter through the huge quantity of available data; whereas the extent of 'digital tracks' left by law-abiding citizens is even greater than that of criminals and terrorists who make considerable efforts to conceal their identities; and whereas there are significant rates of 'false positives' whereby not only do wholly innocent people come under suspicion resulting in potential invasion of individual privacy but real suspects meanwhile remain unidentified;

T. Whereas the inverse problem is the possibility of missing perpetrators who do not fit the profile, an example being the ringleader of the 7 July 2005 London bombings who 'had come to the attention of the intelligence services as an associate of other men who were suspected of involvement in a terrorist bomb plot…but…was not pursued because he did not tick enough of the boxes in the pre-July 2005 profile of the terror suspect' [2];

U. Whereas profiling that upsets good community relations and alienates certain communities from cooperation with law enforcement agencies would be counter-productive in hampering the gathering of intelligence and effective action against crime and terrorism [3];

V. Whereas the efficient collection of information about specific suspects and following of specific leads is the best approach to detect and pre-empt terrorism and as a supplement to this, random checks and controls which affect everyone equally and are impossible for terrorists to evade may be more effective than profiling in preventive counter-terrorism efforts [4];

Ethnic profiling

W. Whereas the use of ethnicity, national origin or religion as factors in law enforcement investigations is not precluded as long as such use conforms to non-discrimination standards, including Article 14 of the ECHR, but it must pass the scrutiny tests of effectiveness, necessity and proportionality if it is to constitute a legitimate difference in treatment that does not constitute discrimination;

X. Whereas profiling based on stereotypical assumptions may exacerbate sentiments of hostility and xenophobia in the general public towards persons of certain ethnic, national or religious background [5];

Y. Whereas the ECtHR case-law has established that where race constitutes an *exclusive* basis for law enforcement action it amounts to prohibited discrimination [6]; whereas in practice it is not always clear if race or ethnicity was the exclusive or decisive basis for such action and it is often only when patterns of law enforcement practice are analysed that the predominant weight of these factors clearly emerges;

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[1] Protecting Individual Privacy in the Struggle Against Terrorists: A Framework for Program Assessment. Free executive summary available at http://www.nap.edu/catalog/12452.html, page 4

[2] 'Detectives draw up new brief in hunt for radicals,' *The Times*, 28 December 2005.

[3] Report of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, paragraph 62.

[4] Ibid., paragraph 61.

[5] Ibid., paragraph 40.

[6] Judgment of the ECtHR in Case *Timishev v. Russia*, above-mentioned.

Z. Whereas there is no international or European norm which expressly forbids 'ethnic profiling', ECtHR case-law would suggest that conclusion and both ICERD and ECRI have made clear that such practice does violate the prohibition against discrimination ([1]);

AA. Whereas the Programme of Action adopted at the 2000 World Conference against Racism urged States to design, implement and enforce effective measures to eliminate 'racial profiling' ([2]); whereas ECRI, in its above-mentioned Recommendation No. 8 on Combating racism while fighting terrorism, has asked governments to ensure that no discrimination ensues from legislation and regulations or their implementation in the field of law enforcement; and whereas the EU Network of Independent Experts on Fundamental Rights believes that terrorist profiles on the basis of characteristics such as nationality, age or birthplace 'presents a major risk of discrimination' ([3]);

AB. Whereas there is a need for a comprehensive evaluation of investigative practices and data processing systems within the EU and Member States which employ or supply the basis for profiling techniques, in order to ensure full compliance with national, European and international legal obligations and avoid unjustified discriminatory or privacy-invading impacts;

AC. Whereas the following guidelines should be applied to such operations and whereas a combination of all these protections is required in order to provide full and effective protection;

1. Addresses the following recommendations to the Council:

(a) all processing of personal data for law enforcement and anti-terrorist purposes should be based on published legal rules imposing limits on use, which are clear, specific and binding and subject to close and effective supervision by independent data protection authorities and to stringent penalties for breach; mass data storage for precautionary motives is disproportionate in relation to the basic requirements of an effective fight against terrorism;

(b) a legal framework should be established providing a clear definition of profiling, whether through the automated mining of computer data or otherwise, with a view to establishing clear rules on legitimate use and laying down limits; it is also necessary to introduce the necessary data protection safeguards for individuals and mechanisms for establishing responsibility;

(c) the collection and retention of personal data and use of profiling techniques in respect of persons not suspected of a specific crime or threat should be subject to particularly strict 'necessity' and 'proportionality' tests;

(d) factual and intelligence data, and data on different categories of data subjects, should be clearly distinguished;

(e) access to police and secret service files should be allowed only on a case-by-case basis, for specified purposes, and should be under judicial control in the Member States;

(f) profiling activities should not detract from targeted investigative policing by Member States' police services, and restrictive legislation on profiling should not prevent legitimate database access as part of such targeted investigations;

(g) there should be time limits on the retention of personal information;

([1]) Opinion of the European Agency for Fundamental Rights of 28 October 2008 on the Council Framework Decision for a Passenger Name Record (PNR) data for law enforcement purposes, paragraph 39.

([2]) Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (A/CONF.189/12), Programme of Action, paragraph 72.

([3]) EU Network of Independent Experts on Fundamental Rights, 'The balance between freedom and security in the response by the European Union and its member States to the Terrorist Threats' (2003), p. 21.

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(h) ethnic statistics are an essential tool to enable the detection of law enforcement practices that focus disproportionate, unwarranted and unjustified law enforcement attention on ethnic minorities; the creation of a high standard of protection for personal data (data linked to an identifiable individual) does not therefore preclude the generation of anonymous statistical data including variables on ethnicity, 'race', religion, and national origin that is necessary to identify any discrimination in law enforcement practices; the Article 29 Working Party should be asked to issue guidance on this issue;

(i) the collection of data on individuals solely on the basis that they have a particular racial or ethnic origin, religious conviction, sexual orientation or behaviour, political opinions or are members of particular movements or organisations which are not proscribed by law should be prohibited; it is necessary to establish safeguards regarding protection and procedures for appealing against the discriminatory use of law enforcement instruments;

(j) reliance by private or public bodies on computers to take decisions on individuals without human assessment should be allowed only exceptionally and under strict safeguards;

(k) there should be strong safeguards established by law which ensure appropriate and effective judicial and parliamentary scrutiny of the activities of the police and the secret services, including their counter-terrorism activities;

(l) in view of the possible consequences for individuals, redress should be effective and accessible with clear information being given to the data subject on the applicable procedures accompanied by rights of access and rectification;

(m) a set of criteria should be established for assessing the effectiveness, legitimacy and consistency with European Union values of all profiling activities; existing and proposed national and EU legislation relating to the use of profiling should be reviewed in order to ascertain that it meets legal requirements under European law and international treaties; and EU law reform should be considered, if necessary, to produce binding rules which avoid any infringement of fundamental rights taking into account the anticipated Council of Europe recommendation on profiling;

(n) there should be an examination of the extent to which Directive 2000/43/EC prohibits or regulates profiling measures and practices, and consideration of reform to remove the exclusion of airports and ports from its scope;

(o) the Council should commission a study, based on the relevant framework and current practices, to be conducted under the responsibility of the Commission, with the consultation of the Fundamental Rights Agency and the European Data Protection Supervisor, as appropriate, and in consultation with law enforcement and with intelligence agencies, covering the actual and potential application of profiling techniques, their effectiveness in identifying suspects and their compatibility with civil liberties, human rights and privacy requirements; Member States should be asked to supply figures on stop-and-search and other interventions which result from profiling techniques;

2. Instructs its President to forward this recommendation to the Council and, for information, to the Commission and to the governments and parliaments of the Member States.

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Non-proliferation and the future of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT)

P6_TA(2009)0333

European Parliament recommendation to the Council of 24 April 2009 on non-proliferation and the future of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) (2008/2324(INI))

(2010/C 184 E/26)

The European Parliament,

— having regard to the proposal for a recommendation to the Council by Annemie Neyts-Uyttebroeck, on behalf of the ALDE Group, and Angelika Beer, on behalf on the Verts/ALE Group, on non-proliferation and the future of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) (B6-0421/2008),

— having regard to the forthcoming 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons,

— having regard to its previous resolutions of 26 February 2004 ([1]), 10 March 2005 ([2]), 17 November 2005 ([3]) and 14 March 2007 ([4]) on nuclear non-proliferation and nuclear disarmament,

— having regard to its resolution of 5 June 2008 on implementation of the European Security Strategy and ESDP ([5]),

— having regard to the European Union Strategy against the proliferation of Weapons of Mass Destruction (WMD), adopted by the European Council on 12 December 2003,

— having regard to the Council statement of 8 December 2008 on tighter international security, in particular points 6, 8 and 9 thereof, which expresses the EU's determination to combat the proliferation of weapons of mass destruction and their means of delivery,

— having regard to the pivotal role of the Nuclear Suppliers Group in the context of non-proliferation,

— having regard to the UN Security Council resolutions relating to issues of non-proliferation and nuclear disarmament, especially Resolution 1540 (2004),

— having regard to the Comprehensive Nuclear-Test-Ban Treaty, the International Atomic Energy Agency (IAEA) Comprehensive Safeguards Agreements and Additional Protocols, the Convention on the Physical Protection of Nuclear Material, the International Convention for the Suppression of Acts of Nuclear Terrorism, the Hague Code of Conduct against Ballistic Missile Proliferation, the Strategic Arms Reduction Treaty (START I), which will expire in 2009, and the Strategic Offensive Reductions Treaty (SORT),

— having regard to the report on the implementation of the European Security Strategy agreed by the European Council on 11 December 2008,

— having regard to Rule 114(3) and Rule 90 of its Rules of Procedure,

— having regard to the report of the Committee on Foreign Affairs (A6-0234/2009),

([1]) OJ C 98 E, 23.4.2004, p. 152.
([2]) OJ C 320 E, 15.12.2005, p. 253.
([3]) OJ C 280 E, 18.11.2006, p. 453.
([4]) OJ C 301 E, 13.12.2007, p. 146.
([5]) Texts adopted, P6_TA(2008)0255.

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A. stressing the need to further reinforce all three pillars of the NPT, namely non-proliferation, disarmament and cooperation on the civilian use of nuclear energy,

B. strongly concerned about the lack of progress in achieving concrete objectives (such as the so-called '13 steps' ([1])) in pursuit of the goals of the NPT, as agreed at the previous Review Conferences, especially now that threats are arising from a variety of sources, including increasing proliferation, the potential for nuclear technology and radioactive material to fall into the hands of criminal organisations and terrorists, and the reluctance of nuclear weapons States that are signatories to the NPT to reduce or eliminate their nuclear arsenals and decrease their adherence to a military doctrine of nuclear deterrence,

C. whereas the proliferation of WMD and their means of delivery, both to state and non-state actors, represents one of the most serious threats to international stability and security,

D. recalling the commitment of the EU to make use of all instruments at its disposal to prevent, deter, halt and if possible eliminate proliferation programmes causing concern at global level, as clearly expressed by the EU Strategy against Proliferation of WMD adopted by the European Council on 12 December 2003,

E. stressing the need for the EU to intensify efforts to counter proliferation flows and proliferation financing, to impose sanctions on acts of proliferation and to develop measures to prevent intangible transfers of knowledge and know-how via all instruments available including multilateral treaties and verification mechanisms, national and internationally coordinated export controls, cooperative threat reduction programmes and political and economic levers,

F. encouraged by new disarmament proposals such as those called for by Henry Kissinger, George P. Shultz, William J. Perry and Sam Nunn in January 2007 and January 2008, the Model Nuclear Weapons Convention and the Hiroshima-Nagasaki protocol, promoted globally by civic organisations and political leaders, and campaigns such as 'Global Zero', which argue that one crucial way of ensuring the prevention of nuclear proliferation and the achievement of global security is to move towards the elimination of nuclear weapons,

G. welcoming, in this respect, the initiatives of the French and British governments to reduce their nuclear arsenals,

H. in particular, strongly encouraged by US President Barack Obama's clear outline of his approach to nuclear issues in Prague on 5 April 2009, his commitment to take nuclear disarmament forward and his vision of a world without nuclear weapons; welcoming the constructive cooperation between the USA and Russia to renew the START agreement, take ballistic missiles off hair-trigger alert, and dramatically reduce the stockpiles of US nuclear weapons and material; welcoming the US decision to fully participate in the E3 + 3 process with Iran; welcoming the ratification by the USA of the Additional Protocol to the IAEA Safeguards Agreements as a positive, confidence-building step; warmly welcoming also the intention of President Obama to finalise the ratification by the United States of the Comprehensive Nuclear-Test-Ban Treaty (CTBT) and to initiate negotiations on a fissile material cut-off treaty,

I. underscoring the need for close coordination and cooperation between the European Union and its partners, including in particular the United States and Russia, with a view to reviving and strengthening the non-proliferation regime,

J. emphasising that strengthening the NPT as the cornerstone of the global non-proliferation regime is of vital importance, and recognising that bold political leadership and a number of progressive, consecutive steps are urgently needed in order to reaffirm the validity of the NPT and to reinforce the agreements, treaties and agencies that make up the existing proliferation and disarmament regime, including in particular the CTBT and the IAEA,

([1]) United Nations: 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, NPT/CONF.2000/28 (Parts I and II).

K. welcoming, in this respect, the joint British-Norwegian initiative aimed at assessing the feasibility of, and establishing clear procedural steps for, the eventual dismantling of nuclear weapons and the verification procedures relating thereto; regarding this initiative as very positive for the EU, for NATO and for other relevant players,

L. welcoming the letter dated 5 December 2008 from the French EU Presidency to UN Secretary-General Ban Ki-moon setting out the EU's disarmament proposals which were adopted by the European Council in December 2008,

M. welcoming the speech made on 9 December 2008 by Javier Solana, EU High Representative for the CFSP, at a conference on 'Peace and Disarmament: A World without Nuclear Weapons', in which he welcomed the fact that the question of nuclear disarmament has again moved to the top of the international agenda and underlined the need for the EU to mainstream non-proliferation in its overall policies,

N. welcoming the speech made in Prague on 5 April 2009 by US President Obama, in which he stated that the USA has a moral responsibility to lead a campaign to rid the world of all nuclear weapons, although he admitted that this goal might not be achieved in his lifetime, and stressed the need to strengthen the NPT as a basis for cooperation and a step-by-step solution; whereas the new US administration should include the European Union fully in this campaign, and especially in the global meeting planned for 2009 to address the threat of nuclear weapons,

O. pointing to the generalisation of the introduction of 'non-proliferation clauses' into the agreements concluded between the EU and third States since 2003,

P. having regard to non-proliferation and disarmament initiatives outside the framework of the UN which the EU has endorsed, such as the Proliferation Security Initiative and the G8 World Partnership,

Q. welcoming the fact that the Commission has observer status in the Nuclear Suppliers Group and in the NPT Review Conference, and that the Council Secretariat is also participating in the NPT Conference, either within the EC delegation or with the EU Presidency,

1. Addresses the following recommendations to the Council:

(a) review and update Council Common Position 2005/329/PESC of 25 April 2005 relating to the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons [1], to be endorsed at the December 2009 European Council meeting, in preparation for a successful outcome at the 2010 NPT Review Conference which will further strengthen all three existing pillars of the NPT; commit to the aim of eventual total nuclear disarmament, as contained in the proposal for a Nuclear Weapons Convention;

(b) intensify efforts to secure the universalisation and effective implementation of non-proliferation rules and instruments, in particular by improving means of verification;

(c) actively support, in cooperation with its partners, concrete proposals to bring the production, use and reprocessing of all nuclear fuel under the control of the IAEA, including the creation of an international fuel bank; support in addition other initiatives for the multilateralisation of the nuclear fuel cycle aimed at the peaceful use of nuclear energy, bearing in mind in that regard that Parliament welcomes the readiness of the Council and the Commission to contribute up to EUR 25 million to the creation of a nuclear fuel bank under the control of the IAEA and wishes to see a speedy approval of the Joint Action on this subject;

[1] OJ L 106, 27.4.2005, p. 32.

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(d) support further efforts to strengthen the mandate of the IAEA, including the generalisation of the Additional Protocols to the IAEA Safeguard Agreements, and other steps designed to develop confidence-building measures; ensure that sufficient resources are made available to that organisation so as to fulfil its vital mandate in making nuclear activities secure;

(e) make substantial progress on the G8 Partnership initiative, the Proliferation Security Initiative and the Global Threat Reduction Initiative, and push for the early entry into force of the CTBT;

(f) deepen its dialogue with the new US administration and all nuclear-weapons powers, with a view to pursuing a common agenda aimed at progressive reduction of the nuclear warheads stockpile; in particular, support those steps being taken by the USA and Russia to substantially reduce their nuclear weapons as agreed in START I and in SORT; press for ratification of the CTBT and renewal of the START agreement;

(g) develop strategies at the 2010 NPT Review Conference aimed at achieving agreement on a treaty to halt the production of fissile material for weapons purposes in a way that is not discriminatory, which means that the treaty thus negotiated should require not only non-nuclear-weapons States or States currently outside the NPT but also the five UN Security Council members, all of which possess nuclear weapons, to forswear the production of fissile material for weapons and to dismantle all their established fissile material production facilities for such weapons;

(h) fully support the reinforcement and improvement of means of verification of compliance with all available non-proliferation instruments;

(i) request an evaluation of the effectiveness of the use of clauses on non-proliferation of WMD in the agreements concluded between the EU and third States;

(j) keep Parliament regularly informed about all preparatory meetings in the run-up to the 2010 NPT Review Conference and duly take into account its views on non-proliferation and disarmament matters with regard to that Conference;

2. Instructs its President to forward this recommendation to the Council and, for information, to the Commission, the UN Secretary-General, the President of the 2010 NPT Review Conference, the parliaments of the Member States, Parliamentarians for Nuclear Non-Proliferation and Disarmament and Mayors for Peace.

Wednesday 22 April 2009

OPINIONS

EUROPEAN PARLIAMENT

Combating violence against women

P6_TA(2009)0259

Declaration of the European Parliament on the 'Say NO to Violence against Women' campaign

(2010/C 184 E/27)

The European Parliament,

— having regard to the UN Declaration on the Elimination of Violence against Women of 20 December 1993 and the resolution on the elimination of domestic violence against women, adopted by the UN General Assembly on 22 December 2003, which recognise the urgent need for elimination of violence against women,

— having regard to its resolutions of 16 September 1997 on the need to establish a European Union wide campaign for zero tolerance of violence against women [1] and of 2 February 2006 on the current situation in combating violence against women and any future action [2],

— having regard to the UN Development Fund for Women (UNIFEM) campaign 'Say NO to Violence against Women', which highlights the need for action and protection of women against violence,

— having regard to Rule 116 of its Rules of Procedure,

A. whereas violence against women and girls is a universal problem of pandemic proportions,

B. whereas, in its above-mentioned resolutions, Parliament stressed the need to establish an EU-wide campaign for zero tolerance of violence against women,

C. whereas the recent Council of Europe campaign 'Stop Domestic Violence against Women' confirms the need for action and protection of women against violence,

1. Asks the Commission to declare, within the next five years, a 'European Year on Zero Tolerance of Violence against Women', as repeatedly requested by Parliament;

2. Calls on the Member States to support the UNIFEM campaign 'Say NO to Violence against Women' by signing its petition;

3. Instructs its President to forward this declaration, together with the names of the signatories, to the Council and the Commission, as well as to UNIFEM.

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[1] OJ C 304, 6.10.1997, p. 55.
[2] OJ C 288 E, 25.11.2006, p. 66.

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List of signatories

Adamos Adamou, Vittorio Agnoletto, Vincenzo Aita, Gabriele Albertini, Alexander Alvaro, Jan Andersson, Georgs Andrejevs, Roberta Angelilli, Rapisardo Antinucci, Kader Arif, Elspeth Attwooll, Marie-Hélène Aubert, Jean-Pierre Audy, Margrete Auken, Inés Ayala Sender, Liam Aylward, Mariela Velichkova Baeva, Katerina Batzeli, Edit Bauer, Jean Marie Beaupuy, Christopher Beazley, Zsolt László Becsey, Angelika Beer, Ivo Belet, Irena Belohorská, Monika Beňová, Maria Berger, Giovanni Berlinguer, Thijs Berman, Šarūnas Birutis, Sebastian Valentin Bodu, Herbert Bösch, Josep Borrell Fontelles, Costas Botopoulos, Catherine Boursier, John Bowis, Emine Bozkurt, Mihael Brejc, Frieda Brepoels, Hiltrud Breyer, André Brie, Danutė Budreikaitė, Kathalijne Maria Buitenweg, Wolfgang Bulfon, Nicodim Bulzesc, Colm Burke, Niels Busk, Cristian Silviu Buşoi, Simon Busuttil, Maddalena Calia, Mogens Camre, Luis Manuel Capoulas Santos, Marco Cappato, Marie-Arlette Carlotti, Carlos Carnero González, Giorgio Carollo, David Casa, Paulo Casaca, Michael Cashman, Françoise Castex, Giusto Catania, Jean-Marie Cavada, Giulietto Chiesa, Călin Cătălin Chiriță, Ole Christensen, Sylwester Chruszcz, Fabio Ciani, Richard Corbett, Dorette Corbey, Giovanna Corda, Michael Cramer, Jan Cremers, Gabriela Creţu, Brian Crowley, Hanne Dahl, Daniel Dăianu, Dragoş Florin David, Bairbre de Brún, Arūnas Degutis, Jean-Luc Dehaene, Véronique De Keyser, Panayiotis Demetriou, Gérard Deprez, Proinsias De Rossa, Marie-Hélène Descamps, Harlem Désir, Christine De Veyrac, Mia De Vits, Agustín Díaz de Mera García Consuegra, Jolanta Dičkutė, Gintaras Didžiokas, Brigitte Douay, Den Dover, Avril Doyle, Mojca Drčar Murko, Konstantinos Droutsas, Bárbara Dührkop Dührkop, Andrew Duff, Árpád Duka-Zólyomi, Constantin Dumitriu, Lena Ek, Saïd El Khadraoui, Edite Estrela, Harald Ettl, Jill Evans, Robert Evans, Göran Färm, Markus Ferber, Anne Ferreira, Elisa Ferreira, Ilda Figueiredo, Roberto Fiore, Věra Flasarová, Hélène Flautre, Alessandro Foglietta, Glyn Ford, Janelly Fourtou, Juan Fraile Cantón, Armando França, Monica Frassoni, Urszula Gacek, Kinga Gál, Milan Gaľa, Vicente Miguel Garcés Ramón, Iratxe García Pérez, Elisabetta Gardini, Evelyne Gebhardt, Eugenijus Gentvilas, Lidia Joanna Geringer de Oedenberg, Claire Gibault, Neena Gill, Monica Giuntini, Robert Goebbels, Bogdan Golik, Ana Maria Gomes, Donata Gottardi, Hélène Goudin, Genowefa Grabowska, Luis de Grandes Pascual, Martí Grau i Segú, Louis Grech, Nathalie Griesbeck, Lissy Gröner, Elly de Groen-Kouwenhoven, Mathieu Grosch, Pedro Guerreiro, Umberto Guidoni, Zita Gurmai, Fiona Hall, Ioan Lucian Hămbăşan, David Hammerstein, Benoît Hamon, Małgorzata Handzlik, Malcolm Harbour, Marian Harkin, Rebecca Harms, Satu Hassi, Anna Hedh, Jacky Hénin, Erna Hennicot-Schoepges, Jeanine Hennis-Plasschaert, Edit Herczog, Esther Herranz García, Jim Higgins, Jens Holm, Mary Honeyball, Richard Howitt, Ian Hudghton, Stephen Hughes, Alain Hutchinson, Filiz Hakaeva Hyusmenova, Sophia in 't Veld, Mikel Irujo Amezaga, Marie Anne Isler Béguin, Ville Itälä, Lily Jacobs, Anneli Jäätteenmäki, Lívia Járóka, Dan Jørgensen, Pierre Jonckheer, Romana Jordan Cizelj, Madeleine Jouye de Grandmaison, Aurelio Juri, Jelko Kacin, Filip Kaczmarek, Gisela Kallenbach, Sylvia-Yvonne Kaufmann, Piia-Noora Kauppi, Metin Kazak, Tunne Kelam, Glenys Kinnock, Evgeni Kirilov, Silvana Koch-Mehrin, Jaromír Kohlíček, Eija-Riitta Korhola, Magda Kósáné Kovács, Guntars Krasts, Rodi Kratsa-Tsagaropoulou, Wolfgang Kreissl-Dörfler, Çirts Valdis Kristovskis, Urszula Krupa, Wiesław Stefan Kuc, Aldis Kušķis, Sepp Kusstatscher, Joost Lagendijk, Alain Lamassoure, Jean Lambert, Stavros Lambrinidis, Vytautas Landsbergis, Raymond Langendries, Anne Laperrouze, Henrik Lax, Johannes Lebech, Stéphane Le Foll, Roselyne Lefrançois, Bernard Lehideux, Lasse Lehtinen, Jörg Leichtfried, Marie-Noëlle Lienemann, Peter Liese, Kartika Tamara Liotard, Alain Lipietz, Pia Elda Locatelli, Eleonora Lo Curto, Andrea Losco, Caroline Lucas, Sarah Ludford, Astrid Lulling, Nils Lundgren, Elizabeth Lynne, Marusya Ivanova Lyubcheva, Jules Maaten, Linda McAvan, Arlene McCarthy, Mary Lou McDonald, Mairead McGuinness, Edward McMillan-Scott, Jamila Madeira, Toine Manders, Ramona Nicole Mănescu, Erika Mann, Catiuscia Marini, Helmuth Markov, David Martin, Miguel Angel Martínez Martínez, Jiří Maštálka, Maria Matsouka, Iosif Matula, Mario Mauro, Erik Meijer, Willy Meyer Pleite, Rosa Miguélez Ramos, Marianne Mikko, Claude Moraes, Eluned Morgan, Luisa Morgantini, Roberto Musacchio, Cristiana Muscardini, Antonio Mussa, Riitta Myller, Pasqualina Napoletano, Alexandru Nazare, Catherine Neris, Ljudmila Novak, Péter Olajos, Gérard Onesta, Dumitru Oprea, Josu Ortuondo Larrea, Siiri Oviir, Reino Paasilinna, Athanasios Pafilis, Maria Grazia Pagano, Justas Vincas Paleckis, Marie Panayotopoulos-Cassiotou, Marco Pannella, Pier Antonio Panzeri, Dimitrios Papadimoulis, Atanas Paparizov, Neil Parish, Vincent Peillon, Alojz Peterle, Maria Petre, Tobias Pflüger, Sirpa Pietikäinen, Rihards Pīks, João de Deus Pinheiro, Józef Pinior, Gianni Pittella, Francisca Pleguezuelos Aguilar, Zita Pleštinská, Anni Podimata, Samuli Pohjamo, Bernard Poignant, Lydie Polfer, Miguel Portas, Christa Prets, Pierre Pribetich, Vittorio Prodi, Jacek Protasiewicz, John Purvis, Miloslav Ransdorf, Poul Nyrup Rasmussen, Vladimír Remek, Karin Resetarits, Teresa Riera Madurell, Karin Riis-Jørgensen, Giovanni Rivera, Marco Rizzo, Maria Robsahm, Giovanni Robusti, Bogusław Rogalski, Zuzana Roithová, Raül Romeva i Rueda, Dariusz Rosati, Mechtild Rothe, Libor Rouček, Martine Roure, Heide Rühle, Flaviu Călin Rus, Leopold Józef Rutowicz, Eoin Ryan, Tokia Saïfi, Aloyzas Sakalas, Katrin Saks, María Isabel Salinas García, Antolín Sánchez Presedo, Daciana Octavia Sârbu, Amalia Sartori, Gilles Savary, Christel Schaldemose, Pierre Schapira, Lydia Schenardi, Carl Schlyter, Olle Schmidt, Elisabeth Schroedter, Inger Segelström, Esko Seppänen, Czesław Adam Siekierski, Eva-Riitta Siitonen, Brian Simpson, Kathy Sinnott, Peter Skinner, Nina Škottová, Alyn Smith, Csaba Sógor, Søren Bo Søndergaard, María Sornosa Martínez, Jean Spautz, Bart Staes, Grażyna Staniszewska, Peter Šťastný, Petya Stavreva, Dirk Sterckx, Catherine Stihler, Daniel Strož, Margie Sudre, Eva-Britt Svensson, Konrad Szymański, Csaba Sándor Tabajdi, Hannu Takkula, Charles Tannock, Andres Tarand, Michel Teychenné, Britta Thomsen,

Marianne Thyssen, Gary Titley, Patrizia Toia, László Tőkés, Ewa Tomaszewska, Jacques Toubon, Georgios Toussas, Kyriacos Triantaphyllides, Helga Trüpel, Claude Turmes, Feleknas Uca, Vladimir Urutchev, Inese Vaidere, Anne Van Lancker, Daniel Varela Suanzes-Carpegna, Ari Vatanen, Yannick Vaugrenard, Donato Tommaso Veraldi, Bernadette Vergnaud, Alejo Vidal-Quadras, Kyösti Virrankoski, Oldřich Vlasák, Dominique Vlasto, Johannes Voggenhuber, Sahra Wagenknecht, Diana Wallis, Graham Watson, Henri Weber, Renate Weber, Åsa Westlund, Anders Wijkman, Glenis Willmott, Iuliu Winkler, Janusz Wojciechowski, Francis Wurtz, Anna Záborská, Jan Zahradil, Iva Zanicchi, Tatjana Ždanoka, Dushana Zdravkova, Roberts Zīle, Gabriele Zimmer, Jaroslav Zvěřina, Tadeusz Zwiefka

Wednesday 22 April 2009

II

(Information)

INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN PARLIAMENT

Request for defence of the immunity and privileges of Aldo Patriciello

P6_TA(2009)0233

European Parliament decision of 22 April 2009 on the request for defence of the immunity and privileges of Aldo Patriciello (2008/2323(IMM))

(2010/C 184 E/28)

The European Parliament,

— having regard to the request by Aldo Patriciello for defence of his immunity in connection with criminal proceedings brought against him before the District Court of Campobasso, of 11 November 2008, announced in plenary sitting on 20 November 2008,

— having heard Aldo Patriciello in accordance with Rule 7(3) of its Rules of Procedure,

— having regard to Articles 9 and 10 of the Protocol of 8 April 1965 on the Privileges and Immunities of the European Communities ('the Protocol'), and Article 6(2) of the Act of 20 September 1976 concerning the election of the members of the European Parliament by direct universal suffrage,

— having regard to the judgments of 12 May 1964, 10 July 1986 and 21 October 2008 [1] of the Court of Justice of the European Communities,

— having regard to Rules 6(3) and 7 of its Rules of Procedure,

— having regard to the report of the Committee on Legal Affairs (A6-0196/2009),

A. whereas Aldo Patriciello is a Member of the European Parliament whose credentials were verified by Parliament on 15 June 2006,

B. whereas, according to the Court of Justice, the European Parliament and the national judicial authorities must cooperate in order to avoid any conflict in the interpretation and application of the provisions of the Protocol; whereas, consequently, where an action has been brought against a Member of the European Parliament before a national court and that court is informed that a procedure for defence of the privileges and immunities of that Member, as provided for in Article 6(3) of the Rules of Procedure, has been initiated, that court must stay the judicial proceedings and request Parliament to issue its opinion as soon as possible [2],

[1] Case 101/63 *Wagner* v *Fohrmann and Krier* [1964] ECR 195, Case 149/85 *Wybot* v *Faure and Others* [1986] ECR 2391 and Joined Cases C-200/07 and C-201/07 *Marra* v *De Gregorio and Clemente*, not yet reported in the European Court Reports.

[2] Judgment in Joined Cases C-200/07 and C-201/07 *Marra*, at paragraphs 42 and 43.

C. whereas, according to Article 10 of the Protocol, during the sessions of the European Parliament, its Members enjoy in the territory of their own State the immunities accorded to members of their parliament and whereas immunity cannot be claimed where a Member is caught in the act of committing an offence; whereas this does not prevent Parliament from exercising its right to waive the immunity of one of its Members,

D. whereas, therefore, the provision applicable to the case in question is Article 68(2) of the Italian Constitution, which allows criminal proceedings to be brought against Members of Parliament without any special formalities, given its provision that, without the leave of the Chamber to which the Member belongs, a search may not be carried out on either the person or the domicile of a Member of Parliament and a Member may not be arrested or otherwise deprived of his or her personal freedom or kept in detention, except to enforce a final conviction or where the Member is caught in the act of committing a crime for which arrest is mandatory in the case of *flagrante delicto*,

E. whereas, as it stands, the Protocol does not afford the European Parliament the means of taking binding action in order to protect Aldo Patriciello,

1. Decides not to defend the immunity and privileges of Aldo Patriciello;

2. Instructs its President to forward this decision, and the report of its committee responsible, immediately to the competent authorities of the Italian Republic.

Request for defence of the immunity and privileges of Renato Brunetta

P6_TA(2009)0234

European Parliament decision of 22 April 2009 on the request for defence of the immunity and privileges of Renato Brunetta (2008/2147(IMM))

(2010/C 184 E/29)

The European Parliament,

— having regard to the request by Renato Brunetta for defence of his immunity in connection with criminal proceedings brought against him before the District Court of Florence, of 15 May 2008, announced in plenary sitting on 4 June 2008,

— having regard to Articles 9 and 10 of the Protocol of 8 April 1965 on the Privileges and Immunities of the European Communities, and Article 6(2) of the Act of 20 September 1976 concerning the election of the members of the European Parliament by direct universal suffrage,

— having regard to the judgments of 12 May 1964, 10 July 1986 and 21 October 2008 [1] of the Court of Justice of the European Communities,

— having regard to Rules 6(3) and 7 of its Rules of Procedure,

— having regard to the report of the Committee on Legal Affairs (A6-0195/2009),

1. Decides to defend the immunity and privileges of Renato Brunetta;

2. Instructs its President to forward this decision, and the report of its committee responsible, immediately to the appropriate authorities of the Italian Republic.

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[1] Case 101/63 *Wagner* v *Fohrmann and Krier* [1964] ECR 195, Case 149/85 *Wybot* v *Faure and Others* [1986] ECR 2391 and Joined Cases C-200/07 and C-201/07 *Marra* v *De Gregorio and Clemente*, not yet reported in the European Court Reports.

Wednesday 22 April 2009

Request for consultation on the immunity and privileges of Antonio Di Pietro

P6_TA(2009)0235

European Parliament decision of 22 April 2009 on the request for consultation on the immunity and privileges of Antonio Di Pietro (2008/2146(IMM))

(2010/C 184 E/30)

The European Parliament,

— having regard to the request for consultation on the parliamentary immunity of Antonio Di Pietro, forwarded by the competent authority of the Italian Republic on 15 May 2008, and announced in plenary sitting on 5 June 2008,

— having heard Antonio Di Pietro in accordance with Rule 7(3) of its Rules of Procedure,

— having regard to Articles 9 and 10 of the Protocol of 8 April 1965 on the Privileges and Immunities of the European Communities and Article 6(2) of the Act of 20 September 1976 concerning the election of the members of the European Parliament by direct universal suffrage,

— having regard to the judgments of 12 May 1964, 10 July 1986 and 21 October 2008 [1] of the Court of Justice of the European Communities,

— having regard to Article 68(1) of the Italian Constitution,

— having regard to Rules 6(1) and 7(13) of its Rules of Procedure,

— having regard to the report of the Committee on Legal Affairs (A6-0197/2009),

1. Decides not to waive the immunity of Antonio Di Pietro;

2. Instructs its President to forward this decision, and the report of the committee responsible, immediately to the competent authorities of the Italian Republic.

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[1] Case 101/63 *Wagner* v *Fohrmann and Krier* [1964] ECR 195, Case 149/85 *Wybot* v *Faure and Others* [1986] ECR 2391 and Joined Cases C-200/07 and C-201/07 *Marra* v *De Gregorio and Clemente*, not yet reported in the European Court Reports.

Wednesday 22 April 2009

Request for waiver of the immunity of Hannes Swoboda

P6_TA(2009)0236

European Parliament decision of 22 April 2009 on the request for waiver of the immunity of Hannes Swoboda (2009/2014(IMM))

(2010/C 184 E/31)

The European Parliament,

— having regard to the request for waiver of the immunity of Hannes Swoboda of 5 December 2008, forwarded by the Vienna Regional Criminal Court on 20 January 2009 and announced in plenary sitting on 5 February 2009,

— having heard Hannes Swoboda in accordance with Rule 7(3) of its Rules of Procedure,

— having regard to Articles 9 and 10 of the Protocol of 8 April 1965 on the Privileges and Immunities of the European Communities, and Article 6(2) of the Act of 20 September 1976 concerning the election of the members of the European Parliament by direct universal suffrage,

— having regard to the judgments of 12 May 1964 and 10 July 1986 ([1]) of the Court of Justice of the European Communities,

— having regard to Article 57 of the Austrian *Bundesverfassungsgesetz* (Federal Constitutional Law),

— having regard to Rules 6(2) and 7 of its Rules of Procedure,

— having regard to the report of the Committee on Legal Affairs (A6-0190/2009),

1. Decides not to waive the immunity of Hannes Swoboda;

2. Instructs its President to forward this decision, and the report of its committee responsible, immediately to the appropriate authority of the Republic of Austria.

([1]) Case 101/63 *Wagner* v *Fohrmann and Krier* [1964] ECR 195, and Case 149/85 *Wybot* v *Faure and others* [1986] ECR 2391.

Wednesday 22 April 2009

III

(Preparatory acts)

EUROPEAN PARLIAMENT

Agreement between the EC and Pakistan on certain aspects of air services *

P6_TA(2009)0218

European Parliament legislative resolution of 22 April 2009 on the proposal for a Council decision on the conclusion of the Agreement between the European Community and the Islamic Republic of Pakistan on certain aspects of air services (COM(2008)0081 – C6-0080/2009 – 2008/0036(CNS))

(2010/C 184 E/32)

(Consultation procedure)

The European Parliament,

— having regard to the proposal for a Council decision (COM(2008)0081),

— having regard to Articles 80(2) and 300(2), first subparagraph, first sentence of the EC Treaty,

— having regard to Article 300(3), first subparagraph, of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0080/2009),

— having regard to Rules 51, 83(7) and 43(1) of its Rules of Procedure,

— having regard to the report of the Committee on Transport and Tourism (A6-0188/2009),

1. Approves conclusion of the agreement;

2. Instructs its President to forward its position to the Council and the Commission, and the governments and parliaments of the Member States and of the Islamic Republic of Pakistan.

Wednesday 22 April 2009

Accession of the EC to UNECE Regulation No 61 on uniform provisions for the approval of commercial vehicles ***

P6_TA(2009)0219

European Parliament legislative resolution of 22 April 2009 on the proposal for a Council decision on the accession of the European Community to United Nations Economic Commission for Europe Regulation No 61 on uniform provisions for the approval of commercial vehicles with regard to their external projections forward of the cab's rear panel (COM(2008)0675 – 7240/2009 - C6-0119/2009 – 2008/0205(AVC))

(2010/C 184 E/33)

(Assent procedure)

The European Parliament,

— having regard to the proposal for a Council decision (COM(2008)0675 - 7240/2009),

— having regard to the request for assent submitted by the Council pursuant to Article 4(2), second indent, of Council Decision 97/836/EC (C6-0119/2009) ([1]),

— having regard to Rules 75(1) and 43(1) of its Rules of Procedure,

— having regard to the recommendation of the Committee on International Trade (A6-0243/2009),

1. Gives its assent to the proposal for a Council decision;

2. Instructs its President to forward its position to the Council and the Commission.

([1]) Council Decision of 27 November 1997 with a view to accession by the European Community to the Agreement of the United Nations Economic Commission for Europe concerning the adoption of uniform technical prescriptions for wheeled vehicles, equipment and parts which can be fitted and/or be used on wheeled vehicles and the conditions for reciprocal recognition of approvals granted on the basis of these prescriptions ('Revised 1958 Agreement') (OJ L 346, 17.12.1997, p. 78).

Wednesday 22 April 2009

Animal health conditions governing the movement and importation from third countries of equidae (codified version) *

P6_TA(2009)0220

European Parliament legislative resolution of 22 April 2009 on the proposal for a Council directive on animal health conditions governing the movement and importation from third countries of equidae (codified version) (COM(2008)0715 – C6-0479/2008 – 2008/0219(CNS))

(2010/C 184 E/34)

(Consultation procedure – codification)

The European Parliament,

— having regard to the Commission proposal to the Council (COM(2008)0715),

— having regard to Article 37 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0479/2008),

— having regard to the Interinstitutional Agreement of 20 December 1994 – Accelerated working method for official codification of legislative texts [1],

— having regard to Rules 80 and 51 of its Rules of Procedure,

— having regard to the report of the Committee on Legal Affairs (A6-0248/2009),

A. whereas, according to the Consultative Working Party of the Legal Services of the European Parliament, the Council and the Commission, the proposal in question contains a straightforward codification of the existing texts without any change in their substance,

1. Approves the Commission proposal as adapted to the recommendations of the Consultative Working Party of the Legal Services of the European Parliament, the Council and the Commission;

2. Instructs its President to forward its position to the Council and the Commission.

[1] OJ C 102, 4.4.1996, p. 2.

Wednesday 22 April 2009

Trade arrangements applicable to certain goods resulting from the processing of agricultural products (codified version) *

P6_TA(2009)0221

European Parliament legislative resolution of 22 April 2009 on the proposal for a Council regulation laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products (codified version) (COM(2008)0796 – C6-0018/2009 – 2008/0226(CNS))

(2010/C 184 E/35)

(Consultation procedure – codification)

The European Parliament,

— having regard to the Commission proposal to the Council (COM(2008)0796),

— having regard to Articles 37 and 133 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0018/2009),

— having regard to the Interinstitutional Agreement of 20 December 1994 – Accelerated working method for official codification of legislative texts [1],

— having regard to Rules 80 and 51 of its Rules of Procedure,

— having regard to the report of the Committee on Legal Affairs (A6-0249/2009),

A. whereas, according to the Consultative Working Party of the Legal Services of the European Parliament, the Council and the Commission, the proposal in question contains a straightforward codification of the existing texts without any change in their substance,

1. Approves the Commission proposal as adapted to the recommendations of the Consultative Working Party of the Legal Services of the European Parliament, the Council and the Commission;

2. Instructs its President to forward its position to the Council and the Commission.

[1] OJ C 102, 4.4.1996, p. 2.

Wednesday 22 April 2009

Coordination of social security systems ***II

P6_TA(2009)0222

European Parliament legislative resolution of 22 April 2009 on the Council common position for adopting a regulation of the European Parliament and of the Council amending Regulation (EC) No 883/2004 on the coordination of social security systems, and determining the content of its annexes (14518/1/2008 – C6-0003/2009 – 2006/0008(COD))

(2010/C 184 E/36)

(Codecision procedure: second reading)

The European Parliament,

— having regard to the Council common position (14518/1/2008 – C6-0003/2009),

— having regard to its position at first reading [1] on the Commission proposals to Parliament and the Council (COM(2006)0007) and (COM(2007)0376),

— having regard to the amended Commission proposal (COM(2008)0648),

— having regard to Article 251(2) of the EC Treaty,

— having regard to Rule 62 of its Rules of Procedure,

— having regard to the recommendation for second reading of the Committee on Employment and Social Affairs (A6-0207/2009),

1. Approves the common position as amended;

2. Instructs its President to forward its position to the Council and the Commission.

[1] Texts adopted, 9.7.2008, P6_TA(2008)0349.

P6_TC2-COD(2006)0008

Position of the European Parliament adopted at second reading on 22 April 2009 with a view to the adoption of Regulation (EC) No …/2009 of the European Parliament and of the Council amending Regulation (EC) No 883/2004 on the coordination of social security systems, and determining the content of its Annexes

(As an agreement was reached between Parliament and Council, Parliament's position at second reading corresponds to the final legislative act, Regulation (EC) No 988/2009.)

Wednesday 22 April 2009

Coordination of social security systems: implementing Regulation ***II

P6_TA(2009)0223

European Parliament legislative resolution of 22 April 2009 on the Council common position for adopting a regulation of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (14516/4/2008 – C6-0006/2009 – 2006/0006(COD))

(2010/C 184 E/37)

(Codecision procedure: second reading)

The European Parliament,

— having regard to the Council common position (14516/4/2008 – C6-0006/2009),

— having regard to its position at first reading [1] on the Commission proposal to Parliament and the Council (COM(2006)0016),

— having regard to the amended Commission proposal (COM(2008)0647),

— having regard to Article 251(2) of the EC Treaty,

— having regard to Rule 62 of its Rules of Procedure,

— having regard to the recommendation for second reading of the Committee on Employment and Social Affairs (A6-0204/2009),

1. Approves the common position as amended;

2. Instructs its President to forward its position to the Council and Commission.

[1] Texts adopted, 9.7.2008, P6_TA(2008)0348.

P6_TC2-COD(2006)0006

Position of the European Parliament adopted at second reading on 22 April 2009 with a view to the adoption of Regulation (EC) No …/2009 of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems

(As an agreement was reached between Parliament and Council, Parliament's position at second reading corresponds to the final legislative act, Regulation (EC) No 987/2009.)

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European metrology research and development programme ***I

P6_TA(2009)0224

European Parliament legislative resolution of 22 April 2009 on the proposal for a decision of the European Parliament and of the Council on the participation by the Community in a European metrology research and development programme undertaken by several Member States (COM(2008)0814 – C6-0468/2008 – 2008/0230(COD))

(2010/C 184 E/38)

(Codecision procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0814),

— having regard to Article 251(2), Article 169 and the second paragraph of Article 172 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0468/2008),

— having regard to the undertaking given by the Council representative by letter of 7 April 2009 to adopt the proposal as amended, in accordance with the first indent in the second subparagraph of Article 251(2) of the EC Treaty,

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on Industry, Research and Energy (A6-0221/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and Commission.

P6_TC1-COD(2008)0230

Position of the European Parliament adopted at first reading on 22 April 2009 with a view to the adoption of a Decision No …/2009/EC of the European Parliament and of the Council on the participation by the Community in a European metrology research and development programme undertaken by several Member States

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Decision No 912/2009/EC.)

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The obligations of operators who place timber and timber products on the market ***I

P6_TA(2009)0225

European Parliament legislative resolution of 22 April 2009 on the proposal for a regulation of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market (COM(2008)0644 – C6-0373/2008 – 2008/0198(COD))

(2010/C 184 E/39)

(Codecision procedure – first reading)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0644),

— having regard to Article 251(2) and Article 175(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0373/2008),

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on the Environment, Public Health and Food Safety and the opinions of the Committee on Development and the Committee on International Trade (A6-0115/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and Commission.

P6_TC1-COD(2008)0198

Position of the European Parliament adopted at first reading on 22 April 2009 with a view to the adoption of Regulation *(EC) No …/2009* of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission ‖,

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Having regard to the opinion of the European Economic and Social Committee [1],

Having regard to the opinion of the Committee of the Regions [2],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [3],

Whereas

(1) Forests provide a broad variety of environmental, economic and social benefits including timber and non-timber forest products, environmental services ***and habitats for local communities.***

(2) The forest environment is a precious heritage that must be protected, preserved and, where practicable, restored with the ultimate aim of maintaining biodiversity and ecosystem functions, protecting the climate, and safeguarding the rights of indigenous peoples and local and forest-dependent communities.

(3) Forests are an economic resource, the cultivation of which generates prosperity and employment. The cultivation of forests also has positive effects on the climate since forest products can replace more energy-consuming products.

(4) It is of great importance, particularly from a climate point of view, that subcontractors operating on the Community market only market legally harvested timber since such timber ensures that the important function of forests as carbon dioxide sinks is not disrupted. In addition, the use of legally harvested timber as building material, in wooden houses, for example, helps to lock in carbon dioxide on a long-term basis.

(5) Forestry accounts for a very large part of social and economic development in developing countries and constitutes the primary source of income in such countries for many people. It is therefore important not to curb this development and source of income but to focus on how to promote a more sustainable development of forestry in those countries.

(6) Due to the growing demand for timber and timber products worldwide, in combination with the institutional and governance deficiencies that are present in the forest sector in a number of timber-producing countries, illegal logging and the associated trade *have become matters* of ever greater concern.

(7) It is evident that pressure on natural forest resources and the demand for timber and timber products are often too high and that the Community needs to reduce its impact on forest ecosystems regardless of where their effects occur.

(8) Illegal logging***, in combination with institutional and governance deficiencies in the forest sector of a significant number of timber-producing countries,*** is a pervasive problem of major international concern. ***Illegal logging*** poses a significant threat to forests as it contributes to the process of deforestation ***and forest degradation***, which is responsible for about 20 % of CO_2 emissions, ***influences the desertification and steppe-formation process, increasing soil erosion and exacerbating extreme weather events and the flooding which may ensue,*** threatens biodiversity, ***damages indigenous peoples' habitats*** and undermines sustainable forest management and development. In addition, it also has social, political and economic implications***, often undermining progress towards good governance goals, and threatens local forest-dependent communities and the rights of indigenous peoples***.

[1] OJ C , , p. .
[2] OJ C , , p. .
[3] *Position of the European Parliament of 22 April 2009.*

(9) The aim of this Regulation is to halt the trade in illegally harvested timber and products made from such timber in the EU and to contribute to stopping deforestation and forest degradation and related carbon emissions and biodiversity loss globally while promoting sustainable economic growth, sustainable human development and respect for indigenous and local peoples. This Regulation should contribute to the fulfilment of obligations and commitments contained in, inter alia: the Convention on Biological Diversity of 1992 (CBD); the Convention on International Trade in Endangered Species of Wild Fauna and Flora of 1973 (CITES); the International Tropical Timber Agreements (ITTAs) of 1983, 1994 and 2006; the United Nations Framework Convention on Climate Change of 2002 (UNFCCC); the United Nations Convention to Combat Desertification of 1994; the Rio Declaration on Environment and Development of 1992; the Johannesburg Declaration and Plan of Implementation as adopted by the World Summit on Sustainable Development on 4 September 2002; the proposals for action of the UN Intergovernmental Panel on Forests, endorsed by the 1997 United Nations General Assembly Special Session (Ungass), and of the UN International Forum on Forests; the United Nations Conference on Environment and Development (UNCED) non-legally binding authoritative statement of principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests of 1992; Agenda 21 as adopted by UNCED in June 1992; the Ungass resolution on the 'Programme for the further implementation of Agenda 21' of 1997; the Millennium Declaration of 2000; the World Charter for Nature of 1982; the Declaration of the United Nations Conference on the Human Environment of 1972; the 1972 Action Plan for Human Environment; the United Nations Forum on Forests, Resolution 4/2; the Convention on European Wildlife and Habitats of 1979; the UN Convention against Corruption of 2003 (UNCAC).

(10) Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme ([1]) has identified as a priority activity the examination of the possibility of taking active measures to prevent and combat trade in illegally harvested wood and the continuation of the active participation of the Community and of Member States in the implementation of global and regional resolutions and agreements on forest-related issues.

(11) The *Commission* Communication of *21 May 2003 entitled* 'Forest Law Enforcement, Governance and Trade (FLEGT): *Proposal for an EU Action Plan'* ([2]) proposed a package of measures to support international efforts to tackle the problem of illegal logging and associated trade ***and to contribute to the wider objective of sustainable forest management***.

(12) The Council and the European Parliament, recognising the need for the Community to contribute to global efforts to address the problem of illegal logging ***and to support sustainable legal logging within the framework of sustainable development, sustainable forest management and poverty reduction, as well as social equity and national sovereignty,*** welcomed that Communication.

(13) In accordance with the aim of that Communication, namely to ensure that only timber products that have been produced in accordance with the national legislation of the producing country enter the Community, the Community has been negotiating Voluntary Partnership Agreements (VPAs) with timber producing countries (partner countries), which put a legally binding obligation on the parties to implement a licensing scheme and to regulate trade in timber and timber products identified in the *VPAs*.

(14) The Community should also push, in bilateral talks with major timber-consuming countries such as the US, China, Russia, and Japan, for discussions in relation to the problem of illegal logging, for convergence towards harmonised appropriate obligations on operators on their own timber market, and for the creation of an independent, global alert system and register of illegal logging consisting for example of Interpol and an appropriate UN body, benefiting from the latest satellite detection technologies.

(15) Operators from countries with forests of international ecological importance should have a particular responsibility for the sustainable exploitation of timber.

([1]) ***OJ L 242, 10.9.2002, p. 1.***
([2]) COM(2003)0251, 21.5.2003.

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(16) Given the major scale and urgency of the problem, it is necessary to actively support the fight against illegal logging and related trade, ***to reduce the Community's impact on forest ecosystems***, to complement and strengthen the VPA initiative and to improve synergies between policies aiming at ***poverty reduction,*** the conservation of forests and the achievement of a high level of environmental protection, including combating climate change and biodiversity loss.

(17) Based on the principle of preventive action, all supply chain actors should share responsibility for eliminating the risk of illegally harvested timber and timber products being made available on the market.

(18) The efforts made by countries which have concluded FLEGT VPAs with the Community and the principles incorporated in them, in particular with regard to the definition of legally produced timber, should be recognised. It should be also taken into account that under the FLEGT licensing scheme only timber and timber products harvested in accordance with the relevant national legislation are exported into the Community. To that effect, timber products listed in Annexes II and III to Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community [1], originating in partner countries listed in Annex I to *that* Regulation, should be considered to have been legally harvested provided they comply with that Regulation and any implementing provisions. ***The principles set out in the VPAs, particularly with regard to the definition of 'legally produced timber' must include and guarantee sustainable forest management, the maintenance of biodiversity, the protection of local forest-dependent communities and of the indigenous peoples, and the safeguarding of the rights of those communities and peoples.***

(19) Account should also be taken of the fact that the Convention on International Trade of Endangered Species of Fauna and Flora (CITES) places a requirement on parties to the Convention *only* to ‖ grant a CITES permit for export when a CITES-listed species has been harvested, *inter alia,* in compliance with domestic legislation in the exporting country. To that effect, timber products of species listed in Annexes A, B and C to Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein [2] should be considered to have been legally harvested provided they comply with that Regulation and any implementing provisions.

(20) Taking into account the complexity of illegal logging as regards the underlying factors and the impacts, the incentives for illegal behaviour should be reduced by targeting the behaviour of operators. ***Strengthening requirements and obligations and enhancing the legal means to prosecute operators for possession of illegal timber and timber products and for placing or making available such timber and timber products on the Community market are among the most effective solutions to deter operators from trading with illegal suppliers.***

(21) In the absence of an internationally agreed definition the legislation of the country where the timber was harvested should be the ***primary*** basis to define what constitutes illegal logging. ***The application of legality standards should involve further consideration of international standards including, inter alia, those of the African Timber Organisation; the International Tropical Timber Organisation; the Montreal Process on Criteria and Indicators for the Conservation and Sustainable Management of Temperate and Boreal Forests; and the Pan-European Forest Process on Criteria and Indicators for Sustainable Forest Management. Such application of legality standards should contribute to the implementation of international commitments, principles and recommendations including those concerning mitigation of climate change, reduction of biodiversity loss, alleviation of poverty, reduction of desertification and the protection and promotion of the rights of indigenous peoples and of local and forest-dependent communities. The timber-harvesting country should provide an inventory of total legal logging including details of tree species and maximum timber production.***

[1] OJ L 347, 30.12.2005, p. 1.
[2] OJ L 61, 3.3.1997, p. 1.

(22) Many timber products undergo numerous processes before and after they are placed on the market for the first time. In order to avoid imposing any unnecessary administrative burden only those operators that place timber and timber products on the market for the first time, rather than all operators involved in the distribution chain, should be subject ***to the requirement to put in place a full system of measures and procedures (due diligence system) to minimise the risk of placing illegally harvested timber and timber products on the market. However all operators in the supply chain should be bound by the overriding prohibition against making illegally sourced timber or timber products available on the market, and must exercise due care to this effect.***

(23) All operators (traders and producers) in the timber and timber product supply chains on the Community market should clearly indicate on the products on offer the source or supplier from which the timber originates.

▌

(24) Operators placing timber and timber products for the first time on the Community market should exercise due diligence through a ‖ due diligence system ‖ to minimise the risk of placing illegally harvested timber and timber products.

(25) The due diligence system should provide access to the sources and suppliers of the timber and timber products being placed on the Community market and to information as regards compliance with the applicable legislation.

(26) In implementing this Regulation, the Commission and the Member States should take special account of the particular vulnerability and limited resources of small and medium-sized enterprises (SMEs). It is extremely important that SMEs are not burdened by complicated rules which impede their development. The Commission should, therefore, as far as possible and on the basis of the mechanisms and principles set out in the forthcoming Small Business Act, devise simplified systems in respect of SMEs' obligations under this Regulation, without jeopardising its object and purpose, and offer SMEs valid alternatives to enable them to operate in line with Community legislation.

(27) ▌In order to facilitate the implementation of this Regulation and to contribute to the development of good practices, it is appropriate to recognise organisations which have developed ***suitable and effective*** requirements for the realisation of the due diligence systems. A list of such recognised organisations *should* be made public. ▌

(28) For the same purpose, the European Union should encourage the above-mentioned organisations to cooperate with environmental organisations and human rights organisations in order to support due diligence systems and the monitoring thereof.

(29) Competent authorities should monitor that ‖ operators fulfil the obligations laid down in this Regulation. For that purpose the competent authorities should carry out official *controls****, including customs checks,*** and require operators to take corrective measures where necessary.

(30) Competent authorities should keep records of the *controls* and make a summary publicly available in accordance with Directive 2003/4/EC of the European Parliament and of the Council of *28* January 2003 on public access to environmental information ([1]).

(31) Taking into account the international character of illegal logging and related trade, competent authorities should cooperate between themselves and with ***environmental organisations, human rights organisations, and*** the administrative authorities of third countries and/or the Commission.

(32) Member States should ensure that infringements of this Regulation are punished by effective, proportionate and dissuasive penalties.

([1]) OJ L 41, 14.2.2003, p. 26.

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(33) 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]).

(34) In particular, the Commission should be empowered to adopt detailed rules for the application of the due diligence system and in particular criteria for assessing the risk of placing illegally harvested timber and timber products on the market, to establish criteria for the recognition of due diligence systems developed by monitoring organisations and to adapt the list of timber and timber products to which this Regulation applies where technical characteristics, end uses or production processes of timber or timber products necessitate such adaptations. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

▌

(35) Development in sustainable forestry is an ongoing process and this Regulation should, therefore, be evaluated, updated and amended on a regular basis in line with the results of new research. The Commission should therefore regularly analyse the latest available research and development and present the conclusions of its analysis and proposed amendments in a report to the European Parliament.

(36) In order to ensure a smoothly operating internal market in forest products, the Commission should analyse the impact of this Regulation on an ongoing basis. Particular account should be taken of the implications of the Regulation for SMEs operating on the Community market. The Commission should, therefore, accordingly and on a regular basis, carry out a study and impact analysis of the effects of the Regulation on the internal market, with particular reference to SMEs, in addition to its impacts on sustainable forest management. The Commission should subsequently present a report of its analysis, its conclusions and proposals for measures to the European Parliament.

(37) Since the *objectives* of this Regulation, namely to complement and underpin the existing policy framework and support the fight against illegal logging and related trade, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out on 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 those objectives,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter ***and objective***

This Regulation lays down the obligations of operators who place ***or make available*** timber and timber products on the market.

Operators shall ensure that only legally harvested timber and timber products are made available on the market.

Operators who place timber and timber products on the market shall use a due diligence system.

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

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Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(a) 'timber and timber products' means the timber and timber products set out in the Annex ***without exception***;

(b) 'making available on the market' means any supply of timber and timber products on the Community market for distribution or use in the course of a commercial activity whether in return for payment or free of charge;

(c) 'placing on the market' means ***the first making available of timber and timber products on the Community market***; ***subsequent processing and distribution of timber does not constitute 'placing on the market';***

(d) 'operator' means any natural or legal person that places ***or makes available on the market*** timber or timber products ▌;

(e) 'legally harvested' means harvested in accordance with the applicable legislation in the country of harvest;

(f) 'risk' means a function of the probability of timber or timber products from an illegal source being imported into, exported from or traded in the territory of the Community and the severity of such an event;

(g) 'risk management' means ***the systematic identification of risks and the implementation of*** a set of measures and procedures ▌ in order to minimise the risk of placing illegally harvested timber and timber products on the market;

(h) 'applicable legislation' means ▌ legislation***, whether national, regional or international, in particular that concerning the conservation of biological diversity, forest management, resource use rights and the minimisation of adverse environmental impacts; it should also take into account property tenure, rights of indigenous people, labour and community welfare legislation, taxes, import and export duties, royalties or fees related to harvesting, transportation and marketing***;

(i) 'Sustainable forest management' means the management and use of forests and wooded lands in a way, and at a rate, that maintains their biological diversity, productivity, regeneration capacity, vitality and their potential to fulfil, now and in the future, relevant ecological, economic and social functions, at local, national, and global levels, without causing any damage to other ecosystems;

(j) 'country of harvest' means the country where the timber or the timber embedded in the timber products was harvested;

(k) 'monitoring organisation' means a legal entity or a membership-based association ▌ that has the legal capacity ***and appropriate expertise*** to monitor and ensure the application of due diligence systems by the operators certified as making use of such systems***, and which is legally independent from the operators it certifies***;

(l) 'traceability' means the ability to trace and follow timber or timber products through all stages of production, processing and distribution.

Article 3

Obligations of operators

1. Operators shall ***ensure that they place or make available on the market only legally harvested timber and timber products.***

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2. Operators ***who place timber and timber products on the market*** shall establish a due diligence system containing the elements referred to in Article 4 ‖ or make use of a due diligence system of a recognised monitoring organisation referred to in *Article 6*(1).

Existing national legislative supervision and any voluntary chain of custody mechanism which fulfil the requirements under this Regulation may be used as a basis for the due diligence system.

3. Operators who make timber and timber products available on the market shall, throughout the supply chain, be able to:

(i) identify the operator who has supplied the timber and timber products, and the operator to whom the timber and timber products have been supplied;

(ii) provide upon request information on the name of the species, the country/countries of harvest and where feasible the concession of origin;

(iii) check, where necessary, that the operator who has placed the timber and timber products on the market has fulfilled his obligations under this Regulation.

4. Timber products listed in Annexes II and III to Regulation (EC) No 2173/2005 originating in partner countries listed in Annex I of *that* Regulation ‖ and which comply with that Regulation and its implementing provisions shall be considered to have been legally harvested for the purposes of this Regulation.

5. Timber products of species listed in Annexes A, B and C to Regulation (EC) No 338/97 and which comply with that Regulation and its implementing provisions shall be considered to have been legally harvested for the purposes of this Regulation.

Article 4

Due diligence systems

1. The due diligence system referred to in Article 3*(2)* shall:

(a) ensure that only legally harvested timber and timber products are placed on the market, employing a traceability system and third party verification by the monitoring organisation;

(b) ***comprise measures to ascertain:***

(i) ***country of origin, forest of origin and, where feasible, concession of harvest;***

(ii) ***name of the species, including scientific name***;

(iii) ***value;***

(iv) ***volume and/or weight***;

(v) ***that the timber or the timber embedded in the timber products has been legally harvested;***

(vi) the name and address of the operator who has supplied the timber and timber products;

(vii) the natural or legal person responsible for harvesting;

(viii) the operator to whom the timber and timber products have been supplied.

These measures shall be supported by appropriate documentation maintained in a database by the operator or by the monitoring organisation.

(c) include a risk management procedure ***which shall consist of the following:***

(i) systematic identification of risks, inter alia through collecting data and information and making use of international, Community or national sources;

(ii) implementation of all measures necessary for limiting exposure to risks;

(iii) establishing procedures which shall be carried out regularly to verify that the measures set out in points (i) and (ii) are working effectively and to review them where necessary;

(iv) establishing records to demonstrate the effective application of the measures set out in points (i) to (iii).

(d) provide for audits to ensure effective application of the due diligence system.

2. The Commission shall adopt measures for the implementation of this Article ***with a view to ensuring uniformity of interpretation of the rules and effective compliance by operators***. The Commission shall, in particular, establish criteria for assessing whether there is a risk of illegally harvested timber and timber products being placed on the market. ***In doing so, the Commission shall take particular account of the special position and capacity of SMEs and, as far as possible, offer those enterprises adapted and simplified alternatives to reporting and control systems so that those systems do not become too burdensome.***

Based on factors related to the product type, source or complexity of the supply chain, certain categories of timber and timber products or suppliers shall be considered 'high risk', requiring extra due diligence obligations from the operators.

Extra due diligence obligations may, inter alia, include:

— ***requiring additional documents, data or information;***

— ***requiring third party audits.***

Timber and timber products from the following shall be considered as 'high risk' by operators under this Regulation:

— ***conflict areas, or countries / regions covered by a UN Security Council ban on timber exports;***

— ***countries where there is consistent and reliable information regarding significant failures of forest governance, a low level of forest law enforcement or a high level of corruption;***

— ***countries where official Food and Agriculture Organisation (FAO) statistics show a decrease in forest area;***

— ***supplies where information on potential irregularities supported by reliable evidence, that has not been disproved by investigation, has been made available from customers or external parties.***

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The Commission shall make available a register of high-risk sources of timber and timber products or suppliers.

Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in *Article 12*(2).

Relevant stakeholders shall be consulted prior to the adoption of additional implementing measures.

3. Individual Member States shall not be prevented, with regard to access to the market for timber and timber products, from setting more stringent requirements for the harvesting and origin of timber than laid down in this Regulation, in respect of sustainability, the protection of the environment, the conservation of biodiversity and the ecosystem, the protection of local communities' habitats, the protection of forest-dependent communities, the protection and rights of indigenous peoples and human rights.

Article 5

Labelling

Member States shall ensure that by … (*) all timber and timber products placed and made available on the market are labelled, as appropriate, with the information specified in Article 3(3).

Article 6

Recognition of monitoring organisations

1. ***The Commission shall, in accordance with the regulatory procedure referred to in Article 12(3),*** recognise ***as a*** monitoring ***organisation a private or public entity which has established a due diligence system which contains the elements set out in Article 4(1).***

2. A public entity applying for the recognition provided for in paragraph 1 shall comply with the following requirements:

(a) it has legal personality;

(b) it is governed by public law;

(c) it has been established to carry out particular functions regarding the forest sector;

(d) it is financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law;

(e) it obliges operators it certifies to use its due diligence *system*;

(f) it has in place a monitoring mechanism to ensure the use of the due diligence *system* by the operators which it has certified as making use of its due diligence system;

(g) it takes appropriate disciplinary measures against any certified operator who fails to comply with *its* due diligence system***; disciplinary measures shall include reporting the matter to the relevant national competent authority;***

(h) it has no conflict of interest with the competent authorities.

(*) ***Two years after the entry into force of this Regulation.***

3. A private entity applying for the recognition provided for in paragraph 1 shall comply with the following requirements:

(a) it has legal personality;

(b) it is governed by private law;

(c) it has appropriate expertise;

(d) it is legally independent from the operators it certifies;

(e) the operators it certifies are bound by the entity's articles of association to use its due diligence system;

(f) it has in place a monitoring mechanism to ensure the use of the due diligence system by the operators which it has certified as making use of its due diligence system;

(g) it takes appropriate disciplinary measures against any certified operator who fails to comply with its due diligence system; disciplinary measures shall include reporting the matter to the relevant national competent authority.

4. The monitoring organisation shall submit to ***the Commission*** the following information together with its application for recognition:

(a) its statute;

(b) the names of persons authorised to act on its behalf;

(c) documentation to demonstrate its appropriate expertise;

(d) a detailed description of its due diligence system.

5. ***In accordance with the regulatory procedure referred to in Article 12(3), the Commission*** shall decide whether to grant recognition to a monitoring organisation within three months of the submission of an application by the monitoring organisation ***or a recommendation from the competent authority of a Member State that it is recommending the organisation for recognition.***

The decision to grant recognition to a monitoring organisation shall be communicated by the Commission to the competent authority of the Member State with jurisdiction over that organisation, together with a copy of the application, within 15 days of the date of the decision.

Member State competent authorities shall carry out checks, ***including field-based audits,*** at regular intervals***, or on the basis of substantiated concerns from third parties,*** to ascertain that monitoring organisations comply with the requirements laid down in paragraph 1. ***The check reports shall be made available to the public.***

If, following those checks, competent authorities ascertain that monitoring organisations do not comply with the requirements laid down in paragraphs 1 and 2 or paragraphs 1 and 3, they shall forthwith inform the Commission and communicate to it any relevant evidence in that regard.

6. ***In accordance with the regulatory procedure referred to in Article 12(3), the Commission*** shall withdraw the recognition of a monitoring organisation if it has been established that the requirements set out in ***paragraphs 1 and 2 or paragraphs 1 and 3*** are no longer fulfilled.

7. Competent authorities shall notify the Commission within two months of any decision to ***recommend the granting, refusal or withdrawal of recognition of any monitoring organisation.***

8. The Commission shall adopt measures for the implementation of this Article.

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Those measures designed to amend non-essential elements of this Regulation by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in *Article 12*(2).

Article 7

List of monitoring organisations

The Commission shall publish the list of the ***recognised*** monitoring organisations ▌in the *Official Journal of the European Union*, C series, and shall make it available on its website. The list shall be regularly updated.

Article 8

Monitoring *and control* measures

1. Competent authorities shall carry out ***controls*** to verify if operators comply with the requirements set out in Article 3(1)***,*** (2) ***and (3)*** and Article 4(1).

2. Controls shall be conducted in accordance with a yearly plan and/or on the basis of substantiated concerns provided by third parties; or in any event where the competent authority of the Member State is in possession of information that questions compliance by the operator with the requirements for due diligence systems set out in this Regulation.

3. Controls may include, inter alia:

(a) examination of the technical and managerial systems and procedures of due diligence and risk assessment that the operators use;

(b) examination of documentation and records that demonstrate the proper functioning of the systems and procedures;

(c) spot checks, including field audits.

4. Competent authorities shall be equipped with a reliable traceability system to track internationally traded timber products and with public monitoring systems to assess the performance of operators in complying with their obligations and to help operators identify suppliers of high-risk timber and timber products.

5. Operators shall offer all assistance necessary to facilitate the performance of the ***controls*** referred to in paragraph 1***, notably as regards access to premises and the presentation of documentation or records***.

6. ***If, following*** the ***controls*** referred to in paragraph 1***, the operator is presumed to have infringed the requirements set out in Article 3,*** the competent authorities may ***in accordance with their national legislation start a full investigation of the infringement and, in conformity with national law and depending on the gravity of the infringement, take immediate measures which may inter alia include:***

(a) the immediate cessation of commercial activities; and

(b) the seizure of timber and timber products.

7. Any immediate measures taken by the competent authorities shall be of such nature as to prevent the continuation of the infringement concerned and to allow the competent authorities to complete their investigation.

8. Where the competent authorities find that the technical and managerial systems and procedures of due diligence and risk assessment are not sufficient, they shall require the operator to take corrective measures.

Article 9

Records of ***controls***

1. Competent authorities shall keep records of the ***controls*** referred to in *Article 8*(1), indicating in particular their nature and results, including any corrective measures requested to be taken. Records of all ***controls*** shall be kept for at least 10 years.

2. ***The*** records referred to in paragraph 1 shall be made available to the public ***on the Internet*** in accordance with Directive 2003/4/EC.

Article 10

Cooperation

1. Competent authorities shall cooperate with each other and with administrative authorities of third countries and with the Commission in order to ensure compliance with this Regulation.

2. The competent authorities shall exchange information on the results of the ***controls*** referred to in *Article 8*(1) with the competent authorities of other Member State(s) and with the Commission.

Article 11

Competent authorities

1. Each Member State shall designate one or more competent authorities responsible for the application of this Regulation. ***These authorities shall be given sufficient powers to enforce this Regulation by monitoring its application, investigating alleged infringements in cooperation with the customs authorities, and reporting offences to the prosecuting authority in a timely manner.***

Member States shall inform the Commission of the names and addresses of the competent authorities by 31 December …. Member States shall inform the Commission of any changes to the names or addresses of the competent authorities.

2. The Commission shall make publicly available ***on the Internet*** the list of the competent authorities. ***This list shall be kept up-to-date.***

Article 12

Committee

1. The Commission shall be assisted by the Committee on Timber Trade ‖.

2. Where reference is made to this paragraph, Article 5a (1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

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Article 13

Development of sustainability requirements

By … (*), the Commission shall present a legislative proposal to the European Parliament and the Council on a Community standard for all timber and timber products sourced from natural forests aimed at achieving the highest sustainability requirements.

Article 14

Advisory Group

1. An Advisory Group shall be established, consisting of representatives of interested stakeholders including, inter alia, forest-based industry representatives, forest owners, non-governmental organisations (NGOs) and consumer groups and chaired by a representative of the Commission.

2. Representatives of Member States may participate in the meetings either on their own initiative or upon invitation by the Advisory Group.

3. The Advisory Group shall set its rules of procedure which shall be made public on the Commission's website.

4. The Commission shall provide the technical and logistical support necessary for the Advisory Group and provide the secretariat for its meetings.

5. The Advisory Group shall examine and issue opinions on matters relating to the application of this Regulation raised by the chairman, either on his own initiative or at the request of the members of the Advisory Group or the Committee.

6. The Commission shall convey the opinions of the Advisory Group to the Committee.

Article 15

Amendments

The Commission may ***add to*** the list of timber and timber products set out in the Annex taking into account technical characteristics, end-uses and production processes.

Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in *Article 12*(2).

Article 16

Penalties

The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for ***may be criminal or administrative,*** must be effective, proportionate and dissuasive, ***and shall include, where appropriate, inter alia***:

(a) financial penalties reflecting:

— ***the degree of environmental damage;***

— ***the value of the timber products concerned by the infringement;***

— ***the tax losses and economic damage occasioned by the infringement;***

(*) ***One year after the date of entry into force of this Regulation.***

(b) seizure of timber and timber products;

(c) temporary prohibition from marketing timber and timber products.

Where legal proceedings are pending, operators shall suspend sourcing timber and timber products from the areas in question.

Financial penalties shall represent at least five times the value of the timber products obtained by committing a serious infringement. In the case of a repeated serious infringement within a five-year period, the financial penalties shall gradually increase up to at least eight times the value of the timber products obtained by committing a serious infringement.

Without prejudice to other provisions laid down in Community law, pertaining to public funds, Member States shall not grant any public aid under national aid regimes or under Community funds to operators convicted of a serious infringement of this Regulation, until corrective measures have been taken and effective, proportionate and dissuasive penalties have been applied.

The Member States shall notify *the* provisions *on penalties* to the Commission by 31 December … and shall notify it without delay of any subsequent amendment affecting them.

Article 17

Reporting

1. Member States shall submit to the Commission *for the first time* by … (*) *and* every second year *thereafter* a report on the application of this Regulation during the previous two years.

2. On the basis of those reports the Commission shall draw up a report to be submitted to the European Parliament and to the Council every two years.

3. In preparing the report referred to in paragraph 2, the Commission shall have regard to the progress made in respect of the conclusion and operation of the FLEGT VPAs adopted pursuant to Regulation (EC) No 2173/2005. The Commission shall consider whether any revisions of this Regulation are required in the light of experience of the operation of the FLEGT VPAs and their effectiveness in addressing the problem of illegal timber.

Article 18

Amendment to Directive 2008/99/EC

Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law ([1]) is hereby amended, with effect from … (**), as follows:

(1) The following point shall be added to Article 3:

'(ia) the making available on the market of illegally harvested timber or timber products.'

(*) *30 April of the third year following the date of entry into force of this Regulation.*
([1]) ***OJ L 328, 6.12.2008, p. 28.***
(**) ***One year after the date of entry into force of this Regulation.***

(2) The following indent shall be added to Annex A:

'— Regulation (EC) No …/2009 of the European Parliament and of the Council of … laying down the obligations of operators who place timber and timber products on the market.'

Article 19

Review

By … (*), and every five years thereafter, the Commission shall carry out a review of the operation of this Regulation in regard to its object and purpose and report its conclusions and, on the basis thereof, its proposals for amendments, to the European Parliament.

The review shall focus on the following:

— a detailed and thorough analysis of research and development in the field of sustainable forestry;

— the impact of this Regulation on the internal market, with particular reference to the competitive situation and the ability of new players to establish themselves on the market;

— the situation of SMEs on the market and how this Regulation has affected their activities.

Article 20

Entry into force

This Regulation shall enter into force on the seventh day following that of its publication in the *Official Journal of the European Union*.

It shall apply from … (**).

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at,.

For the European Parliament	For the Council
The President	The President

(*) ***Three years after the date of entry into force of this Regulation.***
(**) ***One year*** after the date of entry into force of this Regulation.

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ANNEX

Timber and timber products as classified in the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 [1]**, to which this Regulation applies**

1. The products set out in Annexes II and III of Regulation (EC) No 2173/2005, to which the FLEGT licensing scheme applies;

2. Pulp and paper of Chapters ***47, 48 and 49*** of the Combined Nomenclature *(CN)*, with the exception of bamboo-based and recovered (waste and scrap) products;

3. Wooden furniture of CN code 9403 30, 9403 40, 9403 50 00, 9403 60 and 9403 90 30;

4. Prefabricated buildings of CN code 9406 00 20;

5. Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms of CN code 4401;

6. Builders' joinery and carpentry of wood, including cellular wood panels, assembled flooring panels, shingles and shakes, wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, moulded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed of CN code 4418;

7. Particle board, oriented strand board (OSB) and similar board of wood whether or not agglomerated with resins or other organic binding substances of CN code 4410;

8. Fibreboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances of CN code 4411;

9. Densified wood, in blocks, plates, strips or profile shapes of CN code 4413 00 00;

10. Wooden frames for paintings, photographs, mirrors or similar objects of CN code 4414 00;

11. Packing cases, boxes, crates, drums and similar packings, of wood; cable-drums of wood; pallets, box pallets and other load boards, of wood; pallet collars of wood; coffins of CN code 4415;

12. Casks, barrels, vats, tubs and other coopers' products and parts thereof, of wood, including staves of CN code 4416 00 00;

13. Other timber products included in CN chapters 94 and 95, including wooden toys and sports accessories.

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[1] Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

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Minimum stocks of crude oil and/or petroleum products *

P6_TA(2009)0226

European Parliament legislative resolution of 22 April 2009 on the proposal for a Council directive imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products (COM(2008)0775 – C6-0511/2008 – 2008/0220(CNS))

(2010/C 184 E/40)

(Consultation procedure)

The European Parliament,

— having regard to the Commission proposal to the Council (COM(2008)0775),

— having regard to Article 100 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0511/2008),

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on Industry, Research and Energy and the opinion of the Committee on Economic and Monetary Affairs (A6-0214/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;

5. Instructs its President to forward its position to the Council and Commission.

TEXT PROPOSED BY THE COMMISSION	AMENDMENT
Amendment 1	
Proposal for a directive	
Recital 1	
(1) The supply of crude oil and petroleum products to the Community remains very important, particularly for the transport sector and the chemicals ***industry***.	(1) The supply of crude oil and petroleum products to the Community remains very important, particularly for the transport sector and the chemicals ***and energy industries. Disruption to supplies of crude oil and petroleum products or insufficient stocks could result in major financial losses for enterprises and could paralyse other sectors of the economy and the daily life of citizens of the Union.***

TEXT PROPOSED BY THE COMMISSION	AMENDMENT
Amendment 2	
Proposal for a directive	
Recital 1 a (new)	
	(1a) Crude oil remains and will remain for the coming decades one of the most important primary energy sources. At the same time, it will be increasingly challenging for Members States to ensure a constant supply of crude oil at a reasonable price.
Amendment 3	
Proposal for a directive	
Recital 2	
(2) The increasing concentration of production, dwindling oil reserves and growing worldwide consumption of petroleum products are all contributing to ***an*** increased risk of supply difficulties.	(2) The increasing concentration of production, dwindling oil reserves and ***constantly*** growing worldwide consumption of petroleum products are all contributing to ***a seriously*** increased risk of supply difficulties.
Amendment 4	
Proposal for a directive	
Recital 2 a (new)	
	(2a) Alongside measures to create a favourable climate of investment for the purpose of prospecting for, and tapping into, oil reserves inside and outside the European Union, which is vital to ensure long-term oil supplies, building up oil reserves is a proven means of compensating for short-term supply disruption.
Amendment 5	
Proposal for a directive	
Recital 2 b (new)	
	(2b) The level of dependence of Member States on oil imports to meet their energy needs is extremely high.
Amendment 6	
Proposal for a directive	
Recital 4 a (new)	
	(4a) The European Union is a global player and its policy for enhancing the security of energy supply should therefore form part of the policy objectives in its relations with candidate and neighbouring countries.
Amendment 7	
Proposal for a directive	
Recital 4 b (new)	
	(4b) The Commission should ensure that the eight Member States that are not members of the International Energy Agency (IEA) [1] are involved on an equal footing as regards the decisions adopted and the measures taken by the European Union in consultation with the IEA.

[1] Bulgaria, Cyprus, Estonia, Latvia, Lithuania, Malta, Romania and Slovenia.

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT
Amendment 8	
Proposal for a directive **Recital 5 a (new)**	
	(5a) The Commission should adequately represent and uphold the interests of the Member States that are not members of the IEA.
Amendment 9	
Proposal for a directive **Recital 7**	
(7) The Presidency Conclusions of the Brussels European Council of 8 and 9 March 2007 show that it is becoming increasingly vital and pressing for the Community to put in place an integrated energy policy, combining action at European and Member State level. It is therefore essential to ensure ***greater convergence*** between the stockholding mechanisms in place in the various Member States.	(7) The Presidency Conclusions of the Brussels European Council of 8 and 9 March 2007 show that it is becoming increasingly vital and pressing for the Community to put in place an integrated energy policy, combining action at European and Member State level. It is therefore essential to ensure ***compatibility*** between the ***different*** stockholding mechanisms in place in the various Member States.
Amendment 10	
Proposal for a directive **Recital 7 a (new)**	
	(7a) The Presidency Conclusions of the European Council of 15 and 16 October 2008 emphasise the Union's desire to establish mechanisms for solidarity among Member States in the case of energy supply disruptions and suggests putting in place all necessary instruments for this purpose. An effective system for maintaining stocks of crude oil and/or petroleum products which is coordinated at Community level is also an important part of putting the principle of energy solidarity into practice.
Amendment 11	
Proposal for a directive **Recital 8**	
(8) The availability of oil stocks and the safeguarding of energy supply are essential elements of public security for Member States and for the Community. The existence of central stockholding entities or services in the Community ***brings those*** goals ***closer.*** Where oil stocks may be held in any location across the Community and by any central entity or service set up for that purpose, ***prohibiting their use for commercial purposes is sufficient to allow the various*** Member States ***concerned*** to make optimum use of national law to define the terms of reference for their central stockholding entities while easing the financial burden placed on final consumers as a result of such stockholding activities.	(8) The availability of oil stocks and the safeguarding of energy supply are essential elements of public security for Member States and for the Community. The existence of central stockholding entities or services in the Community ***could contribute to achieving these*** goals ***in a cost-efficient way.*** Where oil stocks may be held in any location across the Community and by any central entity or service set up for that purpose, Member States ***should be able*** to make optimum use of national law to define the terms of reference for their central stockholding entities ***and the conditions on which they delegate the holding of stocks to other Member States or other stockholding entities,*** while easing the financial burden placed on final consumers as a result of such stockholding activities.
Amendment 12	
Proposal for a directive **Recital 8 a (new)**	
	(8a) In order to ease the financial burden on end-users, Member States should provide for closer cooperation among central stockholding entities and for the setting up of regional stockholding entities.

TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 13

Proposal for a directive
Recital 9

(9) Given the objectives of the Community legislation on oil stocks, possible security concerns which may be expressed by some Member States and the desire to make mechanisms for solidarity amongst Member States more rigorous and more transparent, central entities acting without an intermediary must be restricted to operating within national boundaries.	***deleted***

Amendment 14

Proposal for a directive
Recital 12

(12) In view of what is required in connection with setting up emergency policies, ***convergence among*** national stockholding mechanisms and the need to ensure a better overview of stock levels, particularly in the event of a crisis, Member States ***and the Community*** must have the means for reinforced control of those stocks.	(12) In view of what is required in connection with setting up emergency policies, ***ensuring compatibility between*** national stockholding mechanisms and the need to ensure a better overview of stock levels, particularly in the event of a crisis, Member States must have the means for reinforced control of those stocks.

Amendment 15

Proposal for a directive
Recital 12 a (new)

	(12a) While sufficient flexibility should be given to Member States to choose the stock holding arrangements which are most suited to their geographical and organisational characteristics, all necessary mechanisms should be put in place to enable the provision to the Commission at any time of accurate and reliable data about stock levels.

Amendment 16

Proposal for a directive
Recital 12 b (new)

	(12b) The role of the Member States in maintaining and managing mandatory oil stocks for emergency situations should be strengthened.

Amendment 17

Proposal for a directive
Recital 14

(14) To help enhance security of supply in the Community, the stocks, ***known as 'specific stocks', purchased by the Member States or the central entities and constituted on the basis of decisions taken by the Member States should correspond to actual needs in the event of a crisis***. They should also have separate legal status to ensure full availability should such a crisis occur. To that end, the Member States concerned should ensure that appropriate steps are taken to protect those stocks unconditionally against all enforcement measures.	(14) To help enhance security of supply in the Community, the ***available*** stocks ***should, in accordance with this Directive, be sufficient to cover demand at least for the specified period***. They should also have separate legal status to ensure full availability should such a crisis occur. To that end, the Member States concerned should ensure that appropriate steps are taken to protect those stocks unconditionally against all enforcement measures.

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 18

Proposal for a directive
Recital 15

(15) At this stage, the volumes to be owned by the central entities or the Member States should be set at a level determined independently and voluntarily by each of the Member States concerned.	(15) At this stage, the volumes to be owned by the central entities or the Member States should be set at a level determined ***in advance,*** independently and voluntarily by each of the Member States concerned.

Amendment 19

Proposal for a directive
Recital 18

(18) The frequency with which stock summaries are drawn up and the deadline for their submission, as laid down by Directive 2006/67/EC, seem to be out of step with the various oil stock systems that have been set up in other parts of the world. In a resolution on the macroeconomic impact of the increase in the price of energy, the European Parliament voiced its support for more frequent reporting.	(18) The frequency with which stock summaries are drawn up and the deadline for their submission, as laid down by Directive 2006/67/EC, seem to be out of step with the various oil stock systems that have been set up in other parts of the world. In a resolution on the macroeconomic impact of the increase in the price of energy, the European Parliament voiced its support for more frequent reporting. ***At the same time it is necessary to ensure that the data are accurate and do not require weekly or monthly correction, as is still frequently the case in the European Union.***

Amendment 20

Proposal for a directive
Recital 21

(21) With the same objectives in mind, the preparation and submission of statistical summaries should also be extended to stocks other than emergency stocks and specific stocks, with those summaries to be submitted on a ***weekly*** basis.	(21) With the same objectives in mind, the preparation and submission of statistical summaries should also be extended to stocks other than emergency stocks and specific stocks, with those summaries to be submitted on a ***monthly*** basis. ***Taking into account the results of the feasibility study to be carried out on the effectiveness of weekly reporting on commercial oil stocks, the Commission should be empowered to require Member States to submit those summaries on a weekly basis, in so far as it can be guaranteed that only minimal adjustments will be necessary and that this offers distinct advantages in terms of market transparency.***

Amendment 21

Proposal for a directive
Recital 23

(23) As there may be errors or discrepancies in the summaries submitted to the Commission, the Commission's employees or authorised agents should be able to verify the existence of the stocks and the documents used by the authorities of the Member States.	(23) As there may be errors or discrepancies in the summaries submitted to the Commission, the Commission's employees or authorised agents should, ***in the case of reasonable suspicion,*** be able, ***together with the designated Member State monitoring authorities,*** to verify the existence of the stocks and the documents used by the authorities of the Member States.

TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 22

Proposal for a directive
Recital 25

(25) The protection of individuals with regard to the processing of personal data by the Member States is governed by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, while the protection of individuals with regard to the processing of personal data by the Commission is governed by Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. ***In particular, those Acts require the processing of personal data to be justified by a legitimate purpose and stipulate that any personal data gathered accidentally must be deleted immediately.***	(25) The protection of individuals with regard to the processing of personal data by the Member States is governed by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, while the protection of individuals with regard to the processing of personal data by the Commission is governed by Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. ***The provisions of this Directive should be without prejudice to the provisions of Directive 95/46/EC and Regulation (EC) No 45/2001.***

Amendment 23

Proposal for a directive
Recital 29

(29) Given that no compulsory standard minimum level has been set at Community level for specific stocks and in view of the number of new mechanisms set up by this Directive, its implementation should be reviewed ***relatively soon*** after its entry into force.	(29) Given that no compulsory standard minimum level has been set at Community level for specific stocks ***and taking into account the current study on the costs and benefits of measures to increase transparency of the oil market, notably by weekly reporting commercial oil stocks,*** and in view of the number of new mechanisms set up by this Directive, its implementation should be reviewed ***at the latest within three years*** after its entry into force.

Amendment 24

Proposal for a directive
Article 2 – paragraph 1 – point e

(e) 'effective international decision to release stocks' means any current decision taken by the Governing Board of the *International Energy Agency* to release ***a Member State's*** stocks of oil or petroleum products;	(e) 'effective international decision to release stocks' means any current decision taken by the Governing Board of the *IEA* to release ***an IEA member country's*** stocks of oil or petroleum products;

Amendment 25

Proposal for a directive
Article 2 – subparagraph 1 – point l a (new)

	(la) 'emergency situations' mean circumstances in which there is significant disruption to supplies of crude oil or petroleum products;

Amendment 26

Proposal for a directive
Article 3 – paragraph 4

4. The methods and procedures for calculating stockholding obligations, as referred to in this Article, may be amended in accordance with the regulatory procedure referred to in Article 24(2).	4. The methods and procedures for calculating stockholding obligations, as referred to in this Article, may be amended in accordance with the regulatory procedure referred to in Article 24(2) ***and after consulting experts and stakeholders***.

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 27

Proposal for a directive
Article 4 – paragraph 3

3. The methods and procedures for calculating stock levels, as referred to in paragraphs 1 and 2, may be amended in accordance with the regulatory procedure referred to in Article 24(2).	3. The methods and procedures for calculating stock levels, as referred to in paragraphs 1 and 2, may be amended in accordance with the regulatory procedure referred to in Article 24(2) ***and after consulting experts and stakeholders***.

Amendment 28

Proposal for a directive
Article 5 – paragraph 1 – subparagraph 1

1. Member States shall ensure that emergency stocks and specific stocks, within the meaning of Article 9, which are held within their national territory are physically accessible and available at all times. They shall establish arrangements for the identification, accounting and control of those stocks so as to allow them to be verified at any time. For emergency stocks and specific stocks that form part of or are commingled with stocks held by economic operators, separate accounts must be kept.	1. Member States shall ensure that emergency stocks and specific stocks, within the meaning of Article 9, which are held within their national territory are physically accessible and available at all times. They shall establish arrangements for the identification, accounting and control of those stocks so as to allow them to be verified at any time. ***Those arrangements shall be established with the prior agreement of the Commission.*** For emergency stocks and specific stocks that form part of or are commingled with, stocks held by economic operators, separate accounts must be kept.

Amendment 29

Proposal for a directive
Article 6 – paragraph 1 – subparagraph 1

1. Each Member State shall keep and continually update a detailed register of all emergency stocks held for its benefit which do not constitute specific stocks within the meaning of Article 9. That register shall contain, in particular, ***all the information needed to pinpoint the exact location of*** the stocks in question and ***to determine*** the quantities involved, the owner of the stocks and their exact nature, with reference to the categories identified in the first paragraph of Section 3.1 of Annex C to Regulation (EC) *No ****** of the European Parliament and of the Council of ********** on energy statistics.*	1. Each Member State shall keep and continually update a detailed register of all emergency stocks held for its benefit which do not constitute specific stocks within the meaning of Article 9. That register shall contain, in particular, ***information concerning the depot, refinery or storage facility where*** the stocks in question ***are located*** and the quantities involved, the owner of the stocks and their exact nature, with reference to the categories identified in the first paragraph of Section 3.1 of Annex C to Regulation (EC) *No 1099/2008 of the European Parliament and of the Council of 22 October 2008 on energy statistics (*).*
	(*) OJ L 304, 14.11.2008, p. 1.

Amendment 30

Proposal for a directive
Article 6 – paragraph 1 – subparagraph 2

Within ***30 days*** of the end of each calendar year, Member States shall send the Commission a copy of the stock register showing the stocks existing on the last day of the calendar year in question.	Within ***45 days*** of the end of each calendar year, Member States shall send the Commission a copy of the stock register showing the stocks existing on the last day of the calendar year in question.

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 31

Proposal for a directive
Article 6 – paragraph 1 – subparagraph 3 a (new)

	The Commission shall ensure the confidentiality of the individual data contained in the registers.

Amendment 32

Proposal for a directive
Article 7 – paragraph 3 – subparagraph 2 a (new)

	In the event that an agreement delegates these obligations to the Member State within whose territory those stocks are located or to the central stockholding entity set up by that Member State, this agreement shall contain provisions, which set out:
	(a) the responsibility of the Member State or the central stockholding entity to ensure accurate data on the level of stocks at any time;
	(b) the timeframe for delivering these emergency stocks acquired, constituted, maintained or managed on its territory to the Member State, which has delegated these tasks;
	(c) effective, proportionate and dissuasive penalties, in case the Member State or central stock holding entity does not fulfil the conditions laid down in the agreement.

Amendment 33

Proposal for a directive
Article 7 – paragraph 4 – point b

(b) publish, at least ***six*** months in advance, the conditions subject to which it offers these services to economic operators.	(b) publish, at least ***three*** months in advance, the conditions subject to which it offers these services to economic operators.

Amendment 34

Proposal for a directive
Article 8 – paragraph 1 – subparagraph 1 – point b

(b) to one or more other central stockholding entities capable of maintaining such stocks, or	(b) to one or more other central stockholding entities capable of maintaining such stocks, ***provided that an agreement is concluded between the Member State concerned and the Member States which will hold the stocks***, or

Amendment 35

Proposal for a directive
Article 9 – paragraph 1 – subparagraph 1

1. Each Member State may ***irrevocably*** undertake to maintain a minimum level of oil stocks, calculated in terms of number of days of consumption, in accordance with the conditions set out in this Article (hereinafter 'specific stocks').	1. Each Member State may undertake to maintain a minimum level of oil stocks, calculated in terms of number of days of consumption, in accordance with the conditions set out in this Article (hereinafter 'specific stocks').

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 36

Proposal for a directive
Article 9 – paragraph 3 – introductory part

3. Specific stocks cover only the following product categories, as defined in Section 4 of Annex B to Regulation (EC) No ********** of the European Parliament and of the Council of ******* on energy statistics***:	3. Specific stocks ***may*** cover only the following product categories, ***which have to comply with Community legislation, in particular concerning fuel standards and environmental protection,*** as defined in Section 4 of Annex B to Regulation (EC) No ***1099/2008***:

Amendment 37

Proposal for a directive
Article 9 – paragraph 5 – subparagraph 1

5. Each Member State that has decided to maintain specific stocks shall send the Commission notification, to be published in the Official Journal of the European Union, specifying the level of the specific stocks that it has ***irrevocably*** undertaken to maintain permanently for each category. There shall be no compulsory minimum level other than the one thus notified, and it shall be applied in the same way for all categories of specific stocks used by the Member State.	5. Each Member State that has decided to maintain specific stocks shall send the Commission notification, to be published in the Official Journal of the European Union, specifying the level of the specific stocks that it has undertaken to maintain permanently for each category ***and the period for which it makes the commitment***. There shall be no compulsory minimum level other than the one thus notified, and it shall be applied in the same way for all categories of specific stocks used by the Member State.

Amendment 38

Proposal for a directive
Article 10 – paragraph 1 – subparagraph 1

1. Each Member State shall keep and continually update a detailed register of all specific stocks held within its national territory. That register shall contain, in particular, ***all information needed to pinpoint the exact location of*** the stocks in question.	1. Each Member State shall keep and ***on a monthly basis*** continually update a detailed register of all specific stocks held within its national territory. That register shall contain, in particular, ***information concerning the depot, refinery or storage facility where*** the stocks in question ***are located***.

Amendment 39

Proposal for a directive
Article 10 – paragraph 1 – subparagraph 2

Member States shall also send the Commission a copy of the register within ***eight days*** of a request by the Commission. Such requests may be made no later than ***10 years*** after the date to which the requested data relate.	Member States shall also send the Commission a copy of the register within ***10 working days*** of a request by the Commission. Such requests may be made no later than ***three years*** after the date to which the requested data relate.

TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 40

Proposal for a directive
Article 11 – paragraph 1 a (new)

	Any agreement between Member States and a central stockholding entity shall contain provisions, which set out:
	(a) the responsibility of the Member State or the central stockholding entity to ensure accurate data on the level of stocks at any time;
	(b) the timeframe for delivering these emergency stocks acquired, constituted, maintained or managed on its territory to the Member State, which has delegated these tasks;
	(c) effective, proportionate and dissuasive penalties, in case the Member State or central stock holding entity does not fulfil the conditions laid down in the agreement.

Amendment 41

Proposal for a directive
Article 15

1. Member States shall send the Commission a ***weekly*** statistical summary of the levels of commercial stocks held within their national territory. When doing so, they shall ensure that sensitive data are protected and shall abstain from mentioning the names of the owners of the stocks concerned.	1. Member States shall send the Commission a ***monthly*** statistical summary of the levels of commercial stocks held within their national territory. When doing so, they shall ensure that sensitive data are protected and shall abstain from mentioning the names of the owners of the stocks concerned.
2. Using aggregate levels, the Commission shall publish a ***weekly*** statistical summary of the commercial stocks in the Community on the basis of the summaries submitted by the Member States.	2. Using aggregate levels, the Commission shall publish a ***monthly*** statistical summary of the commercial stocks in the Community on the basis of the summaries submitted by the Member States.
3. The Commission shall establish rules for the implementation of paragraphs 1 and 2 in accordance with the regulatory procedure referred to in Article 24(2).	3. The Commission shall establish rules for the implementation of paragraphs 1 and 2 in accordance with the regulatory procedure referred to in Article 24(2).
	3a. The Commission may, following its review under Article 23, require Member States to send a weekly (as opposed to monthly) statistical summary of the levels of commercial oil stocks, if a thorough examination of the feasibility and effectiveness of weekly statistical summaries shows that they offer distinct advantages in terms of market transparency and that no major subsequent corrections are routinely necessary to the data obtained for such summaries.

Amendment 42

Proposal for a directive
Article 19 – paragraph 1

1. The Commission may ***at any time*** decide to carry out checks on emergency stocks and specific stocks in the Member States. The Commission may ask the Coordination Group for advice when preparing those checks.	1. The Commission may, ***if there are reasonable grounds for suspicion,*** decide to carry out checks on emergency stocks and specific stocks in the Member States. The Commission may ask the Coordination Group for advice when preparing those checks.

Wednesday 22 April 2009

TEXT PROPOSED BY THE COMMISSION	AMENDMENT
Amendment 43 **Proposal for a directive** **Article 19 – paragraph 2**	
2. The objectives of the checks referred to in paragraph 1 may not include ***gathering*** personal data. Any personal data found or uncovered during those checks may not be gathered or taken into consideration and, if gathered accidentally, shall be destroyed immediately.	2. The objectives of the checks referred to in paragraph 1 may not include ***the processing of*** personal data. Any personal data found or uncovered during those checks may not be gathered or taken into consideration and, if gathered accidentally, shall be destroyed immediately.
Amendment 44 **Proposal for a directive** **Article 19 – paragraph 4**	
4. Member States shall ensure that, when the checks referred to in paragraph 1 are being carried out, those responsible for maintaining and managing emergency stocks and specific stocks within their national territory cooperate with the Commission's employees or ***authorised*** agents.	4. Member States shall ensure that, when the checks referred to in paragraph 1 are being carried out, those responsible for maintaining and managing emergency stocks and specific stocks within their national territory cooperate with the ***authorised*** Commission employees or agents.
Amendment 45 **Proposal for a directive** **Article 19 – paragraph 7**	
7. Member States shall take the necessary measures to ensure that all data, records, summaries and documents relating to emergency stocks and specific stocks are kept for a period of at least ***10*** years.	7. Member States shall take the necessary measures to ensure that all data, records, summaries and documents relating to emergency stocks and specific stocks are kept for a period of at least ***three*** years.
Amendment 46 **Proposal for a directive** **Article 21 – paragraphs 3 and 4**	
3. In the event of an effective international decision to release stocks, the Member States concerned may use their emergency stocks and specific stocks to fulfil their international obligations under that decision. Any Member State so doing shall notify the Commission immediately, so that the Commission can call a meeting of the Coordination Group or consult its members by electronic means to assess, in particular, the impact of that release.	3. ***The Commission shall work in close cooperation with other international organisations having the power to take a decision to release stocks and shall strengthen multilateral and bilateral coordination on these matters worldwide.*** In the event of an effective international decision to release stocks, the Member States concerned may use their emergency stocks and specific stocks to fulfil their international obligations under that decision. Any Member State so doing shall notify the Commission immediately, so that the Commission can call a meeting of the Coordination Group or consult its members by electronic means to assess, in particular, the impact of that release.
4. In the event of difficulties arising in the supply of crude oil or petroleum products to the Community or to a Member State, the Commission shall call a meeting of the Coordination Group as soon as possible, either at the request of a Member State or on its own initiative. The Coordination Group shall examine the situation, and the Commission shall determine whether a major supply disruption has occurred.	4. In the event of difficulties arising in the supply of crude oil or petroleum products to the Community or to a Member State, the Commission shall call a meeting of the Coordination Group as soon as possible, either at the request of a Member State or on its own initiative. ***Every Member State shall ensure that it can be represented, in person or by electronic means, at a meeting of the Coordination Group within 24 hours following the call for a meeting.*** The Coordination Group shall examine the situation ***based on the commitment to the principle of solidarity among Member States and on an objective assessment of the economic and social impact***, and the Commission shall determine ***based on the assessment by the Coordination Group,*** whether a major supply disruption has occurred.

TEXT PROPOSED BY THE COMMISSION	AMENDMENT
If a major supply disruption is deemed to have occurred, the Commission may authorise the release of some or all of the quantities put forward for that purpose by the Member States concerned.	If a major supply disruption is deemed to have occurred, the Commission may authorise the release of some or all of the quantities put forward for that purpose by the Member States concerned.

Amendment 47

Proposal for a directive
Article 23

Within three years of the entry into force of this Directive, the Commission shall review its implementation, looking in particular at whether it would be appropriate to require all Member States to hold a compulsory minimum level of specific stocks.	Within, ***at the latest,*** three years of the entry into force of this Directive, the Commission shall review its implementation, looking in particular at: ***(a) whether data on stocks are accurate and transmitted on time;*** ***(b) whether the levels of commercial oil stocks shall be reported on a weekly or on a monthly basis;*** ***(c)*** whether it would be appropriate to require all Member States to hold a compulsory minimum level of specific stocks ***covering a longer period of time***.

Amendment 48

Proposal for a directive
Article 26 – paragraph 1 – subparagraph 1

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 20XX at the latest. They shall forthwith communicate to the Commission the text of those provisions and a table of correlation between those provisions and this Directive.	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 20XX at the latest ***with the exception of those Member States for which a transitional period applies for the constitution of reserves of petroleum or petroleum products under the treaty of accession to the European Union for which the deadline for implementation is the date on which the transitional period ends***. They shall forthwith communicate to the Commission the text of those provisions and a table of correlation between those provisions and this Directive.

Amendment 49

Proposal for a directive
Annex III – paragraph 11

When calculating their stocks, Member States must reduce the quantities of stocks calculated as set out above by ***10 %***. That reduction applies to all quantities included in a given calculation.	When calculating their stocks, Member States must reduce the quantities of stocks calculated as set out above by ***5 %***. That reduction applies to all quantities included in a given calculation.

Wednesday 22 April 2009

Critical Infrastructure Warning Information Network *

P6_TA(2009)0227

European Parliament legislative resolution of 22 April 2009 on the proposal for a Council decision on a Critical Infrastructure Warning Information Network (CIWIN) (COM(2008)0676 – C6-0399/2008 – 2008/0200(CNS))

(2010/C 184 E/41)

(Consultation procedure)

The European Parliament,

— having regard to the Commission proposal to the Council (COM(2008)0676),

— having regard to Article 308 of the EC Treaty and Article 203 of the Euratom Treaty, pursuant to which the Council consulted Parliament (C6-0399/2008),

— having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,

— having regard to Rules 51 and 35 of its Rules of Procedure,

— having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0228/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;

5. Calls on the Commission, following the entry into force of the Treaty of Lisbon, if the Council has not taken any decision in this respect, to consider the possibility of using Article 196 (Civil Protection) as the legal basis for this proposal and to reconsider, if appropriate, submitting a proposal to Parliament;

6. Instructs its President to forward its position to the Council and the Commission.

Wednesday 22 April 2009

TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 1

Proposal for a decision
Recital 1

(1) The Council conclusions on 'Prevention, Preparedness and Response to Terrorist Attacks' and the 'EU Solidarity Programme on the Consequences of Terrorist Threats and Attacks' adopted by Council in December 2004 endorsed the Commission's intention to propose a European Programme for Critical Infrastructure Protection and agreed to the Commission setting up CIWIN ([1]).	(1) The Council conclusions on 'Prevention, Preparedness and Response to Terrorist Attacks' and the 'EU Solidarity Programme on the Consequences of Terrorist Threats and Attacks' adopted by Council in December 2004 endorsed the Commission's intention to propose a European Programme for Critical Infrastructure Protection and agreed to the Commission setting up CIWIN ([1]).
_____	_____
([1]) 14894/04.	***([1]) Council Document 15232/04.***

Amendment 2

Proposal for a decision
Recital 4

(4) Several incidents involving critical infrastructure in Europe such as for example the European blackout in 2006 demonstrated the need for a better and more efficient exchange of information in order to ***prevent or limit the scope of the incident***.	(4) Several incidents involving critical infrastructure in Europe such as for example the European blackout in 2006 demonstrated the need for a better and more efficient exchange of information ***and greater knowledge of the practice of different Member States*** in order to ***be prepared and to avoid a recurrence of such incidents***.

Amendment 3

Proposal for a decision
Recital 5

(5) It is appropriate to establish an information system that will enable Member States and the Commission to exchange information ***and alerts*** in the field of ***Critical Infrastructure Protection*** ***(***CIP***)***, to strengthen their CIP dialogue, and contribute towards promoting the integration and better coordination of nationally scattered and fragmented CIP research programmes.	(5) It is ***therefore*** appropriate to establish an information system that will enable Member States and the Commission to exchange information in the field of CIP, to strengthen their CIP dialogue, and contribute towards promoting the integration and better coordination of nationally scattered and fragmented CIP research programmes.

Amendment 4

Proposal for a decision
Recital 6

(6) CIWIN should contribute to the improvement of CIP in the EU by providing an information system that could facilitate Member States' cooperation***;*** and offer an efficient and quick alternative to time-consuming methods of searching for information on critical infrastructures in the Community.	(6) CIWIN should contribute to the improvement of CIP in the EU by providing an information system that could facilitate Member States' cooperation ***and coordination,*** and offer an efficient and quick alternative to time-consuming methods of searching for information on critical infrastructures in the Community. ***It should in particular stimulate the development of appropriate measures aimed at facilitating the exchange and dissemination of information, best practice and experience between Member States.***

Wednesday 22 April 2009

TEXT PROPOSED BY THE COMMISSION	AMENDMENT
Amendment 5 **Proposal for a decision** **Recital 6 a (new)**	
	(6a) The first evaluation of CIWIN should also include an in-depth analysis of the necessity of adding a new functionality to CIWIN, namely the technical facility of a rapid alert system (RAS). This functionality should enable Member States and the Commission to post alerts on immediate risks and threats to critical infrastructure, taking into account all the necessary security requirements.
Amendment 6 **Proposal for a decision** **Recital 7**	
(7) CIWIN should, in particular, stimulate the development of appropriate measures aimed at facilitating an exchange of best practices as well as being a vehicle for transmission of immediate threats and alerts in a secure manner.	***deleted***
Amendment 7 **Proposal for a decision** **Recital 8**	
(8) CIWIN ***should avoid*** duplication and ***be*** heedful of the specific characteristics, expertise, arrangements and areas of competence of each of the existing sectoral rapid alert systems (RAS).	(8) ***In the course of the development and evaluation of the new information system, Member States and the Commission should ensure that*** CIWIN ***avoids*** duplication and ***is*** heedful of the specific characteristics, expertise, arrangements and areas of competence of each of the existing sectoral rapid alert systems (RAS).
Amendment 8 **Proposal for a decision** **Recital 10**	
(10) The interdependence of critical infrastructure in Member States and varying levels of CIP in Member States suggest that creating a horizontal and cross-sectoral Community tool for the exchange of information ***and alerts*** on CIP would increase the security of citizens.	***(4a)*** The interdependence of critical infrastructure in Member States and varying levels of***Critical Infrastructure Protection*** (CIP) in Member States suggest that creating a horizontal and cross-sectoral Community tool for the exchange of information on CIP would increase the security of citizens.
Amendment 9 **Proposal for a decision** **Recital 10 a (new)**	
	(10a) The adoption of measures in the sphere of civil protection is listed among the activities of Community in point (u) of Article 3(1) of the EC Treaty. Therefore, the creation of CIWIN is necessary to enable the Community to attain an objective laid down by the Treaty.

Wednesday 22 April 2009

TEXT PROPOSED BY THE COMMISSION	AMENDMENT
Amendment 11 **Proposal for a decision** **Recital 17**	
(17) This Decision respects the fundamental rights and observes the principles recognised ***in particular*** by the Charter of Fundamental Rights of the European Union,	(17) This Decision respects the fundamental rights and observes the principles recognised by ***Article 6 of the EU Treaty and reflected in*** the Charter of Fundamental Rights of the European Union,
Amendment 12 **Proposal for a decision** **Article 1**	
This Decision sets up a secure information***,*** communication ***and alert*** system - Critical Infrastructure Warning Information Network (CIWIN) - with the aim of assisting Member States to exchange information on ***shared threats,*** vulnerabilities and appropriate measures and strategies to mitigate risks related to CIP.	This Decision sets up a secure information ***and*** communication system - Critical Infrastructure Warning Information Network (CIWIN) - with the aim of assisting Member States to exchange information on vulnerabilities and appropriate measures and strategies to mitigate risks related to CIP.
Amendment 13 **Proposal for a decision** **Article 2 – paragraph 2**	
'Critical Infrastructure' shall mean those assets, systems or parts thereof located in Member States which are essential for the maintenance of vital societal functions, health, safety, security, economic or social well-being of people, and the disruption or destruction of which would have a significant impact in a Member State as a result of the failure to maintain those functions.	'Critical Infrastructure' shall mean those assets, systems or parts thereof located in Member States which are essential for the maintenance of vital societal functions, health, safety, security, ***supply chain,*** economic or social well-being of people, and the disruption or destruction of which would have a significant impact in a Member State as a result of the failure to maintain those functions.
Amendment 14 **Proposal for a decision** **Article 2 – paragraph 3**	
'Participating Member State' shall mean the Member State having signed a Memorandum of understanding with the Commission.	***deleted***
Amendment 15 **Proposal for a decision** **Article 3**	
Article 3 ***Participation*** ***Participation in and use of CIWIN is open to all Member States. The participation to CIWIN shall be conditional upon the signature of a Memorandum of understanding that contains technical and security requirements applicable to CIWIN, and information on the sites to be connected to CIWIN.***	***deleted***

Wednesday 22 April 2009

TEXT PROPOSED BY THE COMMISSION	AMENDMENT
Amendment 16 **Proposal for a decision** **Article 4 – Title**	
Functionalities	***Functionality and structure***
Amendment 17 **Proposal for a decision** **Article 4 – paragraph 1**	
(1) The CIWIN shall ***consist of the two following functionalities:***	(1) The CIWIN shall ***be designed as*** an electronic forum for the CIP related to information exchange.
(a) an electronic forum for the CIP related to information exchange;	
(b) a rapid alert functionality that shall enable participating Member States and the Commission to post alerts on immediate risks and threats to critical infrastructure.	
Amendment 18 **Proposal for a decision** **Article 4 – paragraph 1 a (new)**	
	(1a) The technical platform for CIWIN shall be present in at least one secure location in each Member State.
Amendment 19 **Proposal for a decision** **Article 4 – paragraph 2 – subparagraph 2**	
Fixed areas shall be included in the system on a permanent basis. While their content may be adjusted, the areas may not be removed***,*** renamed ***or new areas added***. Annex I contains a list of fixed areas.	Fixed areas shall be included in the system on a permanent basis. While their content may be adjusted, the areas may not be removed ***and*** renamed. Annex I contains a list of fixed areas. ***This does not preclude the inclusion of new areas if the functioning of the system demonstrates that it is necessary.***
Amendment 20 **Proposal for a decision** **Article 5 – paragraph 1**	
(1) ***Participating*** Member States shall designate a CIWIN Executive and notify the Commission thereof. CIWIN Executive shall be responsible for granting or denying access rights to the CIWIN within the relevant Member State.	(1) Member States shall designate a CIWIN Executive and notify the Commission thereof. CIWIN Executive shall be responsible for granting or denying access rights to the CIWIN within the relevant Member State.
	(This amendment applies throughout the text.)

Wednesday 22 April 2009

TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 21

Proposal for a decision
Article 5 – paragraph 2

(2) ***Participating*** Member States shall provide access to the CIWIN in compliance with the guidelines adopted by the Commission.	(2) Member States shall provide access to the CIWIN in compliance with the ***user*** guidelines adopted by the Commission.

Amendment 22

Proposal for a decision
Article 6 – paragraph 1 – point b

(b) laying down guidelines on the terms of use of the system, including confidentiality, transmission, storage, filing and deletion of information. The Commission shall also establish the terms and procedures for granting full or selective access to the CIWIN.	(b) laying down ***user*** guidelines on the terms of use of the system, including confidentiality, transmission, storage, filing and deletion of information. The Commission shall also establish the terms and procedures for granting full or selective access to the CIWIN.

Amendment 23

Proposal for a decision
Article 6 – paragraph 3 a (new)

	(3a) The Commission shall monitor the functioning of the CIWIN system.

Amendment 24

Proposal for a decision
Article 7 – paragraph 2

(2) Users' rights to access documents shall be on a 'need to know' basis ***and must*** at all times respect the author's specific instructions on the protection and distribution of a document.	(2) Users' rights to access documents shall be on a 'need to know' basis***. Users shall*** at all times respect the author's specific instructions on the protection and distribution of a document.

Amendment 25

Proposal for a decision
Article 7 – paragraph 2 a (new)

	(2a) In Member States, the exchange of sensitive information uploaded onto CIWIN between authorised users and third parties shall be subject to the prior authorisation of the owner of that information and shall take place in accordance with relevant Community and national law.

Amendment 26

Proposal for a decision
Article 7 a (new)

	Article 7a
	Requirements relating to information included in CIWIN
	For any information or documents uploaded in the system an automatic translation will be possible.
	The Commission shall, in collaboration with CIP contact points, develop a list of key words for each sector which could be used when uploading or searching for information in CIWIN.

Wednesday 22 April 2009

TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 27

Proposal for a decision
Article 8

The Commission shall develop and regularly update User guidelines containing full details of CIWIN's ***functionalities*** and roles.	The Commission shall develop and regularly update ***the*** User guidelines containing full details of CIWIN's ***functionality*** and roles.

Amendment 28

Proposal for a decision
Article 8 – paragraph 1 a (new)

	The User Guidelines shall be established in accordance with the advisory procedure laid down in Article 3 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [1].
	[1] OJ L 184, 17.7.1999, p. 23.

Amendment 29

Proposal for a decision
Article 10 – paragraph 1

The Commission shall review and evaluate the operation of the CIWIN every three years, and shall submit regular reports to ***the*** Member States.	The Commission***, using specially developed indicators for monitoring progress,*** shall review and evaluate the operation of the CIWIN every three years, and shall submit regular reports to ***all*** Member States***, the European Parliament, the Committee of the Regions and the European Economic and Social Committee***.

Amendment 30

Proposal for a decision
Article 10 – paragraph 2

The first report, which shall be submitted within three years after the entry into force of this Decision, shall, in particular, identify those elements of the Community network which should be improved or adapted. It shall also include any proposal that the Commission considers necessary for the amendment or adaptation of this Decision.	The first report, which shall be submitted within three years after the entry into force of this Decision, shall, in particular, identify those elements of the Community network which should be improved or adapted ***and shall, in particular, assess the participation of each Member State in the CIWIN system as well as the possibility of upgrading CIWIN to include a rapid alert system (RAS) functionality***. It shall also include any proposal that the Commission considers necessary for the amendment or adaptation of this Decision.

Amendment 31

Proposal for a decision
Article 11

This Decision shall ***apply as from 1 January 2009***.	This Decision shall ***take effect on the day of its publication in the Official Journal of the European Union***.

Amendment 32

Proposal for a decision
Annex II – point 3

(3) Alert Areas, which may be created in the event of an alert being triggered in the RAS, and will constitute the channel of communication during CIP-related activities;	***deleted***

Wednesday 22 April 2009

European Network for the Protection of Public Figures *

P6_TA(2009)0228

European Parliament legislative resolution of 22 April 2009 on the initiative by the Kingdom of the Netherlands for adoption of a Council decision amending Decision 2002/956/JHA setting up a European Network for the Protection of Public Figures (16437/2008 – C6-0029/2009 – 2009/0801(CNS))

(2010/C 184 E/42)

(Consultation procedure)

The European Parliament,

— having regard to the initiative by the Kingdom of the Netherlands (16437/2008),

— having regard to Article 30(1)(a) and (c) and Article 34(2)(c) of the EU Treaty,

— having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C6-0029/2009),

— having regard to Rules 93 and 51 of its Rules of Procedure,

— having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0193/2009),

1. Approves the initiative by the Kingdom of the Netherlands;

2. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

3. Calls on the Council to consult Parliament again if it intends to amend the initiative by the Kingdom of the Netherlands substantially;

4. Instructs its President to forward its position to the Council and the Commission, and to the government of the Kingdom of the Netherlands.

Wednesday 22 April 2009

National restructuring programmes for the cotton sector *

P6_TA(2009)0229

European Parliament legislative resolution of 22 April 2009 on the proposal for a Council regulation amending Regulation (EC) No 637/2008 as regards the national restructuring programmes for the cotton sector (COM(2009)0037 – C6-0063/2009 – 2009/0008(CNS))

(2010/C 184 E/43)

(Consultation procedure)

The European Parliament,

— having regard to the Commission proposal to the Council (COM(2009)0037),

— having regard to the Act of Accession of 1979, and in particular paragraph 6 of Protocol No 4 on cotton annexed to the Act,

— having regard to Article 37(2), third subparagraph of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0063/2009),

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on Agriculture and Rural Development (A6-0200/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;

5. Instructs its President to forward its position to the Council and Commission.

TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 1

Proposal for a regulation – amending act
Recital 1 a (new)

	(1a) The reform that entered into force on 1 January 2006 led to a drastic fall in cotton production in Spain that has seriously jeopardised the sector's survival, resulting in the immediate restructuring of the ginning industry.

Wednesday 22 April 2009

Protocol on the Implementation of the Alpine Convention in the field of Transport *

P6_TA(2009)0230

European Parliament legislative resolution of 22 April 2009 on the proposal for a Council decision on the conclusion, of behalf of the European Community, of the Protocol on the Implementation of the Alpine Convention in the field of Transport (Transport Protocol) (COM(2008)0895 – C6-0073/2009 – 2008/0262(CNS))

(2010/C 184 E/44)

(Consultation procedure)

The European Parliament,

— having regard to the proposal for a Council decision (COM(2008)0895),

— having regard to Article 71 and the first sentence of the first subparagraph of Article 300(2) of the EC Treaty,

— having regard to Article 300(3), first subparagraph, of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0073/2009),

— having regard to Rules 51 and 83(7) of its Rules of Procedure,

— having regard to the report of the Committee on Transport and Tourism (A6-0219/2009),

1. Approves conclusion of the Protocol;

2. Instructs its President to forward its position to the Council and Commission, and the governments and parliaments of the Member States.

Wednesday 22 April 2009

Draft amending budget No 2/2009

P6_TA(2009)0231

European Parliament resolution of 22 April 2009 on Draft amending budget No 2/2009 of the European Union for the financial year 2009, Section III - Commission (6953/2009 – C6-0077/2009 – 2009/2010(BUD))

(2010/C 184 E/45)

The European Parliament,

— having regard to Article 272 of the EC Treaty and Article 177 of the Euratom Treaty,

— having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities [1], and particularly Articles 37 and 38,

— having regard to the general budget of the European Union for the financial year 2009, as finally adopted on 18 December 2008 [2],

— having regard to the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management [3],

— having regard to Preliminary draft amending budget No 2/2009 of the European Union for the financial year 2009, which the Commission presented on 2 February 2009 (COM(2009)0032),

— having regard to Draft amending budget No 2/2009, which the Council established on 26 February 2009 (6953/2009 – C6-0077/2009),

— having regard to Rule 69 of and Annex IV to its Rules of Procedure,

— having regard to the report of the Committee on Budgets (A6-0192/2009),

A. whereas Draft amending budget No 2 to the general budget 2009 covers the following items: the establishment plans of Single European Sky ATM Research (SESAR) Joint Undertaking, of European Centre for Disease Prevention and Control (ECDC), the modification of the European Railway Agency (ERA), and the modification of the budget remarks for 'Global Monitoring for environment and Security' (GMES) Preparatory Action,

B. whereas the purpose of Draft amending budget No 2/2009 is to formally enter these budgetary adjustments into the 2009 budget,

1. Takes note of the Preliminary draft amending budget No 2/2009;

2. Approves Draft amending budget No 2/2009 unamended;

3. Instructs its President to forward this resolution to the Council and Commission.

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[1] OJ L 248, 16.9.2002, p. 1.
[2] OJ L 69, 13.3.2009.
[3] OJ C 139, 14.6.2006, p. 1.

Wednesday 22 April 2009

Draft amending budget No 3/2009

P6_TA(2009)0232

European Parliament resolution of 22 April 2009 on Draft amending budget No 3/2009 of the European Union for the financial year 2009, Section III - Commission (8153/2009 – C6-0118/2009 – 2009/2017(BUD))

(2010/C 184 E/46)

The European Parliament,

— having regard to Article 272 of the EC Treaty and Article 177 of the Euratom Treaty,

— having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ([1]), and particularly Articles 37 and 38,

— having regard to the general budget of the European Union for the financial year 2009, as finally adopted on 18 December 2008 ([2]),

— having regard to the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management ([3]),

— having regard to Preliminary draft amending budget No 3/2009 of the European Union for the financial year 2009, which the Commission presented on 6 March 2009 (COM (2009)0110),

— having regard to Draft amending budget No 3/2009, which the Council established on 30 March 2009 (8153/2009 – C6-0118/2009),

— having regard to Rule 69 of and Annex IV to its Rules of Procedure,

— having regard to the report of the Committee on Budgets (A6-0194/2009),

A. whereas Draft amending budget No 3 to the general budget 2009 covers the readjustment, with retroactive effect from 1 January 2007, of the own resources system according to Decision 2007/436/EC, Euratom of 7 June 2007,

B. whereas the purpose of Draft amending budget No 3/2009 is to formally enter these budgetary adjustments into the 2009 budget,

1. Takes note of the Preliminary draft amending budget No 3/2009;

2. Approves Draft amending budget No 3/2009 unamended;

3. Instructs its President to forward this resolution to the Council and Commission.

([1]) OJ L 248, 16.9.2002, p. 1.
([2]) OJ L 69, 13.3.2009.
([3]) OJ C 139, 14.6.2006, p. 1.

Wednesday 22 April 2009

Internal market in electricity ***II

P6_TA(2009)0241

European Parliament legislative resolution of 22 April 2009 on the Council common position for adopting a directive of the European Parliament and of the Council concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (14539/2/2008 – C6-0024/2009 – 2007/0195(COD))

(2010/C 184 E/47)

(Codecision procedure: second reading)

The European Parliament,

— having regard to the Council common position (14539/2/2008 – C6-0024/2009),

— having regard to its position at first reading [1] on the Commission proposal to Parliament and the Council (COM(2007)0528),

— having regard to Article 251(2) of the EC Treaty,

— having regard to Rule 62 of its Rules of Procedure,

— having regard to the recommendation for second reading of the Committee on Industry, Research and Energy (A6-0216/2009),

1. Approves the common position as amended;

2. Instructs its President to forward its position to the Council and the Commission.

[1] Texts adopted, 18.6.2008, P6_TA(2008)0294.

P6_TC2-COD(2007)0195

Position of the European Parliament adopted at first reading on 22 April 2009 with a view to the adoption of Directive 2009/…/EC of the European Parliament and of the Council concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC

(As an agreement was reached between Parliament and Council, Parliament's position at second reading corresponds to the final legislative act, Directive 2009/72/EC.)

Wednesday 22 April 2009

Agency for the Cooperation of Energy Regulators ***II

P6_TA(2009)0242

European Parliament legislative resolution of 22 April 2009 on the Council common position for adopting a regulation of the European Parliament and of the Council establishing an Agency for the Cooperation of Energy Regulators (14541/1/2008 – C6-0020/2009 – 2007/0197(COD))

(2010/C 184 E/48)

(Codecision procedure: second reading)

The European Parliament,

— having regard to the Council common position (14541/1/2008 – C6-0020/2009),

— having regard to its position at first reading [1] on the Commission proposal to Parliament and the Council (COM(2007)0530),

— having regard to the amended Commission proposal (COM(2008)0908),

— having regard to Article 251(2) of the EC Treaty,

— having regard to Rule 62 of its Rules of Procedure,

— having regard to the recommendation for second reading of the Committee on Industry, Research and Energy (A6-0235/2009),

1. Approves the common position as amended;

2. Instructs its President to forward its position to the Council and the Commission.

[1] Texts adopted, 18.6.2008, P6_TA(2008)0296.

P6_TC2-COD(2007)0197

Position of the European Parliament adopted at second reading on 22 April 2009 with a view to the adoption of Regulation (EC) No …/2009 of the European Parliament and of the Council establishing an Agency for the Cooperation of Energy Regulators

(As an agreement was reached between Parliament and Council, Parliament's position at second reading corresponds to the final legislative act, Regulation (EC) No 713/2009.)

Wednesday 22 April 2009

Access to the network: cross-border exchanges in electricity ***II

P6_TA(2009)0243

European Parliament legislative resolution of 22 April 2009 on the Council common position for adopting a regulation of the European Parliament and of the Council on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 (14546/2/2008 – C6-0022/2009 – 2007/0198(COD))

(2010/C 184 E/49)

(Codecision procedure: second reading)

The European Parliament,

— having regard to the Council common position (14546/2/2008 – C6-0022/2009),

— having regard to its position at first reading [1] on the Commission proposal to Parliament and the Council (COM(2007)0531),

— having regard to Article 251(2) of the EC Treaty,

— having regard to Rule 62 of its Rules of Procedure,

— having regard to the recommendation for second reading of the Committee on Industry, Research and Energy (A6-0213/2009),

1. Approves the common position as amended;

2. Instructs its President to forward its position to the Council and the Commission.

[1] Texts adopted, 18.6.2008, P6_TA(2008)0295.

P6_TC2-COD(2007)0198

Position of the European Parliament adopted at second reading on 22 April 2009 with a view to the adoption of Regulation (EC) No …/2009 of the European Parliament and of the Council on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003

(As an agreement was reached between Parliament and Council, Parliament's position at second reading corresponds to the final legislative act, Regulation (EC) No 714/2009.)

Wednesday 22 April 2009

Internal market in natural gas ***II

P6_TA(2009)0244

European Parliament legislative resolution of 22 April 2009 on the Council common position for adopting a directive of the European Parliament and of the Council concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (14540/2/2008 – C6-0021/2009 – 2007/0196(COD))

(2010/C 184 E/50)

(Codecision procedure: second reading)

The European Parliament,

— having regard to the Council common position (14540/2/2008 – C6-0021/2009),

— having regard to its position at first reading [1] on the Commission proposal to Parliament and the Council (COM(2007)0529),

— having regard to Article 251(2) of the EC Treaty,

— having regard to Rule 62 of its Rules of Procedure,

— having regard to the recommendation for second reading of the Committee on Industry, Research and Energy (A6-0238/2009),

1. Approves the common position as amended;

2. Instructs its President to forward its position to the Council and the Commission.

[1] Texts adopted, 9.7.2008, P6_TA(2008)0347.

P6_TC2-COD(2007)0196

Position of the European Parliament adopted at second reading on 22 April 2009 with a view to the adoption of Directive 2009/…/EC of the European Parliament and of the Council concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC

(As an agreement was reached between Parliament and Council, Parliament's position at second reading corresponds to the final legislative act, Directive 2009/73/EC.)

Wednesday 22 April 2009

Access to the natural gas transmission networks ***II

P6_TA(2009)0245

European Parliament legislative resolution of 22 April 2009 on the Council common position for adopting a regulation of the European Parliament and of the Council on conditions for access to the natural gas transmission networks and repealing regulation (EC) No 1775/2005 (14548/2/2008 – C6-0023/2009 – 2007/0199(COD))

(2010/C 184 E/51)

(Codecision procedure: second reading)

The European Parliament,

— having regard to the Council common position (14548/2/2008 – C6-0023/2009),

— having regard to its position at first reading [1] on the Commission proposal to Parliament and the Council (COM(2007)0532),

— having regard to Article 251(2) of the EC Treaty,

— having regard to Rule 62 of its Rules of Procedure,

— having regard to the recommendation for second reading of the Committee on Industry, Research and Energy (A6-0237/2009),

1. Approves the common position as amended;

2. Instructs its President to forward its position to the Council and the Commission.

[1] Texts adopted, 9.7.2008, P6_TA(2008)0346.

P6_TC2-COD(2007)0199

Position of the European Parliament adopted at second reading on 22 April 2009 with a view to the adoption of Regulation (EC) No …/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005

(As an agreement was reached between Parliament and Council, Parliament's position at second reading corresponds to the final legislative act, Regulation (EC) No 715/2009.)

Wednesday 22 April 2009

European public administration ISA: interoperability solutions ***I

P6_TA(2009)0246

European Parliament legislative resolution of 22 April 2009 on the proposal for a decision of the European Parliament and of the Council on interoperability solutions for European public administrations (ISA) (COM(2008)0583 – C6-0337/2008 – 2008/0185(COD))

(2010/C 184 E/52)

(Codecision procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0583),

— having regard to Article 251(2) and Article 156 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0337/2008),

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on Industry, Research and Energy (A6-0136/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and Commission.

P6_TC1-COD(2008)0185

Position of the European Parliament adopted at first reading on 22 April 2009 with a view to the adoption of Decision No …/2009/EC of the European Parliament and of the Council on interoperability solutions for European public administrations (ISA)

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Decision No 922/2009/EC.)

Wednesday 22 April 2009

Machinery for pesticide application ***I

P6_TA(2009)0247

European Parliament legislative resolution of 22 April 2009 on the proposal for a directive of the European Parliament and of the Council on machinery for pesticide application, amending Directive 2006/42/EC of 17 May 2006 on machinery (COM(2008)0535 – C6-0307/2008 – 2008/0172(COD))

(2010/C 184 E/53)

(Codecision procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0535),

— having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0307/2008),

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on the Internal Market and Consumer Protection (A6-0137/2009),

1. Approves the Commission proposal as amended;

2. Takes note of the Commission statement annexed to this resolution;

3. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

4. Instructs its President to forward its position to the Council and Commission.

P6_TC1-COD(2008)0172

Position of the European Parliament adopted at first reading on 22 April 2009 with a view to the adoption of Directive 2009/…/EC of the European Parliament and of the Council amending Directive 2006/42/EC with regard to machinery for pesticide application

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Directive 2009/127/EC.)

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ANNEX

Declaration of the Commission on standardisation for pesticide application machinery

To support the essential requirements included in Section 2.4 of Annex I, the Commission will mandate CEN to develop harmonised standards for each category of machinery for pesticide application based on the best available techniques for preventing unintended exposure of the environment to pesticides. In particular, the mandate will require the standards to provide criteria and technical specifications for the fitting of mechanical shielding, tunnel spraying and air-assistance systems for spraying, for preventing contamination of the water source during filling and emptying and precise specifications for the manufacturer's instructions to prevent drift of pesticides, taking account of all of the relevant parameters such as nozzles, pressure, boom height, wind speed, air temperature and humidity and driving speed.

Fuel efficiency: labelling of tyres ***I

P6_TA(2009)0248

European Parliament legislative resolution of 22 April 2009 on the proposal for a directive of the European Parliament and of the Council on labelling of tyres with respect to fuel efficiency and other essential parameters (COM(2008)0779 – C6-0411/2008 – 2008/0221(COD))

(2010/C 184 E/54)

(Codecision procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0779),

— having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0411/2008),

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on Industry, Research and Energy and the opinion of the Committee on the Environment, Public Health and Food Safety (A6-0218/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and Commission.

Wednesday 22 April 2009

P6_TC1-COD(2008)0221

Position of the European Parliament adopted at first reading on 22 April 2009 with a view to the adoption of *Regulation (EC) No …/2009* of the European Parliament and of the Council on labelling of tyres with respect to fuel efficiency and other essential parameters

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission ‖,

Having regard to the opinion of the European Economic and Social Committee ([1]),

Having regard to the opinion of the Committee of the Regions ([2]),

Acting in accordance with the procedure laid down in Article 251 of the Treaty ([3]),

Whereas:

(1) Sustainable mobility is a major challenge facing the Community in the light of climate change and the need to support European competitiveness as *emphasised* in the Commission Communication *of 8 July 2008* on Greening Transport ([4]).

(2) The ‖ *Commission Communication of 19 October 2006 entitled* 'Action Plan on Energy Efficiency-Realising the potential' ([5]) highlighted the potential to reduce total energy consumption by 20 % by 2020 by means of a list of targeted actions including labelling of tyres.

(3) Tyres, mainly because of their rolling resistance, account for 20 % to 30 % of the fuel consumption of vehicles. A reduction of the rolling resistance of tyres may therefore contribute significantly to the energy efficiency of road transport and thus to the reduction of emissions.

(4) Tyres are characterised by a number of parameters which are interrelated. Improving one parameter such as rolling resistance may have an adverse impact on other parameters such as wet grip, while improving wet grip may have an adverse impact on external rolling noise. Tyre manufacturers should be encouraged to optimise all parameters, ***without undercutting safety standards which have already been achieved***.

(5) Fuel-efficient tyres are cost-effective, as fuel savings over-compensate for the increased purchasing price of tyres *resulting* from higher production costs.

([1]) Opinion of 25 March 2009 (not yet published in the OJ).
([2]) OJ C, p.
([3]) Position of the European Paliament of 22 April 2009.
([4]) COM(2008)*0433*.
([5]) ‖ COM(2006)*0545*. ‖

(6) ‖ Regulation (EC) No …/*2009 of the European Parliament and of the Council of …* [concerning type-approval requirements for the general safety of motor vehicles, *their trailers and systems, components and separate technical units intended therefor*] [1]. sets out minimum requirements on rolling resistance of tyres. Technological developments make it possible to ‖ decrease *significantly beyond those minimum requirements the* energy losses *resulting from* tyre rolling resistance ‖. *In order to* reduce the environmental impact of road transport, it is therefore appropriate to lay down provisions to encourage end-users to purchase more fuel efficient tyres by providing them *with* harmonised information about this parameter.

(7) In order to increase understanding and awareness of rolling resistance, a fuel savings calculator, such as that which already exists for C3 tyres, would serve as a meaningful tool to demonstrate potential savings of fuel, money and CO_2.

(8) Traffic noise is a significant nuisance and has a harmful effect on health. ‖ Regulation (EC) No …/*2009* [concerning type-approval requirements for the general safety of motor vehicles …] sets out minimum requirements on external rolling noise of tyres. Technological developments make it possible to ‖ reduce external rolling noise *significantly* beyond those minimum requirements. *In order to* reduce traffic noise it is therefore appropriate to lay down provisions to encourage end-users to purchase tyres with low external rolling noise by providing them harmonised information about this parameter.

(9) The provision of harmonised information on tyre external rolling noise would also facilitate the implementation of measures against traffic noise and contribute to increased awareness of the effect of tyres on traffic noise within the framework of Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise [2].

(10) ‖ Regulation (EC) No …/*2009* [concerning type-approval requirements for the general safety of motor vehicles …] sets out minimum requirements on wet grip performance of tyres. Technological development make it possible to ‖ improve wet grip *significantly* beyond those minimum requirements, and thus to reduce wet breaking distances. *In order to* improve road safety it is therefore appropriate to lay down provisions to encourage end-users to purchase tyres with high wet grip performance by providing them harmonised information about this parameter.

(11) Other tyre parameters, such as aquaplaning or handling in curves, also affect road safety. However, at this stage, harmonised testing methods are not yet available in respect of such parameters. Therefore, it is appropriate to provide for the possibility, at a later stage and if necessary, of laying down provisions on harmonised information to end-users about such tyre parameters.

(12) Snow tyres and Nordic winter tyres have specific parameters that are not fully comparable to normal tyres. In order to ensure that end-users make fair and informed decisions, the parameters of those tyres should be displayed in a way that puts them on an equal footing with normal tyres.

(13) The provision of information on tyre parameters in the form of a standard label is likely to influence purchasing decisions by end-users in favour of safer, quieter and more fuel efficient tyres. This in turn is likely to encourage tyre manufacturers to optimise those tyre parameters, which would pave the way for more sustainable consumption and production.

(14) Tyre manufacturers, suppliers and distributors should be encouraged to comply with the provisions of this Regulation before 2012 to speed up the recognition of the scheme and realisation of its benefits.

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[1] ‖ OJ *L*, p.
[2] OJ L 189, 18.7.2002, p. 12.

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(15) A *multiplicity* of rules concerning labelling of tyres across Member States would create barriers to intra-Community trade and increase the administrative burden and testing costs for tyre manufacturers.

(16) Replacement tyres account for 78 % of the tyre market. It is therefore justified to inform the end-user about the parameters of replacement tyres as well as tyres fitted on new vehicles.

(17) The need for greater information on tyre fuel efficiency and other parameters is relevant for consumers, including fleet managers and transport *undertakings*, who cannot easily compare the parameters of different tyre brands in the absence of a labelling and harmonised testing regime. It is therefore appropriate to include C1, C2 and C3 tyres *within* the scope of this ***Regulation***.

(18) The energy label which ranks products on a scale from "A to G", as applied to household appliances pursuant to *Council* Directive 1992/75/EC *of 22 September 1992* on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances ([1]), is well known by consumers and has proven to be successful in promoting more efficient appliances. The same design should be used for the labelling of tyre fuel efficiency.

(19) The display of a label on tyres at the point of sale, as well as in technical promotional literature, should ensure that distributors as well as potential end-users receive harmonised information on tyre fuel efficiency, wet grip performance and external rolling noise.

(20) Some end-users choose tyres before arriving at the point of sale or purchase tyres by mail order. *In order to* ensure that those end-users can also make an informed choice on the basis of harmonised information on tyre fuel efficiency, wet grip performance and external rolling noise, labels should be displayed in all technical promotional literature, including where such literature is made available on the Internet.

(21) Potential purchasers should be provided with supplementary standardised information which explains each of the components of the label - fuel efficiency, wet grip and noise emissions - and their relevance, and includes a fuel savings calculator which demonstrates average savings of fuel, CO_2 and costs. That information should be provided on the EU tyre labelling website and on explanatory leaflets and posters at all points of sale. The website address should be clearly indicated on the label and all technical promotional literature.

(22) Information should be provided in accordance with the harmonised testing methods laid down in ‖ Regulation (EC) No …/*2009* [concerning type-approval requirements for the general safety of motor vehicles …] to enable end-users to compare different tyres and to limit testing costs for manufacturers.

(23) ***In order to meet the challenge of reducing the CO_2 emissions of road transport, it is appropriate for*** Member States ***to*** put in place incentives in favour of fuel-efficient tyres ▌. ***Those*** incentives ***should*** be in accordance with Articles 87 and 88 of the Treaty ▌. ***In order to avoid fragmentation of the internal market, classes of minimum fuel efficiency should be determined.***

(24) Compliance with provisions on labelling by manufacturers, suppliers and distributors is essential to achieve the aims of those provisions ***and to ensure a level playing field within the Community***. Member States should therefore ***determine effective measures, including*** market surveillance, regular ex-post controls ***and effective sanctions, sufficient to ensure enforcement of the provisions of this Regulation***.

(25) Member States should strive, in implementing the relevant provisions of this Regulation, to refrain from measures that impose unjustified, bureaucratic and unwieldy obligations on small and medium-sized enterprises (SMEs), and, where feasible, to take into consideration the special needs and financial and administrative constraints on SMEs.

([1]) OJ L 297, 13.10.1992, p. 16.

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(26) For the proper evaluation of the implementation of this Regulation, a review should be undertaken to ascertain whether changes are necessary. This review should focus in particular on consumers' understanding of the label, including the noise parameter, and adaptation to technological change.

(27) The measures necessary to implement 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].

(28) In particular, ‖ the Commission *should be empowered* to introduce requirements with respect to wet grip grading of C2 and C3 tyre classes, to introduce requirements with respect to essential tyre parameters other than fuel efficiency, wet grip and external rolling noise and to adapt the Annexes to technical progress. Since those measures are of general scope and are designed to amend non-essential elements of this ***Regulation*** *inter alia* by supplementing it with *new non-essential elements*, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC,

HAVE ADOPTED THIS ***REGULATION***:

Article 1

Aim and subject matter

The aim of this ***Regulation*** is to increase the ***safety and the economic and environmental*** efficiency of road transport by promoting fuel-efficient, ***safe and quiet*** tyres.

This ***Regulation*** establishes a framework for the provision of ***harmonised*** information on tyre parameters through labelling, ***allowing consumers to make an informed choice when purchasing tyres***.

Article 2

Scope

1. This ***Regulation*** shall apply to C1, C2 and C3 tyres.

2. By derogation from paragraph 1, this ***Regulation*** shall not apply to:

(a) re-treaded tyres;

(b) off-road professional tyres;

(c) tyres designed to be fitted only to vehicles registered for the first time before 1. October 1990;

(d) T-type temporary-use spare tyres;

(e) tyres whose speed rating is less than 80 km/h;

(f) tyres whose nominal rim diameter does not exceed 254 mm or is 635 mm or more;

(g) tyres fitted with additional devices to improve traction properties, such as studded tyres.

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

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Article 3

Definitions

For the purpose of this ***Regulation***:

(1) 'C1, C2 and C3 tyres' means the tyre classes defined in Article 8 of ‖ Regulation (EC) No …/*2009* [concerning type-approval requirements for the general safety of motor vehicles …];

(2) 'T-type temporary-use spare tyre' means a temporary-use spare tyre designed for use at inflation pressures higher than those established for standard and reinforced tyres;

(3) 'snow tyre' means a tyre whose tread pattern, tread compound or structure are primarily designed to achieve in snow conditions a performance better than that of a normal tyre with regard to its ability to initiate or maintain vehicle motion;

(4) 'point of sale' means a location where tyres are displayed ▌ or offered for sale, including car show rooms as regards displayed tyres which are not fitted on the vehicles;

(5) 'technical promotional literature' means ***technical manuals, brochures, leaflets and catalogues*** used in the marketing of tyres or vehicles, and aimed at end-users or distributors, and which *describe* the specific parameters of a tyre and are ***either printed, or in electronic form or published on the internet but excluding media advertising***;

(6) 'technical documentation' means information relating to tyres, including the manufacturer and *tyre* brand ‖ ; description of the tyre type or the grouping of tyres determined for the declaration of the fuel efficiency class, wet grip class and external rolling noise measured value; test reports and testing accuracy;

(7) 'fuel savings calculator' means a tool provided on dedicated tyre labelling websites to demonstrate potential average savings of fuel, CO_2 and costs, for C1, C2 and C3 tyre classes;

(8) 'EU tyre labelling website' means a central online source of explanatory and supplementary information administered by the Commission, regarding each of the components of the tyre label and including a fuel savings calculator;

(9) 'manufacturer' means any natural or legal person who manufactures a product, or has a product designed or manufactured and markets that product under his name or trademark;

(10) 'importer' means any natural or legal person established within the Community who places a product from a third country on the Community market;

(11) 'supplier' means the manufacturer or its authorised representative in the Community or the importer;

(12) 'distributor' means any natural or legal person in the supply chain, other than the supplier or the importer, who makes a tyre available on the market;

(13) 'making available on the market' means any supply of a product for distribution or use on the Community market in the course of a commercial activity, whether in return for payment or free of charge;

(14) 'end-user' means a consumer, including a fleet manager or road transport *undertaking* that is buying or expected to buy a tyre;

(15) 'essential parameter' means a tyre parameter such as rolling resistance, wet grip or external rolling noise that has a notable impact on the environment, road safety or health during use.

Article 4

Responsibilities of the Commission

1. The Commission shall establish and administer, no later than September 2010, the 'EU tyre labelling website' as a reference source of explanatory information for each component of the label.

2. The website shall include:

(a) an explanation of the pictograms printed on the label;

(b) a fuel savings calculator which demonstrates potential savings of fuel, money and CO2 by fitting low rolling resistance tyres for C1, C2 and C3 tyre classes;

(c) a statement highlighting that actual fuel savings and road safety heavily depend on the behaviour of drivers, and in particular the following:

(i) eco-driving, which can significantly reduce fuel consumption;

(ii) tyre pressure, that should be regularly checked for higher wet grip and fuel efficiency performance characteristics;

(iii) stopping distances, that should always be strictly respected.

Article 5

Responsibilities of tyre suppliers

Member States shall ensure that tyre suppliers comply with the following *requirements*:

(1) suppliers shall ensure that C1 and C2 tyres ▌delivered to distributors or end-users are ***supplied*** with ***a label to be displayed by any means or by*** a sticker on the tyre tread, indicating the fuel efficiency ***and wet grip*** class ▌and the external rolling noise measured value, as set out in Annex I, ***Parts A, B and C, respectively***;

(2) the format of the sticker ***and the label*** referred to in *point 1* shall be as prescribed in Annex II;

(3) suppliers shall state the fuel efficiency class, wet grip class and the external rolling noise measured value on technical promotional literature as set out in Annex I in the order specified in Annex III. ***For C2 and C3 tyres the measured rolling resistance coefficient shall also be stated;***

(4) suppliers shall make technical documentation available to the authorities of Member States on request, for a period ending five years after the last tyre of a given tyre type has been made available on the market; the technical documentation shall be sufficiently detailed *so* as to allow the authorities to verify the accuracy of information provided on the label on fuel efficiency, wet grip and external rolling noise;

(5) suppliers shall present measured values from the type approval test with regard to the rolling resistance coefficient (expressed in kg/t), wet grip index (expressed as a performance index, G, compared to the standard reference tyre) and noise emissions (expressed in dB) in a publicly available database.

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Article 6

Responsibilities of tyre distributors

Member States shall ensure that tyre distributors comply with the following *requirements*:

(1) distributors shall ensure that the sticker ***or the label*** provided by suppliers in accordance with *point 1 of Article 5* ***or a more detailed explanatory version of the label as set out in Annex II, point 3 are available and*** clearly ***displayed either on the tyre or in its immediate proximity at the point of sale, respectively***;

(2) where tyres offered for sale are not visible to *the* end-user, distributors shall provide the end-user with ***documentation*** on the fuel efficiency class, wet grip class and external rolling noise measured value of those tyres;

(3) for C1, C2 ***and C3*** tyres, distributors shall provide ***the explanatory version of the label as set out in Annex II, point 3 or 4, stating*** the fuel efficiency class, ***the wet grip class*** and external rolling noise measured value, ***as set out in Annex I, Parts A, B and C respectively, on or*** with the bills delivered to end-users when they purchase tyres. ▌

Article 7

Responsibilities of ***vehicle*** suppliers and ***vehicle*** distributors

Member States shall ensure that ***vehicle*** suppliers and ***vehicle*** distributors comply with the following *requirements*:

(1) ***vehicle*** suppliers and ***vehicle*** distributors shall ***provide*** information on tyres which are fitted on new vehicles. *That* information shall include the fuel efficiency class as set out in Annex I, Part A, the external rolling noise measured value as set out in Annex I, Part C and, for C1 tyres, the wet grip class as set out in Annex I, Part B, ***in the order specified in Annex III. That information shall be included in at least the electronic technical promotional literature and shall be provided to end-users before the sale of the vehicle***;

(2) where different tyre types may be fitted on a new vehicle without end-users being offered a choice between *types*, ***the information referred to in point 1 shall mention*** the lowest fuel efficiency class, wet grip class and the highest external rolling noise measured value of these tyre types ▌;

(3) where end-users are offered a choice between different tyre types to be fitted on a new vehicle, ***one of the following points shall apply:***

(a) where end-users are offered a choice between different tyre/rim sizes but not between other parameters of the tyre type, the information referred in point 1 shall mention for each tyre/rim size the lowest fuel efficiency class, wet grip class and highest external rolling noise measured value of all tyre types within this tyre/rim size;

(b) except in cases covered by point (a), the information referred in point 1 shall mention the fuel efficiency class, wet grip class and external rolling noise measured value of all tyre types which may be chosen by the end-user.

Article 8

Harmonised testing methods

The information to be provided under *Articles 5, 6 and 7* on the fuel efficiency class, the external rolling noise measured value, and the wet grip class of tyres shall be obtained by applying the harmonised testing methods referred to in *Annex I*. ***The harmonised tests shall provide end-users with a reliable and fully representative ranking of the characteristics tested.***

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Article 9

Verification procedure

1. Member States shall, *in accordance with the procedure laid down in Annex IV*, assess the conformity of the declared fuel efficiency and wet grip classes, within the meaning of Annex I Parts A and B, and the declared external rolling noise measured value within the meaning of Annex I Part C.

2. Such assessments shall not prejudice any EU vehicle or tyre type-approval obtained in accordance with Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles ([1]) or Regulation (EC) No …/2009 concerning type-approval requirements for the general safety of motor vehicles …]. For the conformity assessment Member States shall also refer, where applicable, to tyre type approval documentation and to relevant supporting documentation provided by the supplier.

3. Member States shall ensure that the competent authorities establish a system of routine and non-routine inspections of points of sale for the purpose of ensuring compliance with the requirements of this Regulation.

Article 10

Internal market

1. Where the *requirements* of this ***Regulation*** are satisfied, Member States shall neither prohibit nor restrict the making available of tyres on the market on grounds of product information covered by this ***Regulation***.

2. Unless they have evidence to the contrary, Member States shall consider that labels and product information comply with the provisions of this ***Regulation***. They may require suppliers to provide technical documentation, ***in accordance with point 4 of Article 5,*** in order to assess the accuracy of the declared values.

Article 11

Incentives

Member States shall not provide incentives *for the use of* tyres below ***class C with respect to either*** fuel efficiency level ***or wet grip*** within the meaning of Annex I, ***Parts A and B respectively***.

Article 12

Amendments and adaptations to technical progress

The following measures designed to amend non-essential elements of this ***Regulation*** inter alia by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in *Article 14(2):*

(1) introduction of requirements with respect to wet grip grading of C2 and C3 tyres, provided that suitable harmonised testing methods are available;

(2) introduction of requirements with respect to snow tyres or Nordic winter tyres;

(3) adaptation of Annexes I to IV to technical progress.

([1]) OJ L 263, 9.10.2007, p. 1.

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Article 13

Enforcement and penalties

1. Member States shall, ***by means of a continuous exchange of information, ensure close cooperation in market supervision in the interest of the consistent implementation of this Regulation. Member States shall take appropriate measures for regular ex-post controls in order to ensure that tyres which are not duly labelled are brought into conformity or taken off the market.***

2. ***Member States shall introduce measures laying down sanctions for infringements of the provisions of this Regulation, including*** rules on penalties applicable to infringements of the provisions adopted pursuant to this ***Regulation*** and ***provisions ensuring*** that they are implemented.

3. ***Those measures shall*** be effective, proportionate and dissuasive.

4. Member States shall notify those ***measures and any subsequent amendments thereof*** to the Commission ▌without delay ▌.

Article 14

Committee

1. The Commission shall be assisted by a committee.

2. Where reference is made to this paragraph, Articles 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 15

Review

1. Not later than ***three*** years after the date of application of this ***Regulation***, the Commission shall ***review*** the ***application of this Regulation, considering inter alia:***

(a) the effectiveness of the label in terms of consumer awareness;

(b) whether the labelling scheme should be extended to include retreaded tyres;

(c) whether new tyre parameters or classes should be introduced;

(d) the information on tyre parameters provided by vehicle suppliers and distributors to end-users.

2. The Commission shall, on the basis of this review and after an impact assessment and a consumer survey, submit a report to the European Parliament and the Council, accompanied if appropriate, by a proposal for amendment of this Regulation.

Article 16

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from 1 November 2012.

However, Articles 5 and 6 shall not apply to tyres produced before 1 July 2012.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ‖,

For the European Parliament
The President

For the Council
The President

Wednesday 22 April 2009

Annex I

Grading of tyre parameters

Part A: Fuel efficiency classes

The fuel efficiency class must be determined on the basis of the rolling resistance coefficient (*RRC*) according to the A to G scale specified below and measured in accordance with ‖ UNECE Regulation ‖

▌

C1 tyres		C2 tyres		C3 tyres	
RRC in kg/t	Energy efficiency class	*RRC* in kg/t	Energy efficiency class	*RRC* in kg/t	Energy efficiency class
RRC≤6,5	A	*RRC*≤5,5	A	*RRC*≤4,0	A
6,6≤*RRC*≤7,7	B	5,6≤*RRC*≤6,7	B	4,1≤*RRC*≤5,0	B
7,8≤*RRC*≤9,0	C	6,8≤*RRC*≤8,0	C	5,1≤*RRC*≤6,0	C
Empty	D	Empty	D	6,1≤*RRC*≤7,0	D
9,1≤*RRC*≤10,5	E	8,1≤*RRC*≤9,2	E	7,1≤*RRC*≤8,0	E
10,6≤*RRC*≤12,0	F	9,3≤*RRC*≤10,5	F	*RRC*≥8,1	F
RRC≥12,1	G	*RRC*≥10,6	G	Empty	G

Part B: Wet Grip Classes

The wet grip classes of C1 tyres must be determined on the basis of the wet grip index (*G*) according to the ‘A to G’ scale specified below and measured in accordance with UNECE Regulation 117 on uniform provisions concerning the approval of tyres with regard to rolling sound emissions and to adhesion on wet surfaces ([1]).

G	Wet grip classes
155≤*G*	A
140≤*G*≤154	B
125≤*G*≤139	C
Empty	D
110≤*G*≤124	E
G≤109	F
Empty	G

Part C: External Rolling noise

The external rolling noise measured value shall be declared in decibels and measured in accordance with UNECE Regulation 117 on uniform provisions concerning the approval of tyres with regard to rolling sound emissions and to adhesion on wet surfaces.

([1]) OJ L 231, 29.8.2008, p. 19.

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Part D: Low Noise Mark

For low noise tyres defined according to the grading specified below, the labelling of the measured external rolling noise value measured in dB shall be complemented by the 'Low Noise Mark':

	External rolling noise classes (dB(A))		
	C1	***C2***	***C3***
Low Noise Mark (*)	***≤68***	***≤69***	***≤70***

(*) ***Low Noise Mark:***

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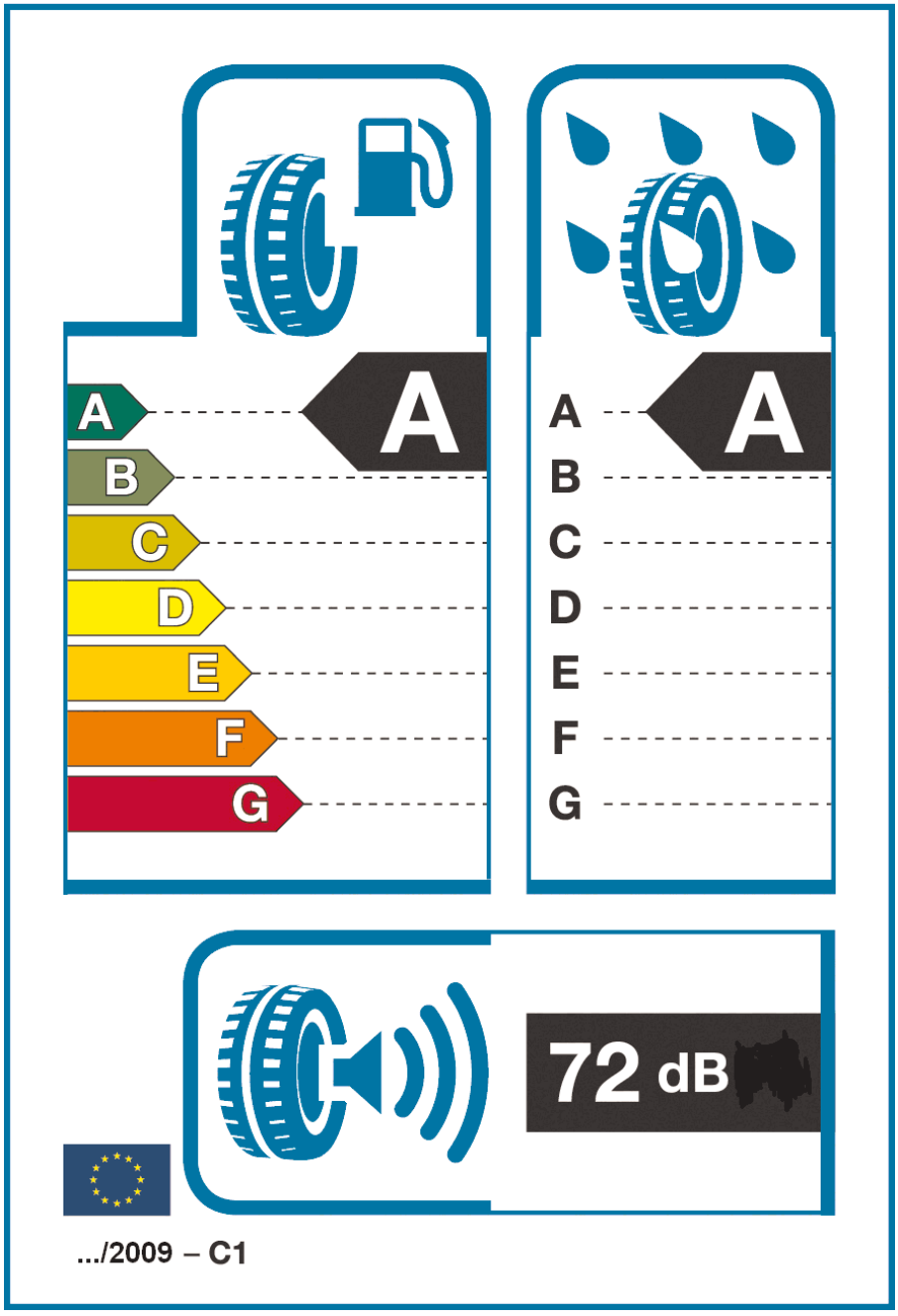
Annex II

Format of the label

The sticker referred to in *point 1 of Article 5* and *point 1 of Article 6* consists of two parts: (1) a label printed in the format described below and (2) a space where the name of the supplier and the tyre line, tyre dimension, load index, speed rating and other technical specification are displayed (hereinafter 'brand space').

1. Label design

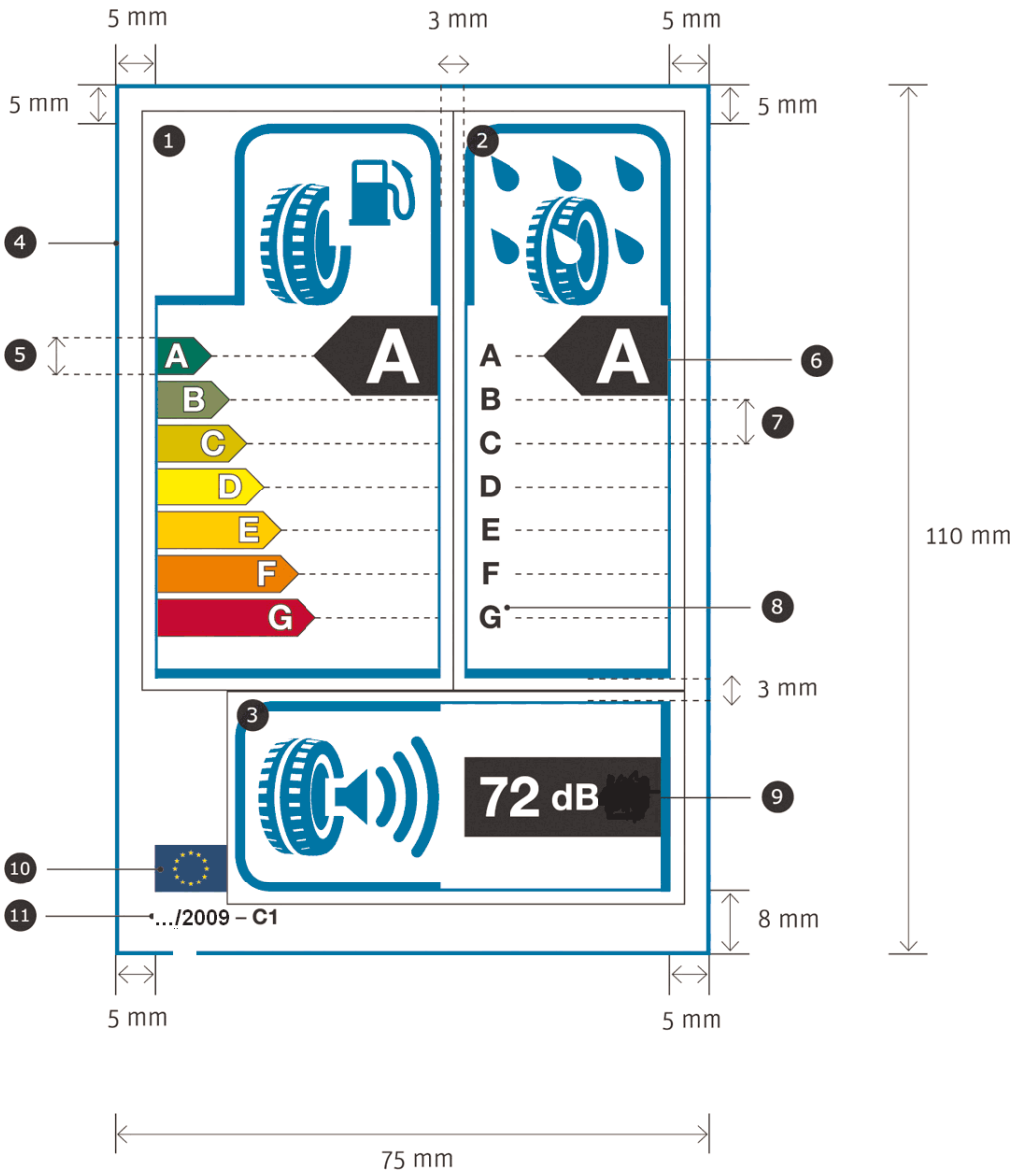
1.1. The label printed on the sticker, referred to in *point 1 of Article 5* and *point 1 of Article 6*, must be in accordance with the illustration below:



1.2. ***The following item shall be added to the design:***

website address of the EU tyre label website, in large font at the bottom of the label

1.3. The following provides specifications for the label:



1.4. The label must be at least 75 mm wide and 110 mm high. Where the label is printed in a larger format, its content must nevertheless remain proportionate to the specifications above.

1.5. The label must conform to the following requirements:

a) Colours are CMYK – cyan, magenta, yellow and black – and are given following this example: 00-70-X-00: 0 % cyan, 70 % magenta, 100 % yellow, 0 % black;

b) The numbers listed below refer to the legends indicated in *point 1.3*;

1 Fuel efficiency

Pictogram as supplied: width: 19,5 mm, height: 18,5 mm – Frame for pictogram stroke: 3,5 pt, width: 26 mm, height: 23 mm – Frame for grading: stroke: 1 pt – Frame end: stroke: 3,5 pt, width: 36 mm – Colour: X-10-00-05;

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❷ Wet grip

Pictogram as supplied: width: 19 mm, height: 19 mm – Frame for pictogram: stroke: 3,5 pt, width: 26 mm, height: 23 mm – Frame for grading: stroke: 1 pt – Frame end: stroke: 3,5 pt, width: 26 mm – Colour: X-10-00-05;

❸ External rolling noise

Pictogram as supplied: width: 23 mm, height: 15 mm – Frame for pictogram: stroke: 3,5 pt, width: 26 mm, height: 24 mm – Frame for value: stroke: 1 pt – Frame end: stroke: 3,5 pt, height: 24 mm – Colour: X-10-00-05;

❹ Label border: stroke: 1,5 pt – Colour: X-10-00-05;

❺ A-G scale

— Arrows: height: 4,75 mm, gap: 0,75 mm, black stroke: 0,5 pt – colours:

  — A: X-00-X-00;

  — B: 70-00-X-00;

  — C: 30-00-X-00;

  — D: 00-00-X-00;

  — E: 00-30-X-00;

  — F: 00-70-X-00;

  — G: 00-X-X-00.

— Text: Helvetica Bold 12 pt, 100 % white, black outline: 0,5 pt;

❻ Grading

— Arrow: width: 16 mm, height: 10 mm, 100 % black;

— Text: Helvetica Bold 27 pt, 100 % white;

❼ Lines in scale: stroke: 0,5 pt, dashed line interval: 5,5 mm, 100 % black;

❽ Scale text: Helvetica Bold 11 pt, 100 % black;

❾ Value of noise

— Box: width: 25 mm, height: 10 mm, 100 % black;

— Text: Helvetica Bold 20 pt, 100 % white;

— Unit text: Helvetica Bold Regular for '(A)' 13 pt, 100 % white;

❿ EU logo: width: 9 mm, height: 6 mm;

⓫ *Regulation* reference: Helvetica Regular 7,5 pt, 100 % black;

Tyre class reference: Helvetica Bold 7,5 pt, 100 % black;

c) The background must be white.

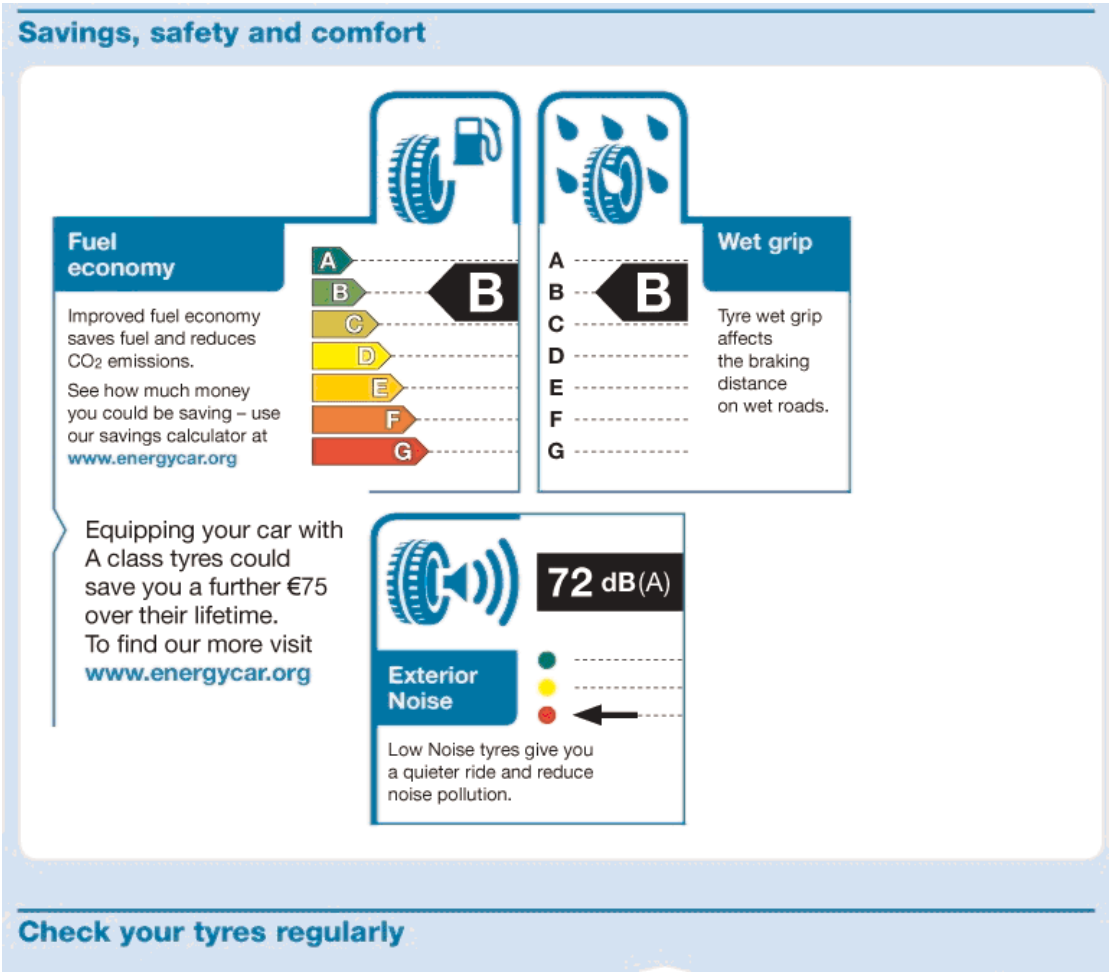
1.6. The tyre class (C1, C2 or C3) must be indicated on the label in the format prescribed in the illustration *point 1.3*.

2. Brand space

‖ Suppliers must add their name, the tyre line, tyre dimension, load index, speed rating and other technical specification on the sticker along with the label in any colour, format and design, provided that the proportional size of brand space does not exceed a 4:5 ratio against the size of the label and the message published along with the label does not disrupt the message of the label.

3. Format of expanded explanatory label

The explanatory version of the label referred to in Article 6 shall be in accordance with the illustration below, and the text translated into the relevant language of the point of sale. This version of the label is to be provided to the customer on or with the bill, unless this results in an undue burden on the distributor, in which case information shall be provided in accordance with Annex II, point 4.



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4. Format of information on the receipt

Where the costs of printing the explanatory label as outlined in Annex II, point 3, represent an undue burden on the distributor, the label information shall be provided in accordance with the illustration below:

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Annex III

Information provided in technical promotional literature

1. Information on tyre shall be provided in the order specified as follows:

   (i) the fuel efficiency class (A to G);

   (ii) the wet grip class (A to G);

   (iii) the external rolling noise measured value (dB).

2. *That* information must meet the following requirements:

   (i) easy to read;

   (ii) easy to understand;

   (iii) if different grading *is* available for a given tyre type depending on dimension or other parameters, the range between the least- and best-performing tyre *must be* stated.

3. Suppliers must also make available on their website:

   (i) a link to the EU tyre labelling website;

   (ii) an explanation of the pictograms printed on the label***, and the fuel efficiency calculator which is provided on the EU tyre labelling website***;

   (iii) a statement highlighting ‖ that actual fuel savings and road safety depend *heavily* on *the* behaviour *of drivers, and* in particular the following:

   — eco-driving can significantly reduce fuel consumption;

   — tyre pressure should be regularly checked for higher wet grip and fuel efficiency performance characteristics;

   — stopping distances should always be strictly respected.

Annex IV

Verification procedure

The conformity of the declared fuel efficiency and wet grip classes as well as the declared external rolling noise measured value shall be assessed for each tyre type or each grouping of tyres as determined by the supplier; according to the following procedure:

(1) a single tyre shall be tested first. If the measured value meets the declared class or external rolling noise measured value, the test is passed;

(2) if the measured value does not meet the declared class or external rolling noise measured value, three more tyres shall be tested. The average measurement value *resulting* from the four tyres tested shall be used to assess *conformity* with the declared information.

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Amendment of Regulation (EC) No 717/2007 (mobile telephone networks) and Directive 2002/21/EC (electronic communications) ***I

P6_TA(2009)0249

European Parliament legislative resolution of 22 April 2009 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 717/2007 on roaming on public mobile telephone networks within the Community and Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (COM(2008)0580 – C6-0333/2008 – 2008/0187(COD))

(2010/C 184 E/55)

(Codecision procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0580),

— having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0333/2008),

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on Industry, Research and Energy and the opinions of the Committee on the Internal Market and Consumer Protection and the Committee on Culture and Education (A6-0138/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and Commission.

P6_TC1-COD(2008)0187

Position of the European Parliament adopted at first reading on 22 April 2009 with a view to the adoption of Regulation (EC) No …/2009 of the European Parliament and of the Council amending Regulation (EC) No 717/2007 on roaming on public mobile telephone networks within the Community and Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Regulation (EC) No 544/2009.)

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Reporting and documentation requirements in the case of mergers and divisions ***I

P6_TA(2009)0250

European Parliament legislative resolution of 22 April 2009 on the proposal for a directive of the European Parliament and of the Council amending Council Directives 77/91/EEC, 78/855/EEC and 82/891/EEC and Directive 2005/56/EC as regards reporting and documentation requirements in the case of merger and divisions (COM(2008)0576 – C6-0330/2008 – 2008/0182(COD))

(2010/C 184 E/56)

(Codecision procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0576),

— having regard to Article 251(2) and Article 44(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0330/2008),

— having regard to the undertaking given by the Council representative by letter of 7 April 2009 to adopt the proposal as amended, in accordance with the first indent in the second subparagraph of Article 251(2) of the EC Treaty,

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Economic and Monetary Affairs (A6-0247/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and the Commission.

P6_TC1-COD(2008)0182

Position of the European Parliament adopted at first reading on 22 April 2009 with a view to the adoption of Directive 2009/…/EC of the European Parliament and of the Council amending Council Directives 77/91/EEC, 78/855/EEC and 82/891/EEC, and Directive 2005/56/EC as regards reporting and documentation requirements in the case of mergers and divisions

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Directive 2009/109/EC.)

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Insurance and reinsurance (Solvency II) (recast) ***I

P6_TA(2009)0251

European Parliament legislative resolution of 22 April 2009 on the amended proposal for a directive of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (recast) (COM(2008)0119 – C6-0231/2007 – 2007/0143(COD))

(2010/C 184 E/57)

(Codecision procedure - recast)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0361) and the amended proposal (COM(2008)0119),

— having regard to Article 251(2) and Article 47(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0231/2007),

— having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts [1],

— having regard to the undertaking given by the Council representative by letter of 1 April 2009 to adopt the proposal as amended, in accordance with the first indent in the second subparagraph of Article 251(2) of the EC Treaty,

— having regard to Rules 80a and 51 of its Rules of Procedure,

— having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs (A6-0413/2008),

A. whereas, according to the Consultative Working Party of the Legal Services of the European Parliament, the Council and the Commission, the Proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance,

1. Approves the Commission proposal as adapted to the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission and as amended below;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and the Commission.

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[1] OJ C 77, 28.3.2002, p. 1.

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P6_TC1-COD(2007)0143

Position of the European Parliament adopted at first reading on 22 April 2009 with a view to the adoption of Directive 2009/…/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast)

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Directive 2009/138/EC.)

Interim Agreement with Turkmenistan *

P6_TA(2009)0253

European Parliament legislative resolution of 22 April 2009 on the proposal for a Council and Commission decision on the conclusion of the Interim Agreement on trade and trade-related matters between the European Community and the European Atomic Energy Community, of the one part, and Turkmenistan, of the other part (5144/1999 – COM(1998)0617 – C5-0338/1999 – 1998/0304(CNS))

(2010/C 184 E/58)

(Consultation procedure)

The European Parliament,

— having regard to the proposal for a Council and Commission decision (COM(1998)0617),

— having regard to the Interim Agreement on trade and trade-related matters between the European Community and the European Atomic Energy Community, of the one part, and Turkmenistan, of the other part (5144/1999),

— having regard to its resolution of 15 March 2001 on the situation in Turkmenistan ([1]),

— having regard to its resolution of 23 October 2003 on Turkmenistan, including Central Asia ([2]),

— having regard to its resolution of 20 February 2008 on an EU Strategy for Central Asia ([3]),

— having regard to Articles 133 and 300(2), first subparagraph, of the EC Treaty,

— having regard to Article 300(3), first subparagraph, of the EC Treaty, pursuant to which the Council consulted Parliament (C5-0338/1999),

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([1]) OJ C 343, 5.12.2001, p. 310.
([2]) OJ C 82 E, 1.4.2004, p. 639.
([3]) Texts adopted, P6_TA(2008)0059.

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— having regard to Rules 51 and 83(7) of its Rules of Procedure,

— having regard to the report of the Committee on International Trade and the opinion of the Committee on Foreign Affairs (A6-0085/2006),

1. Approves the conclusion of the agreement;

2. Instructs its President to forward its position to the Council and the Commission, and the governments and parliaments of the Member States and of Turkmenistan.

Community framework for nuclear safety *

P6_TA(2009)0254

European Parliament legislative resolution of 22 April 2009 on the proposal for a Council directive (Euratom) setting up a Community framework for nuclear safety (COM(2008)0790 – C6-0026/2009 – 2008/0231(CNS))

(2010/C 184 E/59)

(Consultation procedure)

The European Parliament,

— having regard to the Commission proposal to the Council (COM(2008)0790),

— having regard to Articles 31 and 32 of the Euratom Treaty, pursuant to which the Council consulted Parliament (C6-0026/2009),

— having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,

— having regard to Rules 51 and 35 of its Rules of Procedure,

— having regard to the report of the Committee on Industry, Research and Energy and the opinion of the Committee on the Environment, Public Health and Food Safety (A6-0236/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 119, second paragraph, of the Euratom Treaty and to ensure that the legal requirements foreseen by the Euratom Treaty for the adoption of this proposal have been respected, notably the consultation of the group of experts in accordance with Article 31 of the Euratom Treaty;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;

5. Instructs its President to forward its position to the Council and Commission.

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 1

Proposal for a directive
Recital 6

(6) ***While*** each Member State is free to decide on its energy mix***, after a period of reflection, interest in the construction of new plants has grown and some Member States decided to licence new plants. Furthermore, requests for nuclear power plant life extensions are expected to be presented by licence holders in the years to come***.	(6) Each Member State is free to decide on its energy mix.

Amendment 2

Proposal for a directive
Recital 7

(7) For this purpose best practices should be developed to guide the regulatory bodies in their decisions on the lifetime extension of nuclear installations.	(7) ***Nuclear security is a matter of Community interest, which should be taken into consideration in the event of decisions on licensing new plants and/or extending the lifetime of nuclear installations.*** For this purpose best practices should be developed to guide the regulatory bodies ***and Member States when deciding whether or not to license new plants as well as*** in their decisions on the lifetime extension of nuclear installations.

Amendment 3

Proposal for a directive
Recital 9

(9) The continuous improvement of nuclear safety requires that the management systems established and the licence holders ensure the ***high*** level of safety for the general public.	(9) The continuous improvement of nuclear safety requires that the management systems established and the licence holders ***and waste managers*** ensure the ***highest possible*** level of safety for the general public.

Amendment 4

Proposal for a directive
Recital 10

(10) Fundamentals ***and*** requirements set by the International Atomic Energy Agency (IAEA) constitute a framework of practices on which national safety requirements should be based. Member States have made considerable contributions to the improvement of those fundamentals ***and*** requirements.	(10) Fundamentals***,*** requirements ***and guidelines*** set by the International Atomic Energy Agency (IAEA) constitute ***a set of rules and*** a framework of practices on which national safety requirements should be based. Member States have made considerable contributions to the improvement of those fundamentals, requirements ***and guidelines. Those rules should reflect best international practice as regards safety requirements and therefore constitute a good basis for Community legislation. They cannot be introduced into Community law by simple reference to the IAEA Safety Standards Series No. SF-1 (2006) in this Directive. An Annex containing the Fundamental Safety Principles should therefore be added to this Directive.***

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 5

Proposal for a directive
Recital 13

(13) The provision of information to the public in an accurate and timely manner about important nuclear safety matters should be based on high level of transparency on issues relating to the safety of nuclear installations.	(13) The provision of information to ***nuclear industry workers and*** the public in an accurate and timely manner about important nuclear safety matters should be based on high level of transparency on issues relating to the safety of nuclear installations.

Amendment 6

Proposal for a directive
Recital 13 a (new)

	(13a) In order to ensure access to information, public participation and transparency, Member States should take all the appropriate measures to implement the obligations laid down in international conventions that already provide for the necessary requirements in national, international, or trans- boundary contexts, such as the Convention on access to information, public participation in decision-making and access to justice in environmental matters (Aarhus Convention, 25 June 1998) [1].

[1] OJ L 124, 17.5.2005, p. 1; OJ L 164, 16.6.2006, p. 17 and Regulation (EC) 1367/2006, OJ L 264, 25.9.2006, p. 13.

Amendment 7

Proposal for a directive
Recital 15

(15) In order to ensure the effective ***implementation*** of ***safety requirements for*** nuclear installations, Member States should establish regulatory bodies as ***independent*** authorities. Regulatory bodies should be provided with adequate competence and resources in order to be able to discharge their duties.	(15) In order to ensure the effective ***regulation*** of nuclear installations, Member States should establish regulatory bodies as authorities ***independent from interests that could unduly affect decisions on nuclear safety issues***. Regulatory bodies should be provided with adequate competence and resources in order to be able to discharge their duties.

Amendment 8

Proposal for a directive
Recital 19

(19) The regulatory bodies charged with the ***safety*** of nuclear installations in the Member States should mainly cooperate through the European High Level Group on Nuclear Safety and Waste Management ***which*** has developed ten principles for the regulation of nuclear safety. The European High Level Group on Nuclear Safety and Waste Management should contribute to the Community nuclear safety framework with the aim of continuously improving it.	(19) The regulatory bodies charged with the ***supervision*** of ***the*** nuclear installations in the Member States should mainly cooperate through the European High Level Group on Nuclear Safety and Waste Management***. The High Level Group*** has developed ten principles for the regulation of nuclear safety ***which are important in the context of this Directive***. The European High Level Group on Nuclear Safety and Waste Management should contribute to the Community nuclear safety framework with the aim of continuously improving it.

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 9

Proposal for a directive
Article 1 – paragraph 1

1. This Directive aims at achieving, maintaining and continuously improving nuclear safety in the Community and to enhance the role of the national regulatory bodies.	1. This Directive aims at ***creating a Community framework for nuclear safety in the European Union. It sets out a foundation for legislation and regulatory arrangements in the Member States concerning nuclear safety and aims at*** achieving, maintaining and continuously improving nuclear safety in the Community and to enhance the role of the national regulatory bodies.

Amendment 11

Proposal for a directive
Article 1 – paragraph 2

2. It shall apply to the design, siting, construction, maintenance, operation and decommissioning of nuclear installations, for which consideration of safety ***is*** required under the legislative and regulatory framework of the Member State concerned.	2. It shall apply to the design, siting, construction, maintenance, ***commissioning,*** operation and decommissioning of nuclear installations ***and to work carried out by subcontractors used by operators***, for which consideration of safety ***shall be*** required under the legislative and regulatory framework of the Member State concerned.

Amendment 12

Proposal for a directive
Article 2 – point 1

(1) 'nuclear installation' means a nuclear fuel fabrication plant, research reactor (including subcritical and critical assemblies), nuclear power plant, spent fuel storage facility, enrichment plant or reprocessing facility;	(1) 'nuclear installation' means a nuclear fuel fabrication plant, research reactor (including subcritical and critical assemblies), nuclear power plant, spent fuel ***and radioactive waste*** storage facility, enrichment plant or reprocessing facility***, including facilities for handling and treatment of radioactive substances generated during the operation of an installation***;

Amendment 13

Proposal for a directive
Article 2 – point 3

(3) 'radioactive ***material***' means any material containing one or more radionuclides the activity or concentration thereof cannot be disregarded as far as radiation protection is concerned;	(3) 'radioactive ***substance***' means any material containing one or more radionuclides the activity or concentration thereof cannot be disregarded as far as radiation protection is concerned;

Amendment 14

Proposal for a directive
Article 2 – point 8

(8) 'regulatory body' means ***any body*** or ***bodies authorised*** by ***the*** Member State ***to grant in that Member State licences and to supervise the siting, design, construction, commissioning, operation or decommissioning of nuclear installations***;	(8) 'regulatory body' means ***an authority*** or ***a system of authorities designated*** by ***a*** Member State ***as having the legal authority to conduct the regulatory process, including the issue of authorisations, and thereby the regulation of nuclear, radiation, radioactive waste and transport safety***;

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT
Amendment 15 **Proposal for a directive** **Article 2 – point 9**	
(9) 'licence' means any authorisation granted by ***the regulatory body*** to the applicant to confer the responsibility for the siting, design, construction, commissioning, operation or decommissioning of nuclear installations;	(9) 'licence' means any authorisation granted by ***a government or a national authority approved by that government*** to the applicant to confer the responsibility for the siting, design, construction, commissioning, operation or decommissioning of nuclear installations;
Amendment 16 **Proposal for a directive** **Article 2 – point 10**	
(10) 'new power reactors' mean nuclear power reactors licensed ***to operate*** after the entry into force of this Directive.	(10) 'new power reactors' mean nuclear power reactors licensed ***for construction*** after the entry into force of this Directive.
Amendment 17 **Proposal for a directive** **Article 3 – title**	
Responsibility and framework for the safety of nuclear installations	***Legal*** framework for the safety of nuclear installations
Amendment 18 **Proposal for a directive** **Article 3 – paragraph 1**	
1. The prime responsibility for the safety of nuclear installations shall rest with the holder of the license under the control of the regulatory body. The safety measures and controls to be implemented in a nuclear installation shall be decided only by the regulatory body and applied by the licence holder. ***The licence holder shall have the prime responsibility for safety throughout the lifetime of the nuclear installations until its release from regulatory control. This responsibility of the licence holder cannot be delegated.***	***deleted***
Amendment 19 **Proposal for a directive** **Article 3 – paragraph 2**	
2. Member States shall establish and maintain a legislative and regulatory framework to govern the safety of nuclear installations. This shall include national safety requirements, a system of licensing and control of nuclear installations and the prohibition of their operation without a licence and a system of regulatory supervision including the necessary enforcement.	***1.*** Member States shall establish and maintain a legislative and regulatory framework***, based on EU and international best available practices,*** to govern the safety of nuclear installations. This shall include national safety requirements, a system of licensing and control of nuclear installations and the prohibition of their operation without a licence and a system of regulatory supervision, ***through suspension, modification or revocation of licences*** including the necessary enforcement.

TEXT PROPOSED BY THE COMMISSION	AMENDMENT
Amendment 20	
Proposal for a directive **Article 3 – paragraph 2 a (new)**	
	2a. Member States shall ensure that legislation is put in place to provide for withdrawal of the operating licence of a nuclear installation in cases of serious breaches of the conditions of a licence.
Amendment 21	
Proposal for a directive **Article 3 – paragraph 2 b (new)**	
	2b. Member States shall ensure that all organisations engaged in activities directly related to nuclear installations shall establish policies that give due priority to nuclear safety.
Amendment 22	
Proposal for a directive **Article 3 – paragraph 2 c (new)**	
	2c. Member States shall ensure that at least every 10 years the regulatory body and the national regulatory system is submitted to an international peer review aimed at continuously improving the regulatory infrastructure. ***Member States shall notify the results of the international peer review to the Commission.***
Amendment 23	
Proposal for a directive **Article 3 – paragraph 2 d (new)**	
	2d. Member States may lay down more stringent safety measures than those laid down in this Directive.
Amendment 24	
Proposal for a directive **Article 4 – title**	
Regulatory bodies	***Designation and responsibilities of the*** regulatory bodies
Amendment 25	
Proposal for a directive **Article 4 – paragraph – -1 (new)**	
	-1. Member States shall designate a national regulatory body responsible for regulating, supervising and assessing the safety of nuclear installations.

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT
Amendment 26	
Proposal for a directive **Article 4 – paragraph 1**	
1. Member States shall ensure ***that*** the regulatory body ***is effectively independent of all organisations*** whose task is to promote, operate nuclear installations or justify societal benefits and free from any influence that may affect ***the*** safety.	1. Member States shall ensure ***the effective independence of*** the regulatory body. ***For this purpose, Member States shall ensure that, when carrying out the tasks conferred upon it by this Directive:*** ***(a) the regulatory body is legally distinct and functionally independent from any other public or private entity, and, in particular from those*** whose task is to promote, operate nuclear installations or justify societal benefits***,*** and free from any influence that may affect safety***;*** ***(b) that the staff of the regulatory body and the persons responsible for its management act independently from any market interest and shall not seek or take instructions from any government or other public or private entity, when carrying out its regulatory duties.*** ***This requirement shall be without prejudice to close cooperation, as appropriate, with other relevant national authorities.***
Amendment 27	
Proposal for a directive **Article 4 – paragraph 2**	
2. The regulatory body ***shall be provided with*** adequate authority, competence and financial and human resources to fulfil its responsibilities and discharge its duties. ***It*** shall supervise and regulate the safety of nuclear installations and ensure the ***implementation of*** safety requirements***, condition and safety regulations***.	2. ***Member States shall ensure that*** the regulatory body ***has*** adequate authority, competence and financial and human resources to fulfil its responsibilities and discharge its duties. ***The regulatory body*** shall supervise and regulate the safety of nuclear installations and ensure ***that*** the ***applicable*** safety requirements ***and licensing conditions are met***.
Amendment 28	
Proposal for a directive **Article 4 – paragraph 3**	
3. The regulatory body shall grant licenses and monitor their application on siting, design, construction, commissioning, operation or decommissioning of nuclear installations.	***deleted***
Amendment 29	
Proposal for a directive **Article 4 – paragraph 3 a (new)**	
	3a. Member States shall ensure that the regulatory body carries out nuclear safety assessments, investigations and controls and, where necessary, enforcement actions in nuclear installations throughout their lifetime, including during decommissioning.
Amendment 30	
Proposal for a directive **Article 4 – paragraph 3 b (new)**	
	3b. Member States shall ensure that the regulatory body is empowered to order the suspension of operations of any nuclear installations in cases where safety is not guaranteed.

TEXT PROPOSED BY THE COMMISSION	AMENDMENT
Amendment 31 **Proposal for a directive** **Article 4 – paragraph 4**	
4. Regulatory bodies shall ensure that licence holders have at their disposal appropriate staff in terms of numbers and qualifications.	***deleted***
Amendment 32 **Proposal for a directive** **Article 4 – paragraph 5**	
5. At least every ten years the regulatory body shall submit itself and the national regulatory system to an international peer review aimed at continuously improving the regulatory infrastructure.	***deleted***
Amendment 33 **Proposal for a directive** **Article 4 – paragraph 5 a (new)**	
	5a. Regulatory bodies of the Member States shall exchange best regulatory practice and develop a common understanding of internationally accepted nuclear safety requirements.
Amendment 34 **Proposal for a directive** **Article 5**	
Member States shall inform the public about the procedures and the results of the surveillance activities on nuclear safety. They shall also ensure that the regulatory bodies effectively inform the public in the fields of their competence. Access to information shall be ensured, in accordance with relevant national and international obligations.	Member States shall inform the public ***and the Commission*** about the procedures and the results of the surveillance activities on nuclear safety ***and shall inform the public immediately in the event of any incident***. They shall also ensure that the regulatory bodies effectively inform the public in the fields of their competence. Access to information shall be ensured, in accordance with relevant national and international obligations.
Amendment 35 **Proposal for a directive** **Article 6 – paragraph 1 – subparagraph 1**	
1. Member States shall ***respect*** the IAEA safety fundamentals (IAEA Safety Fundamentals: Fundamental safety principles, IAEA Safety Standard Series No. SF-1 (2006)). They shall ***observe*** the obligations and requirements incorporated in the Convention on Nuclear safety ***(IAEA INFCIRC 449 of 5 July 1994)***.	1. ***For the siting, design, construction, operation and decommissioning of nuclear facilities,*** Member States shall ***apply those parts of*** the IAEA safety fundamentals (IAEA Safety Fundamentals: Fundamental safety principles, IAEA Safety Standard Series No. SF-1 (2006)), ***which are relevant to the creation of a Community framework for nuclear safety, as specified in the Annex.*** They shall ***apply*** the obligations and requirements incorporated in the Convention on Nuclear Safety ([1]).

([1]) OJ L 318, 11.12.1999, p. 20 and OJ L 172, 6.5.2004, p. 7.

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT
Amendment 36 **Proposal for a directive** **Article 6 – paragraph 1 – subparagraph 2**	
They shall in particular ensure that the applicable principles laid down in the IAEA safety fundamentals are implemented to ensure a high level of safety in nuclear installations, including inter alia effective arrangements against potential radiological hazards, accident prevention and response, ageing management, long term management of all produced radioactive materials and information of the population and the authorities of neighbouring States.	***deleted***
Amendment 37 **Proposal for a directive** **Article 6 – paragraph 2**	
2. ***As regards the safety*** of new nuclear power reactors Member States shall aim to develop additional safety requirements, ***in line with*** the continuous improvement of ***safety on the basis of the safety levels developed by the Western European Nuclear Regulators' Association (WENRA) and in close collaboration with the European High Level Group on Nuclear Safety and Waste Management***.	2. ***For the licensing of construction*** of new nuclear power reactors Member States shall aim to develop additional safety requirements, ***reflecting*** the continuous improvement of ***the operating experience of existing reactors, insight gained from safety analyses for operating plants, state of the art methodologies and technology and results of safety research***.
Amendment 38 **Proposal for a directive** **Article 6 – paragraph 2 a (new)**	
	2a. The Commission shall ensure that all third countries that wish to enter or are in the process of negotiating their accession to the EU comply, as a minimum, with the standards set out in this Directive and the principles in the Annex, as set by the IAEA.
Amendment 39 **Proposal for a directive** **Article 7 – title**	
Obligations of licence holders	***Responsibilities*** of licence holders
Amendment 40 **Proposal for a directive** **Article 7 – paragraph – -1 (new)**	
	-1. Member States shall ensure that the prime responsibility for the safety of nuclear installations, throughout the lifetime of the nuclear installations, shall rest with the holder of the licence. This responsibility of the licence holder cannot be delegated.

TEXT PROPOSED BY THE COMMISSION	AMENDMENT
Amendment 41 **Proposal for a directive** **Article 7 – paragraph 1**	
1. Licence holders ***shall design, construct, operate and decommission*** their nuclear installations in accordance with the provisions set out in ***Article 6(1) and (2)***.	1. ***Member States shall ensure that*** licence holders ***are responsible for the design, construction, operation and decommissioning of*** their nuclear installations in accordance with the provisions set out in ***Article 6***.
Amendment 42 **Proposal for a directive** **Article 7 – paragraph 2**	
2. Licence holders ***shall*** establish and implement management systems which ***shall be*** regularly verified by the regulatory body.	2. ***Member States shall ensure that*** licence holders establish and implement management systems which ***are*** regularly verified by the regulatory body.
Amendment 44 **Proposal for a directive** **Article 7 – paragraph 3 a (new)**	
	3a. Member States shall ensure that the regulatory body assess regularly the sufficiency and qualifications of the staff of the licence holder, as a prerequisite for ensuring nuclear safety, on the basis of a report presented by the licence holder on the evaluation of employment issues such as health and safety and the safety culture, qualifications and training, numbers of staff employed and use of subcontractors.
Amendment 45 **Proposal for a directive** **Article 7 – paragraph 3 b (new)**	
	3b. The relevant regulatory authorities shall, every three years, present to the Commission and the European social partners a report on nuclear safety and safety culture. The Commission, in consultation with the European social partners, may propose improvements to ensure nuclear safety including health protection at the highest possible level in the EU.
Amendment 46 **Proposal for a directive** **Article 8 – paragraph 1**	
1. Nuclear safety assessments, investigations, controls and, where necessary, enforcement actions shall be carried out by the regulatory body in nuclear installations throughout their lifetime, including during decommissioning.	***deleted***
Amendment 47 **Proposal for a directive** **Article 8 – paragraph 2**	
2. The regulatory body shall have the power to withdraw the operating licence in case of serious or repeated safety rules breaches in the nuclear installation.	***deleted***

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT
Amendment 48 **Proposal for a directive** **Article 8 – paragraph 3**	
3. The regulatory body shall have the power to order the suspension of operations of any nuclear plant if it deems that safety is not fully guaranteed.	***deleted***
Amendment 49 **Proposal for a directive** **Article 9**	
Appropriate education and training opportunities for continuous theoretical and practical training in nuclear safety ***shall be*** made available by Member States ***separately*** and through *trans-national* cooperation.	***In order to build adequate national human resources and preserve nuclear knowledge, Member States shall ensure that*** education and training opportunities for ***basic and*** continuous theoretical and practical training in nuclear safety***, including exchange programmes, are*** made available by Member States and***,if necessary,*** through *transnational* cooperation.
Amendment 50 **Proposal for a directive** **Article 10**	
Article 10 ***Priority to safety*** ***Member States may lay down more stringent safety measures than those laid down in this Directive.***	***deleted***
Amendment 51 **Proposal for a directive** **Article 11**	
Member States shall ***submit a*** report to the Commission on the implementation of this Directive ***by [three years after the entry into force] at the latest, and every three years thereafter***. On the basis of ***the first*** report, the Commission shall present a report to the Council on progress made with the implementation of this Directive, accompanied, if appropriate, by legislative proposals.	Member States shall report to the Commission on the implementation of this Directive ***at the same time and frequency as for their national reports under review meetings of the Convention of the Nuclear Safety***. On the basis of ***this*** report, the Commission shall present a report to ***the European Parliament and*** the Council on progress made with the implementation of this Directive, accompanied, if appropriate, by legislative proposals.
Amendment 52 **Proposal for a directive** **Article 12 – paragraph 1**	
Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [two years after the date referred to in Article 13] at the latest. They shall forthwith communicate to the Commission the text of those provisions ***and a correlation table between those provisions and this Directive***.	Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [two years after the date referred to in Article 13] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 53

Proposal for a directive
Annex (new)

Annex

SAFETY OBJECTIVE

The fundamental safety objective is to protect workers and the general public from harmful effects of ionising radiation, which may be caused by nuclear installations.

1. To ensure the protection of workers and the general public, nuclear installations shall be operated so as to achieve the highest standards of safety that can reasonably be achieved taking into account economic and social factors.

In addition to the measures concerning health protection, laid down in the Euratom Basic Standards (Directive 96/29/Euratom), the following measures shall be taken:

— restriction of the likelihood of events that might lead to a loss of control over a nuclear reactor core, nuclear chain reaction, radioactive source and

— mitigation of the consequences of such events if they were to occur.2. The fundamental safety objective shall be taken into account for all nuclear installations and for all stages over the lifetime of the nuclear installation.

SAFETY PRINCIPLES

Principle 1: Responsibility for safety

Each Member State shall ensure that the prime responsibility for the safety of a nuclear installation rests with the holder of the relevant licence and shall take the appropriate steps to ensure that all such licence holders meet their responsibility.

1.1 Each Member State shall ensure that the licence holder has implemented provisions for:

— establishing and maintaining the necessary competences;

— providing adequate training and information;

— establishing procedures and arrangements to maintain safety under all conditions;

— verifying appropriate design and the adequate quality of nuclear installations;

— ensuring the safe control of all radioactive material that is used, produced or stored;

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	— ensuring the safe control of all radioactive waste that is generated
	to fulfil the responsibility for the safety of a nuclear installation.
	These responsibilities shall be fulfilled in accordance with applicable safety objectives and requirements as established or approved by the regulatory body, and their fulfilment shall be ensured through the implementation of a management system.
	Principle 2: Leadership and management for safety
	Effective leadership and management for safety must be established and sustained in all organisations concerned with nuclear safety.
	2.1 Leadership in safety matters shall be demonstrated at the highest levels in an organisation. An effective management system shall be implemented and maintained, integrating all elements of management so that requirements for safety are established and applied coherently with other requirements, including those relating to human performance, quality and security, and so that safety is not compromised by other requirements or demands.
	The management system also shall ensure the promotion of a safety culture, the regular assessment of safety performance and the application of lessons learned from experience.
	2.2 A safety culture that governs the attitudes and behaviour in relation to safety of all organisations and individuals concerned shall be integrated into the management system. Safety culture includes:
	— individual and collective commitment to safety on the part of the leadership, the management and personnel at all levels;
	— accountability of organisations and of individuals at all levels for safety;
	— measures to encourage a questioning and learning attitude and to discourage complacency with regard to safety.
	2.3 The management system shall recognise the entire range of interactions of individuals at all levels with technology and with organisations. To prevent safety, significant human, and organisational failures, human factors shall be taken into account and good performance and good practices shall be supported.

TEXT PROPOSED BY THE COMMISSION	AMENDMENT
	Principle 3: Assessment of Safety
	Comprehensive and systematic safety assessments shall be carried out before the construction and commissioning of a nuclear installation and throughout its lifetime. A graded approach shall be used taking in account the magnitude of the potential risks arising from the nuclear installation.
	3.1 The regulatory body shall require an assessment on nuclear safety for all nuclear installations, consistent with a graded approach. This safety assessment shall involve the systematic analysis of normal operation and its effects, of the ways in which failures might occur and of the consequences of such failures. The safety assessments shall cover the safety measures necessary to control the hazard, and the design and engineered safety features shall be assessed to demonstrate that they fulfil the safety functions required of them. Where control measures or operator actions are called on to maintain safety, an initial safety assessment shall be carried out to demonstrate that the arrangements made are robust and that they can be relied on. An authorisation for a nuclear installation shall only be granted by a Member State once it has been demonstrated to the satisfaction of the regulatory body that the safety measures proposed by the licence holder are adequate.
	3.2 The required safety assessment shall be repeated in whole or in part as necessary later in the conduct of operations in order to take into account changed circumstances (such as the application of new standards or scientific and technological developments), the feedback of operating experience, modifications and the effects of ageing. For operations that continue over long periods of time, assessments shall be reviewed and repeated as necessary. Continuation of such operations shall be subject to these reassessments demonstrating that the safety measures remain adequate.
	3.3 Within the required safety assessment precursors to accidents (an initiating event that could lead to accident conditions) shall be identified and analysed, and measures shall be taken to prevent the occurrence of accidents.
	3.4 To further enhance safety, processes shall be put in place for the feedback and analysis of operating experience in own and other facilities, including initiating events, accident precursors, 'near misses', accidents and unauthorised acts, so that lessons may be learned, shared and acted upon.
	Principle 4: Optimisation of safety
	Member States shall ensure that nuclear installations are optimised to provide the highest level of safety that can reasonably practicable be achieved without unduly limiting their operation.

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	4.1 The optimisation of safety shall require judgements to be made about the relative significance of various factors, including:
	— the likelihood of the occurrence of foreseeable events and the resulting consequences;
	— the magnitude and distribution of radiation doses received;
	— economic, social and environmental factors arising from the radiation risks.
	The optimisation of safety also means using good practices and common sense as far as is practical in day to day activities.
	Principle 5: Prevention and mitigation
	Member States shall ensure that all practical efforts are made to prevent and mitigate nuclear incidents and accidents in its nuclear installations.
	5.1 Each Member State shall ensure, that the licence holders engage all practical efforts
	— to prevent the occurrence of abnormal conditions or incidents that could lead to a loss of control;
	— to prevent the escalation of any such abnormal conditions or incidents that do occur; and
	— to mitigate any harmful consequences of an accident.
	by implementing 'defence in depth'.
	5.2 The application of the defence in depth concept shall ensure that no single technical, human or organisational failure could lead to harmful effects, and that the combinations of failures that could give rise to significant harmful effects are of very low probability.
	5.3 Defence in depth shall be implemented through the combination of a number of consecutive and independent levels of protection that would all have to fail before harmful effects could be caused to workers or the general public. The levels of defence in depth shall include:

TEXT PROPOSED BY THE COMMISSION	AMENDMENT
	— ***an adequate site selection***
	— ***an adequate design of the nuclear installation, consisting of:***
	High quality of design and construction
	High reliability of components and equipment
	Control, limiting and protection systems and surveillance features;
	— ***an adequate organisation with:***
	An effective management system with a strong management commitment to safety culture
	Comprehensive operational procedures and practices
	Comprehensive accident management procedures
	Emergency preparedness arrangements.
	Principle 6: Emergency preparedness and response
	Members States shall ensure that arrangements are made for emergency preparedness and response for nuclear installations accidents according to Directive 96/29/Euratom.

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Community control system for ensuring compliance with the rules of the Common Fisheries Policy *

P6_TA(2009)0255

European Parliament legislative resolution of 22 April 2009 on the proposal for a Council regulation establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy (COM(2008)0721 – C6-0510/2008 – 2008/0216(CNS))

(2010/C 184 E/60)

(Consultation procedure)

The European Parliament,

— having regard to the Commission proposal to the Council (COM(2008)0721),

— having regard to Article 37 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0510/2008),

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on Fisheries and the opinion of the Committee on the Environment, Public Health and Food Safety (A6-0253/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;

5. Instructs its President to forward its position to the Council and the Commission.

TEXT PROPOSED BY THE COMMISSION	AMENDMENT
Amendment 1	
Proposal for a regulation	
Recital 4	
(4) Currently control provisions are spread in a wide number of overlapping and complex legal texts. Some parts of the control system are poorly implemented by Member States ***which results in*** insufficient and divergent measures in response to infringements of the rules of the Common Fisheries Policy thereby undermining the creation of a level playing field for fishermen across the Community. Accordingly the existing regime and all the obligations therein should be consolidated, rationalised and simplified, in particular through reduction of double regulation and administrative burdens.	(4) Currently control provisions are spread in a wide number of overlapping and complex legal texts. Some parts of the control system are poorly implemented by Member States***, and the Commission has not proposed all of the necessary implementing regulations needed for Regulation (EEC) No 2847/93. The result is*** insufficient and divergent measures in response to infringements of the rules of the Common Fisheries Policy thereby undermining the creation of a level playing field for fishermen across the Community. Accordingly the existing regime and all the obligations therein should be consolidated, rationalised and simplified, in particular through reduction of double regulation and administrative burdens.

TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 2

Proposal for a regulation
Recital 14 a (new)

	(14a) The Common Fisheries Policy covers the conservation, management and exploitation of living aquatic resources, so that all types of activities that exploit such resources are treated on an equal basis, whether they be commercial or non-commercial. It would be discriminatory to subject commercial fisheries to strict controls and limits while largely exempting non-commercial fisheries.

Amendment 3

Proposal for a regulation
Recital 19

(19) Control activities and methods should be based on risk management using cross-checking procedures in a systematic and comprehensive way.	(19) Control activities and methods should be based on risk management using cross-checking procedures in a systematic and comprehensive way ***by Member States. It is also necessary for Member States to exchange relevant information.***

Amendment 4

Proposal for a regulation
Recital 24

(24) An integrated maritime surveillance network should be established between surveillance, monitoring, identification and tracking systems operated for the purposes of maritime security and safety, protection of the marine environment, fisheries control, border control, general law enforcement, and trade facilitation. The network shall have the ability to continuously make available information on activities in the maritime domain in order to support a timely decision process. In turn this would allow, the public authorities engaged in surveillance activities to provide a more effective and cost efficient service. To this end Automatic Identification Systems, Vessel Monitoring Systems as referred to in Commission Regulation (EC) No 2244/2003 of 18 December 2003, laying down detailed provisions regarding satellite-based vessel monitoring systems and Vessel Detection Systems data collected in the framework of this Regulation should be transmitted and used by other public authorities engaged in the surveillance activities above mentioned.	(24) An integrated maritime surveillance network should be established between surveillance, monitoring, identification and tracking systems operated for the purposes of maritime security and safety, protection of the marine environment, fisheries control, border control, general law enforcement, and trade facilitation***, geared to the different situations in the Member States***. The network shall have the ability to continuously make available information on activities in the maritime domain in order to support a timely decision process. In turn this would allow, the public authorities engaged in surveillance activities to provide a more effective and cost efficient service. To this end Automatic Identification Systems, Vessel Monitoring Systems as referred to in Commission Regulation (EC) No 2244/2003 of 18 December 2003, laying down detailed provisions regarding satellite-based vessel monitoring systems and Vessel Detection Systems data collected in the framework of this Regulation should be transmitted and used by other public authorities engaged in the surveillance activities above mentioned.

Amendment 5

Proposal for a regulation
Recital 29

(29) Powers should be conferred to the Commission to close a fishery when the quota of a Member State or a TAC itself is exhausted. ***The Commission should also be empowered to deduct quotas and refuse quota transfers or quota exchanges to ensure the achievement of the objectives of the Common Fisheries Policy by the Member States.***	(29) Powers should be conferred to the Commission to close a fishery when the quota of a Member State or a TAC itself is exhausted.

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 6

Proposal for a regulation
Recital 34

(34) 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. All measures adopted by the Commission to implement this Regulation will comply with the proportionality principle.	(34) 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***, as amended by Council Decision 2006/512/EC of 17 July 2006***. All measures adopted by the Commission to implement this Regulation will comply with the proportionality principle.

Amendment 7

Proposal for a regulation
Recital 39

(39) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of ensuring the effective implementation of the Common Fisheries Policy to establish a comprehensive and uniform system of controls. This Regulation does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with the third paragraph of Article 5 of the Treaty.	(39) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of ensuring the effective implementation of the Common Fisheries Policy to establish a comprehensive and uniform system of controls, ***taking account of the fact that small-scale and artisanal fisheries clearly differ from industrial, subsistence and recreational fisheries and that a system of control regulations should reflect these differences in an appropriate manner.*** This Regulation does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with the third paragraph of Article 5 of the Treaty.

Amendment 8

Proposal for a regulation
Article 1

This Regulation establishes a Community system for control, ***monitoring, surveillance, inspection, and enforcement (hereinafter to be referred to as 'Community control system') of*** the rules of the Common Fisheries Policy.	This Regulation establishes a Community system for control, ***with the aim of ensuring compliance with*** the rules of the Common Fisheries Policy.

Amendment 9

Proposal for a regulation
Article 4 – point 1

(1) 'Fishing activity' means searching for fish, shooting, setting, hauling of a fishing gear, taking catch on board, transhipping, retaining on board, processing on board, transferring ***and*** caging of fish and fishery products;	(1) 'Fishing activity' means searching for fish, shooting, setting, hauling of a fishing gear, taking catch on board, transhipping, retaining on board, ***landing,*** processing on board, transferring, caging ***and fattening*** of fish and fishery products;

Amendment 10

Proposal for a regulation
Article 4 – point 6 a (new)

	(6a) 'Serious infringement' means those activities listed in Article 42(1) of Council Regulation (EC) No 1005/2008;

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 11

Proposal for a regulation
Article 4 – point 7 a (new)

	(7a) 'Recreational Fisheries' means non-commercial fishing activities exploiting living aquatic resources for recreation or sport and including, inter alia, recreational angling, sports fishing, sports tournaments and other forms of recreational fishing;

Amendment 12

Proposal for a regulation
Article 4 – point 8

(8) 'Fishing authorisation' means a fishing authorisation issued in respect of a Community fishing vessel in addition to its fishing licence, entitling it to carry out fishing activities ***in Community waters in general*** and/or specific fishing activities during a specified period, in a given area or for a given fishery under specific conditions;	(8) 'Fishing authorisation' means a fishing authorisation issued in respect of a Community fishing vessel in addition to its fishing licence, entitling it to carry out fishing activities and/or specific fishing activities during a specified period, in a given area or for a given fishery under specific conditions;

Amendment 13

Proposal for a regulation
Article 4 – point 17

(17) 'Processing' means the process by which the presentation was prepared. It includes ***cleaning,*** filleting, ***icing,*** packing, canning, freezing, smoking, salting, cooking, pickling, drying or preparing fish for market in any other manner;	(17) 'Processing' means the process by which the presentation was prepared. It includes filleting, packing, canning, freezing, smoking, salting, cooking, pickling, drying or preparing fish for market in any other manner;

Amendment 14

Proposal for a regulation
Article 5 – paragraph 1

1. Member States shall control the activities carried out by any natural or legal person within the scope of the Common Fisheries Policy on their territory and within waters subject to their sovereignty or jurisdiction, in particular fishing, transhipments, transfer of fish to cages or aquaculture installations including fattening installations, landing, import, transport, marketing and storage of fishery products.	1. Member States shall control the activities carried out by any natural or legal person within the scope of the Common Fisheries Policy on their territory and within waters subject to their sovereignty or jurisdiction, in particular fishing, ***aquaculture activities,*** transhipments, transfer of fish to cages or aquaculture installations including fattening installations, landing, import, transport, marketing and storage of fishery products.

Amendment 15

Proposal for a regulation
Article 5 – paragraph 4

4. Each Member State shall ensure that control, inspection, monitoring, surveillance and enforcement is carried out on a non-discriminatory basis as regards ***the*** sectors, vessels or persons ***chosen for inspection***, and on the basis of risk management.	4. Each Member State shall ensure that control, inspection, monitoring, surveillance and enforcement is carried out on a non-discriminatory basis as regards sectors, vessels or persons, and on the basis of risk management.

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 16

Proposal for a regulation
Article 6 – paragraph 3

3. The flag Member State shall suspend temporarily the fishing licence of a vessel which is subject to temporary immobilisation decided by that Member State and which has had its fishing authorisation suspended in accordance with Article ***45 paragraph 1 d)*** of Regulation (EC) No 1005/2008.	3. The flag Member State shall suspend temporarily the fishing licence of a vessel which is subject to temporary immobilisation decided by that Member State and which has had its fishing authorisation suspended in accordance with Article ***45(4)*** of Regulation (EC) No 1005/2008.

Amendment 17

Proposal for a regulation
Article 6 – paragraph 4

4. The flag Member State shall withdraw permanently the fishing licence-of a vessel which is the subject of a capacity adjustment measure referred to in Article 11(3) of Regulation (EC) No 2371/2002 or which has had its fishing authorisation withdrawn in accordance with ***article 45 (1) (d)*** of Regulation (EC) No 1005/2008.	4. The flag Member State shall withdraw permanently the fishing licence-of a vessel which is the subject of a capacity adjustment measure referred to in Article 11(3) of Regulation (EC) No 2371/2002 or which has had its fishing authorisation withdrawn in accordance with ***Article 45 (4)*** of Regulation (EC) No 1005/2008.

Amendment 18

Proposal for a regulation
Article 7 – paragraph 1 – point f

f) fishing activities with bottom gears in ***areas*** not under the responsibility of a Regional Fisheries Management Organisation;	f) fishing activities with bottom gears in ***international waters*** not under the responsibility of a Regional Fisheries Management Organisation; ***a list shall be drawn up of the gears referred to in this provision;***

Amendment 19

Proposal for a regulation
Article 9 – paragraph 2

2. A fishing vessel exceeding 10 meters length overall shall have installed on board a fully functioning device which allows that vessel to be automatically located and identified through the Vessel Monitoring System by transmitting position data at regular intervals. It shall also allow the Fisheries Monitoring Centre of the flag Member State to poll the fishing vessel. For vessels exceeding 10 meters length and up to 15 meters length overall this paragraph shall apply as from ***1 January 2012.***	2. A fishing vessel exceeding 10 meters length overall shall have installed on board a fully functioning device which allows that vessel to be automatically located and identified through the Vessel Monitoring System by transmitting position data at regular intervals. It shall also allow the Fisheries Monitoring Centre of the flag Member State to poll the fishing vessel. For vessels exceeding 10 meters length and up to 15 meters length overall this paragraph shall apply as from ***1 July 2013***.

Amendment 20

Proposal for a regulation
Article 9 – paragraph 2 a (new)

	2a. Financial assistance for the installation of Vessel Monitoring System devices shall be eligible for funding under Article 8(a) of Regulation (EC) No 861/2006. Co-financing from the Community budget shall be at the rate of 80 %.

TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 21

Proposal for a regulation
Article 9 – paragraph 6 – point a

a) operate exclusively within the territorial seas of the flag Member State ***or***	a) operate exclusively within the territorial seas of the flag Member State ***and***

Amendment 22

Proposal for a regulation
Article 11 – paragraph 2

2. The Commission may require a Member State to use a Vessel Detection System for a given fishery and at a given time.	2. The Commission***, after providing documentary justification by submitting evidence of failure to comply with control measures or scientific reports,*** may require a Member State to use a Vessel Detection System for a given fishery and at a given time.

Amendment 23

Proposal for a regulation
Article 14 – paragraph 3

3. The permitted margin of tolerance in estimates recorded in the logbook of the quantities in kilograms of fish retained on board shall be ***5*** %.	3. The permitted margin of tolerance in estimates recorded in the logbook of the quantities in kilograms of fish retained on board shall be ***10*** %.

Amendment 24

Proposal for a regulation
Article 15 – paragraph 1 a (new)

	1a. Financial assistance for the installation of electronic logbooks shall be eligible for funding under Article 8(a) of Regulation (EC) No 861/2006. Co-financing from the Community budget shall be at the rate of 80 %.

Amendment 25

Proposal for a regulation
Article 15 – paragraph 2

2. Paragraph 1 shall apply to Community fishing vessels exceeding 15 meters length and up to 24 meters length overall as from 1 July 2011, and to Community fishing vessels exceeding 10 meters length and up to 15 meters length overall as from ***1 January 2012***. Community vessels up to 15 meters length overall may be exempted from paragraph 1 if they:	2. Paragraph 1 shall apply to Community fishing vessels exceeding 15 meters length and up to 24 meters length overall as from 1 July 2011, and to Community fishing vessels exceeding 10 meters length and up to 15 meters length overall as from ***1 July 2013***. Community vessels up to 15 meters length overall may be exempted from paragraph 1 if they:

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT
a) operate exclusively within the territorial seas of the flag Member State, ***or***	a) operate exclusively within the territorial seas of the flag Member State, ***and***
b) never spend more than 24 hours at sea taken from the time of departure to the return to port.	b) never spend more than 24 hours at sea taken from the time of departure to the return to port.

Amendment 26

Proposal for a regulation
Article 17 – paragraph 1 – introductory part

1. Without prejudice to specific provisions contained in multiannual plans, masters of Community fishing vessels or their representatives shall notify the competent authorities of the Member State whose port or landing facilities they wish to use at least 4 hours before the estimated time of arrival at the port, unless the competent authorities have given permission for an earlier entry, of the following information:	1. Without prejudice to specific provisions contained in multiannual plans, masters of Community fishing vessels or their representatives ***having species on board which are subject to catch or effort limits*** shall notify the competent authorities of the Member State whose port or landing facilities they wish to use at least 4 hours before the estimated time of arrival at the port, unless the competent authorities have given permission for an earlier entry, of the following information:

Amendment 27

Proposal for a regulation
Article 17 – paragraph 1 – point d

d) dates of the fishing trip and the areas in which the catches were taken;	d) dates of the fishing trip and the areas in which the catches were taken; ***the area shall be to the same level of detail as under Article 14(1);***

Amendment 28

Proposal for a regulation
Article 17 – paragraph 1 – point f

f) the quantities of each species retained on board***, including zero catches returns***;	f) the quantities of each species retained on board;

Amendment 29

Proposal for a regulation
Article 17 – paragraph 4

4. The Commission, ***in accordance with the procedure referred to in Article 111,*** may ***exempt*** certain categories of fishing vessels ***from the obligation set out in paragraph 1 for a limited period, which may be renewed, or make provision for*** another notification period taking into account, inter alia, the type of fishery products, the distance between the fishing grounds, landing places and ports where the vessels in question are registered.	4. The ***Council, on a proposal from the*** Commission***,*** may ***set, for*** certain categories of fishing vessels, another notification period ***for the obligation laid down in paragraph 1*** taking into account, inter alia, the type of fishery products, the distance between the fishing grounds, landing places and ports where the vessels in question are registered.

Amendment 30

Proposal for a regulation
Article 17 – paragraph 4 a (new)

	4a. The competent authorities of the Member State whose port or landing facilities the master of a fishing vessel wishes to use, having made a request to do so at least four hours prior to the estimated time of arrival at the port shall, within two hours of receiving the request, give permission accordingly.

TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 31

Proposal for a regulation
Article 19 – paragraph 3

3. The transhipment declaration shall indicate the quantity of fishery products by species that has been transhipped, the date and place of each catch, the names of the vessels involved and the ports of transhipment and destination. Masters of both the vessels involved shall be held responsible for the accuracy of such declarations.	3. The transhipment declaration shall indicate the quantity of fishery products by species that has been transhipped, the date and place of each catch, the names of the vessels involved and the ports of transhipment and destination. Masters of both the vessels involved shall be held responsible for the accuracy of such declarations. ***The area shall be to the same level of detail as under Article 14(1).***

Amendment 32

Proposal for a regulation
Article 19 – paragraph 4

4. The Commission, in accordance with the procedure referred to in Article 111, may exempt certain categories of fishing vessels from the obligation laid down in paragraph 1 for a limited and renewable period, or make provision for another notification period taking into account, inter alia, the type of fishery products and the distance between the fishing grounds, landing places and ports where the vessels in question are registered.	***deleted***

Amendment 33

Proposal for a regulation
Article 20 – paragraph 4

4. When giving the authorisation to land, the competent authorities shall assign a unique landing number (ULN) to the landing and inform the master of the vessel thereof. If the landing is interrupted, permission shall be required before the landing recommences.	***deleted***

Amendment 34

Proposal for a regulation
Article 21 – paragraph 2

2. Without prejudice to specific provisions contained in multiannual plans, the master or his representative of a Community fishing vessel exceeding 10 meters length overall shall transmit landing declaration data by electronic means to the competent authorities of the flag Member State within ***2 hours*** after completion of the landing.	2. Without prejudice to specific provisions contained in multiannual plans, the master or his representative of a Community fishing vessel exceeding 10 meters length overall shall transmit landing declaration data by electronic means to the competent authorities of the flag Member State within ***6 hours*** after completion of the landing.

Amendment 35

Proposal for a regulation
Article 21 – paragraph 4

4. Paragraph 2 shall apply to Community fishing vessels exceeding 15 meters length and up to 24 meters length overall as from 1 July 2011, and to Community fishing vessels exceeding 10 meters length and up to 15 meters length overall as from ***1 January 2012***. Community vessels up to 15 meters length overall may be exempted from the application of paragraph 2 if they:	4. Paragraph 2 shall apply to Community fishing vessels exceeding 15 meters length and up to 24 meters length overall as from 1 July 2011, and to Community fishing vessels exceeding 10 meters length and up to 15 meters length overall as from ***1 July 2013***. Community vessels up to 15 meters length overall may be exempted from the application of paragraph 2 if they:

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT
a) operate exclusively within the territorial seas of the flag Member State, ***or***	a) operate exclusively within the territorial seas of the flag Member State, ***and***
b) never spend more than 24 hours at sea taken from the time of departure to the return to port.	b) never spend more than 24 hours at sea taken from the time of departure to the return to port.

Amendment 36

Proposal for a regulation
Article 21 – paragraph 5

5. For vessels exempted from the requirement set out in paragraph 2, the master, or his representative, shall record upon landing and submit as soon as possible and not later than 24 hours after landing, a landing declaration to the competent authorities of the Member State where the landing has taken place.	5. For vessels exempted from the requirement set out in paragraph 2, the master, or his representative, shall record upon landing and submit as soon as possible and not later than 24 hours after landing, a landing declaration to the competent authorities of the Member State where the landing has taken place***, which shall forward it without delay to the flag Member State***.

Amendment 37

Proposal for a regulation
Article 23 – paragraph 1

1. Each Member State shall record all relevant data on fishing opportunities as referred to in this Chapter, expressed both in terms of catches and fishing effort, and shall keep the originals of that data for a period of three years or longer in accordance with national rules.	1. Each Member State shall record all relevant data on fishing opportunities as referred to in this Chapter, expressed both in terms of catches***, discards*** and fishing effort, and shall keep the originals of that data for a period of three years or longer in accordance with national rules. ***The data in electronic format shall be kept for a minimum of ten years.***

Amendment 38

Proposal for a regulation
Article 23 – paragraph 3

3. All catches of a stock or a group of stocks subject to quota made by Community fishing vessels shall be charged against the quota applicable to the flag Member State for the stock or group of stocks in question, irrespective of the place of landing.	3. All catches ***and discards*** of a stock or a group of stocks subject to quota made by Community fishing vessels shall be charged against the quota applicable to the flag Member State for the stock or group of stocks in question, irrespective of the place of landing.

Amendment 39

Proposal for a regulation
Article 26 – paragraph 3

3. The decision referred to in paragraph 2 shall be made public by the Member State concerned and immediately communicated to the Commission ***and*** other Member States. It shall be published in the *Official Journal of the European Union* (C series). As from the date that the decision has been made public by the Member State concerned, Member States ***shall ensure*** that no retention on board, landings, cagings or transhipments of the relevant fish by vessels flying the flag of the Member State concerned take place in their waters and on their territory.	3. The decision referred to in paragraph 2 shall be made public by the Member State concerned and immediately communicated to the Commission***, which shall inform the*** other Member States. It shall be published in the *Official Journal of the European Union* (C series). As from the date that the decision has been made public by the Member State concerned, Member States ***shall verify, through the corresponding documentation,*** that no retention on board, landings, cagings or transhipments of the relevant fish ***caught, after the date of closure,*** by vessels flying the flag of the Member State concerned take place in their waters and on their territory.

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 40

Proposal for a regulation
Article 28 – paragraph 3

3. These deductions and the consequent allocations shall be made taking into account as a matter of priority the species and zones for which the fishing opportunities were fixed. They may be made during the year in which the prejudice occurred or in the succeeding year ***or years***.	3. These deductions and the consequent allocations shall be made taking into account as a matter of priority the species and zones for which the fishing opportunities were fixed. They may be made during the year in which the prejudice occurred or in the succeeding year.

Amendment 41

Proposal for a regulation
Article 28 a (new)

	Article 28a
	Transfer of unused quotas
	1. If all or part of the quotas for a Member State will not be used during the year in which they were granted, these quotas may be used, that same year, by other Member States. The Commission shall first of all inform the Member States concerned, asking them to confirm that they are not going to use these fishing opportunities. Following such confirmation, the Commission shall assess all the unused fishing opportunities and inform the Member States thereof, before taking the decision on their reallocation, in close cooperation with the Member States concerned.
	2. The transmission of applications in accordance with this Article shall in no way affect the allocation of fishing opportunities or their exchange among Member States, in accordance with Article 20 of Regulation (EC) No 2371/2002.
	3. Detailed rules for the application of this Article, and in particular those referring to the conditions for the use or transfer of quotas, shall be adopted in accordance with the procedure referred to in Article 111.

Amendment 42

Proposal for a regulation
Article 33

Article 33	***deleted***
Transhipments in port	
Community fishing vessels engaged in fishing activities in the fisheries subject to a multiannual plan shall not transfer their catches on board of any other vessel or vehicle without previously landing their catches in order to be weighed in an auction centre or other body authorised by Member States.	

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 43

Proposal for a regulation
Article 34 – paragraph 4 a (new)

	4a. Member States may designate a port not meeting the criteria set out in paragraph 4 in order to avoid vessels having to sail for a distance greater than 50 miles to port.

Amendment 44

Proposal for a regulation
Article 37 – paragraph 2 – introductory part

2. In fisheries in which it is allowed to have more than ***two types*** of gear on board, the gear which is not used shall be stowed so that it may not readily be used in accordance with the following conditions:	2. In fisheries in which it is allowed to have more than ***one type*** of gear on board, the gear which is not used shall be stowed so that it may not readily be used in accordance with the following conditions:

Amendment 45

Proposal for a regulation
Article 41 – paragraph 1

1. The master of a fishing vessel shall record all discards above 15 kg of live weight equivalents in volume and shall communicate, where possible by electronic means, this information without delay to its competent authorities.	1. The master of a fishing vessel shall record all discards above 15 kg of live weight equivalents in volume ***per haul of gear and per trip,*** and shall communicate, where possible by electronic means, this information without delay to its competent authorities. ***The Commission shall consider a scheme to fit video-monitoring equipment for the purpose of ensuring compliance with this Regulation. Released fish in Recreational Fisheries shall not be considered to constitute discards or mortality for the purposes of this Regulation.***

Amendment 46

Proposal for a regulation
Article 42

For vessels fitted with Vessel Monitoring System, Member States shall verify systematically that the information received at the Fisheries Monitoring Centre corresponds to activities recorded in the logbook by using Vessel Monitoring System data and where available to the data from observers. Such cross-checks shall be recorded in computer-readable format and kept for a period of ***three*** years.	For vessels fitted with Vessel Monitoring System, Member States shall verify systematically that the information received at the Fisheries Monitoring Centre corresponds to activities recorded in the logbook by using Vessel Monitoring System data and where available to the data from observers. Such cross-checks shall be recorded in computer-readable format and kept for a period of ***ten*** years.

Amendment 47

Proposal for a regulation
Chapter IV – section 4

Section 4 ***Real time closure of fisheries***	***The whole of Section 4 is deleted.***

TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 48

Proposal for a regulation
Article 47 – paragraph 1

1. Recreational fisheries ***on*** a vessel in Community waters on a stock subject to a multiannual plan ***shall be subject to an authorisation for that vessel issued*** by the ***flag*** Member State.	1. Recreational ***Fisheries conducted from*** a vessel in Community ***marine*** waters on a stock subject to a multiannual ***recovery*** plan ***may be evaluated by the*** Member State ***in whose waters they are conducted. Fishing with rod and reel from shore shall not be included.***

Amendment 49

Proposal for a regulation
Article 47 – paragraph 2

2. ***Catches in recreational fisheries on stocks subject to a multiannual plan shall be registered by the flag*** Member State.	2. ***Within two years of the date of entry into force of this Regulation, Member States may estimate the impact of Recreational Fisheries conducted in their waters and submit the information to the Commission. The relevant*** Member State ***and the Commission, on the basis of the advice of the Scientific, Technical and Economic Committee for Fisheries, shall decide which Recreational Fisheries are having a significant impact on stocks. For those fisheries having a significant impact, the Member State concerned, in close cooperation with the Commission, shall develop a monitoring system that is able to accurately estimate the total recreational catches from each stock. Recreational Fisheries shall comply with the objectives of the Common Fisheries Policy.***

Amendment 50

Proposal for a regulation
Article 47 – paragraph 3

3. ***Catches of species subject to a multiannual plan by*** recreational ***fisheries*** shall be counted against the relevant ***quotas*** of the flag Member State. ***The Member States concerned shall*** establish a share from such ***quotas*** to be used exclusively for the purpose of recreational ***fisheries***.	3. ***Where a Recreational Fishery is found to have a significant impact***, ***catches*** shall be counted against the relevant ***quota*** of the flag Member State. ***The Member State may*** establish a share from such ***quota*** to be used exclusively for the purpose of ***that Recreational Fishery***.

Amendment 51

Proposal for a regulation
Article 48 – paragraph 3

3. ***Where a minimum size has been fixed for a given species, operators*** responsible for selling, stocking or transporting must be able to prove the geographical origin of the products expressed ***by reference to a sub-area and division or sub-division, or where applicable statistical rectangle in which catch limits apply pursuant to Community legislation.***	3. ***Operators*** responsible for selling, stocking or transporting must be able to prove the geographical origin of the products expressed ***to the same level of detail as under Article 14(1).***

Amendment 52

Proposal for a regulation
Article 50 – paragraph 2 – point d a (new)

	da) the area of capture, to the same level of detail as under Article 14(1);

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT
Amendment 53 **Proposal for a regulation** **Article 54 – paragraph 1**	
1. Registered buyers, registered auctions or other bodies or persons which are responsible for the first marketing of fishery products landed in a Member State, shall submit electronically, within ***2 hours*** after the first sale, a sales note to the competent authorities of the Member State in whose territory the first sale takes place. If this Member State is not the flag State of the vessel that landed the fish, it shall ensure that a copy of the sales note is submitted to the competent authorities of the flag Member State upon receipt of the relevant information. The accuracy of the sales note shall be the responsibility of these buyers, auctions, bodies or persons.	1. Registered buyers, registered auctions or other bodies or persons which are responsible for the first marketing of fishery products landed in a Member State, shall submit electronically, within ***6 hours*** after the first sale, a sales note to the competent authorities of the Member State in whose territory the first sale takes place. If this Member State is not the flag State of the vessel that landed the fish, it shall ensure that a copy of the sales note is submitted ***without delay*** to the competent authorities of the flag Member State upon receipt of the relevant information. The accuracy of the sales note shall be the responsibility of these buyers, auctions, bodies or persons.
Amendment 54 **Proposal for a regulation** **Article 55 – point e**	
e) the relevant name or FAO alpha code of each species and its geographical origin expressed ***by reference to a sub-area and division or sub-division in which catch limits apply pursuant to Community legislation;***	e) the relevant name or FAO alpha code of each species and its geographical origin expressed ***to the same level of detail as under Article 14(1)***;
Amendment 55 **Proposal for a regulation** **Article 55 – point e a (new)**	
	ea) the quantity of each species in kilograms live weight;
Amendment 56 **Proposal for a regulation** **Article 63 – paragraph 6**	
6. All costs arising from the operation of observers under this Article shall be borne by the flag Member States. ***Member States may charge those costs, in part or in full, to the operators of the vessels flying their flags involved in the relevant fishery.***	6. All costs arising from the operation of observers under this Article shall be borne by the flag Member States ***and the Commission***.
Amendment 57 **Proposal for a regulation** **Article 69**	
Member States shall set up and keep up to date an electronic database where they upload all inspection and surveillance reports drawn up by their officials.	Member States shall set up and keep up to date an electronic database where they upload all inspection and surveillance reports***, including observer reports,*** drawn up by their officials.

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 58

Proposal for a regulation
Article 78

The inspecting Member State may also transfer prosecution of the infringement to the competent authorities of the flag Member State ***or the Member State of registration*** or the Member State of which the offender is a citizen so long as this is done, with the agreement of the latter Member State and on condition that the transfer is more likely to achieve the result referred to in Article 81(2).	The inspecting Member State may also transfer prosecution of the infringement to the competent authorities of the flag Member State or the Member State of which the offender is a citizen so long as this is done, with the agreement of the latter Member State and on condition that the transfer is more likely to achieve the result referred to in Article 81(2).

Amendment 59

Proposal for a regulation
Article 82 – paragraph 1

1. Member States shall ensure that a natural person having committed or a legal person held liable for a serious infringement is ***punishable*** by effective, proportionate and dissuasive administrative sanctions, in accordance with the range of sanctions and measures provided for in Chapter IX of Regulation (EC) No 1005/2008.	1. Member States shall ensure that a natural person having committed or a legal person held liable for a serious infringement is***, in principle, punished*** by effective, proportionate and dissuasive administrative sanctions, in accordance with the range of sanctions and measures provided for in Chapter IX of Regulation (EC) No 1005/2008.

Amendment 61

Proposal for a regulation
Article 82 – paragraph 6 a (new)

	6a. Member States shall ensure that operators found liable for a serious infringement of the rules of the Common Fisheries Policy are precluded from benefiting from the European Fisheries Fund, Fisheries Partnership Agreements and other public aid. The sanctions provided for in this Chapter shall be accompanied by other sanctions or measures, in particular the repayment of public assistance or subsidies received by IUU vessels during the financing period concerned.

Amendment 62

Proposal for a regulation
Article 84 – paragraph 1

1. Member States shall apply a penalty point system on the basis of which the holder of a fishing authorisation receives appropriate penalty points as a result of an infringement against the rules of the Common Fisheries Policy.	1. Member States shall apply a penalty point system on the basis of which the holder of a fishing authorisation receives appropriate penalty points as a result of ***a serious*** infringement against the rules of the Common Fisheries Policy.

Amendment 63

Proposal for a regulation
Article 84 – paragraph 2

2. When a natural person has committed or a legal person is held liable for ***an*** infringement of the rules of the Common Fisheries Policy, the appropriate number of points shall be assigned to the holder of the fishing authorisation as a result of the infringement. The holder of the fishing authorisation shall be entitled to review proceedings in accordance with national law.	2. When a natural person has committed or a legal person is held liable for ***a serious*** infringement of the rules of the Common Fisheries Policy, the appropriate number of points shall be assigned to the holder of the fishing authorisation as a result of the ***serious*** infringement. The holder of the fishing authorisation shall be entitled to review proceedings in accordance with national law.

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 64

Proposal for a regulation
Article 84 – paragraph 2 a (new)

	2a. As long as a holder of a fishing authorisation has been assigned penalty points, that holder shall be precluded from receiving Community subsidies and national public aid during that time.

Amendment 65

Proposal for a regulation
Article 84 – paragraph 4

4. In the event of a serious infringement, the penalty points assigned shall be at least, equal to half of the points referred to in paragraph 3.	***deleted***

Amendment 66

Proposal for a regulation
Article 84 – paragraph 5

5. If the holder of a suspended fishing authorisation does not commit, within three years from the date of the last infringement, another infringement, all points on the fishing authorisation shall be deleted.	5. If the holder of a suspended fishing authorisation does not commit, within three years from the date of the last ***serious*** infringement, another ***serious*** infringement, all points on the fishing authorisation shall be deleted.

Amendment 67

Proposal for a regulation
Article 84 – paragraph 7

7. Member States shall also establish a penalty point system under which the master ***and the officers*** of a vessel receive appropriate penalty points as a result of an infringement against the rules of the Common Fisheries Policy committed by them.	7. Member States shall also establish a penalty point system under which the master ***or the captain*** of a vessel receive appropriate penalty points as a result of an infringement against the rules of the Common Fisheries Policy committed by them.

Amendment 68

Proposal for a regulation
Article 85 – paragraph 1

1. Member States shall register in a national data base all infringements against rules of the Common Fisheries Policy, committed by vessels flying their flag or by their nationals, including the sanctions they incurred and the number of points assigned. Infringements of vessels flying their flag or by their nationals prosecuted in other Member States shall also be entered by Member States in their national data base on infringements, upon notification of the definitive ruling by the Member State having jurisdiction, pursuant to Article 82.	1. Member States shall register in a national data base all infringements against rules of the Common Fisheries Policy, committed by ***those responsible for*** vessels flying their flag or by their nationals, including the sanctions they incurred and the number of points assigned. Infringements of vessels flying their flag or by their nationals prosecuted in other Member States shall also be entered by Member States in their national data base on infringements, upon notification of the definitive ruling by the Member State having jurisdiction, pursuant to Article 82.

TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 69

Proposal for a regulation
Article 85 – paragraph 3

3. Where a Member State requests information from another Member State in relation to the prosecution of an infringement, that other Member State shall provide the relevant information on the fishing vessels and persons in question.	3. Where a Member State requests information from another Member State in relation to the prosecution of an infringement, that other Member State shall provide the relevant information on the fishing vessels and persons in question ***without delay***.

Amendment 70

Proposal for a regulation
Article 85 – paragraph 3 a (new)

	3a. Information on infringements committed and for which a conviction has been obtained by the fishing vessels and individuals in question will be available to the public via the public part of the website referred in Article 107.

Amendment 71

Proposal for a regulation
Article 91 – paragraph 4

4. Officials of the Member State concerned shall ***be given the possibility to*** be present during the inspection and shall, at the request of the Commission officials, assist them to carry out their duties.	4. Officials of the Member State concerned shall ***always*** be present during the inspection and shall, at the request of the Commission officials, assist them to carry out their duties.

Amendment 72

Proposal for a regulation
Article 95 – paragraph 1 – point a

a) the provisions of this Regulation have not been complied with as a result of an action or omission directly attributable to the Member State concerned, and that	***deleted***

Amendment 73

Proposal for a regulation
Article 96 – paragraph 1

1. Where a Member State does not respect its obligations for the implementation of a multiannual plan, and where the Commission has ***reasons to believe*** that the non respect of those obligations is particularly detrimental to the stock concerned, the Commission may provisionally close the fisheries affected by those shortcomings.	1. Where a Member State does not respect its obligations for the implementation of a multiannual plan, and where the Commission has ***evidence*** that the non respect of those obligations is particularly detrimental to the stock concerned, the Commission may provisionally close the fisheries affected by those shortcomings.

Amendment 74

Proposal for a regulation
Article 97 – paragraph 1 – introductory part

1. When the Commission has established that a Member State has overfished its quota, allocation or share of a stock or a group of stocks available to it the Commission shall operate deductions in the following year ***or years*** from the annual quota, allocation or share of the Member State which has overfished by applying a multiplying factor according to the following table:	1. When the Commission has established that a Member State has overfished its quota, allocation or share of a stock or a group of stocks available to it the Commission shall operate deductions in the following year from the annual quota, allocation or share of the Member State which has overfished by applying a multiplying factor according to the following table:

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 75

Proposal for a regulation
Article 97 – paragraph 1 – table

Extent of overfishing relative to the permitted landings	Multiplying factor
Up to 5%	Overfishing **** 1.0***
Over 5 % up to 10 %	Overfishing **** 1.1***
Over 10 % up to 20 %	Overfishing **** 1.2***
Over 20 % up to 40 %	Overfishing **** 1.4***
Over 40 % up to 50 %	Overfishing **** 1.8***
Any further overfishing greater than ***50 %***	Overfishing **** 2.0***

Extent of overfishing relative to the permitted landings	Multiplying factor
The first 10 %	***Deduction*** = Overfishing × ***1,00***
The next 10 % up to 20 % in total	***Deduction*** = Overfishing × ***1,10***
The next 20 % up to 40 % in total	***Deduction*** = Overfishing × ***1,20***
Any further overfishing greater than ***40 %***	***Deduction*** = Overfishing × ***1,40***

Note: The percentage intervals shall be replaced by the intervals set in Article 5(2) of Council Regulation (EC) No 847/96 of 6 May 1996 introducing additional conditions for year-to-year management of TACs and quotas.

Amendment 76

Proposal for a regulation
Article 97 – paragraph 1 a (new)

	1a. If the quota, allocation or share of a stock or a group of stocks allocated to a Member State does not exceed 100 tonnes, the reduction for exceeding the quota shall be applied in a linear manner and not by percentage, except for species covered by a multiannual plan to which paragraph 1 shall apply.

Amendment 77

Proposal for a regulation
Article 97 – paragraph 2

2. If a Member State has repeatedly overfished its quota, allocation or share of *the* stock or group of stocks ***over the previous two years, if the overfishing is*** particularly ***detrimental to the stock concerned or if the stock is*** subject to a multiannual plan, the multiplying factor referred to in paragraph 1 shall be doubled.	2. If***, over the previous two years,*** a Member State has repeatedly overfished its quota, allocation or share of *a* stock or group of stocks ***that is*** particularly ***sensitive to over-fishing or subject*** to a multiannual plan, the multiplying factor referred to in paragraph 1 shall be doubled.

Amendment 78

Proposal for a regulation
Article 97 – paragraph 3

3. If a Member State takes catches from a stock subject to a quota for which it has no quota, allocation or share of a stock or a group of stocks available to it, the Commission may deduct in the following year or years quotas for other stocks or groups of stocks available to that Member State in accordance with paragraph 1.	***deleted***

TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 79

Proposal for a regulation
Article 98

Article 98	***deleted***
Deduction of quotas for failure to comply with the objectives of the Common Fisheries Policy	
1. Where there is evidence that rules on conservation, control, inspection or enforcement under the Common Fisheries Policy are not being complied with by a Member State and that this may lead to a serious threat to the conservation of living aquatic resources or the effective operation of the Community control and enforcement system, the Commission may operate deductions from the annual quotas, allocations or shares of a stock or group of stocks available to that Member State.	
2. The Commission shall inform in writing the Member State concerned of its findings and set a deadline of no more than 10 working days for the Member State to demonstrate that the fisheries can be safely exploited.	
3. The measures referred to in paragraph 1 shall only apply if the Member State fails to respond to this request of the Commission within the deadline given in paragraph 2 or if the response is considered unsatisfactory or is clearly indicative of the fact that the necessary measures have not been implemented.	
4. Detailed rules for the application of this article, and in particular for determining the quantities concerned, shall be adopted in accordance with the procedure referred to in Article 111.	

Amendment 80

Proposal for a regulation
Article 100

Article 100	***deleted***
Refusal of quota exchanges	
The Commission may exclude the possibility to exchange quotas according to Article 20 paragraph 5 of Regulation (EC) No 2371/2002:	
a) for quotas for which there was an overfishing of more than 10 % of the quotas available to one of the Member State concerned in one of the immediately preceding two years or	
b) if the Member State concerned does not take appropriate measures to ensure a proper management of the fishing opportunities of the stocks concerned, in particular by not operating a computerized validation system as referred to in Article 102 or by insufficiently operating the systems providing the data for this validation system.	

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT
Amendment 81	
Proposal for a regulation **Article 101 – paragraph 1**	
1. If there is evidence, including based on the results of the sampling carried out by the Commission, that fishing activities and/or measures adopted by a Member State or Member States undermine the Common Fisheries Policy or threaten the marine eco-system and this requires immediate action, the Commission, at the substantiated request of any Member State or on its own initiative, may decide on emergency measures which shall last not more than ***one year***. The Commission may take a new decision to extend the emergency measures for no more than six months.	1. If there is evidence, including based on the results of the sampling carried out by the Commission, that fishing activities and/or measures adopted by a Member State or Member States undermine the Common Fisheries Policy or threaten the marine eco-system and this requires immediate action, the Commission, at the substantiated request of any Member State or on its own initiative, may decide on emergency measures which shall last not more than ***six months***. The Commission may take a new decision to extend the emergency measures for no more than six months.
Amendment 82	
Proposal for a regulation **Article 101 – paragraph 2 – point g**	
g) prohibition for fishing vessels flying the flag of the Member State concerned to fish in waters under the jurisdiction of other Member States;	g) prohibition for fishing vessels flying the flag of the Member State concerned to fish in waters under the jurisdiction of other Member States ***or of a third country, or on the high seas***;
Amendment 83	
Proposal for a regulation **Article 101 – paragraph 3**	
3. A Member State shall communicate the request referred to in paragraph 1 simultaneously to the Commission and to the Member States concerned. The other Member States may submit their written comments to the Commission within ***five*** working days of receipt of the request. The Commission shall take a decision within 15 working days of receipt of the request.	3. A Member State shall communicate the request referred to in paragraph 1 simultaneously to the Commission and to the Member States concerned. The other Member States may submit their written comments to the Commission within ***15*** working days of receipt of the request. The Commission shall take a decision within 15 working days of receipt of the request.
Amendment 84	
Proposal for a regulation **Article 101 – paragraph 5**	
5. The Member States concerned may refer the Commission decision to the Council within ***10*** working days of receipt of the notification.	5. The Member States concerned may refer the Commission decision to the Council within ***15*** working days of receipt of the notification.

TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 85

Proposal for a regulation
Article 104 – paragraph 2

2. ***The names of natural persons*** shall not be communicated to the Commission or to another Member State except in the case where such communication is expressly provided for in this Regulation or if it is necessary for the purposes of preventing or pursuing infringements or the verification of apparent infringements. The data referred to in paragraph 1 shall not be transmitted unless they are aggregated with other data in a form, which does not permit the direct or indirect identification of natural persons.	2. ***Personal data*** shall not be communicated to the Commission or to another Member State except in the case where such communication is expressly provided for in this Regulation or if it is necessary for the purposes of preventing or pursuing infringements or the verification of apparent infringements. The data referred to in paragraph 1 shall not be transmitted unless they are aggregated with other data in a form, which does not permit the direct or indirect identification of natural persons.

Amendment 86

Proposal for a regulation
Article 105 – paragraph 1

1. Member States and the Commission shall take all necessary steps to ensure that the data collected and received within the framework of this Regulation shall be treated in a confidential manner and shall respect all rules on professional and commercial secrecy of data.	1. Member States and the Commission shall take all necessary steps to ensure that the data collected and received within the framework of this Regulation shall be treated in a confidential manner and shall respect all rules on professional and commercial secrecy of data***, consistent with all applicable provisions laid down in Regulation (EC) No 45/2001 and Directive 95/46/EC***.

Amendment 87

Proposal for a regulation
Article 105 – paragraph 4

4. Data communicated in the framework of this Regulation to persons working for competent authorities, courts, other public authorities and the Commission or the body designated by it, the disclosure of which would undermine:	***deleted***
a) the protection of the privacy and the integrity of the individual, in accordance with Community legislation regarding the protection of personal data,	
b) the commercial interests of a natural or legal person, including intellectual property,	
c) court proceedings and legal advice or	
d) the scope of inspections or investigations,	
shall be permitted only if it is necessary to bring about the cessation or prohibition of an infringement of the rules of the Common Fisheries Policy and the authority communicating the information consents to its disclosure.	

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT
Amendment 88	
Proposal for a regulation **Article 108 – paragraph 3**	
3. For the secure part of its website, each Member State shall provide remote access to the Commission and the body designated by it. The Member State shall grant access to Commission officials based on electronic certificates generated by the Commission or the body designated by it.	3. For the secure part of its website, each Member State shall provide remote access to the Commission and the body designated by it. The Member State shall grant access to Commission officials based on electronic certificates generated by the Commission or the body designated by it. ***Third countries shall be provided with the information included in paragraphs 1(b), 1(d) and 1(f) for Community vessels that apply for licences to fish in their waters. The information shall be provided at the request of the third country concerned and without delay, on condition that the third country guarantees in writing the confidentiality of the information. The transfer of personal data under this provision shall be deemed to comply with Article 26(1)(d) of Directive 95/46/EC.***
Amendment 89	
Proposal for a regulation **Article 112** Regulation (EC) No 768/2005 Article 17a – paragraph 1 – introductory part	
1. Without prejudice to the enforcement powers conferred by the Treaty on the Commission, the Agency shall assist the Commission for the purpose of evaluating and controlling the application of the rules of the Common Fisheries Policy by the Member States. The Agency may undertake inspections of public authorities and private operators in the Member States. For this purpose it may, in compliance with the legal provisions of the Member State concerned,	1. Without prejudice to the enforcement powers conferred by the Treaty on the Commission, the Agency shall assist the Commission for the purpose of evaluating and controlling the application of the rules of the Common Fisheries Policy by the Member States. The Agency may***, using its own resources,*** undertake inspections of public authorities and private operators in the Member States. For this purpose it may, in compliance with the legal provisions of the Member State concerned,

Wednesday 22 April 2009

Conservation of fisheries resources through technical measures *

P6_TA(2009)0256

European Parliament legislative resolution of 22 April 2009 on the proposal for a Council regulation concerning the conservation of fisheries resources through technical measures (COM(2008)0324 – C6-0282/2008 – 2008/0112(CNS))

(2010/C 184 E/61)

(Consultation procedure)

The European Parliament,

— having regard to the Commission proposal to the Council (COM(2008)0324),

— having regard to Article 37 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0282/2008),

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on Fisheries (A6-0206/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;

5. Instructs its President to forward its position to the Council and the Commission.

TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 1

Proposal for a regulation
Recital 7 a (new)

	(7a) Given that both the homogeneous rules which are generally applicable in all areas and those applicable specifically on a regional basis are of similar importance for fisheries management, they should be adopted by the Council.

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 2

Proposal for a regulation
Recital 12 a (new)

	(12a) As an additional clarification, in order to prevent future disputes due to the misinterpretation of rules, and in line with the approach recently introduced, the Commission should supplement the provisions of this Regulation by publishing an annex containing illustrations to explain the characteristics of fishing gear.

Amendment 3

Proposal for a regulation
Recital 13 a (new)

	(13a) It is necessary to prevent situations that cause distortions of competition or confusion among operators and consumers and that could lead to failure to comply with minimum sizes, and therefore the rules should also apply to products derived from imports. To this end, the Commission should submit, as soon as possible, a proposal to amend Council Regulation (EC) No 104/2000 [1], in order to harmonise biological sizes with marketing sizes.
	[1] Council Regulation (EC) No 104/2000 of 17 December 1999 on the common organisation of the markets in fishery and aquaculture products (OJ L 17 21.1.2000, p. 22).

Amendment 4

Proposal for a regulation
Recital 15

(15) ***A vessel must immediately move to another area when maximum by-catches are exceeded.***	(15) ***In order to ensure adequate protection for marine resources, protect breeding areas or sensitive areas and reduce discards, restrictions should be placed on fishing activity in certain areas and periods and with certain gear and attachments.***

Amendment 5

Proposal for a regulation
Recital 17

(17) Where conservation is seriously threatened, the Commission ***and*** Member States should be authorised to take appropriate provisional measures to be implemented in real time.	(17) Where conservation is seriously threatened, the Commission***, at its own initiative or at the substantiated request of the*** Member States, should be authorised to take appropriate provisional measures to be implemented in real time.

Amendment 6

Proposal for a regulation
Recital 19

(19) The measures necessary for the implementation of this Regulation***, including specific provisions for each area covered by a Regional Advisory Council,*** should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of the implementing powers conferred on the Commission.	(19) 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 the implementing powers conferred on the Commission.

TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 7

Proposal for a regulation
Article 2 a (new)

	Article 2a
	Regional regulations
	The Council, on a proposal from the Commission, shall, in accordance with the procedure laid down in Article 37 of the Treaty, adopt the measures applicable specifically in the various regions corresponding to the various Regional Advisory Councils (RACs).

Amendment 8

Proposal for a regulation
Article 3 - point b

(b) 'beam trawl' means a bottom trawl in which the horizontal opening of the net is provided by a beam;	(b) 'beam trawl' means a bottom trawl in which the horizontal opening of the net is provided by a beam***, where a beam is a round pipe made out of steel supported by two slides; the construction is towed over the seabed;***

Amendment 9

Proposal for a regulation
Article 3 - point e

(e) 'codend' means the last ***8 m*** of the towed gear measured from the codline when the mesh size is equal or more than 80 mm and means the last 20 m of the towed gear measured from the codline when mesh size is less than 80 mm;	(e) 'codend' means the last ***6 m*** of the towed gear measured from the codline when the mesh size is equal or more than 80 mm and means the last 20 m of the towed gear measured from the codline when mesh size is less than 80 mm;

Amendment 10

Proposal for a regulation
Article 4 - paragraph 3 a (new)

	3a. In the case of small pelagics (sardine, anchovy, horse mackerel and mackerel) the possibility for 10 % of catches to be made up of undersized fish shall be maintained.

Amendment 11

Proposal for a regulation
Article 5

One net rule	***Combinations of nets***
It shall be prohibited to carry on board, during any fishing voyage, any combination of nets of more than one range of mesh size.	***1. The Council, on a proposal from the Commission, shall regulate cases where vessels may carry on board one or more than one*** combination of nets of more than one range of mesh size ***during the same fishing voyage***.
	2. These criteria shall take account of:
	(a) the distance between the home port of the vessel concerned and the fishing area;
	(b) the degree to which the fishery being practised is a multi-species fishery and the economic importance of secondary species by comparison with the target species;

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT
	(c) whether any of the fishing operations during a particular voyage are carried out using a net with a mesh size larger than those provided for in this Regulation.
	3. The content of this Article shall be regulated within the framework laid down in Article 2a of this Regulation.

Amendment 12

Proposal for a regulation
Article 6 - paragraph 2 - point a

(a) attach, ***when fishing with towed gear with a mesh size less than 80 mm,*** to the outside of the codend a strengthening bag. The mesh size of the strengthening bag shall be at least twice as large as that of the codend;	(a) attach, to the outside of the cod end a strengthening bag. The mesh size of the strengthening bag shall be at least twice as large as that of the cod end;

Amendment 13

Proposal for a regulation
Article 6 - paragraph 2 - point b a (new)

	(ba) use strengthening bags on the outside of the codend on vessels licensed for trawl nets with a mesh size equal to or larger than 60 mm in ICES zones VIII, IX and X;

Amendment 14

Proposal for a regulation
Article 6 - paragraph 3 - point d

(d) any towed gear with a mesh size equal to or larger than 80 mm having more than 100 open meshes and less than 40 open meshes in any circumference of the codend, excluding the joining or the selvedges;	***deleted***

Amendment 15

Proposal for a regulation
Article 6 - paragraph 4

4. By way of derogation from paragraphs (2)(a), (3)(b), (3)(d) and (3)(e), the mesh size of 80 mm shall be replaced by 60 mm when fishing in ICES zones VIII, IX and X.	***deleted***

Amendment 16

Proposal for a regulation
Article 8 - paragraph 2

2. The immersion time of gillnets and trammel nets shall not exceed ***48*** hours.	2. The immersion time of gillnets and trammel nets shall not exceed ***24*** hours.

Amendment 17

Proposal for a regulation
Article 8 - paragraph 3

3. Where fishing is conducted using gillnets and trammel nets, the use of more than ***50*** km of nets shall be prohibited.	3. Where fishing is conducted using gillnets and trammel nets, the use of more than ***40*** km of nets shall be prohibited.

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 18

Proposal for a regulation
Article 9 - paragraph 1

1. By way of derogation from Article 8, it shall be permitted to deploy gillnets with a mesh size equal to or greater than 120 mm and less than 150 mm north of 48°N or with a mesh size equal to or greater than 100 mm and less than 130 mm south of 48°N, in waters of less than ***600 metres*** charted depth, provided that they are no more than 100 meshes deep, have a hanging ratio of not less than 0.5, and are rigged with floats or equivalent floatation. The nets shall each be of a maximum of 5 nautical miles in length, and the total length of all nets deployed at any one time shall not exceed 25km per vessel. The maximum immersion time shall be 24 hours.	1. By way of derogation from Article 8, it shall be permitted to deploy gillnets with a mesh size equal to or greater than 120 mm and less than 150 mm north of 48°N or with a mesh size equal to or greater than 100 mm and less than 130 mm south of 48°N, in waters of less than ***400 metres*** charted depth, provided that they are no more than 100 meshes deep, have a hanging ratio of not less than 0.5, and are rigged with floats or equivalent floatation. The nets shall each be of a maximum of 5 nautical miles in length, and the total length of all nets deployed at any one time shall not exceed 25km per vessel. The maximum immersion time shall be 24 hours ***unless weather conditions make hauling of the nets impossible.***

Amendment 19

Proposal for a regulation
Article 9 - paragraph 2

2. By way of derogation from Article 8, it shall be permitted to deploy gillnets with a mesh size equal to or greater than 250 mm, in waters of less than 600 metres charted depth, provided that they are no more than 15 meshes deep, have a hanging ratio of not less than 0.33, and are not rigged with floats or other means of floatation. The nets shall each be of a maximum of 10km in length. The total length of all nets deployed at any one time shall not exceed ***100*** km per vessel. The maximum immersion time shall be 72 hours.	2. By way of derogation from Article 8, it shall be permitted to deploy gillnets with a mesh size equal to or greater than 250 mm, in waters of less than 600 metres charted depth, provided that they are no more than 15 meshes deep, have a hanging ratio of not less than 0.33, and are not rigged with floats or other means of floatation. The nets shall each be of a maximum of 10km in length. The total length of all nets deployed at any one time shall not exceed ***60*** km per vessel. The maximum immersion time shall be 72 hours.

Amendment 20

Proposal for a regulation
Article 10 - paragraph 1

1. Where the ***quantity*** of undersized fish caught exceeds 10 % of the total ***quantity*** of the catches in any one haul, the vessel shall move away to a distance of at least five nautical miles from any position of the previous haul before continuing fishing.	1. Where the ***weight*** of undersized fish caught***, in accordance with Annex I,*** exceeds 10 % of the total ***weight*** of the catches in any one haul, ***and this situation recurs in a series of three consecutive hauls,*** the vessel shall move away to a distance of at least five nautical miles from any position of the previous haul before continuing fishing. ***By way of derogation from the previous subparagraph, for local and inshore fisheries with particular characteristics owing to both the depth and composition of the seabed and distance from the coast, and subject to a scientific report substantiating those characteristics, the obligation to move away may be less than five nautical miles provided that it is guaranteed that fishing activity is not carried out on a concentration of juveniles.***

Amendment 21

Proposal for a regulation
Article 10 - paragraph 2

2. ***If the minimum and/or maximum percentages of target species, excluding undersized fish of the target species, allowed to be caught with the mesh size range admissible for that***	2. ***The Council, on a proposal from the Commission, shall determine the corresponding closed areas and periods within the framework of Article 2a of this Regulation.***

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species and retained on board, in any one haul have not been in agreement with the percentages laid down in detailed rules adopted in accordance with Article 22, the vessel must immediately move a minimum of 10 nautical miles from any position of the previous haul and throughout the next haul keep a minimum distance of 10 nautical miles from any position of the previous haul.	

Amendment 22

Proposal for a regulation
Article 12

The catching, retention on board, the transhipment, storage, landing, sale, display or offer for sale of marine organisms caught using methods incorporating the use of explosives, poisonous or stupefying substances, electric current or any kind of projectile shall be prohibited.	The catching, retention on board, the transhipment, storage, landing, sale, display or offer for sale of marine organisms caught using methods incorporating the use of explosives, poisonous or stupefying substances, electric current or any kind of projectile shall be prohibited***, except pulse trawl fishing***.

Amendment 23

Proposal for a regulation
Article 16 - paragraph 1

1. Where the conservation of certain species or fishing grounds is seriously threatened, including where a high congestion of juvenile fish is detected, and where any delay would result in damage which would be difficult to repair, a Member State may take appropriate conservation measures in respect of the waters under its sovereignty or jurisdiction. The Member State concerned shall ensure that such measures do not discriminate against fishing vessels from other Member States.	1. Where the conservation of certain species or fishing grounds is seriously threatened, including where a high congestion of juvenile fish is detected, and where any delay would result in damage which would be difficult to repair, a Member State may take appropriate conservation measures in respect of the waters under its sovereignty or jurisdiction. The Member State concerned shall ensure that such measures do not discriminate against fishing vessels from other Member States. ***Before such measures are implemented, the appropriate Regional Advisory Councils and the Commission shall be consulted.***

Amendment 24

Proposal for a regulation
Article 18 - paragraph 2

2. Where any delay in reducing or eliminating discards would result in damage which would be difficult to repair, a Member State may take appropriate non-discriminatory conservation measures in respect of the waters under ***its*** sovereignty or jurisdiction ***in accordance with Article 16***.	2. Where any delay in reducing or eliminating discards would result in damage which would be difficult to repair, ***the Commission, at its own initiative or at the substantiated request of*** a Member State, may take appropriate non-discriminatory conservation measures in respect of the waters under ***the*** sovereignty or jurisdiction ***of the Member State concerned***. ***Before such measures are taken, the Commission and the relevant Regional Advisory Council shall be consulted.***

Amendment 25

Proposal for a regulation
Article 21 a (new)

	Article 21a
	Future regulation
	Rules governing the regulation of the following elements of the technical measures shall be adopted by a Council regulation:

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT
	(a) the minimum and maximum percentages of the target species among the living aquatic resources retained on board;
	(b) the mesh size ranges admissible for each target species;
	(c) provisions for the reduction or elimination of discards and the improvement of the selectivity of fishing gear;
	(d) measures concerning the restriction of fishing activities in specific periods and/or specific areas referred to in Article 2 on the basis of the best scientific information available in order to protect marine habitats in those areas.

Amendment 26

Proposal for a regulation
Article 22

Detailed rules for the implementation of this Regulation shall be adopted in accordance with the procedure referred to in Article 30(2) of Regulation No 2371/2002. ***These rules shall lie down in particular:***	***Other technical measures to implement this Regulation to protect marine habitats or fisheries resources shall be adopted in accordance*** with the procedure referred to in Article 30(2) of Regulation *(EC)* No 2371/2002.
(a) the minimum and maximum percentages of the target species among the living aquatic resources retained on board;	
(b) the mesh size ranges admissible for each target species;	
(c) provisions for the reduction or elimination of discards and the improvement of the selectivity of fishing gear;	
(d) measures concerning the restriction of fishing activities in specific periods and/or specific areas referred to in Article 2 on the basis of the best scientific information available in order to protect marine habitats in those areas;	
(e) other technical measures to protect marine habitats or fishery resources.	

Amendment 27

Proposal for a regulation

Article 24 - paragraph 2 a (new)

	2a. The entry into force of this Regulation shall provide for a period for the adjustment of fleets and the adoption of supplementary rules.

Thursday 23 April 2009

Common rules for access to the international market for coach and bus services (recast) ***II

P6_TA(2009)0275

European Parliament legislative resolution of 23 April 2009 on the common position adopted by the Council with a view to the adoption of a regulation of the European Parliament and of the Council on common rules for access to the international market for coach and bus services (recast) (11786/1/2008 – C6-0016/2009 – 2007/0097(COD))

(2010/C 184 E/62)

(Codecision procedure: second reading)

The European Parliament,

— having regard to the Council common position (11786/1/2008 – C6-0016/2009) ([1]),

— having regard to its position at first reading ([2]) on the Commission proposal to Parliament and the Council (COM(2007)0264),

— having regard to Article 251(2) of the EC Treaty,

— having regard to Rule 62 of its Rules of Procedure,

— having regard to the recommendation for second reading of the Committee on Transport and Tourism (A6-0215/2009),

1. Approves the common position as amended;

2. Instructs its President to forward its position to the Council and Commission.

([1]) OJ C 62 E, 17.3.2009, p. 25.
([2]) Texts adopted, 5.6.2008, P6_TA(2008)0249.

P6_TC2-COD(2007)0097

Position of the European Parliament adopted at second reading on 23 April 2009 with a view to the adoption of Regulation (EC) No …/2009 of the European Parliament and of the Council on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006 (recast)

(As an agreement was reached between Parliament and Council, Parliament's position at second reading corresponds to the final legislative act, Regulation (EC) No.…)

Thursday 23 April 2009

Common rules concerning the conditions to be complied with to pursue the occupation of road transport operator ***II

P6_TA(2009)0276

European Parliament legislative resolution of 23 April 2009 on the Council common position for adopting a regulation of the European Parliament and of the Council establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (11783/1/2008 – C6-0015/2009 – 2007/0098(COD))

(2010/C 184 E/63)

(Codecision procedure: second reading)

The European Parliament,

— having regard to the Council common position (11783/1/2008 – C6-0015/2009) [1],

— having regard to its position at first reading [2] on the Commission proposal to Parliament and the Council (COM(2007)0263),

— having regard to Article 251(2) of the EC Treaty,

— having regard to Rule 62 of its Rules of Procedure,

— having regard to the recommendation for second reading of the Committee on Transport and Tourism (A6-0210/2009),

1. Approves the common position as amended;

2. Instructs its President to forward its position to the Council and Commission.

[1] OJ C 62 E, 17.3.2009, p. 1.
[2] Texts adopted, 21.5.2008, P6_TA(2008)0217.

P6_TC2-COD(2007)0098

Position of the European Parliament adopted at second reading on 23 April 2009 with a view to the adoption of Regulation (EC) No …/2009 of the European Parliament and of the Council establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC

(As an agreement was reached between Parliament and Council, Parliament's position at second reading corresponds to the final legislative act, Regulation (EC) No …)

Thursday 23 April 2009

Common rules for access to the international road haulage market (recast) ***II

P6_TA(2009)0277

European Parliament legislative resolution of 23 April 2009 on the common position adopted by the Council with a view to the adoption of a regulation of the European Parliament and of the Council on common rules for access to the international road haulage market (recast) (11788/1/2008 – C6-0014/2009 – 2007/0099(COD))

(2010/C 184 E/64)

(Codecision procedure: second reading)

The European Parliament,

— having regard to the Council common position (11788/1/2008 – C6-0014/2009) ([1]),

— having regard to its position at first reading ([2]) on the Commission proposal to Parliament and the Council (COM(2007)0265),

— having regard to Article 251(2) of the EC Treaty,

— having regard to Rule 62 of its Rules of Procedure,

— having regard to the recommendation for second reading of the Committee on Transport and Tourism (A6-0211/2009),

1. Approves the common position as amended;

2. Instructs its President to forward its position to the Council and Commission.

([1]) OJ C 62 E, 17.3.2009, p. 46.
([2]) Texts adopted, 21.5.2008, P6_TA(2008)0218.

P6_TC2-COD(2007)0099

Position of the European Parliament adopted at second reading on 23 April 2009 with a view to the adoption of Regulation (EC) No …/2009 of the European Parliament and of the Council on common rules for access to the international road haulage market (recast)

(As an agreement was reached between Parliament and Council, Parliament's position at second reading corresponds to the final legislative act, Regulation (EC) No …)

Thursday 23 April 2009

Energy performance of buildings (recast) ***I

P6_TA(2009)0278

European Parliament legislative resolution of 23 April 2009 on the proposal for a directive of the European Parliament and of the Council on the energy performance of buildings (recast) (COM(2008)0780 – C6-0413/2008 – 2008/0223(COD))

(2010/C 184 E/65)

(Codecision procedure – recast)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0780),

— having regard to Article 251(2) and Article 175(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0413/2008),

— having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts [1],

— having regard to the letter of 3 February 2009 from the Committee on Legal Affairs to the Committee on Industry, Research and Energy in accordance with Rule 80a(3) of its Rules of Procedure,

— having regard to Rules 80a and 51 of its Rules of Procedure,

— having regard to the report of the Committee on Industry, Research and Energy and the opinion of the Committee on Legal Affairs (A6-0254/2009),

A. whereas, according to the Consultative Working Party of the Legal Services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance,

1. Approves the Commission proposal as adapted to the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission and as amended below;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and Commission.

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[1] OJ C 77, 28.3.2002, p. 1.

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P6_TC1-COD(2008)0223

Position of the European Parliament adopted at first reading on 23 April 2009 with a view to the adoption of Directive *2009/…/EC* of the European Parliament and of the Council on the energy performance of buildings (recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ([1]),

Having regard to the opinion of the Committee of the Regions ([2]),

Acting in accordance with the procedure laid down in Article 251 of the Treaty ([3]),

Whereas:

(1) Directive 2002/91/EC the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings ([4]) has been amended ([5]). Since further substantive amendments are to be made, it should be recast in the interests of clarity.

(2) *Natural* resources, to the prudent and rational utilisation of which Article 174 of the Treaty refers, include oil products, natural gas and solid fuels, which are essential sources of energy, but also the leading sources of carbon dioxide emissions.

(3) ***As buildings account for 40 % of total energy consumption in the EU, reduction*** of energy consumption ***and the use of energy from renewable sources*** in the buildings sector *constitute* important ‖ measures needed to reduce ***the EU's energy dependency and*** greenhouse gas emissions. ***Together with an increased use of energy from renewable sources, measures taken to reduce energy consumption in the EU would allow the EU to*** comply with the Kyoto Protocol to the United Nations Framework Convention on Climate Change ***(UNFCCC), its long term commitment to maintain the global temperature rise below 2 ºC, and its commitment to reduce by 2020, overall greenhouse gas emissions by at least 20 % below 1990 levels, and by 30 % in the event of an international agreement.*** Reduced energy consumption ***and an increased use of energy from renewable sources*** also has an important part to play in promoting security of energy supply, technological *developments* and *in creating* opportunities for employment and regional development, *in particular* in rural areas.

(4) Management of energy demand is an important tool enabling the Community to influence the global energy market and hence the security of energy supply in the medium and long term.

([1]) *Opinion of 13 May 2009 (not yet published in the OJ).*
([2]) *Opinion of 21 April 2009 (not yet published in the OJ).*
([3]) *Position of the European Parliament of 23 April 2009.*
([4]) OJ L 1, 4.1.2003, p. 65.
([5]) See *Annex VI*, Part A.

(5) The European Council of March 2007 emphasised the need to increase energy efficiency in the Community so as to achieve the objective of reducing by 20 % the Community's energy consumption by 2020 and called for a thorough and rapid implementation of the priorities established in the *Commission* Communication *entitled* 'Action Plan for Energy Efficiency: Realising the Potential'. *That* Action Plan identified the significant potential for cost-effective energy savings in the buildings sector. The European Parliament, in its resolution of 31 January 2008, ‖ called for *the* strengthening *of* provisions of Directive 2002/91/EC, ***and has called at various times, on the latest occasion in its resolution of 3 February 2009 on the Second Strategic Energy Review [1], for the 20 % energy efficiency target in 2020 to be made binding. Moreover, Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 [2], sets national binding targets for CO_2 reduction for which energy efficiency in the building sector will be crucial, and Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources [3] provides for the promotion of energy efficiency in the context of a binding target for energy from renewable sources accounting for 20 % of total EU energy consumption by 2020.***

(6) The European Council of March 2007 reaffirmed the Community's commitment to the Community-wide development of energy from renewable sources by endorsing a mandatory target of a 20 % share of energy from renewable sources by 2020. Directive 2009/28/EC establishes a common framework for the promotion of energy from renewable sources. It underlines the need to incorporate a factor for energy from renewable sources in meeting minimum energy performance requirements under Directive 2002/91/EC in order to speed up, for use in buildings, the introduction of minimum levels of energy from renewable sources.

(7) The residential and tertiary sector, the major part of which is buildings, accounts for approximately 40 % of final energy consumption in the Community and is expanding, a trend which is bound to increase its energy consumption and hence also its carbon dioxide emissions.

(8) It is necessary to lay down more concrete actions with a view to achieving the great unrealised potential for energy savings in buildings and reducing the large differences between Member States' results in this sector.

(9) *Measures* to improve *further* the energy performance of buildings should take into account climatic and local conditions as well as indoor climate environment and cost-effectiveness. These measures should not affect other requirements concerning buildings such as accessibility, safety and the intended use of the building.

(10) The energy performance of buildings should be calculated on the basis of a ***common*** methodology***, with objective variables that take into account regional climatic differences***, and that includes, in addition to thermal characteristics, other factors that play an increasingly important role such as heating, ***cooling and ventilation systems, heat recovery, zone control,*** application of renewable energy sources, passive heating and cooling elements, shading, indoor air-quality, adequate natural light ***measurements***, ***insulation and lighting systems, monitoring and control systems*** and design of the building. The methodology for calculating energy performance should ‖ be based *not only* on the season *in which* heating is required, but should cover the annual energy performance of a building. ***That methodology should take into account existing European standards.***

(11) Member States should set minimum requirements for the energy performance of buildings. *Those* requirements should be set with a view to achieving the cost-optimal balance between the investments involved and the energy costs saved throughout the life-cycle of the building. Provision should be made for the possibility *for* Member States ‖ regularly *to* review ‖ minimum energy performance requirements for buildings *in the light of* technical progress.

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[1] ***Texts adopted P6_TA(2009)0038.***
[2] ***OJ L 140, 5.6.2009, p. 136.***
[3] ***OJ L 140, 5.6.2009, p. 16.***

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(12) This Directive is without prejudice to Articles 87 and 88 of the Treaty. *The term* 'incentive' used in this Directive should not *therefore* be interpreted as including *State* aid.

(13) The Commission should lay down a ***common*** methodology for calculating cost-optimal levels of minimum energy performance requirements. ***This methodology should be consistent with that used in Community legislation applicable to performance requirements for the products, components and technical building systems which comprise the building.*** Member States should use this ***common*** methodology to ***adopt*** the minimum energy performance requirements. The results of this ***calculation*** and the data used to reach these results should be regularly reported to the Commission. These reports should enable the Commission to assess *and report on* the progress of Member States in reaching cost-optimal levels of minimum energy performance requirements ‖. Member States should ***apply*** this methodology when they review ***and set*** their minimum energy performance requirements.

(14) Buildings have ***a major*** impact on long-term energy consumption***. Given the long renovation cycle for existing buildings,*** new ***and existing*** buildings ***that are subject to major renovation,*** should therefore meet minimum energy performance requirements adapted to the local climate. As the application of alternative energy supply systems is ‖ not *generally* explored to its full potential, alternative energy supply systems should be considered ***for new and existing buildings***, regardless of ***their*** size, ***pursuant to the principle of first ensuring that energy needs for heating and cooling are reduced to a minimum cost-optimal level***.

(15) Major renovations of existing buildings, regardless of their size, provide an opportunity to take cost-effective measures to enhance *the* energy performance ***of the whole building***. ***Setting requirements for cost-effective measures will ensure that no barriers are created which might discourage major renovations from being undertaken.***

(16) Studies show that the construction sector suffers from inefficiency, which leads to end-user costs that are significantly higher than the optimal costs. Calculations show that the costs for construction could be reduced by as much as 30-35 % through reducing waste in most construction processes and for most products. The inefficiency in the construction sector poses a major threat to the aim and purpose of this Directive, since unjustified high costs for construction and renovation reduce the cost-effectiveness and thereby the energy-effectiveness of the sector. In order to guarantee the proper functioning of this Directive, the Commission should evaluate the functioning of the construction market and report its conclusions and suggestions to the European Parliament and the Council. Member States should strive to ensure transparent pricing in the field of construction and renovation, and in addition take appropriate measures to remove, for new entrants and in particular SMEs, barriers to entry to the market, and to relevant facilities and infrastructure.

(17) In order to improve the energy efficiency of domestic appliances and of heating and cooling, information technology should be developed and brought into use; the objective being 'intelligent buildings'.

(18) Measures are needed to increase the number of buildings which not only fulfil current minimum energy performance requirements, but ***ensure at least a cost-optimal level of energy performance***. For this purpose Member States should draw up national plans for increasing the number of ***net zero energy*** buildings ▌ and regularly report *such plans* to the Commission.

(19) *In order to* limit the reporting burden on ‖ Member States it should be possible to integrate the reports required by this Directive *into* the Energy Efficiency Action Plans referred to in Article 14(2) of Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services ‖ ([1]). The public sector in each Member State should lead the way in the field of energy performance of buildings, and therefore the national plans should set more ambitious targets for the buildings occupied by public authorities.

([1]) OJ L 114, 27.4.2006, p. 64.

(20) Member States should be encouraged to take measures additional to those laid down in this Directive to promote the increased energy efficiency of buildings. Such measures may include financial and fiscal incentives to businesses, homeowners and tenants including reduced rates of VAT for renovation services.

(21) Member States should avoid distortive energy price regulation for consumers which does not provide incentives to make energy savings.

(22) The prospective buyer and tenant of *a* building or parts thereof should, *through the energy performance certificate,* be given correct information about the energy performance of the building and practical advice *on* improving *such performance,*. ***Owners and tenants of commercial buildings should also be obliged to exchange information regarding actual energy consumption, in order to ensure that all the data is available to make informed decisions about necessary improvements.*** The certificate should also provide information about the actual impact of heating and cooling on the energy needs of the building, on its primary energy consumption and on carbon dioxide emissions. ***Building owners should have the opportunity to request certification or an updated certificate at any time, not just at the time at which buildings are rented, sold or refurbished.***

(23) Public authorities should lead by example and should implement the recommendations included in the energy performance certificate within its validity period. Member States should include within their national plans measures to support public authorities to become early adopters of energy efficiency improvements and to implement the recommendations included in the energy performance certificate within its validity period. In developing national plans, Member States should consult the representatives of local and regional authorities.

(24) In accordance with the requirements on the installation of smart meters laid down in Directive 2006/32/EC, owners and tenants should be supplied with accurate real-time information on energy consumption in the buildings that they occupy.

(25) Buildings occupied by public authorities and buildings frequently visited by the public ***should*** set an example by showing environmental and energy considerations being taken into account and therefore those buildings should be subject to energy certification on a regular basis. The dissemination to the public of information on energy performance should be enhanced by clearly displaying these energy certificates. ***If Member States opt to include energy usage as part of energy certification requirements, a site-based approach should be possible, whereby a collection of buildings in the same vicinity and occupied by the same organisation share energy meters.***

(26) Ensuring mutual recognition of energy performance certificates issued by other Member States is likely to be important for the development of a cross-border market for financial and other services supporting energy efficiency. In order to facilitate this, the Commission should establish common minimum standards for the content and presentation of certificates, and for the accreditation of experts. An energy performance certificate should be available in both the language of the owner and of the tenant, so that recommendations are easily understood.

(27) Recent years have seen a rise in the number of air-conditioning systems in European countries. This creates considerable problems at peak load times, increasing the cost of electricity and disrupting the energy balance in ***all Member States. Priority should be given to strategies which enhance the thermic performance of buildings during the summer period. To that end, there should be further development of passive cooling techniques, primarily those that improve indoor climatic conditions and the micro-climate around buildings***.

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(28) Regular inspection of heating and air-conditioning systems by qualified personnel contributes to maintaining their correct adjustment in accordance with the product specification and in that way ensures optimal performance from an environmental, safety and energy point of view. An independent assessment of the entire heating and air-conditioning system should occur at regular intervals during *its* life-cycle ‖, *in particular* before ‖ replacement or retrofitting. ***In order to minimise the administrative burden on building owners and tenants, Member States should ensure that any certification for energy performance includes an inspection of heating and air conditioning systems; and that, as far as possible, inspections of heating and air conditioning systems are carried out at the same time.***

(29) A common approach to *the* energy performance certification of buildings and to the inspection of heating and air-conditioning systems, carried out by qualified and accredited experts, whose independence is to be guaranteed on the basis of objective criteria, will contribute to a level playing field as regards efforts made in Member States to energy saving in the buildings sector and will introduce transparency for prospective owners or users with regard to the energy performance in the Community property market. In order to guarantee the quality of energy performance certificates and of the inspection of heating and air-conditioning systems throughout the Community, an independent control mechanism should be established in each Member State.

(30) Local and regional authorities are critical for the successful implementation of this Directive. Their representatives should be consulted on every aspect of its implementation at national or regional level. Local planners and building inspectors should receive adequate guidance and resources to carry out the necessary tasks.

(31) In so far as the access or pursuit of the profession of installer is a regulated profession, the preconditions for the recognition of professional qualifications are laid down in Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications [1]. This Directive therefore applies without prejudice to Directive 2005/36/EC. While Directive 2005/36/EC lays down requirements for the mutual recognition of professional qualifications, including for architects, there is a further need to ensure that architects and planners properly consider high-efficiency technologies in their plans and designs. Member States should therefore provide clear guidance. This should be done without prejudice to the provisions of Directive 2005/36/EC and in particular Articles 46 and 49 thereof.

(32) The measures necessary for the implementation of this Directive 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 [2].

(33) *In particular, the Commission should be empowered* to adapt *to technical progress* certain parts of the general framework set out in Annex I, ‖ to establish a ***common methodology*** for calculating cost-optimal levels of minimum energy performance requirements and to establish ***a definition for net zero energy buildings taking into consideration normal regional weather conditions and predicted changes in such weather conditions over time.*** Since those measures are of general scope and are designed to amend non-essential elements of this Directive, *inter alia by supplementing it with new non-essential elements*, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(34) As lighting applications currently account for approximately 14 % of the energy used in the EU and as modern state of the art lighting systems can save more than 80 % of energy while maintaining lighting conditions in accordance with European standards, (which is an underexploited contribution to enabling the European Union to achieve the EU 2020 targets), the Commission should take appropriate steps towards the adoption of a Lighting Design Directive in order to complement the measures and aims laid down in this Directive. Higher energy efficiency arising from better lighting design and the use of energy efficient light sources in accordance with the provisions of Directive 2009/…/EC of the European Parliament and of the Council of … [establishing a framework for the setting of eco-design requirements for energy-related products (recast)] [3] is considered to make a significant contribution to better energy performance in buildings.

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[1] ***OJ L 255, 30.9.2005, p. 22.***
[2] OJ L 184, 17.7.1999, p. 23.
[3] ***OJ L …***

(35) Since the objective of enhancing the energy performance of buildings cannot be sufficiently achieved by the Member States due to the complexity of the buildings sector, and the inability of the national housing markets ‖ adequately *to* address the challenges of energy ***performance***, and can by the reason of the scale and the effects of the action 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 principles of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(36) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.

(37) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directive set out in *Annex VI, Part B*,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive promotes the improvement of the energy performance of buildings within the Community, taking into account outdoor climatic and local conditions, as well as indoor climate requirements and ***cost-optimal levels of energy performance.***

This Directive lays down requirements as regards:

(a) ▌a methodology *for* calculation of the integrated energy performance of buildings and parts thereof, ***of building components and of technical building systems***;

(b) the application of minimum requirements on the energy performance of new buildings and parts thereof;

(c) the application of minimum requirements on the energy performance of existing buildings ▌that are subject to major renovation ***and of the building components and technical building systems where they are replaced or retrofitted;***

(d) national plans ***and targets*** for increasing the number of ***net zero energy*** buildings; ▌

(e) energy certification of buildings or parts thereof;

(f) regular inspection of heating and air-conditioning systems in buildings;

(g) independent control systems for energy performance certificates and inspection reports;

(h) education, training and mutual recognition requirements between Member States for certifiers of the energy performance of buildings and for inspectors of heating and air-conditioning systems;

(i) national plans for eliminating obstacles under building, tenancy and heritage protection laws and for creating financial incentives.

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Article 2

Definitions

For the purpose of this Directive, the following definitions shall apply:

(1) 'building' means a roofed construction having walls, for which energy is used to condition the indoor climate;

(2) 'new building' means a building for which the relevant authorisation for construction is obtained after the entry into force of this Directive;

(3) 'parts of a building' means apartments or units designated for separate use in building blocks;

(4) 'net zero energy building' means a building where, as a result of the very high level of energy efficiency of the building, the overall annual primary energy consumption is equal to or less than the energy production from renewable energy sources on site;

(5) 'technical building system' means technical equipment for heating, cooling, ventilation, hot water, lighting and electricity production**, measurement, monitoring and control systems,** or for a combination *thereof*;

(6) 'energy performance of a building' means the calculated or measured amount of energy needed to meet the ***primary*** energy demand associated with a typical use of the building, ***expressed in kWh/m2 per year, and*** which includes inter alia energy used for heating, hot water, cooling, ventilation***, and built-in lighting, taking into account passive solar gains, sun shading*** and natural lighting;

(7) 'primary energy': means ***energy from*** renewable and non-renewable ***sources*** which has not undergone any conversion or transformation process;

(8) 'energy from renewable sources' means energy from renewable non-fossil sources: wind, solar, geothermal, aerothermal, hydrothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases;

(9) 'building envelope' means ***the integrated*** elements of a building which separate its interior from the outdoor environment; ▌

(10) 'building component' means an individual part of a building which influences the energy performance of the building and is not covered by the technical building system, including windows, shading, exterior doors, walls, foundation, basement slab, ceiling, roof, and insulation systems;

(11) 'major renovation': means the renovation of a building where

(a) the total cost of the renovation relat*ing* to the building envelope or the technical building systems is higher than ***20*** % of the value of the building, ***in which case the value shall be based on current construction costs in the Member State concerned,*** excluding the value of the land upon which the building is situated, or

(b) more than 25 % of the surface of the building envelope ***which has a direct effect on the energy performance of the building,*** undergoes renovation;

(12) 'European standard': means a standard adopted by the European Committee for Standardisation, the European Committee for Electrotechnical Standardisation or the European Telecommunications Standards Institute and made available for public use;

(13) 'energy performance certificate' means a certificate recognised by the Member State or a legal person designated by it, which indicates the energy performance of a building or parts thereof, calculated according to a methodology adopted in accordance with Article 3;

(14) 'cogeneration' means simultaneous generation in one process of thermal energy and electrical and/or mechanical energy;

(15) 'cost-optimal level' means the level ***where the cost-benefit analysis calculated over*** the life-cycle of a building ***is positive***, taking into account **at least the net present value of** investment ▌and operating costs (including energy costs), ***maintenance***, earnings from energy produced ▌and, *where applicable,* disposal costs ‖ ;

(16) 'air-conditioning system' means a combination of the components required to provide a form of indoor air treatment, including ventilation;

(17) 'boiler' means the combined boiler body-burner unit, designed to transmit to a fluid the heat released from burning;

(18) 'effective rated output' means the maximum calorific output, expressed in kW, specified and guaranteed by the manufacturer as being deliverable during continuous operation while complying with the useful efficiency indicated by the manufacturer;

(19) 'heat pump' means ***a machine***, a device or installation that ***transfers*** heat ▌from ***natural surroundings such as*** air, water or ***ground to buildings or industrial applications by reversing the natural flow of heat such that it flows from a lower to a higher temperature. The amount of ambient energy captured by heat pumps to be considered renewable energy for the purposes of this Directive shall be that established under Directive 2009/28/EC***;

(20) 'energy poverty' means the situation where a household has to spend more than 10 % of its revenue on energy bills in order to heat its home to an acceptable standard based on the levels recommended by the World Health Organisation;

(21) 'lighting system' means the combination of components required to provide a certain light level;

(22) 'district heating or cooling' means the distribution of thermal energy in the form of steam, hot water or chilled liquids, from a central source of production through a network to multiple buildings, for the use of space or process heating or cooling or for water heating;

(23) 'lighting design' means a scheme or drawing detailing the configuration and layout of lighting units including related control equipment.

Article 3

Adoption of a methodology of calculation of the energy performance of buildings

1. The Commission shall, after consulting the relevant stakeholders and in particular representatives from local, regional and national authorities, establish by 31 March 2010 a ***common*** methodology of calculation of the energy performance of buildings, in accordance with the general framework set out in Annex I.

Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(2).

2. Member States shall implement this ***common*** methodology. ▌

3. The energy performance of buildings shall be expressed in a transparent manner and shall include an indicator for primary energy demand.

Article 4

Setting of minimum energy performance requirements

1. Member States shall take the necessary measures to ensure that minimum energy performance requirements for buildings ***and for building components and technical building systems and parts thereof*** are set ***to achieve at least*** cost-optimal levels and are calculated in accordance with the ***common*** methodology referred to in Article 3.

When setting requirements, Member States ***shall consult public authorities and other relevant stakeholders and*** may differentiate between new and existing buildings and between different categories of buildings.

These requirements ***shall be consistent with other applicable Community legislation and*** shall take account of general indoor climate ***and indoor and outdoor lighting*** conditions, in order to avoid possible negative effects such as inadequate ventilation ***and inadequate natural lighting***, as well as local conditions and the designated function and the age of the building.

These requirements shall be reviewed at regular intervals which shall not be longer than ***four*** years and shall be updated in order to reflect technical progress in the building sector.

The provisions of this Article shall not prevent Member States from supporting the construction of new buildings, major renovations, or the upgrading of components and technical systems which go beyond the minimum requirements laid down in this Directive.

2. Member States may decide not to set or apply the requirements referred to in paragraph 1 for the following categories of buildings:

(a) buildings officially protected as part of a designated environment or because of their special architectural or historic merit, ***in so far as*** compliance with ***a specific*** minimum energy performance ***requirement*** would unacceptably alter their character or appearance;

(b) buildings used as places of worship and for religious activities;

(c) temporary buildings with a planned time of use of ***less than 18 months***, industrial sites, workshops and non-residential agricultural buildings with low energy demand and non-residential agricultural buildings which are in use by a sector covered by a national sectoral agreement on energy performance;

▌

(d) stand-alone buildings with a total useful floor area of less than 50 m^2.

3. *From* 30 June ***2012*** Member States shall ***only provide*** incentives for the construction or ***major*** renovation of buildings or parts thereof***, including building components, the results of which*** comply ***at least*** with minimum energy performance requirements achieving the results of the calculation referred to in Article 5(2).

4. ▌Member States ***shall*** review their minimum energy performance requirements set in accordance with paragraph 1 ‖ ***and*** shall ensure that those requirements achieve ***at least*** the results of the calculation referred to in Article 5(2) ***no later than 30 June 2015.***

5. Member States shall provide subsidies and technical advice to historic buildings or centres to undertake specific programmes for adaptation to energy efficiency.

6. Systems for the production of energy and insulation measures located in historic centres shall be subject to visual impact assessments.

Article 5

Calculation of cost-optimal levels of minimum energy performance requirements

1. The Commission shall***, after consulting the relevant stakeholders and in particular representatives from local, regional and national authorities and on the basis of the principles set out in Annex IV,*** establish by 31 ***March*** 2010 a ***common*** methodology for calculating cost-optimal levels of minimum energy performance requirements for buildings or parts thereof. ***This common*** methodology ***may refer to relevant European standards and*** shall:

— differentiate between new and existing buildings and between different categories of buildings,

— ***reflect the different climatic conditions in different Member States and the likely change in those conditions over the lifetime of the building concerned, and***

— ***set out common assumptions or calculation methods for energy costs.***

The Commission shall review and, if necessary, update the common methodology every five years.

Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the *regulatory* procedure *with scrutiny* referred to in *Article 22(2).*

2. Member States shall calculate cost-optimal levels of minimum energy performance requirements using the ***common*** methodology established in accordance with paragraph 1 and relevant parameters, such as climatic conditions. ▌

Member States shall report to the Commission all input data and assumptions used as *the basis* for these calculations and *the* results *of those calculations.* The report ***shall*** be included in the Energy Efficiency Action Plans referred to in Article 14(2) of Directive 2006/32/EC. Member States shall submit *those reports* to the Commission ‖ every three years. The first report shall be submitted by 30 June 2011 at the latest.

3. The Commission shall publish a report on the progress of the Member States in ***implementing this Article***.

Article 6

New buildings

1. Member States shall take the necessary measures to ensure that new buildings meet the minimum energy performance requirements set in accordance with Article 4 ***and comply with the provisions set out in Article 9.***

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For new buildings, Member States shall ***promote the use of high-efficiency*** alternative systems***. These alternative systems may include but are not limited to:***

(a) decentralised energy supply systems based on energy ***from renewable sources***;

(b) cogeneration;

(c) district or block heating or cooling, if available, ***particularly that based entirely or partially on energy from renewable sources***;

(d) heat pumps***;***

(e) ICT equipment for monitoring and control purposes.

Article 7

Existing buildings

Member States shall take the necessary measures to ensure that when buildings undergo major renovation ***or building components and technical building systems or parts thereof are retrofitted or replaced***, their energy performance is upgraded in order to meet ***at least*** minimum energy performance requirements in so far as this is technically, functionally and economically feasible. Member States shall determine these minimum energy performance requirements in accordance with Article 4 ***and taking into account the provisions of Article 9.*** The requirements ***shall*** be set for ***both*** the renovated systems ***and building*** components ***where they are retrofitted or replaced, and for the renovated building as a whole in the event of major renovation.***

Member States shall encourage, in relation to buildings undergoing major renovation, the following high-efficiency alternative systems being considered and taken into account:

(a) decentralised energy supply systems based on energy from renewable sources;

(b) cogeneration;

(c) district or block heating or cooling, if available, particularly that based entirely or partially on energy from renewable sources;

(d) heat pumps;

(e) ICT equipment for monitoring and control purposes.

Article 8

Technical building systems ***and building components***

1. Member States shall set minimum energy performance requirements in respect ***of building components and*** of technical building systems which are installed ***and brought into operation*** in buildings ***and which are not covered by Directive 2009/…/EC [establishing a framework for the setting of eco-design requirements for energy-related products] and its implementing measures***. Requirements shall be set for new, replacement and *retrofitting* of ***operating equipment,*** technical building systems ***and building components*** and parts thereof ***and shall be applied in so far as they are technically and functionally feasible.***

The requirements shall in particular cover the following components:

(a) boilers, other heat generators ***or heat exchangers*** of heating systems***, including district or block heating and cooling***;

(b) water heaters in hot water systems;

(c) central air conditioning unit or cold generator in air-conditioning systems;

(d) installed lighting;

(e) building components.

2. The minimum energy performance requirements set in accordance with paragraph 1 shall be consistent with ***any*** legislation applicable to the product(s) which compose the systems ***and building components*** and be based on proper installation of the product(s) and appropriate adjustment and control of the technical building system. ***In the case of technical building systems,*** those requirements shall ensure ***that they are properly adjusted when brought into operation,*** that a proper hydraulic balance of hydraulic wet heating systems is achieved and that the appropriate size and type of the product(s) have been used for the installation having regard to the intended use of the technical building system.

3. In accordance with Annex I of Directive 2009/…/EC of the European Parliament and of the Council of … [concerning common rules for the internal market in electricity] ([1]), Member States shall ensure that smart meters are installed in all new buildings and all buildings undergoing major renovation and whenever a meter is replaced, and shall encourage the installation of active control systems such as automation, control and monitoring systems, where appropriate.

Article 9

Net zero energy buildings

1. Member States shall draw up national plans for increasing the number of ***net zero energy*** buildings.

Members States shall ensure that all new buildings are at least net zero energy buildings by 31 December 2018 at the latest.

Member States shall set targets for the minimum percentage ***of buildings which shall be, by 2015 and by 2020 respectively, net zero energy buildings, measured as a percentage*** of the total number of buildings and ***as a percentage*** in relation to the total useful floor area.

Separate targets shall be set for:

(a) new and refurbished residential buildings;

(b) new and refurbished non-residential buildings;

(c) buildings occupied by public authorities.

Member States shall set ***separate*** targets ***for both new and existing buildings*** referred in point (c) ***which apply at least three years before the respective targets set in this Article*** taking into account the leading role which public authorities should play in the field of energy performance of buildings.

([1]) ***OJ L …***

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2. The national plan referred to in paragraph 1 shall be drawn up after consulting all relevant stakeholders, including local and regional authorities, and include inter alia the following elements:

▌

(a) intermediate targets expressed as a percentage ‖ of the total number of buildings and ‖ in relation to the total useful floor area *for* 2015 ***and 2020 respectively***;

(b) details of national requirements concerning minimum levels of energy from renewable sources in new buildings and existing buildings undergoing major renovation, as required under Directive 2009/28/EC and Articles 6 and 7 of this Directive;

(c) ***a summary of all policies and*** information on the measures undertaken for the promotion of those buildings;

(d) national, regional or local programmes to support measures for the promotion of these buildings such as fiscal incentives, financial instruments or reduced VAT.

3. Member States shall communicate the national plans referred to in paragraph 1 to the Commission by 30 June 2011 at the latest and report to the Commission every three years on the progress in implementing their national plans. The national plans and progress reports ***shall*** be included in the Energy Efficiency Action Plans referred to in Article 14(2) of Directive 2006/32/EC.

4. Within two months of the communication of a national plan by a Member State referred to in paragraph 3, the Commission may, taking full account of the principle of subsidiarity, reject that plan, or any aspect thereof, on the basis that it does not respect all of the requirements of this Article. In this case, the Member State concerned shall propose amendments. Within one month of receiving those proposals, the Commission shall accept the amended plan or request further specific amendments. The Commission and the Member State concerned shall take all reasonable steps to reach an agreement on the national plan within five months of the date of the initial communication.

5. The Commission shall***, in accordance with the definition set out in Article 2,*** establish ***a detailed*** common ***definition of net zero energy*** buildings ***by 31 December 2010 at the latest***.

Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the *regulatory* procedure *with scrutiny* referred to in *Article 22(2)*.

6. The Commission shall ***by 30 June 2012 and every three years thereafter*** publish a report on the progress of Member States in increasing the number of ***net zero energy*** buildings. ▌On the basis of this report the Commission shall develop ***an action plan***, and, if necessary, propose measures to increase the number of those buildings.

Article 10

Financial Incentives and Market Barriers

1. Member States shall, by 30 June 2011, draw up national action plans, including proposed measures, for meeting the requirements laid down in this Directive through reducing existing legal and market barriers and developing existing and new financial and fiscal instruments to increase the energy efficiency of new and existing buildings.

These proposed measures shall be sufficient, effective, transparent and non-discriminatory, shall support the execution of the recommendations included in the energy performance certificate, strive to encourage substantial improvements in the energy performance of buildings where an improvement would not otherwise be economically feasible and include measures to support households at risk of energy poverty.

Member States shall compare their financial and fiscal instruments with the instruments listed in Annex V and, without prejudice to national legislation, implement at least two measures from that Annex.

2. Member States shall communicate these national action plans to the Commission by including them in the Energy Efficiency Action Plans referred to in Article 14(2) of Directive 2006/32/EC and shall update them every three years.

3. The Commission shall, by 30 June 2010 at the latest, following an impact assessment, bring forward appropriate legislative proposals to strengthen existing and introduce additional Community financial instruments to support the implementation of this Directive.

These proposals shall consider the following measures:

(a) in the context of the revision of Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund [1] for the next programming period, a significant increase of the maximum amount of the European Regional Development Fund allocation that may be used to support energy efficiency including district heating and cooling and renewable energy investments in housing and an extension of the eligibility of those projects;

(b) the use of other Community funds to support research and development, information campaigns or training related to energy efficiency;

(c) the establishment of an Energy Efficiency Fund, based on contributions from the Community budget, the European Investment Bank and Member States to act as a leverage for increasing private and public investments for projects increasing the energy efficiency of buildings, including renewable energy in buildings or building componentsby 2020. That Fund shall be integrated into the programming of other Community structural assistance. The criteria for its allocation shall be defined according to Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund [2] and it shall be implemented by 2014, at the latest;

(d) reduced VAT for services and products, including renewable energy in buildings or building components, related to energy efficiency.

Article 11

Energy performance certificates

1. Member States shall lay down the necessary measures to establish a system of certification of the energy performance of buildings. The energy performance certificate shall include the energy performance of a building and reference values such as minimum energy performance requirements in order to make it possible for owners or tenants of the building or parts thereof to ▌assess its energy performance ***and to compare it easily with other residential or non-residential buildings. It may for non-residential buildings, where appropriate, also include the actual annual energy consumed, as referred to in Annex I.***

[1] ***OJ L 210, 31.7.2006, p. 1.***
[2] ***OJ L 210, 31.7.2006, p. 25.***

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Where a building is sold or let in advance of construction, the seller shall provide an accurate written assessment of its future energy performance.

2. The certificate shall include recommendations for the ***cost-optimal*** improvement of the energy performance of a building or parts thereof.

The recommendations included in the energy performance certificate shall cover:

(a) measures carried out in connection with a major renovation of the building envelope***, including its insulation systems,*** or technical building system(s);

b) measures for individual parts or elements of a building independent of a major renovation of the building envelope***, including its insulation systems,*** or technical building system(s).

3. The recommendations included in the energy performance certificate shall be technically feasible for the specific building and shall provide transparent information***, including as a minimum a clear indication of the calculated energy saving potential of the measure, the net present value and investment costs for the specific building or building type***. The evaluation of ***the costs*** shall be based on a set of standard conditions, ***which shall include as a minimum*** the assessment of energy savings and underlying energy prices***, financial or fiscal incentives*** and interest rates for investments necessary to implement the recommendations.

4. Member States shall ensure that public authorities and other institutions which provide financing for the purchase or renovation of buildings take the indicated energy performance and the recommendations from energy performance certificates into account in determining the level and conditions of financial incentives, fiscal measures and loans.

5. The energy performance certificate shall provide an indication as to where the owner or tenant can receive more detailed information regarding the recommendations given in the certificate. In addition, it shall contain information on the steps to be taken to implement the recommendations***, including information on available fiscal and financial incentives and financing possibilities***.

6. Public authorities, taking into account the leading role which they should play in the field of energy performance of buildings, shall implement the recommendations included in the energy performance certificate issued for buildings occupied by them within its validity period.

7. Certification for apartments or units designed for separate use in building blocks may be based:

(a) on a common certification of the whole building for blocks with a common heating system or

(b) on the assessment of ***the energy performance of that apartment or unit.***

8. Certification for single-family houses may be based on the assessment of another representative building of similar design and size with a similar actual energy performance quality if this correspondence can be guaranteed by the expert issuing the energy performance certificate.

9. The validity of the energy performance certificate shall not exceed 10 years.

10. The Commission shall adopt, by 30 June 2010, guidelines specifying minimum standards for the content, language and presentation of energy performance certificates.

That measure, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(2).

11. Each Member State shall recognise certificates issued in another Member State in accordance with these guidelines and shall not restrict the freedom to provide financial services for reasons relating to the certificate issued in that Member State.

12. By 2011, on the basis of information received from Member States and in consultation with the relevant sectors, the Commission shall adopt a voluntary common European Union certification system for the energy performance of non-residential buildings.

That measure, designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(2).

By 2012, Member States shall introduce the European Union voluntary certification system referred to in the first subparagraph to function alongside the national certification scheme.

Article 12

Issue of energy performance certificates

1. Member States shall ensure that an energy performance certificate is issued for buildings or parts thereof which are constructed, sold or rented out, and for buildings ***frequently visited by the public with*** a total useful floor area over 250 m^2 ***and for buildings*** occupied by a public authority.

2. Member States shall require *on construction of* buildings or parts thereof ‖ , an energy performance certificate *to be* handed over to the owner by the *vendor or the* independent expert issuing the certificate and referred to in *Article 17*.

3. Member States shall require *on offer for sale of* buildings or parts thereof ‖ the numeric energy performance indicator of the energy performance certificate *to be* stated in all advertisements for sale of the building or parts thereof, and ‖ the energy performance certificate *to be* shown to the prospective buyer.

The energy performance certificate shall *at the latest* be *given* by the vendor to the buyer at the moment of conclusion of the ‖ contract *for sale of the building or parts thereof.*

4. Member States shall require *on offer for rent of the* buildings or parts thereof ‖ , the numeric energy performance indicator of the energy performance certificate *to be* stated in all advertisements for rent of the building or parts thereof, and ‖ the energy performance certificate *to be* shown to the prospective tenant.

The energy performance certificate shall *at the latest* be *given* by the owner to the tenant at the moment of conclusion of the lease ‖.

5. A building owner may at any time request an accredited expert to produce, re-calculate and update an energy performance certificate, irrespective of whether the building is being constructed, refurbished, rented or sold.

6. Member States may exclude the categories of buildings referred to in Article 4(2) from the application of paragraphs 1, 2, 3 and 4 *of this Article.*

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Article 13

Display of ‖ energy performance certificates

1. Member States shall take measures to ensure that where ▌a building is occupied by public authorities ***or where a building with a total useful floor area over 250 m² is frequently visited by the public*** the energy performance certificate is displayed in a prominent place clearly visible to the public.

▌

Article 14

Inspection of heating systems

1. Member States shall lay down the necessary measures to establish a regular inspection of heating systems with boilers ***fired by non-renewable liquid or solid fuel*** of an effective rated output of more than 20 kW. *Such* inspection shall include an assessment of the boiler efficiency and the boiler sizing compared to the heating requirements of the building. ***Member States may suspend these inspections where an electronic monitoring and control system is in place.***

2. ‖ Member States may set different *rates* of *inspection* depending on the type and effective rated output ▌of the heating system. When setting *those rates* Member States shall take into account the costs of the inspection of the heating system and the estimated energy cost savings that may result from the inspection.

3. Heating systems with boilers of an effective rated output of more than 100 kW shall be inspected at least every two years.

For gas boilers, this period may be extended to four years.

4. By derogation from paragraphs 1, 2 and 3 Member States may decide to take measures to ensure the provision of advice to ‖ users on the replacement of boilers, other modifications to the heating system and on alternative solutions to assess the efficiency and appropriate size of the boiler. The overall impact of this approach shall be equivalent to that arising from the provisions set out in *paragraphs 1,* 2 and 3.

Where Member States choose to apply the measures referred to in the first subparagraph ‖ , they shall *by 30 June 2011 at the latest* submit to the Commission a report on the equivalence of those measures to *the* measures laid down in paragraphs 1, 2 and 3 ‖ . Member States shall submit these reports to the Commission every three years. The reports may be included in the Energy Efficiency Action Plans referred to in Article 14(2) of Directive 2006/32/EC.

Where the Commission considers that the report by the Member State referred to in the second subparagraph does not demonstrate the equivalence of a measure referred to in the first subparagraph, it may, within six months of receiving the report, request that the Member State either produce further evidence or implement specific additional measures. If, within one year of making this request, the Commission is not satisfied with the evidence provided or additional measures implemented, it may withdraw the derogation.

Article 15

Inspection of air-conditioning systems

1. Member States shall lay down the necessary measures to establish a regular inspection of air-conditioning ***and ventilation*** systems, ***and reversible heat pumps with*** an effective rated output of more than ***5 kW***. The inspection shall include an assessment of the air-conditioning efficiency and the sizing compared to the cooling requirements of the building. ***The inspection of ventilation systems shall also include an assessment of the airflows.***

Member States may suspend these inspections where an electronic monitoring and control system is in place allowing for remote monitoring of the efficiency and safety of the systems.

2. The Member States may set different *rates* of *inspection* depending on the type and effective rated output of the air-conditioning system, ***the ventilation system or reversible heat pumps***. When setting *those rates* Member States shall take into account the costs of the inspection ▌ and the estimated energy cost savings that may result from the inspection.

3. In laying down the measures referred to in paragraphs 1 and 2, Member States shall, as far as is economically and technically feasible, ensure that inspections are carried out in accordance with the inspection of heating systems and other technical systems referred to in Article 14 of this Directive and the inspection of leakages referred to in Regulation (EC) No 842/2006 of the European Parliament and of the Council of 17 May 2006 on certain fluorinated greenhouse gases [1].

4. By derogation from paragraphs 1 and 2 Member States may take measures to ensure the provision of advice to users on the replacement of air conditioning systems or on other modifications to the air conditioning system which may include inspections to assess the efficiency and appropriate size of the air conditioning system. The overall impact of this approach shall be equivalent to that arising from the provisions set out in paragraphs 1 and 2.

Where Member States apply the measures referred to in the first subparagraph, they shall by 30 June 2011 at the latest, submit to the Commission a report on the equivalence of those measures to measures laid down in paragraphs 1 and 2. Member States shall submit these reports to the Commission every three years. The reports may be included in the Energy Efficiency Action Plans referred to in Article 14(2) of Directive 2006/32/EC.

Where the Commission considers that the report by the Member State referred to in the second subparagraph does not demonstrate the equivalence of a measure referred to in the first subparagraph, it may, within six months of receiving the report, request that the Member State either produce further evidence or implement specific additional measures. If, within one year of making this request, the Commission is not satisfied with the evidence provided or additional measures implemented, it may withdraw the derogation.

Article 16

Reports on the inspection of heating and air-conditioning systems

1. This Article applies to reports on the inspection of heating and air-conditioning systems.

2. Inspection *reports* shall be issued at regular intervals for each system inspected. The inspection report shall include the following:

(a) a comparison of the energy performance of the system inspected with that of

(i) the best available system feasible; and

(ii) a system of similar type for which all relevant components achieve the level of energy performance required by the applicable legislation;

(b) recommendations for the cost-effective improvement of the energy performance of the system of the building or parts thereof.

[1] ***OJ L 161, 14.6.2006, p. 1***.

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The recommendations referred to in point (b) shall be specific to the system and shall provide transparent information as to their cost-effectiveness. The evaluation of cost-effectiveness shall be based on a set of standard conditions, such as on the assessment of energy savings and underlying energy prices and interest rates for investments.

3. The inspection report shall be handed over by the inspector to the owner or tenant of the building.

Article 17

Independent experts

1. Member States shall ensure that the energy performance certification of buildings, the inspection of heating systems and air-conditioning systems are carried out in an independent manner by qualified and accredited experts, whether operating *in a* self-employed *capacity* or employed by public bodies or private enterprises bodies.

Experts shall be accredited taking into account their competence and their independence.

2. Member States shall ensure mutual recognition of national qualifications and accreditation.

3. By 2011 the Commission shall establish guidelines including recommendations for minimum standards for the regular training of experts.

That measure, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(2).

4. Member States shall make available to the public information on training and accreditation. Member States shall also set up and make available a register of qualified and accredited experts.

Article 18

Independent control system

1. Member States shall ensure that an independent control system for energy performance certificates and reports on the inspection of heating and air conditioning systems is established in accordance with Annex II. ***Member States shall establish split enforcement mechanisms for organisations which have responsibility for the enforcement of energy performance certificates and reports on the inspection of heating and air conditioning systems.***

2. The Member States may delegate ‖ responsibilities for implementing the independent control systems, *provided that* they *ensure* that *those* systems are implemented in *accordance* with Annex II.

3. Member States shall require ‖ the energy performance certificates and the inspection reports *referred to* in paragraph 1 *to be* registered or made available to the competent authorities or bodies to whom responsibilities for implementing the independent control systems have been delegated by the competent authorities on request.

Article 19

Review

The Commission, assisted by the Committee established by *Article 22*, shall evaluate this Directive ***and consider a revision by 2015,*** in the light of experience gained ***and progress made*** during its application, and, if necessary, make proposals with respect to, inter alia:

(a) methodologies to rate the energy performance of buildings on the basis of primary energy use and carbon dioxide emissions;

(b) general incentives for further energy efficiency measures in buildings;

(c) establishment of a Community-wide requirement for existing buildings to be net zero energy buildings.

Article 20

Information

1. Member States shall take the necessary measures to inform the owners ***and*** tenants of buildings or parts thereof as to the different methods and practices that serve to enhance energy performance.

2. Member States shall in particular provide information to the owners ***and*** tenants of buildings on energy performance certificates and inspection reports, their purpose and objectives, on cost effective ways to improve the energy performance of the building and on mid- and long-term financial consequences if no action is taken ***and on financial instruments available*** to improve the energy performance of the building. ***Information campaigns shall aim to encourage owners and tenants to meet at least the minimum requirements set out in Articles 4 and 9.***

Upon Member States' request, the Commission shall assist Member States in staging information campaigns for the purposes of *paragraph 1 and the first subparagraph of this paragraph,* which may be dealt with in Community programmes.

3. Member States shall ensure that local and regional authorities are involved in the development of programmes to provide information and training and to raise awareness.

4. Member States shall also ensure, with participation from local and regional authorities, that suitable guidance and training is made available for those responsible for implementing this Directive through planning and enforcement of building standards. In particular such guidance and training shall reinforce the importance of improving energy performance and shall enable consideration of the optimal combination of improvements in energy efficiency, use of renewable energy and use of district heating and cooling when planning, designing, building and renovating industrial or residential areas.

5. Owners and tenants of commercial buildings shall exchange information regarding actual energy consumption.

6. Member States shall provide information to the Commission regarding:

(a) support schemes at national, regional and local level for the promotion of energy efficiency and the use of energy from renewable sources in buildings;

(b) the share of energy from renewable sources used in the buildings sector at national and regional level, including specific information about whether the renewable energy comes from on-site devices, district heating and cooling or cogeneration;

This information shall be included in the Energy Efficiency Action Plans referred to in Article 14(2) of Directive 2006/32/EC.

7. Member States shall take the necessary measures to train more installers and to ensure training to a higher level of competence for the installation and integration of the energy efficient and renewable technology required, so as to enable them to play the key role they have to support the improvement of building energy efficiency.

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8. By 2010, the Commission shall establish a website, which shall contain the following information:

(a) the latest version of every Energy Efficiency Action Plan referred to in Article 14(2) of Directive 2006/32/EC;

(b) details of measures currently in place at Community level to improve the energy performance of buildings, including any applicable financial/fiscal instrument, appropriate application or contact details;

(c) details of national action plans and of national, regional and local measures currently in place in each Member State to improve the energy performance of buildings, including any applicable financial or fiscal instrument, any appropriate application or contact details;

(d) examples of best practice at national, regional and local level on improving the energy performance of buildings.

The information referred to in the first subparagraph shall be in a form which is easily accessed and understood by ordinary tenants, owners and businesses from all Member States, as well as by all local, regional and national authorities. It shall be in a form which will assist these individuals and organisations easily to assess the support available to them to improve the energy performance of buildings, and to compare support measures between Member States.

Article 21

Adaptation of Annex I to technical progress

The Commission shall adapt points 3 and 4 of Annex I to technical progress.

Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in *Article 22(2)*.

Article 22

Committee procedure

1. The Commission shall be assisted by a Committee.

2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 23

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall communicate those provisions to the Commission by 31 December 2010 at the latest and shall notify it without delay of any subsequent amendment affecting them. ***Member States shall provide evidence for the effectiveness of the rules on penalties in the Energy Efficiency Action Plans referred to in Article 14(2) of Directive 2006/32/EC.***

Article 24

Transposition

1. Member States shall adopt and publish, by 31 December 2010 at the latest, the laws, regulations and administrative provisions necessary to comply with Articles 2 to *18, 20 and 23* and Annexes I and II of this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

Member States shall apply those provisions as far as Articles 2, 3, 9, *11 to 13, 17, 18, 20 and 23* are concerned, from 31 December 2010 at the latest.

Member States shall apply those provisions as far as Articles 4 to 8, *14 to 16, and 18* are concerned, to buildings occupied by ‖ public authorities from 31 December 2010 at the latest and to other buildings from 31 January 2012 at the latest.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 25

Repeal

Directive 2002/91/EC, as amended by the Regulation indicated in Annex III, Part A, is repealed with effect from 1 February 2012, without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law and application of the Directive set out in Annex III, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in *Annex VI*.

Article 26

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Article 27

Addressees

This Directive is addressed to the Member States.

Done at

For the European Parliament
The President

For the Council
The President

Thursday 23 April 2009

ANNEX I

General framework for the calculation of energy performance of buildings (referred to in Article 3)

1. The energy performance of a building shall be determined on the basis of the calculated or actual annual ***primary*** energy that is consumed in order to meet the different needs associated with its ***customary*** use and shall reflect the heating energy needs and cooling energy needs (energy needed to avoid over-heating) to maintain the envisaged temperature conditions of the building. ***Consumption shall be balanced where applicable against energy produced by energy from renewable sources on site.***

2. The energy performance of a building shall be expressed in a transparent manner and shall also include a numeric indicator of ▌primary energy use***, expressed in kWh/m² per year***.

   The methodology of calculation of energy performance of buildings ***shall use*** European standards ***and relevant Community legislation, including Directive 2009/28/EC***.

   When assessing the energy performance of electricity use in a building, the conversion factor from final to primary energy shall take into consideration the annual weighted average of the appropriate electricity fuel mix.

3. The methodology shall be laid down taking into consideration at least the following aspects:

   (a) the following actual thermal characteristics of the building including its internal partitions

      (i) thermal capacity;

      (ii) insulation; ***as achieved by the lowest thermally conductive materials available;***

      (iii) passive heating;

      (iv) cooling elements; and

      (v) thermal bridges;

   (b) heating installation and hot water supply, including their insulation characteristics;

   (c) air-conditioning installations**, including cooling systems**;

   (d) natural and mechanical ventilation, *which* may include air-tightness;

   (e) build-in lighting ***systems defined by a lighting design taking into account the appropriate lighting levels for the functions executed at room level, the presence of persons, the availability of the appropriate level of natural light, the flexible adoption of light levels which respect the differences of functions and whether the installation is for the residential or non-residential sector;***

   (f) the design, positioning and orientation of the building, including outdoor climate;

   (g) passive solar systems and solar protection;

(h) indoor climatic conditions, including the designed indoor climate;

(i) internal loads.

4. The positive influence of the following aspects shall, where relevant in this calculation, be taken into account:

(a) local solar exposure conditions, active solar systems and other heating and electricity systems based on renewable energy sources;

(b) electricity produced by cogeneration;

(c) district or block heating and cooling systems;

(d) natural lighting.

5. For the purpose of this calculation buildings should be adequately classified into the following categories:

(a) single-family houses of different types;

(b) apartment blocks;

(c) offices;

(d) education buildings;

(e) hospitals;

(f) hotels and restaurants;

(g) sports facilities;

(h) ‖ retail trade services buildings;

(i) wholesale and logistics buildings;

(j) other types of energy-consuming buildings.

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ANNEX II

Independent control systems for energy performance certificates and inspection reports

1. The competent authorities or bodies to whom responsibilities for implementing the independent control system have been delegated by the competent authorities shall make a random selection of at least 0,5 % of all the energy performance certificates issued annually ***by each expert*** and subject *those certificates* to verification. ***If an independent expert issues only a few certificates, the competent authorities or bodies shall make a random selection of at least one certificate and subject it to verification.*** The verification shall be carried out at one of the three alternative levels indicated below and each verification level shall be carried out ‖ for *at least* a statistically significant proportion of the certificates selected:

   (a) validity check of input data of the building used to issue the energy performance certificate and the results stated in the certificate;

   (b) check of the input data and verification of the results of the certificate, including the recommendations given;

   (c) full check of input data of the building used to issue the energy performance certificate, full verification of the results stated in the certificate, including the recommendations given, and on-site visit of the building to check correspondence between specifications given in the energy performance certificate and the building certified.

2. If those checks demonstrate non compliance, the competent authorities or bodies shall make a random selection of an additional five certificates issued by the same expert and subject those certificates to verification. Competent authorities or bodies shall impose penalties on the expert if the additional checks show non-compliance. The most serious infringements may be punished by way of withdrawal of the expert's accreditation.

3. The competent authorities or bodies to whom responsibilities for implementing the independent control system have been delegated by the competent authorities shall make a random selection of at least *0,1* % of all the inspection reports issued annually ***by each expert*** and subject *those reports* to verification. ***If an independent expert issues only a few inspection reports, the competent authorities or bodies shall make a random selection of at least one inspection report and subject it to verification.*** The verification shall be carried out at one of the three alternative levels indicated below and each verification level shall be carried out ‖ for *at least* a statistically significant proportion of the inspection reports selected:

   (a) validity check of input data of the technical building system inspected used to issue the inspection report and the results stated in the inspection report;

   (b) check of the input data and verification of the results of the inspection report including the recommendations given;

   (c) full check of input data of the technical building system inspected used to issue the inspection report, full verification of the results stated in the inspection report including the recommendations given and an on-site visit of the building to check correspondence between specifications given in the inspection report and the technical building system inspected.

4. If those checks demonstrate non compliance, the competent authorities or bodies shall make a random selection of an additional five inspection reports issued by the same expert and subject those reports to verification. Competent authorities or bodies shall impose penalties on the expert if the additional checks show non-compliance. The most serious infringements may be punished by way of withdrawal of the expert's accreditation.

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ANNEX III

Part A

Repealed Directive with its successive amendment

(referred to in *Article 25*)

Directive 2002/91/EC the European Parliament and of the Council (OJ L 1, 4.1.2003, p. 65)	
Regulation *(EC) No 1137/2008* of the European Parliament and of the Council (*OJ L 311, 21.11.2008, p. 1*)	only point 9.9 of the Annex

Part B

Time-limits for transposition into national law and application

(referred to in *Article 25*)

Directive	Time-limit for transposition	Date of application
2002/91/EC	4 January 2006	4 January 2009 as regards Articles 7, 8 and 9 only

ANNEX IV

Principles for a common methodology for calculating cost-optimal levels

In setting a common methodology for calculating cost-optimal levels, the Commission shall take into consideration at least the following principles:

— ***define reference buildings that are characterised by and representative of their functionality and geographic location, including indoor and outdoor climate conditions. The reference buildings shall cover both new and existing residential and non-residential buildings;***

— ***define technical packages (for example, insulation of the building's envelope or parts thereof, or more energy efficient technical building systems) of energy efficiency and energy supply measures to be assessed;***

— ***define complete technical packages designed to obtain net zero energy buildings;***

— ***assess heating and cooling energy demand, delivered energy, renewable energy produced on site, used primary energy and CO_2 emissions of the reference buildings (including the defined technical packages applied);***

— ***assess the corresponding energy-related investment costs, energy costs and other running costs of the technical packages applied to the reference buildings from the societal perspective as well as from the perspective of the property owner or investor;***

— ***regional/local labour related costs, including materials;***

By calculating the life-cycle costs of a building on the basis of technical packages of measures applied to a reference building and setting them in relation to the energy performance and CO_2 emissions, the cost-efficiency of different levels of minimum energy performance requirements shall be assessed.

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ANNEX V

Financial instruments for improving the energy performance of buildings

Without prejudice to national legislation, Member States shall implement at least two financial instruments from the following list:

(a) VAT reductions for energy saving, high energy performance and renewable energy goods and services;

(b) other tax reductions for energy saving goods and services or energy efficient buildings, including fiscal rebates on income or property taxes;

(c) direct subsidies;

(d) subsidised loan schemes or low interest loans;

(e) grant schemes;

(f) loan guarantee schemes;

(g) requirements on or agreements with energy suppliers to offer financial assistance to all categories of consumers.

ANNEX VI

CORRELATION TABLE

Directive 2002/91/EC	This Directive
Article 1	Article 1
Article 2, introductory wording	Article 2, introductory wording
Article 2, point (1)	Article 2, point (1)
-	Article 2, *point (5)*
Article 2, point (2)	Article 2, *point (6)* and Annex I
-	Article 2, *points (7), (9), (11) and (12)*
Article 2, point (3)	Article 2, *point (13)*
Article 2, point (4)	Article 2, *point (14)*
-	Article 2, *point (15)*
Article 2, point (5)	Article 2, *point (16)*
Article 2, point (6)	Article 2, *point (17)*
Article 2, point (7)	Article 2, *point (18)*
Article 2, point (8)	Article 2, *point (19)*
Article 3	*Article 20* and Annex I
Article 4 ‖ (1)	Article 4 ‖ (1)
Article 4 ‖ (2)	-
Article 4 ‖ (3)	Article 4 ‖ (2)
-	Article 4 ‖ (3)
-	Article 4 ‖ (4)
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Article 5	Article 6 ‖ (1)

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Article 6	Article 7
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-	Article 9
Article 7 ‖ (1)	*Article 11(7), Article 12 (1), (2), (3), (4)* and (6)
Article 7 ‖ (2)	*Article 11* (1) and (2)
Article 7 ‖ (3)	*Article 13*
-	*Article 12* (4), (7) and (8)
Article 8, introductory wording	*Article 14*, introductory wording
Article 8, *point* (a)	*Article 14 (1) and (3)*
-	*Article 14 (2)*
Article 8, *point* (b)	*Article 14 (4)*
Article 9	*Article 15 (1)*
-	*Article 15 (2)*
-	*Article 16*
Article 10	*Article 17*
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Article 11, introductory wording	*Article 19*, introductory wording
Article 11, *point* (a)	-
-	*Article 19, point (a)*
Article 11, *point* (b)	*Article 19, point (b)*
Article 12	*Article 20*
Article 13	*Article 21*
Article 14 ‖ (1)	*Article 22 (1)*
Article 14 ‖ (2)	*Article 22 (2)*
‖	‖
-	*Article 23*
Article 15 ‖ (1)	*Article 24 (1) and (2)*
Article 15 ‖ (2)	-
-	*Article 25*
Article 16	*Article 26*
Article 17	*Article 27*
Annex	Annex I
-	*Annexes II to VI*

Thursday 23 April 2009

Credit Rating Agencies ***I

P6_TA(2009)0279

European Parliament legislative resolution of 23 April 2009 on the proposal for a regulation of the European Parliament and of the Council on Credit Rating Agencies (COM(2008)0704 – C6-0397/2008 – 2008/0217(COD))

(2010/C 184 E/66)

(Codecision procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0704),

— having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0397/2008),

— having regard to the undertaking given by the Council representative by letter of 23 April 2009 to adopt the proposal as amended, in accordance with the first indent in the second subparagraph of Article 251(2) of the EC Treaty,

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs (A6-0191/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and the Commission.

P6_TC1-COD(2008)0217

Position of the European Parliament adopted at first reading on 23 April 2009 with a view to the adoption of Regulation (EC) No …/2009 of the European Parliament and of the Council on Credit Rating Agencies

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Regulation (EC) No …)

Thursday 23 April 2009

Rights of passengers when travelling by sea and inland waterway ***I

P6_TA(2009)0280

European Parliament legislative resolution of 23 April 2009 on the proposal for a regulation of the European Parliament and of the Council concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (COM(2008)0816 – C6-0476/2008 – 2008/0246(COD))

(2010/C 184 E/67)

(Codecision procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0816),

— having regard to Article 251(2) and Articles 71(1) and 80(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0476/2008),

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on Transport and Tourism and the opinion of the Committee on Legal Affairs (A6-0209/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and to the Commission.

Thursday 23 April 2009

P6_TC1-COD(2008)0246

Position of the European Parliament adopted at first reading on 23 April 2009 with a view to the adoption of Regulation *(EC) No …/2009* of the European Parliament and of the Council concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws

(Text with EEA relevance)

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,

Having regard to the opinion of the European Economic and Social Committee [1],

Having regard to the opinion of the Committee of the Regions [2],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [3],

Whereas:

(1) Action by the Community in the field of maritime transport should aim, among other things, at ensuring a high level of protection for passengers that is comparable *to* other modes of transport. Moreover, full account should be taken of *general consumer protection* requirements.

(2) Since the maritime passenger is the weaker party to the transport contract, passengers' rights in this respect should be safeguarded *irrespective* of their nationality or place of residence within the Community.

(3) The single market for maritime and inland waterway passenger services should benefit citizens in general. Consequently, disabled persons and persons with reduced mobility, whether caused by disability, age or any other factor, should have opportunities *comparable to those available to other citizens* for using commercial passenger maritime services ‖. Disabled persons and persons with reduced mobility have the same right as all other citizens to free movement, freedom of choice and non-discrimination.

(4) In the light of Article 9 of the United Nations Convention on the Rights of Persons with Disabilities and in order to give disabled persons and persons with reduced mobility opportunities for maritime and inland waterway travel comparable to those of other citizens, rules for non-discrimination and assistance during their journey should be established. Those persons should therefore be accepted for carriage and not refused transport on the grounds of their disability or lack of mobility. ▌They should enjoy the right to assistance at ports, and at embarkation/disembarkation points where no port exists, as well as on board passenger ships. In the interests of social inclusion, the persons concerned should receive this assistance free of charge. Carriers should establish accessibility rules, preferably *using* the European standardisation system.

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[1] OJ C …
[2] OJ C …
[3] *Position of the European Parliament of 23 April 2009.*

(5) In deciding on the design of new ports and terminals if any, and as part of major refurbishments, managing bodies of ports and carriers that will operate them should ▌take into account the needs of disabled persons and persons with reduced mobility. Similarly, carriers should ▌take such needs into account when deciding on the design of new and newly refurbished passenger ships in accordance with Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships ([1]).

(6) Assistance given at ports situated in the territory of a Member State to which the Treaty applies should, among other things, enable disabled persons and persons with reduced mobility to proceed from a designated point of arrival at a port to a passenger ship and from the passenger ship to a designated point of departure of the port, including *embarkation* and *disembarkation*.

(7) Assistance should be financed in such a way as to spread the burden equitably among all passengers using a carrier and to avoid disincentives to the carriage of disabled persons and persons with reduced mobility. A charge levied on each passenger using a carrier, included in the basic ticket price, appears to be the most effective way of funding *assistance*. The charges should be adopted and applied in a fully transparent manner.

(8) In organising the provision of assistance to disabled persons and persons with reduced mobility, and the training of their personnel, carriers should have regard to the Recommendation of the International Maritime Organisation on the Design and Operation of Passenger Ships to Respond to Elderly and Disabled Persons' Needs ([2]).

(9) The provisions governing the embarkation of disabled persons or persons with reduced mobility should be without prejudice to the general provisions applicable to the embarkation of passengers laid down by international, Community or national rules in force.

(10) Passengers should be adequately informed in the event of cancellation or delay of any service. This information should help passengers to make the necessary arrangements and if *necessary* to obtain information about alternative connections.

(11) Inconvenience experienced by passengers due to the cancellation or long delay of their journey should be reduced. To this end, passengers should be adequately looked after and should be able to cancel their journey and have their tickets reimbursed or to obtain *re-routing* under satisfactory conditions.

(12) Carriers should provide for the payment of compensation for passengers in the event of delay or cancellation of a service based on a percentage of the ticket price, except when the delay or cancellation occurs in extraordinary circumstances, which could not have been avoided even if all reasonable measures had been taken.

(13) Carriers should cooperate in order to adopt arrangements at national or European level for improving care and assistance offered to passengers whenever their travel is interrupted, notably in the event of long delays.

(14) This Regulation should not affect the rights of passengers established by Council Directive 90/314/EEC on package travel, package holidays and package tours ([3]). In *the event that* a package tour is cancelled for reasons other than cancellation of the maritime transport service, this Regulation should not apply.

(15) Passengers should be fully informed of their rights under this Regulation, so that they can effectively exercise those rights. Rights of maritime and inland waterway passengers should include the receipt of information regarding the service before and during the journey. All essential information provided to maritime and inland waterway passengers should also be provided in ▌formats accessible to disabled persons and persons with reduced mobility.

([1]) OJ L 144, 15.5.1998, p. 1.
([2]) IMO - Maritime Safety Committee, Circ.735, 24 June 1996 at the time of the adoption of this Regulation.
([3]) OJ L 158, 23.6.1990, p. 59.

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(16) Member States should supervise and ensure compliance with this Regulation and designate an appropriate body to carry out enforcement tasks. *That* supervision does not affect the rights of passengers to seek legal redress from courts under national law.

(17) *Passengers* should be able to exercise their rights by means of appropriate complaint procedures implemented by carriers or, as the case may be, by the submission of complaints to the body ▌ designated to that end by the relevant Member State.

(18) Complaints concerning assistance given at a port or an embarkation/disembarkation point should be addressed to the body ▌designated for the enforcement of this Regulation by the Member State where the port is situated. Complaints concerning assistance given by a carrier at sea should be addressed to the body ▌designated for the enforcement of this Regulation by the Member State which has issued the operating licence to the carrier. The body designated for the enforcement of this Regulation should have the power and capacity to investigate individual complaints and to facilitate out of court dispute settlements.

(19) The Commission should propose clear rules for passengers' rights with regard to responsibility, liability, accessibility, and rights of disabled persons or persons with reduced mobility at points of transfer of passengers between land and sea or inland waterway transport.

(20) Member States should lay down penalties applicable to infringements of this Regulation and ensure that those penalties are applied. The penalties, which could include ordering the payment of compensation to the *passenger* concerned, should be effective, proportionate and dissuasive.

(21) Since the objectives of this Regulation, namely to ensure high and equivalent levels of protection of and assistance to passengers throughout the Member States and to ensure that economic agents operate under harmonised conditions in a single market, cannot sufficiently be achieved by the Member States and can therefore, by reason of the scale or effects of the action, 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 those objectives.

(22) In the event of a future European legislative initiative relating to passenger rights, a horizontal legislative approach covering all means of transportation would be sensible, in light of the need to use combined transportation.

(23) The enforcement of this Regulation should be based on Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of ‖consumer protection *laws* (the Regulation on consumer protection cooperation) ([1]). That Regulation should therefore be amended accordingly.

(24) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ([2]) should be strictly enforced in order to guarantee respect for the privacy of maritime and inland waterway passengers, and ensure that the information requested serves solely to fulfil the assistance obligations laid down in this Regulation and is not used to the detriment of passengers.

(25) This Regulation respects the fundamental rights and *complies with* the principles recognised in particular by the Charter of Fundamental Rights of the European Union,

([1]) OJ L 364, 9.12.2004, p. 1.
([2]) OJ L 281, 23.11.1995, p. 31.

HAVE ADOPTED THIS REGULATION:

Chapter I

General provisions

Article 1

Subject matter

This Regulation establishes rules as regards the following:

(1) non-discrimination between passengers with regard to transport conditions offered by carriers;

(2) non-discrimination and mandatory assistance for disabled persons and persons with reduced mobility;

(3) the obligations of carriers towards passengers in *the event* of cancellation or delay;

(4) minimum information to be provided to passengers;

(5) the handling of complaints;

(6) the enforcement of passengers' rights.

Article 2

Scope

1. This Regulation shall apply to ***the*** commercial ***transport of passengers travelling by sea*** and inland waterway ***by passenger ship***, including cruises, between or at ports or any embarkation/disembarkation point situated in the territory of a Member State to which the Treaty applies.

2. Member States may exempt services covered by public service contracts if such contracts ensure a comparable level of passenger rights to that required by this Regulation.

3. Member States shall be authorised to exclude urban and suburban transport services from the scope of this Regulation if they give assurances that the aims of this Regulation can be achieved by means of regulatory measures and guarantee a level of passenger rights comparable to that required by this Regulation.

Article 3

Definitions

For the purposes of this Regulation the following definitions shall apply:

(a) 'disabled person' or 'person with reduced mobility' means any person whose mobility when using transport is reduced as a result of any physical disability (sensory or locomotor, permanent or temporary), intellectual ***or psychosocial*** disability or impairment, or any other cause of disability, or as a result of age, and whose situation needs appropriate attention and adaptation to his particular needs the service made available to all passengers;

(b) 'cancellation' means the non-operation of a service which was previously scheduled and for which at least one reservation was made;

(c) 'delay' means a difference between the time the passenger was scheduled to depart or to arrive in accordance with the published timetable and the time of his actual or expected departure or arrival;

(d) 'carrier' means a person by or on behalf of whom a contract of carriage has been concluded, or the performing carrier whether the carriage is actually performed by him or by a performing carrier, other than a tour operator;

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(e) 'commercial passenger maritime service' means a passenger maritime transport service operated by a carrier through a scheduled or non-scheduled route offered to the general public for valuable consideration, whether on its own or as part of a package;

(f) 'performing carrier' means a person other than the carrier and the tour operator, who actually performs *all* or a part of the carriage;

(g) 'port' means an area of land and water made up of such improvement works and equipment as to permit, principally, the reception of ships, their loading and unloading, the storage of goods, the receipt and delivery of these goods by inland transport, and the embarkation and disembarkation of passenger ships;

(h) 'embarkation/disembarkation point' means an area of land and water other than a port, from and to which passengers regularly embark and disembark.

(i) 'ship' means a seagoing or ***inland waterway*** vessel, excluding an air-cushion vehicle;

(j) 'transport contract' means a contract of carriage between a carrier ▌and a passenger for the provision of one or more transport services***, irrespective of whether the ticket was purchased from a carrier, a tour operator or a ticket vendor, or on the Internet;***

(k) 'ticket' means a valid document giving entitlement to transport, or something equivalent in paperless form, including electronic form, issued or authorised by a carrier or its authorised ticket vendor;

(l) 'ticket vendor' means any ***intermediary selling*** maritime transport services, ***including services sold as part of a package,*** on behalf of a carrier or ***tour operator***;

(m) 'tour operator' means an organiser, ▌other than a carrier, within the meaning of Article 2(2) ▌of Directive 90/314/EEC;

(n) 'reservation' means an authorisation, on paper or in electronic form, giving entitlement to transportation subject to previously confirmed personalised transport arrangements;

(o) 'passenger ship' means a ship which carries more than 12 passengers;

▌

(*p*) 'port authority' or 'managing body of the port' means a body which, whether or not in conjunction with other activities, has as its objective under national law or *regulations* the administration and management of the port infrastructures, and the coordination and control of the activities of the different operators present in a port or port system. It may consist of several separate bodies or be responsible for more than one port.

(*q*) 'cruise' means a passenger shipping activity supplemented by accommodation and other facilities, exceeding *a* one day (overnight) stay, which is not a regular or scheduled passenger service between two or more ports, but with passengers usually returning to the port of embarkation.

(r) 'accessible formats' means that all passengers can access the same information using text, Braille, audio, video and/or electronic formats. Examples of accessible formats include, but are not limited to, pictograms, vocal announcement and subtitling and may vary according to technological developments.

(s) 'passenger' means any person travelling under a contract of carriage other than those persons accompanying vehicles, trailers or goods that are being carried as freight or commercial goods.

(t) 'arrival' means the actual time the vessel is secured at the arrival berth.

(u) 'departure' means the actual time at which the vessel is secured for sea.

(v) 'ticket price' means the cost paid for the transport and accommodation on board. It excludes the costs of meals, other activities and any on-board purchases.

(w) 'force majeure' is an event or circumstance, which could not have been avoided even if all reasonable measures had been taken, such as war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or military or illegal confiscation, terrorist activities, nationalisation, government sanction, blockage, embargo, labour dispute, strike, lockout, interruption or failure of electricity or acts of God, including fire, flood, earthquake, storm, hurricane or other natural disasters. Cases of force majeure can also be caused by extreme tidal conditions, strong winds, significant wave heights being exceeded and ice formation.

Article 4

Transport contract and non-discriminatory contract conditions

1. Carriers shall provide passengers with a proof of the conclusion of the transport contract by issuing one or more tickets. The tickets shall be considered prima facie evidence of the conclusion of the contract and thus give rights as provided for in this Regulation.

2. Without prejudice to public service obligations requiring social tariffs, contract conditions and tariffs applied by carriers or ticket vendors shall be offered to the general public without any discrimination based on the nationality or the place of residence of the final customer or on the place of establishment of carriers or ticket vendors within the Community.

Article 5

Exclusion of waiver

1. Obligations pursuant to this Regulation shall not be limited or waived, inter alia by a derogation or restrictive clause in the contract of carriage.

2. Carriers may offer contract conditions that are more favourable for the passenger than the conditions laid down in this Regulation.

Chapter II

Rights of disabled persons and persons with reduced mobility

Article 6

Prevention of refusal of carriage

1. Carriers, ticket vendors and tour operators shall not refuse, on the grounds of disability or of reduced mobility:

(a) to accept a reservation, or to issue a ticket, for a journey to which this Regulation applies;

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(b) to embark a disabled person or a person with reduced mobility at a port or embarkation/disembarkation point, provided that the person concerned has a valid ticket or reservation.

2. Reservations and tickets shall be offered to disabled persons and persons with reduced mobility at no additional cost.

Article 7

Derogations and special conditions

1. Notwithstanding the provisions of Article 6, carriers, ticket vendors or tour operators may refuse ▌to accept a reservation from or to issue a ticket to or to embark a disabled person or a person with reduced mobility ▌where the structure of the passenger ship makes the embarkation or carriage of the disabled person or person with reduced mobility physically impossible ***and where they cannot be afforded the normal level of service in a safe, dignified and operationally feasible manner***.

In the event of refusal to accept a reservation on the grounds referred to *in* the first subparagraph, carriers, ticket vendors or tour operators shall make reasonable efforts to propose an acceptable alternative to the person in question.

In case of advanced booking, a disabled person or a person with reduced mobility who has been denied embarkation ▌and any person accompanying that person pursuant to paragraph 2 shall be offered the right to reimbursement or re-routing as provided for in Annex I. ▌

2. ▌A carrier or a ticket vendor or a tour operator may require that a disabled person or person with reduced mobility be accompanied by another person who is capable of providing the assistance required by that person if this is strictly necessary.

3. When a carrier or a ticket vendor or a tour operator exercises a derogation provided for in paragraphs 1 or 2, it shall immediately inform the disabled person or person with reduced mobility of the reasons *therefor*. On request, the carrier, the ticket vendor or the tour *operator* shall communicate these reasons in writing to the disabled person or person with reduced mobility, within five working days of the request.

Article 8

Accessibility and information

1. Carriers shall establish, ***under the supervision of the national enforcement bodies and*** with the active involvement of *representative organisations* ***of ports***, of disabled persons and *of* persons with reduced mobility, ▌non-discriminatory access rules that apply to the carriage of disabled persons and persons with reduced mobility, ***and accompanying persons***, as well as any restrictions on their carriage or on that of mobility equipment due to the structure of passenger ships, in order to meet applicable safety requirements. These rules shall *set out* all *the* access conditions of the maritime service in question, including accessibility of the ships operated and their facilities on board, ***and of the fitted assistive equipment***.

2. The rules provided for in paragraph 1 shall be made publicly available by carriers or ticket vendors***, physically or on the Internet,*** at least at the time a reservation is made, ***in accessible formats,*** in appropriate ways, and in the same languages as those in which information is generally made available to all passengers. When providing this information particular attention shall be paid to the needs of *disabled persons* and persons with reduced mobility.

3. Upon request carriers shall make available, *in accessible formats,* ‖international, Community or national law establishing the safety requirements, on which non-discriminatory access rules are based.

4. Tour operators shall make available the rules provided for in paragraph 1 which apply to journeys included in package travel, package holidays and package tours which they organise, sell or offer for sale.

5. Carriers, their ticket vendors or tour operators shall ensure that all relevant information concerning the conditions of carriage, journey information***,*** information on accessibility of services ***and written confirmation of the provision of assistance*** is available in ▌accessible formats for disabled persons and persons with reduced mobility including online booking and information.

Article 9

Right to assistance at ports

1. On departure from, transit through or arrival at a port, the Carrier shall be responsible for ensuring the provision of the assistance specified in Annex II to disabled persons and persons with reduced mobility free of charge in such a way that person is able to board the departing service, or to disembark from the arriving service for which he purchased a ticket without prejudice to the access rules referred to in Article 8(1). ***The assistance shall be adapted to the individual needs of the disabled person or person with reduced mobility.***

2. A carrier may provide assistance itself or may contract with one or more other parties for the supply of the assistance. The carrier may enter into such a contract or contracts on its own initiative or on request, including from a port authority, and taking into account the existing services at the port concerned.

Where a carrier contracts with one or more other parties for the supply of the assistances, the carrier shall remain responsible for provision of the assistance and for ensuring compliance with the quality standards referred to in Article 14(1).

3. Carriers may, on a non-discriminatory basis, levy a specific charge on all passengers for the purpose of funding assistance at ports. The specific charge shall be reasonable, cost-related, and transparent.

▌

4. Carriers shall make available to the enforcement body or bodies designated pursuant to *article 27(1),* an audited annual overview of charges received and expenses made in respect of the assistance provided to disabled persons and persons with reduced mobility.

5. In accordance with Article 12, the managing body of a port shall be responsible, where necessary, for ensuring it is accessible to disabled persons and persons with reduced mobility.

Article 10

Right to assistance at embarkation / disembarkation points

Where no port exists for a particular destination or leg, the assistance shall be organised by the carrier at the embarkation / disembarkation point in accordance with Article 9.

Article 11

Right to assistance aboard ships

Carriers shall at least provide the assistance specified in Annex III free of charge to disabled persons or persons with reduced mobility departing from, arriving at or transiting through a port to which this Regulation applies.

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Article 12

Conditions on under which assistance is provided

Carriers, managing bodies of ports, ticket vendors and tour operators shall cooperate in order to provide assistance to disabled persons and persons with reduced mobility in line with Articles 9, 10 and 11 in accordance with the following points:

(a) Assistance shall be provided on condition that the carrier, the ticket vendor or the tour operator with which the ticket was purchased is notified of the person's need for such assistance ***when the reservation is made or*** at least 48 hours before the assistance is needed***, unless a shorter notification period is agreed between the assistance provider and the passenger, with the exception of cruise journeys, where the need for assistance shall be notified at the time of reservation.*** Where the ticket permits multiple journeys, one notification shall be sufficient provided that adequate information on the timing of subsequent journeys is provided;

(b) carriers, ticket vendors and tour operators shall take all measures necessary for the ***request and*** reception of notifications of the need for assistance made by disabled persons or persons with reduced mobility. ***The passenger shall receive a confirmation, stating that the assistance needs have been notified.*** *Those obligations* shall apply at all their points of sale, including sale by telephone and via the Internet;

(c) if no notification is made in accordance with point (a), carriers, ticket vendors and tour operators shall make all reasonable efforts to ensure that the assistance is provided in such a way that the disabled person or person with reduced mobility is able to board the departing service, to change to the corresponding service or to disembark from the arriving service for which he has purchased a ticket;

(d) without prejudice to the powers of other entities regarding areas located outside the port premises, the managing body of a port or any other authorised person shall designate points of arrival and departure within the port boundary, both inside and/or outside terminal buildings as the case may be, at which disabled persons or persons with reduced mobility can announce their arrival and request assistance; these points shall be clearly signed and shall offer basic information about the port and assistance provided in accessible formats;

(e) assistance shall be provided on condition that the disabled person or person with reduced mobility present *himself* at the designated point:

— at a time stipulated by the carrier which shall be not more than 60 minutes before the *scheduled time of departure,*

— if no time is stipulated, no later than 30 minutes before the *scheduled* ***embarkation*** time***, unless otherwise agreed between the passenger and the assistance provider***, or

— ***in the case of cruises, at a time stipulated by the carrier, which shall not be more than 60 minutes before the check-in time;***

(f) Where a disabled person or person with reduced mobility requires the use of an assistance ***dog***, that ***dog*** shall be accommodated provided that the carrier or the ticket vendor or the tour operator are notified in accordance with applicable national rules covering the carriage of recognised assistance ***dogs*** on board passenger ships, where such rules exist.

Article 13

Transmission of information to a third party

1. Where provision of the assistance has been subcontracted, and the carrier ▌receives a notification of the need for assistance at least 48 hours before the *scheduled time of departure* for the journey, it shall transmit the relevant information so that the sub-contractor receives it ***as soon as possible, and in any event*** at least 36 hours before the *scheduled time of departure* for the journey.

2. Where provision of the assistance has been subcontracted, and the carrier ▌does not receive a notification of the need for assistance at least 48 hours before the *scheduled time of departure* for the journey, the carrier ▌shall transmit the information to the sub-contractor as soon as possible.

Article 14

Quality standards for assistance

1. Carriers shall set quality standards for the assistance specified in Annex II and III and shall determine resource requirements for meeting those standards, in cooperation with organisations representing disabled passengers and passengers with reduced mobility.

2. In the setting of quality standards, full account shall be taken of internationally recognised policies and codes of conduct concerning facilitation of the transport of disabled persons or persons with reduced mobility, notably the International Maritime Organisation's Recommendation of the Design and Operation of Passenger Ships to Respond to Elderly and Disabled Persons' Needs.

3. Carriers shall publish their quality standards ***in accessible formats***.

Article 15

Training

Carriers shall:

(a) Ensure that all their personnel, including those employed by any sub-contractor, providing direct assistance to disabled persons and persons with reduced mobility have knowledge of how to meet the needs of persons having various disabilities or mobility impairments;

(b) provide disability-assistance and disability-awareness training as described in Annex IV to all their personnel working at the port who deal directly with the travelling public;

(c) ensure that, upon recruitment, all new employees ***who come into direct contact with passengers*** attend disability-related training and that personnel receive refresher training courses when appropriate.

Article 16

Compensation in respect of wheelchairs and mobility equipment

1. ***Unless the passenger to whom the equipment belongs has already been compensated under Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents [1], where*** wheelchairs or other mobility equipment or parts thereof are lost or damaged whilst being handled at the port or transported on board *a* ship, before, during and after the journey, the passenger to whom the equipment belongs shall be compensated, ▌depending on who was responsible *for* the equipment at the time of loss or damage.

[1] **OJ L 131, 28.5.2009, p. 24.**

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Where necessary every effort shall be undertaken to rapidly provide replacement equipment***, suitable to the needs of the passenger concerned***.

2. There shall be no limit to the amount of compensation payable pursuant to this Article.

Chapter III

Obligations of carriers in the event of interrupted travel

Article 17

Provision of information

1. In the event of delay, the carrier or, where appropriate, the managing body of the port shall inform passengers ***at the latest*** 30 minutes after a scheduled departure or one hour before a scheduled arrival. ***If this information is available, the carrier shall inform passengers of the estimated departure and arrival times.***

2. If passengers miss a connection due to a delay, the performing carrier shall make reasonable efforts to inform the passengers concerned of alternative connections.

3. The carrier or managing body of the port shall ensure that disabled passengers or passengers with reduced mobility receive the information required under paragraphs 1 and 2 in accessible formats.

Article 18

Right to assistance

1. Where a carrier reasonably expects a passenger maritime service to be delayed for more than 60 minutes beyond its scheduled time of departure, passengers shall be offered meals and refreshments *free of charge* in reasonable *proportion* to the waiting time, if they are available on board or at the port, or can reasonably be supplied.

2. In the case of any delay where a stay of one or more nights or a stay additional to that intended by the passenger becomes necessary, ▌passengers shall be offered, free of charge, hotel or other accommodation, and transport between the port and place of accommodation in addition to the meals and refreshments provided for in paragraph 1. ***The additional accommodation and transport costs borne by the carrier may not exceed twice the price of the ticket.***

3. If the maritime service can no longer be continued, carriers shall, where possible and as soon as possible, organise alternative transport services for passengers.

4. In applying paragraphs 1, 2, and 3, the performing carrier shall pay particular attention to the needs of disabled persons and persons with reduced mobility and any accompanying persons.

Article 19

Re-routing and reimbursement

1. Where a carrier reasonably expects a passenger maritime service to be delayed beyond its scheduled time of departure by more than 120 minutes, the passenger shall immediately:

(a) be offered alternative transport services under reasonable conditions or, if that is impractical, be informed of adequate alternative transport services *by* other transport operators;

(b) ***be offered*** reimbursement of the ticket price ***if he decides not to travel with the carrier***.

The payment of the reimbursement provided for in point (b) shall be made under the same conditions as the payment of the compensation provided for in Article 20***, paragraphs 3, 4 and 5.***

2. ***By way of derogation from paragraph 1,*** passengers on a cruise journey ***shall be re-routed or reimbursed in accordance with the provisions of*** Directive 90/314/EEC.

Article 20

Compensation of the ticket price

1. Without losing the right of transport, a passenger may request compensation from the carrier if he is facing a delay in arrival. ▌The minimum levels of compensation shall be as follows:

(a) 25 % of the ticket price for a delay of 60 to 119 minutes;

(b) 50 % of the ticket price for a delay of 120 minutes or more;

(c) 100 % of the ticket price if the carrier fails to provide alternative services or the information referred to in Article 19(1)(a).

2. ***paragraph 1*** shall not apply to passengers on a cruise journey***. Passengers on a cruise journey may claim compensation in accordance with*** Directive 90/314/EEC.

3. The compensation shall be paid within one month after the submission of the request for compensation. The compensation may be paid in vouchers and/or other services providing the terms are flexible, in particular as regards the period of validity and destination. The compensation shall be paid in money at the request of the passenger.

4. If the carrier has announced the cancellation or postponement of the crossing or an increase in the crossing time three or more days before the scheduled time of departure, there shall be no entitlement to compensation.

Article 21

Force Majeure

The obligations laid down in Articles 18, 19 and 20 shall not apply in cases of force majeure hindering the performance of the transport service.

Article 22

Further claims

Nothing in this Regulation shall preclude passengers from seeking damages in respect of loss resulting from cancellation or delay of transport services before national courts. ***Compensation awarded under this Regulation may be deducted from any additional compensation granted.***

Article 23

Additional measures in favour of passengers

Carriers shall cooperate***, under the supervision of the national enforcement bodies,*** in order to adopt arrangements at national or European level with the involvement of stakeholders, professional ***organisations*** and associations of customers, passengers***, ports*** and disabled persons. These measures *shall* be aimed at improving care for passengers, especially in the event of long delays and interruption or cancellation of travel.

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Chapter IV

Information for passengers and handling complaints

Article 24

Right to travel information

Managing bodies of ports and carriers shall provide passengers with adequate information throughout their travel in ***accessible formats and the customary languages***. Particular attention shall be paid to the needs of disabled persons and persons with reduced mobility.

Article 25

Information on passenger rights

1. Carriers shall ensure that passengers are provided with appropriate and comprehensible information regarding their rights under this Regulation at the latest on departure. To the extent that the information has been provided by either the carrier or the performing carrier, the other shall not be obliged to provide that information. The information shall be provided in ***accessible formats and in the customary languages***. When providing this information particular attention shall be paid to the needs of *disabled persons* and persons with reduced mobility.

2. Carriers and managing bodies of the ports shall ensure that information on the rights of passengers under this Regulation is publicly available both on board ships and at ports. This information shall include contact details of the enforcement body designated by the Member *States* pursuant to *Article 27(1)*.

Article 26

Complaints

1. ***Member States' authorities*** shall set up ***an independent*** complaint handling mechanism***, accessible for all passengers, including disabled persons and persons with reduced mobility,*** for rights and obligations covered by this Regulation.

2. Passengers may submit a complaint to a carrier within one month from the day when a service was performed or when a service should have been performed. Within 20 working days, the addressee of a complaint shall either give a reasoned opinion or, in justified cases, inform the passenger by what date a reply is to be expected. The time taken to reply shall not be longer than two months from the receipt of the complaint.

3. If no reply is received within the time limits set out in paragraph 2, the complaint shall be deemed to have been accepted.

Chapter V

Enforcement and national enforcement bodies

Article 27

National enforcement bodies

1. Each Member State shall designate a body responsible for the enforcement of this Regulation. Each body shall take the measures necessary to ensure that ***the accessibility rules referred to in Article 8 are drawn up, compliance with those rules is ensured and that*** the rights of passengers are respected. Each body shall, in its organisation, funding decisions, legal structure and decision-making, be independent of ***commercial interests***.

2. Member States shall inform the Commission of the body ▌designated in accordance with this Article and of *its* responsibilities.

3. Any passenger may complain to the appropriate body designated under paragraph 1 ▌by a Member State about an alleged infringement of this Regulation.

4. Member States that have chosen to exempt certain services pursuant to Article 2(2) shall ensure a comparable mechanism of enforcement of passenger rights.

Article 28

Report on enforcement

1. On 1 June each year the enforcement bodies designated pursuant to Article *27* shall publish a report on their activity in the previous year, containing inter alia:

(a) a description of actions taken in order to implement the provisions of this Regulation,

(b) a reference to the procedure applicable to the settlement of individual complaints,

(c) a summary of rules on accessibility for disabled persons and persons with reduced mobility applicable in that Member State;

(d) aggregated data on complaints***, including on their outcome and resolution timescales***;

(e) details of sanctions applied;

(f) other issues of importance for the better enforcement of this Regulation.

2. In order to be able to draft such a report enforcement bodies shall keep statistics on individual complaints, according to the subject and the companies concerned. Such data shall be made available on request to the Commission or to the national investigative authorities up to three years after the date of the incident.

Article 29

Cooperation between enforcement bodies

National enforcement bodies designated pursuant to *Article 27(1)* shall exchange information on their work and decision-making principles and practices for the purpose of consistent protection of passengers across the Community. The Commission shall support them in this task.

Article 30

Penalties

The Member States shall lay down rules on penalties applicable to infringements of this Regulation and shall take all the measures necessary to ensure that those rules are implemented. The penalties provided for***, which could include ordering the payment of compensation to the passenger concerned,*** must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission and shall notify it without delay of any subsequent amendment affecting them.

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Chapter VI

Final Provisions

Article 31

Report

The Commission shall report to the European Parliament and to the Council *by not later than… (*)*, on the operation and the effects of this Regulation. The report shall be accompanied where necessary by legislative proposals implementing in further detail the provisions of this Regulation, or amending it.

Article 32

Amendment to Regulation (EC) No 2006/2004

In the Annex to Regulation (EC) No 2006/2004 the following point is added:

'19. Regulation *(EC) No…/2009* of the European Parliament and of the Council of … *[*concerning the rights of passengers traveling by sea and inland waterway and amending Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws*]* [1]

[1] OJ C'

Article 33

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from … (**). Articles 6, *7*, *26*, *27*, and *30*, shall apply from … (***).
This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ‖,

For the European Parliament
The President

For the Council
The President

(*) *Three years after entry into force of this Regulation.*
(**) *Two years after publication of this Regulation.*
(***) *One year after publication of this Regulation.*

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ANNEX I

Right to reimbursement or re-routing in case of advanced booking for disabled persons and persons with reduced mobility

1. Where reference is made to this Annex, disabled persons and persons with reduced mobility shall be offered the choice between:

   (a) — reimbursement within seven days, paid in cash, by electronic bank transfer, bank orders or bank cheques or, with the signed agreement of the passenger, of the full cost of the ticket at the price at which it was purchased, for the part or parts of the journey not made, and for the part or parts already made if the journey no longer serves any purpose in relation to the passenger's original travel plan, plus, where relevant,

   — a return journey to the first point of departure, at the earliest opportunity; or

   (b) re-routing, under comparable transport conditions, to their final destination at the earliest opportunity; or

   (c) re-routing, under comparable transport conditions, to their final destination at a later date at the passenger's convenience, subject to availability of tickets.

2. Paragraph 1(a) shall also apply to passengers whose journeys form part of a package, except for the right to reimbursement where such a right arises under Directive 90/314/EEC ‖.

3. When, in the case where a town, city or region is served by several ports, an performing carrier offers a passenger a journey to an alternative port to that for which the booking was made, the performing carrier shall bear the cost of transferring the passenger from that alternative port either to that for which the booking was made, or to another nearby destination agreed with the passenger.

ANNEX II

Assistance in ports

Assistance and arrangements necessary to enable disabled persons and persons with reduced mobility to:

— communicate their arrival at a port and their request for assistance;

— move from *an* entry point to the check-in counter, if any, or to the ship;

— check-in and register baggage, if necessary;

— proceed from the check-in counter (if any) to the ship, with completion of emigration, customs and security procedures;

— board the ship, with the provision of ***the necessary means***;

— proceed from the ship door to their seats/area;

— store and retrieve baggage on the ship;

— proceed from their seats to the ship door;

— disembark from the ship, with the provision of lifts, wheelchairs or other assistance needed, as appropriate;

— retrieve baggage (if necessary), with completion of immigration and customs procedures;

— proceed from the baggage hall or the disembarkation point to a designated point of exit;

— make their way to the toilet facilities if required.

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Where a disabled person or person with reduced mobility is assisted by an accompanying person, this person must, if requested, be allowed to provide the necessary assistance in the port and with embarking and disembarking.

Handling of all necessary mobility equipment, including equipment such as electric wheelchairs.

Temporary replacement of damaged or lost mobility equipment, ▌not necessarily on a like for like basis ***but with similar technical and functional characteristics***.

Ground handling of recognised assistance ***dogs***, when relevant.

Communication in accessible formats of information needed to embark and disembark.

ANNEX III

Assistance aboard ships

Carriage of recognised assistance *dogs* in the ship, subject to national regulations.

In addition to medical equipment, transport of up to two pieces of mobility equipment per disabled person or person with reduced mobility, including electric wheelchairs.

Communication of essential information concerning a route in accessible formats.

Making of all reasonable efforts to arrange seating to meet the needs of *persons* with disability or reduced mobility on request and subject to safety requirements and availability.

Assistance in moving to toilet facilities, if required.

Where a disabled person or person with reduced mobility is assisted by an accompanying person, the shipping company will make all reasonable efforts to give such person a seat next to the disabled person or person with reduced mobility.

ANNEX IV

Disability-related training

Disability-awareness training

Training of staff who deal directly with the travelling public includes:

— awareness of and appropriate responses to passengers with physical, sensory (hearing and visual), hidden or learning disabilities, including how to distinguish between the different abilities of individuals whose mobility, orientation, or communication may be reduced;

— barriers faced by persons with reduced mobility, including attitudinal, environmental/physical and organisational barriers;

— recognised assistance *dogs*, including the role and the needs of an assistance *dog*;

— dealing with unexpected occurrences;

— interpersonal skills and methods of communication with deaf people, people with hearing impairments, visual impairments and speech impairments and people with a learning disability;

— general awareness of IMO guidelines relating to the Recommendation of the Design and Operation of Passenger Ships to Respond to Elderly and Disabled Persons' Needs;

— how to handle wheelchairs and other mobility aids carefully so as to avoid damage (to all staff who are responsible for baggage handling if *relevant*).

Disability-assistance training

Training of staff directly assisting persons with reduced mobility includes:

— how to help wheelchair users make transfers into and out of a wheelchair;

— skills for providing assistance to persons with reduced mobility travelling with ***an*** assistance ***dog***, including the role and the needs of those ***dogs***;

— techniques for escorting blind and partially-sighted passengers; ▌

— an understanding of the types of equipment which can assist persons with reduced mobility and a knowledge of how to handle such ‖ equipment;

— the use of boarding and deboarding assistance equipment used and knowledge of the appropriate boarding and deboarding assistance procedures that safeguard the safety and dignity of persons with reduced mobility;

— sufficient understanding of the need for reliable and professional assistance. Also awareness of the potential of certain disabled passengers to experience feelings of vulnerability during travel because of their dependence on the assistance provided;

— a knowledge of first aid.

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Rights of passengers in bus and coach transport ***I

P6_TA(2009)0281

European Parliament legislative resolution of 23 April 2009 on the proposal for a regulation of the European Parliament and of the Council on the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (COM(2008)0817 – C6-0469/2008 – 2008/0237(COD))

(2010/C 184 E/68)

(Codecision procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0817),

— having regard to Article 251(2) and Article 71(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0469/2008),

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on Transport (A6-0250/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and to the Commission.

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P6_TC1-COD(2008)0237

Position of the European Parliament adopted at first reading on 23 April 2009 with a view to the adoption of Regulation *(EC) No …/2009* of the European Parliament and of the Council on the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws

(Text with EEA relevance)

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) thereof,

Having regard to the proposal from the Commission ‖ ,

Having regard to the opinion of the European Economic and Social Committee [1],

Having regard to the opinion of the Committee of the Regions [2],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [3],

Whereas:

(1) Action by the Community in the field of bus and coach transport should aim, among other things, at ensuring a high level of protection for passengers that is comparable *to* other modes of transport and wherever they travel. Moreover, full account should be taken of *general consumer protection* requirements.

(2) Since the bus or coach passenger is the weaker party to the transport contract, passengers' rights in this respect should be safeguarded *irrespective* of their nationality or place of residence within the Community.

(3) Member States should have the possibility to exempt urban and suburban transport from this Regulation if they ensure a comparable level of passenger rights through alternative regulatory measures. These measures should take into account passenger charters for multimodal public transport networks, which cover the issues set out in Article 1 of this Regulation. The Commission should examine the possibility of establishing a set of common passenger rights for urban, suburban and regional transport, which cover all modes of transport and submit a report to Parliament, accompanied, if appropriate, by a legislative proposal.

(4) Member States should encourage the development of passenger charters for urban, suburban and regional bus and/or coach services which set out commitments by bus and/or coach undertakings to increase the quality of their service and better meet the needs of their passengers.

(5) EU measures to improve passengers' rights in the bus and coach transport sector should take account of the specific characteristics of this sector, which consists largely of small and medium sized undertakings.

(6) Passengers should enjoy liability rules comparable to *those applicable to* other modes of transport in the event of accidents resulting in death or injury.

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[1] *OJ C …*
[2] *OJ C …*
[3] *Position of the European Parliament of 23 April 2009.*

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(7) Passengers should be entitled to advance payments to cover their immediate economic needs following an accident.

(8) Passengers who have suffered damage as a result of an accident covered by an insurance guarantee should, in the first instance, submit their claims for damages, as referred to in this Regulation, to the bus and/or coach undertaking and may apply to the insurance company only if that undertaking fails to take action in the matter.

(9) Bus and/or coach undertakings should be liable for loss or damage of passengers' luggage on terms comparable *to those applicable to* other modes of transport.

(10) Bus and coach passenger services should benefit citizens in general. Consequently, disabled persons and persons with reduced mobility, whether caused by disability, age or any other factor, should have *opportunities comparable to those of other citizens for using* bus and coach services ‖. Disabled persons and persons with reduced mobility have the same right as all other citizens to free movement, freedom of choice and non-discrimination.

(11) In the light of Article 9 of the United Nations Convention on the Rights of Persons with Disabilities and in order to give disabled persons and persons with reduced mobility opportunities for bus and coach travel comparable to those of other citizens, rules for non-discrimination and assistance during their journey should be established. Those persons should therefore be accepted for carriage and not refused transport on the grounds of their disability or lack of mobility, except for reasons which are justified on grounds of safety and prescribed by law. They should enjoy the right to assistance at bus and coach terminals and on board the vehicles, including embarking and disembarking. In the interest of social inclusion, the persons concerned should receive the assistance without additional charge. Bus and/or coach undertakings should establish accessibility rules, preferably *using* the European Standardisation system.

(12) There is a need for bus and/or coach undertakings to provide specific training to their personnel enabling them to properly assist disabled persons and persons with reduced mobility. Such training should be provided within the framework of Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers ([1]). Member States should - to the extent possible - support the bus and/or coach undertakings in the setting up and execution of appropriate training programmes.

(13) In deciding on the design of new terminals, and as part of major refurbishments, managing bodies should, ***without exception***, take into account the needs of disabled persons and persons with reduced mobility. In any case, managing bodies of bus and coach terminals should designate points where such persons can notify their arrival and need for assistance.

(14) Similarly, bus and/or coach undertakings should take those needs into account when deciding on the design of new and newly refurbished vehicles.

(15) Member States should improve existing infrastructure, where this is necessary to enable bus and/or coach undertakings to ensure access for disabled persons and persons with reduced mobility as well as to provide appropriate assistance.

(16) EU measures to improve barrier-free mobility should promote, as a matter of priority, barrier-free access to bus and coach terminals and stops.

(17) According to the conclusions of the COST 349 project on accessibility of coaches and long distance buses, the Commission should propose action for accessible infrastructure, interoperable throughout the EU, at bus and coach terminals and stops.

([1]) ***OJ L 226, 10.9.2003, p. 4.***

(18) Rights of bus and coach passengers should include the receipt of information regarding the service before and during the journey. All essential information provided to bus and coach passengers should also be provided in alternative formats accessible to disabled persons and persons with reduced mobility.

(19) This Regulation should not restrict the rights of bus and/*or* coach undertakings to seek compensation from any person, including third parties, in accordance with the applicable law.

(20) Inconveniences experienced by passengers due to cancellation or long delay of their journey should be reduced. To this end, passengers should be adequately looked after and informed. Passengers should be able to cancel and have their tickets reimbursed or to obtain re-routing under satisfactory conditions or information on alternative transport services. If bus and/or coach undertakings fail to provide passengers with the necessary assistance, passengers should have a right to obtain financial compensation.

(21) Bus and/or coach undertakings should cooperate in order to adopt arrangements at national or European level for improving care and assistance offered to passengers whenever their travel is interrupted, notably in the event of long delays.

(22) This Regulation shall not affect the rights of passengers established by *Council* Directive 90/314/EEC *of 13 June 1990* on package travel, package holidays and package tours ([1]). In *the event that* a package tour is cancelled for reasons other than the bus and coach transport service being cancelled, this Regulation should not apply.

(23) Passengers should be fully informed of their rights provided for in this Regulation, so that they can effectively exercise those rights.

(24) Passengers should be able to exercise their rights by means of appropriate complaint procedures implemented by bus and/or coach undertakings or, as the case may be, by submission of complaints to the body or bodies designated to that end by the relevant Member State.

(25) Member States should ensure and supervise general compliance by bus and/or coach undertakings with this Regulation and designate an appropriate body to carry out such enforcement tasks. The supervision should not affect the rights of passengers to seek legal redress from courts *according to national legal* procedures.

(26) Member States should lay down penalties applicable to infringements of this Regulation and ensure that *those* penalties are applied. *Those* penalties should be effective, proportionate and dissuasive.

(27) Since the objectives of this Regulation, namely to ensure high and equivalent levels of protection of and assistance to passengers in bus and coach transport across all Member States, cannot sufficiently be achieved by the Member States alone and can therefore by reason of the significant international dimension 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 those objectives.

(28) This Regulation should be without prejudice to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ([2]).

([1]) OJ L 158, 23.6.1990, p. 59.
([2]) OJ L 281, 23.11.1995, p. 31.

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(29) The enforcement of this Regulation should be based on Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection law (the Regulation on consumer protection cooperation) ([1]). That Regulation should therefore be amended accordingly.

(30) This Regulation respects the fundamental rights and *complies with* the principles recognised in particular by the Charter of Fundamental Rights of the European Union,

HAVE ADOPTED THIS REGULATION:

Chapter I

General provisions

Article 1

Subject matter

This Regulation establishes rules as regards the following:

(1) non-discrimination between passengers with regard to transport conditions offered by bus and/or coach undertakings;

(2) the liability of bus and/or coach undertakings in the event of accidents resulting in death or injury of passengers or loss of or damage to their luggage;

(3) non-discrimination and mandatory assistance for disabled persons and persons with reduced mobility travelling by bus or coach;

(4) *the* obligations of bus and/or coach undertakings towards passengers in *the event* of cancellation or delay;

(5) the minimum information to be provided to passengers;

(6) the handling of complaints;

(7) the enforcement of *passengers*' rights.

Article 2

Scope

1. This Regulation shall apply to the carriage of passengers by bus and/or coach undertakings by means of regular services.

2. Member States may exempt urban ***and*** suburban ▌transport covered by public service contracts, if such contracts ensure a comparable level of passenger rights to that required *by* this Regulation.

3. With respect to occasional services, only Chapter II shall be applicable.

Article 3

Definitions

For the purposes of this Regulation the following definitions shall apply:

([1]) OJ L 364, 9.12.2004, p. 1

(1) 'bus and/or coach undertaking' means a transport undertaking that is authorised in the State of establishment to undertake carriage by coach and bus in accordance with the market-access conditions laid down by national legislation and a transport undertaking holding a valid Community licence issued in conformity with Council Regulation (EEC) No 684/92 ***of 16 March 1992 on common rules for the international carriage of passengers by coach and bus*** [1] for the purpose of carrying out international services of carriage of passengers;

(2) 'occasional services' means services within the meaning of Article 2(3) of Regulation (EEC) No 684/92;

(3) 'regular services' means services within the meaning of Article 2(1) of Regulation (EEC) No 684/92;

(4) 'transport contract' means a contract of carriage between a bus and/or coach undertaking ▌ and a passenger for the provision of one or more transport services, ***irrespective of whether the ticket was purchased from a carrier, tour operator or ticket vendor;***

(5) 'ticket' means a valid document giving entitlement to transport, or something equivalent in paperless form, including electronic form, issued or authorised by a bus and/or coach undertaking or its authorised ticket vendors;

(6) 'ticket vendor' means any ***intermediary selling*** bus ***or*** coach transport services, ***including those sold as part of a package***, on behalf of a bus and/or coach undertaking ***or a tour operator***;

(7) 'tour operator' means an organiser ▌within the meaning of Article 2(2) ▌of Directive 90/314/EEC;

(8) 'disabled person' or 'person with reduced mobility' means any person whose mobility when using transport is reduced as a result of any physical disability (sensory or locomotory, permanent or temporary), intellectual disability or impairment, or any other cause of disability, or as a result of age, and whose situation needs appropriate attention and adaptation to his particular needs of the services made available to all passengers;

(9) 'reservation' means an authorisation, on paper or in electronic form, giving entitlement to transportation subject to previously confirmed personalised transport arrangements;

(10) 'terminal managing body' means an organisational entity in a Member State which has been made responsible for the management of a bus and/or coach terminal;

(11) 'cancellation' means the non-operation of a ***specific*** service which was previously scheduled and for which at least one ***actual*** reservation was made;

(12) 'delay' means a difference between the time the passenger was scheduled to depart or to arrive in accordance with the published timetable and the time of his actual or expected departure or arrival;

(13) 'accessible formats' means that passengers can access the same information using, for example, text, Braille, audio, video and/or electronic formats.

Article 4

Transport contract and non-discriminatory contract conditions

1. Bus and/*or* coach undertakings shall provide passengers with a proof of the conclusion of the transport contract by issuing one or more tickets. The tickets shall be considered prima facie evidence of the conclusion of the contract and thus give rights as provided for in this Regulation.

[1] *OJ L 74, 20.3.1992, p. 1.*

2. Without prejudice to public service obligations requiring social tariffs, contract conditions and tariffs applied by bus and/or coach undertakings or ticket vendors shall be offered to the general public without any discrimination based on the nationality or the place of residence of the final customer or on the place of establishment of the bus and/or coach undertakings, or ticket vendors within the Community.

Article 5

Exclusion of waiver

1. Obligations pursuant to this Regulation shall not be limited or waived, inter alia by a derogation or restrictive clause in the transport contract.

2. Bus and/or coach undertakings may offer contract conditions that are more favourable for the passenger than the conditions laid down in this Regulation.

Chapter II

Liability of bus and/or coach undertakings with regard to passengers and their luggage

Article 6

Liability for death and injury of passengers

1. In accordance with this Chapter, bus and/or coach undertakings shall be liable for the loss or damage resulting from the death of, ***or*** personal injury ▌ to, passengers, caused by accidents arising out of the operation of bus and coach transport services and occurring while the passenger is in, entering or leaving the vehicle.

2. The ***tortious*** liability of bus and/or coach undertakings for damages shall not be subject to any financial limit, be it defined by law, convention or contract.

3. For any *claim* up to the amount of EUR 220 000 ***per passenger***, a bus and/or coach undertaking shall not exclude or limit its liability by proving that it has taken the care required pursuant to paragraph 4(a)***, unless the total amount of the resulting claim exceeds the amount for which compulsory insurance is, in conformity with Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles ([1]), required under the national legislation of the Member state in which the bus or coach is normally based. In such a situation, liability shall be limited to that amount***.

4. A bus and/or coach undertaking shall not be liable pursuant to paragraph 1:

(a) if the accident has been caused by circumstances not connected with the operation of bus and coach transport services ***or*** which the ***carrier*** could not have avoided, in spite of having taken the care required in the particular circumstances of the case, ***or*** the consequences of which it was unable to prevent;

(b) to the extent that the accident is the fault of the passenger or caused by his negligence.

5. Nothing in this Regulation shall:

(a) imply that a bus and/or coach undertaking is the sole party liable to pay damages; or

(b) restrict any rights of a bus and/or coach undertaking to seek redress from any other party in accordance with *the* applicable law of a Member State.

([1]) ***OJ L 8, 11.1.1984, p. 17.***

Article 7

Damages

1. In the event of the death of a passenger, the damages in respect of the liability provided for in Article 6 shall comprise:

(a) any necessary costs following the *passenger's* death, in particular the cost of transporting the body and the funeral expenses;

(b) if the death does not occur at once, the damages provided for in paragraph 2 ‖.

2. In the event of personal injury or any other physical or mental harm to a passenger, the damages shall comprise:

(a) any necessary costs, in particular those *for* treatment and *for* transport;

(b) compensation for financial loss, due to total or partial incapacity to work, or to increased needs.

3. If, through the death of the passenger, a person whom the passenger had, or would have had, a legal duty to maintain is deprived of support, such persons shall also be compensated for that loss.

Article 8

Advance payments

1. In the event of the death of, ***or any*** personal injury ▌to, passengers, caused by an accident arising out of the operation of bus and coach transport services, ***and where the passenger is not covered by any other travel insurance policy,*** the bus and/or coach undertaking shall without delay, and in any event ***within*** fifteen days ***of the*** establishment of the identity of the natural person entitled to compensation, make such advance payments as may be required to meet immediate economic needs on a basis proportional to the damage suffered***, provided that there is prima facie evidence of causality attributable to the transport undertaking***.

2. Without prejudice to paragraph 1, the advance payment shall not be less than EUR 21 000 per passenger in the event of death.

3. An advance payment shall not constitute recognition of liability and may be offset against any subsequent sums paid on the basis of this Regulation but it shall not be returnable, except in cases where the damage was caused by the negligence or fault of the passenger, where the person who received the advance payment was not the person entitled to compensation***, or where the actual damage incurred was below the amount of the advance payment.***

Article 9

Liability for lost and damaged luggage

1. Bus and/or coach undertakings shall be liable for the loss of or damage to luggage placed under their responsibility. The maximum compensation shall amount to EUR 1 800 per passenger.

2. In the event of accidents arising out of the operation of bus and coach transport services, bus and/or coach undertakings shall be liable for loss of or damage to the personal effects which passengers had on them or with them as hand luggage. The maximum compensation shall amount to EUR 1 300 *per passenger*.

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3. ▌ A bus and/or coach undertaking ***shall not be held liable for loss or*** damage ***pursuant to paragraphs 1 and 2:***

(a) if the loss or damage has been caused by circumstances not connected with the operation of bus and coach transport services and which the bus and/or coach undertaking could not have avoided, in spite of having taken the care required in the particular circumstances of the case, and the consequences of which it was unable to prevent;

(b) to the extent that the loss or damage is the fault of the passenger or caused by his negligence.

Chapter III

Rights of disabled persons and persons with reduced mobility

Article 10

Prevention of refusal of carriage

1. Bus and/or coach undertakings, their ticket vendors and tour operators shall not refuse, on the grounds of disability or of reduced mobility:

(a) to accept a reservation for a transport service or to issue a ticket for a journey to which this Regulation applies;

(b) to embark a disabled person or a person with reduced mobility, provided that the person concerned has a valid ticket or reservation.

2. Reservations and tickets shall be offered to disabled persons and persons with reduced mobility at no additional cost.

Article 11

Derogations and special conditions

1. Notwithstanding the provisions of Article 10, bus and/or coach undertakings or their ticket vendors or tour operators may refuse, on the grounds of disability or reduced mobility, to accept a reservation from, to issue a ticket to or *to* embark a disabled person or a person with reduced mobility:

▌

(a) where the ***design*** of *the* vehicle makes the embarkation or carriage of the disabled person or person with reduced mobility physically ***or actually*** impossible;

(b) if the vehicle or the infrastructure at the place of departure or arrival or en route is not fitted out in such a way as to guarantee the safe transport of disabled persons and persons with reduced mobility.

In the event of refusal to accept a reservation on the grounds referred to under points (a) or (b) of the first subparagraph, carriers, ticket vendors or tour operators shall make reasonable efforts to propose an acceptable alternative to the person in question.

2. A disabled person or a person with reduced mobility who has been denied embarkation on the grounds of his disability or reduced mobility shall be offered ***the choice between*** the right to reimbursement and reasonable alternative transport services to the place of destination in a comparable time frame.

3. ▌A bus and/or coach undertaking, a ticket vendor or a tour operator may require that disabled persons or persons with reduced mobility be accompanied by another person who is capable of providing the assistance required by that person, if this is strictly necessary***, if***

(a) the conditions referred to in paragraph 1(a) or (b) apply, or

(b) the crew of the vehicle concerned consists only of one person who drives the vehicle and who is not in a position to provide the disabled person or the person with reduced mobility with the assistance as specified in Annex I.

4. When a bus and/or coach undertaking or a ticket vendor or a tour operator exercise the derogation provided for in paragraph 1, it shall immediately inform the disabled person or person with reduced mobility of the reasons, or upon request inform them in writing within five working days of the ***request***.

Article 12

Accessibility and information

1. Bus and/or coach undertakings shall establish, ***in co-operation with*** organisations ***representing*** disabled persons and persons with reduced mobility and enforcement bodies referred to in Article 27, non-discriminatory access rules that apply to the transport of disabled persons and persons with reduced mobility ***and accompanying persons***, in order to meet applicable safety requirements. These rules shall *set out* all *the* access conditions of the bus and coach service in question, including accessibility of the vehicles operated and their facilities on board, ***and of the fitted assistive equipment***.

2. The rules provided for in paragraph 1 shall be made publicly available by bus and/or coach undertakings or ticket vendors at least at the time a reservation is made, in ***accessible formats***, and in the same languages as those in which information is generally made available to all passengers. When providing this information particular attention shall be paid to the needs of *disabled persons* and persons with reduced mobility.

3. Upon request bus and/*or* coach undertakings shall ***immediately*** make available the international, Community or national law establishing the safety requirements, on which non-discriminatory access rules are based. ***These must be provided in accessible formats.***

4. Tour operators shall make available the rules provided for in paragraph 1 which apply to journeys included in package travel, package holidays and package tours which they organise, sell or offer for sale.

5. Bus and/or coach undertakings, their ticket vendors or tour operators shall ensure that all relevant information concerning the conditions of carriage, journey information and information on accessibility of services***, including online booking and information***, is available in ▌accessible formats for disabled persons and persons with reduced mobility ***extending to persons incapable of travelling without assistance because of their elderly or young age and accompanying persons***.

Article 13

Right to assistance

1. Terminal managing bodies and bus and/or coach undertakings shall ensure appropriate assistance to a disabled person or a person with reduced mobility as specified in Annex I free of charge before, ***after and where possible during*** the journey. ***The assistance shall be adapted to the individual needs of the disabled person or person with reduced mobility.***

2. Terminal managing bodies and bus and/or coach undertakings may provide assistance themselves or may contract with one or more other parties for the supply of the assistance. They may enter into such a contract or contracts on their own initiative or on request.

Where terminal managing bodies and bus and/or coach undertakings contract with one or more other parties for the supply of the assistances, they shall remain responsible for provision of assistance.

3. The provisions of this Chapter do not prevent terminal managing bodies or bus and/or coach undertakings from providing assistance of a higher standard than the standards referred to in Annex I or providing services additional to those specified therein.

Article 14

Right to assistance at terminals

1. No later than six months after the entry into force of this Regulation, Member States shall designate bus and coach terminals where assistance for disabled persons and persons with reduced mobility should be provided, taking into consideration a need to ensure the accessibility of services in most geographical locations. Member States shall inform the Commission thereof. ***The Commission shall make available a list of the designated bus and coach terminals on the Internet.***

2. The terminal managing body of a terminal designated by a Member State in accordance with paragraph 1 shall be responsible for ensuring the provision of the assistance specified in part (a) of Annex I without additional charge to disabled persons and persons with reduced mobility, provided that the person concerned fulfils the conditions set out in Article 16.

3. Where use of a recognised assistance dog is required, this shall be granted provided that the bus and/or coach undertaking, ticket vendor or tour operator were notified in accordance with applicable national rules covering the carriage of assistance dogs.

Article 15

Right to assistance on board

Bus and/or coach undertakings shall provide at least the assistance specified in part (b) of Annex I free of charge to disabled persons and persons with reduced mobility ▌during boarding and disembarking from the coach or bus provided that the person concerned fulfils the conditions set out in Article 16.

Article 16

Conditions under which assistance is provided

1. Bus and/or coach undertakings, terminal managing bodies, ticket vendors and tour operators shall cooperate in order to provide assistance to disabled persons and persons with reduced mobility on condition that the person's need for such assistance is notified to the bus and/or coach undertaking, terminal managing body, ticket vendor or tour operator at least ***24*** hours before the assistance is needed, ***unless a shorter notification period is proposed by the assistance provider, or agreed between the assistance provider and the passenger.***

2. Bus and/or coach undertakings, ticket vendors and tour operators shall take all measures necessary to facilitate the receipt of notifications of the need for assistance made by disabled persons or persons with reduced mobility. ***The passenger shall receive a confirmation, stating that the assistance needs have been notified. These obligations*** shall apply at all their points of sale including sale by telephone and via the Internet.

3. If no notification is made in accordance with paragraph 1, bus and/or coach undertakings, terminal managing bodies, ticket vendors and tour operators shall make every reasonable effort to ensure that the assistance is provided in such a way that the disabled person or person with reduced mobility is able to board the departing service, to change to the corresponding service or to disembark from the arriving service for which he has purchased a ticket.

4. Assistance shall be provided on condition that the person concerned presents himself at the designated point:

— at a time stipulated in advance by the bus and/or coach undertaking, which shall be no more than 60 minutes before the *scheduled time of* departure, or

— if no time is stipulated, not later than 30 minutes before the *scheduled time of* departure, ***unless otherwise proposed by the assistance provider or otherwise agreed between the passenger and the assistance provider***.

5. The terminal managing body of a terminal designated by a Member State in accordance with Article 14(1) shall, taking account of local conditions and without prejudice to the powers of other entities regarding areas located outside the terminal premises, designate points of arrival and departure within the terminal or at points under the direct control of the terminal managing body, both inside and outside the terminal building, at which disabled persons or persons with reduced mobility can announce their arrival and request assistance.

6. The ***designated*** points referred to in paragraph 5 shall be clearly ***signposted, accessible and recognisable to disabled persons and persons with reduced mobility*** and shall offer ***the necessary*** information about the terminal and assistance provided, in accessible formats.

Article 17

Transmission of information to a third party

1. Where provision of the assistance has been subcontracted, and a bus and/or coach undertaking or the ticket vendor or the tour operator receives a notification of the need for assistance at least 48 hours before the *scheduled time of* departure for the journey, it shall transmit the relevant information ***so that*** the *subcontractor* ***receives the notification*** at least 36 hours before the *scheduled time of* departure for the journey.

2. Where provision of the assistance has been subcontracted, and a bus and/or coach undertaking or a ticket vendor or a tour operator does not receive a notification of the need for assistance at least 48 hours before the *scheduled time of* departure for the journey, the carrier or ticket vendor or tour operator shall transmit the information ***so that*** the *subcontractor* ***receives the notification*** as soon as possible.

Article 18

Training

Bus and/or coach undertakings ***and terminal managing bodies*** shall:

(a) ensure that all their personnel, including those employed by any sub-contractor, providing direct assistance to disabled persons and persons with reduced mobility have knowledge of how to meet the needs of persons having various disabilities or mobility impairments;

(*b*) provide disability-assistance and disability-awareness training as described in Annex II to all their personnel who deal directly with the travelling public;

(*c*) ensure that, upon recruitment, all new employees attend disability-related training and that personnel receive refresher training courses when appropriate.

Article 19

Compensation in respect of wheelchairs and mobility equipment

1. Where wheelchairs or other mobility equipment, or parts thereof, are lost or damaged whilst being handled at the terminal or transported on board *a bus or coach*, the passenger to whom the equipment belongs shall be compensated by the bus and/or coach undertaking or the terminal managing body depending on who was responsible for the equipment at the time of loss or damage.

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Where necessary every effort shall be undertaken to rapidly provide replacement equipment ***with similar technical and functional features to that lost or damaged***.

2. A bus and/or coach undertaking shall not be liable pursuant to paragraph 1:

(a) if the loss or damage has been caused by circumstances not connected with the operation of bus and coach transport services and which the bus and/or coach undertaking could not have avoided, in spite of having taken the care required in the particular circumstances of the case, and the consequences of which it was unable to prevent;

(b) to the extent that the loss or damage is the fault of the passenger or was caused by the passenger's negligence.

3. ▌ The amount of compensation payable pursuant to this Article ***shall be equivalent to the actual loss suffered***.

Chapter IV

Obligations of bus and/or coach undertakings in the event of interrupted travel

Article 20

Responsibility in the event of cancellations and long delays

1. Bus and/or coach undertakings shall be liable for cancellations, ***overbookings*** and ▌ for delays at departure of more than two hours. ***Bus and/or coach undertakings shall be liable only for cancellations and delays resulting from circumstances within their control. That liability shall not cover delays as a result of traffic congestion and border and/or vehicle checks.*** In ***all cases where undertakings are liable*** the passengers concerned shall at least:

(a) be offered alternative transport services ***at no extra cost and*** under reasonable conditions or, if that is impractical, be informed of adequate alternative transport services of other transport operators;

(b) receive reimbursement of the ticket price unless they accept alternative transport services referred to in point (a);

(c) ***in addition to the reimbursement referred to in point (b)***, have the right to compensation amounting to ***50 %*** of the ticket price if the bus and/or coach undertaking fails to provide alternative services or information as referred to in point (a). The compensation shall be paid within one month after the submission of the request for compensation;

(d) where they choose to accept the alternative transport services offered, have the right to compensation amounting to 50 % of the ticket price without losing their right to transport. The ticket price shall be the full cost paid by the passenger for the delayed part of the journey. The compensation shall be paid within one month after the submission of the request for compensation;

(e) be offered meals and refreshments in line with the waiting time if they can be reasonably provided;

(f) be offered hotel or other accommodation and transport between the terminal and the place of accommodation in case an overnight stay becomes necessary before the trip can be continued;

(g) where the bus and/or coach becomes inoperable, be offered transport from the location of the inoperational vehicle to a suitable waiting point and/or terminal from where continuation of the journey becomes possible.

2. In cases other than those covered by paragraph 1, bus and/or coach undertakings shall be liable for delays at arrival of more than two hours, where the delay is due to:

— the driver's negligence and fault, or

— a technical failure of the vehicle.

In such events the passengers concerned shall at least:

(a) have the right to compensation amounting to 50 % of the ticket price; the ticket price shall be the full cost paid by the passenger for the delayed part of the journey. The compensation shall be paid within one month after the submission of the request for compensation;

(b) be offered assistance as referred to in points (e), (f) and (g) of paragraph 1 of this Article.

3. A bus and/or coach undertaking shall be exonerated from this liability if the cancellation or delay can be attributed to one of the following causes:

(a) circumstances not connected with the operation of bus and coach transport services and which the bus and/or coach undertaking could not have avoided, in spite of having taken the care required in the particular circumstances of the case, and the consequences of which it was unable to prevent;

(b) passenger negligence, or

(c) the actions of a third party which the bus and/or coach undertaking could not have avoided, in spite of having taken the care required in the particular circumstances of the case, and the consequences of which it was unable to prevent.

Article 21

Provision of information

1. In the event of delay, bus and/or coach undertakings or, where appropriate, terminal managing bodies shall inform passengers of estimated departure and arrival times as soon as this information is available, but not later than 30 minutes after a scheduled departure or one hour before a scheduled arrival respectively. ***This information shall also be provided in accessible formats for persons with disabilities and persons with reduced mobility.***

2. If passengers miss a connection due to a delay, bus and/or coach undertakings shall make reasonable efforts to inform the passengers concerned of alternative connections.

Article 22

Further claims

This Regulation shall ***apply without prejudice to a passenger's rights to further compensation. The compensation granted under this Regulation may be deducted from such compensation.***

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Article 23

Additional measures in favour of passengers

Carriers shall cooperate in order to adopt arrangements at national or European level with the involvement of stakeholders, professional associations and associations of customers, passengers and disabled persons. These measures should be aimed at improving care for passengers, especially in the event of long delays and interruption or cancellation of travel ***prioritising care for those passengers with special needs owing to disability, reduced mobility, illness, elderly age, pregnancy and extending to young children, and accompanying passengers***.

In the event of long delays and interruption or cancellation of travel, care shall focus on providing passengers with medical assistance and food and drink as necessary, regular information updates, and, where appropriate, alternative travel arrangements and accommodation.

Chapter V

Information for passengers and handling of complaints

Article 24

Right to travel information

Terminal managing bodies and bus and/or coach undertakings shall provide passengers with adequate information throughout their travel in ***accessible formats.***

Article 25

Information on passenger rights

‖ Bus and/or coach undertakings and terminal managing bodies shall ensure that passengers are provided with appropriate and comprehensible information regarding their rights under this Regulation at the latest on departure and during their journey. The information shall be provided in ***accessible formats***. This information shall include contact details of the enforcement body designated by the Member State pursuant to Article 27(1).

Article 26

Complaints

1. Bus and/or coach undertakings shall***, where one does not already exist, establish*** a complaint handling mechanism***, accessible for all passengers, including passengers with disabilities and passengers with reduced mobility,*** for rights and obligations covered by this Regulation.

2. Passengers may submit a complaint to a bus and/or coach undertaking within one month from the day when a service was performed or when a service should have been performed. Within 20 working days, the addressee of a complaint shall either give a reasoned opinion or, in justified cases, inform the passenger by what date a reply is to be expected. The time taken to reply shall not be longer than two months from the receipt of the complaint.

3. If no reply is received within the time limits set out in paragraph 2, the complaint shall be deemed to have been accepted.

4. Bus and/or coach undertakings shall issue annually a report containing the number and subject matter of complaints received, the average number of days required to answer them and corrective actions taken.

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Chapter VI

Enforcement and national enforcement bodies

Article 27

National enforcement bodies

1. Each Member State shall designate a body or bodies responsible for the enforcement of this Regulation. Each body shall take the measures necessary to ensure that the rights of passengers are respected including compliance with the accessibility rules referred to in Article 12. Each body shall, in its organisation, funding decisions, legal structure and decision-making, be independent. ▌

2. Member States shall inform the Commission of the body or bodies designated in accordance with this Article and of their respective responsibilities.

3. These bodies shall cooperate with organisations representing bus and/or coach undertakings and consumers, including organisations representing disabled persons and persons with reduced mobility.

4. Any passenger may complain to the appropriate body designated under paragraph 1, about an alleged infringement of this Regulation.

5. Member States that have chosen to exempt certain services pursuant to Article 2(2) shall ensure a comparable mechanism of enforcement of passenger rights.

Article 28

Report on enforcement

1. On 1 June each year the enforcement bodies designated pursuant to Article 27 (1) shall publish a report on their activity in the previous year, containing inter alia:

(a) a description of actions taken in order to implement the provisions of this Regulation,

(b) a reference to the procedure applicable to the settlement of individual complaints

(c) a summary of rules on accessibility for disabled persons and persons with reduced mobility applicable in that Member State,

(d) aggregated data on complaints***, including on their outcome and resolution timescales;***

(e) details of sanctions applied,

(f) other issues of importance for the better enforcement of this Regulation.

2. In order to be able to draft such a report enforcement bodies shall keep statistics on individual complaints, according to the subject and the companies concerned. Such data shall be made available on request to the Commission or to the national investigative authorities up to three years after the date of the incident.

Article 29

Cooperation between enforcement bodies

National enforcement bodies designated pursuant to Article 27 (1) shall exchange information on their work and decision-making principles and practices for the purpose of consistent protection of passengers across the Community. The Commission shall support them in this task.

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Article 30

Penalties

Member States shall lay down rules on penalties applicable to infringement of this Regulation and shall take all the measures necessary to ensure that those rules are implemented. The penalties provided for***, which could include ordering the payment of compensation to the passenger concerned,*** must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission and shall inform it without delay of any subsequent amendment affecting them.

Chapter VII

Final provisions

Article 31

Report

The Commission shall report to the European Parliament and the Council *no later than* … (*) on the operation and effects of this Regulation. The report shall be accompanied, where necessary by legislative proposals implementing in further detail the provisions of this Regulation, or amending it.

Article 32

Amendment to Regulation (EC) No 2006/2004

In the Annex to Regulation (EC) No 2006/2004 the following point is added:

'18. Regulation (EC) No … of the European Parliament and of the Council of … on the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 *on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation)* (OJ L …)'

Article 33

Entry into force

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

2. It shall apply with effect from … (**).

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ‖,

For the European Parliament
The President

For the Council
The President

(*) *OJ: Three years after entry into force of this Regulation.*
(**) *OJ: Two years after entry into force of this Regulation.*

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ANNEX I

Assistance provided to disabled persons and persons with reduced mobility

a) Assistance at terminals

Assistance and arrangements necessary to enable disabled persons and persons with reduced mobility to:

— communicate their arrival at the terminal and their request for assistance at designated points;

— move from designated point to ticket counter, waiting room and embarkation area.

b) Assistance on board

Assistance and arrangements necessary to enable disabled persons and persons with reduced mobility to:

— board the vehicle, with the provision of lifts, wheelchairs or other appropriate equipment;

— load their luggage;

— retrieve their luggage;

— disembark from the vehicle;

— move to toilet facilities**,** if **possible;**

— carry***, to the extent possible,*** a recognised assistance dog on board a bus or coach;

— proceed to the seats;

— be provided with essential information on a journey in accessible formats;

— embark/disembark during pauses in a journey, if feasible.

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ANNEX II

Disability-related training

a) Disability-awareness training

Training of staff that deal directly with the travelling public includes:

— awareness of and appropriate responses to passengers with physical, sensory (hearing and visual), hidden or learning disabilities, including how to distinguish between the different abilities of individuals whose mobility, orientation, or communication may be reduced;

— barriers faced by disabled persons and persons with reduced mobility, including attitudinal, environmental/physical and organisational barriers;

— recognised assistance *dogs*, including the role and the needs of an assistance *dog*;

— dealing with unexpected occurrences;

— interpersonal skills and methods of communication with deaf *people* and *people with* hearing *impairments, people with* visual *impairments, people with* speech *impairments* and people with a learning disability;

— how to handle wheelchairs and other mobility aids carefully so as to avoid damage (to all staff who are responsible for baggage handling if *relevant).*

b) Disability-assistance training

Training of staff directly assisting disabled persons and persons with reduced mobility includes:

— how to help wheelchair users make transfers into and out of a wheelchair;

— skills for providing assistance to disabled persons and persons with reduced mobility travelling with a recognised assistance *dog*, including the role and the needs of those *dogs*;

— techniques for escorting blind and partially-sighted passengers and for the handling and carriage of recognised assistance ***dogs, bearing in mind that assistance dogs are trained to obey exclusively the commands of the owner and should not be handled by the staff while on duty***;

— an understanding of the types of equipment which can assist disabled persons and persons with reduced mobility and a knowledge of how to handle such an equipment;

— the use of boarding and deboarding assistance equipment used and knowledge of the appropriate boarding and deboarding assistance procedures that safeguard the safety and dignity of disabled persons and persons with reduced mobility;

— sufficient understanding of the need for reliable and professional assistance. Also awareness of the potential of certain disabled passengers to experience feelings of vulnerability during travel because of their dependence on the assistance provided;

— a knowledge of first aid.

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Term of protection of copyright and related rights ***I

P6_TA(2009)0282

European Parliament legislative resolution of 23 April 2009 on the proposal for a directive of the European Parliament and of the Council amending Directive 2006/116/EC of the European Parliament and of the Council on the term of protection of copyright and related rights (COM(2008)0464 – C6-0281/2008 – 2008/0157(COD))

(2010/C 184 E/69)

(Codecision procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0464),

— having regard to Article 251(2) and Articles 47(2), 55 and 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0281/2008),

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Industry, Research and Energy, the Committee on the Internal Market and Consumer Protection and the Committee on Culture and Education (A6-0070/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and the Commission.

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P6_TC1-COD(2008)0157

Position of the European Parliament adopted at first reading on 23 April 2009 with a view to the adoption of Directive *2009/…/EC* of the European Parliament and of the Council amending Directive 2006/116/EC ‖ on the term of protection of copyright and related rights

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 47(2), 55 and 95 thereof,

Having regard to the proposal from the Commission ‖,

Having regard to the opinion of the European Economic and Social Committee [1],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [2],

Whereas:

(1) Under Directive 2006/116/EC *of the European Parliament and of the Council* of 12 December 2006 on the term of protection of copyright and certain related rights [3], the term of protection for performers and producers of phonograms is 50 years.

(2) In the case of performers this period starts with the performance or, when the fixation of their performance is published or communicated to the public within 50 years after the performance is made, ***with*** the first such publication or the first such communication to the public, whichever is the earliest.

(3) For phonogram producers the period starts with the fixation of the phonogram or ‖ its publication within 50 years after fixation, or, if *it is* not published, ‖ its communication to the public within 50 years after fixation.

(4) The socially recognised importance of the creative contribution of performers needs to be reflected in a level of protection that acknowledges their creative and artistic contributions.

(5) Performers generally start their careers young and the current term of protection of 50 years ***applicable to fixations of performances*** often does not protect their performances for their entire lifetime. Therefore, ***some*** performers face an income gap at the end of their lifetimes. They are also often not able to rely on their rights to prevent or restrict objectionable uses of their performances that ***may*** occur during their lifetimes.

(6) The revenues derived from the exclusive rights of reproduction and making available, as provided for in Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society [4], as well as fair compensation for reproductions for private use within the meaning of that Directive, and from the exclusive rights of distribution and rental within the meaning of Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property [5], should be available to performers for at least their lifetime.

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[1] *Opinion of 14 January 2009 (not yet published in the OJ).*
[2] *of the European Parliament of 23 April 2009.*
[3] OJ L 372, 27.12.2006, p. 12.
[4] OJ L 167, 22.6.2001, p. 10.
[5] OJ L 376, 27.12.2006, p. 28.

(7) The term of protection for fixations of performances and for phonograms should therefore be extended to ***70 years*** after ***the relevant event***.

(8) ▌*The* rights in the fixation of the performance should revert to the performer if a phonogram producer refrains from offering for sale in sufficient quantity ***within the meaning of the International Convention on the Protection of Performers, Producers of Phonograms and Broadcasting Organisations*** copies of a phonogram which, but for the term extension, would be in the public domain or refrains from making such a phonogram available to the public. ***That option should be available on expiry of a reasonable period of time left to the phonogram producer to carry out both of these acts of exploitation. The rights of the phonogram producer in the phonogram should therefore expire, in order to avoid a situation in which these rights would coexist with those of the performer in the fixation of the performance while the latter rights are no longer transferred or assigned to the phonogram producer.***

(9) Upon entering into a contractual relationship with a phonogram producer, performers normally have to transfer or assign to the phonogram *producer* their exclusive rights of reproduction, distribution, rental and making available of fixations of their performances. In exchange, ***some*** performers are paid an advance on royalties and enjoy payments only once the phonogram producer has recouped the initial advance and made any contractually defined deductions. ***Other performers transfer or assign their exclusive rights against a one-off payment (non-recurring remuneration). This is particularly the case for performers*** who play in the background and do not appear in the credits ('non-featured performers') ***but sometimes also for performers who appear in the credits ('featured performers')***.

(10) In order to ensure that performers who have transferred their exclusive rights to phonogram producers ▌actually benefit from the term extension, a series of accompanying ▌measures should be introduced. ▌

(11) A first accompanying ▌measure should be that phonogram producers are under an obligation to set aside, at least once a year, ***a sum corresponding to*** 20 % of the revenues from the exclusive rights of distribution, reproduction and making available of phonograms. ***'Revenues' means the revenues derived by the phonogram producer before deducting costs.***

▌

(12) Those ***payments*** should be reserved solely for the benefit of performers whose performances are fixed in a phonogram and who have transferred ***or assigned*** their rights to the phonogram producer against a one-off payment. The ***payments*** set aside in this manner should be distributed to non-featured performers at least once a year on an individual basis. ***Such distribution should be*** entrusted to collecting societies ***and*** national rules on non-distributable revenues may be applied. ***In order to avoid a disproportionate burden in the collection and administration of those revenues, Member States may regulate the extent to which micro enterprises are subject to the obligation to contribute where such payments would appear unreasonable in relation to the costs of collecting and administering such revenues.***

(13) However, Article 5 of Directive 2006/115/EC ‖ already grants performers an unwaivable right to equitable remuneration for the rental, inter alia, of phonograms. Likewise, in contractual practice performers do not usually transfer or assign to phonogram producers their rights to claim a single equitable remuneration for broadcasting and communication to the public under Article 8(2) of Directive 2006/115/EC and to fair compensation for reproductions for private use under *point (b) of Article 5(2)* of Directive 2001/29/EC. Therefore, in the calculation of the overall amount to be dedicated by a phonogram producer to payments of the supplementary remuneration, no account should be taken of revenues which the phonogram producer has derived from the rental of phonograms ***or of the*** single equitable remuneration received for broadcasting and communication to the public ***or of the*** fair compensation ***received*** for private copying ▌.

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(14) A second accompanying measure in order to rebalance contracts whereby performers transfer their exclusive rights, on a royalty basis, to a phonogram producer, should be a 'clean slate' for those performers who have assigned their above-mentioned exclusive rights to phonogram producers in return for royalties or remuneration. In order for performers to benefit fully from the extended term of protection, Member States should ensure that, under agreements between phonogram producers and performers, a royalty or remuneration rate unencumbered by advance payments or contractually defined deductions is paid to performers during the extended period.

(15) For the sake of legal certainty it should be provided that in the absence of clear indications to the contrary ***in the contract***, a contractual transfer or assignment of rights in the fixation of the performance concluded before the date by which Member States are to adopt measures implementing *this Directive* shall continue to produce its effects for the extended term.

(16) Member States should be able to provide that certain terms in those contracts which provide for recurring remuneration can be renegotiated for the benefit of performers. Member States should have procedures in place in case the renegotiation fails.

▌

(17) Since the objectives of the proposed accompanying measures cannot be sufficiently achieved by the Member States, *inasmuch* as national measures in that field would either lead to distortion of ‖ competition or affect the scope of exclusive rights of the phonogram producer which are defined by Community legislation, and can therefore ‖ 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 *Directive* does not go beyond what is necessary in order to achieve those objectives.

(18) This Directive does not affect national rules and agreements which are compatible with its provisions, for example collective agreements concluded in Member States between organisations representing performers and organisations representing producers.

(19) In certain Member States, musical compositions with words are *given* a single term of protection, calculated from the death of the last surviving author, while in other Member States separate terms of protection apply for music and lyrics. Musical compositions with words are overwhelmingly co-written. For example, ***an*** opera ***is*** often the ***work of a librettist*** and ***a composer***. Moreover, in musical genres such as jazz, rock and pop music, the creative process is often collaborative in nature.

(20) Consequently, the harmonisation of the term of protection in *respect of* musical compositions with words ***the lyrics and music of which were created in order to be used together*** is incomplete, giving rise to ***obstacles*** to the free movement of goods and services, such as cross-border collective management services. ***In order to ensure the removal of such obstacles, all such works in protection at the date by which the Member States are required to transpose this Directive should have the same harmonised term of protection in all Member States.***

(21) Directive 2006/116/EC should therefore be amended accordingly.

(22) In accordance with point 34 of the Interinstitutional Agreement on better law-making, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating the correlation between this Directive and the transposition measures, and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2006/116/EC

Directive 2006/116/EC is *hereby* amended as follows:

(1) The following *paragraph shall be added to* Article 1:

'*7.* The term of protection of a musical composition with words shall expire 70 years after the death of the last of the following persons to survive, whether or not *those* persons are designated as co-authors: the author of the lyrics and the composer of the ***musical composition, provided that both contributions were specifically created for the respective musical composition with words.***'

(2) Article 3 shall be amended as follows:

a) In paragraph 1, the second subparagraph shall be replaced by the following:

'However,

— if a fixation of the performance otherwise than in a ***phonogram*** is lawfully published or lawfully communicated to the public within this period, the rights shall expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier;

— if a fixation of the performance in a ***phonogram*** is lawfully published or lawfully communicated to the public within this period, the rights shall expire ***70 years*** from the date of the first such publication or the first such communication to the public, whichever is the earlier.'

b) In *paragraph 2, in* the second and third sentence ‖, the ***number*** '50' *shall be* replaced by ***'70'***

c) The following paragraphs shall be inserted in:

'***2a. If, 50 years after the phonogram was lawfully published, or failing such publication, 50 years after it was lawfully communicated to the public, the phonogram producer does not offer copies of the phonogram for sale in sufficient quantity or does not make it available to the public, by wire or wireless means, in such a way that members of the public may access it from a place and at a time individually chosen by them, the performer may terminate the contract whereby he has transferred or assigned his rights in the fixation of his performance to a phonogram producer (hereinafter, a 'contract on transfer or assignment'). The right to terminate the contract may be exercised if the producer, within a year from the notification by the performer of his intention to terminate the contract pursuant to the previous sentence, does not carry out both acts of exploitation mentioned in that sentence. This right to terminate may not be waived by the performer. Where a phonogram contains the fixation of the performances of a plurality of performers, they may terminate their contracts on transfer or assignment in accordance with the applicable national law. If the contract on transfer or assignment is terminated pursuant to this paragraph, the rights of the phonogram producer in the phonogram shall expire.***

2b. Where a contract on transfer or assignment gives the performer a right to claim a non-recurring remuneration, the performer shall have the right to obtain an annual supplementary remuneration from the phonogram producer for each full year immediately following the 50th year after the phonogram was lawfully published or, failing such publication, the 50th year after it was lawfully communicated to the public. The right to obtain such annual supplementary remuneration may not be waived by the performer.

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2c. The overall amount to be set aside by a phonogram producer for payment of the supplementary remuneration referred to in paragraph 2b shall correspond to 20 % of the revenues which he has derived, during the year preceding that for which the said remuneration is paid, from the reproduction, distribution and making available of the phonogram in question, following the 50th year after it was lawfully published or, failing such publication, the 50th year after it was lawfully communicated to the public.

Member States shall ensure that phonogram producers are required on request to provide to performers who are entitled to the annual supplementary remuneration referred to in paragraph 2b any information which may be necessary in order to secure payment of that remuneration.

2d. Member States shall ensure that the right to obtain an annual supplementary remuneration as referred to in paragraph 2b is administered by collecting societies.

2e. Where a performer is entitled to recurring payments, neither advance payments nor any contractually agreed deductions shall be deducted from the payments made to the performer following the 50th year after the phonogram was lawfully published or, failing such publication, the 50th year after it was lawfully communicated to the public.'

(3) *The following paragraphs shall be added to* Article 10 ‖:

'5. Article 3(1) ***to 3(2e) in the*** version *provided for* by Directive …/…/*EC* (*) shall ▌apply ▌to fixations of performances and phonograms in regard ***to*** which the performer and the phonogram producer are still protected, by virtue of these provisions, on ***… (**) and to fixations of performances and phonograms which come into being after that date***.

6. ***Article 1(7), as added by Directive …/…/EC (*), shall apply to musical compositions with words of which at least the musical composition or the lyrics are protected in at least one Member State before … (**), and to musical compositions with words which come into being after that date.***

The first subparagraph shall be without prejudice to any acts of exploitation performed before … (**). Member States shall adopt the necessary provisions to protect, in particular, acquired rights of third parties.

(*) *OJ L …*
(**) ***2 years from the date of entry into force of this amending Directive.***'

(4) The following Article *shall be* inserted:

'Article 10a

Transitional measures relating to the transposition of *Directive …/…/EC* (*)

1. In the absence of clear ***contractual*** indications to the contrary, a contract ***on transfer or assignment concluded before …*** (**) shall be deemed to continue to produce its effects beyond the moment at which, by virtue of Article 3 (1) ▌in ***the*** version ***thereof*** before amendment by Directive …/…/*EC* (*), the performer ▌would be no longer protected ▌.

▌

2. Member States may provide that contracts on transfer or assignment which entitle a performer to recurring payments and which are concluded before … (**) can be modified following the 50th year after the phonogram was lawfully published or, failing such publication, the 50th year after it was lawfully communicated to the public.

(*) ***2 years from the date of entry into force of this amending Directive.***
(**) ***5 years from the date of entry into force of this amending Directive.***'

Article 2

Report

The Commission shall submit to the European Parliament, the Council and the Economic and Social Committee, not later than … (*) a report on the application of this Directive in the light of the development of the digital market and shall, where appropriate, submit a proposal for the further amendment of Directive 2006/116/EC.

Article 3

Assessment

The Commission shall carry out an assessment of the possible need for an extension of the term of protection of rights to performers and producers in the audiovisual sector and it shall report on the outcome of such assessment to the European Parliament, the Council and the Economic and Social Committee not later than 1 January 2010. If appropriate, the Commission shall submit a proposal for the further amendment of Directive 2006/116/EC.

Article 4

Transposition

1. Member States shall ***bring into force, by …*** (**) at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions ▌.

▌

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 5

Entry into force

This Directive shall enter into force ***on the twentieth day*** following its publication in the *Official Journal of the European Union*.

Article 6

Addressees

This Directive is addressed to the Member States.

Done at ‖,

For the European Parliament
The President

For the Council
The President

(*) ***5 years from the date of entry into force of this amending Directive.***
(**) ***2 years from the date of entry into force of this Directive.***

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Intelligent Transport Systems in the field of road transport and interfaces with other transport modes ***I

P6_TA(2009)0283

European Parliament legislative resolution of 23 April 2009 on the proposal for a directive of the European Parliament and of the Council laying down the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other transport modes (COM(2008)0887 – C6-0512/2008 – 2008/0263(COD))

(2010/C 184 E/70)

(Codecision procedure - first reading)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0887),

— having regard to Article 251(2) and Article 71(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0512/2008),

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on Transport and Tourism (A6-0226/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and to the Commission.

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P6_TC1-COD(2008)0263

Position of the European Parliament adopted at first reading on 23 April 2009 with a view to the adoption of Directive *2009/…/EC* of the European Parliament and of the Council on laying down the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other transport modes

(Text with EEA relevance)

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) thereof,

Having regard to the proposal from the Commission ‖,

Having regard to the opinion of the European Economic and Social Committee ([1]),

Having regard to the opinion of the Committee of the Regions ([2]),

Acting in accordance with the procedure laid down in Article 251 of the Treaty ([3]),

Whereas:

(1) The increase of road transport associated with the growth of the European economy and with the mobility requirements of the citizens is a primary cause of increasing congestion of the road infrastructure and energy consumption, as well as environmental and social problems.

(2) The response to those major challenges cannot be limited to traditional measures including, notably, the expansion of the existing road transport infrastructure. Innovation will have a major role to play in finding appropriate solutions for the Community.

(3) Intelligent Transport Systems (ITS) are advanced applications that without embodying intelligence as such aim to provide innovative services on transport modes and traffic management and enable various users to be better informed and make safer, more coordinated and 'smarter' use of transport networks.

(4) The application of information and communication technologies to the road transport sector and its interfaces with other transport modes (ITS) will make a significant contribution to improving environmental performance, efficiency, including energy efficiency, safety and security of road transport and passenger and freight mobility whilst at the same time ensuring the functioning of the internal market and increased levels of competitiveness and employment.

(5) Several advanced applications and Community mechanisms have been developed for different transport modes such as for railway transport (ERTMS and TAF-TSI), open sea and inland waterways (LRITS, SafeSeaNet, VTMIS, RIS), air transport (SESAR) and land transport, for example, livestock transport.

(6) Advances in the application of information and communication technologies to other transport modes should now be reflected in developments in the road transport sector, in particular with a view to ensuring higher levels of integration in that field between road transport and other transport modes.

([1]) *Opinion of 13 May 2009 (not yet published in the OJ).*
([2]) OJ C …
([3]) *Position of the European Parliament of 23 April 2009.*

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(7) In some Member States national applications of these technologies are already being deployed in the road transport sector, but such deployment remains fragmented and uncoordinated and cannot provide geographical continuity of ITS services throughout the Community.

(8) To ensure a coordinated and effective deployment of ITS within the Community as a whole, common specifications should be introduced. In the first instance, priority should be given to four main areas of ITS development and deployment.

(9) The common specifications should inter alia take into account and build upon the experience and results already obtained in this area, notably in the context of the eSafety initiative ([1]), launched by the Commission in April 2002. The eSafety Forum has been established by the Commission under that initiative to promote and further implement recommendations to support the development, deployment and use of eSafety systems.

(10) Vehicles which are operated mainly for their historical interest and which were originally registered and/or type-approved and/or put into service before the entry into force of this Directive and of its implementing measures should not be affected by the rules and procedures laid down in this Directive.

(11) ITS should build on interoperable systems based on open and public standards, available on a non-discriminatory basis to all application and service suppliers and users.

(12) It is necessary to ensure in future the interoperability of applications and services provided by ITS deployment and covering, where appropriate, the backward compatibility of ITS applications and services.

(13) The deployment and use of ITS applications and services will entail the processing of personal data. Such processing should be carried out in accordance with Community rules, as set out, *inter alia,* in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ([2]) and in Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector ([3]).

(14) The deployment and use of ITS applications and services, and notably traffic and travel information services, will entail the processing and use of road, traffic and travel data forming part of documents held by public sector bodies of the Member States. Such processing and use should be carried out in accordance with Community rules, as set out in Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information ([4]).

(15) Directive 2007/46/EC *of the European Parliament and of the Council* ([5]) establishes a framework for the type approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, whilst Directives 2002/24/EC ([6]) and 2003/37/EC *of the European Parliament and of the Council* ([7]) relate to the type approval of two or three-wheel motor vehicles and agricultural or forestry tractors, their trailers and interchangeable towed machinery respectively. Although the provisions in these Directives cover ITS-related equipment installed in vehicles, they do not apply to external road infrastructure ITS equipment and software, which should accordingly be covered by national type-approval procedures.

([1]) http://www.esafetysupport.org/download/European_Commission/048-esafety.pdf
([2]) OJ L 281, 23.11.1995, p. 31.
([3]) OJ L 201, 31.7.2002, p. 37.
([4]) OJ L 345, 31.12.2003, p. 90.
([5]) OJ L 263, 9.10.2007, p. 1.
([6]) OJ L 124, 9.5.2002, p. 1.
([7]) OJ L 171, 9.7.2003, p. 1.

(16) For ITS applications and services for which accurate and guaranteed timing and positioning services are required, satellite-based infrastructures or any technology providing an equivalent level of precisions [1], ***such as Dedicated Short Range Communication (DSRC)*** should be used.

(17) Major stakeholders such as ITS service providers, associations of ITS users, transport and facilities operators, representatives of the manufacturing industry, social partners, professional associations and local authorities should have the possibility to advise the Commission on the commercial and technical aspects of the deployment of ITS within the Community.

(18) The measures necessary for the implementation of this Directive 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 [2].

(19) In particular the Commission should be empowered to adopt measures concerning the amendment of the Annexes and measures laying down more detailed specifications for the development, implementation and use of interoperable ITS. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, *inter alia* by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(20) In order to guarantee a coordinated approach, the Commission should ensure coherence between the activities of the committee established by this Directive and those of the Committee established by Directive 2004/52/EC of the European Parliament and of the Council of 29 April 2004 on the interoperability of electronic road toll systems in the Community [3], the Committee set up by Council Regulation (EEC) No 3821/85 *of 20 December 1985* on recording equipment in road transport [4], and the Committee *referred to in* Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles [5].

(21) Since the *objectives* of this Directive, namely to ensure the coordinated deployment *and use* of interoperable ITS throughout the Community, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, 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 Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter and scope

This Directive establishes a framework for the coordinated ***and coherent*** deployment and use of *ITS*, ***including interoperable ITS***, within the Community and the development of the specifications necessary for that purpose.

It shall apply to all *ITS* ***for travellers, vehicles and infrastructure and their interaction*** in the field of road transport, ***including urban transport,*** and interfaces with other transport modes.

The application of this Directive and of the measures referred to in Article 4 shall be without prejudice to the requirements of the Member States relating to public order and public security.

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[1] See Council Regulation *(EC)* No 1/2005 ‖ (OJ L 3, 5.1.2005, p. 1) and Regulation (EC) No 683/2008 of the European Parliament and of the Council ‖ (OJ L 196, 24.7.2008, p. 1).
[2] OJ L 184, 17.7.1999, p. 23.
[3] OJ L 166, 30.4.2004, p. 124.
[4] OJ L 370, 31.12.1985, p. 8.
[5] OJ L 263, 9.10.2007, p. 1.

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Article 2

Definitions

For the purposes of this Directive, the following definitions shall apply:

(a) 'Intelligent Transport Systems (ITS)' means systems, in which information and communication technologies are applied, in support of road transport (including infrastructure, vehicles and users) ***and, traffic and mobility management*** and for the interfaces *with* other transport modes***, including the provision of multimodal interoperable ticketing***;

(b) 'interoperability' means the capacity of systems, and of the underlying business processes, to exchange data and to share information and knowledge;

(c) 'ITS application' means an operational instrument for the application of ITS;

(d) 'ITS service' means the deployment of an ITS application through a well-defined organisational and operational framework with the aim of contributing to ‖ user safety, efficiency, comfort and/or to facilitate or support transport and travel operations;

(e) 'ITS service provider' means any provider of an ITS service, whether public or private;

(f) 'ITS user' means any user of ITS applications or services including travellers, ***vulnerable transport users***, road transport infrastructure users and operators, fleet managers and operators of emergency services;

(g) 'nomadic device' means an item of communication or information equipment that can be brought inside the vehicle by the driver to be used while driving, such as a mobile phone, navigation system or pocket personal computer;

(h) 'platform' means the encompassing functional, technical and operational environment enabling the deployment, provision or exploitation of ITS applications and services;

(i) 'vulnerable transport users' means non-motorised transport users, such as pedestrians and cyclists as well as motor-cyclists and persons with disabilities or limited mobility;

(j) 'the minimum level of ITS applications and services' means the basic level of ITS applications and services, which are indispensable elements of the Trans European Transport Network (TEN-T).

Article 3

Deployment of ITS

1. Member States shall take the necessary measures to ensure the coordinated deployment and use of ***effective*** interoperable ITS applications and services within the Community.

2. Where possible, Member States shall ensure the backward compatibility of ITS applications and services within the Community.

3. Member States shall in particular:

(a) ensure that reliable and regularly updated relevant road transport data is made available to ITS users and ITS service providers;

(b) ensure that road traffic and travel data and other relevant information can be exchanged between the competent traffic information and control centres in different regions or in different Member States;

(c) apply ITS to all modes of transport and to the interfaces between them, ensuring a high level of integration between all transport modes;

(d) take the necessary measures to integrate safety and security-related ITS systems into vehicles and road infrastructure and to develop safe human-machine interfaces *(HMIs)*, in particular for nomadic devices;

(e) take the necessary measures to integrate different ITS applications, involving the exchange of information and communication between vehicles and the road infrastructure within a single platform;

(f) avoid creating geographical fragmentation and discontinuity.

4. For the purpose of ITS applications and services that require global, continuous, accurate and guaranteed timing and positioning services, satellite-based infrastructures, or any technology providing equivalent levels of *precision*, ***such as DSRC,*** shall be used.

5. When adopting the measures provided for in paragraphs 1 and 2 Member States shall ***require compliance with*** the principles set out in Annex I.

6. The Member States shall take account of the morphological particularities of geographically isolated regions and the distances that have to be covered to reach them, making an exception if need be to the cost-efficiency ratio principle referred to in Annex I.

Article 4

Specifications

1. The Commission shall define specifications for the deployment and use of ITS ▌ in the following priority areas:

(a) optimal use of road, traffic and travel data;

(b) continuity of traffic and freight management ITS services on European transport corridors and in conurbations;

(c) road safety and security;

(d) integration of the vehicle into the transport infrastructure.

2. The Commission shall define specifications for the obligatory deployment and use of the minimum level of ITS applications and services, in particular in the following areas:

(a) the provision of EU-wide real-time traffic and travel information services;

(b) data and procedures for the provision of free minimum universal traffic information services;

(c) the harmonised introduction of eCall throughout Europe;

(d) appropriate measures on secure parking places for trucks and commercial vehicles and on telematics-controlled parking and reservation systems.

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3. The Commission shall define specifications for the necessary deployment and use of ITS beyond the minimum level of ITS applications and services for Community co-financed trans-European road network (TERN) construction or maintenance.

4. The specifications shall ***comply with*** the principles set out in Annex I and shall comprise at least the core elements set out in Annex II.

5. In order to ensure interoperability and the apportionment of liabilities, the Commission shall complement, where necessary, the core elements set out in Annex II with specifications for the planning, implementation and operational use of ITS services and shall stipulate the content of the services and service providers' obligations.

6. The specifications shall also determine the conditions under which Member States may, in conjunction with the Commission, impose additional rules for the provision of such services throughout or in part of their territory.

7. The measures referred to in paragraphs 1 to 6, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 9(3).

8. The Commission shall conduct a suitable impact assessment prior to the adoption of the specifications referred to in paragraphs 5 and 6.

9. Additional principles and/or core elements of specifications not provided for in this Directive shall be added to Annex I and/or II in accordance with the procedure referred to in Article 251 of the Treaty.

Article 5

Type-approval of road-infrastructure related ITS equipment and software

1. Where necessary for efficiency, including energy efficiency, safety or security, or environmental protection reasons, ITS equipment and software applications falling outside the scope of Directives 2002/24/EC, 2003/37/EC and 2007/46/EC, shall be type-approved before being put into service.

2. For ITS equipment and software applications referred to in paragraph 1, the relevant specifications on liability shall be communicated to the national bodies responsible for the type-approval of ITS equipment and software applications covered by this Directive.

3. Member States shall notify to the Commission the national bodies responsible for the type-approval of ITS equipment and software applications, ***including for the accreditation of ITS software application suppliers,*** covered by this Directive. The Commission shall communicate such information to the other Member States.

4. All Member States shall recognise type-approvals issued by the national bodies of the other Member States referred to in *paragraph 3*.

5. ITS equipment and software may be placed on the market and put into service only if, when properly installed and maintained and used for their intended purpose, they do not endanger the health and safety of persons and the environment, in accordance with relevant Community legislation, and, where appropriate, property.

6. ITS equipment and software shall be presumed to meet the adopted specifications as provided for by Article 4 if they conform to, where available, the relevant national or European standards in accordance with Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and rules on Information Society services [1].

Article 6

Committee on technical standards and regulations

Where a Member State or the Commission considers that the standards referred to in Article 5 (6) do not entirely meet the adopted specifications as provided for by Article 4, the Member State concerned or the Commission shall inform the Standing Committee set up by Article 5 of Directive 98/34/EC giving the reasons therefor. The Committee shall issue an opinion as a matter of urgency.

Taking into account the Committee's opinion, the Commission shall notify the Member States as to whether or not those standards should be withdrawn from the communications referred to in Article 5 of this Directive.

Article 7

Rules on privacy, security and re-use of information

1. Member States shall ensure that the ***collection, storage and*** processing of personal data in the context of the operation of ITS is carried out in accordance with the Community rules protecting the freedoms and fundamental rights of individuals, in particular Directives 95/46/EC and 2002/58/EC.

2. In order to ensure privacy, the use of anonymous data shall be encouraged, where appropriate, for the performance of the ITS application and/or service.

3. Personal data shall only be processed insofar as processing is necessary for the performance of the ITS application and/or service.

4. Where special categories of data referred to under Article 8 of Directive 95/46/EC are involved, such data shall only be processed where the data subject has given his or her explicit consent to the processing of those data on an informed basis.

5. ▌Member States shall ensure that ITS data and records are protected against misuse, including unlawful access, alteration or loss ***and may not be used for purposes other than those referred to in this Directive***.

6. Directive 2003/98/EC shall apply.

▌

Article 8

Programming

1. The Commission shall prepare an annual work programme on the basis of the core elements set out in Annex II for the first time … (*) at the latest.

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[1] ***OJ L 204, 21.7.1998, p. 37.***

(*) ***Three months from the entry into force of this Directive.***

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2. The Commission shall take into account the results of the work conducted by committees established in accordance with other Community acts, relating to the different areas of ITS, including the European ITS Advisory Group referred to in Article 10.

3. The Commission shall, in close cooperation with the Member States, ensure general consistency and complementarity of ITS deployment with other relevant Community policies, programmes and actions.

4. The Commission shall cooperate actively with European and international standardisation bodies on the provisions set out in Annexes I and II.

5. The Commission shall act in accordance with the regulatory procedure referred to in Article 9(2) for the purposes of:

(a) adopting and amending the annual work programme;

(b) determining the priority areas for international cooperation.

The annual work programme and the priority areas for international cooperation shall be published in the Official Journal of the European Union.

6. In accordance with the regulatory procedure with scrutiny referred to in Article 9(3), the Commission shall, no later than … (*), adopt a working programme with targets and deadlines for implementing the core elements set out in Annex II.

Article 9

Committee

1. The Commission shall be assisted by a committee, called the European ITS Committee ‖, composed of representatives of the Member States and chaired by a representative of the Commission.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 10

European ITS Advisory Group

1. The Commission shall establish a European ITS Advisory Group to advise it on *the* business and technical aspects of the deployment and use of ITS *throughout* the Community. The group shall be composed of high level representatives from relevant ITS service providers, associations of users, transport and facilities operators, manufacturing industry, social partners, professional association, local authorities and other relevant fora.

2. The Commission shall ensure that the representatives of the European ITS Advisory Group are competent and that the Group includes adequate representation from those sectors of industry and of those users affected by measures which might be proposed by the Commission under this Directive.

(*) ***Six months from the entry into force of this Directive.***

3. The European ITS Advisory Group shall be called upon to provide a technical opinion on the drafting of the specifications referred to in Article 4.

4. The work of the European ITS Advisory Group shall be carried out in a transparent manner.

Article 11

Reporting

1. Member States shall submit to the Commission by … (*) at the latest a detailed report on their national activities and projects regarding the priority areas laid down in Article 4(1) and including at least the information set out in Annex III.

2. Member States shall provide to the Commission by … (**) at the latest their plans for national ITS actions over the following five years including at least the information set out in Annex III.

3. Member States shall report annually thereafter on the progress made in the implementation of these plans.

4. The Commission shall *every six months report* to the European Parliament and to the Council ***on the progress made for the implementation of this Directive accompanied by an analysis on the functioning of the rules set out in Annexes I and II and shall assess the need to amend this Directive.***

In particular the Commission shall every six months report to the European Parliament and to the Council on the status of funding, and if necessary the Commission shall make a proposal for financing the implementation of the minimum level of ITS applications and services.

Article 12

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by … (***) at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 13

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

(*) Six months from the entry into force of this Directive.
(**) *Two years from the entry into force of this Directive.*
(***) ***12 months*** *from the entry into force of this Directive.*

Article 14

Addressees

This Directive is addressed to the Member States.

Done at ‖,

For the European Parliament
The President

For the Council
The President

ANNEX I

ITS DEPLOYMENT PRINCIPLES AS REFERRED TO IN ARTICLE 3

The selection and deployment of ITS applications and services shall be based upon an evaluation of needs, and shall respect the following principles:

(a) effectiveness – the ability to make a tangible contribution towards solving the key challenges affecting road transportation in Europe (*for example*, reducing congestion, lowering of emissions, improving energy efficiency, attaining higher levels of safety and security *and* ***addressing issues related to vulnerable transport users***);

(b) cost-efficiency – the ratio of costs in relation to output with regard to meeting objectives;

(c) geographical continuity – the ability to ensure seamless services across the Community ***and at its external borders***, in particular on the *TEN-T*;

(d) interoperability – the ability of systems to exchange data and to enable information and knowledge to be shared;

(e) degree of maturity – the level of development;

(f) intermodality – shifting freight from road to short sea shipping, rail, inland waterways or a combination of modes of transport in which road journeys are as efficient as possible.

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ANNEX II

CORE ELEMENTS OF THE SPECIFICATIONS AS REFERRED TO IN ARTICLE 4

(1) Optimal use of road, traffic and travel data

The specifications for *the* optimal use of road, traffic and travel data shall include the following:

(a) the definition of the necessary requirements to make real-time traffic and travel information accurate and available across borders to ITS users, in particular:

— the availability of accurate public road and real-time traffic data used for real-time traffic and travel information to ITS service providers,

— the facilitation of the electronic exchange between the relevant public authorities and stakeholders and the relevant ITS service providers, across borders,

— the timely updating of public road and traffic data used for real-time traffic and travel information by the relevant public authorities and stakeholders,

— the timely updating of real-time traffic and travel information by the ITS service providers;

(b) the definition of the necessary requirements for the collection by relevant public authorities of road and traffic data (including, *for example*,. traffic circulation plans, traffic regulations and recommended routes, notably for heavy goods vehicles) and for their *provision* to ITS service providers, in particular:

— the availability of public road and traffic data (including, *for example*, traffic circulation plans, traffic regulations and recommended routes) collected by the relevant public authorities *for* ITS service providers,

— the facilitation of the electronic exchange between the relevant public authorities and the ITS service providers,

— the timely updating of public road and traffic data (including traffic circulation plans, traffic regulations and recommended routes) by the relevant public authorities,

— the timely updating of the ITS services and applications using this public road and traffic data by the ITS service providers;

(c) the definition of the necessary requirements to make public road and traffic data used for digital maps accurate and available to digital map producers and service providers, in particular:

— the availability of public road and traffic data used for digital maps to digital map producers and service providers,

— the facilitation of the electronic exchange between the relevant public authorities and stakeholders and the private digital map producers and providers,

— the timely updating of public road and traffic data for digital maps by the relevant public authorities and stakeholders,

— the timely updating of the digital maps by the digital maps producers and service providers;

(d) the definition of minimum requirements for the free provision of 'universal traffic messages' to all road users, as well as their minimum content, in particular:

— the use of a standardised list of safety related traffic events ('universal traffic messages') which should be communicated to ITS users free of charge,

— the compatibility of and the integration of 'universal traffic messages' into ITS services for real-time traffic and travel information.

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(2) Continuity of traffic and freight management ITS services on European transport corridors and in conurbations

The specifications for the continuity and interoperability of the traffic and freight management services and on European transport corridors and in conurbations shall include the following:

(a) the definition of the minimum/necessary requirements for the continuity of ITS services for freight and passengers along transport corridors and across different modes, in particular:

— the facilitation of the electronic exchange for traffic data and information across borders, regions, or between urban and inter-urban areas between the relevant traffic information/control centres,

— the use of standardised information flows or traffic interfaces between the relevant traffic information/control centres;

(b) the definition of the necessary measures to use innovative ITS technologies (RFID, ***DSRC*** or Galileo/EGNOS) in the realisation of ITS applications (notably the tracking and tracing of freight along its journey and across modes) for freight transport logistics (eFreight), in particular:

— the availability of relevant ITS technologies to and their use by ITS application developers,

— the integration of localisation results (through, *for example,* RFID, ***DSRC*** and/or Galileo/EGNOS) in the traffic management tools and centres;

(c) the definition of the necessary measures to develop an ITS architecture for urban mobility including an integrated and multi-modal approach for travel planning, transport demand and traffic management, in particular:

— the availability of public transport, travel planning, transport demand, traffic data and parking data to urban control centres,

— the facilitation of the electronic data exchange between the different urban control centres for public or private transport and through all possible transport modes,

— the integration of all relevant data and information in a single architecture;

(d) the definition of the necessary measures to ensure seamless ITS services within the Community and at its external borders.

(3) Road safety and security

The specifications for ITS road safety and security applications shall include the following:

(a) the definition of the necessary measures for the harmonised introduction of pan-European eCall, including:

— the availability of the required in-vehicle ITS data to be exchanged,

— the availability of the necessary equipment in the road infrastructure (rescue) centres (Public Service Access Points) receiving the data emitted from the vehicles,

— the facilitation of the electronic data exchange between the vehicles and the road infrastructure (rescue) centres (Public Service Access Points);

(b) the definition of the necessary measures to guarantee the safety of road users with respect to their on-board *HMI* and the use of nomadic devices, as well as the security of the in-vehicle communications;

(c) the definition of measures to guarantee the safety of vulnerable transport users, through the use of mobility management systems for service providers and users with respect to Advanced Driving Assistance Systems (ADAS) deployment and HMI;

(d) the definition of the necessary measures to guarantee the safety and comfort of vulnerable road users *in* all ITS applications;

(e) the definition of the necessary measures to provide secure parking places for truck and commercial vehicles and ITS based parking and reservation systems, in particular:

— the availability of sufficient parking facilities,

— the availability of ‖ road parking information to ‖ users,

— the facilitation of the electronic data exchange between road parking sites, centres and the vehicles,

— the integration of relevant ITS technologies in both vehicles and road *parking* facilities to update the information on available parking space for reservation purposes.

(4) Integration of the vehicle into the transport infrastructure

The specifications for ITS for integration of the vehicle into the transport infrastructure shall include the following:

(a) the definition of *the* necessary measures to integrate different ITS applications on an open in-vehicle platform, based in particular on:

— the identification of functional requirements of existing or planned ITS applications,

— the definition of an open-system architecture that guarantees the interoperability/interconnection with infrastructure systems and facilities,

— the integration of future new or upgraded ITS applications in a ‘plug and play’ manner into an open in-vehicle platform,

— the use of standardisation *processes* to adopt the architecture, and the open in-vehicle specifications;

(b) the definition of *the* necessary measures to progress *further* the development and implementation of cooperative (vehicle infrastructure) systems, in particular:

— the facilitation of the exchange of data and information between vehicle and vehicle, between vehicle and infrastructure *and* between infrastructure and infrastructure,

— the availability to the respective parties (vehicle or road infrastructure) of the relevant data or information to be exchanged,

— the use of a standardised message format for this exchange of data between the vehicle and the infrastructure,

— the definition of *a* communication infrastructure for each type of exchange *of data and information between vehicle and vehicle, between vehicle and infrastructure and between infrastructure and infrastructure,*

— ***the definition of a regulatory framework on the HMI to address liability issues and provide a more reliable adjustment of ITS functional safety features to human behaviour,***

— the use of standardisation processes to adopt the respective architectures.

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ANNEX III

GUIDELINES FOR THE CONTENT OF REPORTS ON NATIONAL ITS ACTIONS REFERRED TO IN ARTICLE 11

(1) The reports with regard to the priority areas laid down in Article 4(1) provided by the Member States according to *Article 11* shall cover the national level. They can however be extended to the regional and/or selected local level, if relevant.

(2) The report to be provided according to *Article 11 (1)* shall include, at least, the following information:

(a) the current national strategy with regard to ITS;

(b) its objectives and their underlying rationale;

(c) a brief description of the status of ITS deployment and framework conditions;

(d) priority areas for current actions and related measures;

(e) an indication as to how this strategy and these actions or measures support the coordinated and interoperable deployment of ITS applications and continuity of services in the Community (see Article 4(1)).

(3) The report to be provided according to *Article 11 (2)* shall include, at least, the following information:

(a) the national strategy with regard to ITS, including its objectives;

(b) a detailed description of ITS deployment and framework conditions;

(c) the planned priority areas for actions and related measures, including an indication on how these tackle the priority areas laid down in Article 4(1);

(d) details on the implementation of current and planned actions as regards:

— instruments,

— resources,

— consultation and active stakeholders,

— milestones,

— monitoring.

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Second 'Marco Polo' programme ***I

P6_TA(2009)0284

European Parliament legislative resolution of 23 April 2009 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1692/2006 establishing the second 'Marco Polo' programme for the granting of Community financial assistance to improve the environmental performance of the freight transport system ('Marco Polo II') (COM(2008)0847 – C6-0482/2008 – 2008/0239(COD))

(2010/C 184 E/71)

(Codecision procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0847),

— having regard to Article 251(2) and Articles 71(1) and 80(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0482/2008),

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on Transport and Tourism and the opinion of the Committee on Budgets (A6-0217/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and to the Commission.

P6_TC1-COD(2008)0239

Position of the European Parliament adopted at first reading on 23 April 2009 with a view to the adoption of Regulation (EC) No …/2009 of the European Parliament and of the Council amending Regulation (EC) No 1692/2006 establishing the second 'Marco Polo' programme for the granting of Community financial assistance to improve the environmental performance of the freight transport system ('Marco Polo II')

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Regulation (EC) No 923/2009.)

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European rail network for competitive freight ***I

P6_TA(2009)0285

European Parliament legislative resolution of 23 April 2009 on the proposal for a regulation of the European Parliament and of the Council concerning a European rail network for competitive freight (COM(2008)0852 – C6-0509/2008 – 2008/0247(COD))

(2010/C 184 E/72)

(Codecision procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0852),

— having regard to Article 251(2) and Article 71(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0509/2008),

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on Transport and Tourism (A6-0220/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and Commission.

P6_TC1-COD(2008)0247

Position of the European Parliament adopted at first reading on 23 April 2009 with a view to the adoption of Regulation *(EC) No …/2009* of the European Parliament and of the Council concerning a European rail network for competitive freight

(Text with EEA relevance)

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) thereof,

Having regard to the proposal from the Commission ‖,

Having regard to the opinion of the European Economic and Social Committee [1],

Having regard to the opinion of the Committee of the Regions [2],

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[1] OJ C […], […], p. […].
[2] OJ C […], […], p. […].

Acting in accordance with the procedure laid down in Article 251 of the Treaty [1],

Whereas:

(1) Within the framework of the Lisbon Strategy for growth and employment and the sustainable development strategy of the Community, the creation of an internal rail market, in particular with regard to freight transport, is an essential factor in making progress towards sustainable mobility.

(2) Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure ‖ [2] has been an important step in the creation of the internal rail market.

(3) In order to be competitive with other modes of transport, international and national rail freight services, which have been opened up to competition since 1 January 2007, must be able to benefit from a good-quality railway infrastructure, that is one which allows freight transport services to be provided in good conditions in terms of commercial speed and journey times and to be reliable, that is to say that the service it provides actually corresponds to the contractual agreements entered into with the railway undertakings.

(4) Although liberalisation of rail freight traffic has made it possible for new operators to enter the network, market mechanisms are not sufficient to organise, regulate and secure rail freight traffic. Optimisation and ensuring its reliability imply in particular strengthening procedures for cooperation and allocation of the train paths between infrastructure managers.

(5) The Council ‖, meeting on 7 ‖ April 2008, concluded that the efficient use of infrastructure must be promoted and that, if necessary, railway infrastructure capacities must be improved by means of measures taken at European and national level, and in particular by means of legislative texts.

(6) In this context, the creation of a European rail network for competitive freight on which freight trains can run in good conditions and easily pass from one national network to another would allow improvements in the conditions of use of the infrastructure.

(7) In order to put in place a European rail network for competitive freight, the initiatives already taken in terms of railway infrastructure show that the creation of international corridors, which meet specific needs in one or more clearly identified segments of the freight market, is the most appropriate method.

(8) The ***European*** rail network for competitive freight should be set up in a manner consistent with the *Trans-European* Transport Network ('TEN-T') ***and the European Railway Traffic Management System ('ERTMS') corridors***. To that end, the coordinated development of the ▌networks is necessary, and in particular the integration of the international corridors for rail freight into the existing TEN-T ***and the ERTMS corridors***. Furthermore, ***harmonising*** rules relating to these freight corridors should be established at Community level. If necessary, the creation of these corridors ***should*** be supported financially within the framework of the TEN-T***, research and Marco Polo programmes, and other Community policies and funds, such as the Cohesion Fund***.

(9) The creation of a freight corridor should take into account the particular importance of the planned extension of the TEN-T network to the European Neighbourhood Policy countries with a view to ensuring better interconnections with the rail infrastructure of third countries.

(10) Within the framework of a freight corridor, good coordination between the Member States and the infrastructure managers concerned should be ensured, ***better and*** sufficient ***facilitation*** given to rail freight traffic, effective and adequate links to other modes of transport set up ***in order to develop an efficient and integrated freight transport network,*** and conditions created which are favourable to the development of competition between rail freight service providers.

[1] *Position* of the European Parliament of *23 April 2009*.
[2] OJ L 75, 15.3.2001, p. 29.

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(11) The creation of a freight corridor should be ***based on proposals made by Member States in consultation with the infrastructure managers. In the second phase it should be*** approved at ***European*** level in accordance with a clearly-defined and transparent procedure***. The*** criteria ***for the creation of freight corridors should be defined in a way adapted to the specific needs of the*** Member States and ***of the*** infrastructure managers ***that allows them*** sufficient decision-making and management scope ▌.

(12) In order to stimulate coordination between the Member States, infrastructure managers ***and railway undertakings***, each freight corridor should be supported by a governance body comprised of the various infrastructure managers who are involved with the freight corridor.

(13) In order to meet market needs, the methods for creating a freight corridor should be presented in an implementation plan which should include identifying and setting a schedule for measures which would improve the performance of rail freight. Furthermore, to ensure that planned or implemented measures for the creation of a freight corridor meet the needs or expectations of ***the market, all user railway undertakings*** must be regularly consulted in accordance with ***appropriate*** procedures ***defined by the governance body***.

(14) In order to guarantee the consistency and continuity of the infrastructure capacities available along the freight corridor, investment in the freight corridor should be coordinated between Member States, ▌ the infrastructure managers ***and the railway undertakings*** concerned, ***as well as, if applicable, between Member States and third countries,*** and planned in a way which meets the needs of the freight corridor. The schedule for carrying out the investment should be published to ensure that ***railway undertakings that*** may operate in the corridor are well-informed. The investment should include projects relating to the development of interoperable systems and the increase in capacity of the trains.

(15) For the same reasons, heavy maintenance work, which very often has a significant impact on railway infrastructure capacity, should also be coordinated at the level of the freight corridor and be the subject of updated publications.

(16) The putting in place of infrastructure and systems for the development of intermodal freight transport services is also necessary to encourage the development of rail freight in the Community.

(17) The Member States concerned and the competent national safety authorities on the freight corridor may conclude agreements concerning the mutual recognition of vehicles on the one hand, and train drivers on the other hand. The safety authorities of the Member States involved with the freight corridor should cooperate in order to guarantee the implementation of these agreements.

(18) In order to facilitate requests for infrastructure capacities for international rail freight services, it is appropriate to set up a one-stop shop for each freight corridor. For this existing initiatives should be built upon, in particular those undertaken by RailNetEurope, a body which acts as a coordination tool for the infrastructure managers and provides a number of services to international freight undertakings.

(19) In view of the different programming schedules for timetables for the different types of traffic, it should be ensured that the requests for infrastructure capacity for freight traffic are ***compatible with the*** requests for passenger transport, particularly in regard to their respective socio-economic values. Fees for using the infrastructure should vary according to the quality and reliability of the train path allocated.

(20) Trains carrying goods which are very sensitive in terms of ▌journey time and punctuality***, as defined by the governance body,*** should be able to enjoy sufficient priority if there are traffic problems.

(21) To guarantee the development of competition between suppliers of rail freight services in the freight corridor, ▌applicants other than railway undertakings or their groupings ***should be able*** to request infrastructure capacity.

(22) In order to optimise the management of the freight corridor and guarantee a better flow and performance of the international rail freight services, it is necessary to ensure efficient coordination between the regulatory bodies over the different networks covered by the freight corridor. To ensure that the railway infrastructure is better used, the management of that infrastructure and the strategic terminals along the freight corridor needs to be coordinated.

(23) To facilitate access to information concerning the use of all the main infrastructure in the freight corridor and to guarantee non-discriminatory access to it, it seems advisable to supply all the international rail freight service providers with a reference document containing all this information.

(24) In order to objectively measure the benefits of the measures aimed at the creation of the freight corridor and to guarantee efficient monitoring of such measures, performance indicators for the service along the freight corridor should be introduced and published regularly. ***The definition of performance indicators should be formulated in consultation with the stakeholders providing and using rail freight services.***

I

(25) Since the objective of this Regulation, namely the creation of a European rail network for competitive freight made up of freight corridors, cannot be adequately achieved by the Member States *alone* and can therefore *by reason of the scale or effects* 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.

(26) Fair rules based on cooperation between the infrastructure managers who must provide a quality service to freight undertakings within the framework of an international railway corridor, should be introduced in respect of the coordination of investment and the management of capacities and traffic.

(27) 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].

(28) In particular, the Commission should be empowered to lay down the conditions and criteria necessary for the implementation of this Regulation. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation *by supplementing it with* new non-essential elements, they *must* be adopted in accordance with the regulatory procedure with scrutiny laid down in Article 5a of Decision 1999/468/EC.

(29) The aim of this Regulation is to improve the efficiency of rail freight transport relative to other modes of transport, but this objective should be pursued also through political actions and the financial involvement of the Member States and the European Union. Coordination should be ensured at the highest level between Member States in order to guarantee the most efficient functioning of freight corridors. Financial commitment in infrastructure and in technical equipment like ERTMS should aim at increasing rail freight capacity and efficiency in parallel with the aim of this Regulation,

[1] *OJ L 184, 17.7.1999, p. 23.*

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HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL

Article 1

Purpose and scope

1. This Regulation lays down the rules for the creation and organisation of the European rail network for competitive freight ***in*** international rail corridors for competitive freight (‖ 'freight corridors'). It sets out the rules for the selection and organisation of freight corridors and ***cooperative*** principles relating to investment planning, and capacity and traffic management.

2. This Regulation applies to the management and use of railway infrastructure for domestic and international rail services, apart from:

a) stand-alone local and regional networks for passenger services using the railway infrastructure, ***except where the services operate on part of a freight corridor***;

b) networks intended only for the operation of urban or suburban passenger services;

c) regional networks which are used for regional freight transport services solely by a railway undertaking that is not covered by *Council* Directive 91/440/EEC *of 29 July 1991 on the development of the Community's railways* [1] until capacity on that network is requested by another applicant;

d) privately-owned railway infrastructure that exists solely for use by the infrastructure owner for their own freight operations.

Article 2

Definitions

1. For the purposes of this Regulation, the definitions laid down in Article 2 of Directive 2001/14/EC shall apply.

2. In addition to the definitions referred to in paragraph 1:

a) 'freight corridor' shall mean all of the railway lines created on the territory of Member States and, where necessary, third European countries linking ***two*** or more strategic terminals, including a principal axis, alternative routes and paths linking them, and railway infrastructure and its equipment in the freight terminals, marshalling yards and train formation facilities, ***as well as*** branch lines to the latter, ***including all rail related services as set out in Annex II to Directive 2001/14/EC***;

b) 'implementation plan' shall mean the document presenting the strategy, measures and means that the parties concerned intend to implement in order to develop over a specified period the measures which are necessary and sufficient to create the freight corridor;

c) 'heavy maintenance work' shall mean any intervention or repair to the railway infrastructure and its equipment***, planned at least one year in advance,*** which is necessary for running the trains along the freight corridor and involving reservations on the capacities for the infrastructure in accordance with Article 28 of Directive 2001/14/EC;

d) 'terminal' shall mean the installation provided along the freight corridor which has been especially arranged to allow either the loading and/or the unloading of goods onto/from freight trains, and the integration of rail freight services with road, maritime, river and air services, and either the forming or modification of the composition of freight trains;

[1] OJ L 237, 24.8.1991, p. 25.

e) 'strategic terminal' shall mean the terminal of the freight corridor which is open to all the applicants and which ***already*** plays***, or is scheduled to play,*** an important role in the rail transport of freight along the freight corridor;

f) 'one-stop shop' shall mean the joint entity set up by ***each*** infrastructure ***manager*** of the freight corridor which offers applicants the opportunity to request ▌a train path for a journey crossing at least one border.

CHAPTER II

DESIGN AND GOVERNANCE OF THE EUROPEAN RAIL NETWORK FOR COMPETITIVE FREIGHT

Article 3

Selection of freight corridors

1. The freight corridor shall ***link at least two Member States and*** allow international and national rail freight services to be operated. ▌It shall have the following characteristics:

a) it shall be part of***, or at least compatible with,*** the TEN-T ***or, where applicable, with the ERTMS corridors. If necessary, certain sections not included in the TEN-T, with high or potentially high volumes of freight traffic, may also form part of the corridor;***

b) it shall allow significant development of rail freight traffic ***and take account of major trade flows and goods traffic***;

c) it shall be justified on the basis of a socio-economic analysis. This shall include the impact on those parts of the transport system where the allocation of infrastructure capacity in the freight corridor significantly affects freight and passenger traffic. It shall also include an analysis of the major effects in terms of external costs;

d) it shall allow better interconnections between border Member States and neighbouring third countries;

e) it shall be supported by an implementation plan.

2. The creation or modification of a freight corridor shall be ***decided*** by the Member States concerned***, after*** they ***have notified*** the Commission ***of their intentions, accompanied by*** a proposal drawn up with the infrastructure managers concerned ***and*** taking into account ***the initiatives and opinions of railway undertakings that use the corridor or are interested in doing so and*** the criteria set out in the Annex. ***Interested railway undertakings may participate in the process, whenever substantial investments concern them.***

3. The freight corridors shall be created in accordance with the following procedure:

a) at the latest …… (*), the territory of each Member State which has at least two ***direct rail links*** with other Member States must allow at least one proposal for a freight corridor;

(*) *One year after the entry into force of this Regulation.*

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b) at the latest … (*), the territory of each Member State must allow at least ▌ one freight corridor

.▌

4. The Commission shall ***note*** the proposals for the creation of the freight corridors referred to in paragraph 2 and ***shall examine their consistency with the assessment criteria set out in the Annex. It may state objections or propose modifications in line with what it considers appropriate.***

5. The freight corridor may contain elements of the rail networks of European third countries. Where applicable, these elements must be compatible with the TEN-T policy.

▌

6. Where difficulties arise between two or more Member States regarding the creation or modification of a freight corridor, and with regard to the railway infrastructure located on their territory, the Commission, at the request of one of the Member States concerned, shall consult the committee referred to in Article 18 on this matter. The opinion of the committee shall be sent to the Member States concerned. The Member States concerned shall take this opinion into account in order to find a solution.

7. Measures aimed at adapting the Annex, which are measures with a general scope and the objective of *amending* non-essential elements of this Regulation, shall be *adopted* in *accordance* with the regulatory procedure with scrutiny referred to in *Article 18(3)*.

Article 4

Governance of freight corridors

1. The Member States affected by a freight corridor shall cooperate to ensure the development of the freight corridor in accordance with its implementation plan. They shall define the general objectives for the freight corridor and ensure that the implementation plan is in line with these objectives.

2. For each freight corridor the infrastructure managers concerned ‖ shall create a governance body responsible for defining and steering the performance and updating of the implementation plan for the freight corridor. ***The interested railway undertakings or groupings of railway undertakings using the corridor regularly participate in this body on a consultative basis.*** The governance body shall make regular reports on its activity to the Member States concerned and, where necessary, to the ***Commission and the*** European coordinators of the TEN-T priority projects *involved in the freight corridor* referred to in Article 17a of 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 network* ([1]).

3. The Member States concerned may set up an executive board responsible for authorising the corridor implementation plan by the governance body and supervising its execution. In that case, the individual members of the executive board shall be mandated by the competent authorities of the Member States.

4. The governance body shall be an independent legal entity. It may take the form of a European economic interest grouping within the meaning of *Council* Regulation (EEC) No 2137/85 ([2]) and shall enjoy the status of such a grouping.

5. The members of the governance body shall appoint its director, whose term of office shall be at least three years.

(*) *Three years after the entry into force of this Regulation.*
([1]) *OJ L 228, 9.9.1996, p. 1.*
([2]) OJ L 199, 31.7.1985, p. 1.

6. A working group made up of managers and owners of the strategic terminals of the freight corridor, ***including sea and inland waterway ports,*** referred to in Article 9, shall be set up. It may issue an opinion on any proposal by the governance body which has direct consequences for investment and the management of strategic terminals. The governance body may not take any decision contrary to that opinion.

Article 5

Measures for implementing the freight corridor

1. The implementation plan, approved ***and regularly adjusted*** by the governance body, shall include ***at least***:

a) a description of the characteristics of the freight corridor***, including potential bottlenecks,*** and the implementation programme for the measures necessary for ***facilitating its creation***;

b) the essential elements of the market study referred to in *paragraph 2*;

c) the objectives of the governance body ***and its programme for improvement*** of performance of the freight corridor ▌ in accordance with the provisions referred to in Article 16.

▌

2. A market study shall be carried out ***and periodically updated,*** relating to the observed and expected changes in the traffic in the freight corridor and those parts of the transport system which are connected to it***, with a view to developing or adapting, if necessary, its implementation plan***. It shall examine changes in the different types of traffic ***and*** include the main features of the socio-economic analysis referred to in *Article 3(1)(c)****, as well as the possible scenarios as regards costs and benefits and the long-term financial impact***.

3. A programme shall be drawn up for creating and improving performance in the freight corridor. In particular this programme shall include the common objectives, the technical choices and the schedule for necessary measures in respect of the railway infrastructure and its equipment in order to implement all of the measures referred to in Articles 7 to 16. ***These measures shall avoid or minimise any restrictions affecting rail capacity.***

Article 6

Consulting applicants

1. The governance body shall introduce consultation mechanisms with a view to the proper participation of the applicants likely to use the freight corridor ‖.

2. Applicants for the use of the freight corridor***, including rail freight operators, passenger operators, shippers, forwarders and their representative bodies,*** shall be consulted by the governance body before the implementation plan is approved and when it is updated. In the event of a disagreement between the governance body and the applicants, the latter may ***refer the matter to the regulatory bodies referred to in Article 17***.

CHAPTER III

INVESTMENT IN THE FREIGHT CORRIDOR

Article 7

Investment planning

1. The governance body shall draw up and approve:

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a) a long-term joint investment plan for infrastructure in the freight corridor, that is for at least the next 10 years;

b) if necessary, a medium-term joint investment plan (at least two years) in the freight corridor.

The investment plans shall list the projects planned for the extension, renewal or redeployment of railway infrastructure and its equipment along the corridor, the relevant financial requirements ***and sources of funding.***

2. The investment plans referred to in paragraph 1 ‖ shall include a strategy relating to the deployment of interoperable systems along the freight corridor which satisfies the essential requirements and the technical specifications for interoperability which apply to the rail networks as defined in Directive 2008/57/EC *of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community (recast)* ([1]). This strategy shall be based on a cost-benefit analysis of the use of these systems. It must be consistent with national and European plans for the deployment of interoperable systems, in particular with the deployment plan for the ‖ERTMS***, as well as with cross-border interconnections and interoperable systems with third countries, where applicable***.

3. Where applicable, investment plans shall refer to the Community contribution envisaged under the TEN-T programme ***or any other policies, funds or programmes,*** and prove that their strategy is consistent with ***them***.

4. The investment plans referred to in paragraph 1 shall ▌include a strategy for the growth of the capacity of freight trains which may run in the freight corridor***, namely, for removing the identified bottlenecks, upgrading existing infrastructure and building new infrastructure***. The strategy may ***include measures to increase*** the length, ***track*** gauge***, loading gauge, speed management, load hauled*** or axle load authorised for the trains running in the freight corridor.

5. The investment plans referred to paragraph 1 ‖ shall be published in the document referred to in Article 15 and updated regularly. They shall form part of the implementation plan for the freight corridor.

Article 8

Coordination of works

The infrastructure managers in the freight corridor shall coordinate***, in accordance with an appropriate manner and timeframe and in line with their respective contractual agreements as referred to in Article 6 of Directive 2001/14/EC,*** their schedule for carrying out ***all the works*** on the infrastructure and its equipment ***that would restrict available capacity on the network.***

Article 9

Strategic terminals

1. In agreement with the working group referred to in *Article 4(6)*, the governance body shall draw up ***an integrated*** strategy for the development of strategic terminals to enable them to meet the needs of rail freight running on the freight corridor***, in particular as intermodal hubs along the freight corridors. This shall include co-operation with regional, local and national authorities; the sourcing of land to develop rail freight terminals and facilitating access to funds in order to encourage such developments. The governance body shall ensure that sufficient terminals are created in strategic locations, based on the expected volume of traffic.***

2. The governance body shall take appropriate measures to carry out this strategy. It shall revise it regularly.

([1]) *OJ L 191, 18.7.2008, p. 1.*

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CHAPTER IV

MANAGEMENT OF THE FREIGHT CORRIDOR

Article 10

One-stop shop for requests for international train paths

1. The governance body shall put in place a one-stop shop ***to reply to*** requests for train paths for freight trains crossing at least one border along the freight corridor ***or using several networks***.

2. ***Individual infrastructure managers of a freight corridor may be assigned to function as the front office of the one-stop shop for the applicants requesting train paths.***

3. The regulatory bodies involved, as referred to in Article 17 ‖, shall ensure that the activities of the one-stop shop are carried out under transparent and non-discriminatory conditions.

Article 11

Standard categories of train paths in the freight corridors

1. The governance body shall define ***and periodically update*** the standard categories of freight ***train paths***, which shall be valid *throughout* the freight corridor. At least one of these categories shall include***, among these categories of paths, a train path with*** an efficient transport time and guaranteed punctuality *('facilitated freight')*.

2. The criteria defining the standard categories of freight traffic shall be adopted ***by the governance body after consultation of the applicants likely to use the freight corridor***.

Article 12

Train paths allocated to freight trains

1. ***In addition to the cases referred to in*** Article 20(2) of Directive 2001/14/EC, the infrastructure managers ***concerned*** shall *maintain a* reserve *of* capacity***, on the basis of the evaluation of market needs for capacity reserve. The infrastructure managers shall publish the working timetable of the train path needed to meet the requirements of international facilitated*** freight traffic for the coming financial year, prior to the annual exercise to define the working timetable referred to in Article 18 of Directive 2001/14/EC and using as a basis the freight traffic observed and the market study *referred to in Article 5(2)*.

2. The infrastructure managers shall keep***, following the preliminary evaluation of the appropriate need to constitute a reserve of capacity for ad hoc requests, such*** a reserve***, whilst guaranteeing a sufficient level of quality of the allocated train path for journey time and timetables adapted for international facilitated freight traffic,*** within the final working timetable to allow them to respond quickly and appropriately to ad hoc requests for capacity as referred to in Article 23 of Directive 2001/14/EC. ▌

▌

3. Save in the case of force majeure, a train path allocated to a ***facilitated*** freight operation ***pursuant to this Article*** may not be cancelled less than ***one month*** before its working timetable if the applicant concerned does not give their approval for such cancellation. ***The applicant may refer the matter to the regulatory body. As referred to in Article 27 of Directive 2001/14/EC, infrastructure managers may specify in their network statement conditions whereby they shall take account of previous levels of utilisation of facilitated freight train paths in determining priorities for the allocation process***.

4. Infrastructure managers in the freight corridor and the working group referred to in *Article 4(6)* shall put in place procedures to ensure optimal coordination of the allocation of ***the*** capacity ***in line with this Article, taking into account access to the*** strategic ***terminals,*** as referred to in Article 9.

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5. Infrastructure managers shall include in their conditions of use a fee for paths that are allocated but ultimately not used. The level of this fee shall be appropriate, dissuasive and effective.

Article 13

Authorised applicants

Notwithstanding Article 16(1) of Directive 2001/14/EC, applicants other than railway undertakings and the international groupings that they make up, may request train paths for freight transport where the latter concern ***several*** sections of the freight corridor.

Article 14

Traffic management

1. ***Following a proposal of the governance body of the freight corridor as well as respecting the principles and plans referred to in paragraph 2, the*** infrastructure managers of the freight corridor shall draw up and publish the rules of priority between the different types of ***train paths, in particular on the train paths allocated to delayed trains,*** in the event of traffic disruption ***for each part of*** the freight corridor in the network statement referred to in Article 3 of and Annex I to Directive 2001/14/EC.

2. The rules of priority referred to in paragraph 1 ‖ must at least provide, ***with the exception of peak hours when this paragraph does not apply,*** that the train path allocated to a ***facilitated*** freight train complying with the initial provisions for its train path ***shall be respected as far as possible or at least minimise overall delays while focusing on facilitated freight train delays. The governance body shall, in conjunction with applicants, develop and publish:***

a) train regulation principles that shall ensure that facilitated freight trains receive the best treatment possible regarding the allocation of the reduced capacity;

b) contingency plans in case of disruption on the corridor that are based on these principles.

Each Member State through the infrastructure manager shall define the peak hours in the network statement. Peak hours shall apply only to working days and shall be limited to a maximum of 3 hours in the morning and to a maximum of 3 hours in the afternoon. In defining the peak hours regional and long distance passenger traffic shall be considered.

3. The infrastructure managers of the freight corridor shall put in place procedures for coordinating traffic management along the freight corridor.

4. Infrastructure managers for the freight corridor and the working group referred to in *Article 4(6)* shall put in place procedures to ensure optimal coordination between the operation of the railway infrastructure and the strategic terminals referred to in Article 9.

Article 15

Information on the conditions of use of the freight corridor

The governance body shall draw up and publish a document containing:

a) all the information contained in the network statement for national networks regarding the freight corridor, drawn up in accordance with the procedure set out in Article 3 of Directive 2001/14/EC;

b) the list and characteristics of strategic terminals and all information concerning the conditions and methods of accessing the strategic terminals.

Article 16

Quality of service in the freight corridor

1. The infrastructure managers for the freight corridor shall ensure consistency between the performance schemes along the freight corridor, as *referred to in* Article 11 of Directive 2001/14/EC. ***This consistency shall be overseen by the regulatory bodies, which shall cooperate with regard to this oversight in accordance with Article 17(1).***

2. In order to measure the quality of the service and the capacity for international and national rail freight services in the freight corridor, the governance body shall ***consult applicants likely to use the corridors and users of rail freight services on*** the performance indicators in the freight corridor. ***After this consultation, the governance body shall define*** and publish them at least once a year.

▌

Article 17

Regulatory bodies

1. The regulatory bodies referred to in Article 30 of Directive 2001/14/EC which are responsible for the freight corridor shall cooperate to supervise the international activities of the infrastructure managers and applicants in the freight corridor. They shall consult each other and exchange information. Where necessary, they shall request the necessary information from infrastructure managers in the Member State for which they are responsible. ***Infrastructure managers and other third parties involved in international capacity allocation are obliged to provide the regulatory bodies concerned without delay with all the information that is needed on the international train paths and capacity they are responsible for.***

2. In the event of a complaint from an applicant regarding international rail freight services, or within the framework of a routine enquiry, the regulatory body concerned shall consult the regulatory body of any other Member State on the territory of which the freight corridor concerned passes and ***ask it for*** the necessary information ▌ before taking its decision. The other regulatory bodies shall provide all the information that they themselves have the right to request under their national legislation. Where necessary, the regulatory body receiving the complaint or having initiated the routine enquiry shall transfer the file to the regulatory body responsible in order to take measures regarding the parties concerned ***in accordance with the procedure established in Article 30(5) and (6) of Directive 2001/14/EC***.

CHAPTER V

FINAL PROVISIONS

Article 18

Committee

1. The Commission shall be assisted by a Committee.

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

▌

3. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

▌

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Article 19

Derogation

Where applicable, a Member *State* may derogate from the provisions of this Regulation. In order to do so, it shall send a substantiated request for derogation to the Commission. The Commission shall adopt a decision on that request, in *accordance w*ith the consultation procedure referred to in Article 18(2), taking into consideration the geographical situation and the development of rail freight transport services in the Member State which has requested derogation.

Article 20

Monitoring implementation

The Member States concerned shall submit to the Commission, every two years from the time of creation of the freight corridor, a *report* showing the results of their cooperation as referred to in Article 4(1). The Commission shall analyse this *report* and notify the committee referred to in Article 18 of its analysis.

Article 21

Report

The Commission shall periodically examine the application of this Regulation. It shall draw up a report for the European Parliament and the Council, initially within … (*), and subsequently every three years.

Article 22

Review

If, where the *TEN-T guidelines* are reviewed in accordance with the procedures referred to in Article 18(3) of Decision No 1692/96/EC, the Commission concludes that it is appropriate to adapt this Regulation to those guidelines, it shall present to the European Parliament and the Council a proposal on amending this Regulation accordingly. ***Similarly, certain decisions taken under this Regulation may entail the need to revise the TEN-T guidelines.***

Article 23

Entry into force

This Regulation shall enter into force on the twentieth 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 ‖,

For the European Parliament	For the Council
The President	The President

(*) *Five years of the entry into force of this Regulation.*

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ANNEX

Criteria for assessing proposals for the creation of a freight corridor

The selection of freight corridors referred to in Article 3, and the updating of the rail network for competitive freight shall be carried out in accordance with the following criteria:

(a) there must be a letter of intent from the Member States concerned confirming their wish to create the freight corridor;

▌

(b) where the itinerary for the freight corridor coincides with a section (or part of a section) of one or more priority TEN-T projects ([1]), this must be integrated into the freight corridor, unless it is dedicated to the passenger transport service;

(c) the freight corridor whose creation is proposed must cross the territory of at least three Member States or at least two Member States if the distance between the railway terminals served by the freight corridor proposed is greater than 500 kilometres;

(d) the economic feasibility and the socio-economic benefits of the freight corridor;

(e) the consistency of all of the freight corridors proposed by the Member States in order to set up a European rail network for competitive freight;

(f) consistency with existing European rail networks such as the ERTMS corridors and the corridors defined by RailNetEurope;

(g) the existence of good interconnections with other modes of transport, in particular thanks to an adequate network of strategic terminals, including in the maritime and inland ports;

(h) the approach proposed to implement the provisions referred to in Articles 4 to 16.

([1]) See Annex III to Decision No 1692/96/EC.

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Patients' rights in cross-border healthcare ***I

P6_TA(2009)0286

European Parliament legislative resolution of 23 April 2009 on the proposal for a directive of the European Parliament and of the Council on the application of patients' rights in cross-border healthcare (COM(2008)0414 – C6-0257/2008 – 2008/0142(COD))

(2010/C 184 E/73)

(Codecision procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0414),

— having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0257/2008),

— having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,

— having regard to Rules 51 and 35 of its Rules of Procedure,

— having regard to the report of the Committee on the Environment, Public Health and Food Safety and the opinions of the Committee on Employment and Social Affairs, the Committee on the Internal Market and Consumer Protection, the Committee on Economic and Monetary Affairs, the Committee on Committee on Industry, Research and Energy, Committee on Legal Affairs and the Committee on Women's Rights and Gender Equality (A6-0233/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and Commission.

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P6_TC1-COD(2008)0142

Position of the European Parliament adopted at first reading on 23 April 2009 with a view to the adoption of Directive *2009/…/EC* of the European Parliament and of the Council on the application of patients' rights in cross-border healthcare

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission ‖,

Having regard to the opinion of the European Economic and Social Committee [1],

Having regard to the opinion of the Committee of the Regions [2],

After consulting the European Data Protection Supervisor [3],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [4],

Whereas:

(1) *In accordance with* Article 152(1) of the Treaty, a high level of human health protection must be ensured in the definition and implementation of all Community policies and activities. This implies that *a* high level of human health protection has to be ensured also when the Community ‖ acts under other Treaty provisions.

(2) Given that the conditions for recourse to Article 95 of the Treaty as a legal basis are fulfilled, the Community ‖ shall rely on this legal basis even when public health protection is a decisive factor in the choices made; in this respect Article 95(3) of the Treaty explicitly requires that ▌a high level of protection of human health should be guaranteed taking account in particular of any new development based on scientific facts.

(3) On 9 June 2005 the European Parliament adopted, by 554 votes to 12, a resolution on patient mobility and healthcare developments in the European Union [5], in which it called for legal certainty and clarity on rights and procedures for patients, health professionals and Member States.

(4) This Directive respects the fundamental rights and observes the general principles of law as recognised in particular by the Charter of Fundamental Rights of the European Union [6] *('the Charter')*. The right of access to healthcare and the right to benefit from medical treatment under conditions established by national law and practices are recognised by Article 35 of the Charter ‖. Specifically, this Directive has to be implemented and applied with due respect for the rights to private and family life, protection of personal data, equality before the law and the principle of non-discrimination and the right to an effective remedy and to a fair trial, in accordance with the general principles of law, as enshrined in Articles 7, 8, 20, 21, 47 of the Charter.

(5) The health systems of the Community are a central component of Europe's high levels of social protection, and contribute to social cohesion and social justice as well as to sustainable development. They are also part of the wider framework of services of general interest.

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[1] *Opinion of 4 December 2008 (not yet published in the Official Journal).*
[2] *OJ C 120, 28.5.2009, p. 65.*
[3] *OJ C 128, 6.6.2009, p. 20.*
[4] *Position of the European Parliament of 23 April 2009.*
[5] ***OJ C 124 E, 25.5.2006, p. 543.***
[6] OJ C 364, 18.12.2000, p. 1.

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(6) This Directive respects and does not prejudice the freedom of each Member State to decide what type of healthcare it considers appropriate. No provision of this Directive should be interpreted in such a way as to undermine the fundamental ethical choices of Member States.

(*7*) As confirmed by the Court of Justice on several occasions, while *recognising* their specific nature, all types of medical care fall within the scope of the Treaty.

(*8*) Some issues related to cross-border healthcare, in particular reimbursement of healthcare provided in a Member State other than that in which the recipient of the care is resident, have been already addressed by the Court of Justice. ▌It is important to address these issues in a specific Community legal instrument in order to achieve a more general and effective application of principles developed by the Court of Justice on a case by case basis.

(*9*) In its Conclusions of 1-2 June 2006 *on Common values and principles in European Union health systems* ([1]) *('Council Conclusions of 1-2 June 2006')*, the Council ‖ adopted a statement on 'Common values and principles' ‖ and recognised *the* particular value of an initiative on cross-border healthcare ensuring clarity for European citizens about their rights and entitlements when they move from one Member State to another in order to ensure legal certainty.

(*10*) This *Directive* aims to establish a general framework for provision of safe, high quality and efficient cross-border healthcare in the Community ***in relation to*** patients mobility ***as well as a to a*** high level of protection of health, whilst fully respecting the responsibilities of the Member States for the definition of social security benefits related to health and ***for*** the organisation and delivery of healthcare and medical care ***as well as of*** social security benefits in particular for sickness.

(*11*) This Directive on the application of patients' rights in cross-border healthcare applies to all types of healthcare. As confirmed by the Court of Justice, neither *the* special nature *of healthcare* nor the way in which *it is* organised or financed removes *it* from the ambit of the fundamental principle of freedom of movement. As regards long-term care, *this* Directive does not apply to assistance and support for families or individuals who are, over an extended period of time, in ‖ particular ‖ need ***of nursing, support or care in so far as this involves specific expert treatment or help provided by a social security system, including above all such long-term care services as are considered necessary in order to provide the person in need of care with as full and independent a life as possible. This Directive*** does not apply, for example, to residential homes or housing, or assistance provided to elderly people or children by social workers or volunteer carers or professionals other than health professionals.

(12) This Directive does not apply to organ transplantations. Due to their specific nature, they will be regulated by a separate directive.

(*13*) For the purpose of this Directive, the concept of 'cross-border healthcare' ***only*** covers the ***use of healthcare in a Member State other than that where the patient is an insured person. This is what is referred to as 'patient mobility'***.

(*14*) As recognised by the Member States in the Council *Conclusions of 1-2 June 2006*, there is a set of operating principles that are shared by health systems throughout the Community. *Those* operating principles include quality, safety, care that is based on evidence and ethics, patient involvement, redress, the fundamental right to privacy with respect to the processing of personal data, and confidentiality. Patients, professionals and authorities responsible for health systems must be able to rely on *those* operating principles being respected and structures provided for their implementation throughout the Community. It is therefore appropriate to require that it is the authorities of the Member State on whose territory the healthcare is provided, *which* are responsible for ensuring compliance with those operating principles. This is necessary to ensure the confidence of patients in cross-border healthcare, which is itself necessary for achieving *patients* mobility ▌as well as a high level of health protection. ***Notwithstanding those common values it is accepted that Member States take different decisions on ethical grounds as regards the availability of certain treatments and the concrete access conditions. This Directive is without prejudice to ethical diversity.***

([1]) OJ C 146, 22.6.2006, p. 1.

(*15*) Given that it is impossible to know in advance whether a given healthcare provider will supply healthcare to a patient coming from another Member State or a patient from their own Member State, it is necessary *for* the requirements to ensure that healthcare is provided *in accordance with* common principles and clear quality and safety standards are applicable to all *types* of healthcare in order to ensure the freedom to provide and obtain crossborder healthcare, which is the aim of the *Directive*. Member States' authorities have to respect the shared overarching values of universality, access to good quality care, equity and solidarity, which have been already widely recognised by the Community institutions and by all the Member States as constituting a set of values that are shared by health systems across Europe. Members States also have to ensure that these values are respected with regard to patients and citizens from other Member States, and that all patients are treated equitably on the basis of their healthcare need rather than their Member State of social security affiliation. In doing so, Member States must respect the principles of freedom of movement ***of individuals*** within the internal market, non-discrimination inter alia with regard to nationality, ▌ necessity and proportionality of any restrictions on free movement. However, nothing in this Directive requires healthcare providers to accept for planned treatment or to prioritise patients from other Member States to the detriment of other patients with similar health needs, such as through increasing waiting time for treatment. ***In order to enable patients to make an informed choice when they seek to receive healthcare in another Member State, Member States should ensure that patients receive on request the relevant information on health and quality standards enforced in the Member State of treatment as well as on the characteristics of healthcare provided by a specific healthcare provider. Such information should also be made available in formats accessible to persons with disabilities.***

(*16*) Moreover, patients from other Member States should enjoy equal treatment with the nationals of the Member State of treatment and, according to the general principles of equity and non discrimination, as *recognised* in Article 21 of the Charter, they should in no way be discriminated *against* on the basis of their sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. Member States may differentiate in the treatment accorded to different groups of patients only where they can demonstrate that this is justified by legitimate medical grounds, such as in case of specific measures for women or for certain ages groups (e.g. free of charge vaccination for children or elderly people). Furthermore, as this Directive respects the fundamental rights and observes the principles recognised in particular by the Charter ‖, it has to be implemented and applied with due respect for the *right* to equality before the law and the principle of non-discrimination in accordance with the general principles of law, as enshrined in Articles 20 and 21 of the Charter. This Directive applies without prejudice to Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [1], ***Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services [2], Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [3], and Council Directive 2009/…/EC of … On implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation*** [4] ‖ giving effect to Article 13 of the ‖ Treaty. In the light of this, this Directive provides that patients shall enjoy equal treatment with the nationals of the Member State of treatment, including the benefit from the protection against discrimination provided for according to Community law as well as from the legislation of the Member State of treatment.

(17) Member States should ensure that in the application of this Directive patients are not encouraged against their will to receive treatment outside of their Member State of affiliation.

(18) It is also important to put in place measures to ensure that women have equitable access to public health schemes and care that is specific to them, particularly gynaecological and reproductive healthcare.

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[1] *OJ L 180, 19.7.2000, p. 22.*
[2] ***OJ L 373, 21.12.2004, p. 37.***
[3] ***OJ L 303, 2.12.2000, p. 16.***
[4] OJ L …

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(*19*) In any event, any *measures* taken by Member States with a view to *ensuring* that healthcare is provided *in accordance with* clear quality and safety standards, should not constitute new barriers to the free movement of health professionals as enshrined *in* the Treaty and in particular regulated by Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications ([1]).

(20) Systematic and continuous efforts should be made to ensure that quality and safety standards are improved, in line with the Council Conclusions of 1-2 June 2006 ‖ and taking into account advances in international medical science and generally recognised good medical practices as well as taking into account new health technology.

(*21*) Research suggests that harm arises from healthcare in around 10 % of cases. Ensuring ***that Member States of treatment have systems in place (including provision of aftercare)*** to deal with ***alleged*** harm arising from healthcare ***as defined by the Member State of treatment*** is therefore essential to avoid lack of confidence in those mechanisms acting as an obstacle to taking up cross-border healthcare. Coverage for harm and compensation by the systems of the *Member State* of treatment should be without prejudice to the possibility for Member States to extend the coverage of their domestic systems to patients from *one Member State* seeking healthcare *in another Member State*, where this is more appropriate to the patient, in particular in the case of patients for whom use of healthcare in another Member State is necessary.

(*22*) Member States should ensure ‖ that mechanisms for the protection of patients and ‖ compensation for harm are in place for healthcare provided on their territory and that they are appropriate to the nature and extent of the risk. However, it is for the Member State to determine the nature and/or modalities of such a mechanism.

(*23*) The right to the protection of personal data is a fundamental right recognised by Article 8 of the Charter ‖. Ensuring continuity of cross-border healthcare depends on transfer of personal data concerning patient's health. *Those* personal data should be able to flow freely from one Member State to another, but *at* the same time the fundamental rights of the individuals should be safeguarded. Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ([2]) establishes the right for individuals to have access to their personal data concerning their health, for example in the patient's medical records containing such matters as diagnosis, examination results, assessments by treating physicians and any treatment or interventions provided. These provisions also apply in the context of cross-border healthcare covered by this Directive. ***The patient should be able to stop the release of his data at any point and receive confirmation that his data have been deleted.***

(*24*) The right to reimbursement of the costs of healthcare provided in another Member State from the statutory social security scheme of patients as insured persons *has been* recognised by the Court of Justice in several judgements. The Court of Justice has held that the Treaty provisions ***include*** the freedom ▌for the recipients of healthcare, including persons in need of medical treatment, to go to another Member Sate in order to receive it there. ▌Community law does not detract from the power of the Member States to organise their healthcare and social security systems ▌.

(*25*) In accordance with the principles established by the Court of Justice, and without endangering the financial balance of Member States' healthcare and social security systems, greater legal certainty as regards the reimbursement of healthcare costs should be provided for patients and for health professionals, healthcare providers and social security institutions.

([1]) OJ L 255, 30.9.2005, p. 22. ‖
([2]) OJ L 281, 23.11.1995, p. 31.

(*26*) This Directive does not address the assumption of costs of healthcare which become necessary on medical grounds during a temporary stay of insured persons in another Member State. Neither does this Directive affect *patients*' rights to be granted an authorisation for ‖ treatment in another Member State where the conditions provided for by the regulations on coordination of social security schemes, in particular Article 22 of Council Regulation (*EEC*) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community [1] and Article 20 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems [2] are met.

(*27*) ▌Patients should be guaranteed assumption of the costs of ▌healthcare ***and goods connected with healthcare provided in a Member State other than their Member State of affiliation*** at least at the level provided for ***treatment which is*** the same or ***equally effective,*** had they been provided ***or purchased*** in the Member State of affiliation. This fully respects *the* responsibility of the Member States to determine the extent of the sickness cover available to their citizens and prevents any significant effect on the financing of the national healthcare systems. Member States may nevertheless provide in their national legislation for reimbursement of the costs of the treatment at the tariffs in force in the Member State of treatment if this is more beneficial for the patient. This may be the case in particular for any treatment provided through European reference networks *referred to* in *Article 17* of this Directive.

(*28*) For the patient, therefore, the two systems are coherent; either this *Directive* applies or Regulation *(EEC) No* 1408/71 *applies*. In any event, any insured person who requests an authorisation to receive a treatment appropriate to his/her condition in another Member State *should* always be granted this authorisation under the conditions provided for in *Regulations (EEC) No* 1408/71 and *(EC) No* 883/*2004* when the treatment in question cannot be given within the time medically justifiable, taking *into* account *the patient's* current state of health and the probable course of the disease. The patient should not be deprived of the more beneficial rights guaranteed by *those Regulations* when the conditions are met.

(*29*) The patient may choose which mechanism they prefer, but in any case, where the application of Regulation *(EEC) No* 1408/71 is more beneficial for the patient, the patient should not be deprived of the rights guaranteed by that Regulation.

(*30*) The patient should, in any event, not derive a financial advantage from the healthcare provided ***or goods purchased*** in another Member State ▌. The assumption of costs should *therefore be* limited only to *the* actual costs. ***Member States may decide to cover other related costs, such as therapeutic treatment, provided that the total cost does not exceed the amount payable in the Member States of affiliation.***

(*31*) This Directive does not aim either to create entitlement for reimbursement of treatment ***or of the cost of purchasing goods*** in another Member State, if such a treatment ***or such goods are*** not among the benefits provided for by the legislation of the patient's Member State of affiliation. Equally this Directive does not prevent the Member States from extending their benefits in kind scheme to healthcare ***and goods*** provided in another Member State according to its provisions. ***This Directive recognises that entitlement to treatment is not always determined nationally by Member States and that Member States may organise their own healthcare and social security systems in such a way as to provide for entitlement to treatment to be determined at a regional or local level.***

(32) If there are several methods available for treating a certain disease or injury, the patient should have the right to reimbursement for all methods of treatment that are sufficiently tried and tested by international medical science, even if they are not available in the patient's Member State of affiliation.

[1] OJ L 149, 5.7.1971, p. 2. ‖
[2] OJ L 166, 30.4.2004, p. 1.

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(33) This Directive does not provide either for transfer of social security entitlements between Member States or other coordination of social security schemes. The sole objective of the provisions regarding prior authorisation and reimbursement of healthcare provided in another Member State is to enable freedom to provide healthcare for both patients and healthcare providers and to remove unjustified obstacles to that fundamental freedom within the patient's Member State of affiliation. Consequently *this* Directive fully respects the differences *between* national *healthcare* systems and the Member States' responsibilities for organisation and delivery of health services and medical care.

(34) This Directive provides also for the right for a patient to receive any medicinal product ***or medical device*** authorised for marketing in the Member State ***of treatment***, even if *that* medicinal product ***or medical device*** is not authorised for marketing in the Member State of affiliation, as it is an indispensable part of obtaining ***this specific*** effective treatment ***for the patient*** in another Member State.

(35) Member States may maintain general conditions, criteria for eligibility and regulatory and administrative formalities for receipt of healthcare and reimbursement of healthcare costs, such as the requirement to consult a general practitioner before consulting a specialist or before receiving hospital care, *including* in relation to patients seeking healthcare in another Member State provided that such conditions are necessary, proportionate to the aim and are not discretionary and discriminatory. It is thus appropriate to require that *those* general conditions and formalities are being applied in an objective, transparent and non-discriminatory way and are known in advance, that they are based primarily on medical considerations and that they do not impose any additional burden on patients seeking healthcare in another Member State *compared to* patients being treated in their Member State of affiliation, and that decisions are made as quickly as possible. This is without prejudice to the rights of the Member States to provide for criteria or conditions of prior authorisation in the case of patients seeking healthcare in their Member State of affiliation.

(36) Any healthcare which is not regarded as hospital care *in accordance with* the provisions of this Directive should be considered as non-hospital care. In the light of the case-law of the Court of Justice on the free movement of services, it is appropriate not to set a requirement of prior authorisation for reimbursement by the statutory social security system of a Member State of affiliation for non-hospital care provided in another Member State. In so far as the reimbursement of such care remains within the limits of the cover guaranteed by the sickness insurance scheme of the Member State of affiliation, the absence of a prior authorisation requirement will not undermine the financial equilibrium of social security systems.

(37) There is no definition of what constitutes hospital care throughout the different health systems of the Community, and different interpretations could therefore constitute an obstacle to the freedom for patients to receive healthcare. In order to overcome that obstacle, it is necessary to provide a Community definition of hospital care. Hospital care generally means care requiring the overnight accommodation of the patient. However, it may be *also* appropriate to submit to the same regime of hospital care certain other kinds of healthcare, if that healthcare requires use of highly specialised and cost-intensive medical infrastructure or medical equipment (e.g. high-technology scanners used for diagnosis) or involving treatments presenting a particular risk *to* the patient or the population (e.g. treatment of serious infectious diseases). ▌

(38) The evidence available indicates that the application of free movement principles regarding use of healthcare in another Member State within the limits of the cover guaranteed by the statutory sickness insurance scheme of the Member State of affiliation will not undermine the health systems of the Member States or financial sustainability of their social security systems. However, the Court of Justice has recognised that it cannot be excluded that the possible risk of seriously undermining a social security system's financial balance or the objective of maintaining a balanced medical and hospital service open to all may constitute overriding reasons in the general interest capable of justifying a barrier to the principle of freedom to provide services. The Court of Justice has also recognised that the

number of hospitals, their geographical distribution, the way in which they are organised and the facilities with which they are provided, and even the nature of the medical services which they are able to offer, are all matters for which planning must be possible. This Directive should provide for a system of prior authorisation for assumption of costs for hospital care received in another Member State, where the following conditions are met: had the treatment been provided on its territory, it would have been assumed by its social security system and the consequent outflow of patients due to the implementation of the directive seriously undermines or is likely to seriously undermine the financial balance of the social security system and/or *that* outflow of patients seriously undermines, or is likely to seriously undermine, the planning and rationalisation carried out in the hospital sector to avoid hospital overcapacity, imbalance in the supply of hospital care and logistical and financial wastage, the maintenance of a balanced medical and hospital service open to all, or the maintenance of treatment capacity or medical competence on the territory of the Member *State concerned*. As the assessment of the precise impact of an expected outflow of patients requires complex assumptions and calculations, *this* Directive allows for a system of prior authorisation if there is sufficient reason to expect that the social security system will be seriously undermined. This should also cover cases of already existing systems of prior authorisation which are in conformity with conditions laid down in Article 8.

(*39*) In any event, if a Member State decided to establish a system of prior authorisation for assumption of costs of hospital or specialised care provided in another Member *State* in accordance with the provision of this Directive, the costs of such care provided in another Member State should also be reimbursed by the Member State of affiliation up to the level of costs that would have been assumed had ***treatment which is*** the same or ***equally effective for the patient*** been provided in the Member State of affiliation, without exceeding the actual costs of healthcare received. However, when the conditions set out in Article 22(2) of Regulation (EEC) No 1408/71 are fulfilled the authorisation should be granted and the benefits provided in accordance with that Regulation. This applies in particular in instances where the authorisation is granted after an administrative or judicial review of the request and that the person concerned has received the treatment in another Member State. In that case Articles 6, 7, 8 and 9 of this Directive *should* not apply. This is in line with the case law of the Court of Justice which has specified that patients who received a refusal of authorisation subsequently held to be unfounded, are entitled to have the cost of the treatment obtained in another Member State reimbursed in full *in accordance with* the provisions of the legislation in the Member State of treatment.

(40) Prior authorisation should only be refused in the context of a fair and transparent procedure. The rules laid down by the Member States for submitting an authorisation request and the possible reasons for refusal should be made known in advance. Refusals should be limited to what is necessary, and should be proportionate to the objectives of setting up a prior authorisation system.

(41) Patients with a life-threatening condition who are on a waiting list for medical treatment in their home country and who are in urgent need of care may not be subject to prior authorisation, as this procedure could prevent patients from having timely treatment in another Member State.

(*42*) Procedures regarding cross-border healthcare established by the Member States should give patients guarantees of objectivity, non-discrimination and transparency, in such a way as to ensure that decisions by national authorities are made in a timely manner and with due care and regard for both those overall principles and the individual circumstances of each case. This applies also to the actual reimbursement of costs of healthcare incurred in another Member State after the patient's return. It is appropriate that patients should normally have a decision regarding the cross-border healthcare within fifteen calendar days. However, that period should be shorter where warranted by the urgency of the treatment in question. In any event, recognition procedures and rules on the provision of services as provided for by Directive 2005/36/EC should not be affected by these general rules.

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(43) Appropriate information on all essential aspects of cross-border healthcare is necessary in order to enable patients to exercise their rights to cross-border healthcare in practice. For cross-border healthcare the most efficient mechanism for providing such information is to establish central contact points within each Member State to which patients can refer, and which can provide information on cross-border healthcare taking into account also the context of the health system in that Member State. Since questions about aspects of cross-border healthcare will also require liaison between authorities in different Member States, *those* central contact points should also constitute a network through which such questions can be most efficiently addressed. *Those* contact points should cooperate with each other and should enable patients to make informed choices about cross border healthcare. They should also provide information about options available in case of problems with cross-border healthcare, in particular about out of court schemes for settling cross border disputes. ***In developing arrangements for the provision of information on cross-border healthcare, the Member States should give consideration to the need to provide information in accessible formats and to potential sources of additional assistance for vulnerable patients, disabled people and people with complex needs.***

(44) When healthcare is received by a patient in a Member *State*, which is not the *Member State* where he is insured, it is essential for the patient to know in advance which rules shall be applicable. An equivalent level of clarity is needed ▌when healthcare is provided cross-border***, such as telemedicine***. In those cases, the rules applicable to healthcare are those provided by the legislation of the Member State of treatment in accordance with the general principles set out in *Article* 5 *of this Directive*, given that in accordance with *Article* 152(5) of the Treaty the organisation and delivery of health services and medical care is of responsibility of Member States. This will help the patient *to make* an informed choice, and will avoid misapprehension and misunderstanding. It will also establish a high level of trust between the patient and the healthcare provider.

(45) The Member States should decide on the form of *the* national contact points as well as the number of them. The national contact points may be also incorporated *into* or build on activities of existing information centres provided that it is clearly indicated that they are also national contact points for cross-border healthcare. The national contact points should have appropriate facilities *for the provision of* information on the main aspects of cross-border healthcare and *for the provision of* practical assistance to patients if needed. ***The Member States should ensure the participation of bodies representing health professionals in these activities.*** The existence of national contact points should not preclude Member States from establishing other linked contact points at regional or local level, reflecting the specific organisation of their healthcare system. ***The national contact points should be able to provide patients with relevant information on cross-border healthcare and to assist them. This should not include legal advice.***

(46) ▌Cooperation ***is required*** between providers, purchasers and regulators of different Member States at national, regional or local level in order to ensure safe, high-quality and efficient care across borders. This is particularly the case for cooperation in border regions, where cross-border provision of ***healthcare*** may be the most efficient way of organising ***healthcare*** for the local populations, but where achieving such cross-border provision on a sustained basis requires cooperation between the health systems of different Member States. Such cooperation may concern joint planning, mutual recognition or adaptation of procedures or standards, interoperability of respective national information and communication technology systems, practical mechanisms to ensure continuity of care or practical *facilitation* of cross-border provision of healthcare by health professionals on a temporary or occasional basis. ▌

(47) The Commission should encourage cooperation between the Member States in the areas set out in Chapter IV of this Directive and may, in accordance with Article 152(2) of the Treaty take, in close contact with the Member States, any useful initiative to facilitate and promote such cooperation. Particular attention should be given to the possible use of a European Grouping of Territorial Cooperation (EGTC).

(*48*) Where medicinal products are authorised within the patient's Member State *of affiliation* in accordance with Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use [1], ***including the future Directives on falsified medicinal products and pharmacovigilance,*** and have been prescribed in another Member State for an individual named patient, it should be in principle possible for such prescriptions to be recognised ***medically or in pharmacies*** and used in the patient's own Member State. The removal of regulatory and administrative barriers to such recognition is without prejudice to the need for appropriate agreement of the patients' treating physician or pharmacist in every individual case, if this is warranted by protection of human health and is necessary and proportionate to that objective. Such medical recognition should also be without prejudice to the decision of the Member State of affiliation regarding the inclusion of such medicinal products within the benefits covered by the social security system of affiliation ***and without prejudice to the validity of national pricing and payment rules***. The implementation of the principle of recognition will be facilitated by the adoption of measures necessary for safeguarding the safety of a patient, and avoiding the misuse or confusion of medicinal products.

(*49*) European reference networks should provide healthcare to all patients who have conditions requiring a particular concentration of resources or expertise, in order to provide affordable, high-quality and cost-effective care and could also be focal points for medical training and research, information dissemination and evaluation. The mechanism for identification and development of the European reference networks should be established with the aim *of organising* at European level equal access to high- level shared expertise in a given medical field for all patients as well as for health professionals.

(*50*) Technological developments in cross-border provision of healthcare through the use of information and communication technologies may result in the exercise of supervisory responsibilities by Member States being unclear, and thus can hinder the free movement of healthcare and give rise to possible additional risks to health protection through this mode of supply. Widely different and incompatible formats and standards are used for cross-border provision of healthcare using information and communication technologies throughout the Community, creating both obstacles to this mode of cross-border healthcare provision and possible risks to health protection. It is therefore necessary to provide for Community harmonisation in these areas, and to do so *by* empowering the Commission to adopt implementing measures in order to allow sufficiently rapid establishment and updating of responsibilities and standards in that area to reflect constant progress in the relevant technologies and techniques.

(51) The interoperability of e-health solutions should be achieved whilst respecting national regulations on the provision of health services adopted in order to protect the patient, including legislation on internet pharmacies, in particular national bans on mail order of prescription-only medicinal products in accordance with the case-law of the Court of Justice and Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts [2].

(*52*) Routine statistics as well as complementary data on cross-border healthcare are required for efficient monitoring, planning and management of healthcare in general and cross-border healthcare in particular, and their production should be integrated *as* far as possible within existing data collection systems to enable appropriate monitoring and planning to take account of cross-border care, including appropriate structures at Community level such as the Community statistical system and in particular Regulation (EC) No *1338/2008* of the European Parliament and of the Council *of 16 December 2008* on Community statistics on public health and health and safety at work [3], the health information system established within the framework of the health programme established by Decision No 1786/2002/EC of the European Parliament and of the Council of 23 September 2002 adopting a programme of Community action in the field of public health (2003-2008) [4] and other monitoring activities such as those carried out by the European Centre for Disease Prevention and Control established by Regulation (EC) No 851/2004 of the European Parliament and of the Council of 21 April 2004 establishing a European centre for disease prevention and control [5].

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[1] OJ L 311, 28.11.2001, p. 67. ‖
[2] ***OJ L 144, 4.6.1997, p. 19.***
[3] *OJ L 354, 31.12.2008, p. 70.*
[4] OJ L 271, 9.10.2002, p. 1.
[5] OJ L 142, 30.4.2004, p. 1.

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(53) The constant progress of medical science and health technologies presents both opportunities and challenges to the health systems of the Member States. ***However, the assessment of health technologies and the possible restriction of access to new technologies by certain decisions by administrative bodies raise a number of fundamental social issues which require contributions from a wide range of stakeholders and the establishment of a viable governance model. Accordingly any cooperation should involve not only the competent authorities of all the Member States but also all the stakeholders concerned, including health professionals and representatives of patients and industry. Moreover, this cooperation should be based on viable principles of good governance such as transparency, openness, objectivity and the impartiality of procedures.***

(54) *The measures* necessary for the implementation of this Directive 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]).

(55) In particular, ‖ the Commission *should be empowered* to adopt***, in collaboration with relevant experts and stakeholders,*** a list of specific criteria and conditions that European reference networks must fulfil *and* the procedure for establishing European reference networks. Since those measures are of general scope and are designed to amend non-essential elements of this Directive *by supplementing it with* new non-essential elements, they *must* be adopted in accordance with the regulatory procedure with scutiny provided for in Article 5a of Decision 1999/468/EC.

(56) Since the *objective* of this Directive, namely establishing ‖ a general framework for provision of safe, high-quality and efficient cross-border healthcare in the European Union, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, 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 Directive does not go beyond what is necessary in order to achieve *that objective*.

(57) The Member State of affiliation and the Member State of treatment should by prior bilateral cooperation and in consultation with the patient ensure that appropriate aftercare and support is made available in either Member State following the authorised medical treatment and that clear information is made available to patients about aftercare options and costs. To do this, Member States should adopt measures to ensure that the necessary medical and social care data are transferred with due regard to patient confidentiality and that medical and social care professionals in both countries are able to consult each other to ensure the highest quality treatment and aftercare (including social support) for the patient.

(58) By facilitating the freedom of movement for patients within the European Union, this Directive is likely to lead to competition between healthcare providers. Such competition is likely to contribute to an increase in the quality of the healthcare for all and to the establishment of centres of excellence,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Aim

This Directive ***lays down rules for access to safe and high-quality healthcare in another Member State and establishes cooperation mechanisms on healthcare between Member States, whilst fully respecting national competencies in the organisation and delivery of healthcare.***

In the application of this Directive, Member States shall take into account the principles of good quality care and equity.

([1]) OJ L 184, 17.7.1999, p. 23. ‖

Article 2

Scope

This Directive shall apply to provision of ***cross-border*** healthcare regardless of how it is organised, delivered and financed or whether it is public or private. ***It shall be without prejudice to the existing legal framework on the coordination of social security systems as laid down in Regulation (EEC) No 1408/71 and its successor Regulation (EC) No 883/2004***.

This Directive shall not apply to health services whose main focus is in the field of long-term care, including services provided over an extended period of time whose purpose is to support people in need of assistance in carrying out routine, everyday tasks.

This Directive shall also not apply to organ transplantation.

Article 3

Relationship *to* other Community provisions

1. This Directive shall apply without prejudice to:

(a) Directive 2005/36/EC on the recognition of professional qualifications;

(b) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') ([1]);

(*c*) Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data and Directive 2002/58/EC *of the European Parliament and of the Council of 12 July 2002* concerning the processing of personal data and the protection of privacy in the electronic communications sector *(Directive on privacy and electronic communications)* ([2]);

(*d*) Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency ([3]) and Directive 2001/83/EC on the Community code relating to medicinal products for human use;

(*e*) Directive 2001/20/EC of the European Parliament and of the Council of 4 April 2001 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the implementation of good clinical practice in the conduct of clinical trials on medicinal products for human use ([4]);

(*f*) Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services ([5]);

(*g*) Directive 2000/43/EC ‖ implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;

(h) Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services;

(i) Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation;

([1]) ***OJ L 178, 17.7.2000, p. 1.***
([2]) OJ L 201, 31.7.2002, p. 37. ‖
([3]) OJ L 136, 30.4.2004, p. 1. ‖
([4]) OJ L 121, 1.5.2001, p. 34.
([5]) OJ L 18, 21.1.1997, p. 1.

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(j) Directive 2009/…/EC on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation;

(*k*) Regulations on coordination of social security schemes, in particular Article 22 of Regulation (*EEC*) No 1408/71 ‖ on the application of social security schemes to employed persons and their families moving within the Community and Regulation (EC) No 883/2004 ‖ on the coordination of social security systems;

(*l*) Regulation (EC) *No* 1082/2006 *of the European Parliament and of the Council* of 5 July 2006 on a European Grouping of territorial cooperation (EGTC) ([1]).

(m) ***Directive 2002/98/EC of the European Parliament and of the Council of 27 January 2003 setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components ([2]);***

(n) ***Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells ([3]);***

(o) Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance ([4]), as regards the implementing powers conferred on the Commission.

2. ***This Directive does not address the assumption of costs of healthcare which become necessary on medical grounds during a temporary stay of insured persons in another Member State. Nor does this Directive affect patients' rights to be granted an authorisation for treatment in another Member State where the conditions provided for by the regulations on coordination of social security schemes, in particular*** Article 22 of Regulation ***(EEC)*** No 1408/71 ***and Article 20 of Regulation (EC) No 883/2004, are met.***

▌

3. Member States shall apply the provisions of this Directive in compliance with the ‖ Treaty.

Article 4

Definitions

For the purposes of this Directive, the following definitions shall apply:

(a) 'healthcare' means ***health services or goods, such as pharmaceuticals and medical devices*** provided ***or prescribed*** by ***health professionals to patients to assess, maintain or restore their state of health or prevent them from becoming ill,*** regardless of the ways in which ***they are*** organised, delivered and financed at national level or whether ***care is*** public or private;

(b) 'health data' means any information which relates to the physical or mental health of an individual, or to the provision of health services to the individual, which may include: information about the registration of the individual for the provision of health services; information about payments or eligibility for healthcare with respect to the individual; a number, symbol or particular assigned to an individual to uniquely identify that individual for health purposes; any information about the individual collected in the course of the provision of health services to the individual; information derived from the testing or examination of a body part or bodily substance; and identification of a person (healthcare professional) as provider of healthcare to the individual;

([1]) OJ L 210, 31.7.2006, p. 19.
([2]) ***OJ L 33, 8.2.2003, p. 30.***
([3]) ***OJ L 102, 7.4.2004, p. 48.***
([4]) ***OJ L 228, 11.8.1992, p. 1.***

(*c*) 'cross-border healthcare' means healthcare provided in a Member State other than that where the patient is an insured person ▌;

▌

(d) 'health professional' means a ***medical practitioner*** or a nurse responsible for general care or a dental practitioner or a midwife or a pharmacist within the meaning of Directive 2005/36/EC or another professional exercising activities in the healthcare sector which are restricted to a regulated profession as defined in Article 3(1)(a) of Directive 2005/36/EC***, or a person legally exercising healthcare activities in the Member State of treatment***;

(e) 'healthcare provider' means any ***health professional in the sense defined in (d) above*** or legal person legally providing healthcare on the territory of a Member State;

(f) 'patient' means any natural person who receives or wishes to receive healthcare in a Member State;

(g) 'insured person' means ▌a person who is insured ***under*** the provisions of ***the definition in*** Article 1(c) of Regulation (EC) No 883/2004***, or as defined in the policy conditions of private sickness insurance schemes***;

(h) 'Member State of affiliation' means the Member State where the patient is an insured person ***or the Member State where the patient resides if this Member State is not the same as the former***.

Where, due to the application of Regulation (EEC) No 1408/71 and Regulation (EC) No 883/2004 respectively, the health insurance body in the Member State of residence of the patient is responsible for the provision of benefits in accordance with the legislation of that state, then that Member State is regarded as the Member State of affiliation for the purposes of this Directive;

(i) 'Member State of treatment' means the Member State on whose territory cross-border healthcare is actually provided;

(**j**) ***'medical device' means a medical device as defined in Council Directive 93/42/EEC of 14 June 1993 concerning medical devices [1], Council Directive 90/385/EEC of 20 June 1990 on the approximation of the laws of the Member States relating to active implantable medical devices [2] or Directive 98/79/EC of the European Parliament and of the Council of 27 October 1998 on in vitro diagnostic medical devices [3];***

(k) 'goods used in connection with health care' means goods which are used to preserve or improve a person's health, such as medical devices and medicines;

(*l*) 'medicinal product' means a medicinal product as defined *in* Directive 2001/83/EC;

(*m*) 'prescription' means a medicinal prescription as defined *in* Directive 2001/83/EC including prescriptions issued and transmitted electronically (ePrescriptions);

(n) 'health technology' means a medicinal product or a medical device or medical and surgical procedures as well as measures for disease prevention, diagnosis or treatment used in healthcare;

(*o*) 'harm' ***is defined in cross-border healthcare by reference to the existing legal framework of the Member State of treatment and understanding of what constitutes harm may vary from Member State to Member State;***

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[1] ***OJ L 169, 12.7.1993, p. 1.***
[2] ***OJ L 189, 20.7.1990, p. 17.***
[3] ***OJ L 331, 7.12.1998, p. 1.***

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(p) 'patient's medical records' or 'medical history' means all the documents containing data, assessments and information of any kind on a patient's situation and clinical development throughout the care process.

CHAPTER II

MEMBER STATE AUTHORITIES RESPONSIBLE FOR COMPLIANCE WITH COMMON PRINCIPLES FOR HEALTHCARE

Article 5

Responsibilities of authorities of the Member State of treatment

1. The Member States of treatment shall be responsible for the organisation and the delivery of healthcare. In such a context and taking into account principles of universality, access to good quality care, equity and solidarity, they shall define clear quality standards for healthcare provided on their territory, and ensure ***compliance with existing EU legislation on safety standards, and*** that:

(a) ***when healthcare is provided in a Member State other than that where the patient is an insured person, such healthcare is provided in accordance with the legislation of the Member State of treatment;***

(b) ***healthcare referred to in point (a) is provided in accordance with standards and guidelines on quality defined by the Member State of treatment;***

(c) patients and healthcare providers from other Member States are provided with information by the national contact point of the Member State of treatment, inter alia by electronic means, on quality standards and guidelines, including provisions on supervision, and on availability, quality and safety, treatment options, prices, outcomes of the healthcare provided, accessibility for persons with disabilities and details of the healthcare provider's registration status and insurance cover or other means of personal or collective protection with regard to their professional liability;

(*d*) healthcare providers provide all relevant information to enable patients to make an informed choice ▌;

(*e*) patients have ***the*** means of making complaints and ***the right to seek*** compensation when they suffer harm arising from the healthcare they receive ***and there are mechanisms in place to guarantee remedies***;

(*f*) systems of professional liability insurance or a guarantee or similar arrangement, ▌ which are appropriate to the nature and the extent of the risk are in place for treatment provided on their territory;

(*g*) the fundamental right to privacy with respect to the processing of personal data is protected in conformity with national measures implementing Community provisions on the protection of personal data, in particular Directives 95/46/EC and 2002/58/EC;

(*h*) patients from other Member States shall enjoy equal treatment with the nationals of the Member State of treatment, including the protection against ***direct or indirect*** discrimination ***on the grounds of racial or ethnic origin, sex, religion or belief, disability, age, or sexual orientation*** provided for *in accordance with* Community law and national legislation in force in the Member State of treatment. ***However, this Directive shall not oblige healthcare providers in a Member State either to provide healthcare to an insured person from another Member State or to prioritise the provision of healthcare to an insured person from another Member State to the detriment of a person who has similar health needs and is an insured person of the Member State of treatment;***

(i) patients who have received treatment are entitled to a written or electronic record of such treatment and of any medical advice for the continuity of their care.

2. The public authorities in the Member State of treatment shall monitor regularly the accessibility, quality and financial state of their healthcare systems on the basis of the data collected under Article 21.

3. In order to maximise patient safety the Member States of treatment and affiliation shall ensure that:

(a) patients have a means of making complaints, and are guaranteed remedies and compensation when they suffer harm arising from the healthcare they receive;

(b) the quality and safety standards of the Member State of treatment are made public in a language and format that is clear and accessible to all citizens;

(c) there is a right to continuity of care, notably by means of the forwarding of relevant medical data concerning the patient with due respect to the provisions of point (g) of paragraph 1 and pursuant to Article 15 and patients who have received treatment are entitled to a written or electronic record of such treatment and of any medical advice for the continuity of their care;

(d) in the event of complications resulting from healthcare provided abroad or if a particular medical follow-up proves necessary, the Member State of affiliation guarantees to provide healthcare equivalent to that received on its territory;

(e) they immediately and proactively inform each other about health providers or health professionals when regulatory action is taken against their registration or their right to provide services.

4. The Commission shall, in accordance with the regulatory procedure referred to in Article 22(2), adopt measures necessary for achieving a common security level of health data at national level, taking into account existing technical standards in this field.

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5. In so far as it is necessary to facilitate the provision of cross-border healthcare and taking as a basis a high level of protection of health, the Commission, in cooperation with the Member States, ***may*** develop guidelines to facilitate the implementation of paragraph 1.

6. For the purposes of this Article, Member States shall establish a transparent mechanism for the calculation of costs that are to be charged for the healthcare provided. That calculation mechanism shall be based on objective, non-discriminatory criteria known in advance and it shall be applied at the relevant administrative level in cases where the Member State of treatment has a decentralised healthcare system.

7. In view of the great importance, particularly to patients, of safeguarding the quality and safety of cross-border care, the organisations involved in drawing up standards and guidelines as referred to in paragraphs 1 and 5 shall at the minimum include patients' organisations (particularly those of a cross-border nature).

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CHAPTER III

CROSS-BORDER HEALTHCARE

Article 6

Responsibilities of authorities of the Member State of affiliation

1. Subject to the provisions of this Directive, in particular Articles 7, 8 and 9, the Member State of affiliation shall ensure that insured persons travelling to another Member State with the purpose of receiving healthcare there or seeking to receive healthcare provided in another Member State, will not be prevented from receiving healthcare provided in another Member State where the treatment in question is among the benefits provided for by the legislation, ***administrative regulations, guidelines and codes of conduct of the medical professions,*** of the Member State of affiliation to which the insured person is entitled. ***Without prejudice to Regulation (EEC) No 1408/71 and, as from its date of application, Regulation (EC) No 883/2004,*** *the* Member State of affiliation shall reimburse the costs to ***the Member State of treatment or*** the insured person‖ which would have been paid for by its statutory social security system had ***equally effective*** healthcare been provided in its territory. ***If a Member State of affiliation rejects the reimbursement of this treatment, that Member State shall have to give a medical justification for its decision.*** In any event, it is for the Member State of affiliation to determine the healthcare that is paid for regardless of where it is provided.

Patients affected by rare diseases should have the right to access healthcare in another Member State and to receive reimbursement even if the treatment in question is not among the benefits provided for by the legislation of the Member State of affiliation.

2. The costs of healthcare provided in another Member State shall be reimbursed ***or paid directly*** by the Member State of affiliation in accordance with the provisions of this Directive up to the level of costs that would have been assumed ***in respect of the same medical condition under the same conditions as laid down in paragraph 1*** in the Member State of affiliation, without exceeding the actual costs of healthcare received. ***Member States may decide to cover other related costs, such as therapeutic treatment and accommodation and travel costs.***

3. The extra costs which persons with disabilities might incur when receiving healthcare in another Member State due to one or more disabilities shall be reimbursed by the Member State of affiliation in accordance with national legislation and on the condition that sufficient documentation setting out these costs exists.

4. The Member State of affiliation may impose on a patient seeking healthcare provided in another Member State, the same conditions, criteria of eligibility and regulatory and administrative formalities***, whether set at a local, national or regional level,*** for receiving healthcare and ***assumption*** of healthcare costs as it would impose if ***that*** healthcare was provided in its territory, in so far as they are neither discriminatory nor an obstacle to freedom of movement of ***patients and goods, such as pharmaceuticals and medical devices, and are known in advance. This may include a requirement that the insured person be assessed for the purposes of applying those conditions, criteria or formalities by a health professional or healthcare administrators providing services for the statutory social security system of the Member State of affiliation, where such an assessment would also be required for accessing health services in the Member State of affiliation.***

5. ***For the purposes of this Article,*** Member States shall have a ***transparent*** mechanism for the calculation of costs that are to be ***assumed*** by the statutory social security system ***or other statutory public system*** for healthcare provided in another Member State. This mechanism shall be based on objective, non-discriminatory criteria known in advance and the costs reimbursed *in accordance with* this mechanism shall be not less than what would have been assumed had ***that*** healthcare been provided in the territory of the Member State of affiliation. ***The mechanism shall be applied at the relevant administrative level in cases where the Member State of affiliation has a decentralised healthcare system.***

6. Patients ▌receiving healthcare ***in a Member State other than their Member State of affiliation*** or seeking to receive healthcare provided in another Member State shall be guaranteed access to their medical records, in conformity with national measures implementing Community provisions on the protection of personal data, in particular Directives 95/46/EC and 2002/58/EC. ***If the medical records are held in electronic form, patients shall have a guaranteed right to obtain a copy of, or a right of remote access to, those records. Data shall be transmitted only with the express consent in writing of the patient or the patient's relatives.***

7. The provisions of this Chapter shall not affect the conclusion of cross-border contractual arrangements for planned healthcare.

Article 7

Non-hospital care

The Member State of affiliation shall not make the reimbursement of the costs of non-hospital care provided in another Member State ***or the purchase of goods connected with healthcare which are purchased in another Member State*** subject to prior authorisation, where the cost of that care, if it had been provided in its territory, ***or of those goods, if they had been purchased in its territory,*** would have been paid for by its social security system.

Article 8

Hospital ▌care

1. For the purposes of reimbursement of healthcare provided in another Member State in accordance with this Directive, ***the definition of*** hospital care***, as established by the Member State of affiliation,*** shall ***be limited to***:

(a) *healthcare which requires overnight accommodation of the patient in question for at least one night****; or***

(b) healthcare ***which is highly specialised and/or requires use of*** cost-intensive medical infrastructure or medical equipment; or

(c) healthcare involving treatments presenting a particular risk *to* the patient or the population.

▌

2. The Member State of affiliation may provide for a system of prior authorisation for reimbursement by its social security system of the cost of hospital care provided in another Member State where the following conditions are met:

(a) had the healthcare been provided *on* its territory, it would have been assumed by the Member State's social security system; and

(b) ***the absence of prior authorisation could*** seriously undermine ***or be likely to undermine:***

(i) the financial balance of the Member State's social security system; and/or

(ii) the planning and rationalisation carried out in the hospital sector to avoid hospital overcapacity, imbalance in the supply of hospital care and logistical and financial wastage, the maintenance of a balanced medical and hospital service open to all, or the maintenance of treatment capacity or medical competence on the territory of the concerned Member State.

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Such a system shall be without prejudice to Regulation (EEC) No 1408/71 and, as from its date of application, Regulation (EC) No 883/2004.

3. The prior authorisation system ***shall apply without prejudice to Article 3(2) and*** shall be limited to what is necessary and proportionate***, shall be based on clear and transparent criteria***, and shall not constitute a means of arbitrary discrimination ***or an obstacle to freedom of movement of patients.***

4. Where prior authorisation has been sought and given, the Member State of affiliation shall ensure that patients are expected only to pay upfront any costs that they would be expected to pay in this manner had their care been provided in the health system of their Member State of affiliation. Member States shall seek to transfer funds directly between the funders and the providers of care for any other costs.

5. Prior authorisation application systems must be made available at a local/regional level and must be accessible and transparent to patients. The rules for application and refusal of prior authorisation must be available in advance of an application so that the application can be made in a fair and transparent way.

6. Patients seeking to receive healthcare provided in another Member State shall be guaranteed the right to apply for prior authorisation in the Member State of affiliation.

7. The Member State *of affiliation* shall make publicly available all relevant information on the prior authorisation systems introduced pursuant to the provisions of paragraph 3***, including appeal procedures in the event of a refusal to give authorisation***.

8. With regard to any request for authorisation made by an insured person with a view to receiving healthcare in another Member State, the Member State of affiliation shall ascertain whether the conditions laid down in Regulation (EC) No 883/2004 have been met, and, if so, shall grant prior authorisation pursuant to that Regulation.

9. Patients with rare diseases shall not be subject to prior authorisation.

Article 9

Procedural guarantees regarding ***cross-border healthcare***

1. The Member State of affiliation shall ensure that administrative procedures regarding ***cross-border healthcare*** related to any prior authorisation referred to in Article 8(2), reimbursement of costs of healthcare incurred in another Member State and other conditions and formalities referred to in Article 6(4), are based on objective, non-discriminatory criteria which are published in advance, and which are necessary and proportionate to the objective to be achieved. In any event, an insured person shall always be granted the authorisation pursuant to Regulations on coordination of social security referred to in *Article 3(1)(k) of this Directive* whenever the conditions of *Article* 22*(1)(c)* and *Article* 22*(2)* of Regulation *(EEC) No* 1408/71 are met.

2. Any such procedural systems shall be easily accessible and capable of ensuring that requests are dealt with objectively and impartially within ***reasonable*** time limits set out and made public in advance by the Member States.

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3. Member States of affiliation shall ensure that patients who have received prior authorisation for cross-border healthcare will only be required to make upfront or top-up payments to the healthcare systems and/or providers in the Member State of treatment, to the extent that such payments would be required in the Member State of affiliation itself.

4. Member States shall, when setting out the time limits within which requests for *cross-border healthcare* must be dealt with ***and, when considering these requests***, take into account:

(a) the specific medical condition,

(b) individual circumstances,

(c) the patient's degree of pain,

(d) the nature of the patient's disability, and

(e) the patient's ability to carry out a professional activity.

5. Prior authorisation application systems shall be made available at the level appropriate for the administration of the Member State's health service and must be accessible and transparent to patients. The rules for application and refusal of prior authorisation must be available in advance of an application so that the application can be made in a fair and transparent way.

6. Member States shall ensure that any administrative ***or medical*** decisions regarding *cross-border healthcare* are subject***, on a case-by-case basis, to a medical opinion or an*** administrative review and also capable of being challenged in judicial proceedings, which include provision for interim measures.

7. The Commission shall conduct a feasibility study into the establishment of a clearing house to facilitate the reimbursement of costs under this Directive across borders, healthcare systems and currency zones within two years of the entry into force of this Directive and shall report back to the European Parliament and the Council and, if appropriate, present a legislative proposal.

Article 10

Prior notification

Member States may offer patients a voluntary system of prior notification whereby, in return for such notification, the patient shall receive a written confirmation of the maximum amount that will be paid. That written confirmation can then be taken to the hospital of treatment and reimbursement would then be made directly to that hospital by the Member State of affiliation.

Article 11

European Patients Ombudsman

The Commission shall present a legislative proposal to establish a European Patients Ombudsman within 18 months after the entry into force of this Directive. The European Patients Ombudsman shall consider and, if appropriate, mediate on patient complaints with regard to prior authorisation, reimbursement of costs or harm. The European Patients Ombudsman shall only be engaged once all the complaint options within the relevant Member State have been exhausted.

Article 12

Information for patients concerning the use of healthcare in another Member State

1. The Member States of affiliation shall ensure that there are ***easily accessible*** mechanisms in place***, including by electronic means, promptly*** to provide patients on request with information on receiving healthcare in another Member State, ***and shall include information on patients' entitlements, on procedures for accessing those entitlements and on systems of appeal and redress if the patient is deprived of such entitlements,*** and the terms and conditions that would apply, inter alia, whenever harm is caused as a result of healthcare received in another Member State. ***This information shall be published in formats accessible to persons with disabilities. Member States shall consult stakeholders, including patients' organisations, to ensure information is clear and accessible. In information about cross-border healthcare, a clear distinction shall be made between the rights which patients have by virtue of this Directive and rights arising from regulations on coordination of social security schemes as referred to in Article 3(1)(k).***

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2. In addition to the information outlined in paragraph 1, information on health professionals and healthcare providers shall be made easily available via electronic means by the Member State in which the health professionals and healthcare providers are registered, and shall include the name, registration number and practice address of the healthcare professional, and any restrictions on their practice.

▌

Article 13

Rules applicable to healthcare provided in another Member State

1. When healthcare is provided in a Member State other than that where the patient is an insured person, ▌ such healthcare service is provided according to the legislation of the Member State of treatment in accordance with *Article* 5.

2. This *Article shall* not apply as far as the recognition of the professional qualifications is concerned.

Article 14

National contact points for cross-border healthcare

1. Member States shall designate national contact points for cross-border healthcare and communicate their names and contact details to the Commission. ***Member States shall ensure that patient organisations, sickness funds and healthcare providers are encompassed by national contact points. The national contact points shall be established in an efficient and transparent way.***

Information about the existence of the national contact points shall be disseminated across Member States, so that patients have easy access to the information.

2. The national contact points for cross-border health care may also be incorporated into existing information centres in the Member States.

3. The national contact point in the Member State of affiliation shall ▌ provide and disseminate information to patients ***and health professionals, on a website if appropriate, on receiving healthcare in another Member State, and on the terms and conditions which apply***, in particular on ***patients'*** rights related to cross-border healthcare ***as laid down in Article 6. The national contact point shall help patients to protect their rights and seek appropriate redress in the event of harm caused by the use of healthcare in another Member State.***

4. The national contact point in the Member State of treatment shall provide and disseminate information to patients, on a website if appropriate, on issues referred to in Article 5(1)(c) and on the protection of personal data, the level of accessibility to healthcare facilities for people with disabilities, procedures for complaints and means of redress available for healthcare received in the Member State of treatment. It shall in particular inform patients ***and health professionals, where necessary,*** about ***the means by which professionals and providers are regulated and the means by which regulatory action can be taken,*** the options available to settle any dispute, ***and*** help to identify the appropriate out-of-court settlement scheme for the specific case ▌.

5. The national contact point in a Member State shall cooperate closely with other competent authorities, with national contact points in other Member States, with patients' organisations and with the Commission.

6. The national contact points shall provide the information referred to in paragraphs 2 and 3 in formats easily accessible for people with disabilities.

7. The Commission shall, in accordance with the procedure referred to in Article *22*(2), adopt:

(a) measures necessary for the management of the network of national contact points provided for in this Article;

(b) the nature and type of data to be collected and exchanged within the network;

(c) guidelines on information to patients provided for in *paragraphs 2 and 3* of this Article.

CHAPTER IV

COOPERATION ON HEALTHCARE

Article 15

Duty of cooperation

1. Member States shall render such mutual assistance as is necessary for the implementation of this Directive.

2. Member States shall facilitate cooperation in cross-border healthcare provision at regional and local level as well as through information and communication technologies, cross-border healthcare provided on a temporary or ad hoc basis and other forms of cross-border cooperation.

3. Member States, particularly neighbouring countries, may conclude agreements with one another concerning the continuation or potential further development of cooperation arrangements.

4. Member States shall guarantee that registers in which health professionals are listed can be consulted by relevant authorities of other Member States.

5. Member States shall immediately and proactively exchange information about disciplinary and criminal findings against health professionals where they impact upon their registration or their right to provide services.

Article 16

Recognition of prescriptions issued in another Member State

1. If a medicinal product is authorised to be marketed on their territory in accordance with Article 6(1) of Directive 2001/83/EC, Member States shall ensure that prescriptions issued by an authorised person in another Member State for a named patient ***in respect of that medicinal product*** can be used in their territory and that any restrictions on recognition of individual prescriptions are prohibited unless they:

(a) are limited to what is necessary and proportionate to safeguard human health and are non-discriminatory; or

(b) are based on legitimate and justified doubts about the authenticity or content of an individual prescription, ***or the status of the prescriber.***

The recognition of such prescription shall not affect:

(i) national rules governing prescribing and dispensing, including generic substitution;

(ii) national rules governing the reimbursement of Community cross-border prescriptions;

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(iii) any professional or ethical duty that would require the pharmacist to refuse to dispense had the prescription been issued in the Member State of affiliation.

2. For facilitating the implementation of paragraph 1, the Commission shall adopt:

(a) measures enabling a pharmacist or other health professional to verify the authenticity of the prescription and whether the prescription was issued in another Member State by an authorised person *by* developing a Community prescription template, and supporting interoperability of ePrescriptions; ***data protection safeguards shall be taken into account and incorporated from the initial stage of that development process***;

(b) measures to ensure that medicinal products prescribed in one Member State and dispensed in another are correctly identified and that the information to patients concerning the product is comprehensible***, including clarity as to different names used for the same medicinal product;***

(c) ***measures to ensure, if needed, contact between the prescribing party and the dispensing party in order to ensure complete understanding of the treatment, whilst maintaining confidentiality of patient's data***.

3. Where a prescription is issued in the Member State of treatment for medicinal products which are not normally available on prescription in the Member State of affiliation, it shall be for the latter to decide whether to authorise exceptionally or to provide an alternative medicinal product deemed to be as effective.

4. The measures referred to in points (a), (b) ***and (c)*** of paragraph 2 shall be adopted in accordance with the regulatory procedure referred to in Article *22*(2). ▌

5. Paragraph 1 shall not apply to medicinal products subject to special medical prescription as provided for in Article 71(2) of Directive 2001/83/EC.

Article 17

European reference networks

1. Member States shall facilitate the development of the European reference networks of healthcare providers***, in particular in the area of rare diseases, which shall draw on the health cooperation experience acquired within the European groupings of territorial cooperation (egtcs)***. Those networks shall at all times be open *to* new healthcare providers which might wish to join them, provided that such healthcare providers fulfil all the required conditions and criteria.

2. The objective of European reference networks shall be:

(a) to help to realise the potential of European cooperation regarding highly specialised healthcare for patients and for healthcare systems from innovations in medical science and health technologies;

(b) to contribute to the pooling of knowledge regarding sickness prevention and the treatment of major commonly occurring disorders;

(*c*) to help to promote access to high quality and cost-effective healthcare for all patients with a medical condition requiring a particular concentration of resources or expertise;

(*d*) to maximise cost-effective use of resources by concentrating them where appropriate;

(*e*) to help to share knowledge and provide training for health professionals;

(*f*) to provide quality and safety benchmarks and to help develop and spread best practice within and outside the network;

(*g*) to help Member States with an insufficient number of patients with a particular medical condition or lacking technology or expertise to provide a full range of highly specialised services of the highest quality;

(h) to implement instruments which enable the best possible use to be made of existing healthcare resources in the event of serious accidents, particularly in cross-border areas.

3. The Commission***, in collaboration with relevant experts and stakeholders,*** shall adopt:

(a) a list of specific criteria and conditions that the European reference networks must fulfil, including ***also a list of rarer disease areas to be covered and*** the conditions and criteria required from healthcare providers wishing to join the European reference networks, in order to ensure, in particular, that the European reference networks:

(i) have appropriate capacities to diagnose, to follow-up and manage patients with evidence of good outcomes so far as applicable;

(ii) have sufficient capacity and activity to provide relevant services and maintain quality of the services provided;

(iii) have capacity to provide expert advice, diagnosis or confirmation of diagnosis, to produce and adhere to good practice guidelines and to implement outcome measures and quality control;

(iv) can demonstrate a multi-disciplinary approach;

(v) provide high level of expertise and experience documented through publications, grants or honorific positions, teaching and training activities;

(vi) provide strong contribution to research;

(vii) are involved in epidemiological surveillance, such as registries;

(viii) have close links and collaboration with other expert centres and networks at national and international level and capacity to network;

(ix) have close links and collaboration with patients associations where such associations exist;

(x) have appropriate and effective relationships with technology providers.

(b) the procedure for establishing European reference networks.

4. The measures referred to in paragraph 3, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article *22*(3).

Article 18

Trial areas

The Commission, in cooperation with the Member States, may designate border regions as trial areas in which innovative cross-border healthcare initiatives can be tested, analysed and evaluated.

Article 19

E-health

The Commission shall, in accordance with the procedure referred to in Article *22*(2), adopt specific measures necessary for achieving the interoperability of information and communication technology systems in the healthcare field, applicable whenever Member States decide to introduce them. Those measures shall ***conform to the applicable data protection laws in each Member State and shall also*** reflect developments in health technologies and medical science, ***including telemedicine and telepsychiatry,*** and respect the fundamental right to the protection of personal data ▌.They shall specify in particular the necessary standards and terminologies for inter-operability of relevant information and communication technology systems to ensure safe, high-quality and efficient provision of cross-border health services.

The Member States shall ensure that the use of e-Health and other telemedicine services:

(a) adhere to the same professional medical quality and safety standards as those in use for non-electronic healthcare provision;

(b) offer adequate protection to patients, notably through the introduction of appropriate regulatory requirements for practitioners similar to those in use for non-electronic healthcare provision.

Article 20

Cooperation on management of ▌health technologies

1. ***The Commission shall, in consultation with the European Parliament, facilitate the establishment*** of a network connecting the national authorities or bodies responsible for health technology assessment. ***That network shall be based on the principles of good governance including transparency, objectiveness, fairness of procedures, and broad and full stakeholder participation of all relevant groups, including - but not limited to - health professionals, patients' representatives, social partners, scientists and industry, whilst respecting Member States' competence in the area of health technology assessment.***

2. The objective of the health technology assessment network shall be:

(a) to support cooperation between national authorities or bodies;

(b) to find sustainable ways to balance the objectives of access to medicines, reward for innovation and management of healthcare budgets;

(c) to support provision of objective, reliable, timely, transparent and transferable information on the short- and long-term effectiveness of health technologies and enable an effective exchange of this information between national authorities or bodies;

(d) to analyse the nature and type of information that can be exchanged.

3. Member States shall designate the authorities or bodies participating in the network as referred to in paragraph 1 and communicate to the Commission *the* names and contact details of those authorities or bodies.

4. The Commission shall, in accordance with the *regulatory* procedure referred to in *Article 22(2)*, adopt the necessary measures for the establishment, the management ***and the transparent functioning*** of this network ▌.

5. The Commission shall only allow such authorities to join the network which fulfil the principles of good governance as defined in paragraph 1.

Article 21

Data collection for statistical and monitoring purposes

1. Member States shall collect statistical ▌data needed for monitoring purposes on the provision of cross-border healthcare, the care provided, its providers and patients, the cost and the outcomes. They shall collect such data as part of their general systems for collecting healthcare data, in accordance with national and Community law for the production of statistics and on the protection of personal data***, and specifically Article 8(4) of Directive 95/46/EC***.

2. Member States shall transmit the data referred to in paragraph 1 to the Commission at least annually, except for data that are already collected pursuant to Directive 2005/36/EC.

3. Without prejudice to the measures adopted for the implementation of the Community Statistical Programme as well as to those adopted for the implementation of Regulation (EC) No *1338/2008*, the Commission shall, in accordance with the *regulatory* procedure referred to in *Article 22(2)*, adopt measures for the implementation of this Article.

CHAPTER V

IMPLEMENTING AND FINAL PROVISIONS

Article 22

Committee

1. The Commission shall be assisted by a Committee, consisting of representatives of the Member States and chaired by the Commission representative. ***In that process, the Commission shall ensure the consultation of experts from the relevant patient and professional groups in an appropriate manner, especially in the context of the implementation of this Directive, and shall provide a reasoned report on those consultations.***

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 of that Decision.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at 3 months.

Where implementing measures relate to the processing of personal data the European Data Protection Supervisor shall be consulted.

3. Where reference is made to this paragraph, Article 5a (1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 23

Reports

The Commission shall within five years after the date referred to in Article *25*(1) draw up a report on the operation of this Directive***, including statistics on patient outflows and inflows resulting from this Directive,*** and submit it to the European Parliament and to the Council.

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To that end and without prejudice to Article 25, the Member States shall communicate to the Commission any measure they have introduced, modified or maintained with a view to *implementing* the procedures laid down in Articles 8 and 9.

Article 24

References to other legislation

As from the date of applicability of Regulation (EC) No 883/2004 ‖:

— references to *Regulation (EEC) No* 1408/71 in this Directive shall be construed as references to Regulation *(EC) No* 883/2004;

— references to Article 22 of *Regulation (EEC) No* 1408/71 in this Directive shall be construed as references to Article 20 of Regulation *(EC) No* 883/2004.

Article 25

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by … (*).

They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 26

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 27

Addressees

This Directive is addressed to the Member States.

Done at … ‖,

For the European Parliament
The President

For the Council
The President

(*) *One year after the date of entry into force of this Directive.*

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Patient safety *

P6_TA(2009)0287

European Parliament legislative resolution of 23 April 2009 on the proposal for a Council recommendation on patient safety, including the prevention and control of healthcare associated infections (COM(2008)0837 – C6-0032/2009 – 2009/0003(CNS))

(2010/C 184 E/74)

(Consultation procedure)

The European Parliament,

— having regard to the Commission proposal to the Council (COM(2008)0837),

— having regard to Article 152(4) of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0032/2009),

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on the Environment, Public Health and Food Safety (A6-0239/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;

5. Instructs its President to forward its position to the Council and Commission.

TEXT PROPOSED BY THE COMMISSION	AMENDMENT
Amendment 1	
Proposal for a recommendation **Recital 2**	
(2) It is estimated that in EU Member States between 8 % and 12 % of patients admitted to hospitals suffer from adverse events whilst receiving healthcare.	(2) It is estimated that in EU Member States between 8 % and 12 % of patients admitted to hospitals suffer from adverse events whilst receiving healthcare***; the numbers affected range from 6,7 million to 15 million hospital in-patients, along with more than 37 million primary care patients***.
Amendment 2	
Proposal for a recommendation **Recital 2 a (new)**	
	(2a) It is estimated that, on average, healthcare-associated infections (HCAIs) occur in one patient in twenty, that is to say 4,1 million patients a year in the EU, and that about 37 000 deaths are caused every year by the after-effects of such infections.

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 3

Proposal for a recommendation
Recital 3

(3) Poor patient safety represents both a severe public health problem and a high economic burden on limited health resources. A large proportion of adverse events are preventable, both in the hospital sector and in primary care, with systemic factors appearing to account for a majority of them.	(3) Poor patient safety represents both a severe public health problem and a high economic burden on limited health resources. A large proportion of adverse events***, including those resulting from misdiagnosis and/or inappropriate treatment,*** are preventable, both in the hospital sector and in primary care, with ***limited financial resources and*** systemic factors appearing to account for a majority of them.

Amendment 4

Proposal for a recommendation
Recital 6 a (new)

	(6a) Among the adverse events associated with healthcare, HCAIs are easily avoidable. Member States need to provide the means to enable the number of persons a year in the European Union affected by adverse events to be reduced by 20 %.

Amendment 5

Proposal for a recommendation
Recital 7

(7) Evidence suggests that EU Member States are at different levels in the development and implementation of effective and comprehensive patient safety strategies. Therefore, this initiative intends to create a framework to stimulate policy development and future action in and between Member States to address the key patient safety issues confronting the EU.	(7) Evidence suggests that EU Member States are at different levels in the development and implementation of effective and comprehensive patient safety strategies. Therefore, this initiative intends to create a framework to stimulate policy development and future action in and between Member States to address the key patient safety issues confronting the EU***, above all the responsibility of healthcare establishments and institutions for people's health. In accordance with Article 152 of the EC Treaty, however, there must be no encroachment upon Member States' competences.***

Amendment 6

Proposal for a recommendation
Recital 8

(8) Patients should be informed and empowered by involving them in the patient safety process; they should be informed of levels of safety and on how they can find accessible and comprehensible information on complaints and redress systems.	(8) Patients should be informed and empowered by involving them in the patient safety process; they should be informed of levels of safety and on how they can find accessible and comprehensible information on complaints and redress systems. ***The individual Member State should, however, be competent for the type and method of compensation.***

TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 7

Proposal for a recommendation
Recital 10

(10) Comparable and aggregate data should be collected at Community level to establish efficient and transparent patient safety programmes, structures and policies, and best practices should be disseminated among the Member States. To facilitate mutual learning, a common terminology for patient safety and common indicators need to be developed through cooperation between Member States and the European Commission, taking into account the work of relevant international organisations.	(10) Comparable and aggregate data should be collected at Community level to establish efficient and transparent patient safety programmes, structures and policies, and best practices should be disseminated among the Member States. ***These data should only be used for the purposes of patient safety with respect to the control of HCAIs.*** To facilitate mutual learning, a common terminology for patient safety and common indicators need to be developed through cooperation between Member States and the European Commission, taking into account the work of relevant international organisations.

Amendment 8

Proposal for a recommendation
Recital 11

(11) Information and communication technology tools, such as electronic health records or e-prescriptions, can contribute to *improve* patient safety, for instance by systematically screening for potential medicinal product interactions or allergies.	(11) Information and communication technology tools, such as electronic health records or e-prescriptions, can contribute to *improving* patient safety, for instance by systematically screening for potential medicinal product interactions or allergies***, as has been recognised in Commission Recommendation 2008/594/EC of 2 July 2008 on cross-border interoperability of electronic health record systems*** ([1]).

([1]) ***OJ L 190, 18.7.2008, p. 37.***

Amendment 9

Proposal for a recommendation
Recital 12 a (new)

	(12a) Older people are more likely to succumb to infectious diseases whilst in hospital; therefore their needs as a specific group should be researched and steps taken to meet them so as to promote their rehabilitation and return to good health.

Amendment 10

Proposal for a recommendation
Recital 15

(15) Insufficient data on healthcare associated infections are available to allow meaningful comparisons between institutions by surveillance networks, to monitor the epidemiology of healthcare associated pathogens and to evaluate and guide policies on the prevention and control of healthcare associated infections. Therefore, surveillance systems should be established or strengthened at the level of healthcare institutions and at regional and national level.	(15) Insufficient data on healthcare associated infections are available to allow meaningful comparisons between institutions by surveillance networks, to monitor the epidemiology of healthcare associated pathogens and to evaluate and guide policies on the prevention and control of healthcare associated infections. Therefore, surveillance systems should be established or strengthened at the level of healthcare institutions and at regional and national level. ***Better information gathering at regional, national and European level should make it possible to determine more easily what direct correlations exist between the quality of the patient safety policies, systems and arrangements laid down and the results achieved in that field.***

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 11

Proposal for a recommendation
Recital 15 a (new)

	(15a) Member States need to be able to reduce the number of persons affected by HCAIs. As regards the possible means to that end, it is essential to recruit more nurses specialising in infection control.

Amendment 12

Proposal for a recommendation
Recital 15 b (new)

	(15b) Furthermore, Member States and their healthcare institutions should consider the use of link staff to support specialist nurses at clinical level in acute and community facilities.

Amendment 13

Proposal for a recommendation
Recital 15 c (new)

	(15c) In order to reduce adverse events resulting from healthcare, Member States should be encouraged to set local and national targets for recruitment of health professionals specialising in infection control, taking into account the recommended target ratio of one nurse for every 250 hospital beds by 2015.

Amendment 14

Proposal for a recommendation
Recital 16 a (new)

	(16a) The Commission should bring forward proposals to prevent the circulation of counterfeit drugs and harm to patients and health workers from needlestick injuries.

Amendment 15

Proposal for a recommendation
Part I – Chapter I a (new) – title

	Ia. REDUCTION TARGETS

Amendment 16

Proposal for a recommendation
Part I – Chapter I a (new) – point 1

	(1) Member States should provide the means necessary to bring about a 20 % reduction in the number of persons in the European Union affected annually by adverse events resulting from healthcare, the target thus being to reduce such events by 900 000 cases a year by 2015.

TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 17

Proposal for a recommendation
Part I – Chapter II – point 1 – point a

(a) Designating the competent ***authority or*** authorities responsible for patient safety on their territory;	(a) Designating the competent authorities ***at the various levels of state and local government administration*** responsible for patient safety ***and supervision and coordination of measures to improve public health*** on their territory;

Amendment 18

Proposal for a recommendation
Part I – Chapter II – point 1 – point c

(c) Supporting the development of safer systems, processes and tools, including the use of information and communication technology.	(c) Supporting the development of safer***, user-friendly*** systems, processes and tools, including the use of information and communication technology.

Amendment 19

Proposal for a recommendation
Part I – Chapter II – point 2 – point b a (new)

	(ba) Informing patients about treatment risks and introducing legal mechanisms to facilitate the lodging of claims for damage to health, including against pharmaceutical companies.

Amendment 20

Proposal for a recommendation
Part I – Chapter II – point 3 – point a

(a) Provide adequate information on the extent, types and causes of errors, adverse events and near misses;	(a) Provide adequate information on the extent, types and causes of errors, adverse events and near misses ***and identify those responsible***;

Amendment 21

Proposal for a recommendation
Part I – Chapter II – point 3 – point b a (new)

	(ba) Provide for confidential sharing of information between health authorities in different Member States on health professionals who have been found guilty of negligence or malpractice.

Amendment 22

Proposal for a recommendation
Part I – Chapter II – point 4 – point b a (new)

	(ba) Providing adequate education and training for all healthcare workers so that they use medical technology appropriately in accordance with the function and specifications outlined in the instruction manuals in order to prevent health risks and adverse effects, including those arising from unintended reuse of devices.

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 23

Proposal for a recommendation
Part I – Chapter II – point 5 – point c

(c) To gather and share comparable data and information on patient safety outcomes in terms of type and number at EU level to facilitate mutual learning and inform priority setting.	(c) To gather and share comparable data and information on patient safety outcomes in terms of type and number at EU level to facilitate mutual learning and inform priority setting. ***The scale and cost of the data collection, and use of the data collected, should not be disproportionate to the expected benefits. The data should only be collected in order to achieve the objective of reducing HCAIs through common learning.***

Amendment 24

Proposal for a recommendation
Part I – Chapter II – point 6 – point b a (new)

	(ba) Promoting opportunities for cooperation and exchange of experience and best practice between hospital managers, clinical teams and patient groups across the European Union on patient safety initiatives at the local level.

Amendment 25

Proposal for a recommendation
Part I – Chapter III – point 1 – point -a (new)

	(-a) Provide effective risk assessment mechanisms, including pre-admission diagnostic screening of patients, in order to rapidly identify conditions requiring additional precautionary measures.

Amendment 26

Proposal for a recommendation
Part I – Chapter III – point 1 – point -a a (new)

	(-aa) Provide adequate protection for healthcare staff, through vaccination, post-exposure prophylaxis, routine diagnostic screening, provision of personal protective equipment and the use of medical technology that reduces exposure to blood-borne infections;

Amendment 27

Proposal for a recommendation
Part I – Chapter III – point 1 – point -a b (new)

	(-ab) Provide effective infection prevention and control in long-term nursing and rehabilitation facilities.

Amendment 28

Proposal for a recommendation
Part I – Chapter III – point 1 – point b

(b) Enhance infection prevention and control at the level of the healthcare institutions;	(b) Enhance infection prevention and control at the level of the healthcare institutions ***and ensure the highest standards of cleanliness, hygiene, and, where necessary, asepsis:***
	(i) as regards supplies used at the time of admission of patients or during their stay;

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT
	(ii) as regards medical and paramedical equipment, electro-medical devices used for patients, and dispensing of medicines;
	(iii) as regards patient care facilities;

Amendment 29

Proposal for a recommendation
Part I – Chapter III – point 1 – point b a (new)

	(ba) Promote hand hygiene among health professionals;

Amendment 30

Proposal for a recommendation
Part I – Chapter III – point 1 – point b b (new)

	(bb) Enhance prevention and control of the spread of diseases among, and their transmission by, medical and paramedical personnel, to that end implementing the requisite prevention-oriented policies, including the necessary staff vaccination campaigns;

Amendment 31

Proposal for a recommendation
Part I – Chapter III – point 1 – point d

(d) Foster education and training of healthcare workers at Member State level and at the level of healthcare institutions;	(d) Foster education and training of healthcare ***and paramedical*** workers at Member State level and at the level of healthcare institutions***, focusing in particular on nosocomial infections and viral antibiotic resistance***;

Amendment 32

Proposal for a recommendation
Part I – Chapter III – point 1 – point e

(e) Improve the information given to patients;	(e) Improve the information given to patients***, using the social and health network as well as by means of information campaigns conducted from time to time in the press and on the radio, television and the Internet***;

Amendment 33

Proposal for a recommendation
Part I – Chapter III – point 1 – point f

(f) Support research.	(f) Support research***, for instance into potential medical applications of nanotechnologies and nanomaterials***;

Amendment 34

Proposal for a recommendation
Part I – Chapter III – point 1 – point f a (new)

	(fa) Report every HCAI outbreak affecting a significant number of patients to the European Centre for Disease Prevention and Control;

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 35

Proposal for a recommendation
Part I – Chapter III – point 1 – point f b (new)

	(fb) Conduct awareness campaigns for the public and for healthcare workers with the aim of reducing practices which lead to antimicrobial resistance.

Amendment 36

Proposal for a recommendation
Part II — Title

PART II: ***REPORT*** BY THE COMMISSION	PART II: ***ACTIONS*** BY THE COMMISSION

Amendment 37

Proposal for a recommendation
Part II – point 1 a (new)

	(1a) The Commission should consider where existing Community legislation could be strengthened to improve patient safety, for example by ensuring that, when healthcare professionals cross borders within Europe, the professional regulators share information about any disciplinary procedures concluded or pending against individuals, and not just their initial qualifications.

Amendment 38

Proposal for a recommendation
Part II – point 1 b (new)

	(1b) Using the practical guide drawn up by the World Health Organisation in 2002, entitled 'Prevention of hospital-acquired infections' [1], the Commission is invited to produce a document aimed at patients on the prevention of nosocomial infections.
	[1] WHO, 'Prevention of hospital-acquired infections. A practical guide', first edition, December 2002 (second edition published in 2008)

Amendment 39

Proposal for a recommendation
Annex 1 – Definitions – 'Adverse event' – column 2

Incident which results in harm to a patient. Harm implies impairment of structure or function of the body and/or any deleterious effect which arises from that.	Incident which results in harm to a patient ***while undergoing medical treatment***. Harm implies ***permanent or temporary*** impairment of structure or function of the body and/or any deleterious effect which arises from that.

Amendment 40

Proposal for a recommendation
Annex 1 – Definitions – 'Healthcare institution' – column 2

An institution where healthcare workers provide secondary or tertiary care.	***A public, non-public or charitable healthcare*** institution***,*** where healthcare workers ***or volunteers*** provide secondary or tertiary care.

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Amendment 41

Proposal for a recommendation
Annex 1 – Definitions – 'Patient safety' - column 2

Freedom for a patient from unnecessary harm or potential harm associated with healthcare.	***Absence of adverse events, where an adverse event is defined as a harmful incident due more to the treatment than to the illness. This adverse event may be avoidable or unavoidable.***

Amendment 42

Proposal for a recommendation
Annex 1 – Definitions – 'Infection control link staff' - column 2

Health professionals working in ***clinical wards/departments*** who act as a liaison between their ***wards/departments*** and the Infection Prevention and Control Team. Infection control link staff *helps* promote infection prevention and control in their ***wards/departments*** and give feedback to the Infection Prevention and Control Team.	Health professionals working in ***the corresponding sectors*** who act as a liaison between their ***work sector*** and the Infection Prevention and Control Team. Infection control link staff *help* promote infection prevention and control in their ***sectors*** and give feedback to the Infection Prevention and Control Team.

Amendment 43

Proposal for a recommendation
Annex 2 – Chapter I – point 1 – point ba (new)

	(ba) Accepting and facilitating the use of information and communication technology tools, such as electronic instructions for use, in order to improve the understanding of users of the medical products.

Amendment 44

Proposal for a recommendation
Annex 2 – Chapter I – point 4 – point ca (new)

	(ca) Providing adequate education and training for all healthcare workers so that they use medical technology appropriately in accordance with the function and specifications outlined in the instruction manuals in order to prevent health risks and adverse effects, including those arising from unintended reuse of devices.

Amendment 45

Proposal for a recommendation
Annex 2 – Chapter 1 – point 7 – point aa (new)

	(aa) Encouraging research, for example into medical applications of nanotechnologies and nanomaterials.

Amendment 46

Proposal for a recommendation
Annex 2 – Chapter 2 – point 1 – point a – indent 2

— Integrating infection prevention and control measures into patient care plans;	— Integrating infection prevention and control measures into patient care plans***, including the necessary staff vaccination campaigns***;

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Rare diseases *

P6_TA(2009)0288

European Parliament legislative resolution of 23 April 2009 on the proposal for a Council recommendation on a European action in the field of rare diseases (COM(2008)0726 – C6-0455/2008 – 2008/0218(CNS))

(2010/C 184 E/75)

(Consultation procedure)

The European Parliament,

— having regard to the Commission proposal to the Council (COM(2008)0726),

— having regard to Article 152(4), second subparagraph of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0455/2008),

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on the Environment, Public Health and Food Safety and the opinion of the Committee on Industry, Research and Energy (A6-0231/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;

5. Instructs its President to forward its position to the Council and Commission.

TEXT PROPOSED BY THE COMMISSION	AMENDMENT
Amendment 1	
Proposal for a recommendation	
Recital 1	
(1) Rare diseases are a threat to the health of European citizens insofar as they are life-threatening or chronically debilitating diseases with a low prevalence and a high level of complexity.	(1) Rare diseases are a threat to the health of European citizens insofar as they are life-threatening or chronically debilitating diseases with a low prevalence and a high level of complexity***, but since there are so many different types of rare disease, the total number of people affected is quite high***.

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 2

Proposal for a recommendation
Recital 2

(2) A Community Action Programme on Rare Diseases, including genetic diseases, was adopted for the period 1 January 1999 to 31 December 2003. This programme defined the prevalence for a rare disease as affecting no more than 5 per 10 000 persons in the European Union.	(2) A Community Action Programme on Rare Diseases, including genetic diseases, was adopted for the period 1 January 1999 to 31 December 2003. This programme defined the prevalence for a rare disease as affecting no more than 5 per 10 000 persons in the European Union***, a number to be judged on a statistical basis subject to a scientific review***.

Amendment 3

Proposal for a recommendation
Recital 2 a (new)

	(2a) Based on this statistical incidence, rare diseases should be meticulously catalogued and reviewed regularly by a scientific committee to determine the need for possible additions.

Amendment 4

Proposal for a recommendation
Recital 4

(4) It is estimated that between 5 000 and 8 000 distinct rare diseases exist today, affecting between 6 % and 8 % of the population in the course of their lives. In other words, between 27 and 36 million people in the European Union. Most of them suffer from less frequently-occurring diseases affecting one in 100 000 people or less.	(4) It is estimated that between 5 000 and 8 000 distinct rare diseases exist today, affecting between 6 % and 8 % of the population in the course of their lives. In other words, ***although rare diseases are characterised by low prevalence for each one of them, the total number of people affected is quite high, ranging*** between 27 and 36 million people in the European Union. Most of them suffer from less frequently-occurring diseases affecting one in 100 000 people or less.

Amendment 5

Proposal for a recommendation
Recital 5

(5) Because of their low prevalence ***and*** their specificity, rare diseases call for a global approach based on special and combined efforts to prevent significant morbidity or avoidable premature mortality, and to improve quality of life and socio-economic potential of affected persons.	(5) Because of their low prevalence**,**their specificity ***and the high total number of cases***, rare diseases call for a global approach based on special and combined efforts***, including in partnership with third countries such as the United States,*** to prevent significant morbidity or avoidable premature mortality, and to improve quality of life and socio-economic potential of affected persons ***in developed and developing countries.***

Amendment 6

Proposal for a recommendation
Recital 8

(8) In order to improve the coordination and coherence of national, regional and local initiatives addressing rare diseases, all relevant national actions in the field of rare diseases should be integrated into national plans for rare diseases.	(8) In order to improve the coordination and coherence of national, regional and local initiatives ***and cooperation between research centres*** addressing rare diseases, all relevant national actions in the field of rare diseases should be integrated into national plans for rare diseases.

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 7

Proposal for a recommendation
Recital 13

(13) The Community added-value of European reference networks is particularly high for rare diseases by reason of the rarity of these conditions, which implies both limited number of patients and scarcity of expertise within a single country. Gathering expertise at European level is therefore paramount to ensure equal access to high quality care to rare disease patients.	(13) The Community added-value of European reference networks is particularly high for rare diseases by reason of the rarity of these conditions, which implies both limited number of patients and scarcity of expertise within a single country. Gathering expertise at European level is therefore paramount to ensure equal access ***to accurate information, appropriate and timely diagnosis and*** to high quality care to rare disease patients.

Amendment 8

Proposal for a recommendation
Recital 14 a (new)

	(14a) On 12 October 2008 the Pharmaceutical Forum adopted its final report, which proposes guidelines to enable Member States, stakeholders and the Commission to step up their efforts to guarantee easier and swifter access to orphan medicinal products within the European Union.

Amendment 9

Proposal for a recommendation
Recital 20

(20) Patients and patients' representatives should therefore be involved at all steps of the policy and decision-making processes. Their activities should be actively promoted and supported, including financially, in each Member State.	(20) Patients and patients' representatives should therefore be involved at all steps of the policy and decision-making processes. Their activities should be actively promoted and supported, including financially, in each Member State***, but also at EU level in terms of pan-EU patient support networks for specific rare diseases***.

Amendment 10

Proposal for a recommendation
Recommendations to Member States – paragraph 1 – introductory part

1. Establish national plans for rare diseases in order to ensure to patients with rare diseases universal access to high quality care, including diagnostics, treatments and orphan drugs throughout their national territory on the basis of equity and solidarity throughout the EU, and in particular:	1. Establish national plans for rare diseases in order to ensure to patients with rare diseases universal access to high quality care, including diagnostics, treatments and orphan drugs***, as well as rehabilitation and habilitation for those living with the disease*** throughout their national territory on the basis of equity and solidarity throughout the EU, and in particular:

Amendment 11

Proposal for a recommendation
Recommendations to Member States – paragraph 1 – point 1

(1) elaborate and adopt a comprehensive and integrated strategy, by the end of ***2011***, aimed at guiding and structuring all relevant actions in the field of rare diseases in the form of a national plan for rare diseases;	(1) elaborate and adopt a comprehensive and integrated strategy, by the end of ***2010***, aimed at guiding and structuring all relevant actions in the field of rare diseases in the form of a national plan for rare diseases;

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 12

Proposal for a recommendation
Recommendations to Member States – paragraph 1 – point 3

(3) define a limited number of priority actions within the national plan for rare diseases, with concrete objectives, clear deadlines, management structures and regular reports;	(3) define a limited number of priority actions within the national plan for rare diseases, with concrete objectives, clear deadlines***, substantial and clearly designated funding***, management structures and regular reports;

Amendment 13

Proposal for a recommendation
Paragraph 1 – point 3 a (new)

	(3a) Declare whether they have any specialised centres and compile a catalogue of experts;

Amendment 14

Proposal for a recommendation
Recommendations to Member States – paragraph 1 – point 5

(5) include in the national plans provisions designed to ensure equitable access to high quality care, including diagnostics, treatments and orphan drugs, **to** all rare disease patients throughout their national territory with a view to ensuring equitable access to quality care on the basis of equity and solidarity throughout the European Union.	(5) include in the national plans provisions designed to ensure equitable access to high quality care, including diagnostics, ***primary preventive measures,*** treatments and orphan drugs, ***as well as rehabilitation and habilitation for those living with the disease for the benefit of*** all rare disease patients throughout their national territory with a view to ensuring equitable access to quality care on the basis of equity and solidarity throughout the European Union ***following the principles agreed in the High Level Pharmaceutical Forum paper entitled 'Improving access to orphan medicines for all affected EU citizens'***.

Amendment 15

Proposal for a recommendation
Recommendations to Member States – paragraph 1 – point 5 a (new)

	(5a) encourage efforts to avoid rare diseases which are hereditary, through:
	(a) genetic counselling of carrier parents; and
	(b) where appropriate and not contrary to existing national laws and always on a voluntary basis, through pre-implantation selection of healthy embryos.

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 16

Proposal for a recommendation
Recommendations to Member States – paragraph 1 – point 5 b (new)

	(5b) provide for exceptional measures within the national plans in relation to making available medicinal products which have no marketing authorisation, when there is a real public health need; and, in the absence of appropriate and available therapeutic alternatives in a Member State, and when the risk/benefit balance is presumed to be positive, ensure that patients affected by rare diseases have access to the medicinal products in question.

Amendment 17

Proposal for a recommendation
Recommendations to Member States – paragraph 1 – point 5 c (new)

	(5c) establish at the national level multi- stakeholder advisory groups comprising all interested stakeholders to guide governments in the setting up and implementation of national action plans for rare diseases. These should ensure that governments are well-informed and that the decisions taken at national level reflect the views and needs of society.

Amendment 18

Proposal for a recommendation
Recommendations to Member States – paragraph 1 – point 5 d (new)

	(5d) encourage treatments for rare diseases to be funded at national level. Where Member States may not wish or may not be able to have Centres of Excellence, this central national funding should be used to ensure that patients can travel to a Centre in another country. However, it is also vital that this separate budget is annually reviewed and adapted on the basis of the knowledge about patients needing treatment in that given year, and about possible new therapies to be added. This should be done with the input of the multi-stakeholder advisory committees.

Amendment 19

Proposal for a recommendation
Recommendations to Member States – paragraph 2 – point 1

(1) implement a European Union common definition of rare diseases as those diseases affecting no more than 5 per 10 000 persons;	(1) implement a European Union common definition of rare diseases as those diseases affecting no more than 5 per 10 000 persons***, as a number for the whole European Union, but it is very important to know the exact distribution for each Member State***;

TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 20

Proposal for a recommendation
Recommendations to Member States – paragraph 2 – point 4

(4) support at national or regional level specific disease information networks, registries and databases.	(4) support***, in particular by financial means,*** at ***European,*** national or regional level specific disease information networks, registries and databases***, including regularly-updated information, which is accessible to the public on the internet***.

Amendment 21

Proposal for a recommendation
Recommendations to Member States – paragraph 3 – point 3

(3) foster participation of national researchers and laboratories in research projects on rare diseases funded at Community level;	(3) foster participation of national researchers and laboratories in research projects on rare diseases funded at Community level ***and make use of the possibilities offered by Regulation (EC) No 141/2000 on orphan medicinal products***;

Amendment 22

Proposal for a recommendation
Recommendations to Member States – paragraph 3 – point 3 a (new)

	(3a) foster knowledge-sharing and cooperation between researchers, laboratories and research projects in the European Union and similar institutions in third countries, to bring global benefits not only to the European Union but also to poorer and developing countries, which are less well placed to provide resources for research into rare diseases;

Amendment 23

Proposal for a recommendation
Recommendations to Member States – paragraph 3 – point 4

(4) include in the national plan for rare diseases provisions aimed at fostering research, including public health and social research, in the field of rare diseases, especially with a view to the development of tools such as transversal infrastructures as well as disease-specific projects**.**	(4) include in the national plan for rare diseases provisions aimed at fostering research, including public health and social research, in the field of rare diseases, especially with a view to the development of tools such as transversal infrastructures as well as disease-specific projects, ***and rehabilitation and habilitation programmes for the duration of a rare disease as well as research on diagnostic tests and tools***;

Amendment 24

Proposal for a recommendation
Recommendations to Member States – paragraph 3 – point 4 a (new)

	(4a) provide adequate and long-term funding, for example through public-private partnerships, so as to support research efforts at national and European level and guarantee the sustainability thereof.

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 25

Proposal for a recommendation
Recommendations to Member States – Paragraph 4 – point 1

(1) identify national or regional centres of expertise throughout their national territory by the end of 2011, and foster the creation of centres of expertise where they do not exist notably by including in their national plan for rare diseases provisions on the creation of national or regional centres of expertise;	(1) identify national or regional centres of expertise throughout their national territory by the end of 2011, and foster the creation of centres of expertise where they do not exist notably by including in their national plan for rare diseases provisions on the creation of national or regional centres of expertise; ***help compile catalogues of rare diseases and rare diseases experts;***

Amendment 26

Proposal for a recommendation
Recommendations to Member States – paragraph 4 – point 3

(3) organise healthcare pathways for patients through the establishment of cooperation with relevant experts within the country or from abroad when necessary; cross-border healthcare, including mobility of patients, health professionals and providers and provision of services through information and communication technologies should be supported where it is necessary to ensure universal access to the specific healthcare needed;	(3) organise ***European*** healthcare pathways for ***those*** patients ***suffering from rare diseases*** through the establishment of cooperation with relevant experts within the country or from abroad when necessary; cross-border healthcare, including mobility of patients ***and expertise through data-mobility support***, health professionals and providers and provision of services through information and communication technologies should be supported where it is necessary to ensure universal access to the specific healthcare needed;

Amendment 27

Proposal for a recommendation
Recommendations to Member States – paragraph 4 – point 5

(5) ensure that national or regional centres of expertise adhere to the standards defined by the European reference networks for rare diseases taking into due account the needs and expectations of patients and professionals.	(5) ensure that national or regional centres of expertise adhere to the standards defined by the European reference networks for rare diseases taking into due account the needs and expectations of patients and professionals***, by involving patients in the activities of these centres***;

Amendment 28

Proposal for a recommendation
Recommendations to Member States – paragraph 4 – point 5 a (new)

	(5a) encourage, possibly with European Union funding or co-funding, centres and hospitals of expertise to create specific training for professionals in certain rare diseases and allow them to acquire relevant expertise.

Amendment 29

Proposal for a recommendation
Recommendations to Member States – paragraph 5 – point 1 – point b

(b) European guidelines on population screening and diagnostic tests;	(b) European guidelines on population screening and diagnostic tests***, including genetic tests like heterozygote testing and polar body diagnosis, ensuring high- quality testing and appropriate genetic counselling while respecting ethical diversity in the Member States***;

TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 30

Proposal for a recommendation
Recommendations to Member States – paragraph 5 – point 1 – point c

(c) ***sharing*** Member *States*' assessment reports on the ***therapeutic*** added value of orphan drugs at EU level, in order to minimise delays for access to orphan drugs for rare disease patients;	(c) ***establishing*** Member *States*' assessment reports on the ***clinical*** added value of orphan drugs at EU level ***within the European Medicines Agency (EMEA) where the relevant European knowledge and expertise is gathered***, in order to minimise delays for access to orphan drugs for rare disease patients;

Amendment 31

Proposal for a recommendation
Recommendations to Member States – paragraph 5 – point 1 – point c a (new)

	(ca) structural support for investment in the Orphanet database to ensure ease of access to information concerning rare diseases.

Amendment 32

Proposal for a recommendation
Recommendations to Member States – paragraph 6

6. Empowerment of patient organisations	6. Empowerment of ***independent*** patient organisations
(1) take action to ensure that patients and patients' representatives are duly consulted at all steps of the policy and decision-making processes in the field of rare diseases, including for the establishment and management of centres of expertise and of European reference networks and for the elaboration of national plans;	(1) take action to ensure that patients and ***independent*** patients' representatives are duly consulted at all steps of the policy and decision-making processes in the field of rare diseases, including for the establishment and management of centres of expertise and of European reference networks and for the elaboration of national plans;
(2) support the activities performed by patient organisations, such as awareness-raising, capacity-building and training, exchange of information and best practices, networking, outreach to very isolated patients;	(2) support the activities performed by ***independent*** patient organisations, such as awareness-raising, capacity-building and training, exchange of information and best practices, networking, outreach to very isolated patients;
	(2a) ensure that funding for patient organisations which is not directly linked to single pharmaceutical companies is provided;
	(2b) facilitate patient access to information existing at European level concerning medicines, treatments or treatment centres in the Member States or third countries providing medical care specifically suited to their illnesses;
(3) include in the national plans for rare diseases provisions on the support to and the consultation of patient organisations as referred to in paragraphs (1) and (2).	(3) include in the national plans for rare diseases provisions on the support to and the consultation of ***independent*** patient organisations as referred to in paragraphs (1) and (2)***; ensure that national plans provide for the identification of national or regional centres of expertise and for the compilation of catalogues of experts on rare diseases.***

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 33

Proposal for a recommendation
Recommendations to the Commission – paragraph -1 (new)

	(-1) To support, in a sustainable way, 'Orphanet', a European website and 'one-stop shop' providing the following information:
	(a) on the existence of specific research into rare diseases, the findings thereof and their availability to patients,
	(b) on available medicines for each rare disease,
	(c) on the treatment existing in each Member State for each rare disease,
	(d) on existing specialist medical centres in Member States or third countries for each rare disease.

Amendment 34

Proposal for a recommendation
Recommendations to the Commission – paragraph 1

1. To produce an implementation report on this Recommendation addressed to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the basis of the information provided by the Member States, not later than in the end of ***the fifth year after the date of adoption of this Recommendation, to consider the extent to which the proposed measures are working effectively, and to consider the need for further action***.	1. To produce an implementation report on this Recommendation addressed to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the basis of the information provided by the Member States, not later than in the end of ***2012, the year in which it will propose the implementing actions covering inter alia:***
	a) the budgetary measures necessary for the Community Programme on Rare Diseases to be effective;
	b) the creation of relevant networks of centres of expertise;
	c) the collection of epidemiological data on rare diseases;
	d) the mobility of experts and professionals;
	e) the mobility of patients; and
	f) consideration of the need for other actions to improve the lives of patients affected by rare diseases and those of their families.

Friday 24 April 2009

UN Convention on the Rights of Persons with Disabilities *

P6_TA(2009)0312

European Parliament legislative resolution of 24 April 2009 on the proposal for a Council decision concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities (COM(2008)0530 – C6-0116/2009 – 2008/0170(CNS))

(2010/C 184 E/76)

(Consultation procedure)

The European Parliament,

— having regard to the proposal for a Council decision (COM(2008)0530),

— having regard to the United Nations Convention on the Rights of Persons with Disabilities ('the Convention'), adopted by the United Nations General Assembly on 13 December 2006,

— having regard to Articles 13(1) and 300(2), first subparagraph, of the EC Treaty,

— having regard to Article 300(3), first subparagraph, of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0116/2009),

— having regard to Rules 51 and 83(7) of its Rules of Procedure,

— having regard to the report of the Committee on Employment and Social Affairs and the opinion of the Committee on Women's rights and Gender Equality (A6-0229/2009),

1. Approves conclusion of the Convention;

2. Instructs its President to forward its position to the Council and the Commission, and the governments and parliaments of the Member States.

Friday 24 April 2009

Optional Protocol to the UN Convention on the Rights of Persons with Disabilities *

P6_TA(2009)0313

European Parliament legislative resolution of 24 April 2009 on the proposal for a Council decision concerning the conclusion, by the European Community, of the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities (COM(2008)0530 – C6-0117/2009 – 2008/0171(CNS))

(2010/C 184 E/77)

(Consultation procedure)

The European Parliament,

— having regard to the proposal for a Council decision (COM(2008)0530),

— having regard to the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities ('the Optional Protocol'), adopted by the United Nations General Assembly on 13 December 2006,

— having regard to Articles 13(1) and 300(2), first subparagraph, of the EC Treaty,

— having regard to Article 300(3), first subparagraph, of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0117/2009),

— having regard to Rules 51 and 83(7) of its Rules of Procedure,

— having regard to the report of the Committee on Employment and Social Affairs and the opinion of the Committee on Women's rights and Gender Equality (A6-0230/2009),

1. Approves conclusion of the Optional Protocol;

2. Calls on the Member States and the Commission to report every three years to the Council and to Parliament on the status of implementation of the Optional Protocol in accordance with their respective fields of competence;

3. Instructs its President to forward its position to the Council and the Commission, and the governments and parliaments of the Member States.

Friday 24 April 2009

Statistics on plant protection products ***II

P6_TA(2009)0318

European Parliament legislative resolution of 24 April 2009 on the Council common position for adopting a regulation of the European Parliament and of the Council concerning statistics on plant protection products (11120/2/2008 – C6-0004/2009 – 2006/0258(COD))

(2010/C 184 E/78)

(Codecision procedure: second reading)

The European Parliament,

— having regard to the Council common position (11120/2/2008 – C6-0004/2009) ([1]),

— having regard to its position at first reading ([2]) on the Commission proposal to Parliament and the Council (COM(2006)0778),

— having regard to Article 251(2) of the EC Treaty,

— having regard to Rule 62 of its Rules of Procedure,

— having regard to the recommendation for second reading of the Committee on the Environment, Public Health and Food Safety (A6-0256/2009),

1. Approves the common position as amended;

2. Instructs its President to forward its position to the Council and Commission.

([1]) OJ C 38 E, 17.2.2009, p. 1.
([2]) OJ C 66 E, 20.3.2009, p. 98.

P6_TC2-COD(2006)0258

Position of the European Parliament adopted at second reading on 24 April 2009 with a view to the adoption of Regulation *(EC) No …/2009* of the European Parliament and of the Council concerning statistics on plant protection products

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 285(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ([1]),

([1]) OJ C 256, 27.10.2007, p. 86.

Friday 24 April 2009

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty [1],

Whereas:

(1) Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme [2] recognised that the impact of pesticides on human health and the environment, in particular from plant protection products used in agriculture, must be reduced further. It underlined the need to achieve more sustainable use of pesticides and called for a significant overall reduction of risks and the use of pesticides consistent with the necessary crop protection.

(2) In its Communication to the Council, the European Parliament and the European Economic and Social Committee entitled 'Towards a Thematic Strategy on the Sustainable Use of Pesticides', the Commission recognised the need for detailed, harmonised and up-to-date statistics on sales and use of pesticides at Community level. Such statistics are necessary for assessing policies of the European Union on sustainable development and for calculating relevant indicators on the risks for health and the environment related to pesticide use.

(3) Harmonised and comparable Community statistics on pesticide sales and use are essential for the development and monitoring of Community legislation and policies in the context of the Thematic Strategy on the Sustainable Use of Pesticides.

(4) Since the effects of the Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market [3] will not become apparent until well after 2006, when the first evaluation of active substances for use in biocidal products will be finalised, neither the Commission nor most Member States currently have sufficient knowledge or experience to propose further measures regarding biocides. The scope of this Regulation should thus be limited to plant protection products covered by Regulation (EC) No …/… of the European Parliament and of the Council of… *[*concerning the placing of plant protection products on the market*]* [4], for which a large experience already exists on data collection.

(5) The experience of the Commission in collecting data on sales and use of plant protection products over many years has demonstrated the need to have a harmonised methodology for collecting statistics at Community level both from the stage of placing on the market and from users. Moreover, in view of the aim of calculating accurate risk indicators according to the objectives of the Thematic Strategy on the Sustainable Use of Pesticides, statistics need to be detailed up to the level of the active substances.

(6) Among the different data collection options evaluated in the impact assessment of the Thematic Strategy on the Sustainable Use of Pesticides, mandatory data collection was recommended as the best option because it would allow the development of accurate and reliable data on the placing on the market and use of plant protection products quickly and cost-efficiently.

(7) Council Regulation (EC) No 322/97 of 17 February 1997 on Community Statistics [5] constitutes the reference framework for the provisions of this Regulation. In particular, it requires conformity to standards of impartiality, reliability, relevance, cost-effectiveness, statistical confidentiality and transparency.

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[1] Opinion of the European Parliament of 12 March 2008 (*OJ C 66 E, 20.3.2009, p. 98*), Council Common Position of *20 November 2008 (OJ C 38 E, 17.2.2009, p. 1)* and Position of the European Parliament of *24 April 2009*.
[2] OJ L 242, 10.9.2002, p. 1.
[3] OJ L 123, 24.4.1998, p. 1.
[4] OJ L …
[5] OJ L 52, 22.2.1997, p. 1.

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(8) The transmission of data subject to statistical confidentiality is governed by the rules set out in Regulation (EC) No 322/97 and in Council Regulation (Euratom, EEC) No 1588/90 of 11 June 1990 on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities [1]. Measures which are taken in accordance with those Regulations ensure the physical and logical protection of confidential data and ensure that no unlawful disclosure and non-statistical use occur when Community statistics are produced and disseminated.

(9) The necessary protection of confidentiality on data of commercial value should be assured, among other means, by an appropriate aggregation when publishing statistics.

(10) To guarantee comparable results, statistics on plant protection products should be produced in accordance with a specified breakdown, in an appropriate form and within a fixed period of time from the end of a reference year as defined in the Annexes of this Regulation.

(11) 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 [2].

(12) In particular the Commission should be empowered to define the area treated and to adapt Annex III. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, inter alia by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(13) Since the objective of this Regulation, namely the establishment of a common framework for the systematic production of Community statistics on the placing on the market and use of plant protection products, cannot be sufficiently achieved by the Member States and can therefore 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.

(14) The Statistical Programme Committee, established by Council Decision 89/382/EEC, Euratom [3], has been consulted,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter, scope and objectives

1. This Regulation establishes a common framework for the systematic production of Community statistics on the placing on the market and use of ***those pesticides which are*** plant protection products***, as defined in point (i) of point (a) of Article 2.***

2. The statistics shall apply to:

— the annual amounts of plant protection products placed on the market in accordance with Annex I;

— the annual agricultural use amounts of plant protection products in accordance with Annex II.

[1] OJ L 151, 15.6.1990, p. 1.
[2] OJ L 184, 17.7.1999, p. 23.
[3] OJ L 181, 28.6.1989, p. 47.

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3. The statistics shall, in particular, together with other relevant data serve the purposes of Article 14 of Directive …/…/EC of the European Parliament and of the Council of … *[*establishing a framework for Community action to achieve a sustainable use of pesticides*]* ([1]).

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(a) 'plant protection products' means plant protection products as referred to in Article 2(1) of Regulation (EC) No …/… *[concerning the placing of plant protection products on the market]*;

(b) 'substances' means substances as defined in point (2) of Article 3 of Regulation (EC) No …/… *[concerning the placing of plant protection products on the market]*, including active substances, safeners and synergists;

(c) 'active substances' means active substances as referred to in Article 2(2) of Regulation (EC) No …/… *[concerning the placing of plant protection products on the market]*;

(d) 'safeners' means safeners as referred to in Article 2(3)(a) of Regulation (EC) No …/… *[concerning the placing of plant protection products on the market]*;

(e) 'synergists' means synergists as referred to in Article 2(3)(b) of Regulation (EC) No …/… *[concerning the placing of plant protection products on the market]*;

(f) 'placing on the market' means placing on the market as defined in point (8) of Article 3 of Regulation (EC) No …/… *[concerning the placing of plant protection products on the market]*;

(g) 'authorisation holder' means authorisation holder as defined in point (20) of Article 3 of Regulation (EC) No …/… *[concerning the placing of plant protection products on the market]*;

(h) 'agricultural use' means any type of application of a plant protection product associated directly or indirectly with the production of plant products in the context of the economic activity of an agricultural holding;

(i) 'professional user' means professional user as defined in point (1) of Article 3 of Directive …/…/EC *[establishing a framework for Community action to achieve a sustainable use of pesticides]*;

(j) 'agricultural holding' means agricultural holding as defined in Regulation (EC) No …/… of the European Parliament and of the Council of … *[*on farm structure surveys and the survey on agricultural production methods*]* ([2]).

Article 3

Data collection, transmission and processing

1. Member States shall collect the data necessary for the specification of the characteristics listed in Annexes I and II by means of:

— surveys,

([1]) OJ L
([2]) OJ L …

— obligations concerning the placing of the plant protection products on the market; in particular, obligations pursuant to Article 67 of Regulation (EC) No …/… *[concerning the placing of plant protection products on the market]*,

— obligations applicable to professional users based on records kept on the use of plant protection products; in particular, obligations pursuant to Article 67 of Regulation (EC) No …/… *[concerning the placing of plant protection products on the market]*,

— administrative sources, or

— a combination of these means, including statistical estimation procedures on the basis of expert judgements or models.

2. Member States shall transmit to the Commission (Eurostat) the statistical results, including confidential data, according to the schedules and with the periodicity specified in Annexes I and II. Data shall be presented according to the classification given in Annex III.

3. Member States shall transmit the data in electronic form, in conformity with an appropriate technical format to be adopted by the Commission (Eurostat) in accordance with the regulatory procedure referred to in Article 6(2).

4. For reasons of confidentiality, the Commission (Eurostat) shall aggregate the data before publication according to the chemical classes or categories of products indicated in Annex III, taking due account of the protection of confidential data at the level of individual Member State. In accordance with Article 15 of Regulation (EC) No 322/97, confidential data shall be used by national authorities and by the Commission (Eurostat) exclusively for statistical purposes.

Article 4

Quality assessment

1. For the purpose of this Regulation, the following quality assessment dimensions shall apply to the data to be transmitted:

— 'relevance' refers to the degree to which statistics meet current and potential needs of the users;

— 'accuracy' refers to the closeness of estimates to the unknown true values;

— 'timeliness' refers to the time lag between the availability of the information and the event or phenomenon it describes;

— 'punctuality' refers to the time lag between the date of the release of the data and the target date when it should have been delivered;

— 'accessibility' and 'clarity' refer to the conditions and modalities by which users can obtain, use and interpret data;

— 'comparability' refers to the measurement of the impact of differences in applied statistical concepts and measurement tools and procedures when statistics are compared between geographical areas, sectoral domains or over time;

— 'coherence' refers to the adequacy of the data to be reliably combined in different ways and for various uses.

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2. Member States shall provide the Commission (Eurostat) with reports on the quality of the data transmitted as referred to in Annexes I and II. The Commission (Eurostat) shall assess the quality of data transmitted.

Article 5

Implementation measures

1. The Commission shall adopt the appropriate technical format for the transmission of data in accordance with the regulatory procedure referred to in Article 6(2).

2. The Commission shall adopt the definition of the 'area treated' as referred to in Section 2 of Annex II. That measure, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 6(3).

3. The Commission may amend the harmonised classification of substances as defined in Annex III for the purpose of adapting it to changes in the list of active substances adopted in accordance with Article 78(3) of Regulation (EC) No …/… *[concerning the placing of plant protection products on the market]*. Those measures, designed to amend non-essential elements of this Regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 6(3).

Article 6

Committee procedure

1. The Commission shall be assisted by the Statistical Programme Committee.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be three months.

3. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 7

Report

The Commission shall submit a report on the implementation of the Regulation to the European Parliament and the Council every five years. This report shall evaluate in particular the quality of data transmitted, as referred to in Article 4, the burden on businesses, agricultural holdings and national administrations and the usefulness of these statistics in the context of the Thematic Strategy on the Sustainable Use of Pesticides in particular with regard to the objectives set out in Article 1. It shall, if appropriate, contain proposals designed to further improve data quality and reduce the burden on businesses, agricultural holdings and national administrations.

The first report shall be submitted by 1 January … (*).

Article 8

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

(*) Eight years from the year of the adoption of this Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at

For the European Parliament	For the Council
The President	The President

Friday 24 April 2009

ANNEX I

Statistics on placing of plant protection products on the market

SECTION 1

Coverage

The statistics shall cover substances listed in Annex III contained in plant protection products placed on the market in each Member State. Special attention shall be paid to avoiding double counting in the event of product reconditioning or transfer of authorisation between authorisation holders.

SECTION 2

Variables

The quantity of each substance listed in Annex III contained in plant protection products placed on the market shall be compiled.

SECTION 3

Reporting measure

Data shall be expressed in kilograms of substances.

SECTION 4

Reference period

The reference period shall be the calendar year.

SECTION 5

First reference period, periodicity and transmission of results

1. The first reference period is the second calendar year following … (*).

2. Member States shall supply data for every calendar year subsequent to the first reference period.

3. Data shall be transmitted to the Commission (Eurostat) within 12 months of the end of the reference year.

SECTION 6

Quality report

Member States shall supply the Commission (Eurostat) with a quality report, referred to in Article 4, indicating:

— the methodology used to collect data;

— relevant aspects of quality according to the methodology used to collect data;

— a description of estimations, aggregations and exclusion methods used.

This report shall be transmitted to the Commission (Eurostat) within 15 months of the end of the reference year.

(*) The date of entry into force of this Regulation.

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ANNEX II

Statistics on agricultural use of plant protection products

SECTION 1

Coverage

1. Statistics shall cover substances listed in Annex III contained in plant protection products used in agriculture on each selected crop in each Member State.

2. Each Member State shall establish the selection of crops to be covered during the five-year period defined in Section 5. The selection shall be designed to be representative of the crops cultivated in the Member State and of the substances used.

   The selection of crops shall take into account the most relevant crops for the national action plans as referred to in Article 4 of Directive …/…/EC *[establishing a framework for Community action to achieve a sustainable use of pesticides]*.

SECTION 2

Variables

For each selected crop the following variables shall be compiled:

(a) the quantity of each substance listed in Annex III contained in plant protection products used on this crop, and

(b) the area treated with each substance.

SECTION 3

Reporting measures

1. Quantities of substances used shall be expressed in kilograms.

2. Areas treated shall be expressed in hectares.

SECTION 4

Reference period

1. The reference period shall, in principle, be a period of maximum 12 months covering all plant protection treatments associated with the crop.

2. The reference period shall be reported as the year in which the harvest began.

SECTION 5

First reference period, periodicity and transmission of results

1. For each five-year period, Member States shall compile statistics on the use of plant protection products for each selected crop within a reference period as defined in Section 4.

2. Member States may choose the reference period at any time of the five-year period. The choice can be made independently for each selected crop.

3. The first five-year period shall start at the first calendar year following … (*).

4. Member States shall supply data for every five-year period.

5. Data shall be transmitted to the Commission (Eurostat) within 12 months of the end of each five-year period.

(*) The date of the entry into force of this Regulation.

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SECTION 6

Quality report

When they transmit their results, Member States shall supply the Commission (Eurostat) with a quality report, referred to in Article 4, indicating:

— the design of the sampling methodology;

— the methodology used to collect data;

— an estimation of the relative importance of the crops covered with regard to the overall amount of plant protection products used;

— relevant aspects of quality according to the methodology used to collect data;

— a comparison between data on plant protection products used during the five-year period and plant protection products placed on the market during the five corresponding years.

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ANNEX III

Harmonised classification of substances

MAJOR GROUPS	Code	Chemical Class	Substances common names	CAS RN (1)	CIPAC (2)
Categories of products			Common Nomenclature		
Fungicides and Bactericides	F0				
Inorganic fungicides	F1				
	F1.1	COPPER COMPOUNDS	ALL COPPER COMPOUNDS		44
	F1.1		BORDEAUX MIXTURE	8011-63-0	44
	F1.1		COPPER HYDROXIDE	20427-59-2	44
	F1.1		COPPER OXYCHLORIDE	1332-40-7	44
	F1.1		TRIBASIC COPPER SULPHATE	1333-22-8	44
	F1.1		COPPER (I) OXIDE	1319-39-1	44
	F1.1		OTHER COPPER SALTS		44
	F1.2	INORGANIC SULFUR	SULFUR	7704-34-9	18
	F1.3	OTHER INORGANIC FUNGICIDES	OTHER INORGANIC FUNGICIDES		
Fungicides based on carbamates and dithiocarbamates	F2				
	F2.1	CARBANILATE FUNGICIDES	DIETHOFENCARB	87130-20-9	513
	F2.2	CARBAMATE FUNGICIDES	BENTHIAVALICARB	413615-35-7	744
	F2.2		IPROVALICARB	140923-17-7	620
	F2.2		PROPAMOCARB	24579-73-5	399
	F2.3	DITHIOCARBAMATE FUNGICIDES	MANCOZEB	8018-01-7	34
	F2.3		MANEB	12427-38-2	61
	F2.3		METIRAM	9006-42-2	478
	F2.3		PROPINEB	12071-83-9	177
	F2.3		THIRAM	137-26-8	24
	F2.3		ZIRAM	137-30-4	31
Fungicides based on benzimidazoles	F3				
	F3.1	BENZIMIDAZOLE FUNGICIDES	CARBENDAZIM	10605-21-7	263
	F3.1		FUBERIDAZOLE	3878-19-1	525
	F3.1		THIABENDAZOLE	148-79-8	323
	F3.1		THIOPHANATE-METHYL	23564-05-8	262

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MAJOR GROUPS	Code	Chemical Class	Substances common names	CAS RN (1)	CIPAC (2)
Fungicides based on imidazoles and triazoles	F4				
	F4.1	CONAZOLE FUNGICIDES	BITERTANOL	55179-31-2	386
	F4.1		BROMUCONAZOLE	116255-48-2	680
	F4.1		CYPROCONAZOLE	94361-06-5	600
	F4.1		DIFENOCONAZOLE	119446-68-3	687
	F4.1		DINICONAZOLE	83657-24-3	690
	F4.1		EPOXICONAZOLE	106325-08-0	609
	F4.1		ETRIDIAZOLE	2593-15-9	518
	F4.1		FENBUCONAZOLE	114369-43-6	694
	F4.1		FLUQUINCONAZOLE	136426-54-5	474
	F4.1		FLUSILAZOLE	85509-19-9	435
	F4.1		FLUTRIAFOL	76674-21-0	436
	F4.1		HEXACONAZOLE	79983-71-4	465
	F4.1		IMAZALIL (ENILCONAZOLE)	58594-72-2	335
	F4.1		METCONAZOLE	125116-23-6	706
	F4.1		MYCLOBUTANIL	88671-89-0	442
	F4.1		PENCONAZOLE	66246-88-6	446
	F4.1		PROPICONAZOLE	60207-90-1	408
	F4.1		PROTHIOCONAZOLE	178928-70-6	745
	F4.1		TEBUCONAZOLE	107534-96-3	494
	F4.1		TETRACONAZOLE	112281-77-3	726
	F4.1		TRIADIMENOL	55219-65-3	398
	F4.1		TRICYCLAZOLE	41814-78-2	547
	F4.1		TRIFLUMIZOLE	99387-89-0	730
	F4.1		TRITICONAZOLE	131983-72-7	652
	F4.2	IMIDAZOLE FUNGICIDES	CYAZOFAMIDE	120116-88-3	653
	F4.2		FENAMIDONE	161326-34-7	650
	F4.2		TRIAZOXIDE	72459-58-6	729
Fungicides based on morpholines	F5				
	F5.1	MORPHOLINE FUNGICIDES	DIMETHOMORPH	110488-70-5	483
	F5.1		DODEMORPH	1593-77-7	300
	F5.1		FENPROPIMORPH	67564-91-4	427

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MAJOR GROUPS	Code	Chemical Class	Substances common names	CAS RN (1)	CIPAC (2)
Other fungicides	F6				
	F6.1	ALIPHATIC NITROGEN FUNGICIDES	CYMOXANIL	57966-95-7	419
	F6.1		DODINE	2439-10-3	101
	F6.1		GUAZATINE	108173-90-6	361
	F6.2	AMIDE FUNGICIDES	BENALAXYL	71626-11-4	416
	F6.2		BOSCALID	188425-85-6	673
	F6.2		FLUTOLANIL	66332-96-5	524
	F6.2		MEPRONIL	55814-41-0	533
	F6.2		METALAXYL	57837-19-1	365
	F6.2		METALAXYL-M	70630-17-0	580
	F6.2		PROCHLORAZ	67747-09-5	407
	F6.2		SILTHIOFAM	175217-20-6	635
	F6.2		TOLYLFLUANID	731-27-1	275
	F6.2		ZOXAMIDE	156052-68-5	640
	F6.3	ANILIDE FUNGICIDES	CARBOXIN	5234-68-4	273
	F6.3		FENHEXAMID	126833-17-8	603
	F6.4	ANTIBIOTIC FUNGICIDES-BACTERICIDES	KASUGAMYCIN	6980-18-3	703
	F6.4		POLYOXINS	11113-80-7	710
	F6.4		STREPTOMYCIN	57-92-1	312
	F6.5	AROMATIC FUNGICIDES	CHLOROTHALONIL	1897-45-6	288
	F6.5		DICLORAN	99-30-9	150
	F6.6	DICARBOXIMIDE FUNGICIDES	IPRODIONE	36734-19-7	278
	F6.6		PROCYMIDONE	32809-16-8	383
	F6.7	DINITROANILINE FUNGICIDES	FLUAZINAM	79622-59-6	521
	F6.8	DINITROPHENOL FUNGICIDES	DINOCAP	39300-45-3	98
	F6.9	ORGANOPHOSPHORUS FUNGICIDES	FOSETYL	15845-66-6	384
	F6.9		TOLCLOFOS-METHYL	57018-04-9	479
	F6.10	OXAZOLE FUNGICIDES	HYMEXAZOL	10004-44-1	528
	F6.10		FAMOXADONE	131807-57-3	594
	F6.10		VINCLOZOLIN	50471-44-8	280
	F6.11	PHENYLPYRROLE FUNGICIDES	FLUDIOXONIL	131341-86-1	522

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MAJOR GROUPS	Code	Chemical Class	Substances common names	CAS RN (1)	CIPAC (2)
	F6.12	PHTHALIMIDE FUNGICIDES	CAPTAN	133-06-2	40
	F6.12		FOLPET	133-07-3	75
	F6.13	PYRIMIDINE FUNGICIDES	BUPIRIMATE	41483-43-6	261
	F6.13		CYPRODINIL	121552-61-2	511
	F6.13		FENARIMOL	60168-88-9	380
	F6.13		MEPANIPYRIM	110235-47-7	611
	F6.13		PYRIMETHANIL	53112-28-0	714
	F6.14	QUINOLINE FUNGICIDES	QUINOXYFEN	124495-18-7	566
	F6.14		8-HYDROXYQUINOLINE SULFATE	134-31-6	677
	F6.15	QUINONE FUNGICIDES	DITHIANON	3347-22-6	153
	F6.16	STROBILURINE FUNGICIDES	AZOXYSTROBIN	131860-33-8	571
	F6.16		DIMOXYSTROBIN	149961-52-4	739
	F6.16		FLUOXASTROBIN	361377-29-9	746
	F6.16		KRESOXIM-METHYL	143390-89-0	568
	F6.16		PICOXYSTROBINE	117428-22-5	628
	F6.16		PYRACLOSTROBINE	175013-18-0	657
	F6.16		TRIFLOXYSTROBINE	141517-21-7	617
	F6.17	UREA FUNGICIDES	PENCYCURON	66063-05-6	402
	F6.18	UNCLASSIFIED FUNGICIDES	ACIBENZOLAR	126448-41-7	597
	F6.18		BENZOIC ACID	65-85-0	622
	F6.18		DICHLOROPHEN	97-23-4	325
	F6.18		FENPROPIDIN	67306-00-7	520
	F6.18		METRAFENONE	220899-03-6	752
	F6.18		2-PHENYPHENOL	90-43-7	246
	F6.18		SPIROXAMINE	118134-30-8	572
	F6.19	OTHER FUNGICIDES	OTHER FUNGICIDES		
Herbicides, Haulm Destructors and Moss Killers	H0				
Herbicides based on phenoxy-phytohormones	H1				
	H1.1	PHENOXY HERBICIDES	2,4-D	94-75-7	1
	H1.1		2,4-DB	94-82-6	83
	H1.1		DICHLORPROP-P	15165-67-0	476

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MAJOR GROUPS	Code	Chemical Class	Substances common names	CAS RN (1)	CIPAC (2)
	H1.1		MCPA	94-74-6	2
	H1.1		MCPB	94-81-5	50
	H1.1		MECOPROP	7085-19-0	51
	H1.1		MECOPROP-P	16484-77-8	475
Herbicides based on triazines and triazinones	H2				
	H2.1	METHYLTHIOTRIAZINE HERBICIDES	METHOPROTRYNE	841-06-5	94
	H2.2	TRIAZINE HERBICIDES	SIMETRYN	1014-70-6	179
	H2.2		TERBUTHYLAZINE	5915-41-3	234
	H2.3	TRIAZINONE HERBICIDES	METAMITRON	41394-05-2	381
	H2.3		METRIBUZIN	21087-64-9	283
Herbicides based on amides and anilides	H3				
	H3.1	AMIDE HERBICIDES	BEFLUBUTAMID	113614-08-7	662
	H3.1		DIMETHENAMID	87674-68-8	638
	H3.1		FLUPOXAM	119126-15-7	8158
	H3.1		ISOXABEN	82558-50-7	701
	H3.1		NAPROPAMIDE	15299-99-7	271
	H3.1		PETHOXAMIDE	106700-29-2	665
	H3.1		PROPYZAMIDE	23950-58-5	315
	H3.2	ANILIDE HERBICIDES	DIFLUFENICAN	83164-33-4	462
	H3.2		FLORASULAM	145701-23-1	616
	H3.2		FLUFENACET	142459-58-3	588
	H3.2		METOSULAM	139528-85-1	707
	H3.2		METAZACHLOR	67129-08-2	411
	H3.2		PROPANIL	709-98-8	205
	H3.3	CHLOROACETANILIDE HERBICIDES	ACETOCHLOR	34256-82-1	496
	H3.3		ALACHLOR	15972-60-8	204
	H3.3		DIMETHACHLOR	50563-36-5	688
	H3.3		PRETILACHLOR	51218-49-6	711
	H3.3		PROPACHLOR	1918-16-7	176
	H3.3		S-METOLACHLOR	87392-12-9	607

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MAJOR GROUPS	Code	Chemical Class	Substances common names	CAS RN (1)	CIPAC (2)
Herbicides based on carbamates and bis-carbamates	H4				
	H4.1	BIS-CARBAMATE HERBICIDES	CHLORPROPHAM	101-21-3	43
	H4.1		DESMEDIPHAM	13684-56-5	477
	H4.1		PHENMEDIPHAM	13684-63-4	77
	H4.2	CARBAMATE HERBICIDES	ASULAM	3337-71-1	240
	H4.2		CARBETAMIDE	16118-49-3	95
Herbicides based on dinitroaniline derivatives	H5				
	H5.1	DINITROANILINE HERBICIDES	BENFLURALIN	1861-40-1	285
	H5.1		BUTRALIN	33629-47-9	504
	H5.1		ETHALFLURALIN	55283-68-6	516
	H5.1		ORYZALIN	19044-88-3	537
	H5.1		PENDIMETHALIN	40487-42-1	357
	H5.1		TRIFLURALIN	2582-09-8	183
Herbicides based on derivatives of urea, of uracil or of sulphonylurea	H6				
	H6.1	SULFONYLUREA HERBICIDES	AMIDOSULFURON	120923-37-7	515
	H6.1		AZIMSULFURON	120162-55-2	584
	H6.1		BENSULFURON	99283-01-9	502
	H6.1		CHLORSULFURON	64902-72-3	391
	H6.1		CINOSULFURON	94593-91-6	507
	H6.1		ETHOXYSULFURON	126801-58-9	591
	H6.1		FLAZASULFURON	104040-78-0	595
	H6.1		FLUPYRSULFURON	150315-10-9	577
	H6.1		FORAMSULFURON	173159-57-4	659
	H6.1		IMAZOSULFURON	122548-33-8	590
	H6.1		IODOSULFURON	185119-76-0	634
	H6.1		MESOSULFURON	400852-66-6	663
	H6.1		METSULFURON	74223-64-6	441
	H6.1		NICOSULFURON	111991-09-4	709
	H6.1		OXASULFURON	144651-06-9	626
	H6.1		PRIMISULFURON	113036-87-6	712

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MAJOR GROUPS	Code	Chemical Class	Substances common names	CAS RN [1]	CIPAC [2]
	H6.1		PROSULFURON	94125-34-5	579
	H6.1		RIMSULFURON	122931-48-0	716
	H6.1		SULFOSULFURON	141776-32-1	601
	H6.1		THIFENSULFURON	79277-67-1	452
	H6.1		TRIASULFURON	82097-50-5	480
	H6.1		TRIBENURON	106040-48-6	546
	H6.1		TRIFLUSULFURON	135990-29-3	731
	H6.1		TRITOSULFURON	142469-14-5	735
	H6.2	URACIL HERBICIDES	LENACIL	2164-08-1	163
	H6.3	UREA HERBICIDES	CHLORTOLURON	15545-48-9	217
	H6.3		DIURON	330-54-1	100
	H6.3		FLUOMETURON	2164-17-2	159
	H6.3		ISOPROTURON	34123-59-6	336
	H6.3		LINURON	330-55-2	76
	H6.3		METHABENZTHIAZURON	18691-97-9	201
	H6.3		METOBROMURON	3060-89-7	168
	H6.3		METOXURON	19937-59-8	219
Other herbicides	H7				
	H7.1	ARYLOXYPHENOXY-PROPIONIC HERBICIDES	CLODINAFOP	114420-56-3	683
	H7.1		CYHALOFOP	122008-85-9	596
	H7.1		DICLOFOP	40843-25-2	358
	H7.1		FENOXAPROP-P	113158-40-0	484
	H7.1		FLUAZIFOP-P-BUTYL	79241-46-6	395
	H7.1		HALOXYFOP	69806-34-4	438
	H7.1		HALOXYFOP-R	72619-32-0	526
	H7.1		PROPAQUIZAFOP	111479-05-1	713
	H7.1		QUIZALOFOP	76578-12-6	429
	H7.1		QUIZALOFOP-P	94051-08-8	641
	H7.2	BENZOFURANE HERBICIDES	ETHOFUMESATE	26225-79-6	233
	H7.3	BENZOIC-ACID HERBICIDES	CHLORTHAL	2136-79-0	328
	H7.3		DICAMBA	1918-00-9	85
	H7.4	BIPYRIDYLIUM HERBICIDES	DIQUAT	85-00-7	55

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MAJOR GROUPS	Code	Chemical Class	Substances common names	CAS RN (1)	CIPAC (2)
	H7.4		PARAQUAT	4685-14-7	56
	H7.5	CYCLOHEXANEDIONE HERBICIDES	CLETHODIM	99129-21-2	508
	H7.5		CYCLOXYDIM	101205-02-1	510
	H7.5		TEPRALOXYDIM	149979-41-9	608
	H7.5		TRALKOXYDIM	87820-88-0	544
	H7.6	DIAZINE HERBICIDES	PYRIDATE	55512-33-9	447
	H7.7	DICARBOXIMIDE HERBICIDES	CINIDON-ETHYL	142891-20-1	598
	H7.7		FLUMIOXAZIN	103361-09-7	578
	H7.8	DIPHENYL ETHER HERBICIDES	ACLONIFEN	74070-46-5	498
	H7.8		BIFENOX	42576-02-3	413
	H7.8		NITROFEN	1836-75-5	170
	H7.8		OXYFLUORFEN	42874-03-3	538
	H7.9	IMIDAZOLINONE HERBICIDES	IMAZAMETHABENZ	100728-84-5	529
	H7.9		IMAZAMOX	114311-32-9	619
	H7.9		IMAZETHAPYR	81335-77-5	700
	H7.10	INORGANIC HERBICIDES	AMMONIUM SULFAMATE	7773-06-0	679
	H7.10		CHLORATES	7775-09-9	7
	H7.11	ISOXAZOLE HERBICIDES	ISOXAFLUTOLE	141112-29-0	575
	H7.12	MORPHACTIN HERBICIDES	FLURENOL	467-69-6	304
	H7.13	NITRILE HERBICIDES	BROMOXYNIL	1689-84-5	87
	H7.13		DICHLOBENIL	1194-65-6	73
	H7.13		IOXYNIL	1689-83-4	86
	H7.14	ORGANOPHOSPHORUS HERBICIDES	GLUFOSINATE	51276-47-2	437
	H7.14		GLYPHOSATE	1071-83-6	284
	H7.15	PHENYLPYRAZOLE HERBICIDES	PYRAFLUFEN	129630-19-9	605
	H7.16	PYRIDAZINONE HERBICIDES	CHLORIDAZON	1698-60-8	111
	H7.16		FLURTAMONE	96525-23-4	569
	H7.17	PYRIDINECARBOXAMIDE HERBICIDES	PICOLINAFEN	137641-05-5	639
	H7.18	PYRIDINECARBOXYLIC-ACID HERBICIDES	CLOPYRALID	1702-17-6	455
	H7.18		PICLORAM	1918-02-1	174

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MAJOR GROUPS	Code	Chemical Class	Substances common names	CAS RN (1)	CIPAC (2)
	H7.19	PYRIDYLOXYACETIC-ACID HERBICIDES	FLUROXYPYR	69377-81-7	431
	H7.19		TRICLOPYR	55335-06-3	376
	H7.20	QUINOLINE HERBICIDES	QUINCLORAC	84087-01-4	493
	H7.20		QUINMERAC	90717-03-6	563
	H7.21	THIADIAZINE HERBICIDES	BENTAZONE	25057-89-0	366
	H7.22	THIOCARBAMATE HERBICIDES	EPTC	759-94-4	155
	H7.22		MOLINATE	2212-67-1	235
	H7.22		PROSULFOCARB	52888-80-9	539
	H7.22		THIOBENCARB	28249-77-6	388
	H7.22		TRI-ALLATE	2303-17-5	97
	H7.23	TRIAZOLE HERBICIDES	AMITROL	61-82-5	90
	H7.24	TRIAZOLINONE HERBICIDES	CARFENTRAZONE	128639-02-1	587
	H7.25	TRIAZOLONE HERBICIDES	PROPOXYCARBAZONE	145026-81-9	655
	H7.26	TRIKETONE HERBICIDES	MESOTRIONE	104206-82-8	625
	H7.26		SULCOTRIONE	99105-77-8	723
	H7.27	UNCLASSIFIED HERBICIDES	CLOMAZONE	81777-89-1	509
	H7.27		FLUROCHLORIDONE	61213-25-0	430
	H7.27		QUINOCLAMINE	2797-51-5	648
	H7.27		METHAZOLE	20354-26-1	369
	H7.27		OXADIARGYL	39807-15-3	604
	H7.27		OXADIAZON	19666-30-9	213
	H7.27	OTHER HERBICIDES HAULM DESTRUCTOR MOSS KILLER	OTHER HERBICIDES HAULM DESTRUCTOR MOSS KILLER		
Insecticides and Acaricides	I0				
Insecticides based on pyrethroids	I1				
	I1.1	PYRETHROID INSECTICIDES	ACRINATHRIN	101007-06-1	678
	I1.1		ALPHA-CYPERMETHRIN	67375-30-8	454
	I1.1		BETA-CYFLUTHRIN	68359-37-5	482
	I1.1		BETA-CYPERMETHRIN	65731-84-2	632
	I1.1		BIFENTHRIN	82657-04-3	415
	I1.1		CYFLUTHRIN	68359-37-5	385
	I1.1		CYPERMETHRIN	52315-07-8	332

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MAJOR GROUPS	Code	Chemical Class	Substances common names	CAS RN (1)	CIPAC (2)
	I1.1		DELTAMETHRIN	52918-63-5	333
	I1.1		ESFENVALERATE	66230-04-4	481
	I1.1		ETOFENPROX	80844-07-1	471
	I1.1		GAMMA-CYHALOTHRIN	76703-62-3	768
	I1.1		LAMBDA-CYHALOTHRIN	91465-08-6	463
	I1.1		TAU-FLUVALINATE	102851-06-9	432
	I1.1		TEFLUTHRIN	79538-32-2	451
	I1.1		ZETA-CYPERMETHRIN	52315-07-8	733
Insecticides based on chlorinated hydrocarbons	I2				
	I2.1	ORGANOCHLORINE INSECTICIDES	DICOFOL	115-32-2	123
	I2.1		TETRASUL	2227-13-6	114
Insecticides based on carbamates and oxime-carbamate	I3				
	I3.1	OXIME-CARBAMATE INSECTICIDES	METHOMYL	16752-77-5	264
	I3.1		OXAMYL	23135-22-0	342
	I3.2	CARBAMATE INSECTICIDES	BENFURACARB	82560-54-1	501
	I3.2		CARBARYL	63-25-2	26
	I3.2		CARBOFURAN	1563-66-2	276
	I3.2		CARBOSULFAN	55285-14-8	417
	I3.2		FENOXYCARB	79127-80-3	425
	I3.2		FORMETANATE	22259-30-9	697
	I3.2		METHIOCARB	2032-65-7	165
	I3.2		PIRIMICARB	23103-98-2	231
Insecticides based on organophosphates	I4				
	I4.1	ORGANOPHOSPHORUS INSECTICIDES	AZINPHOS-METHYL	86-50-0	37
	I4.1		CADUSAFOS	95465-99-9	682
	I4.1		CHLORPYRIFOS	2921-88-2	221
	I4.1		CHLORPYRIFOS-METHYL	5589-13-0	486
	I4.1		COUMAPHOS	56-72-4	121
	I4.1		DIAZINON	333-41-5	15
	I4.1		DICHLORVOS	62-73-7	11

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MAJOR GROUPS	Code	Chemical Class	Substances common names	CAS RN [1]	CIPAC [2]
	I4.1		DIMETHOATE	60-51-5	59
	I4.1		ETHOPROPHOS	13194-48-4	218
	I4.1		FENAMIPHOS	22224-92-6	692
	I4.1		FENITROTHION	122-14-5	35
	I4.1		FOSTHIAZATE	98886-44-3	585
	I4.1		ISOFENPHOS	25311-71-1	412
	I4.1		MALATHION	121-75-5	12
	I4.1		METHAMIDOPHOS	10265-92-6	355
	I4.1		NALED	300-76-5	195
	I4.1		OXYDEMETON-METHYL	301-12-2	171
	I4.1		PHOSALONE	2310-17-0	109
	I4.1		PHOSMET	732-11-6	318
	I4.1		PHOXIM	14816-18-3	364
	I4.1		PIRIMIPHOS-METHYL	29232-93-7	239
	I4.1		TRICHLORFON	52-68-6	68
Biological and botanical product based insecticides	I5				
	I5.1	BIOLOGICAL INSECTICIDES	AZADIRACHTIN	11141-17-6	627
	I5.1		NICOTINE	54-11-5	8
	I5.1		PYRETHRINS	8003-34-7	32
	I5.1		ROTENONE	83-79-4	671
Other insecticides	I6				
	I6.1	INSECTICIDES PRODUCED BY FERMENTATION	ABAMECTIN	71751-41-2	495
	I6.1		MILBEMECTIN	51596-10-2 51596-11-3	660
	I6.1		SPINOSAD	168316-95-8	636
	I6.3	BENZOYLUREA INSECTICIDES	DIFLUBENZURON	35367-38-5	339
	I6.3		FLUFENOXURON	101463-69-8	470
	I6.3		HEXAFLUMURON	86479-06-3	698
	I6.3		LUFENURON	103055-07-8	704
	I6.3		NOVALURON	116714-46-6	672
	I6.3		TEFLUBENZURON	83121-18-0	450
	I6.3		TRIFLUMURON	64628-44-0	548

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MAJOR GROUPS	Code	Chemical Class	Substances common names	CAS RN (1)	CIPAC (2)
	I6.4	CARBAZATE INSECTICIDES	BIFENAZATE	149877-41-8	736
	I6.5	DIAZYLHYDRAZINE INSECTICIDES	METHOXYFENOZIDE	161050-58-4	656
	I6.5		TEBUFENOZIDE	112410-23-8	724
	I6.6	INSECT GROWTH REGULATORS	BUPROFEZIN	69327-76-0	681
	I6.6		CYROMAZINE	66215-27-8	420
	I6.6		HEXYTHIAZOX	78587-05-0	439
	I6.7	INSECT PHEROMONES	(E,Z)-9-DODECENYL ACETATE	35148-19-7	422
	I6.8	NITROGUANIDINE INSECTICIDES	CLOTHIANIDIN	210880-92-5	738
	I6.8		THIAMETHOXAM	153719-23-4	637
	I6.9	ORGANOTIN INSECTICIDES	AZOCYCLOTIN	41083-11-8	404
	I6.9		CYHEXATIN	13121-70-5	289
	I6.9		FENBUTATIN OXIDE	13356-08-6	359
	I6.10	OXADIAZINE INSECTICIDES	INDOXACARB	173584-44-6	612
	I6.11	PHENYL-ETHER INSECTICIDES	PYRIPROXYFEN	95737-68-1	715
	I6.12	PYRAZOLE (PHENYL-) INSECTICIDES	FENPYROXIMATE	134098-61-6	695
	I6.12		FIPRONIL	120068-37-3	581
	I6.12		TEBUFENPYRAD	119168-77-3	725
	I6.13	PYRIDINE INSECTICIDES	PYMETROZINE	123312-89-0	593
	I6.14	PYRIDYLMETHYLAMINE INSECTICIDES	ACETAMIPRID	135410-20-7	649
	I6.14		IMIDACLOPRID	138261-41-3	582
	I6.14		THIACLOPRID	111988-49-9	631
	I6.15	SULFITE ESTER INSECTICIDES	PROPARGITE	2312-35-8	216
	I6.16	TETRAZINE INSECTICIDES	CLOFENTEZINE	74115-24-5	418
	I6.17	TETRONIC ACID INSECTICIDES	SPIRODICLOFEN	148477-71-8	737
	I6.18	(CARBAMOYL-) TRIAZOLE INSECTICIDES	TRIAZAMATE	112143-82-5	728
	I6.19	UREA INSECTICIDES	DIAFENTHIURON	80060-09-9	8097
	I6.20	UNCLASSIFIED INSECTICIDES	ETOXAZOLE	153233-91-1	623
	I6.20		FENAZAQUIN	120928-09-8	693
	I6.20		PYRIDABEN	96489-71-3	583
	I6.21	OTHER INSECTICIDES-ACARICIDES	OTHER INSECTICIDES-ACARICIDES		
Molluscicides, total:	M0				

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MAJOR GROUPS	Code	Chemical Class	Substances common names	CAS RN [1]	CIPAC [2]
Molluscicides	M1				
	M1.1	CARBAMATE MOLLUSCICIDE	THIODICARB	59669-26-0	543
	M1.2	OTHER MOLLUSCICIDES	FERRIC PHOSPHATE	10045-86-0	629
	M1.2		METALDEHYDE	108-62-3	62
	M1.2		OTHER MOLLUSCICIDES		
Plant Growth Regulators, total:	PGR0				
Physiological plant growth regulators	PGR1				
	PGR1.1	PHYSIOLOGICAL PLANT GROWTH REGULATORS	CHLORMEQUAT	999-81-5	143
	PGR1.1		CYCLANILIDE	113136-77-9	586
	PGR1.1		DAMINOZIDE	1596-84-5	330
	PGR1.1		DIMETHIPIN	55290-64-7	689
	PGR1.1		DIPHENYLAMINE	122-39-4	460
	PGR1.1		ETHEPHON	16672-87-0	373
	PGR1.1		ETHOXYQUIN	91-53-2	517
	PGR1.1		FLORCHLORFENURON	68157-60-8	633
	PGR1.1		FLURPRIMIDOL	56425-91-3	696
	PGR1.1		IMAZAQUIN	81335-37-7	699
	PGR1.1		MALEIC HYDRAZIDE	51542-52-0	310
	PGR1.1		MEPIQUAT	24307-26-4	440
	PGR1.1		1-METHYLCYCLOPROPENE	3100-04-7	767
	PGR1.1		PACLOBUTRAZOL	76738-62-0	445
	PGR1.1		PROHEXADIONE-CALCIUM	127277-53-6	567
	PGR1.1		SODIUM 5-NITROGUAIACOLATE	67233-85-6	718
	PGR1.1		SODIUM O-NITROPHENOLATE	824-39-5	720
	PGR1.1		TRINEXAPAC-ETHYL	95266-40-3	8349
Anti-sprouting products	PGR2				
	PGR2.2	ANTISPROUTING PRODUCTS	CARVONE	99-49-0	602
	PGR2.2		CHLORPROPHAM	101-21-3	43
Other plant growth regulators	PGR3				
	PGR3.1	OTHER PLANT GROWTH REGULATORS	OTHER PGR		

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MAJOR GROUPS	Code	Chemical Class	Substances common names	CAS RN (1)	CIPAC (2)
Other Plant Protection Products, total:	ZR0				
Mineral oils	ZR1				
	ZR1.1	MINERAL OIL	PETROLEUM OILS	64742-55-8	29
Vegetal oils	ZR2				
	ZR2.1	VEGETAL OIL	TAR OILS		30
Soil sterilants (incl. Nematicides)	ZR3				
	ZR3.1	METHYL BROMIDE	METHYL BROMIDE	74-83-9	128
	ZR3.2	OTHER SOIL STERILANTS	CHLOROPICRIN	76-06-2	298
	ZR3.2		DAZOMET	533-74-4	146
	ZR3.2		1,3-DICHLOROPROPENE	542-75-6	675
	ZR3.2		METAM-SODIUM	137-42-8	20
	ZR3.2		OTHER SOIL STERILANTS		
Rodenticides	ZR4				
	ZR4.1	RODENTICIDES	BRODIFACOUM	56073-10-0	370
	ZR4.1		BROMADIOLONE	28772-56-7	371
	ZR4.1		CHLORALOSE	15879-93-3	249
	ZR4.1		CHLOROPHACINONE	3691-35-8	208
	ZR4.1		COUMATETRALYL	5836-29-3	189
	ZR4.1		DIFENACOUM	56073-07-5	514
	ZR4.1		DIFETHIALONE	104653-34-1	549
	ZR4.1		FLOCOUMAFEN	90035-08-8	453
	ZR4.1		WARFARIN	81-81-2	70
	ZR4.1		OTHER RODENTICIDES		
All other plant protection products	ZR5				
	ZR5.1	DISINFECTANTS	OTHER DISINFECTANTS		
	ZR5.2	OTHER PLANT PROTECTION PRODUCTS	OTHER PPP		

(1) Chemical Abstracts Service Registry Numbers.
(2) Collaborative International Pesticides Analytical Council.

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Ecodesign requirements for energy-related products (recast) ***I

P6_TA(2009)0319

European Parliament legislative resolution of 24 April 2009 on the proposal for a directive of the European Parliament and of the Council establishing a framework for the setting of ecodesign requirements for energy related products (recast) (COM(2008)0399 – C6-0277/2008 – 2008/0151(COD))

(2010/C 184 E/79)

(Codecision procedure – recast)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0399),

— having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0277/2008),

— having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts [1],

— having regard to the letter of 9 October 2008 from the Committee on Legal Affairs to the Committee on the Environment, Public Health and Food Safety in accordance with Rule 80a(3) of its Rules of Procedure,

— having regard to Rules 80a and 51 of its Rules of Procedure,

— having regard to the report of the Committee on the Environment, Public Health and Food Safety and the opinion of the Committee on Industry, Research and Energy (A6-0096/2009),

A. whereas, according to the Consultative Working Party of the Legal Services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance,

1. Approves the Commission proposal as adapted to the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission and as amended below;

2. Takes note of the Commission declaration annexed hereto;

3. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

4. Instructs its President to forward its position to the Council and the Commission.

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[1] OJ C 77, 28.3.2002, p. 1.

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P6_TC1-COD(2008)0151

Position of the European Parliament adopted at first reading on 24 April 2009 with a view to the adoption of Directive 2009/…/EC of the European Parliament and of the Council establishing a framework for the setting of ecodesign requirements for energy-related products (recast)

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Directive 2009/125/EC.)

ANNEX

Commission Declaration

'The Commission declares that adoption of the proposed extension of the Directive of the European Parliament and of the Council establishing a framework for the setting of eco-design requirements for energy-related products will not affect the implementation of the work programme currently established.

Moreover, the Commission will take due account of the experience gained under the Directive when establishing the work programme and proposing new implementing measures under the recast Directive. In line with Article 15(2)(c) of the Directive and the principles of better regulation, the Commission will in particular strive to ensure that overall consistency in the EU legislation on products is maintained.

In addition, the Commission will, when assessing the appropriateness of extending the scope of the Directive to non energy related products according to Article 21, consider the need for adapting the methodology for identifying and addressing significant environmental parameters for such products.'

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Harmonised conditions for the marketing of construction products ***I

P6_TA(2009)0320

European Parliament legislative resolution of 24 April 2009 on the proposal for a regulation of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products (COM(2008)0311 – C6-0203/2008 – 2008/0098(COD))

(2010/C 184 E/80)

(Codecision procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0311),

— having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0203/2008),

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinion of the Committee on Industry, Research and Energy (A6-0068/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and the Commission.

P6_TC1-COD(2008)0098

Position of the European Parliament adopted at first reading on 24 April 2009 with a view to the adoption of Regulation *(EC) No …/2009* of the European Parliament and of the Council laying down harmonised conditions for the marketing of ‖ construction products

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission ‖,

Having regard to the opinion of the European Economic and Social Committee [1],

Having regard to the opinion of the Committee of the Regions [2],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [3],

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[1] *Opinion of 25 February 2009 (not yet published in the OJ).*
[2] OJ C
[3] *Position of the European Parliament of 24 April 2009.*

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Whereas:

(1) The rules of Member States require that construction works are designed and executed so as not to endanger the safety of persons, domestic animals and property ***nor damage the natural or man-made environment***.

(2) Those rules have a direct influence on the requirements of construction products. Those requirements are consequently reflected in national product standards, national technical approvals and other national technical specifications and provisions related to construction products. By their disparity, those requirements hinder trade within the Community.

(3) Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products [1], aimed at the removal of technical barriers to trade in the field of construction products, in order to enhance their free movement in the internal market.

(4) In order to achieve that objective, Directive 89/106/EEC provided for the establishment of harmonised standards for construction products and provided for the granting of European technical approvals.

(5) Directive 89/106/EEC should be replaced in order to simplify and clarify the existing framework, and improve the transparency and the effectiveness of the existing measures.

(6) It is necessary to provide for simplified procedures for drawing up declarations of performance in order to alleviate the financial burden of *small and medium-sized enterprises (*SMEs*)* and in particular of micro-enterprises.

(7) Regulation *(EC) No 765/2008* of the European Parliament and of the Council *of 9 July 2008* setting *out* the requirements for accreditation and market surveillance relating to the marketing of products *and repealing Regulation (EEC) No 339/93 [2]* and Decision *No 768/2008/EC* of *the European* Parliament and of the Council *of 9 July 2008* on a common framework for the marketing of products*, and repealing Council Decision 93/465/EEC [3]* provide for a horizontal legal framework for the marketing of products in the internal market. Therefore this Regulation should take account of that legal framework.

(8) Products made on the site of construction works should not be considered to fall within the scope of the concept of the supply of construction products on the Community market. Manufacturers incorporating their construction products in works should be allowed, but not obliged, to declare the performance of these products in accordance with this Regulation.

(9) The removal of technical barriers in the field of construction may only be achieved by the establishment of harmonised technical specifications for the purposes of assessing the performance of construction products.

(10) The performance of a construction product is not only defined in terms of technical capabilities and essential characteristics, but also in terms of the health and safety aspects related to the use of the product during its entire lifecycle.

(11) Those harmonised technical specifications should include testing, calculation and other means, defined within harmonised standards and European Assessment Documents (EAD) for assessing performance in relation to the essential characteristics of construction products.

(12) The methods used by the Member States in their requirements for works, as well as other national rules in relation to the essential characteristics of construction products, ***shall*** be in accordance with harmonised technical specifications.

(13) It is necessary to establish basic works requirements in order to provide the basis for the preparation of the mandates and *harmonised* standards and for the elaboration of the EADs for construction products.

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[1] *OJ* L 40, 11.2.1989, p.12. ‖
[2] *OJ L 218, 13.8.2008, p. 30.*
[3] *OJ L 218, 13.8.2008, p. 82.*

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(14) For the assessment of the sustainable use of resources and of the impact of building works on the environment, Environmental Product Declarations (EPD) should be used.

(15) Where appropriate, the use in harmonised standards of classes of performance in relation to the essential characteristics of construction products should be encouraged, so as to take account of different levels of basic works requirements for certain works as well as differences in climate, geology and geography and other conditions prevailing in the Member States. Where the Commission has not already established them, the European standardisation bodies should be entitled to establish such classes on the basis of a revised mandate.

(16) Where appropriate, performance levels in relation to the essential characteristics, to be fulfilled by construction products in Member States should be established in the *harmonised* technical specifications so as to take account of different levels of basic works requirements for certain works as well as of the differences in climate, geology and geography and other different conditions prevailing in the Member States.

(17) The European Committee for Standardization (CEN) and the European Committee for Electrotechnical Standardization (*Cenelec*) are *recognised* as the competent organisations for the adoption of *harmonised* standards in accordance with the general guidelines [1] for cooperation between the Commission and those two organisations signed on 28 March 2003.

(18) Those harmonised standards should provide the appropriate tools for the harmonised assessment of the performance in relation to the essential characteristics of construction products. Harmonised standards should be established on the basis of mandates adopted by the Commission, covering the relevant families of construction products, in accordance with Article 6 of Directive 98/34/EC *of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services* [2]. ***The Commission should take steps to increase the range of products covered by harmonised standards.***

(19) It is necessary for the representative bodies of the principal professions involved in the design, manufacture and deployment of construction products to participate in European technical bodies to ensure they operate in a fair and transparent way and to ensure market effectiveness.

(20) In order to ensure the comprehensibility of the information provided by the manufacturer, the declaration of performance should be drawn up in the official language, or one of the official languages, of the Member State in which the product is placed on the market. If a Member State has several official languages, the choice of the language used for the drawing up of the declaration of performance should be made with the recipient's agreement.

(21) The procedures under Directive 89/106/EEC for assessing performance in relation to the essential characteristics of construction products not covered by a harmonised standard should be simplified in order to make them more transparent and to reduce costs to manufacturers of construction products.

(22) In order to allow manufacturers and importers of construction products to draw up a declaration of performance for construction products which are ***not fully covered or*** not covered by a harmonised standard it is necessary to provide for a European Technical Assessment.

I

(23) Manufacturers and importers of construction products should be allowed to request European Technical Assessments to be carried out for their products on the basis of the guidelines for European technical approval established under Directive 89/106/EEC. Therefore, the continuing validity of these guidelines as EADs should be ensured.

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[1] *OJ C 91, 16.4.2003, p. 7.*
[2] *OJ L 204, 21.7.1998, p. 37.*

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(24) The establishment of ▌EADs and the issuing of European Technical Assessments should be entrusted to Technical Assessment Bodies (*TABs*) designated by Member States. In order to ensure that TABs have necessary competence for carrying out those tasks, the requirements for their designation should be set out at Community level. Therefore it is also necessary to provide for periodical evaluations of TABs by TABs from other Member States.

(25) ‖ TABs should establish an organisation to coordinate ***and ensure the transparency of*** procedures for the establishment of ▌EADs and for *the* issuing of ‖ European Technical Assessments. ***That organisation should ensure, in particular, that manufacturers are properly informed and, if necessary, that the working groups set up by the tabs organise a hearing with an independent scientific expert and/or a professional organisation nominated by the manufacturer.***

(26) Among the essential characteristics, characteristics for which the minimum requirements in terms of levels or classes of performance are determined by the Commission under the appropriate committee procedure, and characteristics which apply independently of where the construction product is marketed should be distinguished.

(27) The placing on the market of construction products which are covered by a harmonised standard or for which a European Technical Assessment has been issued should be accompanied by a declaration of performance in relation to the essential characteristics of the product in accordance with the relevant harmonised technical specifications.

▌

(28) It is necessary to provide for simplified procedures for drawing up declarations of performance in order to alleviate the financial burden of SMEs and in particular of micro-enterprises.

(29) In order to ensure that the declaration of performance is accurate and reliable, the performance of the construction product should be assessed and the production in the factory should be controlled in accordance with an appropriate system of assessment and verification of constancy of performance of the construction product.

(30) Given the specificity of construction products and the particular focus of the system for their assessment, the procedures for ‖ conformity assessment *provided for* in *Decision No 768/2008/EC*, and the modules set out in that Decision, are not appropriate for those products. Therefore, specific methods should be established for the assessment and verification of constancy of performance in relation to the essential characteristics of construction products.

(31) Due to the difference in the meaning of the CE marking for construction products, when compared to the general principles set out in *Regulation (EC) No 765/2008*, specific provisions should be put in place to ensure the clarity of the obligation to affix the CE marking to construction products and the consequences of that affixing.

(32) By affixing or having affixed the CE marking to *a* construction product, the manufacturer***, authorised representative or importer*** should take responsibility for the conformity of that product with its declared performance.

(33) The CE marking should be affixed to all construction products, for which the manufacturer has drawn up a declaration of performance in accordance with this Regulation. ▌

(34) The CE marking should be the only marking ***of*** conformity of the construction product with the declared performance and with applicable requirements ***relating to Community harmonisation legislation. However, other markings may be used, provided that they help to improve the protection of users of construction products and are not covered by Community harmonisation legislation.***

(35) To avoid unnecessary testing of construction products, for which performance has already sufficiently been demonstrated by stable previous test results or other existing data, the manufacturer should be allowed, under conditions set up in the harmonised technical specifications or in a Commission Decision, to declare a certain level or class of performance without testing or without further testing.

(36) To avoid duplicating tests already carried out, a manufacturer of a construction product should be allowed to use the test results obtained by a third party.

(37) To decrease the cost of placing products on the market for micro-enterprises, it is necessary to provide for simplified procedures for assessment and verification of constancy of performance, when the products in question do not imply significant safety concerns.

(38) In order to allow effective market surveillance and to ensure a high level of consumer protection, it is important that simplified procedures for declaring a certain level or class of performance without testing or without further testing do not apply to importers who place a product on the market under their own name or trademark or modify a construction product already placed on the market in such a way that conformity with the declared performance may be affected. This concerns the use of stable previous test results or other existing data and the use of results of tests obtained by third parties. It also concerns the simplified procedure applying to micro-enterprises.

(39) For individually designed and manufactured construction products the manufacturer should be allowed to use simplified procedures for assessment and verification of constancy of performance, where the compliance of the product placed on the market with the applicable regulatory provisions can be demonstrated.

(40) It is important to ensure the accessibility of national technical rules, so that enterprises, and in particular SMEs, can gather reliable and precise information about the law in force in the Member State where they intend to market their products. Product Contact Points established by ‖ Regulation (EC) *No 764/2008* of the European Parliament and of the Council of *9 july 2008* laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision *No* 3052/95/EC [1] should therefore provide information also on rules applicable to the incorporation, assembling or installation of a specific type of construction product. ***They should also be able to provide to any manufacturer all information concerning the available appeals procedures where the conditions of access for one or more of the manufacturer's products to the CE marking are contested, in particular the appropriate appeals procedures against decisions taken following the assessment.***

(41) For the purposes of ensuring an equivalent and consistent enforcement of Community harmonisation legislation, effective market surveillance should be operated by the Member States. Regulation (EC) *No 765/2008* ‖ provides the basic conditions for the functioning of such market surveillance.

(42) The responsibility of Member States for safety, health and other matters covered by the basic works requirements on their territory should be *recognised* in a safeguard clause providing for appropriate protective measures.

(43) Since it is necessary to ensure throughout the Community a uniform level of performance of bodies carrying out assessment and verification of constancy of performance of construction products and since all such bodies should perform their functions to the same level and under conditions of fair competition, requirements should be set for performance assessment bodies seeking to be notified for the purposes of this Regulation. Provisions should also be made for the availability of adequate information about such bodies and for their monitoring.

[1] *OJ L 218, 13.8.2008, p. 21.*

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(44) In order to ensure a coherent level of quality in assessment and verification of constancy of performance of construction products, it is also necessary to establish requirements applicable to the authorities responsible for notifying the bodies carrying out these tasks to the Commission and the other Member States.

(45) Since the *objective* of *this Regulation*, namely *the achievement of* the proper functioning of the *internal market in* construction products by means of harmonised technical specifications for expressing the performance of construction products, cannot be sufficiently achieved by the Member States and can therefore, by reason of *its* scale and effects, 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*.

(46) 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].

(47) In particular, the Commission should be empowered to establish conditions under which the declaration of performance may be available on a web site, to determine the period during which manufacturers, importers and distributors should keep the technical documentation and the declaration of performance available, to establish classes of performance in relation to the essential characteristics of construction products, to establish the system of assessment of performance and verification of constancy of the declared performance to be applied to a given construction product or family of construction products, to establish the format of the European Technical Assessment, to establish procedures for carrying out the evaluation of TABs and to amend *Annexes I to VI*. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, inter alia by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(48) Existing mandates for the setting of harmonised European standards should be taken into account. CEN should devise standards to clarify Basic Works Requirement No 7 entitled 'Sustainable use of natural resources'.

(49) ***Basic Works Requirement No 7 should take account of the recyclability of construction works, their materials and parts after demolition, the durability of construction works and the use of environmentally compatible raw and secondary materials in construction works.***

(50) Since a period of time is required to ensure that the framework for the proper functioning of this Regulation is in place, its application should be deferred, with the exception of the provisions concerning the designation of TABs, notifying authorities and notified bodies, the establishment of an organisation of TABs and the establishment of the Standing Committee.

(51) The Commission and the Member States should, in collaboration with stakeholders, launch information campaigns to inform the construction sector, particularly economic operators and users, regarding the establishment of a common technical language, the distribution of responsibilities between the individual economic operators, the affixing of the CE marking to construction products, the revision of the basic works requirements and the systems of assessment and verification of constancy of performance.

[1] OJ L 184, 17.7.1999, p. 23. ‖

(52) The Commission should, within one year of the entry into force of this Regulation, submit to the European Parliament and the Council a proposal for the revision of the European standardisation system to increase the transparency of the system as a whole, above all to ensure balanced participation of stakeholders in the technical committees of European standardisation bodies and to prevent conflicts of interest among them. At the same time, measures should be taken to speed up the adoption of European standards, as well as their translation into all official languages of the European Union, and especially the translation of guidelines for smes,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

General Provisions

Article 1

Subject matter

This Regulation lays down ***conditions for the marketing of construction products by establishing*** rules on how to express the performance of construction products in relation to their essential characteristics and on the use of CE marking on those products.

Article 2

Definitions

For the purposes of this Regulation the following definitions shall apply:

1. 'construction product' means any product or kit which is produced and placed on the market for incorporation in a permanent manner in construction works or parts thereof so that the dismantling of the product decreases the performance of the construction works and the dismantling or replacement of the product constitute construction operations;

2. 'products which are not covered or not fully covered by a harmonised standard' means any construction product whose essential characteristics and performance cannot be entirely evaluated according to an existing harmonised standard, because inter alia:

(a) the product does not fall within the scope of any existing harmonised standard;

(b) the product does not meet one or more definitions of characteristics included in any such harmonised standard;

(c) one or more essential characteristics of the product are not adequately covered by any such harmonised standard; or

(d) one or more test methods necessary to assess the performance of the product are missing or not applicable;

3. 'works' means buildings and civil engineering works;

4. 'essential characteristics' means those characteristics of the construction product which relate to the basic works requirements ***set out in Annex I; among those essential characteristics, laid down in the harmonised technical specifications, a distinction shall be made between:***

(a) characteristics which exist where the manufacturer or importer intends to place the product on the market; and

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(b) characteristics which must be notified irrespective of where the product is placed on the market and for which the minimum requirements in terms of levels or classes of performance are determined for each family of products laid down in Table 1 of Annex V, and by type of application, by the European Standardisation Bodies, with the agreement of the Commission and the Standing Committee on Construction referred to in Article 51(1).

When appropriate, for each family of construction products laid down in Table 1 of Annex V, the characteristics referred to in point (b) of this point shall be established by the Commission in accordance with the regulatory procedure with scrutiny referred to in Article 51(2); they shall relate inter alia to issues of general interest such as the environment, safety and evaluation of possible health hazards throughout the entire lifecycle of the construction product;

5. 'performance of a construction product' means performance with reference to essential individual characteristics expressed through value, level, class or threshold, or in a description;

6. 'threshold level' means a minimum performance value of a product. A threshold level can be of a technical or regulatory nature, and may be applicable to a single characteristic or comprise a set of characteristics;

7. 'class' means a range for the performance of a product delimited by a minimum and a maximum performance value. A class may be applicable to a single characteristic or comprise a set of characteristics;

8. 'harmonised technical specifications' means harmonised standards and European Assessment Documents;

9. 'European Technical Assessment' means an assessment based on a European Assessment Document, and reserved for construction products which are not or not fully covered by a harmonised standard;

10. 'harmonised standard' means a standard adopted by one of the European standardisation bodies listed in Annex I to Directive 98/34/EC, on the basis of a request issued by the Commission, in accordance with Article 6 of that Directive;

11. 'European Assessment Document' means a document ***which is*** adopted by the organisation of Technical Assessment Bodies ***for the purpose of issuing a European Technical Assessment and which concerns a product not covered or not fully covered by a harmonised standard***;

12. 'economic operators' means the manufacturer, the importer, distributor and the authorised representative;

13. 'manufacturer' means any natural or legal person who manufactures a construction product or who has such a product manufactured, ***and markets that product*** under his name or trademark;

14. 'importer' means any natural or legal person established within the Community, who places a construction product from a third country on the Community market;

15. 'distributor' means any natural or legal person in the supply chain, other than the manufacturer or the importer, who makes a construction product available on the market;

16. 'authorised representative' means any natural or legal person established within the Community who has received mandate from the manufacturer to act on his behalf for specific tasks;

17. 'making available on the market' means any supply of a construction product for distribution or use on the Community market in the course of a commercial activity, whether in return for payment or free of charge; ***this excludes:***

(a) any product which users transform on site for their own use in the context of their professional activity;

(b) any product manufactured on and/or off site and incorporated by the manufacturer into a work without being placed on the market;

18. 'placing on the market' means the first making available of a construction product on the Community market;

19. 'withdrawal' means any measure aimed at preventing the making available on the market of a construction product in the supply chain;

20. 'recall' means any measure aimed at achieving the return of a construction product that has already been made available on the market;

21. 'accreditation' has the meaning assigned to it by *Regulation (EC) No 765/2008*;

22. 'user' means any natural or legal person responsible for the safe incorporation of a construction product into construction works;

23. 'Technical Assessment Body' means a body designated by a Member State to participate in the development of European Assessment Documents and to assess the performance of the essential characteristics of construction products not or not fully covered by a harmonised standard in the product areas listed in Annex V;

24. 'product-type' means the performance of a construction product produced using a given combination of raw materials or other elements in a specific production process;

25. 'factory production control' means the permanent internal control of ▌production ***carried out by the manufacturer ensuring that the production of the construction product and the product produced are in conformity with the technical specifications***;

26. 'micro-enterprise' means a micro-enterprise as defined in ‖ Commission Recommendation ***2003/361/ec*** of 6 May 2003 concerning the definition of micro, small and *medium-sized* enterprises [1];

27. 'life cycle' means the consecutive and interlinked stages of a product life, from raw material acquisition or generation from natural resources to final disposal;

28. 'kit' means a set of at least two separate components that need to be put together to be installed permanently in the works in order to become an assembled system.

[1] OJ L 124, 20.5.2003, p. 36.

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Article 3

Basic works requirements and essential product characteristics

‖ The essential characteristics of construction products shall be laid down in harmonised technical specifications in relation to the basic works requirements which are set out in Annex I.

CHAPTER II

Declaration of performance and CE marking

Article 4

Conditions for drawing up declaration of performance

1. The manufacturer or the importer when placing a construction product on the market shall make a declaration of performance if ***one of*** the following conditions ***is*** met:

(a) the construction product is covered by a harmonised standard ▌;

(b) ***a European Technical Assessment has been issued for the construction product***.

▌

2. Member States shall presume the declaration of performance drawn up by the manufacturer or the importer to be accurate and reliable.

Article 5

Content of the declaration of performance

1. The declaration of performance shall express the performance of construction products in relation to the ***two types of*** essential ***characteristic set out in Article 2(4)*** of those products in accordance with the relevant harmonised technical specifications.

2. The declaration of performance shall contain the following information:

(a) the product-type for which it has been drawn up;

(b) the ***full*** list of the essential characteristics ***given in the harmonised technical specification for*** the construction product***, and for each essential characteristic either the declared values, classes or levels of performance or 'no performance determined'***;

(c) the reference number ***and title*** of the harmonised standard, the European Assessment Document or the Specific Technical Documentation, which has been used for the assessment of each essential characteristic;

(d) the generic intended use set out in the harmonised technical specification;

(e) details of the procedure used to assess and verify the constancy of performance; if the applicable system of assessment of performance has been replaced by the simplified procedure referred to in Article 27 or 28, the manufacturer shall make the following declaration: 'STD - Simplified procedure';

(f) information about hazardous substances in the construction product, as referred to in Annex IV, and details of hazardous substances to be declared pursuant to other Community harmonisation rules.

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Article 6

Form of the declaration of performance

1. A copy of the declaration of performance ***of each product which is made available on the market*** shall be supplied ***in paper form or sent by electronic means***.

However, where a batch of the same product is delivered to a single user, it may be accompanied by one copy of the declaration of performance.

2. ***The producer shall send in paper form*** the copy of the declaration of performance***, if*** the recipient ***requests it***.

3. By way of derogation from paragraphs 1 and 2, the content of the declaration of performance may be made available on a web site in accordance with conditions established by the Commission.

Those measures, designed to amend non-essential elements of this Regulation ‖ by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(2).

4. The declaration of performances shall be drawn up using the model set out in Annex III ***in the official language, or one of the official languages, of the Member State in which the product is placed on the market***.

Article 7

Use of CE marking

1. The CE marking shall be affixed ▌ to those construction products for which the manufacturer has drawn up a declaration of performance in accordance with Articles 4, 5 and 6. ***In the absence of a declaration of performance, the CE marking can not be affixed.***

If a declaration of performance has not been drawn up by the manufacturer in accordance with Articles 4, 5 and 6, the CE marking may not be affixed to construction products.

By affixing or having affixed the CE marking the manufacturer***, or, where applicable, the importer,*** shall take responsibility for the conformity of the construction product with the declared performance.

2. The CE marking shall be the only marking which attests conformity of the construction product with the declared performance.

Member States shall not introduce national measures or shall withdraw any references to a conformity marking other than the CE marking.

3. Member States shall not prohibit or impede, within their territory or under their responsibility, the making available on the market or the use of construction products bearing the CE marking, when the requirements for this use in that Member State correspond to the declared performance.

4. Member States shall ensure that the use of construction products bearing the CE marking shall not be impeded by rules or conditions imposed by public bodies or private bodies acting as a public undertaking, or acting as a public body on the basis of a monopoly position or under a public mandate, when the requirements for this use in that Member State correspond to the declared performance.

Article 8

Rules and conditions for the affixing of CE marking

1. The CE marking shall be subjected to the general principles set out in *Article 30* of *Regulation (EC) No 765/2008*.

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2. The CE marking shall be affixed visibly, legibly and indelibly to the construction product**,** its data plate**,** the packaging or ▌ the accompanying documents.

3. The CE marking shall be followed by ▌ the name or the identifying mark of the producer ***and*** the unique identification code of the construction product ▌.

4. The CE marking shall be affixed before the construction product is placed on the market. It may be followed by a pictogram or any other mark indicating a special risk or use.

5. Member States shall build upon existing mechanisms to ensure correct application of the regime governing the CE marking, and shall take appropriate action in the event of improper use of the marking. Member States shall also provide for penalties for infringements, which may include criminal sanctions for serious infringements. Those penalties shall be proportional to the seriousness of the infringement.

Article 9

Product Contact Points

Each Member State shall ensure that the Product Contact Points established in accordance with *Regulation (EC) No 764/2008* also provide ‖ information***, using transparent and easily understandable terms,*** on:

(a) any technical rules or regulatory provisions applicable to the incorporation, assembling or installation of a specific type of construction product in the territory of that Member State;

(b) if applicable, the appeals possibilities available to all manufacturers contesting the conditions of access for one or more of their products to the CE marking, in particular the appropriate appeals procedures against decisions taken following the assessment.

The Product Contact Points shall be independent of any body or organisation involved in the procedure for obtaining the CE marking. Guidelines on the role and responsibility of contact points shall be drawn up by the Commission and adopted by the Standing Committee on Construction referred to in Article 51(1).

CHAPTER III

Obligations of Economic Operators

Article 10

Obligations of manufacturers

1. Manufacturers shall draw up the required technical documentation describing all the relevant elements related to the applicable attestation of declared performance.

Manufacturers shall draw up the declaration of performance in accordance with Articles 4, 5 and 6, and affix CE marking in accordance with Articles 7 and 8.

2. Manufacturers shall keep the technical documentation and the declaration of performance for the period determined by the Commission for each family of construction products on the basis of expected life and the role of the construction product in the works.

Those measures, designed to amend non-essential elements of this Regulation ‖ by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(2).

3. Manufacturers shall ensure that procedures are in place in order for series production to maintain the declared performance. Changes in the product-type and changes in the applicable harmonised technical specifications shall be adequately taken into account.

▌

4. Manufacturers shall ensure that their construction products bear a type, batch or serial number or any other element allowing their identification, or ▌that the required information is provided on the packaging or in a document accompanying the construction product.

5. Manufacturers shall indicate their name, registered trade name or registered trade mark and the address at which they can be contacted on the construction product or ▌its packaging or in a document accompanying the construction product.

6. Manufacturers who consider or have reason to believe that a construction product which they have placed on the market is not in conformity with the declared performance, shall immediately take the necessary corrective measures to bring that construction product in conformity or withdraw it from the market and recall it from end users, if appropriate. They shall immediately inform the national authorities of the Member States where they made the construction product available to this effect, giving details, in particular, of the non-compliance and of the corrective measures taken.

7. Manufacturers shall, upon the basis of a reasoned request of the competent national authorities, provide them with all the information and documentation necessary to demonstrate the conformity of the construction product with the declared performance. They shall cooperate with those authorities, at the request of the latter, on any action to avoid the risks posed by construction products which they have placed on the market.

Article 11

Authorised representatives

1. Manufacturers may appoint, by a written mandate, an authorised representative.

The drawing up of technical documentation may not form part of the authorised representative's mandate.

2. Where a manufacturer has appointed an authorised representative, the latter shall at least do the following:

(a) keep the declaration of performance and the technical documentation at the disposal of national surveillance authorities for the period referred to Article 10(2);

(b) on request from the competent national authorities, provide them with all the information and documentation necessary to demonstrate the conformity of the product with the declared performance;

(c) co-operate with the competent authorities, at the request of the latter, on any action to avoid the risks posed by construction products covered by their mandate.

Article 12

Obligations of importers

1. When placing a construction product on the Community market importers shall act with due care in relation to the requirements of this Regulation.

2. Before placing a construction product on the market importers shall ensure that the assessment and the verification of constancy of the declared performance has been carried out by the manufacturer. They shall ensure that the manufacturer has drawn up the technical documentation referred to in the first subparagraph of Article 10(1). They shall draw up the declaration of performance in accordance with Articles 4, 5 and 6. They shall also ensure that the product bears the required CE marking, is accompanied by the required documents and that the manufacturer has respected the requirements set out in *Article* 10(4) and ‖ (5).

Where an importer considers or has reason to believe that the construction product is not in conformity with the declaration of performance, he may not place the construction product on the market until it conforms to the accompanying declaration of performance or until declaration of performance is corrected.

3. Importers shall indicate their name, registered trade name or registered trade mark and the address at which they can be contacted on the construction product or, where not possible, on its packaging or in a document accompanying the product.

4. Importers shall ensure that, while a construction product is under their responsibility, storage or transport conditions do not jeopardise its conformity with the declared performance.

5. Importers who consider or have reason to believe that a construction product which they have placed on the market is not in conformity with the declaration of performance, shall immediately take the necessary corrective measures to bring that construction product in conformity or withdraw it from the market and recall it from end users, if appropriate. They shall immediately inform the national authorities of the Member States where they made the construction product available to this effect, giving details, in particular, of the non-compliance and of the corrective measures taken.

6. Importers shall, for the period referred to in Article 10(2), keep a copy of the declaration of performance at the disposal of the market surveillance authorities and ensure that the technical documentation can be made available to those authorities, upon request.

7. Importers shall, on the basis of a reasoned request from the competent national authorities, provide them with all the information and documentation necessary to demonstrate the conformity of the construction product with the declared performance. They shall cooperate with those authorities, at the request of the latter, on any action to avoid the risks posed by construction products which they have placed on the market.

Article 13

Obligations of distributors

1. When making a product available on the market distributors shall act with due care in relation to the requirements of this Regulation.

2. Before making a construction product available on the market distributors shall ensure that the product bears the required CE marking and is accompanied by the documents required under this Regulation and by instructions and safety information in a language easily understood by users in the Member State where the product is made available on the market and that the manufacturer and the importer have complied with the requirements set out in Article 10(4), Article 10(5) and Article 12(3) respectively.

Where a distributor considers or has reason to believe that a construction product is not in conformity with the declaration of performance, he may make the product available on the market only after it conforms to the accompanying declaration of performance or until declaration of performance is corrected. The distributor shall inform the manufacturer or the importer to this effect as well as the market surveillance authorities, when the product presents a risk.

3. A distributor shall ensure that, while a construction product is under his responsibility, storage or transport conditions do not jeopardise its conformity with the declared performance.

4. Distributors who consider or have reason to believe that a construction product which they have made available on the market is not in conformity with the declaration of performance, shall immediately make sure that the necessary corrective measures to bring that product in conformity or withdraw it from the market and recall it from end users are taken, if appropriate. They shall immediately inform the national authorities of the Member States where they made the product available to this effect, giving details, in particular, of the non-compliance and of the corrective measures taken.

5. Distributors shall, on the basis of a reasoned request from the competent national authorities, provide them with all the information and documentation necessary to demonstrate the conformity of the construction product with the declared performance. They shall cooperate with those authorities, at the request of the latter, on any action to avoid the risks posed by construction products which they have made available on the market.

Article 14

Cases in which obligations of manufacturers apply to importers and distributors

An importer or distributor shall be considered a manufacturer for the purposes of this Regulation, when he places a product on the market under his name or trademark or modifies a construction product already placed on the market in such a way that conformity with the declared performance, may be affected and consequently he shall be subject to the obligations of the manufacturer under Article 10.

Article 15

Identification of economic operators

Economic operators shall be able, on request, to identify the following to the market surveillance authorities, for a period referred to in Article 10(2):

(a) any economic operator who has supplied them with a product;

(b) any economic operator to whom they have supplied a product.

CHAPTER IV

Harmonised Technical Specifications

Article 16

Harmonised standards

1. Harmonised standards shall be established by the European standardisation bodies listed in Annex I to Directive 98/34/EC on the basis of ***requests submitted*** by the Commission in accordance with ***the first indent of Article 6(3)*** of that Directive ***and by the Standing Committee in accordance with Article 5(1) of that Directive***.

The European standardisation bodies shall ensure that no category of actors in any one sector comprises more than 25 % of the participants in a technical committee or working group. If one or more categories of actors cannot take part in a working group, or chooses not to, this requirement may be reassessed with the agreement of all participants.

2. Harmonised standards shall provide the methods and ‖ criteria for assessing the performance ***and durability*** of ‖ construction products in relation to their essential characteristics.

Harmonised standards shall provide the generic intended use of the products if applicable; they shall also provide the characteristics, the minimum requirements for which in terms of levels or classes of performance shall be determined by the Commission, acting in accordance with the regulatory procedure with scrutiny referred to in Article 51(2), for each family of products laid down in Table 1 of Annex V, and by type of application.

Harmonised standards shall, where appropriate, provide methods less onerous than testing for assessing the performance of the construction products in relation to their essential characteristics.

3. The European standardisation bodies shall determine in harmonised standards the applicable factory production control, which shall take into account the specific conditions of the manufacturing process of the construction product concerned.

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4. The Commission shall assess the conformity of harmonised standards established by the European standardisation bodies with the relevant mandate.

The Commission shall publish in the *Official Journal of the European Union* the list of references of harmonised standards which are in conformity with the relevant mandates, and set the date of applicability of those standards.

The Commission shall publish any updates to that list.

Article 17

Formal objection against harmonised standards

1. When a Member State or the Commission considers that a harmonised standard does not entirely satisfy the requirements set out in the relevant mandate, the Commission or the Member State concerned shall bring the matter before the *Standing* Committee *established* by *Article 5(1)* of Directive 98/34/EC, giving its arguments. The Committee shall, after having consulted with the relevant European standardisation bodies, deliver its opinion without delay.

2. In the light of the Committee's opinion, the Commission shall decide to publish, not to publish, to publish with restriction, to maintain, to maintain with restriction or to withdraw the references to the harmonised standard concerned in the *Official Journal of the European Union*.

3. The Commission shall inform the European standardisation body concerned and, if necessary, request the revision of the harmonised standards concerned.

4. When a harmonised standard has been approved by a European standardisation body, the Standing Committee on Construction referred to in Article 51(1) may take responsibility for all verifications ensuring that the standard meets the requirements laid down in the mandate given by the Commission or a Member State.

Article 18 ‖

Levels or classes of performance

1. The Commission may establish classes of performance in relation to the essential characteristics of construction products.

Those measures, designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(2).

2. Where classes of performance in relation to the essential characteristics of construction products are not established by the Commission, they may be established by the European standardisation bodies in harmonised standards.

Where the Commission has established classes of performance in relation to the essential characteristics of construction products, the European standardisation bodies shall use those classes in harmonised standards***, on the basis of a revised mandate***.

3. ***Where provided for in the relevant mandate,*** the European standardisation bodies ***shall establish in harmonised standards minimum performance levels in relation to essential characteristics and, where appropriate, intended end uses to be fulfilled by construction products in Member States***.

4. The Commission may establish conditions under which a construction product shall be deemed to satisfy a certain level or class of performance without testing or without further testing.

Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(2).

Where such conditions are not established by the Commission, they may be established by the European standardisation bodies in harmonised standards, on the basis of a revised mandate.

5. Member States may determine the levels or classes of performance ***to be complied with by construction products*** in relation to the essential characteristics of construction products only in accordance with the classification systems established by the European standardisation bodies in harmonised standards, or by the Commission.

Article 19 ‖

Assessment and verification of constancy of performance

1. Assessment and verification of constancy of the declared performance of construction products in relation to their essential characteristics shall be carried out in accordance with one of the systems set out in *Annex VI*.

2. The Commission shall establish which system is applicable to a given construction product or family of construction products according to the following criteria:

(a) the importance of the part played by the product with respect to the basic works requirements;

(b) the nature of the product;

(c) the effect of the variability of the essential characteristics of construction product during the service life of the product;

(d) the susceptibility to defects in the product manufacture.

In each case, the Commission shall choose the least onerous system consistent with ***the safe incorporation of the construction product into construction works***.

Those measures, designed to amend non-essential elements of this Regulation ‖ by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(2).

3. The system thus determined ***and information concerning its envisaged generic use*** shall be indicated in the mandates for harmonised standards and in the harmonised technical specifications.

Article 20 ‖

European Assessment Document

1. ***For construction products not or not fully covered by a harmonised standard,*** the European Assessment Document (EAD) shall be adopted by the organisation of Technical Assessment Bodies referred to in Article 25(1) following a request for a European Technical Assessment by a manufacturer or an importer, in accordance with the procedure set out in Annex II.

2. The organisation of Technical Assessment Bodies referred to in Article 25(1) shall establish in the EAD the methods and the criteria for assessing the performance in relation to those essential characteristics of the construction product, which are related to the use intended by the manufacturer.

3. The organisation of technical assessment bodies referred to in Article 25(1) shall determine in the EAD the specific factory production control to be applied, taking into account the particular conditions of the manufacturing process of the construction product concerned.

4. Where the Commission considers that a sufficient level of technical and scientific expertise concerning an EAD has been achieved, it shall give a mandate to the European standardisation bodies to draw up a harmonised standard on the basis of that EAD.

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Article 21 ‖

European Technical Assessment

1. ***For construction products which are not or not fully covered by a harmonised standard,*** the European Technical Assessment (ETA) shall be issued by a Technical Assessment Body, for any construction product, at the request of a manufacturer or importer on the basis of a EAD in accordance with the procedure set out in Annex II.

2. The Commission shall establish the format of the ETA.

Those measures, designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(2).

CHAPTER V

Technical Assessment Bodies

Article 22 ‖

Designation of Technical Assessment Bodies

1. Member States may designate Technical Assessment Bodies (TAB) for product areas listed in Table 1 of *Annex V*.

Member States which have designated a TAB shall communicate to the other Member States and the Commission the name, the address of that TAB and the product areas for which that TAB is designated.

2. The Commission shall make publicly available the list of TABs indicating the product areas for which they are designated.

The Commission shall make publicly available any updates to that list.

Article 23 ‖

Requirements for TABs

1. The TAB shall satisfy the requirements set out in Table 2 of *Annex V*.

2. Where a TAB no longer complies with the requirements referred to in paragraph 1, the Member State shall withdraw the designation of that TAB.

3. Member States shall inform the Commission and the other Member States of their national procedures for the assessment of TABs, of the monitoring of their activity, and of any changes to that information. The Commission shall make that information publicly available.

Article 24 ‖

Evaluation of TABs

1. The TABs shall verify whether other TABs fulfil the respective criteria set out in Table 2 of *Annex V*.

The evaluation shall be organised by the organisation referred to in Article 25(1) and shall take place once every four years, within the product areas listed in Table 1 of *Annex V*, for which the TABs have been designated.

2. The Commission shall establish ***transparent*** procedures for carrying out the evaluation, including appropriate ***and accessible*** appeals procedures against decisions taken as a result of the evaluation.

Those measures, designed to amend non-essential elements of this Regulation ‖ by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(2).

The evaluation of a TAB may not be carried out by a TAB from the same Member State.

3. The organisation referred to in Article 25(1) shall communicate the results of the evaluations of TABs to all Member States and the Commission.

The Commission shall, in cooperation with Member States, monitor the respect of the rules and the proper functioning of the evaluation of TABs.

Article 25 ‖

Co-ordination of TABs

1. The TABs shall establish an organisation for technical assessment, hereinafter 'organisation of TABs'.

2. The organisation of TABs shall carry out the following tasks:

(a) co-ordinate the application of the rules and procedures set out in Article 19 and Annex II, as well as provide the support needed to that end;

(b) inform the Commission twice a year of any question related to the preparation of EADs and of any aspects related to the interpretation of the rules and procedures set out in Article 19 and Annex II;

(c) adopt EADs;

(d) organise the evaluation of the TABs;

(e) ensure the co-ordination of the TABs;

(f) ensure equal treatment of tabs within the organisation of tabs;

(g) ensure that the procedures set out in Article 19 and Annex II are transparent, and that the manufacturer is consulted during those procedures.

3. The Commission may provide assistance to the organisation of TABs in carrying out the tasks referred to in point (e) of paragraph 2. The Commission may conclude a framework partnership agreement with the organisation of TABs to that end.

4. Member States shall ensure that the TABs contribute with financial and human resources to the organisation of TABs.

CHAPTER VI

SIMPLIFIED PROCEDURES

Article 26 ‖

Use of Specific Technical Documentation

1. When the manufacturer determines the product-type he may replace type-testing or type-calculation by a Specific Technical Documentation (STD) demonstrating that:

(a) for one or several essential characteristics of the construction product he places on the market, that product is deemed to achieve a certain level or class of performance without testing or calculation, or without further testing or calculation, in accordance with the conditions set out in the relevant harmonised technical specification or Commission decision;

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(b) the construction product he places on the market shares the product-type with another construction product, manufactured by another manufacturer and already tested in accordance with the relevant harmonised technical specification. When these conditions are fulfilled, the manufacturer is entitled to declare performance corresponding to all or part of the test results of this another product. ***The manufacturer may use the test results obtained by another manufacturer only after having obtained an authorisation of that manufacturer, who remains responsible for the accuracy, reliability and stability of those test results; or***

(c) the construction product he places on the market is a system made of components, which he assembles duly following precise instructions given by the provider of such a system or of a component thereof, who has already tested that system or that component for one or several of its essential characteristics in accordance with the relevant harmonised technical specification. When these conditions are fulfilled, the manufacturer is entitled to declare performance corresponding to all or part of the test results for the system or the component provided to him.

The manufacturer may use the test results obtained by another manufacturer ***or the system provider*** only after having obtained the authorisation of that manufacturer ***or system provider***, who remains responsible for the accuracy, reliability and stability of those test results. ***The manufacturer shall remain responsible for the product being in compliance with all declared performance in accordance with the relevant harmonised technical specification. The manufacturer shall ensure that the performance of the product is not adversely affected at a later stage of the manufacturing and assembly process.***

2. ***The STD shall be verified by a relevant certification body as referred to in Annex VI*** if the construction product, referred to in paragraph 1, belongs to a family of construction products for which the applicable system for assessment and verification of constancy of performance is ▌, as set out in *Annex VI,*

— ***system 1+ or 1 for products corresponding to Article 26(1)(a) (WT/WFT);***

— ***system 1+, 1 or 3 for products corresponding to Article 26(1)(b) (shared IT);***

— ***system 1+ or 1 for products corresponding to Article 26(1)(c) (cascading).***

3. This Article shall not apply to importers who place a product on the market under their own name or trademark or modify a construction product already placed on the market in such a way that conformity with the declared performance may be affected, within the meaning of Article 14.

Article 27 ‖

Use of Specific Technical Documentation by micro-enterprises *which manufacture construction products*

1. Micro-enterprises ***which manufacture construction products*** may replace the applicable system for assessment of the declared performance of construction product by a STD. The STD shall demonstrate the compliance of the construction product with the applicable requirements.

2. If a construction product, *referred to in paragraph 1,* belongs to a family of construction products for which the applicable system for assessment and verification of constancy of performance is *system 1+ or 1,* as set out in *Annex VI,* the STD shall be verified by a relevant certification body as referred to in *Annex VI.*

3. The Specific Technical Documentation shall ensure an equivalent level of health and safety for persons and for other issues of public interest. The manufacturer shall remain responsible for the compliance of the product with the characteristics stated in the declaration of performance. The manufacturer shall provide information on the intended end use of the product.

4. By … ([1]), the Commission shall draw up a report on the implementation of this Article considering inter alia whether its application could be extended to other undertakings, whether to adapt it to small series production, or whether to repeal it. The Commission shall submit this report to the European Parliament and the Council, together with legislative proposals as appropriate.

5. This Article shall not apply to importers who place a product on the market under their own name or trademark or modify a construction product already placed on the market in such a way that conformity with the declared performance may be affected, within the meaning of Article 14.

Article 28 ‖

Use of Specific Technical Documentation for individually manufactured products

1. For a construction product designed and manufactured in a non-industrialised production process in response to a specific order, and installed in a single identified work, the manufacturer may replace the applicable system for assessment of performance by ***an*** STD, demonstrating compliance of that product with the applicable requirements. ***The STD shall provide for an equivalent level of confidence and reliability of performance regarding the essential work requirements.***

2. If a construction product, *referred to in paragraph 1*, belongs to a family of construction products for which the applicable system for assessment and verification of constancy of performance is *system 1+ or 1*, as set out in *Annex VI*, the STD shall be verified by a relevant certification body as referred to in *Annex VI*.

CHAPTER VII

Notifying Authorities and Notified Bodies

Article 29 ‖

Notification

Member States shall notify the Commission and the other Member States of bodies authorised to carry out third-party tasks in the process of assessment and verification of constancy of performance under this Regulation.

Article 30 ‖

Notifying authorities

1. Member States shall designate a notifying authority that shall be responsible for setting up and carrying out the necessary procedures for the assessment and notification of the bodies to be authorised to carry out third party tasks in the process of assessment and verification of constancy of the declared performance for the purposes of this Regulation, and for the monitoring of notified bodies, including compliance with the provisions of Article 33.

2. Where notification is based on an accreditation certificate, Member States may decide that the assessment and monitoring referred to in paragraph 1 shall be carried out by their national accreditation bodies within the meaning of and in accordance with Regulation (EC) *No 765/2008*.

3. Where the notifying authority delegates, subcontracts or otherwise entrusts the assessment, notification or monitoring referred to in paragraph 1 to a body which is not a governmental entity, the delegated, or otherwise entrusted body shall be a legal entity and shall comply mutatis mutandis with the requirements laid down in *Article 33*. In addition, such body shall have arrangements to cover liabilities arising from its activities.

4. The notifying authority shall take full responsibility for the tasks performed by delegated or otherwise entrusted body.

([1]) ***5 years from the date of entry into force of this Regulation.***

5. The notifying authority shall verify that the conformity assessments are carried out appropriately, without imposing unnecessary burdens on undertakings and taking due account of the size of the undertakings, the specific nature of the construction sector and its structure, the degree of technological complexity of the product in question and the nature, volume and frequency of the manufacturing process.

Article 31 ‖

Requirements relating to notifying authorities

1. The notifying authority shall be established in such a way that no conflicts of interest with notified bodies occur.

2. The notifying authority shall be organised and operated so as to safeguard the objectivity and impartiality of its activities.

3. The notifying authority shall be organised in such a way that each decision relating to notification of a performance assessment body is taken by competent persons different from those who carried out the assessment.

4. The notifying authority shall not offer or provide any activities that notified bodies perform, or consultancy services on a commercial or competitive basis.

5. The notifying authority shall safeguard the confidentiality of the information obtained.

6. The notifying authority shall have a sufficient number of competent personnel at its disposal for the proper performance of its tasks.

Article 32 ‖

Information obligation for the notifying authorities

Member States shall inform the Commission and the other Member States of their national procedures for the assessment and notification of performance assessment bodies and the monitoring of notified bodies, and of any changes to that information.

The Commission shall make that information publicly available.

Article 33 ‖

Requirements for notified bodies

1. For the purposes of notification, a performance assessment body shall meet the requirements set out in paragraphs 2 to 11.

2. The performance assessment body shall be established under national law and have legal personality.

3. The performance assessment body shall be a third-party body independent from the organisation or the construction product it assesses.

A body belonging to a business association or professional federation representing undertakings involved in the design, manufacturing, provision, assembly, use or maintenance of construction products which it assesses, can on condition that its independence and the absence of any conflict of interest are demonstrated, be considered to be such a body.

4. The performance assessment body, its top level management and the personnel responsible for carrying out the third party tasks in the process of assessment and verification of constancy of the declared performance shall not be the designer, manufacturer, supplier, installer, purchaser, owner, user or maintainer of the construction products which they assess, nor the authorised representative of any of those parties. This shall not preclude the use of assessed products that are necessary for the operations of the notified body or the use of the products for personal purposes.

They shall not become directly involved in the design, manufacture or construction, the marketing, installation, use or maintenance of those construction products, nor represent the parties engaged in those activities. They shall not engage any activity that may conflict with their independence or judgement and integrity related to the activities for which they have been notified.

The notified body shall ensure that activities of its subsidiaries or subcontractors do not affect the confidentiality, objectivity and impartiality of its assessment and/or verification activities.

5. The notified body and its personnel shall carry out***, with complete transparency as regards the manufacturer,*** the third party tasks in the process of assessment and verification of constancy of performance, with the highest degree of professional integrity and requisite technical competence in the specific field and must be free from all pressures and inducements, particularly financial, which might influence their judgement or the results of their assessment and/or verification activities, especially from persons or groups of persons with an interest in the results of those activities.

6. The notified body shall be capable of carrying out all the third party tasks in the process of assessment and verification of constancy of performance assigned to such a body in accordance with *Annex VI* and for which it has been notified, whether those tasks are carried out by the notified body itself or on its behalf and under its responsibility.

At all times and for each system of assessment and verification of constancy of performance and for each kind or category of construction products, characteristics and tasks for which it is notified, the notified body shall have at its disposal the necessary:

(a) personnel with technical knowledge and sufficient and appropriate experience to perform the third party tasks in the process of assessment and verification of constancy of performance;

(b) description of procedures according to which the assessing of performance is carried out, ensuring the transparency and the ability of reproduction of these procedures. It shall have appropriate policy and procedures in place that distinguish between tasks carried out as notified body and any other activity;

(c) procedures to perform their activities taking into consideration the size, the sector, the structure of the undertakings, the degree of complexity of the product technology in question and the mass or serial nature of the production process.

It shall have the means necessary to perform the technical and administrative tasks connected with the activities for which it is notified in an appropriate manner and shall have access to all necessary equipment or facilities.

7. The personnel responsible for carrying out the activities, for which the body has been notified, shall have the following:

(a) sound technical and vocational training covering all the third party tasks in the process of assessment and verification of constancy of the declared performance of the relevant scope for which the body has been notified;

(b) satisfactory knowledge of the requirements of the assessments and verifications they carry out and adequate authority to carry out such operations;

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(c) appropriate knowledge and understanding of the applicable harmonised standards and of the relevant provisions of the Regulation;

(d) the ability required to draw up the certificates, records and reports to demonstrate that the assessments and the verifications have been carried out.

8. The impartiality of the notified body, its top level management and assessment personnel shall be guaranteed.

The remuneration of the notified body's top level management and assessment personnel shall not depend on the number of assessments carried out or on the results of such assessments.

9. The notified body shall take out liability insurance unless liability is assumed by the State in accordance with national law, or the Member State itself is directly responsible for the assessment and/or the verification performed.

10. The personnel of the notified body shall be bound to observe professional secrecy with regard to all information gained in carrying out its tasks under *Annex VI*, except in relation to the competent administrative authorities of the Member State in which its activities are carried out. Proprietary rights shall be protected.

11. The notified body shall participate in, or ensure that its assessment personnel is informed of, the relevant standardisation activities and the activities of the notified body co-ordination group established under this Regulation and apply as general guidance the administrative decisions and documents produced as a work result of that group.

12. Notified bodies shall inform their clients and advise them in their best interests.

Article 34

Presumption of conformity

When a performance assessment body can demonstrate its conformity with the criteria laid down in the relevant harmonised standards or parts thereof, the references of which have been published in the *Official Journal of the European Union*, it shall be presumed to comply with the requirements set out in Article 33 insofar as the applicable harmonised standards cover these requirements.

Article 35‖

Subsidiaries and subcontracting of notified bodies

1. Where the notified body subcontracts specific tasks connected with the third party tasks in the process of assessment and verification of constancy of performance or has recourse to a subsidiary, it shall ensure that the subcontractor or the subsidiary meets the requirements set out in Article 33, and inform the notifying authority.

2. The notified body shall take full responsibility for the tasks performed by subcontractors or subsidiaries wherever these are established.

3. Activities may be subcontracted or carried out by a subsidiary only with the agreement of the client.

4. The notified body shall keep at the disposal of the national authorities the relevant documents concerning the assessment of the subcontractor's or subsidiary's qualifications and the work carried out by the subcontractor or the subsidiary under *Annex VI*.

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Article 36 ‖

Witness tests

1. Where justified by technical, economical or logistic reasons, notified bodies may decide to carry out the tests referred to in *Annex VI*, or have such tests carried out under their supervision, either in the manufacturing plants using the test equipments of the internal laboratory of the manufacturer or, with the prior consent of the manufacturer, in a private or public laboratory, using the test equipments of that laboratory.

2. Before carrying out those tests, the notified body shall check whether the test equipment has an appropriate calibration system and whether that system is operational.

Article 37 ‖

Application for notification

1. A body to be authorised to carry out third party tasks in the process of assessment and verification of constancy of performance shall submit an application for notification to the notifying authority of the Member State in which it is established.

2. The application shall be accompanied by a description of the activities to be performed, the assessment and/or verification procedures for which the body claims to be competent, as well as by an accreditation certificate, where it exists, delivered by the national accreditation body within the meaning of Regulation *(EC) No 765/2008*, attesting that the body meets the requirements laid down in Article 33.

3. Where the body concerned cannot provide an accreditation certificate, it shall provide the notifying authority with all documentary evidence necessary for the verification, recognition and regular monitoring of its compliance with the requirements laid down in Article 33.

Article 38 ‖

Notification procedure

1. Notifying authorities may notify only bodies which have satisfied the requirements laid down in Article 33.

2. They shall notify the Commission and the other Member States using the electronic notification tool developed and managed by the Commission.

Exceptionally, for horizontal notifications referred to in the second subparagraph of paragraph 3, for which the appropriate electronic tool is not available, hard copy of the notification shall be accepted.

3. The notification shall include full details of the functions to be performed, reference to the relevant harmonised technical specification and, for the purposes of the system set out in point 1.4 of *Annex VI*, the essential characteristics for which the body is competent.

However, reference to the relevant harmonised technical specification is not required in the following cases of essential characteristics:

(a) reaction to fire;

(b) resistance to fire;

(c) external fire performance;

(d) noise absorption.

4. Where a notification is not based on an accreditation certificate, the notifying authority shall provide the Commission and the other Member States with all documentary evidence which attests the notified body's competence and the arrangements in place to ensure that the body will be regularly monitored and will continue to satisfy the requirements laid down in Article 33.

5. The body concerned may perform the activities of a notified body only where no objections have been raised by the Commission and the other Member States within two weeks following a notification in case of an accreditation certificate is used and within two months following a notification in case accreditation is not used.

Only such a body shall be considered as a notified body for the purpose of this Regulation.

6. The Commission and the other Member States shall be notified of any subsequent relevant changes to the notification.

Article 39 ‖

Identification numbers and lists of notified bodies

1. The Commission shall assign an identification number to a notified body.

It shall assign a single such number even where the body is notified under several Community acts.

2. The Commission shall make publicly available the list of the bodies notified under this Regulation, including the identification numbers that have been allocated to them and the activities for which they have been notified.

The Commission shall ensure that this list is kept up to date.

Article 40 ‖

Changes to the notification

1. Where a notifying authority has ascertained or has been informed that a notified body no longer meets the requirements set out in Article 33, or that it is failing to fulfil its obligations, the notifying authority shall restrict, suspend or withdraw the notification as appropriate, depending on the seriousness of the failure to meet those requirements or fulfil those obligations. It shall immediately inform the Commission and the other Member States thereof.

2. In the case of withdrawal, restriction or suspension of notification or where the notified body has ceased activity, the notifying Member State concerned shall take the appropriate steps to ensure that the files are either processed by another notified body or kept available for the responsible notifying and market surveillance authorities on request.

Article 41 ‖

Challenge of the competence of notified bodies

1. The Commission shall investigate all cases where it doubts or doubt is brought to its attention as to the competence of a notified body or the continued fulfilment by a notified body of the requirements and responsibilities placed on it.

2. The notifying Member State shall provide the Commission, on request, with all information related to the basis for notification or the maintenance of the competence of the body concerned.

3. The Commission shall ensure that all information obtained in the course of its investigations is treated confidentially.

4. Where the Commission ascertains that a notified body does not meet, or no longer meets, the requirements for its notification, it shall inform the notifying Member State thereof and request it to take the necessary corrective measures, including de-notification, if necessary.

Article 42 ‖

Operational obligations for notified bodies

1. Notified bodies shall carry out third party tasks in accordance with the systems of assessment and verification of constancy of performance provided for in *Annex VI*.

2. Assessments and verifications of constancy of performance shall be carried out in a proportionate manner, avoiding unnecessary burden for economic operators. The notified bodies shall perform their activities taking into consideration the size, the sector, the structure of the undertakings involved, the relative complexity of the technology used by the construction products and the serial character of the production.

In so doing it shall nevertheless respect the degree of rigour required for the product by this Regulation and the role of the product in the safety of the works.

3. Where, in the course of the monitoring activity aiming at the verification of the constancy of the manufactured product performances, a notified body finds that a construction product no longer has the same performance compared to that of the product-type, it shall require the manufacturer to take appropriate corrective measures and shall suspend or withdraw its certificate if necessary.

4. Where corrective measures are not taken or do not have the required effect, the notified body shall restrict, suspend or withdraw any certificates, as appropriate.

Article 43 ‖

Information obligation for notified bodies

1. Notified bodies shall inform the notifying authority of the following:

(a) any refusal, restriction, suspension or withdrawal of certificates;

(b) any circumstances affecting the scope of and conditions for notification;

(c) any request for information on assessment and/or verification of constancy of performance activities carried out which they have received from market surveillance authorities;

(d) on request, third party tasks in accordance with the systems of assessment and verification of constancy of performance carried out within the scope of their notification and, any other activity performed, including, cross-border activities and subcontracting.

2. Notified bodies shall provide the other bodies notified under this Regulation carrying out similar third party tasks in accordance with the systems of assessment and verification of constancy of performance and covering the same construction products with relevant information on issues relating to negative and, on request, positive results from these assessments and/or verifications.

Article 44 ‖

Exchange of experience

The Commission shall provide for the organisation of exchange of experience between the Member States' national authorities responsible for policy on notification.

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Article 45 ‖

Coordination of notified bodies

The Commission shall ensure that appropriate coordination and cooperation between bodies notified under Article 29 is put into place and properly operated in the form of groups of notified bodies both at the sectoral and cross sectoral level.

Member States shall ensure that the bodies notified by them participate to the work of those groups, directly or by designated representatives.

CHAPTER VIII

Market surveillance and safeguard procedures

Article 46 ‖

Procedure to deal with construction products presenting a risk at national level

1. Where the market surveillance authorities of one Member State have taken action pursuant to Article 18 of Regulation *(EC) No 765/2008* or where they have sufficient reason to believe that a construction product does not achieve the declared performances and/or presents a risk for the health or safety of persons or for other issues of public interest protection covered by this Regulation, they shall perform an evaluation in relation to the product concerned covering all the requirements laid down by this Regulation. The concerned economic operators shall cooperate in any necessary way with the market surveillance authorities.

Where, in the course of that evaluation, the market surveillance authorities find that the construction product does not comply with the requirements laid down by this Regulation, they shall without delay require the relevant economic operator to take all appropriate corrective actions to bring the product into compliance with those requirements or to withdraw the product from the market or recall it within such reasonable period, commensurate with the nature of the risk, as they may prescribe.

The market surveillance authorities shall inform the relevant notified body.

Article 19 of Regulation *(EC) No 765/2008 shall apply* to the measures referred to above.

2. Where the market surveillance authorities consider that the non-compliance is not limited to the national territory, they shall inform the Commission and the other Member States of the results of the evaluation and of the actions which they have required the economic operator to take.

3. The economic operator shall ensure that any corrective actions are taken in respect of all the construction products concerned which he has made available on the market throughout the Community.

4. Where the relevant economic operator, within the period referred to in the second subparagraph of paragraph 1, does not take adequate corrective actions, the market surveillance authorities shall take all appropriate provisional measures to prohibit or restrict the making available of the construction product on the national market or to withdraw the construction product from that market or to recall it.

They shall inform the Commission and the other Member States, without delay, of such measures.

5. The information referred to in paragraph 4 shall provide all available details, in particular as regards the necessary data for the identification of the non-compliant construction product, the origin of the construction product, the nature of the risk involved, the nature and duration of national measures taken as well as the view points put forward by the economic operator concerned. In particular, the market surveillance authorities shall indicate whether the non-compliance is due to either of the following:

(a) failure of the product to meet the requirements related to the health or safety of persons or to other issues of public interest protection laid down by this Regulation;

(b) shortcomings in the harmonised technical specifications or in the STD.

6. Member States other than the Member State which initiated the procedure shall without delay inform the Commission and the other Member States of any measures adopted and of any additional information relating to the non-compliance of the construction product concerned at their disposal, and, in the event of disagreement with the notified national measure, of their objections.

7. Where, within fifteen working days of receipt of the information referred to in paragraph 4, no objection has been raised by either a Member State or the Commission in respect of a provisional measure taken by a Member State in relation to the construction product concerned, the measure shall be deemed justified.

8. Member States shall ensure the appropriate restrictive measures are taken in respect of the construction product concerned, such as withdrawal of the product from their market, without delay.

Article 47 ‖

Community safeguard procedure

1. Where, on completion of the procedure set out in Article 46(3) and (4), objections are raised against a national measure of a Member State or where the Commission considers the national measure to be contrary to Community legislation the Commission shall without delay enter into consultation with the Member States and the relevant economic operator(s) and shall proceed to the evaluation of the national measure. On the basis of the results of that evaluation, the Commission shall take a decision, indicating whether the measure is justified or not.

The Commission shall address its decision to all Member States and shall immediately communicate it to them and to the relevant economic operator(s).

2. If the national measure is considered justified, all Member States shall take the necessary measures to ensure that the non compliant construction product is withdrawn from their markets. Member States shall inform the Commission thereof. If the national measure is considered unjustified, the Member State concerned shall withdraw the measure.

3. Where the national measure is considered to be justified and the non-compliance of the construction product is attributed to shortcomings in the harmonised standards as referred to in Article 46(5)(b), the Commission must inform the relevant European standardisation body *or bodies* and bring the matter before the *Standing* Committee *established by Article 5(1)* of Directive 98/34/EC. *That committee* must consult with the relevant European standardisation body and deliver its opinion without delay.

Where the national measure is considered to be justified and the non-compliance of the construction product is attributed to shortcomings in the EAD or in the STD as referred to in Article 46(5)(b), the Commission shall adopt the appropriate measures.

Article 48 ‖

Complying construction products which nevertheless present a risk to health and safety

1. Where a Member State after having performed an evaluation under Article 46(1) finds that although a construction product is in compliance with this Regulation, it presents a risk for the health or safety of persons or for other issues of public interest protection, it shall require the relevant economic operator to take all appropriate measures to ensure that the construction product concerned, when placed on the market, no longer presents that risk or to withdraw the construction product from the market or recall it within such reasonable period, commensurate with the nature of the risk, as it may prescribe.

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2. The economic operator shall ensure that any corrective actions are taken in respect of all the construction products concerned which he has made available on the market throughout the Community.

3. The Member State shall immediately inform the Commission and the other Member States. The information shall provide all available details, in particular as regards the necessary data for the identification of the construction product concerned, the origin and the supply chain of the product, the nature of the risk involved, the nature and duration of national measures taken.

4. The Commission shall without delay enter into consultation with the Member States and the relevant economic operator(s) and shall proceed to the evaluation of the national measure. On the basis of the results of that evaluation, the Commission shall take a decision, indicating whether the measure is justified or not, and where necessary, propose appropriate measures.

5. The Commission shall address its decision to all Member States and shall immediately communicate it to them and to the relevant economic operator(s).

Article 49 ‖

Formal non-compliance

1. Without prejudice to Article 46, where a Member State makes one of the following findings, it shall require the relevant economic operator to put an end to the non-compliance concerned:

(a) the CE marking has been affixed in violation of Article 7 or ‖ 8;

(b) the CE marking has not been affixed, when required according to Article 7(1);

(c) the declaration of performance has not been drawn up, when required according to Article 4;

(d) the declaration of performance has not been drawn up in accordance with Articles 4, 5 and 6;

(e) the technical documentation is either not available or not complete.

2. Where the non-compliance referred to in paragraph 1 continues, the Member State shall take all appropriate measures to restrict or prohibit the making available on the market of the construction product or ensure that it is recalled or withdrawn from the market.

CHAPTER IX

Final provisions

Article 50‖

Amendment of Annexes

1. *The* Commission may amend *Annexes I to VI.*

2. Those measures, designed to amend non-essential elements of this Regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(2).

Article 51‖

Committee

1. The Commission shall be assisted by a committee, called *the* Standing Committee *on* Construction.

2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. Member States shall ensure that the members of the committee referred to in paragraph 1 are independent of the parties involved in assessing the conformity of construction products.

Article 52 ‖

Repeal

1. Directive 89/106/EEC is repealed.

2. References to the repealed Directive shall be construed as references to this Regulation.

Article 53 ‖

Transitional provisions

1. Construction products which have been placed on the market in accordance with Directive 89/106/EEC before 1 July 2011 shall be deemed to comply with this Regulation.

2. Manufacturers and importers may make a declaration of performance on the basis of a certificate of conformity or a declaration of conformity, which has been issued before 1 July 2011 in accordance with Directive 89/106/EEC.

3. Guidelines for European technical approval which were published before 1 July 2011 in accordance with Article 11 of Directive 89/106/EEC ***and joint interpretations of procedures for the evaluation of construction products adopted by EOTA before 1 July 2011, on the basis of Article 9(2) of Directive 89/106/EEC,*** may be used as EADs. ***Where the Commission considers that a sufficient level of technical and scientific expertise concerning European technical approval guidelines has been achieved, it shall give a mandate to the European standardisation bodies to draw up a harmonised standard on the basis of those guidelines in accordance with Article 20(4).***

4. Manufacturers and importers may use European technical approvals issued in accordance with Article 9 of Directive 89/106/EEC before 1 July 2011 as European Technical Assessments throughout the period of validity of those approvals.

Article 54 ‖

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

‖ Articles 3 to 21, 26, 27, ‖ 28, ‖ 46 to 50, 52 and 53 *and* Annexes I, II, III and *VI* shall apply from 1 July 2011.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ‖,

For the European Parliament
The President

For the Council
The President

Friday 24 April 2009

ANNEX I

Basic works requirements

Construction works as a whole and in their separate parts must be fit for their intended use***, taking into account the health and safety of persons involved throughout the lifecycle of the works***.

Subject to normal maintenance, basic works requirements must be satisfied for an economically reasonable working life.

1. MECHANICAL RESISTANCE AND STABILITY

The construction works must be designed and built in such a way that the loadings that are liable to act on them during their constructions and use will not lead to any of the following:

(a) collapse of the whole or part of the work;

(b) major deformations to an inadmissible degree;

(c) damage to other parts of the works or to fittings or installed equipment as a result of major deformation of the load-bearing construction;

(d) damage by an event to an extent disproportionate to the original cause.

2. SAFETY IN CASE OF FIRE

The construction works must be designed and built in such a way that in the event of an outbreak of fire:

(a) the load-bearing capacity of the construction can be assumed for a specific period of time,

(b) the generation and spread of fire and smoke within the works are limited,

(c) the spread of the fire to neighbouring construction works is limited,

(d) the safety of rescue teams is taken into consideration.

3. HYGIENE, HEALTH AND THE ENVIRONMENT

The construction works must be designed and built in such a way that they will neither be a threat ‖ to the hygiene *or* health ***and safety*** of ***workers,*** occupants and neighbours ***throughout their lifecycle***, nor exert an exceedingly high impact over their entire life cycle to the environmental quality nor to the climate, during their construction, use and demolition, in particular as a result of any of the following:

(a) the giving-off of toxic gas;

(b) the emissions of dangerous substances, volatile organic compounds (VOC), greenhouse gases or dangerous particles into indoor or out door air;

(c) the emission of dangerous radiation;

(d) the release of dangerous substances into drinking water, ground water, marine waters or soil;

(e) faulty discharge of waste water, emission of flue gases or faulty disposal of solid or liquid wastes;

(f) the presence of dampness in parts of the works or on surfaces within the works.

4. SAFETY IN USE

The construction works must be designed and built in such a way that they do not present unacceptable risks of accidents in service or in operation such as slipping, falling, collision, burns, electrocution, and injury from explosion.

5. PROTECTION AGAINST NOISE

The construction works must be designed and built in such a way that noise perceived by the occupants or people nearby is kept down to a level that will not threaten their health and will allow them to sleep, rest and work in satisfactory conditions.

6. ENERGY ECONOMY AND HEAT RETENTION

The construction works and their heating, cooling***, lighting*** and ventilation installations must be designed and built in such a way that the amount of energy required in use shall be low, when account is taken of the climatic conditions of the location and the occupants. ***Construction products must also be energy-efficient; they must use as little energy as possible during their life cycle.***

7. SUSTAINABLE USE OF NATURAL RESOURCES

The construction works must be designed, built and demolished in such a way that the use of natural resources is sustainable and ensure***, at least,*** the following:

(a) recyclability of the construction works, their materials and parts after demolition;

(b) durability of the construction works;

(c) use of environmentally compatible raw and secondary materials in the construction works.

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ANNEX II

Procedure for adopting *a* European Assessment Document and for issuing *a* European Technical Assessment ***for construction products not or not fully covered by a harmonised standard***

1. Technical Assessment Body (TAB) shall carry out assessment and issue the European Technical Assessment (ETA) in the product area for which it has been designated.

The provisions of this Annex on manufacturers apply also to importers.

2. The elaboration and the adoption of a European Assessment Document shall be carried out in accordance with points 2.1 to *2.11*.

2.1. In agreement with the Technical Assessment Bodies of the selected destination market, the relevant Technical Assessment Body shall carry out the assessment in accordance with the provisions of the second contract and the draft work programme, shall issue the relevant European Technical Assessment and shall forward it to the Commission and all other TABs appointed for the same product areas pursuant to Table 1 of Annex V.

2.2. The TAB receiving a ETA request ‖ for a construction product *(the 'responsible TAB')* shall inform the organisation of TABs referred to in Article 25(1) and the Commission of the content of the request and of the reference to the Commission decision for assessment and verification of constancy of performance, which the TAB intends to apply for this product, or of the lack of such a Commission decision.

2.3. In agreement with the other TABs, the relevant TAB shall carry out the assessment in accordance with the provisions of the second contract and the draft work programme, shall issue the relevant ETA and shall forward it to the Commission and the other TABs designated for the same product areas in accordance with Table 1 of Annex V.

2.4. The responsible TAB shall, in cooperation with the manufacturer, obtain the relevant information on the product and on its intended use. The responsible TAB shall inform the manufacturer if the product is covered, fully or partially, by another harmonised technical specification. The responsible TAB shall then draft a first contract to be concluded with the manufacturer, defining the terms for the elaboration of the work programme.

2.5. Within one month from the conclusion of the first contract, the manufacturer shall submit to the responsible TAB a technical file describing the product, its intended use and details of the factory production control he applies.

2.6. Within one month from the reception of the technical file, the responsible TAB shall prepare and send to the manufacturer the draft second contract and the draft work programme, containing all detailed aspects and actions it will undertake to assess the performance for the essential characteristics of the product in relation to the intended use. The draft work programme shall include at least the following parts:

(a) part 1: the assessment programme indicating test methods, calculation methods, descriptive methods, parameters and all other means, including the assessment criteria considered suitable for identifying the product, for assessing the performance for its essential characteristics in relation to the intended use, and the durability aspects for the relevant essential characteristics;

(b) part 2: the activities related to the initial inspection of the plant in which the product covered by the request is manufactured;

(c) part 3: the places where the tests will be carried out;

(d) part 4: expected time and costs.

2.7. After the conclusion of the second contract, comprising the agreed work programme, between the responsible TAB and the manufacturer, the responsible TAB shall send Part 1 of the work programme, together with the part of the technical file related to the description of the product and its intended use, to all the other TABs designated for the same construction products area, referred to in Table 1 of *Annex V*. Those TABs shall constitute a working group, which shall be co-ordinated by the responsible TAB.

The manufacturer may ask for the above-mentioned working group to hear an independent scientific expert of its choice in order to supplement the information made available to the TABs. The working group shall be required to hold such a hearing.

Within two weeks from the reception by all the TABs concerned of those documents from the responsible TAB, the working group shall establish the draft EAD, containing the assessment methods and criteria of the performance for the relevant essential characteristics, based on Part 1 of the work programme and on the pertinent and justified technical contributions provided by its members.

2.8. The draft EAD shall then be communicated by the responsible TAB, together with the relevant part of the technical file, containing the description of the product and its intended use, to all the other TABs.

Within two weeks, these other TABs shall communicate to the responsible TAB the relevant information related to their national building regulations and other legal or administrative provisions applicable to the product and to its intended use, as appropriate. The responsible TAB shall inform the members of the working group and the manufacturer about the contents of these contributions.

2.9. The responsible TAB shall include these contributions, after consulting the working group, in the draft EAD, which it shall send to the organisation of TABs referred to in Article 25(1). After communicating the final draft EAD to the manufacturer, who shall have one week for his reactions, ***and after having consulted at least one professional organisation designated by the manufacturer should he so wish,*** the organisation of TABs shall adopt the EAD as a provisional document. The organisation of TABs shall send a copy of the adopted provisional EAD to the manufacturer and the Commission. If the Commission communicates, within fifteen working days from reception, to the organisation of TABs its observations on the provisional EAD, it shall be amended accordingly by the organisation of TABs. After this period, the responsible TAB shall start the preparations for carrying out the assessment.

2.10. The responsible TAB shall carry out the assessment according to the provisions of the adopted provisional EAD and shall subsequently issue the corresponding ETA.

2.11. As soon as the first ETA has been issued on the basis of a given provisional EAD by the responsible TAB, this EAD shall be adjusted, if appropriate, by the organisation of TABs on the basis of a proposal from the responsible TAB. The final EAD shall then be adopted by the organisation of TABs and sent to the Commission. The Commission shall publish the reference to the final EAD in the Series C of the *Official Journal of the European Union*.

3. When the reference to the final EAD has been published in the *Official Journal of the European Union*, the preparations for ETAs on the basis of any subsequent requests, concerning construction products with similar essential characteristics in relation to their intended use to the first request, shall be carried out according to this final EAD.

4. A Commission representative may attend, as observer, to all the meetings of the working group referred to in point *2.7*.

5. If all the TABs and the manufacturer have not agreed upon the EAD, the organisation of TABs shall submit this matter to the Commission for appropriate resolution.

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ANNEX III

I

1. No ..... (unique identification code of the product)

2. Name or identification mark and address of (authorised representative of the) manufacturer:

.....

.....

3. This declaration of performance is issued under the sole responsibility of the manufacturer:

.....

.....

4. Identification of product (allowing traceability) ***and reference to the envisaged generic use***:

.....

.....

5. The performance of the product identified above is in conformity with the declared performances under point 7.

6. The ..... (name, number of the notified body, if relevant)

performed .....(description of intervention)

in accordance with system .....[No] for assessing and verifying the constancy of performance

and issued .....(the certificate of conformity of the product, the certificate of conformity of the factory production control, the test reports - if relevant):

.....

.....

7. Declaration of performance (list, levels or classes and reference to the corresponding harmonised technical specification/Specific Technical Documentation used for the assessment of the performance for the declared essential characteristics)

Name of the declared essential characteristic	Level or class of performance for the declared essential characteristic	Reference of the harmonised technical specification / Specific Technical Documentation

Signed for and on behalf of: .....

....

(place and date of issue) (name, function)(signature)

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ANNEX IV

Hazardous substances to be declared in the performance declaration

1. Substances of very high concern:

(a) substances on the candidate list of REACH (Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency [1];

(b) substances that are persistent, bio accumulative or toxic (PBT) according to REACH (Regulation (EC) No 1907/2006);

(c) substances that are very persistent or very bio accumulative (vPvB) according to REACH (Regulation (EC) No 1907/2006);

(d) ***substances that are carcinogenic, mutagenic and toxic to reproduction in category 1 or 2 according to Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances [2].***

2. Substances with certain classifications

Substances that fulfil the criteria for classification set out in Directive 67/548/EEC for the following categories:

(a) carcinogenic, mutagenic and toxic to reproduction in category 3;

(b) substances with chronic toxicity (R48);

(c) environmentally hazardous substances with possible long term effect (R50-53);

(d) ozone depleting substances (R59);

(e) substances which may cause sensitisation by inhalation (R42);

(f) substances which may cause sensitisation by skin contact (R43).

3. Priority Hazardous Substances

Priority hazardous substances as listed in Annex X to Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy [3] (Water Framework Directive).

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[1] ***OJ L 396, 30.12.2006, p. 1.***
[2] ***OJ 196, 16.8.1967, p. 1.***
[3] ***OJ L 327, 22.12.2000, p. 1.***

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ANNEX V

Product areas and requirements for Technical Assessment Bodies

Table 1 - Product areas

Area Code	Product Area	Families of construction products
A	CIVIL ENGINEERING	Geotextiles and related products - Circulation fixtures - Floorings, paving and road finishes - Aggregates - Road construction products - Pipes, thanks and ancillaries not in contact with water intended for human consumption - Floor beds including suspended ground floors, roads and other trafficked areas - Ultra thin layer asphalt concrete - Waste water engineering products - Falling rock protection kits - Liquid applied bridge-deck waterproofing kits - Expansion joints for road bridges
B	PREFABRICATED TOTAL/PARTIAL BUILDING UNITS	Timber frame and log prefabricated building kits - Cold storage building kits and cold storage building envelope kits - Prefabricated building units - Concrete frame building kits - Metal frame building kits
C	LOAD BEARING MATERIALS AND COMPONENTS	Structural timber products and ancillaries - Cement, building limes and other hydraulic binders - Reinforcing and pre-stressing steel for concrete - Structural metallic products and ancillaries - Products related to concrete, mortar and grout - Structural bearings - Precast concrete products - Prefabricated stairs kits - Light composite wood-based beams and columns - Post tensioning kits for the pre-stressing of structures - Anchor bolts
D	ROOFING AND BUILDING ENVELOPE	Curtain walling kits - Roof coverings, Roof lights, roof windows and ancillary products - Flat glass, profiled glass and glass block products - External and internal doors and windows, roof openings and roof lights - Liquid applied roof waterproofing kits - Kits for exterior wall claddings - Structural sealant glazing systems - Kits of mechanically fastened flexible roof waterproofing membranes - Self supporting translucent roof kits - Prefabricated wood-based load-bearing stressed skin panels and self-supporting composite lightweight panels
E	INTERNAL/EXTERNAL BUILDING COMPONENTS/KITS	Sanitary appliances - Wood-based panels - Masonry and related products - Internal and external wall and ceiling finishes - Gypsum products - Internal partition kits - Watertight covering kits for wet room floors and walls - Non-load bearing permanent shuttering kits based on hollow blocks or panels of insulating materials and/or concrete
F	HEATING/VENTILATION/INSULATION	Chimneys, Flues and specific products - Space heating appliances - Thermal insulating products - External thermal insulation composite kits - Inverted roof insulation kits – Vetures
G	FIXATIONS SEALINGS/ADHESIVES	Construction adhesives - Pins for structural joints / Connectors - Three dimensional nailing plates - Anchors bolts / Screws - Wall plates made of stainless steel. - Cavity trays - Fastener for external wall claddings and flat or pitched roofs - Connector for sandwich elements of concrete - Gas and watertight seals for pipes in wall and floor penetrations - Sealing kits, profiles and strips - Joints sealing compounds - Elastic suspended fixings - Tension Rods - Point fastener - Surface repellents and coating treatments - Levelling fasteners for roofs, walls and interior applications - Water-proofing products / treatments

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Area Code	Product Area	Families of construction products
H	FIRE PROTECTION AND RELATED PRODUCTS	Fire alarm, fire detection, fixed fire fighting, fire and smoke control and explosion suppression products - Fire stopping, fire sealing and fire protective products.
I	ELECTRIC INSTALLATION	Any construction product related to electric installation.
J	GAS INSTALLATION	Any construction product related to gas installation.
K	WATER SUPPLY AND SEWAGE	Kit consisting of a trap with partially mechanical closure, mounted in a non-trapped gully - Kit for manhole top consisting of Cover and additional rings made of plastic for different purposes - Piping kits for cold and hot water, including those intended for human consumption - Piping systems for drainage and sewerage with or without pressure - Flexible coupling for gravity and pressure sewerage and drainage pipe - Composition toilet

Table 2 - Requirements for technical assessment bodies

Competence	Description of competence	Requirement
1. Analysing risks	Identify the possible risks and benefits for the use of innovative construction products in the absence of established/ consolidated technical information regarding their performance when installed in construction works.	A TAB shall be independent from the stakeholders and from any particular interests. In addition, a TAB shall have staff with: (a) objectivity and sound technical judgement; (b) detailed knowledge of the regulatory provisions and other requirements in force in the Member States, concerning product areas for which it is to be designated; (c) general understanding of construction practice and detailed technical knowledge, concerning product areas for which it is to be designated; (d) detailed knowledge of specific risks involved and the technical aspects of the construction process; (e) detailed knowledge of the existing harmonised standards and test methods within the product areas for which it is to be designated; (f) appropriate linguistic skills.
2. Setting technical criteria	Transform the outcome of the risk analysis into technical criteria for evaluating behaviour and performance of the construction products regarding the fulfilment of applicable national requirements; the technical information needed by those participating in the building process as potential users of the construction products (manufacturers, designers, contractors, installers).	
3. Setting assessment methods	Design and validate appropriate methods (tests or calculations) to assess performance for essential characteristics of construction products, taking into account the current state of the art.	
4. Determining the specific factory production control	Understand and evaluate the manufacturing process of the specific product in order to identify appropriate measures ensuring product constancy through the given manufacturing process.	A TAB shall have staff with appropriate knowledge of the relationship between the manufacturing processes and product characteristics related to factory production control.

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Competence	Description of competence	Requirement
5. Assessing the product	Assess the performance for essential characteristics of construction products on the basis of harmonised methods against harmonised criteria.	In addition to the requirements listed in points 1, 2 and 3, a TAB shall have access to the necessary means and equipment for the assessment of the performance for essential characteristics of construction products within the product areas for which it is to be designated.
6. General management	Ensure consistency, reliability, objectivity and traceability through the constant application of appropriate management methods.	A TAB shall have: (a) a proven record of respect of good administrative behaviour; (b) a policy and the supporting procedures to ensure confidentiality of sensitive information within the TAB and all its partners; (c) a document control system to ensure registration, traceability, maintenance and archiving of all relevant documents; (d) a mechanism for internal audit and management review to ensure the regular monitoring of the compliance with appropriate management methods; (e) a procedure to deal objectively with appeals and complaints.

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ANNEX VI

Assessment and verification of constancy of performance

1. SYSTEMS OF ASSESSMENT AND VERIFICATION OF CONSTANCY OF PERFORMANCE

1.1. ***System 1+***: Declaration of the performance for the essential characteristics of the product by the manufacturer on the basis of following items:

(a) the manufacturer shall carry out:

(i) factory production control (FPC);

(ii) further testing of samples taken at the factory according to the prescribed test plan;

(b) the notified body shall issue the certificate of conformity of the product on the basis of:

(i) determination of the product-type on the basis of type testing (including the sampling), type calculation, tabulated values or descriptive documentation of the product;

(ii) initial inspection of the manufacturing plant and of *factory production control*;

(iii) continuous surveillance, assessment and evaluation of *factory production control*;

(iv) audit-testing of samples taken at the factory.

1.2. ***System 1***: Declaration of the performance for the essential characteristics of the product by the manufacturer on the basis of following items:

(a) the manufacturer shall carry out:

(i) factory production control;

(ii) further testing of samples taken at the factory by the manufacturer according to the prescribed test plan;

(b) the notified body shall issue the certificate of conformity of the product on the basis of:

(i) determination of the product type on the basis of type testing (including the sampling), type calculation, tabulated values or descriptive documentation of the product;

(ii) initial inspection of the manufacturing plant and of *factory production control*;

(iii) continuous surveillance, assessment and evaluation of *factory production control*.

1.3. ***System 2+***: Declaration of the performance for the essential characteristics of the product by the manufacturer on the basis of following items:

(a) the manufacturer shall carry out:

(i) determination of the product-type on the basis of type testing (including the sampling), type calculation, tabulated values or descriptive documentation of the product;

(ii) factory production control;

(iii) testing of samples taken at the factory according to the prescribed test plan;

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(b) the notified body shall issue the certificate of conformity of *factory production control* on the basis of:

(i) initial inspection of the manufacturing plant and of *factory production control*;

(ii) continuous surveillance, assessment and evaluation of *factory production control*.

1.4. ***System 3***: Declaration of the performance for the essential characteristics of the product by the manufacturer on the basis of following items:

(a) the manufacturer shall carry out factory production control;

(b) the notified body shall carry out determination of the product-type on the basis of type testing (based on the sampling carried out by the manufacturer), type calculation, tabulated values or descriptive documentation of the product;

1.5. ***System 4***: Declaration of the performance for the essential characteristics of the product by the manufacturer on the basis of following items:

(a) the manufacturer shall carry out:

(i) determination of the product-type on the basis of type testing, type calculation, tabulated values or descriptive documentation of the product;

(ii) factory production control;

(b) no tasks for the notified body.

2. BODIES INVOLVED IN THE ASSESSMENT AND VERIFICATION OF CONSTANCY OF PERFORMANCE

With respect to the function of the notified bodies involved in the assessment and verification of constancy of performance of construction product, distinction shall be made between:

(1) certification body: a notified body, governmental or non governmental, possessing the necessary competence and responsibility to carry out a certification according to given rules of procedure and management;

(2) inspection body: a notified body having the *organisation*, staffing, competence and integrity to perform according to specified criteria the following functions: assessing, recommending for acceptance and subsequent audit of quality control operations of manufacturers, and selection and evaluation of construction products in the plant, according to specific criteria;

(3) testing laboratory: a notified laboratory which measures, examines, tests, calibrates or otherwise determines the characteristics or performance of materials or construction products.

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Cross-border payments in the Community ***I

P6_TA(2009)0321

European Parliament legislative resolution of 24 April 2009 on the proposal for a regulation of the European Parliament and of the Council on cross-border payments in the Community (COM(2008)0640 – C6-0352/2008 – 2008/0194(COD))

(2010/C 184 E/81)

(Codecision procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0640),

— having regard to Article 251(2) and Article 95(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0352/2008),

— having regard to the undertaking given by the Council representative by letter of 25 March 2009 to adopt the proposal as amended, in accordance with the first indent in the second subparagraph of Article 251(2) of the EC Treaty,

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs (A6-0053/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and the Commission.

P6_TC1-COD(2008)0194

Position of the European Parliament adopted at first reading on 24 April 2009 with a view to the adoption of a Regulation (EC) No …/2009 of the European Parliament and of the Council on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Regulation (EC) No 924/2009.

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The business of electronic money institutions ***I

P6_TA(2009)0322

European Parliament legislative resolution of 24 April 2009 on the proposal for a directive of the European Parliament and of the Council on the taking up, pursuit and prudential supervision of the business of electronic money institutions, amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (COM(2008)0627 – C6-0350/2008 – 2008/0190(COD))

(2010/C 184 E/82)

(Codecision procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0627),

— having regard to Article 251(2), Article 47(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0350/2008),

— having regard to the undertaking given by the Council representative by letter of 25 March 2009 to adopt the proposal as amended, in accordance with the first indent in the second subparagraph of Article 251(2) of the EC Treaty,

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on Economic and Monetary Affairs (A6-0056/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and the Commission.

P6_TC1-COD(2008)0190

Position of the European Parliament adopted at first reading on 24 April 2009 with a view to the adoption of Directive 2009/…/EC of the European Parliament and of the Council on the taking up, pursuit and prudential supervision of the business of electronic money institutions, amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Directive 2009/110/EC.)

Friday 24 April 2009

Animal by-products ***I

P6_TA(2009)0323

European Parliament legislative resolution of 24 April 2009 on the proposal for a regulation of the European Parliament and of the Council laying down health rules as regards animal by-products not intended for human consumption (Animal by-products Regulation) (COM(2008)0345 – C6-0220/2008 – 2008/0110(COD))

(2010/C 184 E/83)

(Codecision procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0345),

— having regard to Article 251(2) and Article 152(4)(b) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0220/2008),

— having regard to the undertaking given by the Council representative by letter of 1 April 2009 to adopt the proposal as amended, in accordance with the first indent in the second subparagraph of Article 251(2) of the EC Treaty,

— having regard to the scope of powers conferred upon the Commission by the future Regulation [laying down health rules as regards animal by-products and derived products not intended for human consumption] ('future Regulation'),

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on the Environment, Public Health and Food Safety and the opinion of the Committee on Agriculture and Rural Development (A6-0087/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Calls on the Commission to prepare its draft measure for the implementation of the future Regulation with the necessary technical expertise that had been demonstrably present during the discussions and before the date of application of the future Regulation, so that the Parliament's more specific suggestions for addressing certain technical issues can be taken into account in that draft measure;

4. Calls on the Commission to present that draft measure to the Parliament for an exchange of views, before initiating the regulatory procedure with scrutiny, to facilitate the exercise of the Parliament's rights of participation;

5. Instructs its President to forward its position to the Council and Commission.

P6_TC1-COD(2008)0110

Position of the European Parliament adopted at first reading on 24 April 2009 with a view to the adoption of Regulation (EC) No …/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation)

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Regulation (EC) No 1069/2009.)

Friday 24 April 2009

Facility providing mid-term financial assistance for Member States' balances of payments *

P6_TA(2009)0324

European Parliament legislative resolution of 24 April 2009 on the proposal for a Council regulation amending Regulation (EC) No 332/2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments (COM(2009)0169 – C6-0134/2009 – 2009/0053(CNS))

(2010/C 184 E/84)

(Consultation procedure)

The European Parliament,

— having regard to the Commission proposal to the Council (COM(2009)0169),

— having regard to Article 308 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0134/2009),

— having regard to Council Regulation (EC) No 332/2002 of 18 February 2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments ([1]) and Parliament's position of 6 September 2001 on the proposal for a Council regulation establishing a facility providing medium-term financial assistance for Member States' balances of payments ([2]),

— having regard to its position of 20 November 2008 ([3]) on the proposal for a Council regulation amending Regulation (EC) No 332/2002 and its resolution of the same day on establishing a facility providing medium-term financial assistance for Member States' balances of payments ([4]),

— having regard to the opinion of the European Central Bank of 20 April 2009 on the proposal for a Council regulation amending Regulation (EC) No 332/2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments,

— having regard to Rules 51 and 134 of its Rules of Procedure,

— having regard to the report of the Committee on Economic and Monetary Affairs (A6-0268/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;

5. Instructs its President to forward its position to the Council, the Commission, and the governments of the Member States.

([1]) OJ L 53, 23.2.2002, p. 1.
([2]) OJ C 72 E, 21.3.2002, p. 312.
([3]) Texts adopted, P6_TA(2008)0560.
([4]) Texts adopted, P6_TA(2008)0562.

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 1

Proposal for a regulation – amending act
Article 1 – point 3
Regulation (EC) No 332/2002
Article 3a

The Commission and the Member State concerned shall conclude a memorandum of understanding detailing the conditions laid down by the Council.	The Commission and the Member State concerned shall conclude a memorandum of understanding detailing the conditions laid down by the Council. ***The Commission shall communicate that memorandum of understanding to the European Parliament and the Council.***

Amendment 2

Proposal for a regulation – amending act
Article 1 – point 4
Regulation (EC) No 332/2002
Article 5

1. The Commission shall take the necessary measures to verify at regular intervals, in collaboration with the Economic and Financial Committee that the economic policy of the Member State in receipt of a Community loan accords with the adjustment programme and with any other conditions laid down by the Council pursuant to Article 3. To *this* end, the Member State shall place all the necessary information at the disposal of the Commission and cooperate in full with the latter. On the basis of the findings of such verification, the Commission, after the Economic and Financial Committee has delivered an opinion, shall decide on the release of further instalments.	1. The Commission shall take the necessary measures to verify at regular intervals, in collaboration with the Economic and Financial Committee that the economic policy of the Member State in receipt of a Community loan accords with the adjustment programme and with any other conditions laid down by the Council pursuant to Article 3 ***and the memorandum of understanding referred to in Article 3a***. To *that* end, the Member State shall place all the necessary information at the disposal of ***the European Parliament and*** the Commission and cooperate in full with the latter. On the basis of the findings of such verification, the Commission, after the Economic and Financial Committee has delivered an opinion, shall decide on the release of further instalments.
The Council shall decide on any adjustments to be made to the initial economic policy conditions.	2. The Council shall decide on any adjustments to be made to the initial economic policy conditions ***in line with the main economic objectives of the Community***.

Amendment 3

Proposal for a regulation – amending act
Article 1 – point 6 a (new)
Regulation (EC) No 332/2002
Article 10

	(6a) Article 10 is replaced by the following:
	'Article 10
	Every *two years* the Council shall examine, on the basis of a report from the Commission, after *consulting the European Parliament and after the delivery of an opinion by* the Economic and Financial Committee […], whether the facility established still meets, in its principle, arrangements and ceiling, the need which led to its creation.'

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Taxation of savings income in the form of interest payments *

P6_TA(2009)0325

European Parliament legislative resolution of 24 April 2009 on the proposal for a Council directive amending Directive 2003/48/EC on taxation of savings income in the form of interest payments (COM(2008)0727 – C6-0464/2008 – 2008/0215(CNS))

(2010/C 184 E/85)

(Consultation procedure)

The European Parliament,

— having regard to the Commission proposal to the Council (COM(2008)0727),

— having regard to Article 94 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0464/2008),

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs (A6-0244/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;

5. Instructs its President to forward its position to the Council and the Commission.

TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 26

Proposal for a directive – amending act
Recital 9 a (new)

	(9a) ***In accordance with the ECOFIN Council conclusions of May 1999 and November 2000, the original choice to exclude all innovative financial products from the scope of Directive 2003/48/EC was accompanied by an express statement that this issue should be re-examined on the occasion of the first review of that Directive, with the aim of finding a definition covering all securities that are equivalent to debt claims so***

TEXT PROPOSED BY THE COMMISSION	AMENDMENT
	as to ensure the effectiveness of the Directive in a changing environment and to preventing market distortions. It is therefore appropriate to include all innovative financial products within the scope of the Directive. Accordingly the definition of interest payment should cover any revenue arising from the investment of capital where the return is fixed ex ante and the substance of the return arising from a transaction is similar to any interest income. In order to ensure a consistent interpretation of that provision throughout the Member States, the provision should be complemented by a list of the financial products concerned. The Commission should adopt that list in accordance with the regulatory procedure laid down in Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (*).
	(*) OJ L 184, 17.7.1999, p. 23.
	Amendment 1
	Proposal for a directive – amending act
	Recital 10 a (new)
	(10a) The Community should promote global tax governance, in line with the Council conclusions of 23 October 2006, which invited the Commission to explore the possibility of negotiating specific agreements with Hong Kong, Macao and Singapore on savings tax with a view to concluding an international agreement on the application of equivalent measures to those applied by Member States under Directive 2003/48/EC.
	Amendment 2
	Proposal for a directive – amending act
	Recital 12 a (new)
	(12a) The Council Conclusions of 21 January 2003 considered that the United States of America applies measures equivalent to those provided for in Directive 2003/48/EC. However, it is appropriate to bring within the scope of Annex I of Directive 2003/48/EC certain legal forms and arrangements in order to ensure effective taxation.
	Amendment 3
	Proposal for a directive – amending act
	Recital 13 a (new)
	(13a) In reviewing the operation of Directive 2003/48/EC, the Commission should pay specific attention to certain types of capital income, such as income derived from life assurance products, annuities, swaps, and certain pensions, which are not yet within the scope of that Directive.

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 4

Proposal for a directive – amending act
Article 1 – point -1 (new)
Directive 2003/48/EC
Recital 8

	(-1) Recital 8 is replaced by the following:
	'(8) This Directive has a dual purpose: to enable savings income in the form of interest payments made in one Member State to beneficial owners who are individuals resident for tax purposes in another Member State to be made subject to effective taxation in accordance with the laws of their Member State of residence, and to ensure a minimum of effective taxation of savings income in the form of interest payments made in one Member State to beneficial owners who are individuals resident for tax purposes in another Member State.'

Amendment 5

Proposal for a directive – amending act
Article 1 – point -1 a (new)
Directive 2003/48/EC
Recital 19

	(-1a) Recital 19 is replaced by the following:
	'(19) Member States levying withholding tax should transfer most of the revenue they obtain from that withholding tax to the Member State of residence of the beneficial owner of the interest. The part of the revenue that the Member States concerned are able to withhold should be proportional to the administrative costs incurred in handling the revenue-sharing mechanism, taking into account the costs that would be incurred in exchanging information.'

Amendment 6

Proposal for a directive – amending act
Article 1 – point -1 b (new)
Directive 2003/48/EC
Recital 24 a (new)

	(-1b) The following recital is inserted:
	'(24a) So long as Hong Kong, Singapore and other countries and territories listed in Annex I do not all apply measures identical or equivalent to those provided for in this Directive, capital flight towards those countries and territories could imperil the attainment of the objectives of this Directive. It is therefore necessary for the Community to take appropriate action in order to ensure that an agreement is reached with those countries and territories under which they will apply such measures.'

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 7

Proposal for a directive – amending act
Article 1 – point -1 c (new)
Directive 2003/48/EC
Article 1 – paragraph 1

	(-1c) Article 1(1) is replaced by the following:
	'1. This Directive aims to:
	— enable savings income in the form of interest payments made in one Member State to beneficial owners who are individuals resident for tax purposes in another Member State to be made subject to effective taxation in accordance with the laws of the latter Member State;
	— ensure a minimum of effective taxation of savings income in the form of interest payments made in one Member State to beneficial owners who are individuals resident for tax purposes in another Member State.'

Amendment 8

Proposal for a directive – amending act
Article 1 – point 1
Directive 2003/48/EC
Article 1 – paragraph 2

2. Member States shall take the necessary measures to ensure that the tasks necessary for the implementation of this Directive are carried out by paying agents established within their territory, irrespective of the place of establishment of the debtor of the debt claim, or the issuer of the security, producing the interest payment.	2. Member States shall take the necessary measures to ensure that the tasks necessary for the implementation of this Directive are carried out by ***economic operators and*** paying agents established within their territory, irrespective of the place of establishment of the debtor of the debt claim, or the issuer of the security, producing the interest payment.

Amendment 9

Proposal for a directive – amending act
Article 1 – point 2 – point a – subpoint i
Directive 2003/48/EC
Article 2 – paragraph 1 – introductory part

For the purposes of this Directive, and without prejudice to Article 4(2), 'beneficial owner' means any individual who receives an interest payment or any individual for whom such a payment is secured, unless he provides evidence that it was not received or secured for his own benefit, that is to say that:	*1.* For the purposes of this Directive, and without prejudice to Article 4(2), 'beneficial owner' means any individual who receives ***or should have received*** an interest payment or any individual for whom such a payment is secured ***or should be secured***, unless he provides evidence that it was not received or secured for his own benefit, that is to say that:

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 10

Proposal for a directive – amending act
Article 1 – point 3
Directive 2003/48/EC
Article 3 – paragraph 2 – subparagraph 1 – point b

(b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 January 2004, the paying agent shall establish the identity of the beneficial owner, consisting of the name, address, date and place of birth and, if the beneficial owner has his address or otherwise proves to be resident for tax purposes in a Member State listed in Annex II, the tax identification number or equivalent allocated by that Member State.	(b) for contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 January 2004, the paying agent shall establish the identity of the beneficial owner, consisting of the name, address, date and place of birth and, if the beneficial owner has his address or otherwise proves to be resident for tax purposes in a Member State listed in Annex II, the tax identification number or equivalent allocated by that Member State***, when that number or equivalent appears in the documentation presented for identification***.

Amendment 11

Proposal for a directive – amending act
Article 1 – point 3
Directive 2003/48/EC
Article 3 – paragraph 2 – subparagraph 2

The details referred to in point (b) of the first subparagraph shall be established on the basis of ***the*** passport or of ***the*** official identity card or other official document listed in Annex II presented by the beneficial owner. Any such details which do not appear on ***that*** passport or on ***that*** official identity card or official document shall be established on the basis of any other official documentary proof of identity presented by the beneficial owner and issued by a public authority of the country where he has his address or otherwise proves to be resident for tax purposes.	The details referred to in point (b) of the first subparagraph shall be established on the basis of ***a*** passport or of ***an*** official identity card or other official document listed in Annex II presented by the beneficial owner. Any such details which do not appear on ***a*** passport or on ***an*** official identity card or ***on any other*** official document shall be established on the basis of any other official documentary proof of identity presented by the beneficial owner and issued by a public authority of the country where he has his address or otherwise proves to be resident for tax purposes.

Amendment 12

Proposal for a directive – amending act
Article 1 – point 3
Directive 2003/48/EC
Article 4 – paragraph 2 – subparagraph 2

For the purpose of the first subparagraph a legal arrangement shall be considered to have its place of effective management in the country where the person who primarily holds legal title and primarily manages its property ***and*** income has his or its permanent address.	For the purpose of the first subparagraph a legal arrangement shall be considered to have its place of effective management in the country where the person who primarily holds legal title and primarily manages its property ***or*** income has his or its permanent address.

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 13

Proposal for a directive – amending act
Article 1 – point 3
Directive 2003/48/EC
Article 4 – paragraph 2 – subparagraph 7

Any economic operator making an interest payment to, or securing an interest payment for, an entity or legal arrangement included in the list set out in Annex III shall communicate to the competent authority of its Member State of establishment the name and place of effective management of the entity, or in the case of a legal arrangement, the name and the permanent address of the person who primarily holds legal title and primarily manages the property ***and*** income of the legal arrangement, and the total amount of interest paid to, or secured for, the entity or legal arrangement. Where the place of effective management of the entity or legal arrangement is located in another Member State, the competent authority shall pass this information on to the competent authority of that other Member State.	Any economic operator making an interest payment to, or securing an interest payment for, an entity or legal arrangement included in the list set out in Annex III shall communicate to the competent authority of its Member State of establishment the name and place of effective management of the entity, or in the case of a legal arrangement, the name and the permanent address of the person who primarily holds legal title and primarily manages the property ***or*** income of the legal arrangement, and the total amount of interest paid to, or secured for, the entity or legal arrangement. Where the place of effective management of the entity or legal arrangement is located in another Member State, the competent authority shall pass this information on to the competent authority of that other Member State.

Amendment 14

Proposal for a directive – amending act
Article 1 – point 3
Directive 2003/48/EC
Article 4 – paragraph 3

'3. Those entities and legal arrangements referred to in paragraph 2 to whose assets or income no beneficial owner is immediately entitled at the moment of receipt of an interest payment shall have the option of being treated for the purposes of this Directive as an undertaking for collective investment or other collective investment fund or scheme as referred to in point (a) of paragraph 2.	***deleted***
Where an entity or legal arrangement exercises that option, the Member State in which it has its place of effective management shall issue a certificate to that effect. The entity or legal arrangement shall present that certificate to the economic operator making or securing the interest payment.	
Member States shall lay down the detailed rules concerning this option for entities and legal arrangements which have their place of effective management in their territory and shall ensure that the entity or legal arrangement having exercised this option acts as paying agent in accordance with paragraph 1, up to the total amount of the interest payments received, on each occasion that a beneficial owner becomes immediately entitled to its assets or income.'	

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 27

Proposal for a directive – amending act
Article 1 – point 4
Directive 2003/48/EC
Article 6 – paragraph -1 (new)

	-1. Without prejudice to the provisions laid down in the following paragraphs of this Article, the general principle under this Directive is that 'interest payment' means any revenue arising from the investment of capital where the return is fixed ex ante and the substance of the return arising from a transaction is similar to any interest income. In order to ensure a consistent interpretation of this provision throughout the Member States, it shall be complemented by a list of the financial products concerned. The Commission shall adopt this list by … [the date specified in Article 2(1) of Council Directive 2009/…/EC amending Directive 2003/48/EC on taxation of savings income in the form of interest payments] in accordance with the regulatory procedure referred to in Article 18b(2) of this Directive.

Amendment 15

Proposal for a directive – amending act
Article 1 – point 4
Directive 2003/48/EC
Article 6 – paragraph 1 – point c – subpoint ii

(ii) entities or legal arrangements having exercised the option under Article 4(3);	***deleted***

Amendment 16

Proposal for a directive – amending act
Article 1 – point 4
Directive 2003/48/EC
Article 6 – paragraph 1 – point d – subpoint ii

(ii) entities or legal arrangements having exercised the option under Article 4(3);	***deleted***

Amendment 35

Proposal for a directive – amending act
Article 1 – point 4
Directive 2003/48/EG
Article 6 – paragraph 1 – point e

(e) benefits from a life insurance contract where the contract provides for a biometric risk coverage which, expressed as an average over the duration of the contract, is lower than ***5 %*** of the capital insured and its actual performance is fully linked to interest or income of the kinds referred to in points (a), (aa), (b), (c) and (d); for this purpose any difference between the amounts paid out pursuant to a life insurance contract and the sum of all the payments made to the life insurer under the same life insurance contract shall be considered benefits from life insurance contracts.	(e) ***in the case of insurance contracts***: ***(i) the difference between the insurance benefit and the sum of contributions paid in the event of the redemption of the contract in the case of endowment retirement insurance, where no lifelong pension is paid;***

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT
	(ii) benefits from a life insurance contract where the contract provides for a biometric risk coverage which, expressed as an average over the duration of the contract, is lower than ***10 %*** of the ***initial*** capital insured and its actual performance is linked to interest or ***its actual performance is expressed in or directly linked to units and more than 40 % of the underlying assets is invested in*** income of the kinds referred to in points (a), (aa), (b), (c) and (d). ***Where for a unit linked insurance contract a paying agent has no information concerning the percentage of the underlying assets invested in debt claims or the relevant securities, that percentage shall be deemed to be above 40 %.*** For this purpose any difference between the amounts paid out pursuant to a life insurance contract and the sum of all the payments made to the life insurer under the same life insurance contract shall be considered benefits from life insurance contracts. ***Where the underwriter of the contract, the insured person and the beneficiary are not identical, the biometric risk coverage is deemed to be lower than 10 %.***

Amendment 36

Proposal for a directive – amending act
Article 1 – point 4
Directive 2003/48/EG
Article 6 – paragraph 1 – point e a (new)

	(ea) income from structured products. Structured products are bonds for which the level of repayment obligations depends on developments in some form of agreed base value. The difference between the purchase cost and the revenue from the sale, refund or redemption of the structured product is also considered to be income;

Amendment 37

Proposal for a directive – amending act
Article 1 – point 4
Directive 2003/48/EG
Article 6 – paragraph 1 – point e b (new)

	(eb) dividends received by a credit institution or financial institution on behalf of the beneficial owner.

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 18

Proposal for a directive – amending act
Article 1 – point 4
Directive 2003/48/EC
Article 6 – paragraph 9

9. Income referred to in point (aa) of paragraph 1 shall be considered to be an interest payment only to the extent to which the securities producing that income were first issued ***on or after 1 December 2008***.	9. Income referred to in point (aa) of paragraph 1 shall be considered to be an interest payment only to the extent to which the securities producing that income were first issued ***six months after the date of publication of this Directive or later***.

Amendment 19

Proposal for a directive – amending act
Article 1 – point 4
Directive 2003/48/EC
Article 6 – paragraph 10

10. Benefits from life insurance contracts shall be considered to be an interest payment in accordance with point (e) of paragraph 1 only to the extent to which the life insurance contracts giving rise to such benefits were first subscribed ***on or after 1 December 2008***.	10. Benefits from life insurance contracts shall be considered to be an interest payment in accordance with point (e) of paragraph 1 only to the extent to which the life insurance contracts giving rise to such benefits were first subscribed ***six months after the date of publication of this Directive or later***.

Amendment 20

Proposal for a directive – amending act
Article 1 – point 5 a (new)
Directive 2003/48/EC
Article 10 – paragraph 2

	(5a) Article 10(2) is replaced by the following:
	'The transition period shall end *no later than 1 July 2014 or at the end of* the first full fiscal year following the later of the dates *given below, provided that this is earlier than 1 July 2014:***
	— the date of entry into force of *the latest* agreement between the European Community, following a unanimous decision of the Council, and the Swiss Confederation, the Principality of Liechtenstein, the

TEXT PROPOSED BY THE COMMISSION	AMENDMENT
	Republic of San Marino, the Principality of Monaco and the Principality of Andorra, providing for the exchange of information upon request as defined in the OECD Model Agreement on Exchange of Information on Tax Matters released on 18 April 2002 (hereinafter the 'OECD Model Agreement') with respect to interest payments, as defined in this Directive, made by paying agents established within their respective territories to beneficial owners resident in the territory to which the Directive applies, in addition to the simultaneous application by those same countries of a withholding tax on such payments at the rate defined for the corresponding periods referred to in Article 11(1),
	— the date on which the Council agrees by unanimity that the United States of America is committed to exchange of information upon request as defined in the OECD Model Agreement with respect to interest payments, as defined in this Directive, made by paying agents established within its territory to beneficial owners resident in the territory to which the Directive applies.
	— the date on which the Council agrees by unanimity that Hong Kong, Singapore and other countries and territories listed under Annex I are committed to exchanging information upon request as defined in the OECD Model Agreement with respect to interest payments, as defined in this Directive, made by paying agents established within their territory to beneficial owners resident in the territory to which the Directive applies.'

Amendment 21

Proposal for a directive – amending act
Article 1 – point 6 a (new)
Directive 2003/48/EC
Article 12 – paragraphs 1 and 2

(6a) Article 12(1) and (2) are replaced by the following:

'1. Member States levying withholding tax in accordance with Article 11(1) shall retain *10 %* of their revenue and transfer *90 %* of the revenue to the Member State of residence of the beneficial owner of the interest.

2. Member States levying withholding tax in accordance with Article 11(5) shall retain *10 %* of the revenue and transfer *90 %* to the other Member States proportionate to the transfers carried out pursuant to paragraph 1 of this Article.'

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 22

Proposal for a directive – amending act
Article 1 – point 10
Directive 2003/48/EC
Article 18

(10) ***The first sentence of*** Article 18 is replaced by the following:	(10) Article 18 is replaced by the following:
'The Commission shall report to the Council every three years on the operation of this Directive on the basis of the statistics listed in Annex V, which shall be provided by each Member State to the Commission.'	***'Article 18***
	Review
	1. By 31st of December 2010, the Commission shall present a comparative study analysing advantages and weaknesses of both the systems of exchange of information and of the withholding tax so as to assess the objective of effective suppression of fiscal fraud and evasion. That comparative study should take into consideration, in particular, aspects of transparency, respect of fiscal sovereignty of the Member States, fiscal justice and administrative burden attached to any of the two systems.
	2. **The Commission shall report to the Council *and the European Parliament* every three years on the operation of this Directive on the basis of the statistics listed in Annex V, which shall be provided by each Member State to the Commission. *On the basis of those reports and the study referred to in paragraph 1, and in particular in relation to the end of transitional period referred to in Article 10(2), the Commission, shall, where appropriate, propose to the Council any amendments to this Directive that prove necessary in order to ensure effective taxation of savings income and to remove undesirable distortions of competition.***
	3. In the context of the study and the reports referred to in paragraphs 1 and 2, the Commission shall examine, in particular, whether it is appropriate to extend the scope of this Directive to all sources of financial income, including dividends and capital gains, as well as to payments made to all legal persons.'

Amendment 23

Proposal for a directive – amending act
Article 1 – point 11
Directive 2003/48/EC
Article 18 b – paragraph 3 a (new)

	3a. The Commission, assisted by the Committee, shall assess, every two years from 1 January 2010 onwards, the procedures, documents and common formats and forms referred to in Article 18a and shall adopt the measures required to improve them in accordance with the regulatory procedure referred to in Article 18b(2).

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Amendment 24

Proposal for a directive – amending act

Annex – point 2

Directive 2003/48/EC

Annex I

TEXT PROPOSED BY THE COMMISSION

ANNEX I

List of legal forms of entities and legal arrangements to which Article 2(3) applies because of the presence within the territory of specific countries or jurisdictions of their place of effective management

1. Entities and legal arrangements whose place of effective management is in a country or jurisdiction outside the territorial scope of the Directive as defined in Article 7 and which is different from those listed in Article 17(2):

Antigua and Barbuda	*International business company*
The Bahamas	*Trust* *Foundation* *International business company*
Bahrain	*Financial trust*
Barbados	*Trust*
Belize	*Trust* *International business company*
Bermuda	*Trust*
Brunei	*Trust* *International business company* *International trust* *International Limited Partnership*
Cook Islands	*Trust* *International trust* *International company* *International partnership*
Costa Rica	*Trust*
Djibouti	*Exempt company* *(Foreign) trust*
Dominica	*Trust* *International business company*
Fiji	*Trust*
French Polynesia	*Société (Company)* *Société de personnes (Partnership)* *Société en participation (Joint venture)* *(Foreign) trust*
Guam	*Company* *Sole proprietorship* *Partnership* *(Foreign) trust*
Guatemala	*Trust* *Fundación (Foundation)*

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Hong Kong	*Trust*
Kiribati	*Trust*
Labuan (Malaysia)	*Offshore company* *Malaysian offshore bank,* *Offshore limited partnership* *Offshore trust*
Lebanon	*Companies benefiting from the Offshore company regime*
Macao	*Trust* *Fundação (Foundation)*
Maldives	*All the companies, partnership and Foreign trust*
Northern Marianas Islands	*Foreign sales corporation* *Offshore banking corporation* *(Foreign) trust*
Marshall Islands	*Trust*
Mauritius	*Trust* *Global business company cat. 1 and 2*
Micronesia	*Company* *Partnership* *(Foreign) trust*
Nauru	*Trusts/nominee company* *Company* *Partnership* *Sole proprietorship* *Foreign will* *Foreign estate* *Other form of business negotiated with the Government*
New Caledonia	*Société (Company)* *Société civile (Civil company)* *Société de personnes (Partnership)* *Joint venture* *Estate of deceased person* *(Foreign) trust*
Niue	*Trust* *International business company*
Panama	*Fideicomiso (Trust)* *Fundación de interés privado (Foundation)*
Palau	*Company* *Partnership* *Sole proprietorship* *Representative office* *Credit union (financial cooperative)* *Cooperative* *(Foreign) trust*
Philippines	*Trust*
Puerto Rico	*Estate* *Trust* *International banking entity*
Saint Kitts and Nevis	*Trust* *Foundation* *Exempt company*

Saint Lucia	*Trust*
Saint Vincent and the Grenadine	*Trust*
Samoa	*Trust* *International trust* *International company* *Offshore bank* *Offshore insurance company* *International partnership* *Limited partnership*
Seychelles	*Trust* *International business company*
Singapore	*Trust*
Solomon Islands	*Company* *Partnership* *Trust*
South Africa	*Trust*
Tonga	*Trust*
Tuvalu	*Trust* *Provident fund*
United Arab Emirates	*Trust*
US Virgin Islands	*Trust* *Exempt company*
Uruguay	*Trust*
Vanuatu	*Trust* *Exempt company* *International company*

2. Entities and legal arrangements whose place of effective management is in a country or jurisdiction listed in Article 17(2), to which Article 2(3) applies pending the adoption by the country or jurisdiction concerned of provisions equivalent to those of Article 4(2):

Andorra	*Trust*
Anguilla	*Trust*
Aruba	*Stichting (Foundation)* *Companies benefiting from the offshore company regime*
British Virgin Islands	*Trust* *International business company*
Cayman Islands	*Trust* *Exempt company*
Guernsey	*Trust* *Zero tax company*
Isle of Man	*Trust*
Jersey	*Trust*

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Liechtenstein	*Anstalt (Trust)* *Stiftung (Foundation)*
Monaco	*Trust* *Fondation (Foundation)*
Montserrat	*Trust*
Netherlands Antilles	*Trust* *Stichting (Foundation)*
San Marino	*Trust* *Fondazione (Foundation)*
Switzerland	*Trust* *Foundation*
Turks and Caicos	*Exempted company* *Limited partnership* *Trust*

AMENDMENT

ANNEX I

1. ***The legal forms of entities and legal arrangements to which Article 2(3) applies shall include the following:***

— ***Limited liability companies whether limited by shares, guarantee or some other mechanism;***

— ***Limited liability corporations whether limited by shares, guarantee or some other mechanism;***

— ***International companies or corporations;***

— ***International business companies or corporations;***

— ***Exempt companies or corporations;***

— ***Protected cell companies or corporations;***

— ***Incorporated cell companies or corporations;***

— ***International banks, including corporations of similar name;***

— ***Offshore banks, including corporations of similar name;***

— ***Insurance companies or corporations;***

— ***Reinsurance companies or corporations;***

— ***Co-operatives;***

— ***Credit unions;***

— ***Partnerships of all forms including (without limitation) general partnerships, limited partnerships, limited liability partnerships, international partnerships and international business partnerships;***

— ***Joint ventures;***

— ***Trusts;***

— ***Settlements;***

— ***Foundations;***

— ***Estates of deceased persons;***

— ***Funds of all forms;***

— ***Branches of any of the entities and arrangements listed here;***

— ***Representative offices of any of the entities and arrangements listed here;***

— ***Permanent establishments of any of the entities and arrangements listed here;***

— ***Multiform Foundation, however described***

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2. The specific countries or jurisdictions outside the territorial scope of the Directive as defined in Article 7 and which are different from those listed in Article 17(2) in which Article 2(3) applies with regard to the legal forms of entities and legal arrangements referred to in Part 1 of this Annex if their place of effective management is located therein includes:

— ***Anjouan***

— ***Antigua and Barbuda***

— ***The Bahamas***

— ***Bahrain***

— ***Barbados***

— ***Belize***

— ***Bermuda***

— ***Brunei***

— ***Cook Islands***

— ***Costa Rica***

— ***Djibouti***

— ***Dominica***

— ***Dubai***

— ***Fiji***

— ***French Polynesia***

— ***Ghana***

— ***Grenada***

— ***Guam***

— ***Guatemala***

— ***Hong Kong***

— ***Kiribati***

— ***Labuan (Malaysia)***

— ***Lebanon***

— ***Liberia***

— ***Macao***

— ***Former Yugoslav Republic of Macedonia***

— ***Maldives***

— ***Montenegro***

— ***Northern Marianas Islands***

— ***Marshall Islands***

— ***Mauritius***

— ***Micronesia***

— ***Nauru***

— ***New Caledonia***

— ***Niue***

— ***Panama***

— ***Palau***

— ***Philippines***

— ***Puerto Rico***

— ***Saint Kitts and Nevis***

— ***Saint Lucia***

— ***Saint Vincent and the Grenadines***

— ***Samoa***

— ***Sao Tome e Principe***

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— *Seychelles*

— *Singapore*

— *Solomon Islands*

— *Somalia*

— *South Africa*

— *Tonga*

— *Tuvalu*

— *United Arab Emirates*

— *USA State of Delaware*

— *USA State of Nevada*

— *US Virgin Islands*

— *Uruguay*

— *Vanuatu*

3. *The specific countries or jurisdictions listed in Article 17(2) in which Article 2(3) applies pending the adoption by the country or jurisdiction concerned of provisions equivalent to those of Article 4(2) with regard to the legal forms of entities and legal arrangements referred to in Part 1 of this Annex if their place of effective management is located therein includes:*

— *Andorra*

— *Anguilla*

— *Aruba*

— *British Virgin Islands*

— *Cayman Islands*

— *Guernsey, Alderney or Sark*

— *Isle of Man*

— *Jersey*

— *Liechtenstein*

— *Monaco*

— *Montserrat*

— *Netherlands Antilles*

— *San Marino*

— *Sark*

— *Switzerland*

— *Turks and Caicos*

4. Any of the legal forms of entities and legal arrangements referred to in Part 1 of this Annex shall be covered by Article 2(3) if their place of effective management is located in any of the specific countries or jurisdictions referred to in Parts 2 and 3 of this Annex subject to the following:

(a) A country or jurisdiction referred to in Parts 2 and 3 can make an application to the Committee referred to in Article 18b to have any of the legal forms of entities and legal arrangements referred to in Part 1 removed from consideration for their country or jurisdiction on the grounds that the legal forms of entities and legal arrangements referred to could not have their place of effective management located therein or on the ground that appropriate taxation of interest income paid to these legal persons or arrangements is in fact ensured;

(b) The Committee shall publish its decision with reasons stated within 3 months of such application being made and the legal forms of entities and legal arrangements noted as being removed from the scope of Part 1 for the country or jurisdiction that has made such application for a notified period, not to exceed two years, which period may be extended on application from the country or jurisdiction submitted no sooner than six months prior to its date of expiry.

Amendment 25

Proposal for a directive – amending act

Annex – point 2

Directive 2003/48/EC

Annex III

TEXT PROPOSED BY THE COMMISSION

ANNEX III

List of 'paying agents on receipt' under Article 4(2)

INTRODUCTORY NOTE

Trusts and similar legal arrangements are listed for those Member States that do not have a domestic fiscal regime for the taxation of income received on behalf of such legal arrangements by the person who primarily holds legal title and primarily manages its property and income, and is resident on their territory. This list refers to trusts and similar legal arrangements whose place of effective management of their movable assets is in these countries (residence of the main trustee or other administrator responsible for movable assets), irrespective of the laws under which these trusts and similar legal arrangements have been set up.

Countries	List of entities and arrangements	Comments
Belgium	— Société de droit commun / maatschap (Civil law or commercial company without any legal status) — Société momentanée / tijdelijke handelsvennootschap (Company without any legal status whose purpose is to deal with one or several specific commercial operations) — Société interne / stille handelsvennootschap (Company without any legal status through which one or more persons has (have) an interest in operations that one or more other persons manage(s) on their behalf) — 'Trust' or other similar legal arrangement	See Articles 46, 47 and 48 of the Belgian Company Code. These 'companies' (the name of which is given in French and Dutch) do not have legal status, and from the point of view of taxation, a look-through approach is applicable.

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Countries	List of entities and arrangements	Comments
Bulgaria	— Drujestvo sys specialna investicionna cel (Special-purpose investment company) — Investicionno drujestvo (Investment company, not covered by Article 6) — 'Trust' or other similar legal arrangement	Entity exempt from corporate income tax. Trusts are allowed for public offering in Bulgaria and are exempt from corporate income tax.
Czech Republic	— Veřejná obchodní společnost (ver. obch. spol. or V.O.S.) (Partnership) — Sdruženi (Association) — Družstvo (Cooperative) — Evropské hospodářské zájmové sdružení (EHZS) (European Economic Interest Grouping (EEIG)) — 'Trust' or other similar legal arrangement	
Denmark	— Interessentskaber (General partnership) — Kommanditselskaber (Limited partnership) — Partnerselskaber (Partner company) — Europæisk økonomisk firmagrupper (EØFG) (European Economic Interest Grouping (EEIG)) — 'Trust' or other similar legal arrangement	
Germany	— Gesellschaft bürgerlichen Rechts (Civil law company) — Kommanditgesellschaft — KG, offene Handelsgesellschaft — OHG (Commercial partnership) — Europäische Wirtschaftliche Interessenvereinigung (European Economic Interest Grouping (EEIG))	
Estonia	— Täisühing- TÜ (General partnership) — Usaldusühing-UÜ (Limited partnership) — 'Trust' or other similar legal arrangement	General and limited partnerships are taxed as separate taxable entities, any distributions by which are deemed to be dividends (subject to distribution tax)
Ireland	— Partnership and investment club — European economic interest grouping (EEIG)	Irish resident trustee taxable on income arising to the trust.
Greece	— Omorrythmos Eteria (OE) (General partnership) — Eterorythmos Eteria (EE) (Limited partnership) — 'Trust' or other similar legal arrangement	Partnerships are subject to corporate income tax. However, up to 50 % of the profits of partnerships is taxed in the hands of the individual partners at their personal tax rate

Countries	List of entities and arrangements	Comments
Spain	Entities subject to the system for taxing attribution of profits: — Sociedad civil con o sin personalidad jurídica (Civil law partnership with or without legal personality), — Agrupación europea de interés económico (AEIE) (European Economic Interest Grouping (EEIG)), — Herencias yacentes (Estate of a deceased person), — Comunidad de bienes (Joint ownership). — Other entities without legal personality that constitute a separate economic unit or a separate group of assets (Article 35(4) of the Ley General Tributaria). — 'Trust' or other similar legal arrangement	
France	— Société en participation (Joint venture company) — Société ou association de fait (De facto company) — Indivision (Joint ownership) — 'Trust' or other similar legal arrangement	
Italy	— Società semplice (Civil law partnership and assimilated entity) — Non-commercial entity without legal personality — 'Trust' or other similar legal arrangement	The category of entities treated as 'società semplici' includes: 'società di fatto' (irregular or 'de facto' partnerships), which do not have commercial activities as their purpose, and 'associazioni' (associations) organised by artists or professional persons for the practice of their art or profession in associative forms with no legal personality The category of non-commercial entities without legal personality is wide, and may include various types of organisations: associations, syndicates, committees, non-profit organisations and others
Cyprus	— Syneterismos (Partnership) — syndesmos or somatio (Association) — Synergatikes (Cooperative) — 'Trust' or other similar legal arrangement — Ekswxwria Eteria (Offshore company)	Trusts created under Cypriot jurisdiction are considered transparent entities under national law.

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Countries	List of entities and arrangements	Comments
Latvia	— Pilnsabiedrība (General partnership) — Komandītsabiedrība (Limited partnership) — Eiropas Ekonomisko interešu grupām (EEIG) (European Economic Interest Grouping (EEIG) — Biedrības un nodibinājumi (Association and foundation); — Lauksaimniecības kooperatīvi (Agriculture cooperative) — 'Trust' or other similar legal arrangement	
Lithuania	— Europos ekonominių interesų grupės (European Economic Interest Grouping (EEIG)) — Asociacija (Association) — 'Trust' or other similar legal arrangement	Interests and capital gains on shares or bonds derived by associations are exempt from corporate income tax.
Luxembourg	— Société en nom collectif (General partnership) — Société en commandite simple (Limited partnership) — 'Trust' or other similar legal arrangement	
Hungary	— 'Trust' or other similar legal arrangement	Hungary recognises trusts as 'entities' under national rules
Malta	— Soċjetà in akomonditia (Partnership 'en commandite'), the capital of which is not divided into shares — Arrangement in participation (Association 'en participation') — Investment club — Soċjetà Kooperattiva (Cooperative society)	Partnerships 'en commandite' the capital of which is divided into shares are subject to general CIT.
The Netherlands	— Vennootschap onder firma (General partnership) — Commanditaire vennootschap (Closed limited partnership) — Europese economische samenwerkingsverbanden (EESV) (European Economic Interest Grouping (EEIG)) — Vereniging (Association) — Stichting (Foundation) — 'Trust' or other similar legal arrangement	General partnerships, closed partnerships and EEIGs are transparent for tax purposes. Verenigingen (associations) and stichtingen (foundations) are tax exempt unless they carry on a trade or business.

Countries	List of entities and arrangements	Comments
Austria	— Personengesellschaft (Partnership) — Offene Personengesellschaft (General commercial partnership) — Kommanditgesellschaft, KG (Limited partnership) — Gesellschaft nach bürgerlichem Recht, GesBR (Civil law partnership) — Offene Erwerbsgeselllschaft (OEG) (Professional general partnership) — Kommandit-Erwerbsgesellschaft (Professional limited partnership) — Stille Gesellschaft (Silent partnership) — Einzelfirma (Sole partnership) — Wirtschaftliche Interessenvereinigung (European Economic Interest Grouping (EEIG)) — Privatstiftung (Private foundation) — 'Trust' or other similar legal arrangement	Partnership is considered transparent, even if viewed as an entity for the purpose of profit computation. Treated like a normal 'partnership'. Taxed as a company, interest income taxed at a reduced rate of 12.5 %
Poland	— Spólka jawna (Sp. j.) (General partnership) — Spólka komandytowa (Sp. k.) (Limited partnership) — Spólka komandytowo-akcyjna (S.K.A.) (Limited joint-stock partnership) — Spólka partnerska (Sp. p.) (Professional partnership) — Europejskie ugrupowanie interesów gospodarczych (EUIG) (European Economic Interest Grouping (EEIG)) — 'Trust' or other similar legal arrangement	
Portugal	— Sociedade civil (Civil law partnership) which is not incorporated in a commercial form — Incorporated firms engaged in listed professional activities in which all partners are individuals qualified in the same profession — Agrupamento de Interesse Económico (AIE) (domestic economic interest grouping) — Agrupamento Europeu de Interesse Económico (AEIE) (European Economic Interest Grouping (EEIG))	Civil law partnerships not incorporated in a commercial form, incorporated firms engaged in listed professional activities, ACE (type of incorporated joint venture), EEIGs and companies holding assets which are either controlled by a family group or fully owned by five members or less are fiscally transparent. Other incorporated partnerships are treated as companies and taxed under the general IRC rules. Offshore companies operating in free-trade zones in Madeira or in Azores island of Santa Maria are exempted from CIT and WHT on dividends, interest, royalties and similar payments made to the foreign parent.

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Countries	List of entities and arrangements	Comments
	— Sociedada gestora de participacoes sociais (SGPS) (Holding companies which are either controlled by a family group or fully owned by five members or less) — Herança jacente (namely estate of a deceased person) — Unincorporated association — Offshore company operating in free-trade zones in Madeira or in Azores island of Santa Maria — 'Trust' or other similar legal arrangement	The only trusts admitted under Portuguese law are those set up under foreign law by legal persons in the International Business Centre of Madeira and trust assets constitute an autonomous part of the patrimony of the legal person acting as trustee.
Romania	— Association (partnership) — Cooperative (Cooperative) — 'Trust' or other similar legal arrangement	
Slovenia	— Samostojni podjetnik (Proprietorship) — 'Trust' or other similar legal arrangement	
Slovak Republic	— Verejná obchodná spoločnosť (General partnership) — Európske združenie hospodárskych záujmov (European Economic interest grouping (EEIG)) — Komanditná spoločnosť (Limited partnership) re income attributed to a general partner — Združenie (Association) — Entities that are not set up for the purpose of conducting business: chambers of professionals, voluntary civic associations, Nadácia (foundations) — 'Trust' or other similar legal arrangement	The taxable base is first computed for the limited partnership as a whole and then allocated to the general partners and limited partners. The profit shares received by the general partners of a limited partnership are taxed at the level of general partners. The remainder income of the limited partners is taxed initially at partnership level according to the rules for companies. Tax-exempt income includes income derived from activities that are the purpose of the establishment of the organisation, except income subject to the WHT regime.
Finland	— yksityisliike (Unregistered firm) — avoin yhtiö / öppet bolag (Partnership) — kommandiittiyhtiö / kommanditbolag (Limited partnership) — kuolinpesä / dödsbo (Estate of a deceased person) — eurooppalaisesta taloudellisesta etuyhtymästä (ETEY) / europeiska ekonomiska intressegrupperingar (European Economic interest grouping (EEIG)) — 'Trust' or other similar legal arrangement	

Countries	List of entities and arrangements	Comments
Sweden	— handelsbolag (General partnership) — kommanditbolag (Limited partnership) — enkelt bolag (Simple partnership) — 'Trust' or other similar legal arrangement	
United Kingdom	— General partnership — Limited partnership — Limited liability partnership — EEIG — Investment club (where members are entitled to a specific share of assets)	General partnerships, limited partnerships; limited liability partnerships and EEIGs are transparent for tax purposes.

AMENDMENT

ANNEX III

List of 'paying agents on receipt' under Article 4(2)

INTRODUCTORY NOTE

Trusts and similar legal arrangements are listed for those Member States that do not have a domestic fiscal regime for the taxation of income received on behalf of such legal arrangements by the person who primarily holds legal title and primarily manages its property and income, and is resident on their territory. This list refers to trusts and similar legal arrangements whose place of effective management of their movable assets is in these countries (residence of the main trustee or other administrator responsible for movable assets), irrespective of the laws under which these trusts and similar legal arrangements have been set up.

Countries	List of entities and arrangements	Comments
Belgium	— Société de droit commun / maatschap (Civil law or commercial company without any legal status) — Société momentanée / tijdelijke handelsvennootschap (Company without any legal status whose purpose is to deal with one or several specific commercial operations) — Société interne / stille handelsvennootschap (Company without any legal status through which one or more persons has (have) an interest in operations that one or more other persons manage(s) on their behalf) — 'Trust', ***foundation*** or other similar legal arrangement	See Articles 46, 47 and 48 of the Belgian Company Code. These 'companies' (the name of which is given in French and Dutch) do not have legal status, and from the point of view of taxation, a look-through approach is applicable.
Bulgaria	— Drujestvo sys specialna investicionna cel (Special-purpose investment company) — Investicionno drujestvo (Investment company, not covered by Article 6) — 'Trust', ***foundation*** or other similar legal arrangement	Entity exempt from corporate income tax Trusts are allowed for public offering in Bulgaria and are exempt from corporate income tax

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Countries	List of entities and arrangements	Comments
Czech Republic	— Veřejná obchodní společnost (ver. obch. spol. or V.O.S.) (Partnership) — Sdruženi (Association) — Družstvo (Cooperative) — Evropské hospodářské zájmové sdružení (EHZS) (European Economic Interest Grouping (EEIG)) — 'Trust', ***foundation*** or other similar legal arrangement	
Denmark	— Interessentskaber (General partnership) — Kommanditselskaber (Limited partnership) — Partnerselskaber (Partner company) — Europæisk økonomisk firmagrupper (EØFG) (European Economic Interest Grouping (EEIG)) — 'Trust', ***foundation*** or other similar legal arrangement	
Germany	— Gesellschaft bürgerlichen Rechts (Civil law company) — Kommanditgesellschaft — KG, offene Handelsgesellschaft — OHG (Commercial partnership) — Europäische Wirtschaftliche Interessenvereinigung (European Economic Interest Grouping (EEIG)) — ***'Trust', foundation or other similar legal arrangement***	
Estonia	— Täisühing- TÜ (General partnership) — Usaldusühing-UÜ (Limited partnership) — 'Trust', ***foundation*** or other similar legal arrangement	General and limited partnerships are taxed as separate taxable entities, any distributions by which are deemed to be dividends (subject to distribution tax).
Ireland	— Partnership and investment club European economic interest grouping (EEIG) — ***'General partnership'*** — ***'Limited partnership'*** — ***'Investment partnership'*** — ***'Non-resident limited liability company'*** — ***'Irish common contractual fund'*** — ***'Trust', foundation or other similar legal arrangement***	Irish resident trustee taxable on income arising to the trust.

Countries	List of entities and arrangements	Comments
Greece	— Omorrythmos Eteria (OE) (General partnership) — *Eterorrythmos* Eteria (EE) (Limited partnership) — 'Trust'***, foundation*** or other similar legal arrangement	Partnerships are subject to corporate income tax. However, up to 50 % of the profits of partnerships is taxed in the hands of the individual partners at their personal tax rate.
Spain	Entities subject to the system for taxing attribution of profits: — Sociedad civil con o sin personalidad jurídica (Civil law partnership with or without legal personality), — Agrupación europea de interés económico (AEIE) (European Economic Interest Grouping (EEIG)), — Herencias yacentes (Estate of a deceased person), — Comunidad de bienes (Joint ownership). — Other entities without legal personality that constitute a separate economic unit or a separate group of assets (Article 35(4) of the Ley General Tributaria). — 'Trust'***, foundation*** or other similar legal arrangement	
France	— Société en participation (Joint venture company) — Société ou association de fait (De facto company) — Indivision (Joint ownership) — 'Trust'***, foundation*** or other similar legal arrangement	
Italy	— Società semplice (Civil law partnership and assimilated entity) — Non-commercial entity without legal personality — 'Trust'***, foundation*** or other similar legal arrangement	The category of entities treated as 'società semplici' includes: 'società di fatto' (irregular or 'de facto' partnerships), which do not have commercial activities as their purpose, and 'associazioni' (associations) organised by artists or professional persons for the practice of their art or profession in associative forms with no legal personality. The category of non-commercial entities without legal personality is wide, and may include various types of organisations: associations, syndicates, committees, non-profit organisations and others.

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Countries	List of entities and arrangements	Comments
Cyprus	— Syneterismos (Partnership) — syndesmos or somatio (Association) — Synergatikes (Cooperative) — 'Trust', ***foundation*** or other similar legal arrangement — Ekswxwria Eteria (Offshore company)	Trusts created under Cypriot jurisdiction are considered transparent entities under national law.
Latvia	— Pilnsabiedrība (General partnership) — Komandītsabiedrība (Limited partnership) — Eiropas Ekonomisko interešu grupām (EEIG) (European Economic Interest Grouping (EEIG) — Biedrības un nodibinājumi (Association and foundation); — Lauksaimniecības kooperatīvi (Agriculture cooperative) — 'Trust', ***foundation*** or other similar legal arrangement	
Lithuania	— Europos ekonominių interesų grupės (European Economic Interest Grouping (EEIG)) — Asociacija (Association) — 'Trust', ***foundation*** or other similar legal arrangement	Interests and capital gains on shares or bonds derived by associations are exempt from corporate income tax.
Luxembourg	— Société en nom collectif (General partnership) — Société en commandite simple (Limited partnership) — 'Trust', ***foundation*** or other similar legal arrangement	
Hungary	— 'Trust', ***foundation*** or other similar legal arrangement	Hungary recognises trusts as 'entities' under national rules
Malta	— Soċjetà in akomonditia (Partnership 'en commandite'), the capital of which is not divided into shares — Arrangement in participation (Association 'en participation') — Investment club — Soċjetà Kooperattiva (Cooperative society) — ***'Trust', foundation or other similar legal arrangement***	Partnerships 'en commandite' the capital of which is divided into shares are subject to general CIT.

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Countries	List of entities and arrangements	Comments
Netherlands	— Vennootschap onder firma (General partnership) — Commanditaire vennootschap (Closed limited partnership) — Europese economische samenwerkingsverbanden (EESV) (European Economic Interest Grouping (EEIG)) — Vereniging (Association) — Stichting (Foundation) — 'Trust'***, foundation*** or other similar legal arrangement	General partnerships, closed partnerships and EEIGs are transparent for tax purposes. Verenigingen (Associations) and stichtingen (foundations) are tax exempt unless they carry on a trade or business.
Austria	— Personengesellschaft (Partnership) — Offene Personengesellschaft (General commercial partnership) — Kommanditgesellschaft, KG (Limited partnership) — Gesellschaft nach bürgerlichem Recht, GesBR (Civil law partnership) — Offene Erwerbsgeselllschaft (OEG) (Professional general partnership) — Kommandit-Erwerbsgesellschaft (Professional limited partnership) — Stille Gesellschaft (Silent partnership) — Einzelfirma (Sole partnership) — Europäische Wirtschaftliche Interessenvereinigung (European Economic Interest Grouping (EEIG)) Privatstiftung (Private foundation) — 'Trust'***, foundation*** or other similar legal arrangement	Partnership is considered transparent, even if viewed as an entity for the purpose of profit computation. Treated like a normal 'partnership'. Taxed as a company, interest income taxed at a reduced rate of 12,5 %
Poland	— Spólka jawna (Sp. j.) (General partnership) — Spólka komandytowa (Sp. k.) (Limited partnership) — Spólka komandytowo-akcyjna (S.K.A.) (Limited joint-stock partnership) — Spólka partnerska (Sp. p.) (Professional partnership) — Europejskie ugrupowanie interesów gospodarczych (EUIG) (European Economic Interest Grouping (EEIG)) — 'Trust'***, foundation*** or other similar legal arrangement	

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Countries	List of entities and arrangements	Comments
Portugal	— Sociedade civil (Civil law partnership) which is not incorporated in a commercial form — Incorporated firms engaged in listed professional activities in which all partners are individuals qualified in the same profession — Agrupamento de Interesse Económico (AIE) (domestic economic interest grouping) — Agrupamento Europeu de Interesse Económico (AEIE) (European Economic Interest Grouping (EEIG)) — Sociedada gestora de participacoes sociais (SGPS) (Holding companies which are either controlled by a family group or fully owned by five members or less) — Herança jacente (namely estate of a deceased person) — Unincorporated association — Offshore company operating in free-trade zones in Madeira or in Azores island of Santa Maria — 'Trust', ***foundation*** or other similar legal arrangement	Civil law partnerships not incorporated in a commercial form, incorporated firms engaged in listed professional activities, ACE (type of incorporated joint venture), EEIGs and companies holding assets which are either controlled by a family group or fully owned by five members or less are fiscally transparent. Other incorporated partnerships are treated as companies and taxed under the general IRC rules. Offshore companies operating in free-trade zones in Madeira or in Azores island of Santa Maria are exempted from CIT and WHT on dividends, interest, royalties and similar payments made to the foreign parent. The only trusts admitted under Portuguese law are those set up under foreign law by legal persons in the International Business Centre of Madeira and trust assets constitute an autonomous part of the patrimony of the legal person acting as trustee.
Romania	— Association (partnership) — Cooperative (Cooperative) — 'Trust', ***foundation*** or other similar legal arrangement	
Slovenia	Samostojni podjetnik (Proprietorship) — 'Trust', ***foundation*** or other similar legal arrangement	
Slovakia	— Verejná obchodná spoločnosť (General partnership) — Európske združenie hospodárskych záujmov (European Economic interest grouping (EEIG)) — Komanditná spoločnosť (Limited partnership) re income attributed to a general partner — Združenie (association) — Entities that are not set up for the purpose of conducting business: chambers of professionals, voluntary civic associations, Nadácia (foundations) — 'Trust', ***foundation*** or other similar legal arrangement	The taxable base is first computed for the limited partnership as a whole and then allocated to the general partners and limited partners. The profit shares received by the general partners of a limited partnership are taxed at the level of general partners. The remainder income of the limited partners is taxed initially at partnership level according to the rules for companies. Tax-exempt income includes income derived from activities that are the purpose of the establishment of the organisation, except income subject to the WHT regime.

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Countries	List of entities and arrangements	Comments
Finland	— yksityisliike (Unregistered firm) — avoin yhtiö / öppet bolag (Partnership) — kommandiittiyhtiö / kommanditbolag (Limited partnership) — kuolinpesä / dödsbo (Estate of a deceased person) — eurooppalaisesta taloudellisesta etuyhtymästä (ETEY) / europeiska ekonomiska intressegrupperingar (European Economic interest grouping (EEIG)) — 'Trust'***, foundation*** or other similar legal arrangement	
Sweden	— handelsbolag (General partnership) — kommanditbolag (Limited partnership) — enkelt bolag (Simple partnership) — 'Trust'***, foundation*** or other similar legal arrangement	
United Kingdom	— General partnership — Limited partnership — Limited liability partnership — EEIG — Investment club (where members are entitled to a specific share of assets) — ***'Trust', foundation or other similar legal arrangement*** — ***Entities and legal arrangements whose place of effective management is in the jurisdiction of Gibraltar, including:*** — ***Limited liability companies whether limited by shares, guarantee or some other mechanism;*** — ***Limited liability corporations whether limited by shares, guarantee or some other mechanism;*** — ***International companies or corporations;*** — ***International business companies or corporations;***	General partnerships, limited partnerships; limited liability partnerships and EEIGs are transparent for tax purposes.

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Countries	List of entities and arrangements	Comments
	— ***Exempt companies or corporations;*** — ***Protected cell companies or corporations;*** — ***Incorporated cell companies or corporations;*** — ***International banks, including corporations of similar name;*** — ***Offshore banks, including corporations of similar name;*** — ***Insurance companies or corporations;*** — ***Reinsurance companies or corporations;*** — ***Co-operatives;*** — ***Credit unions;*** — ***Partnerships of all forms including (without limitation) general partnerships, limited partnerships, limited liability partnerships, international partnerships and international business partnerships;*** — ***Joint ventures;*** — ***Trusts;*** — ***Settlements;*** — ***Foundations;*** — ***Estates of deceased persons;*** — ***Funds of all forms;*** — ***Branches of any of the entities and arrangements listed here;*** — ***Representative offices of any of the entities and arrangements listed here;*** — ***Permanent establishments of any of the entities and arrangements listed here;*** — ***Multiform Foundation, however described.***	

Friday 24 April 2009

Common system of VAT as regards tax evasion linked to import and other cross-border transactions *

P6_TA(2009)0326

European Parliament legislative resolution of 24 April 2009 on the proposal for a Council directive amending Directive 2006/112/EC on the common system of value added tax as regards tax evasion linked to import and other cross-border transactions (COM(2008)0805 – C6-0039/2009 – 2008/0228(CNS))

(2010/C 184 E/86)

(Consultation procedure)

The European Parliament,

— having regard to the Commission proposal to the Council (COM(2008)0805),

— having regard to Article 93 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0039/2009),

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on Economic and Monetary Affairs (A6-0189/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;

5. Instructs its President to forward its position to the Council and the Commission.

TEXT PROPOSED BY THE COMMISSION	AMENDMENT
Amendment 1 **Proposal for a directive – amending act** **Recital 5**	
(5) VAT is payable by the person liable for the payment to the tax authorities. To safeguard payment of VAT, Member States may however provide that under appropriate circumstances another person is held jointly and severally liable for the payment of that VAT.	(5) VAT is payable by the person liable for the payment to the tax authorities. To safeguard payment of VAT, Member States may however provide that under appropriate circumstances another person is held jointly and severally liable for the payment of that VAT. ***In so doing, Member States should ensure that any measures to counter fraud are proportional and targeted at persons that have committed fraud.***

Friday 24 April 2009

TEXT PROPOSED BY THE COMMISSION	AMENDMENT

Amendment 2

Proposal for a directive – amending act
Recital 6

(6) In order to guarantee that a supplier of goods who contributes to a VAT loss occurring when the goods supplied exempt of VAT are acquired by another person, may also be held jointly and severally liable for the payment of VAT due on the *intra Community* acquisition of those goods in a Member State where the supplier concerned is not established (non-established supplier), it is appropriate to provide for that possibility.	(6) In order to guarantee that a supplier of goods who contributes to a VAT loss occurring when the goods supplied exempt of VAT are acquired by another person, may also be held jointly and severally liable for the payment of VAT due on the *intra-Community* acquisition of those goods in a Member State where the supplier concerned is not established (non-established supplier), it is appropriate to provide for that possibility. ***By … (*), the Commission should evaluate the functioning of joint and several liability and, if appropriate, submit a proposal for amendment in that regard.***
	(*) Five years after the entry into force of this Directive.

Amendment 3

Proposal for a directive – amending act
Article 1 – point 2
Directive 2006/112/EC
Article 205 – paragraph 2

2. In the situation referred to in Article 200, the person supplying goods in accordance with *the conditions laid down in* Article 138, shall be held jointly and severally liable for the payment of the VAT due on the intra-Community acquisition of those goods where *he* has not complied with the obligation provided for in Articles 262 and 263 to submit a recapitulative statement containing the information concerning the supply or the recapitulative statement submitted by him does not set out the information concerning this supply as required under Article 264.	2. In the situation referred to in Article 200, the person supplying goods in accordance with Article 138, shall be held jointly and severally liable for the payment of the VAT due on the intra-Community acquisition of those goods where *that person* has not complied with the obligation provided for in Articles 262 and 263 to submit a recapitulative statement containing the information concerning the supply or the recapitulative statement submitted by him does not set out the information concerning this supply as required under Article 264. ***Prior to holding a person supplying goods in accordance with Article 138 jointly and severally liable, the authorities to which that person is required to submit his recapitulative statement under Article 262 shall notify him of his non-compliance and shall give him the opportunity to justify his shortcoming within a period not shorter than two months.***
However, the first subparagraph shall not apply *in the following situations*:	The first subparagraph shall not apply *where*:
(a) the customer has, for the period during which the tax became chargeable on the transaction concerned, submitted a VAT return as provided for in Article 250 containing all the information on this transaction;	(a) the customer has, for the period during which the tax became chargeable on the transaction concerned, submitted a VAT return as provided for in Article 250 containing all the information on this transaction;
(b) the person supplying goods in accordance with *the conditions laid down in* Article 138 can duly justify to *the satisfaction of* the competent authorities his shortcoming referred to in the first subparagraph of this paragraph.	(b) the person supplying goods in accordance with Article 138 can duly justify to the competent authorities ***to which the recapitulative statement must be submitted in accordance with Article 262*** his shortcoming referred to in the first subparagraph of this paragraph*; or*

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TEXT PROPOSED BY THE COMMISSION	AMENDMENT
	(c) more than two years have elapsed between the supply of goods and the date on which the person supplying goods in accordance with Article 138 received the notification referred to in the second subparagraph of this paragraph.

Amendment 4

Proposal for a directive – amending act
Article 1 a (new)

	Article 1a
	Commission evaluation
	By … (*), the Commission shall draw up a report evaluating the impact of joint and several liability under Article 205 of Directive 2006/112/EC, including its impact on administrative costs for suppliers and on tax revenue gained by Member States. If appropriate, and provided that the Commission is able to demonstrate that the Value-added Tax Information Exchange System (VIES) database and the exchange of information between Member States function correctly, the Commission shall submit a proposal to amend Article 205 of Directive 2006/112/EC.
	_____
	(*) Five years after the entry into force of this Directive.

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Key to symbols used

*	Consultation procedure
**I	Cooperation procedure: first reading
**II	Cooperation procedure: second reading
***	Assent procedure
***I	Codecision procedure: first reading
***II	Codecision procedure: second reading
***III	Codecision procedure: third reading

(The type of procedure is determined by the legal basis proposed by the Commission.)

Political amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ▌.

Technical corrections and adaptations by the services: new or replacement text is highlighted in italics and deletions are indicated by the symbol ‖.

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