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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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Tuesday 23 September 2008

I

(Resolutions, recommendations and opinions)

RESOLUTIONS

EUROPEAN PARLIAMENT

Follow-up to the Monterrey Conference of 2002 on Financing for Development

P6_TA(2008)0420

European Parliament resolution of 23 September 2008 on the follow-up to the Monterrey Conference of 2002 on financing for Development (2008/2050(INI))

(2010/C 8 E/01)

The European Parliament,

— having regard to the Monterrey Consensus, adopted by the United Nations (UN) International Conference on Financing for Development in Monterrey, Mexico, on 18-22 March 2002 (the Monterrey Conference),

— having regard to the commitments made by Member States at the European Council in Barcelona on 14 March 2002 (Barcelona commitments),

— having regard to its resolution of 25 April 2002 on the financing of development aid [1],

— having regard to its resolution of 7 February 2002 on the financing of development aid [2],

— having regard to the Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: 'The European Consensus' [3] signed on 20 December 2005,

— having regard to the Commission Communication of 9 April 2008 entitled 'The EU — a global partner for development — on speeding up progress towards the Millennium Development Goals' (COM(2008)0177),

— having regard to the Commission Communication of 4 April 2007 entitled 'Keeping Europe's promises on Financing for Development' (COM(2007)0164),

— having regard to the Commission Communication of 2 March 2006 entitled 'Financing for development and aid effectiveness — the challenges of scaling up EU aid 2006-2010' (COM(2006)0085),

[1] OJ C 131 E, 5.6.2003, p. 164.
[2] OJ C 284 E, 21.11.2002, p. 315.
[3] OJ C 46, 24.2.2006, p. 1.

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— having regard to the Commission Communication of 12 April 2005 entitled 'Accelerating progress towards attaining the Millennium Development Goals — Financing for Development and Aid Effectiveness' (COM(2005)0133),

— having regard to the Communication of 5 March 2004 entitled 'Translating the Monterrey Consensus into practice: the contribution by the European Union' (COM(2004)0150),

— having regard to the European Council conclusions of 14 March 2002 on the international Conference on Financing for Development (Monterrey, Mexico, 18-22 March 2002),

— having regard to the Millennium Development Goals (MDGs) adopted at the UN Millennium Summit in New York on 6-8 September 2000, and reaffirmed at subsequent UN Conferences, notably the Monterrey Conference,

— having regard to the commitment made at the Göteborg European Council on 15-16 June 2001 for Member States to reach the UN target for Official Development Assistance (ODA) of 0,7 % of Gross National Income (GNI),

— having regard to the Commission Communication of 2 March 2006 entitled 'EU Aid: Delivering more, better and faster' (COM(2006)0087),

— having regard to its resolution of 22 May 2008 on the follow-up to the Paris Declaration of 2005 on Aid Effectiveness ([1]),

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

— having regard to the report of the Committee on Development and the opinion of the Committee on Budgets (A6-0310/2008),

A. whereas for the second time in history the UN is organising an International Conference on Financing for Development, which is to be held in Doha from 29 November to 2 December 2008, aimed at bringing together Heads of State and Government and not only development but also finance ministers, as well as representatives from the international financial organisations, private banking and business and civil society, to examine the progress that has been made since the Monterrey Conference,

B. whereas, to achieve the MDGs, there is a need for greatly increased financing,

C. whereas financing for development should be defined as the most cost-effective way to respond to the world's development needs and global insecurities,

D. whereas the need for adequate predictable and sustainable financial resources is more urgent than ever, especially taking account of the challenge of climate change and its implications, including natural disasters, and the particular vulnerability of developing countries,

E. whereas the EU is the world's biggest aid donor, a major shareholder in the international financial institutions, and the most important trading partner for developing countries,

F. whereas the EU has committed itself to a clear and mandatory timeframe for reaching the 0,56 % of GNI target by 2010 and the 0,7 % of GNI target by 2015,

([1]) Texts Adopted, P6_TA(2008)0237.

G. whereas, if current trends regarding Member States' ODA levels continue, some Member States will not meet the targets to which they are committed of 0,51 % for the EU 15 (i.e. the Member States part of the EU prior to the 2004 enlargement) and 0,17 % for the EU 12 (i.e. the Member States which acceded to the EU on 1 May 2004 and 1 January 2007) of GNI by 2010,

H. whereas programmable aid to Africa is rising despite the general decrease in ODA in 2007,

I. whereas significant new development challenges have recently emerged, including climate change, structural changes in commodity markets and in particular those for food and oil, and important new trends in South-South cooperation, including support for infrastructure by China in Africa and lending by the Brazilian Development Bank (BNDES) in Latin America,

J. whereas financial services in many developing countries are underdeveloped as a result of many factors including restrictions on supply of services and lack of legal certainty and property rights,

1. Reaffirms its commitment to poverty eradication, sustainable development and the achievement of the MDGs, as the only ways to bring about social justice and improved quality of life for the approximately one billion people globally who live in extreme poverty, defined as an income of less than one US dollar a day;

2. Calls on Member States to place a clear division between development spending and spending on foreign policy interests and emphasises, in this regard, that ODA should be in line with the criteria for ODA established by the Development Assistance Committee of the Organisation for Economic Cooperation and Development (OECD/DAC) and the OECD/DAC recommendations on untying ODA;

3. Underlines the absolute need for the EU to aim for the highest level of coordination in order to achieve coherence with other Community policies (environment, migration, human rights, agriculture, etc.) and avoid duplication of work and inconsistency of activities;

4. Recalls that the immediate and necessary actions to be taken by the EU to tackle the dramatic consequences of the soaring food prices in developing countries should not be understood and carried out as part of the financial efforts required by the Monterrey Consensus; therefore looks forward to a concrete proposal from the Commission on the use of emergency funds;

5. Stresses that the excessive and disproportionate administrative burden in some of the partner countries impairs the effectiveness of development aid; fears that this burden risks jeopardising the achievement of the MDGs;

6. Notes that the EU still has to find the right balance between two contradictory approaches towards development aid: on the one hand, to trust partner countries in the adequate allocation of the funds and to help their administrations develop the right tools for implementation of the funds; on the other hand, to earmark the financial aid in order to avoid misuse or ineffective allocation of the aid;

Volumes of ODA

7. Points out that the EU is the world's leading donor in ODA, representing almost 60 % of the world official development aid, and welcomes the fact that the EU share of global ODA has been increasing over the years; nevertheless requests the Commission to provide clear and transparent data on the share of the EU budget devoted to EU development aid in order to assess the follow-up to the Monterrey Consensus by all European donors; also expresses its regret that the level of EU financial contributions to developing countries lacks visibility and invites the Commission to develop appropriate and targeted communication and information tools to increase the visibility of EU development aid;

8. Welcomes the fact that the EU met its binding ODA target of the EU average of 0,39 % of GNI by 2006, but notes the alarming decrease in EU aid in 2007 from EUR 47,7 billion in 2006 (0,41 % of EU collective GNI) to EUR 46,1 billion in 2007 (0,38 % of EU collective GNI) and calls upon Member States to raise ODA volumes to achieve their promised target of 0,56 % of GNI in 2010;

9. Insists that reductions in Member States' reported ODA should not take place again; points out that the EU will have given EUR 75 billion less than was promised for the period 2005-2010 if the current trend continues;

10. Expresses serious concern that a majority of the Member States (18 out of 27, especially Latvia, Italy, Portugal, Greece and the Czech Republic) were unable to raise their level of ODA between 2006 and 2007 and that there has even been a dramatic reduction of over 10 % in a number of countries such as Belgium, France and the United Kingdom; calls on Member States to fulfil the ODA volumes to which they are committed; notes with satisfaction that some Member States (Denmark, Ireland, Luxembourg, Spain, Sweden and the Netherlands) are certain to reach their ODA targets for 2010, and is confident that these Member States will maintain their high levels of ODA;

11. Welcomes the firm stance of the Commission on the efforts to be concentrated on both the quantity and the quality of development aid from Member States, and strongly supports its warning against the potential highly negative consequences of the Member States' failing to fulfil their financial commitments; calls on the Commission to use its expertise and authority to convince other public and private donors to honour their financial promises;

12. Is extremely concerned that some Member States are backloading ODA increases, leading to a net loss for developing countries of more than EUR 17 billion;

13. Welcomes the approach of some Member States to develop binding multi-annual timetables for increasing ODA levels to meet the UN target of 0,7 % by 2015; asks Member States that have not yet done so to disclose their multi-annual timetables as quickly as possible; stresses that Member States should adopt these prior to the abovementioned Follow-up International Conference on Financing for Development to be held in Doha and fulfil their commitments;

14. Observes that the 2007 decreases in reported aid levels are due in some cases to the artificial boosting of figures in 2006 by debt relief; calls on Member States to increase ODA levels in a sustainable manner by concentrating on figures with the debt relief component removed;

15. Views as totally unacceptable the discrepancy between the frequent pledges of increased financial assistance and the considerably lower sums that are actually disbursed and is concerned that some Member States are demonstrating aid fatigue;

16. Stresses the fact that consultation with partner governments, national parliaments and civil society organisations is crucial in the decision making on ODA volumes and destinations;

Speed, flexibility, predictability and sustainability of financial flows

17. Stresses that assistance needs to be delivered in a timely manner and expresses dissatisfaction that the processes for delivery are often subject to undue delays;

18. Stresses the need to balance flexibility in the delivery of cooperation funds, in order to respond to changing circumstances, such as rising food prices with the imperative for predictable funding to allow partner countries to plan for sustainable development and climate change adaptation and mitigation;

19. Calls strongly for the clear observance of the principles of responsible lending and financing, to make lending and financing operations sustainable in terms of economic and environmental development along and in line with the equator principles; calls on the Commission to participate in establishing such principles and press in international fora for binding measures to put them into practice in such a way that their coverage extends to new development actors from public and private sectors;

Debt and capital flight

20. Fully endorses efforts by developing countries to maintain long-term debt sustainability and to implement the initiative for very Heavily Indebted Poor Countries (HIPC), which is of key importance to fulfil the MDGs; regrets, however, that the debt relief plans exclude a large number of countries for which debt remains an obstacle to fulfilling the MDGs; stresses the need for an urgent international debate on extending the reduction of international measures to a number of indebted countries currently excluded from the HIPC initiative;

21. Calls on the Commission to address the issue of 'odious' or illegitimate debts, meaning debts having arisen from irresponsible, self-interested, reckless or unfair lending and the principles of responsible finance in bilateral and multilateral negotiations on debt relief; welcomes the Commission's call for action to limit the rights of commercial creditors and vulture funds to be repaid, in the event of judicial proceedings;

22. Calls on all Member States to adhere to the framework of debt sustainability and push for its development to take account of a country's internal debt and financial requirements; calls on all Member States to recognise that lender liability does not just involve compliance with the sustainability framework, but also entails:

— taking into consideration the vulnerability of borrowing countries to external shocks, making provision in such cases for the possibility of suspending or easing repayment,

— incorporating transparency requirements, for both parties, in borrowing agreements,

— exercising greater vigilance in ensuring that the borrowing does not contribute to human rights violations or an increase in corruption;

23. Urges the EU to promote international efforts which aim to put in place some form of international insolvency procedures or fair and transparent arbitration procedure to deal efficiently and equitably with any future debt crisis;

24. Regrets that the Commission does not place more emphasis on the mobilisation of internal resources to finance development, as these are sources of greater autonomy for developing countries; encourages Member States to be fully involved in the Extractive Industries Transparency Initiative (EITI) and to call for it to be strengthened; calls on the Commission to ask the International Accounting Standards Board (IASB) to include among these international accounting standards a country-by-country reporting requirement on the activities of multinational companies in all sectors;

25. Regrets that the Commission communication package on aid effectiveness (COM(2008)0177) does not mention capital flight as a risk factor for the economies of developing countries; points out that capital flight does serious damage to the development of sustainable economic systems in developing countries and points out that each year tax evasion costs developing countries more than they receive in the form of ODA; calls on the Commission to include measures to prevent capital flight in its policies, as required by the Monterrey Consensus, including a frank analysis of the causes of capital flight, with the goal of closing down tax havens, some of which are located within the EU or operate in close connection with Member States;

26. Notes, in particular, that according to the World Bank the illegal component of this capital flight amounts to 1 000 to 1 600 billion USD each year, half of which comes from developing countries; supports the international efforts made to freeze and recover stolen assets and asks those Member States that have not done so to ratify the United Nations Convention against corruption; deplores the fact that similar efforts are not being made to combat tax evasion and calls upon the Commission and Member States to promote the global extension of the principle of the automatic exchange of tax information, to ask that the Code of Conduct on tax evasion currently being drawn up at the United Nations Economic and Social Council (UN Ecosoc) be annexed to the Doha declaration and to support the transformation of the UN Committee of Experts on International Cooperation in Tax Matters into a genuine intergovernmental body equipped with additional resources to conduct the international fight against tax evasion alongside the OECD;

Innovative financing mechanisms

27. Welcomes the proposals for innovative financing mechanisms put forward by the Member States and calls on the Commission to examine them against the benchmarks of ease of practical implementation, sustainability, additionality, transaction costs and effectiveness; calls for financial mechanisms and instruments that provide new funding and do not put future financial flows at risk;

28. Calls for financial mechanisms and instruments which provide measures to leverage private money as stated in the Monterrey Consensus and deploy credit guarantees;

29. Calls on the Commission greatly to enhance funding of climate change adaptation and mitigation measures in developing countries, in particular of the Global Climate Change Alliance; emphasises the acute need for funding beyond current ODA flows as ODA alone should not provide adequate support for measures for adaptation and mitigation for climate change in developing countries; stresses that innovative finance mechanisms should be developed urgently for this purpose, such as levies on aviation and oil trading, as well as by earmarking of auctioning revenues from the EU Emissions Trading Scheme (EU ETS);

30. Welcomes the Commission's proposal to establish a Global Climate Financing Mechanism, based on the principal of frontloading aid to finance mitigation and adaptation measures in developing countries; calls on Member States and the Commission to make substantial financial commitments in order to implement the proposal urgently;

31. Calls on the Commission and Member States to earmark at least 25 % of future auctioning revenues from the EU ETS to finance climate change adaptation and mitigation measures in developing countries;

32. Calls on the Commission to develop access to finance for small-scale entrepreneurs and farmers, as a means of increasing food production and providing a sustainable solution to the food crisis;

33. Calls on the European Investment Bank (EIB) to investigate possibilities for the immediate setting up of a guarantee fund in support of micro-credit and risk-hedging schemes that respond closely to the needs of local food producers in poorer developing countries;

34. Welcomes the proposal to set up a multi-donor gender fund that was launched at the UN and would be managed by the United Nations Development Fund for Women (Unifem), with the aim of promoting and funding gender equality policies in developing countries; calls on the Council and the Commission to examine and endorse this international initiative;

35. Calls for a redoubling of efforts to encourage the development of financial services, given that the banking sector has the potential to unleash local financing for development and that furthermore a stable financial services sector is the best way to combat capital flight;

36. Calls on all stakeholders to appreciate fully the enormous potential of revenues from natural resources; in this regard sees it as essential that resource industries are transparent; considers that, while the EITI and the Kimberley Process are moving in the right direction, much more needs to be done to encourage the transparent management of resource industries and their revenues;

Reforming international systems

37. Calls upon the Council and the Commission to include the European Development Fund in the EU budget at the 2008/2009 Midterm Review, in order to enhance the democratic legitimacy of an important part of EU development policy and its budget;

38. Notes the first step taken in April 2008 towards the better representation of developing countries within the International Monetary Fund (IMF); regrets that a wealth-based weighting continues to govern the breakdown of voting rights at the IMF; calls on the Commission and Member States to demonstrate their interest in double-majority decision-making (shareholders/States) within the institution responsible for international financial stability, the IMF;

39. Calls on the Commission and Member States to use the abovementioned Follow-up International Conference on Financing for Development, to be held in Doha, as an opportunity to present a common EU position on development aimed at achieving the MDGs through a sustainable approach;

40. Calls on Member States to undertake a rapid and ambitious reform of the World Bank so that those most directly concerned by its programmes are better represented;

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41. Instructs its President to forward this resolution to the Council, the Commission, the UN Secretary-General, and the heads of the World Trade Organisation, the IMF, the World Bank Group and the UN Ecosoc.

Internal Market Scoreboard

P6_TA(2008)0421

European Parliament resolution of 23 September 2008 on the Internal Market Scoreboard (2008/2056(INI))

(2010/C 8 E/02)

The European Parliament,

— having regard to the Internal Market Scoreboard No 16 bis of 14 February 2008 (SEC(2008)0076),

— having regard to its resolution of 4 September 2007 on the Single Market Review: tackling barriers and inefficiencies through better implementation and enforcement ([1]),

— having regard to the Communication from the Commission of 20 November 2007 entitled 'A single market for 21st century Europe' (COM(2007)0724),

— having regard to the Interinstitutional Agreement on better law-making ([2]),

([1]) OJ C 187 E, 24.7.2008, p. 80.
([2]) OJ C 321, 31.12.2003, p. 1.

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— having regard to the Communication from the Commission of 30 January 2008 entitled 'Second strategic review of Better Regulation in the European Union' (COM(2008)0032),

— having regard to the Presidency Conclusions of the Brussels European Council of 8 and 9 March 2007, which endorsed the Action Programme for Reducing Administrative Burdens in the EU, established an EU target of a 25 % reduction in administrative burdens, and called on Member States to set equivalent targets at national level,

— having regard to the Commission Staff Working Document of 20 November 2007 entitled 'Implementing the new methodology for product market and sector monitoring: Results of a first sector screening — Accompanying document to the Communication from the Commission — A single market for 21st century Europe' (SEC(2007)1517),

— having regard to the Commission Staff Working Document of 20 November 2007 entitled 'Instruments for a modernised single market policy — Accompanying document to the Communication from the Commission — A single market for 21st century Europe' (SEC(2007)1518),

— having regard to the Communication from the Commission of 29 January 2008 entitled 'Monitoring consumer outcomes in the single market: the Consumer Markets Scoreboard' (COM(2008)0031),

— having regard to the Conclusions of the Council (Competitiveness — Internal Market, Industry and Research) of 25 February 2008 on a single market for 21st century Europe,

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

— having regard to the report of the Committee on the Internal Market and Consumer Protection (A6-0272/2008),

A. whereas it welcomes the publication of the Internal Market Scoreboard, which helps to reduce the transposition deficit,

B. whereas all Member States are legally obliged to transpose all Internal Market directives within the prescribed deadlines,

C. whereas the Scoreboard primarily aims at stimulating Member States to ensure timely transposition,

D. whereas the current deficit of 1,2 % is below the future target of 1,0 % agreed by the Heads of State and Government in 2007,

E. whereas the fragmentation factor is 8 %, meaning that 124 directives have not been transposed in at least one Member State,

F. whereas there are disparities between the transposition levels registered in the various Member States,

G. whereas a directive may not be fully effective, even though it has been quickly and properly transposed, in particular when its implementation generates situations of legal uncertainty which lead to proceedings before the European Court of Justice and hamper the effective functioning of the Internal Market,

H. whereas the number of open infringement proceedings is still very high and a large number of these infringements relates to absent or incorrect transposition,

I. whereas unfair advantage can be attained by the evasion of certain directives and a lack of transposition or incorrect transposition,

J. whereas the implementation of Internal Market directives is crucial for the achievement of the Lisbon and Göteborg Sustainable Development Agenda,

K. whereas the average time for an infringement proceeding to be brought to the European Court of Justice exceeds 20 months,

L. whereas some Member States do not respect the rulings of the European Court of Justice in infringement cases, which is of further detriment of the functioning of the Internal Market,

M. whereas the administrative burden is too onerous in the Member States, which is a result of both national and Community legislation,

Implementation — the basis of the Internal Market

1. Stresses that timely implementation, correct transposition and correct application of Internal Market directives is a prerequisite for the effective functioning of the Internal Market, and has implications also for competitiveness and the economic and social balance within the EU;

2. Underlines the importance of ownership of the Internal Market at national, regional and local levels; underlines the Commission's role to create partnerships in the related policy-making process to this end;

3. Recalls that from 2009 the transposition deficit target is set at 1,0 %; urges Member States to take action to attain this objective;

4. Urges those Member States with a particularly high deficit to take immediate action and the Commission to work closely with them with a view to improving the situation; notes that some Member Sates have proven that it is possible to significantly and rapidly reduce the deficit;

5. Recalls that the high fragmentation factor must urgently be dealt with by the Member States as well as the Commission;

6. Regrets that Member States sometimes add additional requirements when transposing directives into national law; holds the view that this so-called 'gold plating' hampers the effective functioning of the Internal Market;

7. Holds the view that a strong, open and competitive Internal Market acts as an essential part of Europe's response to the challenges of globalisation by promoting the competitiveness of European industry, reinforces incentives for foreign investments, and ensures consumers' rights in Europe; the external dimension should be taken into consideration by the Commission when adopting new Internal Market initiatives;

8. Recalls that in an open and competitive Internal Market, better targeted and more stringent tools are needed to improve the fight against counterfeiting and piracy;

9. Calls on the Member States to urgently address correct transposition and application of Internal Market directives through the use of existing guidelines and best practices; urges the development of more accurate tools to address the deficiency;

10. Calls on the Commission to speed up the process of solving disputes at an early stage and to highlight those infringements with the most serious consequences for European citizens; also encourages the Commission to produce a compilation of infringement proceedings brought before the European Court of Justice in order to provide detailed information on the offence in question;

11. Calls on the Member States to fulfil their obligations in accordance with the rulings of the European Court of Justice;

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Developing the Scoreboard as a tool for policy-making

12. Takes the view that while the Scoreboard should primarily serve to encourage timely and correct transposition, it could be further developed as a tool assisting policy makers in identifying obstacles and barriers and in pinpointing where new initiatives are called for; calls on the Commission to widen and deepen the range of information and indicators included in the Scoreboard, inter alia quality, social conditions of workers and the impact on the environment and climate change;

13. Calls on the Commission to include an easily comprehensible summary in future Scoreboards to increase accessibility for citizens and other stakeholders; encourages relevant EU and national bodies to publish the Scoreboard on their websites and to step up efforts to promote the Scoreboard to the media;

14. Regrets that the Scoreboard does not provide information concerning directives which have not been transposed; takes the view that certain directives, for example Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market [1], are more important for the effective functioning of the Internal Market than others; calls on the Commission to consider indicators that better reflect the relative importance of directives for industry and citizens within various sectors; holds the view that impact assessments carried out by the Commission may be of relevance for this purpose;

15. Recalls that the quality of Community legislation and its implementation is of major importance to the proper functioning of the Internal Market, and that the number of cases before the European Court of Justice related to unclear provisions and incorrect implementation of secondary legislation demonstrates the need to draft Community legislation more precisely; therefore calls on the Commission to introduce indicators in the Scoreboard regarding the number of proceedings before the European Court of Justice concerning quality of secondary legislation, as well as its incorrect implementation;

16. Welcomes the Commission's intention to introduce a more systematic approach to monitoring the functioning of key goods and services markets in order to uncover market failures and promote more effective policy instruments; hence calls for the inclusion of more sector-specific and Member State-specific information in the Scoreboard and for the inclusion of accurate information; calls for the inclusion also of indicators relating to cross-border aspects of public procurement;

17. Calls on the Commission to ensure, in accordance with point 34 of the Interinstitutional Agreement on better law-making, that all of its proposals for directives contain a specific provision requiring Member States to draw up tables illustrating the correlation between the act in question and the transposition measures, and to communicate those tables to the Commission; regrets in this respect that Member States are watering down the efforts of the Commission and Parliament as regards transparency by opposing the clause or making the clause a non-binding recital;

18. Considers the achievement of the Lisbon and Göteborg Sustainable Development Agenda to be a political priority, and emphasises in particular the importance of implementing those directives which are necessary for its achievement; calls on the Council to give Internal Market issues a leading role within the revised strategy post-2010;

19. Welcomes the Commission's intention to develop instruments improving Single Market policy and tools by making Single Market policy more evidence-based, targeted, decentralised and accessible, as well as better communicated;

20. Calls on the Commission, through sector inquiries, business surveys, consumer surveys or other means, to evaluate the quality and coherence of implementation in the Member States in order to guarantee the effective functioning of legislation;

[1] OJ L 376, 27.12.2006, p. 36.

21. Underlines the fact that late and incorrect implementation deprives consumers and undertakings of their rights, causes harm to the European economy and undermines confidence in the Internal Market; calls on the Commission to develop indicators measuring the costs incurred by citizens and industry as a result of late and incorrect transposition, and calls on the Commission also to develop indicators reflecting the relationship between transposition performance and infringement proceedings brought against Member States;

22. Welcomes the Commission's intention to table further better regulation initiatives, in particular to improve impact assessments and to reduce administrative burdens, as this will contribute to the more effective functioning of the Internal Market; holds the view that work on these issues is interlinked and needs to be approached in a consistent way;

23. Welcomes the target of reducing administrative burdens within the EU by 25 % by 2012; calls on the Member States to take action to achieve this aim; holds the view that the Scoreboard should measure efforts and progress at national and Community level related to this; therefore calls on the Commission to reflect on including a chapter in the Scoreboard on this issue;

24. Regrets that citizens still face many obstacles in relation to free movement within the Internal Market; notes in this context that 15 % of Solvit cases handled in 2007 were related to free movement of persons and EU citizenship; calls therefore on Member States and the Commission to step up efforts to ensure the free movement of persons; calls in particular on Member States to establish one-stop shops to assist people on all legal and practical matters when moving within the Internal Market; also calls on the Commission to develop indicators to be included in the Scoreboard which measure obstacles to the free movement of persons;

25. Reiterates the aim of making Internal Market legislation work better; takes the view that improved implementation also depends on the development of practical cooperation and partnership between administrations; calls on the Member States and the Commission to further develop systems of exchange of best practices; stresses that, due to the number of authorities at local, regional and national level, there is a need to actively promote and support administrative cooperation and simplification; points out that the Internal Market Information system has the potential to play a major role to this end;

26. Calls on Member States to establish national Internal Market centres to promote the coordination, simplification and political visibility of their efforts to make the Internal Market work; underlines that such centres should be placed within existing entities, for example with the national Single Contact Points; urges Member States to ensure improved practical knowledge of EU law at all levels of national administrations to ensure that citizens and businesses do not face unnecessary burdens and obstacles resulting from a lack of understanding of the rules;

27. Welcomes the Commission's work to establish partnerships with the Member States in the implementation process through working groups, networks in specific sectors, meetings with national experts and implementation guidelines; believes that the Commission's work with the implementation of Directive 2006/123/EC will prove to be a success to be repeated in the future; stresses that Parliament should be continuously informed about implementation processes;

28. Highlights that implementation problems are often detected through the Solvit network; notes with concern that Solvit centres are often understaffed, and that the average handling time of a case is more than 10 weeks; calls on the Member States to ensure that Solvit centres are properly staffed, and calls on the Member States and the Commission to improve administrative efficiency in order to shorten the handling time considerably; calls furthermore on Member States to make a bigger effort in promoting the services of the Solvit network through the appropriate information channels in order to increase citizens' and businesses' awareness of Solvit;

29. Welcomes the Commission's intention to improve the filtering of enquiries and complaints by businesses and citizens through Solvit and other Single Market Assistance Services to ensure that they are directed immediately to the right administrative body regardless of which network they are tabled through; emphasises that experiences from Solvit should be fed into national and EU policy-making, resulting in structural or regulatory changes where necessary;

30. Calls on the Commission, in cooperation with Parliament and the Presidency of the Council, to hold a yearly Internal Market Forum with participation of the Member States and other stakeholders in order to establish a clearer commitment to proper implementation in due time and to provide an arena for bench-marking and exchange of best practices;

31. Calls on the Council to give a higher priority to Internal Market issues either by establishing a new Council formation addressing these questions or by giving them top priority on the agenda in the existing Competitiveness Council;

32. Recalls its abovementioned resolution on the Single Market Review, where it called for the Commission to establish an Internal Market Test; calls on the Commission to take action to introduce such a test;

The Internal Market and Consumer Markets Scoreboards

33. Holds the view that the Internal Market Scoreboard and the Consumer Markets Scoreboard both serve to promote an improved Internal Market to the benefit of citizens and consumers;

34. Welcomes the Commission's intention to ensure a better communicated Internal Market, and holds the view that the two Scoreboards are important steps in that direction;

35. Emphasises that while the two Scoreboards are interlinked and that it is important to promote their coherent development, they have however different target addressees and hence should be kept separate with different sets of indicators;

36. Holds the view that a review of the indicators used as well as the relationship between the two Scoreboards should be carried out on a regular basis in order to adapt them to development in the Internal Market;

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

Improving the quality of teacher education

P6_TA(2008)0422

European Parliament resolution of 23 September 2008 on improving the quality of teacher education (2008/2068(INI))

(2010/C 8 E/03)

The European Parliament,

— having regard to Articles 3(1)(q), 149 and 150 of the EC Treaty,

— having regard to the Commission communication entitled Improving the Quality of Teacher Education (COM(2007)0392) and to the related Commission staff working papers (SEC(2007)0931 and SEC(2007)0933),

— having regard to Decision No 1720/2006/EC of the European Parliament and of the Council of 15 November 2006 establishing an action programme in the field of lifelong learning ([1]), which includes the specific objective of enhancing the quality and European dimension of teacher training (Article 17(2)(e)),

— having regard to the eight key skills set out in Recommendation 2006/962/EC of the European Parliament and of the Council of 18 December 2006 entitled Key Competences for lifelong learning — A European Reference Framework ([2]),

— having regard to the 10-year Education and Training 2010 work programme and specifically to Objective 1.1 'Improving Education and Training for Teachers and Trainers' ([3]), as well as to the subsequent joint interim reports on progress towards its implementation,

— having regard to the European Union's multilingualism policy and to the Commission's High Level Group Report on Multilingualism (2007),

— having regard to the Presidency Conclusions of the Lisbon Special European Council of 23-24 March 2000,

— having regard to the Presidency Conclusions of the Barcelona European Council of March 2002, which adopted concrete objectives for improving, among other things, education and training for teachers and trainers,

— having regard to the Council Conclusions of 5 May 2003 on reference levels of European average performance in education and training (Benchmarks) ([4]),

— having regard to the conclusions adopted by the Education, Youth and Culture Council at its meeting of 15-16 November 2007 and specifically to the conclusions on teacher education ([5]),

— having regard to the OECD's triennial PISA (Programme for International Student Assessment) surveys as well as to its report 'Teachers Matter: Attracting, Developing and Retaining Effective Teachers' (2005),

— having regard to the report 'How the world's best performing school systems come out on top' (McKinsey & Co, September 2007),

— having regard to the study published by the European Parliament in Feburary 2007 entitled Current situation and prospects for physical education in the European Union,

— having regard to its resolution of 13 November 2007 on the role of sport in education ([6]),

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

— having regard to the report of the Committee on Culture and Education (A6-0304/2008),

A. whereas high quality education and training have multifaceted benefits that go beyond job creation and the promotion of competitiveness, and are important components of lifelong learning,

B. whereas there is a need to educate individuals to become self-sufficient, informed and committed to a cohesive society, and whereas the quality of teaching is a critical factor in contributing to the European Union's social and economic cohesion as well as its job creation, competitiveness and growth potential in a globalising world,

([1]) OJ L 327, 24.11.2006, p. 45.
([2]) OJ L 394, 30.12.2006, p. 10.
([3]) OJ C 142, 14.6.2002, p. 7.
([4]) OJ C 134, 7.6.2003, p. 3.
([5]) OJ C 300, 12.12.2007, p. 6.
([6]) Texts Adopted, P6_TA(2007)0503.

C. whereas the European Social Fund can play an important role in education and training development, thus contributing to better teacher education,

D. whereas the quality of teacher training is reflected in educational practice and has a direct effect not only on pupils' level of knowledge but also on the formation of their personality, particularly during the first years of their school experience,

E. whereas the challenges faced by the teaching profession are increasing as educational environments become more complex and heterogeneous; whereas these challenges include advances in Information and Communication Technologies (ICT), changes to social and family structures, and the increasingly diverse mix of students in many schools resulting from increased immigration and the emergence of multicultural societies, the increase in the autonomy of schools, which entails an increase in teachers' duties, and the need to pay more attention to the learning needs of individual pupils,

F. whereas there is a clear and positive correlation between high quality teacher training and pupils achieving high success rates,

G. whereas in the light of the growing supply of information in conjunction with ongoing digitisation, the capacity must be developed to use media and their content effectively in accordance with individuals' aims and needs, and whereas media education is a type of pedagogical approach to the media which should enable users to develop a critical and reflective approach when using all media,

H. whereas more than 80 % of primary school teachers and 97 % of pre-school teachers in the Union are women, while in secondary education the equivalent figure is only 60 %,

I. whereas the quality of teacher education can affect early school leaving levels and older students' reading skills,

J. whereas pre-school and primary education have a particularly critical impact on children's eventual educational achievement,

K. whereas with more than 27 different teacher training systems in place across the Union, the challenges facing the teaching profession are nonetheless, in essence, common to all Member States,

L. whereas teaching is a vocational profession in which high levels of job satisfaction are important for the retention of good staff,

M. whereas it would be unfair to make teachers solely responsible for their educational activity; whereas it needs to be stressed that the ability of teachers to offer a proper education to all their pupils, create a climate in which all can live together, and reduce violent behaviour, is closely linked to the conditions in which they teach, the means of support available, the number of pupils with learning difficulties in class, the social and cultural environment in the school, the cooperation of families, and the social support received; whereas the level of teacher commitment depends to a large extent on society's commitment to education, and both factors interact in the interests of better teaching,

N. whereas every effort needs to be made to ensure that all teachers feel they belong to a respected and valued profession, given that a large part of professional identity depends on society's perceived view,

O. whereas attracting top-performing recruits to the teaching profession requires corresponding levels of social recognition, status and remuneration,

P. whereas teachers play important social and developmental roles that extend beyond traditional subject boundaries, and can perform an important function as role models,

Q. whereas the objective of equal opportunities for all is enshrined in the EC Treaty, particularly in Article 13 of the Treaty, which provides a legal basis for combating discrimination on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation,

R. whereas the quality of schools is to a large extent dependent on the degree of autonomy attaching to their plans and management,

S. whereas appropriate professional qualifications for physical education teachers play a very important role in the physical and mental development of children and in encouraging them to adopt a healthy way of life,

1. Strongly supports the analysis that raising the quality of teacher education leads to substantial gains in student performance;

2. Considers that the provision of more and better quality teacher education combined with policies aimed at recruiting the best candidates into the teaching profession should be key priorities for all education ministries;

3. Believes that increases in education expenditure should target the areas that produce the greatest improvements in student performance;

4. Emphasises that Member States must attach greater importance and allocate more resources to teacher training if significant progress is to be made in achieving the Lisbon Strategy's Education and Training 2010 objectives, namely that the quality of education is to be boosted, and that lifelong learning is to be reinforced across the Union;

5. Strongly encourages the promotion of continuous and coherent professional development for teachers throughout their careers; recommends that all teachers have regular academic, work and financial opportunities, such as government scholarships, to improve and update their skills and qualifications, as well as their pedagogical knowledge; considers that these training opportunities should be structured in such a way that the qualifications are recognised in all the Member States;

6. Stresses the need for increased transnational dialogue and exchanges of experience, especially in the provision and effectiveness of continuing professional development in the field of pre-school, primary and secondary teacher education;

7. Urges that particular attention be paid to the initial induction of new teachers; encourages the development of support networks and mentoring programmes, through which teachers of proven experience and capacity can play a key role in new colleagues' training, passing on knowledge acquired throughout successful careers, promoting team-learning and helping to tackle drop-out rates among new recruits; believes that by working and learning together, teachers can help improve a school's performance and overall learning environment;

8. Calls on the Member States to ensure that, while maintaining the focus on recruiting and retaining the best teachers, notably by making the profession sufficiently attractive, the composition of the teaching workforce at all levels of school education represents the social and cultural diversity within society;

9. Emphasises the close link between ensuring that teaching is an attractive and fulfilling profession with good career progression prospects and the successful recruitment of motivated, high-achieving graduates and professionals; urges the Member States to take further measures to promote teaching as a career choice for top achievers;

10. Stresses the particular importance of gender policy; stresses also the importance of ensuring that pre-school and primary school teachers are of high quality and that they receive the appropriate levels of social and professional support that their responsibilities entail;

11. Recognises the importance of the ongoing participation of teachers in working and discussion groups relating to their teaching activity; believes that this work should be backed up by mentors and educational authorities; considers that participation in critical reflection activities concerning the teaching process should generate greater interest in teachers' work and thus improve their performance;

12. Insists on the important role of school in terms of children's social life and education as well as in giving them the knowledge and skills necessary for participating in democratic society; stresses the importance of having qualified, competent and experienced teachers involved in the conception of effective pedagogical training methods for teachers;

13. Calls on the Member States to ensure that only suitably qualified physical education teachers can give PE lessons within the public education system;

14. Highlights the marked differences between the average wages of teachers, not only between different Member States, but also in relation to average national incomes and GDP per capita; believes that teachers should benefit from good remuneration packages which reflect their importance to society, and calls for action to address the 'brain-drain' of top teachers to better-paid private sector posts, particularly in the areas of science and technology;

15. Emphasises that teachers must be better equipped to meet the range of new demands made on them; recognises the challenges that developments in ICT present to teachers, but also the opportunities; encourages the prioritisation of ICT education during initial and subsequent training to ensure up-to-date knowledge of recent technological developments and their educational application and to ensure that teachers have the necessary skills to take advantage of these in the classroom;

16. Believes that training should aim, amongst other objectives, to provide teachers with the innovative framework they need in order to mainstream the environmental perspective into their activities and into the new subject areas; favours local seminars aimed at meeting needs detected in particular contexts and courses intended for the staff of a given establishment, with a view to implementing concrete projects which take into account their needs and their particular context;

17. Emphasises that teacher mobility, better cooperation and team work could improve the creativity and innovation of teaching methods and would facilitate learning based on best practices;

18. Calls on the Commission to reinforce the financial resources available to support teacher education through the Lifelong Learning Programme, and in particular teacher exchanges between schools in neighbouring countries and regions; emphasises that mobility facilitates the spread of ideas and best practice within teaching and promotes improvements in foreign language skills as well as awareness of other cultures; stresses that teachers should benefit from greater language learning facilities throughout their careers, which, inter alia, will maximise the opportunities provided by Union mobility programmes;

19. Calls for media studies to be assigned priority in teacher training and for media studies modules already underway to be an important component in the basic training of teachers;

20. Highlights the crucial role of the Comenius and Comenius-Regio school partnership in this teacher mobility framework;

21. Strongly supports foreign language learning from a very early age and the inclusion of language lessons in all primary curricula; emphasises that sufficient investment in recruiting and training foreign language teachers is vital in order to achieve this objective;

22. Stresses that every teacher should be a role model as regards the mastery of his or her own language, since this is a vital tool for correct transmission and facilitates pupils' learning of the remaining subjects while developing their ability to communicate, a factor of ever greater importance in numerous professional activities;

23. Underlines the need for teachers in all Member States to have certificated competence in at least one foreign language;

24. Calls for media competence to be promoted in the school, post-school and extramural education of teachers in the context of media studies and lifelong learning by means of cooperation between the public authorities and the private sector;

25. Emphasises that there is no substitute for the time teachers spend in the classroom with students and is concerned that increasing administration and paperwork can be detrimental to this and to time spent preparing classes;

26. Calls for civic education to become a compulsory subject both in teacher training and at schools, so that teachers and pupils have the requisite knowledge of citizens' rights and obligations and of the Union and can analyse and critically assess topical political and social situations and processes;

27. Considers that every school has a unique relationship with its local community, and that school leaders should have greater decision-making responsibility that allows them to address the educational challenges and teaching requirements particular to their environment, in collaboration with parents and with local community stakeholders; stresses that, with the arrival of a highly diverse immigrant population, the teaching profession needs to be made specifically aware of intercultural issues and processes, not only within schools but also in relation to families and their immediate local environment, where diversity flourishes;

28. Emphasises the extremely beneficial impact of the Comenius programme on teachers and its importance for small communities, especially in socially and economically deprived areas, in that it promotes inclusion and greater awareness of the European dimension in education;

29. Welcomes the agreement of the Member States to work together to enhance the coordination of teacher education policies, notably through the Open Method of Coordination; urges the Member States to take full advantage of this opportunity to learn from each other and asks be consulted on the timetable and developments in this area;

30. Underlines the need for better statistics on teacher training across the Union, in order to encourage the sharing of information, greater cooperation and the exchange of best practice; proposes that the Member States, in cooperation with the Commission, put in place systems that ensure comparative data is readily available on teacher education across pre-school, primary and secondary education;

31. Considers that, in order to deal with violence at schools, it is vital to achieve closer cooperation between head teachers and parents and to create the tools and procedures to tackle the phenomenon effectively;

32. Stresses the importance of gender-sensitive teaching and of the gender aspect in teacher training;

33. Calls on the Commission to disseminate best practice models from the Member States which improve general life skills by means of school projects, e.g. healthy diet and sport, domestic science and private financial planning;

34. Calls on the Member States to include in teacher training conflict resolution programmes, so that teachers learn new strategies for resolving all kinds of conflicts inside the classroom, and also for coping with violence and aggression;

35. Calls on the Member States to include in teacher training basic knowledge about the European Union, its institutions and their mode of functioning and arrange for practical visits by trainee teachers to the institutions of the Union;

36. Instructs its President to forward this resolution to the Council and Commission, and the governments and parliaments of the Member States, to the OECD, to Unesco and to the Council of Europe.

Tuesday 23 September 2008

The Bologna Process and student mobility

P6_TA(2008)0423

European Parliament resolution of 23 September 2008 on the Bologna Process and student mobility (2008/2070(INI))

(2010/C 8 E/04)

The European Parliament,

— having regard to Articles 149 and 150 of the EC Treaty,

— having regard to the Communication from the Commission entitled Delivering on the Modernisation Agenda for Universities: Education, Research and Innovation, (COM(2006)0208),

— having regard to the Communication from the Commission entitled Mobilising the brainpower of Europe: enabling universities to make their full contribution to the Lisbon Strategy (COM(2005)0152),

— having regard to the report entitled 'Focus on the structure of higher education in Europe 2006/07 — National trends in the Bologna Process', (Eurydice, European Commission, 2007),

— having regard to the Eurobarometer survey from March 2007 on 'Perceptions of Higher Education Reforms',

— having regard to its position adopted at first reading on 25 September 2007 on the proposal for a regulation of the European Parliament and of the Council concerning the production and development of statistics on education and lifelong learning ([1]),

— having regard to the Council Resolution of 23 November 2007 on modernising universities for Europe's competitiveness in a global knowledge economy,

— having regard to the Presidency Conclusions of the European Council of 13 and 14 March 2008,

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

— having regard to the report of the Committee on Culture and Education and the opinion of the Committee on Budgets (A6-0302/2008),

A. whereas the aims of the Bologna process are to establish a European Area of Higher Education by 2010, including higher education reforms, elimination of remaining barriers to the mobility of students and teachers, and the improvement of the quality, attractiveness and competitiveness of higher education in Europe,

B. whereas the mobility of students and the quality of education must remain among the core elements of the Bologna process,

C. whereas student mobility forms new cultural, social and academic values and creates opportunities for personal growth and for enhancing academic standards and employability at national and international levels,

D. whereas student mobility is still beyond the reach of many students, researchers and other staff, especially in the newer Member States, principally because of insufficient grants; whereas the obstacles are well known, and have been indicated repeatedly by many stakeholders involved in the debate,

([1]) OJ C 219 E 20.8.2008, p. 68.

E. whereas particular attention should be paid to the appropriate funding of students' learning, living costs and mobility,

F. whereas Parliament has consistently made the mobility of students its budgetary priority and has endeavoured to ensure an appropriate level of funding for Community programmes in the field of education; whereas its firm position on that issue led, despite cuts introduced by the Council on the Commission's proposal, to an increase in appropriations for the Lifelong Learning and Erasmus Mundus programmes negotiated under the Multi-annual Financial Framework 2007-2013 and recent budgetary procedures,

G. whereas reliable statistical data on student mobility are required in order to observe, compare and evaluate, as well as to develop, adequate policies and measures,

H. whereas recognition of informal and non-formal learning forms the cornerstone of a lifelong learning strategy, and the importance of adult learning in this process also needs to be recognised,

I. whereas the choice to go abroad should not be hindered by any administrative, financial or linguistic barriers,

J. whereas mobility encourages foreign language learning and the improvement of overall communication skills,

K. whereas reform and modernisation of universities in terms of quality, studies structure, innovation and flexibility is urgently needed,

L. whereas the quality of teaching is as important as the quality of research and should be reformed and modernised throughout the European Union, and whereas these two dimensions are closely linked,

M. whereas different national recognition systems constitute a significant obstacle to equal treatment of students and to their progress in the European Higher Education Area and the European labour market,

N. whereas mobility can be hindered by both the failure to give full and proper recognition to courses attended and the lack of equivalence of grades obtained,

O. whereas it is urgent to implement, coordinate and promote a coherent approach among all countries that signed the Bologna Process,

P. whereas the Bologna Process must create a new progressive model of education which guarantees access to training for all, whose principal objective is to transmit knowledge and values, and which creates a sustainable society for the future which is self-aware and free of social imbalances,

1. Considers that an increase in student mobility and the quality of the various educational systems should be a priority in the context of redefining the major goals of the Bologna Process beyond 2010;

2. Stresses that in order to achieve student mobility, actions must be taken across various policy areas; various aspects of mobility go beyond the scope of higher education and concern the scope of social affairs, finance, and immigration and visa policies;

3. Welcomes the efforts of Member States within the framework of intergovernmental cooperation to enhance the quality and competitiveness of education in the Union by, in particular, the promotion of mobility, ensuring recognition of qualifications and quality assurance, particularly in light of the limited room for manoeuvre due to the narrow margins left in Heading 1a of the Financial Framework;

4. Is convinced that the consultation method undertaken by all stakeholders involved in the process should continue: institutions as well as student representatives should closely cooperate in order to tackle the remaining barriers to mobility and problems related to quality and the implementation of the Bologna Process;

5. Points out that in implementing the Bologna Process, particular attention should be devoted to close and intensive cooperation and coordination with the European Research Area;

Student mobility: Quality and Efficiency

6. Insists on the urgent need for comparable and reliable statistics on student mobility and the socio-economic profile of students, such as common indicators, criteria and benchmarks, in order to overcome the current lack of data and promote the exchange of good practices;

7. Calls on universities to improve and simplify the information provided online and off-line, both for incoming and outgoing students; calls on universities and Erasmus National Agencies to collaborate with student organisations in order to make available all the necessary information in due time; calls on universities to support student rights, in line with the commitments they have made, by adhering to the Erasmus University Charter;

8. Emphasises that in order for the Bologna Process to fulfil its objectives, reciprocity in terms of the flow of students and scholars is necessary; underlines the disparities in current trends, and in particular the poor mobility towards the Member States which acceded to the EU in 2004 and 2007;

9. Points out the importance of mentoring for the social, cultural and linguistic integration of incoming students;

10. Stresses that an improved command of languages is a considerable asset and one of the reasons for student mobility, and that it is important for intensive language courses to be offered to incoming students, before and/or during Erasmus study periods;

Higher education reform and modernisation of universities: quality, innovation and flexibility

11. Calls on universities in the Union to undertake an innovative, far-reaching and methodical curricular reform, since ambitious and high-quality content and restructuring of organisation is crucial for student mobility and for greater flexibility; calls for a 'mobility study period' to be introduced into all degree programmes to enable students to go abroad;

12. Calls for emphasis to be given to the need for joint European doctoral programmes promoting doctoral student mobility and for the creation of a framework for a European doctorate;

13. Stresses the essential role of the quality and excellence of teaching, given that the development and ongoing training of qualified teachers in all sectors of studies is crucial for their attractiveness and effectiveness and for achieving the Bologna Process objectives;

14. Reiterates the need for more trans-national dialogue and exchange of information and experiences to facilitate a convergence of teacher education, including primary teacher education, and the effectiveness of continuing professional development;

Funding and investment in student mobility and the social dimension

15. Special assistance should be provided to students from disadvantaged groups in society by, for example, proposing inexpensive and decent accommodation, considering that extra support after arrival is often necessary;

16. Proposes the introduction of a harmonised European Student Identity Card, in order to facilitate mobility and to enable students to get discounts for accommodation and living costs;

17. Calls on the Member States and the competent authorities to guarantee an equal and universal access to mobility by simple, flexible and transparent grant-awarding procedures and by additional financial support for high-cost destinations and for those students who need it; considers it essential for students to receive this support before their departure, to avoid placing an excessive financial burden on them;

18. Welcomes the fact that, in the context of the mid-term review of the Multi-annual Financial Framework provided for in the Declaration attached to the Interinstitutional Agreement of 17 May 2006 on budgetary discipline and sound financial management, increasing the financial envelope allocated to the programmes in the field of education and notably for Erasmus grants could be considered, subject to the results of monitoring and evaluation of the programme;

19. Points out that new means of financing student mobility, such as interest-free loans and transferable loans, should be introduced and promoted;

20. Invites European universities to cooperate with the private sector (e.g. economic or business organisations such as chambers of commerce) in order to find new effective mechanisms of co-financing student mobility during each cycle (bachelor-masters-doctorate), thereby improving the quality of educational systems;

21. Suggests a fruitful dialogue and a two-way exchange between companies and universities in order to come up with innovative partnerships and to explore new ways of cooperation;

Quality and full recognition of diplomas

22. Calls on the Commission and the Member States to proceed with the implementation of the European reference frameworks (Bologna Qualifications Framework, European Qualifications Framework for lifelong learning, European Standards and Guidelines for Quality Assurance, and the Lisbon Recognition Convention) in order to establish the European High Education Area;

23. Stresses the urgency, therefore, of implementing the comprehensive, unified and effective credit transfer system ECTS, in order that students' and academics' qualifications may be easily transferable throughout Europe thanks to a single common framework;

24. Emphasises that the three-cycle degree system (Bachelor degree, Masters Degree and Doctorate) could become more flexible especially by using a '4+1' instead of '3+2' system for the first and second cycles; notes that for some studies this could be more appropriate in order to enable greater mobility and employability of graduates;

25. Calls for internships and other informal and non-formal mobility experience approved by universities to be granted ECTS credits and recognised as an integral part of study curricula;

Bologna Process implementation in all countries concerned

26. Calls on the Member States' competent authorities and European universities to encourage and foster the exchange of best practices and awareness-raising initiatives;

27. Urges Member States to facilitate visa procedures and to reduce the procedural costs for mobile students, especially those from more easterly Member States and candidate countries, in line with the EU Directives on visas;

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

Tuesday 23 September 2008

Alignment of legal acts to the new Comitology Decision

P6_TA(2008)0424

European Parliament resolution of 23 September 2008 with recommendations to the Commission on the alignment of legal acts to the new Comitology Decision (2008/2096(INI))

(2010/C 8 E/05)

The European Parliament,

— having regard to Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [1], as amended by Council Decision 2006/512/EC [2] (hereinafter together referred to as 'the Comitology Decision'),

— having regard to the Statement by the European Parliament, the Council and the Commission concerning the Council Decision of 17 July 2006 amending Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission (2006/512/EC) [3],

— having regard to the Agreement between the European Parliament and the Commission on procedures for implementing Council Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission, as amended by Decision 2006/512/EC [4],

— having regard to Article 192, second paragraph, and Article 202 of the EC Treaty,

— having regard to Articles 290 and 291 of the Treaty on the Functioning of the European Union,

— having regard to its decision of 8 May 2008 on the conclusion of an interinstitutional agreement between the European Parliament and the Commission on procedures for implementing Council Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission, as amended by Decision 2006/512/EC [5],

— having regard to Rules 39 and 45 of its Rules of Procedure,

— having regard to the report of the Committee on Legal Affairs (A6-0345/2008),

A. whereas, for the sake of the quality of legislation, it is increasingly necessary to delegate to the Commission the development of the non-essential and more technical aspects of the legislation as well as its prompt adjustment to take account of technological progress and economic change; whereas such delegation of powers must be facilitated by giving the legislator the institutional means to scrutinise the exercise of such powers,

B. whereas hitherto the Union legislator had no option other than to use Article 202 of the EC Treaty in order to carry out such delegation; whereas recourse to that provision has not been satisfactory since it refers to the Commission's powers of implementation and to the scrutiny procedures to which such powers are subject, those procedures being decided on by the Council by a unanimous vote after mere consultation of Parliament; whereas those scrutiny procedures are based essentially on the action of committees composed of civil servants of the Member States, and Parliament was excluded from all such procedures until the adoption of the Council Decision of 28 June 1999 as amended by Decision 2006/512/EC,

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[1] OJ L 184, 17.7.1999, p. 23.
[2] OJ L 200, 22.7.2006, p. 11.
[3] OJ C 255, 21.10.2006, p. 1.
[4] OJ C 143, 10.6.2008, p. 1.
[5] Texts Adopted, P6_TA(2008)0189.

C. whereas Article 2(2) of the Comitology Decision introduces measures where a basic legal instrument adopted by codecision provides for measures of general scope designed to amend non-essential elements of that instrument, *inter alia* by deleting some of those elements or by supplementing the instrument with new non-essential elements; whereas it is up to the Union legislator to define, on a case-by-case basis, the essential elements of each legislative act that can only be amended by means of a legislative procedure,

D. whereas the Comitology Decision makes what are known as 'quasi-legislative' measures subject to a regulatory procedure with scrutiny under which Parliament is fully associated with the control of such measures and can oppose draft measures proposed by the Commission which exceed the implementing powers provided for in the basic instrument or a draft which is not compatible with the aim or the content of the basic instrument or does not respect the principles of subsidiarity or proportionality,

E. whereas the new procedure guarantees democratic control of implementing measures when they are quasi-legislative in nature by placing both co-legislators, Parliament and the Council, on an equal footing, and thereby brings to an end one of the most serious aspects of the democratic deficit in the Union; whereas the Comitology Decision enables the most technical aspects of legislation and its adjustment to be delegated to the Commission, thereby ensuring that the legislator concentrates on the essential aspects and on improving the quality of Community law,

F. whereas the new regulatory procedure with scrutiny is not optional but compulsory when the implementing measures possess the characteristics specified in Article 2(2) of the Comitology Decision,

G. whereas the current alignment of the *acquis* with the Comitology Decision is still not complete since there remain legal instruments that provide for implementing measures to which the new regulatory procedure with scrutiny should be applied,

H. whereas not only implementing measures hitherto subject to the regulatory procedure but also some of measures subject to the management or consultation procedures may fall within the ambit of the requirements of Article 2(2) of the Comitology Decision,

I. whereas the Treaty of Lisbon introduces a hierarchy of norms and creates the concept of a 'delegated act', where 'a legislative act … delegate[s] to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act'; whereas the Treaty of Lisbon also treats implementing acts in a new way and provides in particular for codecision between Parliament and the Council as the procedure for the adoption of the regulation that will lay down the mechanisms for control by the Member States over implementing acts,

J. whereas implementation of the corresponding provisions of the Treaty of Lisbon will necessitate an intense and complex process of interinstitutional negotiation, and whereas the present process of alignment should therefore be completed as soon as possible and in any event before the Treaty of Lisbon enters into force,

K. whereas, in the event that the Treaty of Lisbon enters into force, it will be necessary to move on to a new — more complex — alignment of the *acquis* to the provisions of Article 290 of the Treaty on the Functioning of the European Union on delegation of legislation; whereas although the definition of the term 'delegated act' in the Treaty of Lisbon is similar to the concept of a 'quasi-legislative' measure contained in the Comitology Decision, the two concepts are not identical and the procedural regimes provided for in those two instruments are totally different; consequently, the present alignment exercise cannot be regarded as constituting an exact precedent for the future,

L. whereas, for the same reason, the results of the alignment under way in relation to each individual legal instrument cannot be seen as a precedent for the future,

Tuesday 23 September 2008

M. whereas it appears useful to agree between the institutions on a standard passage for delegated acts that would be regularly included by the Commission in the draft legislative act, although the legislators would remain free to amend it; whereas it is necessary to proceed to the adoption in codecision of the regulation laying down the mechanisms for control by Member States of implementing acts in accordance with Article 291 of the Treaty on the Functioning of the European Union,

1. Requests the Commission to submit to Parliament, on the basis of the appropriate articles of the EC Treaty, legislative proposals completing the comitology alignment; calls for these proposals to be drawn up in the light of interinstitutional discussions and to address in particular the legislative acts listed in the Annex hereto;

2. Calls on the Commission to submit the corresponding legislative proposals for the purpose of bringing the remaining legal acts into line with the Comitology Decision, in particular those listed in the Annex hereto;

3. Requests the Commission, in the event that the present alignment procedures are not concluded prior to the entry into force of the Treaty of Lisbon, to submit the relevant legislative proposals needed to adapt those legal acts that have still not been aligned at that juncture to the new regime provided for by Article 290 of the Treaty on the Functioning of the European Union;

4. Requests the Commission to submit in any case, following the entry into force of the Treaty of Lisbon, the relevant legislative proposals needed to align the whole of the *acquis communautaire* to that new regime;

5. Requests the Commission to submit as soon as possible the draft legislative proposal for the regulation laying down in advance the rules and general principles concerning the mechanism for control by Member States of the exercise of implementing powers by the Commission, in accordance with Article 291(3) of the Treaty on the Functioning of the European Union;

6. Requests that additional resources be granted in the European Parliament for all comitology procedures, not just during the current transitional period but also in preparation for the eventuality that the Treaty of Lisbon enters into force, in order to ensure that every comitology procedure between the three institutions functions satisfactorily;

7. Confirms that the requests respect the principle of subsidiarity and the fundamental rights of citizens;

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

ANNEX TO THE RESOLUTION:
DETAILED RECOMMENDATIONS ON THE CONTENT OF THE PROPOSAL REQUESTED

Parliament asks the Commission to present the corresponding legislative proposals to align the remaining legal acts to Council Decision 1999/468/EC of 28 June 1999 as amended by Decision 2006/512/EC, including in particular:

— Directive 2000/15/EC of the European Parliament and of the Council of 10 April 2000 amending Council Directive 64/432/EEC on health problems affecting intra-Community trade in bovine animals and swine [1];

[1] OJ L 105, 3.5.2000, p. 34.

— Directive 2000/25/EC of the European Parliament and of the Council of 22 May 2000 on action to be taken against the emission of gaseous and particulate pollutants by engines intended to power agricultural or forestry tractors and amending Council Directive 74/150/EEC ([1]);

— Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97 ([2]);

— Directive 2001/43/EC of the European Parliament and of the Council of 27 June 2001 amending Council Directive 92/23/EEC relating to tyres for motor vehicles and their trailers and to their fitting ([3]);

— Directive 2001/46/EC of the European Parliament and of the Council of 23 July 2001 amending Council Directive 95/53/EC fixing the principles governing the organisation of official inspections in the field of animal nutrition and Directives 70/524/EEC, 96/25/EC and 1999/29/EC on animal nutrition ([4]);

— Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision) ([5]);

— Directive 2002/33/EC of the European Parliament and of the Council of 21 October 2002 amending Council Directives 90/425/EEC and 92/118/EEC as regards health requirements for animal by-products ([6]);

— Directive 2004/3/EC of the European Parliament and of the Council of 11 February 2004 amending Council Directives 70/156/EEC and 80/1268/EEC as regards the measurement of carbon dioxide emissions and fuel consumption of N1 vehicles ([7]);

— Directive 2004/41/EC of the European Parliament and of the Council of 21 April 2004 repealing certain directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives 89/662/EEC and 92/118/EEC and Council Decision 95/408/EC ([8]);

— Directive 2005/33/EC of the European Parliament and of the Council of 6 July 2005 amending Directive 1999/32/EC as regards the sulphur content of marine fuels ([9]);

— Directive 2005/64/EC of the European Parliament and of the Council of 26 October 2005 on the type-approval of motor vehicles with regard to their reusability, recyclability and recoverability and amending Council Directive 70/156/EEC ([10]);

— Directive 2006/40/EC of the European Parliament and of the Council of 17 May 2006 relating to emissions from air-conditioning systems in motor vehicles and amending Council Directive 70/156/EEC ([11]);

— 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 and repealing Regulation (EC) No 1260/1999 ([12]);

— Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation ([13]).

([1]) OJ L 173, 12.7.2000, p. 1.
([2]) OJ L 204, 11.8.2000, p. 1.
([3]) OJ L 211, 4.8.2001, p. 25.
([4]) OJ L 234, 1.9.2001, p. 55.
([5]) OJ L 108, 24.4.2002, p. 1.
([6]) OJ L 315, 19.11.2002, p. 14.
([7]) OJ L 49, 19.2.2004, p. 36.
([8]) OJ L 157, 30.4.2004, p. 33.
([9]) OJ L 191, 22.7.2005, p. 59.
([10]) OJ L 310, 25.11.2005, p. 10.
([11]) OJ L 161, 14.6.2006, p. 12.
([12]) OJ L 210, 31.7.2006, p. 25.
([13]) OJ L 378, 27.12.2006, p. 41.

Tuesday 23 September 2008

Hedge funds and private equity

P6_TA(2008)0425

European Parliament resolution of 23 September 2008 with recommendations to the Commission on hedge funds and private equity (2007/2238(INI))

(2010/C 8 E/06)

The European Parliament,

— having regard to the Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent ([1]),

— having regard to the Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies ([2]),

— having regard to the Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts ([3]),

— having regard to Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions ([4]),

— having regard to Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses ([5]),

— having regard to Directive 2001/65/EC of the European Parliament and of the Council of 27 September 2001 amending Directives 78/660/EEC, 83/349/EEC and 86/635/EEC as regards the valuation rules for the annual and consolidated accounts of certain types of companies as well as of banks and other financial institutions ([6]),

— having regard to Directive 2001/107/EC of the European Parliament and of the Council of 21 January 2002 amending Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) with a view to regulating management companies and simplified prospectuses ([7]),

— having regard to Directive 2001/108/EC of the European Parliament and of the Council of 21 January 2002 amending Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), with regard to investments of UCITS ([8]),

— having regard to Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services ([9]),

— having regard to Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) ([10]),

— having regard to Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision ([11]) (Pension Funds Directive),

([1]) OJ L 26, 31.1.1977, p. 1.
([2]) OJ L 222, 14.8.1978, p. 11.
([3]) OJ L 193, 18.7.1983, p. 1.
([4]) OJ L 372, 31.12.1986, p. 1.
([5]) OJ L 82, 22.3.2001, p. 16.
([6]) OJ L 283, 27.10.2001, p. 28.
([7]) OJ L 41, 13.2.2002, p. 20.
([8]) OJ L 41, 13.2.2002, p. 35.
([9]) OJ L 271, 9.10.2002, p. 16.
([10]) OJ L 96, 12.4.2003, p. 16.
([11]) OJ L 235, 23.9.2003, p. 10.

— having regard to Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003 amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings ([1]),

— having regard to Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading ([2]),

— having regard to Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids ([3]),

— having regard to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ([4]),

— having regard to Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive ([5]) (MiFID Implementing Directive),

— having regard to Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market ([6]),

— having regard to Directive 2005/1/EC of the European Parliament and of the Council of 9 March 2005 establishing a new organisational structure for financial services committees ([7]),

— having regard to Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing ([8]),

— having regard to Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) ([9]) (the Capital Requirements Directive),

— having regard to Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast) ([10]) (the Capital Adequacy Directive),

— having regard to Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies ([11]),

— having regard to the Commission proposal for a directive of the European Parliament and of the Council of 21 April 2008 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (COM(2008)0119) (Solvency II Proposal),

— having regard to the Commission communication of 21 December 2007 on Removing obstacles to cross-border investments by venture capital funds (COM(2007)0853),

— having regard to its resolution of 15 January 2004 on the future of hedge funds and derivatives ([12]),

— having regard to its resolutions of 27 April 2006 ([13]) on asset management and of 13 December 2007 on Asset Management II ([14]),

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([1]) OJ L 178, 17.7.2003, p. 16.
([2]) OJ L 345, 31.12.2003, p. 64.
([3]) OJ L 142, 30.4.2004, p. 12.
([4]) OJ L 145, 30.4.2004, p. 1.
([5]) OJ L 241, 2.9.2006, p. 26.
([6]) OJ L 390, 31.12.2004, p. 38.
([7]) OJ L 79, 24.3.2005, p. 9.
([8]) OJ L 309, 25.11.2005, p. 15.
([9]) OJ L 177, 30.6.2006, p. 1.
([10]) OJ L 177, 30.6.2006, p. 201.
([11]) OJ L 184, 14.7.2007, p. 17.
([12]) OJ C 92 E, 16.4.2004, p. 407.
([13]) OJ C 296 E, 6.12.2006, p. 257.
([14]) Texts Adopted, P6_TA(2007)0627.

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— having regard to its resolution of 11 July 2007 on financial services policy (2005-2010) — White Paper ([1])), in particular paragraph 19 thereof,

— having regard to its resolution of 20 February 2008 on the Integrated Guidelines for Growth and Jobs (Part: broad guidelines for the economic policies of the Member States and the Community): Launching the new cycle (2008–2010) ([2]),

— having regard to the International Organisation of Securities Commissions' (IOSCO) Objectives and Principles of Securities Regulation of May 2003, which include principles for, inter alia, the marketing of collective investment schemes including hedge funds,

— having regard to the study by the European Parliament Policy Department for Economic and Scientific Policy on Hedge Funds on Transparency and Conflict of Interest, of December 2007,

— having regard to the Hedge Fund Working Group's best practice standards of 22 January 2008, and the subsequent setting up of a Hedge Fund Standards Board to act as custodian of those standards,

— having regard to Article 192, second paragraph, of the EC Treaty,

— having regard to Rules 39 and 45 of its Rules of Procedure,

— having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of the Committee on Legal Affairs and the Committee on Employment and Social Affairs (A6-0338/2008),

A. whereas there is at present national and EU regulation concerning financial markets that directly or indirectly, though not exclusively, applies to hedge funds and private equity,

B. whereas the Member States and the Commission should ensure the consistent implementation and application of that regulation; whereas all further adjustments to existing legislation should be the subject of a proper cost/benefit analysis and should be non-discriminatory,

C. whereas the Commission has not responded positively to all aspects of Parliament's earlier requests, including those made in its abovementioned resolutions of 15 January 2004, 27 April 2006, 11 July 2007, 13 December 2007,

D. whereas hedge funds and private equity have very different characteristics and no unambiguous definition of either exists but both are investment vehicles used by sophisticated rather than retail consumers; whereas they cannot be appropriately treated as a single category for product-specific regulation,

E. whereas hedge funds and private equity are increasingly important alternative investment vehicles that not only have a significant and increasing share in global assets under management, but also improve the efficiency of financial markets, by creating new investment opportunities,

F. whereas several global, EU and national institutions have, long before the current financial crisis, analysed potential concerns in relation to hedge funds and private equity as regards financial stability, risk management standards, excessive debt (leverage) and the valuation of illiquid and complex financial instruments,

G. whereas an analysis conducted by the Financial Stability Forum in 2007 concluded that financial stability concerns were best addressed through enhanced supervision of all actors,

H. whereas in its Global Financial Stability Report of April 2008, the International Monetary Fund (IMF) concluded that there is a 'collective failure to appreciate the extent of leverage taken on by a wide range of institutions — bank, monoline insurers, government-sponsored entities, hedge funds — and the associated risks of a disorderly unwinding',

([1]) OJ C 175 E, 10.7.2008, p. 392.
([2]) Texts Adopted, P6_TA(2008)0058.

I. whereas realising the Lisbon Agenda requires long-term investment in growth and jobs,

J. whereas such long-term investment requires well-functioning stable financial markets in the EU and globally, contributing to the real economy, which can be achieved only by ensuring the presence in the EU of a competitive and innovative financial industry,

K. whereas hedge funds and private equity in many cases provide liquidity, foster market diversification and market efficiency by creating demand for innovative products, and aid price discovery,

L. whereas financial stability also requires better supervisory cooperation, including at global level, which logically requires, continuing improvements of current EU supervisory arrangements including regular exchanges of information and enhanced transparency of institutional investors,

M. whereas the Commission should investigate the possibilities of regulating off-shore market players globally,

N. whereas appropriate levels of transparency towards investors and supervisory authorities are crucial to ensure such well-functioning and stable financial markets as well as for promoting competition between market actors and products,

O. whereas the Commission should monitor and analyse the effects of the operations of hedge funds and private equity and to consider putting forward a directive on minimum transparency rules on how investments are financed in the future, risk management, methods of assessment, managers' qualifications, possible conflicts of interest as well as the disclosure of ownership structures and the registration of hedge funds,

P. whereas in order to satisfy the need to monitor market activity for supervisory purposes, information on hedge fund exposures and lending should be made available to competent supervisory authorities without excessive burdens,

Q. whereas the fund industry is expected to move further towards binding measures on corporate governance with a view to achieving greater transparency which must also be made public; calls for an improvement of controlling mechanisms,

R. whereas Member States should use best practice to ensure that company pensions acquired by employees are shielded from bankruptcies;

S. whereas the Commission should consider including in the definition of the prudent person principle, whenever that principle is incorporated in the existing Community legislation, the requirement for investors to verify that the alternative investment funds in which they invest comply with appropriate legislation and the industry's best practice standards,

T. whereas the current diversity of private placement definitions in the Member States constitutes an obstacle to the internal market and creates an incentive for the leakage of high risk products onto the retail market,

U. whereas a one-stop-shop website for codes of conduct should be established, including a register of those who comply, their disclosure and explanations of non-compliance; observes that reasons for non-compliance can also be a learning tool; whereas that website should be established for the EU and promoted internationally,

V. whereas in its Global Financial Stability Report of April 2008, the IMF warned that 'corporate debt market appears vulnerable as default rates are set to rise, owing to both macroeconomic and structural factors',

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W. whereas the recent increase in private equity transactions has significantly increased the number of employees whose jobs are ultimately controlled by equity funds, and, therefore, due regard should be paid to existing national employment laws as well as Community employment law (in particular Directive 2001/23/EC), which was formulated when this was not so; whereas national and Community employment law should apply on a non-discriminatory basis, including fair and appropriate treatment of all economic actors with similar responsibilities towards employees,

X. whereas under many legal systems, hedge funds and private equity that own and control companies are not regarded as employers and are therefore exempt from employers' legal obligations,

Y. whereas in the event of extreme debt loads companies present a higher risk profile,

Z. whereas, as with other entities, there may be conflicts of interest either arising from the business model of private equity or hedge funds or from the relationships between those vehicles and other actors in financial markets; efforts to enhance existing Community legislation should not be restricted to hedge funds and private equity and should be in line with global standards such as the IOSCO principles for the management of conflicts of interest by collective investment schemes and market intermediaries;

AA. whereas the remuneration systems for managers of hedge funds and private equity may give rise to inappropriate incentives leading to irresponsible risk taking,

AB. whereas hedge funds were amongst the investors in the complex structured products that were subject to the credit crisis, and thus incurred losses as did other investors.,

AC. whereas in order to minimise the risk of future financial crises and given the strong interactions across markets and between market participants as well as the objective of a level playing field across borders and between regulated and unregulated market participants, several initiatives in the EU and at global level are under way, including a review of the Capital Requirements and Capital Adequacy Directives and a proposal for a directive on Credit Rating Agencies, in order to secure more coherent and harmonised regulation across the board,

AD. whereas principle-based regulation is an appropriate approach to regulating financial markets as it is better able to keep up with market developments,

AE. whereas there is need for action at EU level on the basis of the following seven principles for financial institutions and markets:

— regulatory coverage: existing Community legislation should be reviewed to identify any regulatory gaps; national variations should be reviewed and harmonisation should be promoted, for example through colleges of supervisors or otherwise; international equivalence and cooperation should be pursued;

— capital: capital requirements should be mandatory for all financial institutions and should reflect risk from the type of business, exposures and risk control; longer liquidity horizons should also be considered;

— originate and distribute: to achieve a better alignment of the interests of investors and originators, originators should generally retain exposure to their securitised products by holding a representative stake in the product; disclosure should be made of the level of the stakes originators keep in loan products; as an alternative to retention, other measures to align interests of investors and originators should be investigated;

— accounting: a smoothing technique to counter the pro-cyclical effects of fair value accounting should be considered;

— rating: to increase transparency and understanding in the ratings market, Credit Rating Agencies should adopt codes of conduct regarding visibility of assumptions, product complexity and business practices; conflict of interest should be managed; unsolicited rating should be independently categorised and not used as a means of pressure to obtain business;

— derivative trading: open and visible trading of derivatives should be promoted whether on-exchange or otherwise;

— the long term: reward packages should be aligned with longer term outcomes, reflecting losses as well as profits,

AF. whereas such action would provide a legal basis, universal and comprehensive, encompassing all financial institutions above a certain size, mutually taking into account international supervisory and regulatory practices,

1. Requests the Commission to submit to Parliament by the end of 2008, on the basis of Article 44, Article 47(2), or Article 95 of the EC Treaty, a legislative proposal or proposals covering all relevant actors and financial market participants, including hedge funds and private equity, responding to the seven principles outlined in Recital AE and following the detailed recommendations below;

2. Confirms that the recommendations respect the principle of subsidiarity and the fundamental rights of citizens;

3. Considers that the financial implications of the requested proposal or proposals should be covered by EU budgetary allocation;

4. Instructs its President to forward this resolution and the accompanying detailed recommendations to the Commission, the Council and the governments and parliaments of the Member States.

ANNEX TO THE RESOLUTION:
DETAILED RECOMMENDATIONS ON THE CONTENT OF THE PROPOSAL(S) REQUESTED

Recommendation 1 on financial stability, capital and universal regulatory coverage

The European Parliament considers that the legislative act to be adopted should aim to regulate:

Capital requirements — Investment firms including partnerships and limited partnerships, insurance companies, credit institutions, conventional funds (such as UCITS and pension arrangements) should be required to comply with capital requirements. The Commission should ensure that appropriate capital requirements be risk based, not entity based, for all financial institutions. Consideration regarding adherence to codes of conduct may be taken into account by supervisors. Those capital requirements should, nevertheless, not be additional requirements to already existing rules and should in no case be regarded as a guarantee in the event of any fund failure.

Originators and Securitisation — The Commission's proposal(s) concerning capital requirements should require that originators hold portions of securitised loans on their balance sheets or impose capital requirements on the originator that are calculated on the assumption that it held those portions or provide other means to align the interests of investors and originators.

EU oversight of Credit Rating Agencies — The Commission should establish a mechanism for EU review of Credit Rating Agencies, procedures and compliance, with duties allocated to existing bodies such as the Committee of European Securities Regulators (CESR), also in order to foster competition and enable market access in the field of credit ratings.

Valuation — The Commission should adopt principle-based legislative measures on the valuation of illiquid financial instruments in line with the work of competent international bodies in order better to protect investors and the stability of financial markets, taking into account the various initiatives on valuation currently under way in the EU and globally and examining how best to promote this valuation.

Prime brokers — The transparency requirements applicable to any institution providing prime brokerage services should be increased in line with the complexity and opacity of the structure or nature of the exposures, to which their dealings with all products and actors, including hedge funds and private equity expose them.

Venture capital and SME sector: The Commission should propose legislation to provide a harmonised EU-wide framework for venture capital and private equity, and particularly so as to ensure cross-border access to such capital for the SME sector in line with the Lisbon Agenda. For this purpose, the Commission should implement, without delay, the policy proposals set out in its communication on removing obstacles to cross-border investments by venture capital funds. The proposal should be in line with principles of good regulation and should avoid additional legal, fiscal and administrative complexities at EU level.

Recommendation 2 on transparency measures

The European Parliament considers that the legislative act to be adopted should aim to regulate:

Private Placement Regime — The Commission should submit a legislative proposal for the establishment of a European private placement regime allowing for cross-border distribution of investment products, including alternative investment vehicles, to eligible groups of sophisticated investors. Such a proposal should establish, where appropriate, the following principles of disclosure to investors and relevant public authorities:

— general investment strategy and fee policy,

— leverage/debt exposure, risk-management system and portfolio valuation methods,

— source and amount of funds raised, including internally,

— rules providing for full transparency of high level executives and senior managers' remuneration systems, including stock options,

— registration and identification of shareholders beyond a certain proportion.

Investors — The Commission should, in cooperation with supervisory authorities, devise rules to ensure clear disclosure and communication of relevant and material information to investors.

Private equity and protection of employees — The Commission should ensure that Directive 2001/23/EC always grants the same rights to employees, including the right to be informed and consulted, whenever control of the undertaking or business concerned is transferred by any investors, including private equity and hedge funds.

Pension schemes — Since the mid-1990s, there has been an increasing number of pension funds and insurance companies with holdings in hedge funds and private equity and any failure would negatively affect the pension entitlements of the pension schemes' members. In reviewing Directive 2003/41/EC, the Commission should ensure that employees or staff representatives are informed directly or via trustees about the way in which their pensions are invested and the associated risks.

Recommendation 3 on excessive debt measures

The European Parliament considers that the legislative act to be adopted should aim to regulate:

Leverage for private equity — The Commission should, while reviewing Directive 77/91/EEC on capital, ensure that any amendments adhere to the following fundamental principles: there is capital held according to risk, there is a reasonable expectation that the level of leverage is sustainable both for the private equity fund/firm and for the target company, and that there is no unfair discrimination against specific private investors or between different investment funds or vehicles that use similar strategy.

Capital depletion — The Commission should propose harmonised supplementary measures at EU level, where needed, on the basis of a review of existing national and Community legislative options in order to avoid unreasonable asset stripping in target companies.

Recommendation 4 on conflicts of interest measures

The European Parliament considers that the legislative act to be adopted should aim to regulate:

The Commission should introduce rules to ensure effective separation between services that investment firms provide for their clients. The European Parliament wishes to reiterate that any adjustments should be applicable to all financial institutions and thus non-discriminatory. As recommended by the IOSCO, financial institutions, which provide a range of different financial services should have policies and procedures, including proper disclosure, at the firm or group level that enable it to identify, assess and develop appropriate means of addressing conflicts or potential conflicts.

Credit Rating Agencies — Credit Rating Agencies should be required to increase information and eliminate or mitigate asymmetric information and uncertainty and disclose the conflicts of interest under which they operate without destroying the transaction oriented financial system. In particular, Credit Rating Agencies should be required to separate their rating business from any other services (such as advice on structuring transactions) that they provide in respect of any obligations or entities that they rate.

Market access and concentration — the Commission's Directorate General for Competition should launch a general review of the effects of market concentration and of the effects of dominant players in the financial services industry and in the light of the international situation including hedge funds and private equity. It should asses whether Community competition rules are applied by all market players, whether there is unlawful market concentration or any need to remove barriers to new entrants as well as the need to remove legislation favouring incumbents and current market structures where competition is limited;

Recommendation 5 on existing financial services legislation

The European Parliament considers that the legislative act to be adopted should aim to regulate:

The Commission should undertake an examination of all existing Community legislation relevant to financial markets in order to identify any lacunae as regards the regulation of hedge funds and private equity and, based on the results of such examination, to submit to the European Parliament a legislative proposal or proposals amending the existing directives where necessary, in order better to regulate hedge funds, private equity and other relevant actors. Such proposed regulation should be purposive.

Tuesday 23 September 2008

Transparency of institutional investors

P6_TA(2008)0426

European Parliament resolution of 23 September 2008 with recommendations to the Commission on transparency of institutional investors (2007/2239(INI))

(2010/C 8 E/07)

The European Parliament,

— having regard to the Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent ([1]),

— having regard to the Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies ([2]),

— having regard to the Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts ([3]),

— having regard to Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions ([4]),

— having regard to 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') ([5]),

— having regard to Directive 2001/65/EC of the European Parliament and of the Council of 27 September 2001 amending Directives 78/660/EEC, 83/349/EEC and 86/635/EEC as regards the valuation rules for the annual and consolidated accounts of certain types of companies as well as of banks and other financial institutions ([6]),

— having regard to Directive 2001/107/EC of the European Parliament and of the Council of 21 January 2002 amending Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) with a view to regulating management companies and simplified prospectuses ([7]),

— having regard to Directive 2001/108/EC of the European Parliament and of the Council of 21 January 2002 amending Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), with regard to investments of UCITS ([8]),

— having regard to Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services ([9]),

— having regard to Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) ([10]),

([1]) OJ L 26, 31.1.1977, p. 1.
([2]) OJ L 222, 14.8.1978, p. 11.
([3]) OJ L 193, 18.7.1983, p. 1.
([4]) OJ L 372, 31.12.1986, p. 1.
([5]) OJ L 178, 17.7.2000, p. 1.
([6]) OJ L 283, 27.10.2001, p. 28.
([7]) OJ L 41, 13.2.2002, p. 20.
([8]) OJ L 41, 13.2.2002, p. 35.
([9]) OJ L 271, 9.10.2002, p. 16.
([10]) OJ L 96, 12.4.2003, p. 16.

— having regard to Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments ([1]),

— having regard to Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003 amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings ([2]),

— having regard to Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading ([3]),

— having regard to Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids ([4]),

— having regard to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ([5]),

— having regard to Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market ([6]) (the 'Transparency Directive'),

— having regard to Directive 2005/1/EC of the European Parliament and of the Council of 9 March 2005 amending Council Directives 73/239/EEC, 85/611/EEC, 91/675/EEC, 92/49/EEC and 93/6/EEC and Directives 94/19/EC, 98/78/EC, 2000/12/EC, 2001/34/EC, 2002/83/EC and 2002/87/EC in order to establish a new organisational structure for financial services committees ([7]),

— having regard to Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing ([8]),

— having regard to Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions ([9]),

— having regard to Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions ([10]),

— having regard to Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive ([11]) (the MiFID Implementing Directive),

— having regard to Commission Directive 2007/16/EC of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards the clarification of certain definitions ([12]),

([1]) OJ L 157, 26.6.2003, p. 38.
([2]) OJ L 178, 17.7.2003, p. 16.
([3]) OJ L 345, 31.12.2003, p. 64.
([4]) OJ L 142, 30.4.2004, p. 12.
([5]) OJ L 145, 30.4.2004, p. 1.
([6]) OJ L 390, 31.12.2004, p. 38.
([7]) OJ L 79, 24.3.2005, p. 9.
([8]) OJ L 309, 25.11.2005, p. 15.
([9]) OJ L 177, 30.6.2006, p. 1.
([10]) OJ L 177, 30.6.2006, p. 201.
([11]) OJ L 241, 2.9.2006, p. 26.
([12]) OJ L 79, 20.3.2007, p. 11.

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— having regard to Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies ([1]),

— having regard to its position of 25 September 2003 on the proposal for a European Parliament and Council directive on investment services and regulated markets ([2]),

— having regard to the Study on Hedge Funds: Transparency and Conflict of Interest commissioned by its Committee on Economic and Monetary Affairs ([3]),

— having regard to Article 192, second paragraph, of the EC Treaty,

— having regard to Rules 39 and 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 (A6-0296/2008),

A. whereas it is recognised that alternative investment vehicles such as hedge funds and private equity can offer new diversification benefits for asset managers, increase market liquidity and the prospects of high returns for investors, contribute to the price discovery process, risk diversification and financial integration, and improve market efficiency,

B. whereas hedge funds and private equity are distinct investment vehicles that differ as regards the nature of investment and investment strategy,

C. whereas EU-based hedge funds and private equity require a regulatory environment which will respect their innovative strategies in order to enable them to remain internationally competitive while mitigating the effects of potential adverse market dynamics; whereas there is a risk that product-specific legislation could be inflexible and stifle innovation,

D. whereas hedge funds and private equity which have their management company domiciled in the EU have to comply with existing and future Community legislation; whereas non-EU-based entities also have to comply with this legislation in the context of certain activity,

E. whereas EU onshore hedge funds, hedge fund managers and private equity are subject to existing legislation, notably concerning market abuse, and whereas they are subject to regulation indirectly through counterparties and when related investments in regulated products are sold,

F. whereas in some Member States hedge funds and private equity are subject to national regulatory regimes and differing implementation of existing EU directives; whereas such divergent national rules give rise to the risk of regulatory fragmentation in the internal market, which may have the effect of impeding the cross-border development of this business in Europe,

G. whereas directives seem to be the appropriate legal instruments with which to address any issues needing to be tackled in relation to hedge funds and private equity; whereas an analysis and assessment of the impact on hedge funds and private equity of legislation already in force in the Member States and in the EU should precede any directive on the transparency thereof; whereas such legislation should be the starting-point for harmonisation; and whereas existing regulations may need to be adjusted but should avoid changes that would introduce unjustifiable divergences,

([1]) OJ L 184, 14.7.2007, p. 17.
([2]) OJ C 77 E, 26.3.2004, p. 329.
([3]) IP/A/ECON/IC/2007-24.

H. whereas it is recognised that one of the main issues is the need for, and analysis of, transparency and instances in which it can be enhanced; whereas transparency has several facets, such as the transparency of hedge funds and — as the case may be — private equity vis-à-vis the companies whose shares they acquire or own, as well as vis-à-vis prime brokers, institutional investors such as pension funds or banks, retail investors, business partners, regulators and authorities; whereas one of the main transparency problems lies in the relationship between a hedge fund and — as the case may be — a private equity on one hand and the companies whose shares it acquires or owns on the other hand,

I. whereas the experience of the United States, where freedom of information legislation has been used by competitors to obtain fund investment details at a level intended for investors, is that this has compromised both the investors and the fund,

J. whereas inconsistent implementation of the Transparency Directive has led to divergent levels of transparency throughout the EU and to high costs for investors,

K. whereas transparency is an essential condition for investor confidence and the understanding of complex financial products, and thus contributes to the optimum functioning and stability of the financial markets; whereas transparency is an aid to, not a replacement for, due diligence,

L. whereas the current sub-prime crisis cannot primarily be attributed to one single sector — bearing in mind that it will take time to thoroughly understand the full causes and effects of that crisis, and whereas the manifold reasons for it include *inter alia*:

— rating agencies, especially the conflicts of interest of credit rating agencies and the misconception of the meaning of ratings,

— negligent lending practices in the US housing market,

— rapid innovation in the area of complex structured products,

— the originate-to-distribute model and the long intermediation chain,

— investors' greed in seeking ever-higher returns and a short-sighted incentive structure as regards remuneration,

— failure to observe the due diligence process,

— the securitisation and rating agency process in the context of complex structured products, which resulted in overpricing of those products with respect to the underlying assets,

— conflicts of interests within, and the lack of regulation of, American investment banks,

M. whereas Community legislation provides for mechanisms such as comitology or Lamfalussy procedures which allow for flexibility in reacting to the changing business environment via implementing measures; whereas this system will improve with the instrument of delegated acts under the Treaty of Lisbon,

N. whereas numerous different hedge funds and private equity initiatives and organisations such as the International Organization of Securities Commissions, the International Monetary Fund, the Organisation for Economic Cooperation and Development and industry bodies, including those relating to hedge funds and private equity, have established principles and codes of best practice which may complement and serve as a model for EU legislation; whereas, in addition to complying with EU legislation, companies and business associations should be encouraged to sign up to these codes on a 'comply or explain' basis and details of such compliance and explanations should be publicly available and properly assessed,

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O. whereas some over-the-counter (OTC) products could use more open or visible trading systems in order to increase mark-to-market valuation where possible and to give an indication of potential ownership changes; whereas a more general OTC clearing system is attractive for the purposes of supervisory oversight and risk assessment, but, in order to ensure that there is a level playing field in the global context, any new system needs to be introduced on an international basis,

P. whereas industry-wide monitoring and reporting has a role to play in addressing public concerns and in order to understand the economic impact of private equity, and whereas there is already an obligation incumbent on private and public companies to consult their employees about matters that affect their interests; whereas no imbalance should be created between commercial disclosure required of private equity portfolio companies and that required of other private companies,

Q. whereas product-related legislation does not seem to be the appropriate type of regulation to deal with this innovative sector,

R. whereas a one-stop-shop website for codes of conduct would be helpful and should be established for the European Union and promoted internationally; whereas that website should include a register of those market players who comply with the codes of conduct, their disclosures, and explanations of non-compliance; whereas reasons for non-compliance can also be a learning tool,

S. whereas attention is drawn to the need to overcome the obstacles to cross-border distribution of alternative investments by establishing a European private placement regime for institutional investors,

T. whereas, in the context of private equity, the costs of any additional reporting requirements, in particular where these are frequent, should be justified and proportionate to the benefits flowing from them; whereas, in all contexts, better linkage is needed between remuneration packages and long-term performance,

U. whereas no proposal in this field is in preparation,

1. Requests the Commission to submit to Parliament, on the basis of Articles 44, 47(2) or 95 of the EC Treaty, depending on the subject matter, a legislative proposal or proposals on the transparency of hedge funds and private equity; calls for such proposal(s) to be drawn up in the light of interinstitutional discussions and following the detailed recommendations below;

2. Confirms that the recommendations respect the principle of subsidiarity and the fundamental rights of citizens;

3. Considers that the requested proposals have no financial implications;

4. Instructs its President to forward this resolution and the accompanying detailed recommendations to the Commission and the Council, and to the parliaments and governments of the Member States.

ANNEX TO THE RESOLUTION:
DETAILED RECOMMENDATIONS ON THE CONTENT OF THE PROPOSALS REQUESTED

The European Parliament asks the Commission to propose a directive or directives guaranteeing a common standard of transparency and to tackle the issues mentioned below covering hedge funds and private equity, on the basis that the directive(s) should give Member States, where necessary, enough flexibility to transpose EU rules into their existing company-law systems; in parallel, it asks the Commission to encourage improvements in transparency by supporting and monitoring the evolution of self-regulation already introduced by managers of hedge funds and private equity and their counterparties, and to encourage Member States to support these efforts through dialogue and exchange of best practice.

Taking into account the fact that there is no uniform public disclosure of sovereign wealth funds (SWFs), the European Parliament welcomes the initiative of the International Monetary Fund to establish a working group to draft an international code of conduct for SWFs, and believes that such a code of conduct would go some way to demystifying SWF activities; it calls on the Commission to take part in that process.

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On hedge funds and private equity

The European Parliament asks the Commission to submit the appropriate legislative proposals by way of review of the existing *acquis communautaire* affecting the various types of investors and counterparties, together with an impact assessment and with the involvement of the industries concerned, to explore the possibility of differentiating between hedge funds, private equity and other investors and to adapt or establish rules providing for the clear disclosure and timely communication of relevant and material information so as to facilitate high-quality decision-making and transparent communication between investors and the company management as well as between investors and other counterparties; where proposals already exist they should be implemented accordingly; it invites the Commission to explore ways of enhancing the visibility and understanding of risk, as distinct from creditworthiness; attention should be paid to the question whether existing and future directives and transparency measures are not undermined by excessive disclaimers in contracts.

The new legislation should require shareholders to notify issuers of the proportion of their voting rights resulting from an acquisition or disposal of shares where that proportion reaches, exceeds or falls below the specific thresholds starting with 3 % instead of 5 %, as mentioned in Directive 2004/109/EC; it should also oblige hedge funds and private equity, as far as those categories of investors can be differentiated from others, to disclose and explain — vis-à-vis the companies whose shares they acquire or own, retail and institutional investors, prime brokers and supervisors — their investment policy and associated risks.

These proposals should be based on an examination of the existing Community legislation, carried out with a view to ascertaining the extent to which the existing rules on transparency can be applied to the specific situation of hedge funds and private equity.

With a view to the abovementioned legislative proposals, the Commission should in particular:

— explore the possibility of contract terms, to be applied to alternative investments, that provide for an unambiguous disclosure and management of risk, for measures to be taken in the event of thresholds being exceeded, for a clear description of lock-up periods and for explicit conditions governing cancellation and termination of the contract;

— investigate the issue of money laundering in the context of hedge funds and private equity;

— explore possibilities of harmonising rules and recommendations for hedge funds and — as the case may be — private equity to register and identify shareholders beyond a certain proportion, as well as to disclose their strategies and intentions — bearing in mind that an overflow of information should be avoided;

— explore the need for, and ways of, obliging intermediaries to enable the original shareholders to participate actively in voting at general meetings of shareholders and to make sure that their voting instructions are respected by proxy-holders, as well as to ensure that voting policies of identified shareholders are disclosed;

— establish, together with the industry, a code of best practice on how to rebalance the current structure of corporate governance with a view to reinforcing long-term orientation and discouraging financial and other incentives for short-term excessive risk-taking and irresponsible behaviour;

— establish rules providing for full transparency of managers' remuneration systems, including stock options, through formal approval by the general meeting of the company's shareholders.

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On hedge funds specifically

The European Parliament asks the Commission to establish rules that enhance the transparency of voting policies of hedge funds, on the basis that the addressees of Community rules should be the managers of such funds; such rules could also include a system of EU-wide shareholder identification; where proposals already exist they should be implemented accordingly.

With a view to the abovementioned legislative proposal(s), the Commission should in particular:

— investigate the effects of securities lending and voting on borrowed shares, having regard to better regulation principles;

— examine whether reporting requirements should also apply to cooperation agreements between several shareholders and to indirect acquisitions of voting rights via option arrangements.

On private equity specifically

The European Parliament asks the Commission to propose rules that forbid investors to 'plunder' companies (so called 'asset stripping') and thus misuse their financial power in a way that merely disadvantages the company acquired in the long term, without having any positive impact on the company's future and the interest of its employees, creditors and business partners; moreover, the Commission should explore common rules to guarantee the capital maintenance of companies; in parallel, the European Parliament also asks the Commission to examine whether the Member States have put in place measures to counteract asset stripping.

With a view to the abovementioned legislative proposal(s), the Commission should examine ways of addressing the issues arising when banks lend huge amounts of money to acquirers, including private equity, and then disclaim any responsibility whatsoever as to the purpose for which that money is used or the provenance of the money used to repay the loan, bearing in mind that these points ultimately remain the responsibility of the debtor and that capital requirements for comparable risks must be the same across the entire financial system.

The European Parliament also asks the Commission to examine whether the Transfers of Undertakings Directive [1] needs to be adjusted to the specific situation of leveraged buy-outs.

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[1] Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82, 22.3.2001, p. 16).

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Deliberations of the Committee on Petitions during 2007

P6_TA(2008)0437

European Parliament resolution of 23 September 2008 on the deliberations of the Committee on Petitions during 2007 (2008/2028(INI))

(2010/C 8 E/08)

The European Parliament,

— having regard to its previous resolutions on the deliberations of the Committee on Petitions, notably its resolution of 21 June 2007 on the results of the fact-finding mission to the regions of Andalucía, Valencia and Madrid conducted on behalf of the Committee on Petitions [1],

— having regard to Articles 21 and 194 of the EC Treaty,

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

— having regard to the report of the Committee on Petitions (A6-0336/2008),

A. recognising the singular importance of the petitions process in allowing individuals the opportunity to draw to the attention of the European Parliament specific issues which are of direct concern to them covering the area of activity of the Union,

B. whereas the Committee on Petitions should always strive to improve its efficiency in order to better serve EU citizens and meet their expectations,

C. 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 often remain conscious of many shortcomings in the application of the policies and programmes of the Union as they affect them directly,

D. whereas, in accordance with the EC Treaty, EU citizens have the right to petition the European Parliament but they may also channel their complaints to other EU institutions or organs, notably the Commission,

E. whereas efforts to promote and provide information on the public right to petition Parliament remain vital at national level, so as to awaken public interest and, in particular, prevent confusion over the various complaints procedures,

F. whereas it is the responsibility of the Member States to apply Community regulations and directives, a responsibility which they may delegate to regional or local political authorities depending upon their own constitutional arrangements,

G. whereas it is legitimate for Parliament to exercise democratic oversight and supervision of Union policies, bearing in mind the important principle of subsidiarity, in order to ensure that Union laws are properly implemented and understood and that they fulfil the purpose for which they were designed, debated and adopted by the competent institutions of the Union,

H. whereas EU citizens and residents of the Union may actively participate in this activity by exercising their right of petition to the European Parliament in the knowledge that their concerns will be addressed and investigated by the responsible committee and that a suitable reply will be given,

[1] OJ C 146 E, 12.6.2008, p. 340.

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I. whereas the existing Treaties already contain commitments to respect, as core principles of European society, human dignity, freedom, democracy, the rule of law, human rights, equality and the rights of minorities and whereas the new Treaties on European Union and on the Functioning of the European Union will, if ratified by all 27 Member States, further strengthen this by incorporating the Charter of Fundamental Rights, providing for the accession of the Union to the European Convention on Human Rights, and introducing a legal basis for citizens' legislative initiatives, as well as a proper system of administrative law for the EU institutions,

J. whereas Article 7 of the Treaty on European Union lays down procedures whereby the Union can take action to counter serious and persistent breaches by a Member State of the principles on which the Union is founded, as laid down in Article 6 of that Treaty,

K. recalling in this respect that EU citizens frequently petition Parliament for redress where they feel that their rights as recognised under the Treaties have been infringed and where they find that judicial remedies are unsuitable, impractical, excessively protracted or — as is often the case — expensive,

L. whereas the Committee on Petitions, as the responsible committee, has a duty not only to respond to individual petitions but also to seek to provide viable solutions to the concerns expressed by petitioners within an adequate time frame, and whereas this constitutes the main objective of its work,

M. whereas the solutions to the concerns of petitioners are generally found as a result of loyal cooperation between the Committee on Petitions, on the one hand, and the Commission, the Member States and their regional and local authorities on the other hand, which together provide non-judicial remedies,

N. whereas, nevertheless, there is not always a clear willingness on the part of Member States and regional or local authorities to find practical solutions to the problems raised by petitioners,

O. whereas, moreover, although petitioners' allegations are not always well-founded, the petitioners are entitled to expect an explanation and a response from the committee responsible,

P. whereas enhanced inter-institutional coordination should make the redirection of inadmissible petitions to national authorities more effective,

Q. whereas petitions may be declared inadmissible if they are not concerned with the area of activity of the European Union and whereas the petitions process is not a method to be used by citizens as a means of appealing against decisions taken by competent national legal or political authorities with which they may disagree,

R. whereas it is essential that Parliament provide itself with the means, in terms of effective authority, rules, procedures and resources, to respond efficiently and in good time to the petitions received by it,

S. whereas the petitions process can make a positive contribution to better law-making, notably by identifying areas indicated by petitioners where existing EU law is weak or ineffective having regard to the objectives of the legislative act concerned and whereas, with the cooperation and under the authority of the competent legislative committee, such situations can be remedied by revising the legislative acts concerned,

T. whereas the petitions process also makes a significant contribution to the identification of instances in which Member States are not correctly applying Community law, which in a number of cases leads to the initiation by the Commission of infringement procedures under Article 226 of the EC Treaty,

U. whereas the infringement procedure is designed to ensure that the Member State concerned is made to comply with existing Community law and is moreover decided upon at the discretion of the Commission without there being any provision for direct parliamentary involvement in this process; noting, nevertheless, that about one third of infringements are related to issues submitted by petitioners to the European Parliament,

V. whereas an infringement procedure, even if successful, may not directly provide redress in relation to the specific issues raised by individual petitioners, whereas this undermines citizens' confidence in the EU institutions' ability to meet their expectations,

W. whereas in 2007, when the membership of the Committee on Petitions was increased from 25 to 40, Parliament registered 1 506 petitions (representing a 50 % increase compared to 2006), of which 1 089 were declared admissible,

X. recording that in 2007 a total of 159 petitioners participated in meetings of the Committee on Petitions, not including many others who were present to observe proceedings,

Y. whereas six fact-finding visits were organised in 2007 to Germany, Spain, Ireland, Poland, France and Cyprus, as a result of which reports were prepared and recommendations made which were subsequently sent to all interested parties and in particular to the petitioners,

Z. whereas nine full committee meetings were organised at which over 500 individual petitions were debated, with the valuable assistance of representatives of the Commission, all petitioners being informed of the outcome,

AA. whereas the priority areas of concern to EU citizens, as expressed in the petitions process, focus on the following issues: the environment and its protection, including the weakness of the Environmental Impact Assessment Directive, the Water Framework Directive, the Drinking Water Directive, the Waste Directives, the Habitats Directive, the Birds Directive, the Money Laundering Directive and others, and including general concerns about pollution and climate change, individual and private property rights, financial services, free movement and rights of workers including pension rights and other social provisions, free movement of goods and taxation, recognition of professional qualifications, freedom of establishment and allegations of discrimination on grounds of nationality, gender or membership of a minority,

AB. whereas the subject-matter of petitions and the course of their examination in 2007 involved major contemporary issues such as climate change, biodiversity loss, water scarcity, regulation of financial services and the European Union's energy supply,

AC. bearing in mind the permanent and constructive relations established between the European Ombudsman, who has the responsibility to investigate citizens' complaints regarding allegations of maladministration in the EU institutions, and the Committee on Petitions, which reports regularly to Parliament on the Ombudsman's Annual Report or on Special Reports — which remain the Ombudsman's last means of action when his recommendations are not followed — of which there was one in 2007,

AD. whereas a request from the committee responsible submitted in June 2005 for authorisation to draw up a report on a Special Report from the Ombudsman to Parliament on maladministration within the European Anti-Fraud Office was refused by a decision of the Conference of Presidents on 15 November 2007,

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AE. bearing in mind future developments which will further enhance the involvement of EU citizens in the activity and work of the European Union, notably by the introduction of the 'citizens' initiative' provided for under the Treaty of Lisbon, if ratified by all 27 Member States, which will permit not less than one million individuals from several Member States to call for a proposal for a new legislative act, and for which specific procedures must be introduced involving the Commission, to which such initiatives must be initially addressed, the European Parliament and the Council,

AF. whereas if the operations of the Committee on Petitions are effective and efficient, this sends a clear signal to citizens that their legitimate concerns are being dealt with and establishes a genuine connection between citizens and the EU; whereas, however, if there are unacceptable delays, and an unwillingness on behalf of Member States to implement the required recommendations in accordance with Community law, this merely serves to increase the distance between the EU and its citizens and in many cases confirms their view that a democratic deficit exists,

AG. whereas in the course of 2007 the members of the Committee on Petitions were able to benefit from the considerable enhancement of the e-Petition database and management tool, developed by its secretariat in collaboration with the service responsible for information technology, which provides all members of the committee and political groups with direct access to all petitions and associated documentation, thus improving their ability to serve petitioners effectively,

AH. noting, nevertheless, that Parliament failed to provide the resources, requested in last year's resolution on the work of the Committee on Petitions, that are needed to improve Internet facilities for the petitions process and to give effect to Rule 192(2) of Parliament's Rules of Procedure, which provides that an electronic register 'shall be set up in which citizens may lend their support to the petitioner, appending their own electronic signature to petitions which have been declared admissible and entered in the register',

AI. whereas it is important for EU citizens to be properly informed of the work of the Committee on Petitions as they prepare to vote for a new Parliament in the next EU elections scheduled for June 2009,

1. Welcomes the close collaboration between the Committee on Petitions and the services of the Commission and the Ombudsman and the climate of cooperation that exists between the institutions which seek to respond to the concerns of EU citizens; firmly believes, however, that priority should be accorded to enabling the Committee on Petitions itself to further enhance its own independent investigatory facilities, notably through the reinforcement of its secretariat and its legal expertise; undertakes to further streamline internal procedures of the Committee on Petitions in order to facilitate the petitions process further, notably with respect to the time frame within which petitions are determined, their admissibility, investigation and follow-up, the organisation of committee meetings, cooperation with other parliamentary committees which may have an interest or competence with regard to certain petitions, and committee initiatives such as fact-finding missions;

2. Stresses that the legal scope of the Charter of Fundamental Rights will be recognised if the Lisbon Treaty is fully ratified, and that this will formally enshrine its independent binding character, and points out that specific measures will have to be envisaged to determine what effect this will have on citizens' rights and, as a consequence, on the work and competences of the Committee on Petitions;

3. Reiterates its requests to its Secretary-General to conduct an urgent review of the 'Citizens Portal' on Parliament's website with the objective of enhancing the visibility of the portal as regards the right of petition and to ensure that citizens are provided with the means to append their signatures electronically in support of petitions, as provided for in Rule 192(2) of the Rules of Procedure; urges that the Citizen's Portal must ensure web-browsing software interoperability in order to provide citizens with equal rights of access in this respect;

4. Considers that the present procedure for registration of petitions unduly delays their examination, and is concerned that this may be perceived as displaying a certain lack of sensitivity towards petitioners; urges its Secretary-General, therefore, to take the necessary measures to transfer the registration of petitions from the Directorate-General of the Presidency to the secretariat of the committee responsible;

5. Calls for the initiation of negotiations between Parliament and the Commission with a view to better coordinating their work on complaints in a way that facilitates, simplifies and streamlines the complaint procedures and makes them more transparent and expeditious; calls on the Secretary-General to report back to the Committee on Petitions within six months;

6. Supports the formalisation of a procedure whereby petitions in the field of the internal market are transferred to the Solvit network with a view to significantly shortening the petitions process in the field of internal market issues such as car taxes, recognition of professional qualifications, residence permits, border controls and access to education, while preserving Parliament's right to examine the issue should a satisfactory solution not be found through Solvit;

7. Reiterates the need for greater involvement on the part of the Council and the Member States' Permanent Representations in the activities of the Committee on Petitions, and urges them to increase their presence and participation in the interests of the citizens;

8. Considers that, in the context of the reinforcement of the secretariat of the Committee on Petitions, and in the context of development of the e-Petition system, the introduction of an IT facility for online tracking aimed at petitioners would help to create a more transparent and efficient process by means of, *inter alia*, regular status updates and calls for additional information; notes that such a measure would better meet the expectations of EU citizens while also fostering improved performance of the institutional responsibilities incumbent on Parliament and on its Committee on Petitions;

9. Calls on the Commission to take full account of the recommendations of the Committee on Petitions when reaching decisions regarding the initiation of infringement proceedings against Member States, and reiterates its demand that the Committee on Petitions be directly and officially notified by the Commission when an infringement procedure is launched which is related to a petition under consideration by the Committee;

10. Reiterates in this connection the representative nature of the Committee on Petitions as well as the institutional role and duty that it performs vis-à-vis EU citizens and residents;

11. Expresses concern about the excessive length of time taken to conclude infringement cases by the Commission services and the Court of Justice, if and when the Court is involved, and — recognising that this is frequently the result of slow and often deliberate obstruction within the Member State administrations involved — calls for the introduction of more stringent timescales; expresses its doubts about the efficiency of the so-called 'horizontal infringement procedures', which take longer to conclude; calls for a review of the infringement procedure aimed at ensuring greater respect for the application of EC legislative acts;

12. Calls on the institutions concerned to make better use of this procedure as a means of ensuring full respect for Community law, and deeply regrets that too often the slowness of the procedures used and the frequent obfuscation of what is at stake lead to de facto breaches of Community law by Member States, who thus act with impunity against the interests of directly affected local communities who have petitioned Parliament;

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13. Considers it problematic that the present system for the monitoring of Community law allows Member States to delay compliance until a pecuniary sanction is actually imminent and still avoid responsibility for past intentional violations, and that citizens often appear to lack adequate access to justice and remedies at national level even when the Court of Justice has ruled that a Member State has failed to respect citizens' rights under Community law;

14. Recommends that priority be given to ensuring that the Committee on Petitions is effective and efficient in all aspects of its operations from start to finish, as this represents a real and tangible commitment to its citizens indicating that the EU is willing and able to respond to their legitimate concerns;

15. Expresses its concern and dismay at reports by petitioners that, even when they have obtained the support of the Committee on Petitions on the substance of their petition, they too often experience great difficulty in obtaining any compensation from the authorities and national courts involved; believes that such systemic weaknesses need to be further investigated, notably in so far as they apply to the financial services sector, as in the case of the findings of the Committee of Inquiry into the Equitable Life Crisis, which were based on petitions received by Parliament and on which a report was produced in 2007;

16. Welcomes the fact that in 2007 the Commission and the Court of Justice acted swiftly, including by means of an injunction, to prevent the imminent destruction of an area protected under the Habitats Directive in the Rospuda Valley by the Via Baltica road corridor, in respect of which the Committee on Petitions had conducted its own independent investigation and fact-finding visit and made specific recommendations; laments the fact that there were not more examples of this kind;

17. Urges the Commission, when dealing with petitions and complaints related to environmental policy — which is one of the predominant concerns of petitioners in the EU — to be more ready to act to prevent breaches of Community law; notes that the 'precautionary principle' has insufficient practical legal force and is too often ignored by responsible authorities in Member States who are nevertheless under an obligation to apply the EC Treaty;

18. Regrets the lack of support given to the Committee on Petitions by the Commission when, as a result of fact-finding visits in particular, compelling evidence is obtained concerning failure to respect citizen's rights as enshrined in the Treaty or failure to apply legislation, and calls for new procedures to be established which allow Parliament to bring such cases directly before the Court of Justice;

19. Fully recognises that the petitions process, as recognised in the Treaty, is nevertheless primarily concerned with obtaining non-judicial remedies and solutions with regard to the problems raised by EU citizens through the political process and, in this context, welcomes the fact that in many instances satisfactory outcomes are achieved;

20. Recognises also that in many instances satisfactory solutions cannot be found for petitioners because of the weaknesses in the applicable Community legislation itself;

21. Calls on the responsible legislative committees, when preparing and negotiating new or revised legislative acts, to pay close attention to the problems reported through the petitions process;

22. Calls on the Commission to be more concerned about the use of Cohesion Funds in areas of the EU where large infrastructure projects have a major impact on the environment, and urges Member States to ensure that EU funds are directed towards sustainable development in the interests of local communities, a growing number of which are petitioning Parliament to protest that such priorities are not always respected by regional and local authorities; welcomes the work being undertaken by the Committee on Budgetary Control and the Court of Auditors in this respect;

23. Notes that a growing number of petitions received, notably from citizens from the new Member States, concern the question of the restitution of property, even though this subject remains essentially one of national competence; urges the Member States involved to ensure that their laws concerning property rights resulting from regime change are fully in accordance with Treaty requirements and the provisions of the European Convention on Human Rights, as required also by Article 6 of the EU Treaty as amended by the Treaty of Lisbon; emphasises that petitions received on this subject do not concern the system of property ownership but the right to legitimately acquired property; in this context, urges the Commission to be particularly vigilant not only in its dealings with existing Member States but also in its negotiations with candidate countries;

24. Reaffirms its commitment to upholding the recognition of rights of EU citizens to their private property which has been legally obtained, and condemns all attempts to divest families of their property without due process, proper compensation or respect for their personal integrity; notes an increase in the numbers of petitions received on this issue, especially regarding Spain in 2007, and notes also the report and recommendations of the fact-finding visit conducted by the Committee on Petitions to investigate the problem for the third time; notes that, as regards the Public Procurement Directives, ongoing infringement procedures are still open;

25. Notes also the criticisms raised by the Committee on Petitions following its fact-finding visit to the Loiret, in France, in 2007, and in particular requests the French authorities to act decisively to ensure compliance with EU directives which risk being infringed should certain planned projects for the construction of bridges over the River Loire be allowed to go ahead, bearing in mind that the Loire Valley is not only protected under the terms of the Habitats Directive and the Birds Directive but is also a Unesco World Heritage Site and one of Europe's last remaining wild river systems;

26. Expresses its ongoing concern about the lack of implementation of the provisions of the Drinking Water Directive in Ireland, the absence of any assessment in advance of a 2007 decision to remove a national monument situated at Lismullin in the path of the M3 motorway project near Tara in County Meath — leading to the Commission's decision to bring an action against Ireland before the Court of Justice on the grounds that Ireland's wider approach to the removal of national monuments in circumstances such as those at Lismullin does not fully respect the requirements of Directive 85/337/EEC ([1]), the problems faced by local communities in Limerick, and other issues raised in the report of the fact-finding visit to Ireland conducted by the Committee on Petitions in 2007; notes that some of these issues are the subject of ongoing infringement procedures;

27. Notes the report on the fact-finding visit to Poland which made recommendations concerning the protection of the Rospuda Valley and the last primeval forest in Europe; urges the Commission to continue to work with the Polish authorities on alternative routes for the Via Baltica road network and rail network as recommended by the report of the Committee on Petitions; also encourages the Commission to ensure that funding is made available to alleviate the pressure on the road system in Augustow in such a way as to protect the local population and preserve the environment of the area;

28. Notes the fact-finding visit to Cyprus in November 2007 by the Chairman and members of the Committee on Petitions; urges the parties concerned to continue with their efforts to reach a negotiated solution to the outstanding issues of concern to petitioners, notably as regards the sealed-off section of Famagusta which should be returned to its lawful owners, and welcomes the fact that the two sides in Cyprus are having talks within a framework of renewed efforts to resolve the Cyprus problem; stresses the importance, moreover, of the immediate implementation of UN Security Council Resolution 550 (1984), which sets out the commitment to return the town of Famagusta to its lawful inhabitants;

29. Notes the growing number of petitions and letters received by the Committee on Petitions concerning the most sensitive matter of child custody, on which it is extremely difficult to take action, as for instance in the case of petitions concerning the German Jugendamt, because of the involvement of the courts in many cases, and because of the fact that — except in cases of parents from different EU countries — it is difficult to claim competence for the EU as such;

([1]) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ L 175, 5.7.1985, p. 40).

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30. Records that, in 2007, many British petitioners who had their property confiscated by the British Customs & Excise authorities were still without redress even though the Commission halted infringement proceedings against the UK for failure to respect the Treaty obligation allowing the free movement of goods; urges the British authorities to come up with an equitable solution including the payment of ex gratia payments to petitioners who suffered serious financial loss before the authorities reviewed their practice and, according to the Commission, began to act in conformity with the relevant directives;

31. Also records the fact that, in Greece, the customs authorities continue to confiscate, as an extra-ordinary measure only, the cars of Greek nationals provisionally abroad and who return to Greece with foreign number plates on their vehicles, many of whom have been accused of smuggling and have not had their case duly processed, as previously reported by the Committee on Petitions to Parliament; urges the Greek authorities to provide compensatory payments to those petitioners who have been victims of this practice; takes note of the ruling of the Court of Justice C-156/04 (7 June 2007) that deems satisfactory most of the explanations provided by the Greek authorities in this case; welcomes the implementation of new legislation adopted by the latter in the purpose of addressing the shortcomings highlighted in the aforementioned ruling;

32. Deplores the fact that, among the oldest outstanding petitions still being worked upon, the case of the 'Lettori', the foreign language teachers in Italy, continues to be unresolved despite two decisions by the Court of Justice and the support of the Commission and the Committee on Petitions for their case and their grievances; urges the Italian authorities and the individual universities involved, including *inter alia* those of Genoa, Padua and Naples, to act to apply a just solution to these legitimate claims;

33. Records that the petitions considered by the Committee on Petitions in 2007 included — although it was originally tabled in 2006 — the so-called 'One Seat' petition, which was supported by 1,25 million EU citizens and which called for a single seat for the European Parliament, to be located in Brussels; notes that in October 2007 the President referred the petition back to the committee, which subsequently called for Parliament to give its opinion on this question, bearing in mind that the seat of the institution is governed by the provisions of the Treaty and that the Member States have the responsibility for taking a decision on this matter;

34. Resolves to review the name of the Committee on Petitions, as translated into all EU official languages, for the next legislative term, so as to ensure that the name communicates the nature of the Committee in a comprehensible manner, as this is apparently not the case in certain languages at the moment, and so as to underline the element of participatory democracy in the right of petition; suggests that the term 'Committee on Citizens' Petitions' may be more easily understandable;

35. Is concerned by the number of petitions received which draw attention to the problems of electoral registration experienced by EU citizens who are expatriates or have minority status within a Member State; urges all Member States to pay particular attention to the facilities made available for all EU citizens and eligible EU residents in order to ensure their full participation in the next EU elections;

36. 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.

Hill and mountain farming

P6_TA(2008)0438

European Parliament resolution of 23 September 2008 on the situation and outlook for hill and mountain farming (2008/2066(INI))

(2010/C 8 E/09)

The European Parliament,

— having regard to its resolution of 6 September 2001 on 25 years' application of Community legislation for hill and mountain farming [1],

— having regard to its resolution of 16 February 2006 on the implementation of a European Union forestry strategy [2],

— having regard to its resolution of 12 March 2008 on the CAP 'Health Check' [3],

— having regard to the Committee of the Regions own-initiative opinion entitled 'For a Green Paper — Towards a European Union policy for upland regions: a European vision for upland regions' [4],

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

— having regard to the report of the Committee on Agriculture and Rural Development and the opinion of the Committee on Regional Development (A6-0327/2008),

A. whereas mountain areas account for 40 % of Europe's total surface area and are home to 19 % of Europe's population,

B. whereas mountain areas cover more than 50 % of the territory of some Member States, such as Greece, Spain, Italy, Austria and Portugal and the farming community remains a significant element in those areas,

C. whereas mountain areas (particularly high mountain areas and highlands) are cultural landscapes that reflect the harmonious interaction between humans and biosystems and form part of our natural heritage,

D. whereas mountain areas suffer intensely from the effects of climate change and extreme weather phenomena, such as droughts and fires,

E. whereas mountain areas are not uniform but are made up of diverse forms of mountain range at varying altitudes (high mountains, highlands, glaciers, unproductive areas),

F. whereas mountain areas have specific features (gradients, varied altitude, inaccessibility, growth, shorter growing seasons, low soil classification, weather, and particular climatic conditions), which make them different from other landscapes in the European Union and whereas they are, in many respects, 'disadvantaged' due to permanent natural handicaps, and whereas in some mountain areas this results in their gradual desertification and declining agricultural production,

G. whereas mountain areas (particularly high mountains and highlands) have the potential to be or could be a model for high-quality products, services and recreational areas, that can be sustainably developed only through the integrated and long-term use of resources and traditions,

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[1] OJ C 72 E, 21.3.2002, p. 354.
[2] OJ C 290 E, 29.11.2006, p. 413.
[3] Texts Adopted, P6_TA(2008)0093.
[4] Committee of the Regions, 23-2008.

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H. whereas stock farming products of particular quality are produced in mountain areas and whereas their production process makes integrated and sustainable use of natural resources, pastureland and specially adapted varieties of grazing crops as well as traditional technology,

I. whereas mountains (particularly high mountains and highlands) are multifunctional habitats, in which the (agricultural) economy is closely tied to social, cultural and ecological issues, and whereas such areas should therefore be given support in the form of appropriate funding,

J. whereas the economy of mountain areas is particularly sensitive to fluctuations in the economic cycle, because of permanent structural shortcomings, and, in the long term, is dependent on the diversification and specialisation of production processes,

K. whereas there are already European conventions for the protection of certain mountain areas — the Convention on the Protection of the Alps of 7 November 1991 (Alpine Convention), and the Framework Convention on the Protection and Sustainable Development of the Carpathians of 22 May 2003 (Carpathian Convention) — which are important instruments for an integrated policy on mountain areas, although they have not been fully ratified and implemented,

L. whereas the agro-sylvo-pastoral economies of mountain areas, which often comprise multiple activities, are an example of environmental balance that should not be disregarded,

M. whereas the majority of farms in mountain areas are family farms with high financial risk,

1. Points out the vast differences in the actions taken by Member States in regard to mountain areas (particularly high mountains and highlands), which envisage purely sectoral rather than integrated development, and that there is no integrated EU framework (as is the case for maritime areas: COM(2007)0574);

2. Stresses that Article 158 of the EC Treaty, on cohesion policy, as amended by the Treaty of Lisbon, identifies mountain regions as suffering from severe and permanent handicaps, whilst acknowledging their diversity, and calls for particular attention to be paid to such areas; regrets, however, that the Commission has not yet been able to draw up a comprehensive strategy to support mountain areas and other regions suffering from permanent natural handicaps effectively, despite numerous requests to do so by Parliament;

3. Stresses the need for good coordination of the various Community policies aimed at ensuring harmonious development, particularly for regions such as mountain areas, which suffer from permanent natural handicaps; is concerned, in this connection, about the usefulness of separating the Community's cohesion policy from rural development in the current programming period 2007-2013, resulting from the integration of the European Agricultural Fund for Regional Development into the Common Agricultural Policy (CAP); considers that this new approach needs to be monitored closely in order to evaluate its impact on regional development;

4. Points out that mountain areas suffer handicaps which make it less easy for agriculture to adapt to competitive conditions and entail extra costs so that it cannot produce very competitive products at low prices;

5. Proposes that, in the context of the Green Paper on territorial cohesion to be adopted in autumn 2008, and in keeping with the objectives of the territorial agenda and the European Spatial Development Perspective, the Commission should, in cooperation with the Member States, adopt a territorial approach in order to address the problems in different types of mountain territories and make provision for such measures within the next legislative package on the Structural Funds;

6. Would like the Commission to develop a genuine integrated EU strategy for mountain areas and considers the publication of a Green Paper on mountains to be an important first step in that direction; calls on the Commission to launch a wide-ranging public consultation involving regional and local authorities, socio-economic and environmental actors, as well as national and European associations representing regional authorities in mountain areas, in order better to identify the situation in those regions;

7. Welcomes the Green Paper on territorial cohesion as a method for dealing with the different areas of the European Union and calls, in this connection, for a CAP with a first and second pillar so that in the European Union, with regard to the international challenges, the economic environment can be effectively influenced accordingly, with a view to making multifunctional mountain and hill farming viable, for which production-linked instruments, including as regards milk transport, are also necessary;

8. At the same time, urges the Commission to develop, within its remit, an integrated EU strategy for the sustainable development and use of resources in mountain areas (EU strategy for mountain areas) within six months of the adoption of this resolution; also calls for national action programmes containing specific implementation measures to be drawn up on this basis by arrangement with regional authorities and civil society representatives familiar with and defending local interests and needs on the spot (e.g. as regards the different types of mountain area), with account to be taken of existing regional initiatives, accordingly;

9. Emphasises the importance of demarcating mountain areas as a prerequisite for targeted measures, such as, in particular, for mountain and hill farming, and the need for those areas to be properly classified by degree of natural disadvantage, which should be monitored to a greater extent by Member States on the basis of the current eligible-area map;

10. Calls on the Commission to produce an overview of programmes and projects funded on topics of relevance to mountain areas for the purpose of transferring knowledge and promoting innovation;

11. Calls on the Commission, in the context of the European Spatial Planning Observation Network work programme, to pay special attention to the situation of regions that are beset by permanent natural handicaps, such as mountain areas; considers that a sound and thorough knowledge of the situation as regards mountain areas is essential in order to be able to draw up differentiated measures that better address the problems of those regions;

12. Emphasises the role played by hill and mountain farming in production, in the cross-sectoral maintenance and utilisation of landscapes and as a multifunctional basis for other sectors of the economy and characteristic feature of traditional cultural landscapes and social fabrics;

13. Points out that many mountain areas have to tackle urban pressures caused by their attractiveness to tourists and, at the same time, to protect traditional landscapes that are becoming less agricultural and are losing their beauty as well as qualities of essential importance to the ecosystem;

14. Notes that farming in mountain areas (in particular in highland and high mountain areas) involves greater effort (inter alia because of high labour intensity and the need for manual labour) and higher costs (inter alia because of the need for special machinery and the high cost of transport) due to natural conditions and risks;

15. Calls for specific and greater account to be taken of the multifunctionality of mountain and hill farming in future CAP reforms by bringing the framework directives for rural development and national programmes into line with the role of mountain and hill farmers not only as producers but also as economic forerunners for other sectors and that scope be created for synergetic collaboration (inter alia, funding for ecotourism programmes and marketing for high-quality products); points, in particular, to the need for charges to be made for mountain farming's ecological benefits;

16. Pays tribute to the work carried out by mountain farmers; notes that the conditions for mountain farming (above all as regards earning a supplementary income, the work life balance and the ability to start a family) should not be complicated by red tape but should be improved through the fusion of sectoral policies; calls on the Commission and the competent (comitology) committees to review existing and prospective rules (above all on compulsory registers) in keeping with the 'better regulation' initiative and/or to make them less complicated with a view to comprehensive simplification of administrative procedures;

17. Emphasises that compensatory payments for mountain areas (in particular in highland and high mountain areas) should continue and that they should, in future, be exclusively geared towards offsetting permanent natural disadvantages and additional costs stemming from farming difficulties, that such payments are justified in the long term due to the lack of alternative production and that full decoupling would lead to a systematic reduction in activity affecting all sectors; emphasises that the needs of mountain areas cannot be met by rural development funding alone;

18. Calls for more assistance for young farmers and equal opportunities for women and men (particularly through family-friendly measures, the regulation of full and part-time work, combined-wage models, supplementary-jobs models, the work life balance and the ability to start a family) as vital factors; calls on the Commission to devise approaches, with stakeholder involvement, as part of 'flexicurity' discussions and projects;

19. Calls for demographic balance to be maintained in those areas that often face problems arising from urban migration;

20. Is convinced that priority should be given to maintaining sufficient population density in mountain areas and of the need for measures to combat desertification and attract new people;

21. Stresses the importance of ensuring a high level of services of general economic interest, improving the accessibility and interconnection of mountain areas and providing the necessary infrastructure, in particular as regards passenger and freight transport, education, the knowledge-based economy and communication networks (including broadband access) in order to facilitate connections with upland markets and urban areas; calls on the competent authorities to promote public-private partnerships for these purposes;

22. Emphasises that producer associations, farming cooperatives, collective marketing initiatives driven by farmers and inter-sectoral partnerships that create added value within regions through an integrated development approach (e.g. Leader groups) and in line with sustainable farming strategies, make an important contribution to the stability of income positioning and security of agricultural production on markets and should be given greater support accordingly;

23. Calls for special financial assistance for the dairy sector (dairy farmers and processors) which plays a key role in mountain areas (in particular highland and high mountain areas) given the lack of alternative production; calls for a 'soft landing' strategy to be adopted for mountain areas during the milk quota reform, and for accompanying measures (special payments) to reduce any negative impact, that leaves room for introducing adjustment processes, which preserves the basis for farming; calls for additional funds to be made available from the first pillar, in particular in the form of a dairy cow premium;

24. Calls on the Member States to establish, with an emphasis on support for sustainable and adapted agriculture in mountain areas, additional per-hectare payments for organic farming and extensive grazing as well as support for investments in livestock facilities appropriate to the species;

25. Points out that undertakings in mountain areas produce high-quality products by making renewed use of traditional know-how and manufacturing procedures and play a key role in the field of employment and should thus be envisaged in EU aid systems;

26. Calls for special assistance measures as a result of increased costs and efforts needed, in particular for delivering milk and dairy products in valleys; repeats its call for the introduction of a dairy cow premium for mountain areas in this context;

27. Underlines the cross-sectoral importance of typical (high-quality) regional and traditional products; asks that the EU strategy for mountain areas to include measures to protect and promote those products or their manufacturing procedures and their certification (e.g. as laid down in Council Regulation (EC) No 509/2006 of 20 March 2006 on agricultural products and foodstuffs as traditional specialities guaranteed ([1]) and Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs ([2])) and to safeguard them from imitations; calls for special provision to be made within the EU promotion programmes for high-quality foodstuffs (e.g. those from mountain pasture and farm cheese dairies as well as high-quality meat);

28. Calls on the Commission and the Member States to support farmer groups and local communities to establish regional quality labels as referred to in paragraph 27; suggests that support be given by improved information and appropriate training for farmers and local food processors as well as by financial support for setting up local processing facilities as well as first promotion campaigns;

29. Calls for the establishment of a fund for disadvantaged areas, including mountain areas, containing, for example, resources from the second pillar which have not been used due to the lack of national co-financing;

30. Calls for guaranteed targeted special financial assistance for mountain areas, in accordance with Article 69 of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the CAP and establishing certain support schemes for farmers ([3]), specific access to this assistance with minimum red tape, and for the upper limit for resources under Article 69 to be raised to 20 %;

31. Points out that mountain areas can provide high-quality agricultural produce and can add to the diversity of agricultural products in the European market, preserve certain animal and vegetable species, uphold traditions and foster industrial and tourist activities and combat climate change by protecting biodiversity and capturing CO_2 through permanent grassland and forests and that sustainable forestry exploitation will make it possible to produce energy using wood residues;

32. Calls for the interests of breeders and farmers of livestock, in particular of indigenous breeds, in mountain areas and in view of the current risks and pressures to which they are subject, to be taken into account in animal health, animal protection and animal breeding provisions, such as breeding programmes, the retention of herd books and compliance checks;

33. Stresses that the Commission's actions in the fields of competition and international trade policy have consequences on the development of mountain areas; calls on the Commission, in this context, to address the needs of those areas in a more targeted way when future adjustments are made, in particular at World Trade Organisation negotiations and as regards the flexibility of State aid rules and factoring public services of general interest into competition law;

34. Calls for particular attention to be given to stock farmers in fire-stricken mountain areas, as the pastureland in those areas requires limited and cautious use over the next five-year period;

([1]) OJ L 93, 31.3.2006, p. 1.
([2]) OJ L 93, 31.3.2006, p. 12.
([3]) OJ L 270, 21.10.2003, p. 1.

35. Calls for the 'strategy' to cover the different types of landscape in mountain areas (mountain pastures, protected forests, high mountains, highlands, meadows, landscapes of particular beauty) and to make provision for ideas and incentives for the protection and the sustainable use of mountain pastures, grassland, forests and other less favoured, sensitive areas in order to regenerate and re-grass them, protect them from erosion, promote rational management of water resources and combat unwelcome developments such as ending grazing on land which then reverts to its wild state on the one hand or over-grazing on the other;

36. Points out, with regard to preserving species diversity, the need to establish repositories of indigenous genetic material from animal and plant species, particularly indigenous farm animals and mountain flora; calls on the Commission to examine whether and how to launch an international action plan initiative;

37. Stresses that in some mountain areas in the European Union, particularly in the newer Member States, there is a growing risk of depopulation and an impoverishment of the social life of local communities and that those areas are also threatened by a curtailment or even a discontinuation of farming, which is likely to result in changes to the landscape and the ecosystem;

38. Stresses that grass premiums are essential for the continuation of farming in mountain areas and should therefore be maintained;

39. Emphasises the importance of a long-term forestry strategy that takes into account the effects of climate change, the natural life cycle and natural composition of the forest ecosystem, and creates prevention, response and compensatory mechanisms in crisis situations (e.g. storms and forest fires) and incentives for integrated forest management; points to the scope for sustainable transformation and exploitation of timber and timber products from mountain regions at local level (as high-quality products with low shipping costs and hence reductions in CO_2 emissions, construction materials and second-generation biofuels);

40. Stresses the importance of the issue of water management in mountain areas and calls on the Commission to encourage local and regional authorities to develop a sense of solidarity between downstream and upstream users, including through appropriate funding to support the sustainable use of water resources in these areas;

41. Stresses that mountain areas are particularly vulnerable to the consequences of climate change and calls on the Commission, the Member States and the competent regional and local authorities to promote the immediate implementation of measures to provide protection against natural disasters, in particular forest fires, in those regions;

42. Points out that mountain areas require new means of protecting their territory against flooding (with an emphasis on flood prevention), whilst farmers and foresters can support anti-flooding preventive measures by means of the direct area-related payments which they receive under the CAP;

43. Points out that thorough and comprehensive anti-erosion protection for soil, buildings and the conservation of aquifers must be provided as a constituent part of farming and forestry practice in order to minimise the risks of flooding and soil erosion and to prevent drought and forest fires and also for the purpose of increasing the supply of groundwater and surface water in the countryside;

44. Emphasises that deciduous and coniferous forests need particular care as a sector of the economy, as recreational areas and as a habitat, and that the unsustainable use of forests leads to ecological and safety risks (such as rock falls and mudslides), which require counteracting measures;

45. Recalls the suggestion in paragraph 15 of its resolution of 16 February 2006 that efforts be made to encourage the separation between forests and grazing land in mountain areas and to introduce the requirement to use paths (not least for safety reasons in general);

46. Points out that mountains form natural barriers, and in many instances are also national barriers, which makes cross-border, transnational and interregional cooperation — and the promotion thereof — essential, given the problems they have in common (e.g. climate change, animal diseases, loss of biodiversity);

47. Welcomes efforts in the field of sustainable tourism and those aimed at making efficient use of nature as an 'economic advantage' through sustainable and also traditional leisure and sports activities that take specific local characteristics into account; emphasises the role of people who 'use' nature for the benefit of their own health whilst respecting the natural environment;

48. Urges greater coordination of rural development and structural support and the development of common programmes;

49. Suggests that rural development and structural assistance be combined and that integrated programmes be developed;

50. Stresses the significance of introducing an integrated approach to decision-making and administrative procedures such as regional planning, the licensing of construction projects and the refurbishment of dwellings by means of environmental, heritage and urban-planning practices, with a view to ensuring sustainable development in mountain areas; recommends that the potential of mountain areas should be exploited in order to promote the comprehensive development of tourism and the use of innovation in land development and, to that end, encourages local, decentralised initiatives and cooperation between mountain areas;

51. Emphasises that land that is not suitable for cultivation and production must be used, inter alia, for the maintenance of forests, sustainable hunting and fishing and for the enhancement of those activities, in order to prevent it reverting to its wild state and to prevent fire hazards, erosion and a reduction in biodiversity;

52. Cites the importance of mountain areas (particularly high mountains and highlands) for conservation, biodiversity and habitat preservation but points in particular to the need to maintain farming and forestry in 'Natura 2000' areas and nature reserves and calls for the increased interlinking of those areas by introducing a minimum proportion of ecological offset land in farming areas (possibly 5 %);

53. Calls on the Commission to give its full backing to nominating mountain areas for inclusion on the world heritage list and to avail itself of all the international opportunities available to protect those regions;

54. Points to the unique water resources of mountain areas, which can be used sustainably for natural irrigation and as a source of drinking water and energy and for spa tourism; stresses the need for upstream and downstream solidarity in the management of these resources; highlights the need in this connection, and so as to prevent any conflicts, to devise solutions, collaboratively, for the use of water resources throughout the areas concerned;

55. Calls on the Commission to promote the implementation of the Mountain Farming Protocol to the Alpine Convention in close collaboration with the Alpine Convention institutions, to give optimum backing to interlinking mountain and hill farming with other policy areas and, in this connection, to take the necessary steps to ensure the ratification of the Alpine Convention protocols that are not yet part of the *acquis communautaire* and the accession of the European Union to the Carpathian Convention as a contracting party;

56. Highlights the importance of the voluntary sector (especially mountain rescue, civil protection and charities) with regard to services and the cultural and natural heritage in the mountains;

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57. Applauds the work of organisations and research institutes dedicated to the cause of mountain areas and stresses that use must be made of their expertise and motivation in developing an EU strategy for mountain areas and similar measures;

58. Points to the role played by the promotion of part-time basic and further vocational training and — in the interests of diversifying vocational capacities and opportunities — of lifelong learning initiatives and projects;

59. Considers it to be necessary to invest in local, advanced training centres in agricultural economy for mountain areas, so as to train professionals with the ability to manage activities in a mountain environment, protect the land and develop agriculture;

60. Calls for particular attention to be given to preserving the landscape and strengthening and modernising the infrastructure in mountain areas which are difficult to access and for the information gap to be bridged and for the results of the research framework programmes (e.g. for e-Government) to be made accessible;

61. Points to the need for efficient local services in maintaining population levels and for competitiveness; calls for targeted support to be given to local entities working as services of general interest;

62. Emphasises the need to focus on sustainable mobility solutions and to adopt an integrated approach to trans-national (transit, long-distance corridors) and local requirements (such as access to areas at very different altitudes and urban mobility);

63. Calls for mountain areas to be given support in the areas of transport management, noise protection and landscape conservation through measures aimed at taking traffic off the roads (e.g. more 'sensitive areas' in the 'Infrastructure Charging Directive' ([1])), thus forming the basis for a better quality of life and sustainable tourism;

64. Stresses the importance of 'transition zones' between plains and mountain areas for providing high-value private and public infrastructure facilities and services (e.g. universities, airports, hospitals); calls for support to make such facilities more easily accessible, particularly by means of public transport;

65. Emphasises that, through the intelligent use of many different sources of energy, mountain areas are 'models' for a diversified energy mix, energy-efficient building solutions and second-generation biofuels, and that support should be given to research work in those fields; stresses, nonetheless, that the development of second-generation biofuels must not give rise to competition between feedstock production (fallow land, coppices, etc.) and grazing areas;

66. Advises Member States to improve the structure of and procedures for the provision of financial assistance intended to support the development of mountain areas and at the same time to simplify administrative procedures and access to resources intended to support the protection and sustainable use of territorial assets: the cultural heritage and natural and human resources;

67. Considers that sustainable, modernised and multifunctional agriculture is necessary in mountain areas for maintaining other activities, such as the exploitation of biomass and agri-tourism, thus increasing the incomes of local people and calls on the Commission and Council to take account specifically, in the CAP and in regional policy, of the needs of mountain areas: the arrival of new farmers, compensation of extra costs linked to the problem of inaccessibility, for example with regard to milk collection, the maintenance of services in rural areas and the development of transport infrastructure;

([1]) Directive 2006/38/EC of the European Parliament and of the Council of 17 May 2006 amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures (OJ L 157, 9.6.2006, p. 8).

68. Points to the vulnerability of mountains and glaciers on climate change, because of their topographical features and structural disadvantages, as well as to their potential as a 'test laboratory' for innovative technologies on climate protection that imitate Nature; calls on the Commission to devise a differentiated climate policy as regards mountain areas and, in the process, to draw on existing knowledge (such as the Alpine and Carpathian Conventions); calls for research activities to be undertaken and transitional measures to be adopted in this area;

69. Calls for coordination arrangements for mountain areas and less favoured areas to be functionally linked with the CAP and the second pillar (rural development);

70. Stresses that sustainable agriculture and the development of mountain areas are of importance to the population not only in those particular areas, but also of adjoining areas (e.g. plains), and that the EU strategy for mountain areas should also influence sustainability in those adjoining areas as regards water supply, environmental stability, biodiversity, balanced population distribution and cultural diversity; calls on the Commission to examine, in formulating the EU strategy for mountain areas, how existing initiatives for the integration of mountain areas and adjoining areas can usefully be incorporated into the strategy;

71. Instructs its Committee on Agriculture and Rural Development to monitor the progress of this resolution in the Council and the Commission;

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

European Day of Remembrance for Victims of Stalinism and Nazism

P6_TA(2008)0439

Declaration of the European Parliament on the proclamation of 23 August as European Day of Remembrance for Victims of Stalinism and Nazism

(2010/C 8 E/10)

The European Parliament,

— having regard to the United Nations Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity,

— having regard to the following articles of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms: Article 1 — Obligation to respect human rights; Article 2 — Right to life; Article 3 — Prohibition of torture, and Article 4 — Prohibition of slavery and forced labour,

— having regard to Resolution 1481 (2006) of the Council of Europe Parliamentary Assembly on the need for international condemnation of crimes of totalitarian communist regimes,

— having regard to Rule 116 of its Rules of Procedure,

A. whereas the Molotov-Ribbentrop Pact of 23 August 1939 between the Soviet Union and Germany divided Europe into two spheres of interest by means of secret additional protocols,

B. whereas the mass deportations, murders and enslavements committed in the context of the acts of aggression by Stalinism and Nazism fall into the category of war crimes and crimes against humanity,

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C. whereas, under international law, statutory limitations do not apply to war crimes and crimes against humanity,

D. whereas the influence and significance of the Soviet order and occupation on and for citizens of the post-Communist States are little known in Europe,

E. whereas Article 3 of Decision No 1904/2006/EC of the European Parliament and of the Council of 12 December 2006 establishing for the period 2007 to 2013 the programme 'Europe for Citizens' to promote active European citizenship ([1]) calls for support for the action 'Active European Remembrance', intended to prevent any repetition of the crimes of Nazism and Stalinism,

1. Proposes that 23 August be proclaimed European Day of Remembrance for Victims of Stalinism and Nazism, in order to preserve the memory of the victims of mass deportations and exterminations, and at the same time rooting democracy more firmly and reinforcing peace and stability in our continent;

2. Instructs its President to forward this declaration, together with the names of the signatories, to the parliaments of the Member States.

([1]) OJ L 378, 27.12.2006, p. 32.

List of signatories

Jim Allister, Alexander Alvaro, Jan Andersson, Georgs Andrejevs, Laima Liucija Andrikienė, Emmanouil Angelakas, Roberta Angelilli, Robert Atkins, John Attard-Montalto, Elspeth Attwooll, Inés Ayala Sender, Liam Aylward, Maria Badía i Cutchet, Enrique Barón Crespo, Alessandro Battilocchio, Edit Bauer, Jean Marie Beaupuy, Christopher Beazley, Zsolt László Becsey, Bastiaan Belder, Ivo Belet, Irena Belohorská, Monika Beňová, Rolf Berend, Sergio Berlato, Giovanni Berlinguer, Adam Bielan, Šarūnas Birutis, Sebastian Valentin Bodu, Guy Bono, Mario Borghezio, Josep Borrell Fontelles, Victor Boştinaru, John Bowis, Sharon Bowles, Iles Braghetto, Elmar Brok, Danutė Budreikaitė, Cristian Silviu Buşoi, Philippe Busquin, Simon Busuttil, Jerzy Buzek, Martin Callanan, Mogens Camre, Luis Manuel Capoulas Santos, Marco Cappato, David Casa, Paulo Casaca, Michael Cashman, Françoise Castex, Giuseppe Castiglione, Jean-Marie Cavada, Charlotte Cederschiöld, Jorgo Chatzimarkakis, Ole Christensen, Sylwester Chruszcz, Philip Claeys, Luigi Cocilovo, Daniel Cohn-Bendit, Richard Corbett, Dorette Corbey, Titus Corlăţean, Corina Creţu, Brian Crowley, Magor Imre Csibi, Marek Aleksander Czarnecki, Ryszard Czarnecki, Daniel Dăianu, Joseph Daul, Dragoş Florin David, Antonio De Blasio, Arūnas Degutis, Véronique De Keyser, Gérard Deprez, Marie-Hélène Descamps, Nirj Deva, Christine De Veyrac, Mia De Vits, Jolanta Dičkutė, Gintaras Didžiokas, Koenraad Dillen, Alexandra Dobolyi, Valdis Dombrovskis, Beniamino Donnici, Bert Doorn, Den Dover, Petr Duchoň, Bárbara Dührkop Dührkop, Andrew Duff, Árpád Duka-Zólyomi, Constantin Dumitriu, Michl Ebner, Lena Ek, Saïd El Khadraoui, Maria da Assunção Esteves, Edite Estrela, Jonathan Evans, Robert Evans, Göran Färm, Richard Falbr, Carlo Fatuzzo, Szabolcs Fazakas, Markus Ferber, Emanuel Jardim Fernandes, Francesco Ferrari, Petru Filip, Hélène Flautre, Alessandro Foglietta, Hanna Foltyn-Kubicka, Nicole Fontaine, Glyn Ford, Ingo Friedrich, Urszula Gacek, Michael Gahler, Kinga Gál, Milan Gaľa, Iratxe García Pérez, Patrick Gaubert, Jas Gawronski, Eugenijus Gentvilas, Georgios Georgiou, Lidia Joanna Geringer de Oedenberg, Adam Gierek, Maciej Marian Giertych, Neena Gill, Béla Glattfelder, Bogdan Golik, Bruno Gollnisch, Ana Maria Gomes, Alfred Gomolka, Donata Gottardi, Genowefa Grabowska, Dariusz Maciej Grabowski, Vasco Graça Moura, Ingeborg Gräßle, Lissy Gröner, Elly de Groen-Kouwenhoven, Françoise Grossetête, Ignasi Guardans Cambó, Ambroise Guellec, Zita Gurmai, Catherine Guy-Quint, Małgorzata Handzlik, Gábor Harangozó, Malcolm Harbour, Marian Harkin, Joel Hasse Ferreira, Satu Hassi, Christopher Heaton-Harris, Gyula Hegyi, Erna Hennicot-Schoepges, Jeanine Hennis-Plasschaert, Edit Herczog, Jim Higgins, Mary Honeyball, Karsten Friedrich Hoppenstedt, Milan Horáček, Richard Howitt, Ján Hudacký, Stephen Hughes, Alain Hutchinson, Jana Hybášková, Filiz Hakaeva Hyusmenova, Marie Anne Isler Béguin, Ville Itälä, Lily Jacobs, Anneli Jäätteenmäki, Mieczysław Edmund Janowski, Lívia Járóka, Rumiana Jeleva, Anne E. Jensen, Dan Jørgensen, Romana Jordan Cizelj, Ona Juknevičienė, Jelko Kacin, Filip Kaczmarek, Gisela Kallenbach, Syed Kamall, Othmar Karas, Sajjad Karim, Ioannis Kasoulides, Piia-Noora Kauppi, Metin Kazak, Tunne Kelam, Glenys Kinnock, Timothy Kirkhope, Dieter-Lebrecht Koch, Eija-Riitta Korhola, Magda Kósáné Kovács, Miloš Koterec, Holger Krahmer, Guntars Krasts, Ģirts Valdis Kristovskis, Aldis Kušķis, Zbigniew Krzysztof Kuźmiuk, Joost Lagendijk, André Laignel, Alain Lamassoure, Jean Lambert, Alexander Graf Lambsdorff, Vytautas Landsbergis, Carl Lang, Romano Maria La Russa, Vincenzo Lavarra, Henrik Lax, Johannes Lebech, Stéphane Le Foll, Roselyne Lefrançois, Klaus-Heiner Lehne, Lasse Lehtinen, Jörg Leichtfried, Jo Leinen, Fernand Le Rachinel, Katalin Lévai, Janusz Lewandowski, Bogusław Liberadzki, Marcin Libicki, Alain Lipietz, Pia Elda Locatelli, Eleonora Lo Curto, Antonio López-Istúriz White, Andrea Losco, Patrick Louis, Caroline Lucas, Sarah Ludford, Astrid Lulling, Elizabeth Lynne, Marusya Ivanova Lyubcheva, Linda McAvan, Arlene McCarthy, Edward McMillan-Scott, Jamila Madeira, Eugenijus Maldeikis, Toine Manders, Ramona Nicole Mănescu, Vladimír Maňka, Thomas

Mann, Marian-Jean Marinescu, David Martin, Miguel Ángel Martínez Martínez, Jan Tadeusz Masiel, Manuel Medina Ortega, Íñigo Méndez de Vigo, Emilio Menéndez del Valle, Rosa Miguélez Ramos, Marianne Mikko, Miroslav Mikolášik, Francisco José Millán Mon, Gay Mitchell, Nickolay Mladenov, Viktória Mohácsi, Claude Moraes, Javier Moreno Sánchez, Eluned Morgan, Philippe Morillon, Jan Mulder, Cristiana Muscardini, Riitta Myller, Pasqualina Napoletano, Robert Navarro, Cătălin-Ioan Nechifor, Catherine Neris, James Nicholson, null Nicholson of Winterbourne, Rareş-Lucian Niculescu, Lambert van Nistelrooij, Vural Öger, Péter Olajos, Jan Olbrycht, Seán Ó Neachtain, Gérard Onesta, Janusz Onyszkiewicz, Ria Oomen-Ruijten, Dumitru Oprea, Josu Ortuondo Larrea, Csaba Őry, Siiri Oviir, Reino Paasilinna, Maria Grazia Pagano, Borut Pahor, Justas Vincas Paleckis, Vladko Todorov Panayotov, Marco Pannella, Pier Antonio Panzeri, Neil Parish, Ioan Mircea Paşcu, Aldo Patriciello, Béatrice Patrie, Vincent Peillon, Bogdan Pęk, Alojz Peterle, Maria Petre, Willi Piecyk, Rihards Pīks, Mirosław Mariusz Piotrowski, Umberto Pirilli, Paweł Bartłomiej Piskorski, Gianni Pittella, Francisca Pleguezuelos Aguilar, Zita Pleštinská, Rovana Plumb, Zdzisław Zbigniew Podkański, Samuli Pohjamo, Lydie Polfer, Nicolae Vlad Popa, Bernd Posselt, Christa Prets, Vittorio Prodi, Jacek Protasiewicz, John Purvis, Poul Nyrup Rasmussen, Karin Resetarits, José Ribeiro e Castro, Teresa Riera Madurell, Karin Riis-Jørgensen, Maria Robsahm, Bogusław Rogalski, Zuzana Roithová, Dariusz Rosati, Wojciech Roszkowski, Christian Rovsing, Flaviu Călin Rus, Leopold Józef Rutowicz, Eoin Ryan, Guido Sacconi, Aloyzas Sakalas, Katrin Saks, José Ignacio Salafranca Sánchez-Neyra, Manuel António dos Santos, Sebastiano Sanzarello, Jacek Saryusz-Wolski, Gilles Savary, Toomas Savi, Christel Schaldemose, Agnes Schierhuber, Carl Schlyter, Olle Schmidt, Pál Schmitt, György Schöpflin, Esko Seppänen, Adrian Severin, Brian Simpson, Kathy Sinnott, Marek Siwiec, Peter Skinner, Csaba Sógor, Bogusław Sonik, María Sornosa Martínez, Bart Staes, Grażyna Staniszewska, Margarita Starkevičiūtė, Peter Šťastný, Petya Stavreva, Dirk Sterckx, Struan Stevenson, Catherine Stihler, Robert Sturdy, Margie Sudre, László Surján, József Szájer, Andrzej Jan Szejna, István Szent-Iványi, Konrad Szymański, Csaba Sándor Tabajdi, Hannu Takkula, Charles Tannock, Andres Tarand, Salvatore Tatarella, Britta Thomsen, Silvia-Adriana Ţicău, Gary Titley, Patrizia Toia, László Tőkés, Ewa Tomaszewska, Witold Tomczak, Jacques Toubon, Catherine Trautmann, Helga Trüpel, Vladimir Urutchev, Inese Vaidere, Nikolaos Vakalis, Adina-Ioana Vălean, Frank Vanhecke, Anne Van Lancker, Geoffrey Van Orden, Daniel Varela Suanzes-Carpegna, Ari Vatanen, Armando Veneto, Riccardo Ventre, Donato Tommaso Veraldi, Marcello Vernola, Alejo Vidal-Quadras, Kristian Vigenin, Kyösti Virrankoski, Graham Watson, Henri Weber, Renate Weber, Anders Wijkman, Iuliu Winkler, Janusz Wojciechowski, Corien Wortmann-Kool, Anna Záborská, Zbigniew Zaleski, Iva Zanicchi, Andrzej Tomasz Zapałowski, Dushana Zdravkova, Roberts Zīle, Marian Zlotea, Tadeusz Zwiefka

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Common approach to the use of the spectrum released by the digital switchover

P6_TA(2008)0451

European Parliament resolution of 24 September 2008 on reaping the full benefits of the digitaldividend in Europe: a common approach to the use of the spectrum released by the digitalswitchover (2008/2099(INI))

(2010/C 8 E/11)

The European Parliament,

— having regard to the Commission Communication of 13 November 2007 entitled Reaping the full benefits of the digital dividend in Europe: A common approach to the use of the spectrum released by the digital switchover (COM(2007)0700) (Commission Communication on a common approach to the use of spectrum),

— having regard to its resolution of 14 February 2007 entitled Towards a European policy on the radio spectrum ([1]),

— having regard to the Commission Communication of 29 September 2005 entitled EU spectrum policy priorities for the digital switchover in the context of the upcoming ITU Regional Radiocommunication Conference 2006 (RRC-06) (COM(2005)0461),

— having regard to the opinion of the Radio Spectrum Policy Group of 14 February 2007 entitled EU Spectrum Policy Implications of the Digital Dividend,

— having regard to its resolution of 16 November 2005 on accelerating the transition from analogue to digital broadcasting ([2]),

— having regard to Rule 45 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 Culture and Education, the Committee on Economic and Monetary Affairs and the Committee on the Internal Market and Consumer Protection (A6-0305/2008),

A. whereas the switchover from analogue to digital terrestrial television by the end of 2012 will, as a result of the superior transmission efficiency of digital technology, free up a significant amount of spectrum in the European Union, thus offering the possibility of reallocating spectrum and presenting new opportunities for market growth and for the expansion of quality consumer services and choice,

B. whereas the benefits of the use of radio spectrum will be maximised through coordinated action at EU level in order to ensure optimal use in terms of efficiency,

C. whereas radio spectrum is key to the provision of a wide range of services and to the development of technology-driven markets whose value is estimated at 2,2 % of the EU's GDP, and is therefore a key factor for the growth, productivity and development of EU industry in accordance with the Lisbon Strategy,

D. whereas radio spectrum is both a scarce natural resource and a public good, and its efficient use is critical in ensuring access to spectrum by the various interested parties that want to offer connected services,

([1]) OJ C 287 E, 29.11.2007, p. 364.
([2]) OJ C 280 E, 18.11.2006, p. 115.

E. whereas a large part of the spectrum is currently used for military purposes under analogue technology and therefore the large increase in the total amount of spectrum in public will also include this part after the digital switchover,

F. whereas the Member States do not have a common timetable for the digital switchover; whereas in many Member States plans for the digital switchover are at an advanced stage, while in a few others the switchover has already taken place,

G. whereas the Commission Communication on a common approach to the use of the spectrum is an integral part of the package on electronic communications adopted by the Commission in November 2007 concerning the reform of the regulatory framework for electronic communications,

H. whereas the (re-)allocation of broadcast frequencies to digital broadcasters is currently under way in many Member States, with the consequence that those frequencies are being allocated and thereby locked away for many years,

I. whereas technological neutrality is key to the promotion of interoperability and essential to a more flexible and transparent digital switchover policy which takes into account the public interest,

J. whereas the Council has called on the Member States to complete, as far as possible, the digital switchover before 2012,

K. whereas all the Member States have published their proposals concerning the digital switchover,

1. Recognises the importance of the i2010 initiative as part of the renewed Lisbon Strategy, and emphasises the importance of efficient access to and use of spectrum in achieving the Lisbon goals; stresses, in this context, the need for access to broadband services in order to overcome the digital divide;

2. Emphasises the need for digital switchover which, together with the development of new information and communication technologies and the digital dividend, will help to bridge the digital divide and contribute to the achievement of the Lisbon goals;

3. Notes the divergence in national regimes relating to spectrum allocation and exploitation; notes that these differences may represent obstacles to the achievement of an effectively functioning internal market;

4. Stresses that the size of the digital dividend will vary from one Member State to another, owing to national circumstances and reflecting national media and audiovisual policies;

5. Recognises that the increased spectrum efficiency of digital terrestrial television should allow for around 100 MHz of digital dividend to be re-allocated to mobile broadband and other services (such as public safety services, radio-frequency identification and road safety applications) whilst ensuring that broadcasting services can continue to flourish;

6. Notes that most Member States today are lagging behind other developed countries regarding investment in new generation communication infrastructures, and stresses that achieving leadership in broadband and Internet development is crucial to the competitiveness and cohesion of the European Union in the international arena, especially as regards the development of interactive digital platforms and the provision of new services such as e-trade, e-health, e-learning and e-government services; emphasises that greater investment should be made at national and EU level to encourage the take-up of innovative products and services; stresses that efforts to secure access to broadband services should not be focused on the digital dividend alone;

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7. Is convinced that new multi-play packages, containing innovative technologies and services, may soon be offered due to increased technological convergence, and at the same time observes that the emergence of those offers depends crucially on the availability of valuable spectrum as well as of new interactive technologies enabling seamless interoperability, connectivity and coverage, such as mobile multimedia technologies and broadband wireless access technologies;

8. Notes that technological convergence is a reality, offering traditional services new means and opportunities; emphasises that access to the parts of the spectrum that have previously been reserved for broadcasting can enable the emergence of new services provided that the spectrum is managed as efficiently and effectively as possible in order to avoid interference with the delivery of high-quality digital broadcasting programmes;

9. Calls for close cooperation among Member States to achieve an efficient, open and competitive electronic communications internal market which will allow the deployment of new network technologies;

10. Stresses the strategic importance of an environment in the European Union where room for innovation, new technologies, new services and new entrants is guaranteed in order to enhance European competitiveness and cohesion; emphasises that it is crucial to give end-users freedom of choice as regards products and services in order to achieve the dynamic development of markets and technologies in the European Union;

11. Emphasises that the digital dividend provides the European Union with unique opportunities to develop new services such as mobile television and wireless Internet access and to remain a world leader in mobile multimedia technologies whilst bridging the digital divide, providing new opportunities for citizens, services, media and cultural diversity throughout the European Union;

12. Calls on the Members States, whilst fully respecting their sovereignty in this regard, to analyse the impact of the digital switchover on the spectrum used in the past for military purposes, and, if appropriate, to reallocate part of that specific digital dividend to new civilian applications;

13. Acknowledges that coordination at EU level would encourage development, boost the digital economy and allow all citizens affordable and equal access to the information society;

14. Urges the Member States to release their digital dividends as quickly as possible, allowing citizens of the Union to benefit from the deployment of new, innovative and competitive services; emphasises that, for this purpose, the active cooperation between Member States to overcome obstacles existing at national level for the efficient (re)allocation of the digital dividend is required;

15. Stresses that broadcasters are essential actors in the defence of pluralistic and democratic principles and strongly believes that that the opportunities offered by the digital dividend will enable public and private broadcasters to provide a much larger number of programmes serving general interest objectives — set out in national legislation — such as the promotion of cultural and linguistic diversity;

16. Believes that the digital dividend should provide an opportunity for broadcasters to develop and expand their services and at the same time to take into account other potential social, cultural and economic applications, such as new and open broadband technologies and access services designed to overcome the digital divide, while not allowing interoperability barriers;

17. Underlines the potential benefits of a coordinated approach to the usage of spectrum in the European Union in terms of economies of scale, the development of interoperable wireless services, and avoiding fragmentation which leads to a suboptimal use of this scarce resource; considers that, while closer coordination and greater flexibility are necessary for efficient exploitation of spectrum, the Commission and the Member States need to strike an appropriate balance between flexibility and the degree of harmonisation, with a view to deriving maximum benefit from the digital dividend;

18. Observes that efficient allocation of the digital dividend may be achieved without hampering any of the players that currently hold spectrum licences in the ultra-high frequency (UHF) band, and that the continuation and expansion of current broadcasting services can be effectively achieved, at the same time ensuring that new mobile multimedia and broadband wireless access technologies are allocated substantial spectrum resources in the UHF band to bring new interactive services to citizens of the Union;

19. Considers that where auctions are used to allocate frequencies, Member States should adopt a common approach as regards the conditions and methods of auction and the allocation of the generated resources; calls on the Commission to present guidelines along these lines;

20. Stresses that the main guiding principle in the allocation of the digital dividend should be to serve the general interest by ensuring the best social, cultural and economic value in terms of an enhanced and geographically wider offer of services and digital content to citizens, and not only to maximise public revenues, while also protecting the rights of current users of audiovisual media services and reflecting cultural and linguistic diversity;

21. Emphasises that the digital dividend provides a unique opportunity for the European Union to develop its role as a world leader in mobile multimedia technologies and at the same time to bridge the digital divide with an increased flow of information, knowledge and services connecting all citizens of the Union with each other and providing new opportunities for media, culture and diversity in all areas of the territory of the European Union;

22. Emphasises that a way in which the digital dividend could help to achieve the Lisbon goals is by increasing the availability of broadband access services to citizens and economic players throughout the European Union, addressing the digital divide by providing benefits in underprivileged, remote or rural areas and ensuring universal coverage in the Member States;

23. Deplores the uneven access of citizens of the Union to digital services, particularly in broadcasting; notes that rural and peripheral regions are especially disadvantaged (in terms of promptness, choice and quality) with regard to the roll-out of digital services; urges Member States and regional authorities to do everything in their power to ensure that the digital switchover is conducted quickly and fairly for all their citizens;

24. Stresses that the digital divide is not just a rural issue; highlights the difficulty in fitting some older high-rise buildings with the infrastructure for new networks; emphasises the benefit that spectrum can play in overcoming the digital divide in both urban and rural areas;

25. Emphasises the contribution that the digital dividend can make to the provision of enhanced inter-operable social services, such as e-government, e-health, e-vocational training and e-education to citizens, in particular those living in less favoured or isolated areas, such as rural and less developed areas and islands;

26. Urges the Member States to step up measures to enable disabled and elderly users and those with special social needs to make the most of the benefits provided by the digital dividend;

27. Confirms the societal value of public safety services and the need to include support for their operational requirements in the spectrum arrangements arising from the reorganisation of the UHF band resulting from the switch-off of analogue services;

28. Emphasises that the main priority of the policy on reaping the full benefits of the digital dividend in Europe is to ensure that consumers enjoy a very broad range of high quality services, while their rights are fully respected, taking account of the need to make effective use of the spectrum released by the digital switchover;

29. Stresses that the digital dividend provides new opportunities for audiovisual and media policy objectives; is therefore convinced that decisions on digital dividend management should promote and protect general interest objectives linked to audiovisual and media policies such as freedom of expression, media pluralism, cultural and linguistic diversity and the rights of minors;

30. Encourages Member States to recognise the social, cultural and economic value of allowing unlicensed users access to the dividend, in particular small and medium-sized enterprises and the not-for-profit sector, and thus increasing the efficiency of spectrum use by concentrating such unlicensed uses in the currently unused frequencies (white spaces);

31. Calls for a step-by-step approach in this field; is of the opinion that effects for smaller networks — especially local wireless networks — for which no licence requirements currently apply must be taken into account and that universal access to broadband, especially in rural areas, should be promoted;

32. Calls on Member States to support enhanced cooperation measures between spectrum management authorities to consider areas where unlicensed white space spectrum allocation would allow new technologies and services to emerge so as to foster innovation;

33. Encourages Member States to consider, in the context of allocating white space, the need for unlicensed open access to spectrum for non-commercial and educational service providers and local communities with a public service mission;

34. Stresses that one of the key elements when seeking to provide access to the digital dividend to unlicensed users is the need to take account of the needs of social groups threatened with exclusion, particularly disabled and elderly users and users with special social needs;

35. Recognises the benefit of new technologies, such as WiFi and Bluetooth, that have emerged in the unlicensed 2,4 GHz band; recognises that particular frequencies are best suited to particular services; believes that allocating a small amount of unlicensed spectrum in other lower frequencies could encourage yet more innovation in new services;

36. Emphasises, therefore, that frequencies should be assigned in a transparent manner, taking into account all the potential uses for the new spectrum and their benefits to society;

37. Encourages the Member States to assess in detail the social and economic value of any spectrum freed up in the years to come by the switchover from analogue to digital broadcast;

38. Recognises the importance of the ITU Geneva-06 Agreement (Regional Radio Communication Conference 2006) and of the national frequency allocation plans as well as of the decisions of the World Radio Communication Conference 2007 (WRC-07) to the reorganisation of the UHF band;

39. Calls on the Member States to develop, following a common methodology, national digital dividend strategies by the end of 2009; urges the Commission to assist Member States in the development of their national digital dividend strategies and to promote best practice at EU level;

40. Emphasises that the immediacy of switchover in some Member States and the differences in national switchover plans require a response at Community level that cannot await the entry into force of the amending directives;

41. Acknowledges the right of Member States to determine their use of the digital dividend, but also affirms that a coordinated approach at Community level greatly enhances the value of the dividend and is the most efficient way to avoid harmful interference between Member States and between Member States and third countries;

42. Reiterates that, in the interest of citizens of the Union, the digital dividend should be managed as efficiently and effectively as possible in order to avoid interference with the delivery of high quality digital TV programmes to an increasing number of citizens and to respect consumers' rights and interests and their investment in equipment;

43. Emphasises that Member States may consider technology-neutral auctions for the purpose of allocating frequencies that are liberated because of the digital dividend and making those frequencies tradable; considers, however, that this procedure should be in full compliance with ITU radio regulations, national frequency planning and national policy objectives in order to avoid harmful interference between services provided; warns of spectrum fragmentation which leads to the suboptimal use of scarce resources; calls on the Commission to ensure that a future coordinated spectrum plan will not create new barriers to future innovation;

44. Supports a common, balanced approach to the use of digital dividend, allowing both broadcasters to continue offering and expanding their services and electronic communications operators to use this resource to deploy new services addressing other important social and economic uses, but stresses that in any event the digital dividend should be allocated on a technology-neutral basis;

45. Stresses that spectrum policy must be dynamic and must enable broadcasters and communications operators to employ new technologies and develop new services, allowing them to continue to play a key role in achieving the objectives of cultural and media policy, while also providing new high-quality communications services;

46. Stresses the potential benefits in terms of economies of scale, innovation, interoperability and the provision of potential pan-European services of more coherent and integrated spectrum planning at Community level; encourages Member States to work together and with the Commission to identify common spectrum sub-bands of the digital dividend for different application clusters that could be harmonised on a technology-neutral basis;

47. Believes that clustering within the UHF band should be based on a 'bottom-up' approach according to the specifics of the national markets while ensuring that harmonisation at Community level takes places wherever this creates a clear added value;

48. In order to achieve a more efficient use of spectrum and to facilitate the emergence of innovative and successful national, cross-border and pan-European services, supports a coordinated approach at Community level, based on different clusters of the UHF spectrum for uni-directional and bi-directional services, taking into account the potential for harmful interference arising from the co-existence of different types of networks in the same band, the outcomes of the ITU Geneva RRC 06 and WRC 07 and the existing authorisations;

49. Considers that the part of the harmonised spectrum at Community level dedicated to emergency services should be capable of providing access to future broadband technologies for the retrieval and transmission of information needed for the protection of human life through a more efficient response on the part of the emergency services;

50. Urges the Commission to undertake, in cooperation with the Member States, the appropriate technical, socio-economic and cost-benefit studies to determine the size and characteristics of the sub-bands that could be coordinated or harmonised at Community level; recalls that such studies should take into account that the dividend is not static, but that technological development is ongoing and implementation of new technologies should allow the usage of the UHF band for new types of innovative social, cultural and economic services beyond broadcasting and wireless broadband; calls on the Commission to ensure that Member States contribute to such studies in order to identify common bands to be harmonised at European level for clearly defined and interoperable pan-European services, as well as for the allocation of these bands;

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51. Urges the Commission to seek to cooperate with the countries neighbouring the Member States so that they adopt similar frequency maps or coordinate the allocation of their frequencies with the European Union, in order to avoid disruptions to the operation of telecommunications applications;

52. Calls on the Commission to conduct a study on conflicts between users of open source software and certification authorities concerning software defined radios;

53. Calls on the Commission to propose steps to reduce legal liabilities in the context of wireless mesh network provision;

54. Calls on the Commission to submit, as soon as the abovementioned studies have been completed, and having consulted both the Radio Spectrum Policy Group and the European Conference of Postal and Telecommunications Administrations, and taking due account of national specificities, a proposal to the European Parliament and the Council for better coordination measures at Community level on the use of the digital dividend, in accordance with internationally agreed frequency plans;

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

International Tropical Timber Agreement

P6_TA(2008)0454

European Parliament resolution of 24 September 2008 on the International Tropical Timber Agreement (ITTA), 2006

(2010/C 8 E/12)

The European Parliament,

— having regard to the draft Council Decision (11964/2007),

— having regard to the Commission's Legislative and Work Programme for 2008 (COM(2007)0640),

— having regard to the Food and Agricultural Organisation's (FAO) 'Forest Products Annual Market Review' of 2006-2007,

— having regard to the 'Review on the Economics of Climate Change' by Sir Nicholas Stern, presented on 30 October 2006,

— having regard to its resolution of 7 July 2005 on speeding up implementation of the EU action plan on Forest Law Enforcement, Governance and Trade (FLEGT) ([1]),

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

A. whereas environmental protection requirements must be integrated into the planning and implementation of the common commercial policy (Articles 6 and 3(1)(b) of the Treaty), since one of the key objectives of the European Community's environment policy is the promotion of measures at the international level to deal with regional or worldwide environmental problems including the conservation and sustainable use of forest biological diversity (Article 174 of the Treaty),

B. whereas deforestation occurs at a rate of about 13 million hectares per year, including 6 million hectares of primary forests,

C. whereas deforestation is estimated to have accounted for 20 % of greenhouse gas emissions in the 1990s,

([1]) OJ C 157 E, 6.7.2006, p. 482.

D. whereas the FAO estimates that less than 8 % of the global forest area is eco-labelled and that less than 5 % of tropical forests are managed sustainably,

E. whereas cheap imports of illegal timber and forest products, together with non-compliance with basic social and environmental standards, destabilise international markets, limit producer countries' tax revenue and threaten higher-quality jobs in both importing and exporting countries as well as undermining the position of those companies that behave responsibly and respect existing standards,

F. whereas the inhabitants of timber producing countries should not be expected to bear the costs of preserving what is a global resource,

G. whereas the Commission Legislative and Work Programme for 2008 included a Commission Communication on measures to reduce deforestation, and a Communication with accompanying legislative proposal to prevent the placing on the EU market of illegally harvested timber and timber products,

1. Welcomes the conclusion of the ITTA, 2006 given that failure to reach agreement would have sent a damaging signal about the international community's commitment to promoting the protection and sustainable use of tropical forests; considers, nevertheless, that the outcome falls well short of what is required to address the loss of these forests;

Need for more joined-up policies

2. Calls on the Commission and Member States to significantly increase the financial resources available to enhance the conservation and ecologically responsible use of tropical forests, to support actions aimed at strengthening environmental governance and capacity-building and to promote economically viable alternatives to destructive logging, mining and agricultural practices;

3. Believes it is equally important to enhance the capacity of national parliaments and civil society, including local communities and indigenous people, to participate in decision-making regarding the conservation, use and management of natural resources, and to demarcate and defend their land rights;

4. Considers that public procurement policies should require timber and timber products to be derived from legal and sustainable sources so as to encourage public authorities' practical commitment to good governance in forestry and to combat corruption;

5. Insists that the Commission and Member States should also work to ensure that Export Credit Agencies, the Cotonou Investment Facility and other International Lending Institutions which fund projects with EU public money use the principle of Free, Prior and Informed Consent before financially supporting any projects in forest areas and that environmental and social impact assessments and screening procedures for these projects are carried out to ensure that they do not encourage deforestation, forest degradation or illegal logging activity;

6. Regards labelling initiatives which enable consumers to be confident that the timber they are buying is not merely legal but originates from sustainably-managed forests as potentially usefully supplements to international agreements, provided the label is underpinned by independent verification;

7. Is concerned that voluntary agreements will be insufficient to verify that timber products placed on the EU market are from legal and sustainable sources and therefore believes that the European Union should begin to adopt legally binding standards internally accompanied by instruments for sanctioning non-compliance;

8. Emphasises that strict sustainability criteria, which take account of both direct and indirect environmental and social impacts, need to be applied to imports of agrofuels and biomass if the climatic benefits of replacing fossil fuels are not to be vastly outweighed by increased CO_2 emissions arising from deforestation;

9. Calls on the Commission to ensure, through its bilateral and multilateral trade agreements, good governance of timber resources;

10. Regards the proposed trade agreement with the countries of South East Asia to be of particular importance in this respect and considers that any agreement must contain a meaningful sustainable development chapter which addresses the issues of forest preservation and the fight against illegal and unsustainable logging;

Features of a stronger, more effective agreement

11. Considers that an effective agreement on tropical timber should have, as its primary objectives, the need to ensure the protection and sustainable management of tropical forests and the restoration of forest areas that have been degraded and that trade in tropical timber should only be encouraged to the extent that it is compatible with those prior objectives;

12. Invites the Commission to develop appropriate financing mechanisms for countries that decide to give priority to the longer-term objective of promoting sustainable forests rather than maximising short-term income and to investigate the possibility of reorganising the International Tropical Timber Organisation (ITTO) voting system so as to reward timber-producing countries that give priority to the conservation and sustainable use of forest resources;

13. Believes that a future agreement should ensure that parliamentarians and civil society are involved in policy formulation and that there are provisions for independent audits of the sustainability of members' forestry management policies and their impact on indigenous people;

Conclusions

14. Considers that the agreement requires the assent of Parliament under Article 300(3), second subparagraph, of the EC Treaty and believes that the Council and Commission should welcome the enhanced legitimacy and public acceptability that would result from greater parliamentary involvement;

15. Asks the Commission to provide annual reports on the implementation of the ITTA, 2006 as well as on measures to minimise the negative impacts from trade on tropical forests, including the consequences of Free Trade Agreements and bilateral agreements under the FLEGT programme;

16. Believes that Parliament should be fully involved and informed of the progress made at every stage of negotiations on FLEGT partnership agreements;

17. Invites the Commission to start preparing for the next round of ITTA negotiations with the objective of ensuring a greatly improved successor agreement;

18. Calls on the Commission to report regularly to Parliament on the progress of future negotiations for a successor agreement to the ITTA, 2006 so that the outcome of such negotiations commands broad support;

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

Wednesday 24 September 2008

Preparation of the EU-India Summit (Marseille, 29.9.2008)

P6_TA(2008)0455

European Parliament resolution of 24 September 2008 on the preparation of the EU-India Summit (Marseille, 29 September 2008)

(2010/C 8 E/13)

The European Parliament,

— having regard to the EU-India Strategic Partnership launched at The Hague on 8 November 2004,

— having regard to the Ninth EU-India Summit, which will take place on 29 September 2008 in Marseille,

— having regard to the 2005 Strategic Partnership Joint Action Plan, adopted at the Sixth EU-India Summit, held in New Delhi on 7 September 2005,

— having regard to the conclusions of the Eighth EU-India Summit, held in New Delhi on 30 November 2007,

— having regard to its resolution of 29 September 2005 on EU-India relations: A Strategic Partnership ([1]),

— having regard to the Memorandum of Understanding between the EU and India on the Country Strategy Paper for India for 2007-2010,

— having regard to the 3rd EU India Energy Panel, held on 20 June 2007,

— having regard to its resolution of 24 May 2007 on Kashmir: present situation and future prospects ([2]),

— having regard to its resolution of 10 July 2008 on allegations of mass graves in Indian-administered Kashmir ([3]),

— having regard to its resolution of 28 September 2006 on the EU's economic and trade relations with India ([4]),

— having regard to the address by the President of the Republic of India to the European Parliament of 25 April 2007,

— having regard to the conclusions of the EU-India Civil Society Round Table held in Paris on 15-16 July 2008,

— having regard to Rule 103(4) of its Rules of Procedure,

A. whereas the EU and India are the biggest democracies in the world, and their shared commitment to democracy, pluralism, the rule of law and multilateralism in international relations contributes to global peace and stability,

B. whereas the abovementioned EU-India Strategic Partnership Joint Action Plan has served as the basis for increasing cooperation between the EU and India since 2005,

([1]) OJ C 227 E, 21.9.2006, p. 589.
([2]) OJ C 102 E, 24.4.2008, p. 468.
([3]) Texts Adopted, P6_TA(2008)0366.
([4]) OJ C 306 E, 15.12.2006, p. 400.

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C. whereas India has recorded annual economic growth in recent years of between 8 and 10 %, marking it out as a country that is emerging as a major economic power which has made great strides in economic development; whereas major advances have been made by India in a variety of human development indicators, a broader middle class approaching 100 million people has emerged, and India has made progress in becoming a donor as well as a beneficiary of development aid; whereas the huge disparity in incomes and the 300 million Indians who live below the poverty line is a continuing cause for concern,

D. whereas in domestic politics India is currently facing a number of crises, such as the unremitting violence of Islamist jihadism and Hindu radicalism, the intercommunal tensions in Jammu and Kashmir, attacks on Christians, many of them of Dalit origin, in Orissa, the spread of the Maoist (Naxalite) insurgency in at least twelve states and natural disasters in the north-east,

E. whereas a wave of violence and a series of murders against Christians occurred in Orissa during August 2008; whereas there have been allegations that there was no effective intervention by the local police and that Vishwa Hindu Parishad's leaders stated that violence would not cease until Orissa was totally free of Christians; whereas certain Christian communities in India are exposed to ongoing intolerance and violence,

F. whereas caste discrimination and the practices of 'untouchability' against the Dalits is still affecting their socio-economic and political-civil rights in a major way in spite of the Indian Government's efforts over decades,

G. whereas since October 2005 more than 400 people have died in bomb attacks in Indian cities; whereas the latest of these, carried out by Islamist terrorists, took place on 13 September 2008, leaving at least 20 people dead and many injured,

H. whereas trade between the EU and India has grown exponentially in recent years, rising from EUR 28,6 billion in 2003 to over EUR 55 billion in 2007, and whereas EU foreign investment in India more than doubled between 2002 and 2006 to EUR 2,4 billion; whereas India's trade regime and regulatory environment still remain comparatively restrictive, and in 2008 the World bank ranked India 120th (out of 178 economies) in terms of the 'ease of doing business',

I. whereas the European Parliament and the Indian Parliament have established formal bilateral relations,

J. whereas the EU and India remain committed to concluding a Free Trade Agreement (FTA) which is comprehensive, balanced and fully consistent with World Trade Organisation (WTO) rules and which provides for progressive and reciprocal liberalisation of trade in goods and services, as well as covering trade-related issues; whereas an FTA will substantially benefit both economies, increase investment, overall exports and imports for both the EU and India, and give a valuable boost to global trade, especially in services,

K. whereas the EU and India have developed close cooperation in the scientific and technology sectors,

L. whereas the EU and India are committed to the eradication of all forms of terrorism, which constitutes one of the most serious threats to international peace and security,

M. whereas India has emerged as a major actor in the international community and one of the largest contributors to UN peacekeeping missions, and whereas this enhanced status should receive recognition from the UN in the form of a seat on the UN Security Council,

N. whereas India has an important role to play in the affairs of South and South-East Asia, notably through its membership of the South Asian Association for Regional Cooperation (SAARC) and through its cooperation with the Association of Southeast Asian Nations (ASEAN); whereas India has a key role in supporting the stability of the region, and in relation to cooperation with the EU in Nepal and Sri Lanka,

O. whereas the United States and India have signed an agreement on civil nuclear cooperation,

P. whereas a peaceful future for the former princely State of Jammu and Kashmir remains an important goal for stability in South Asia,

Q. whereas climate change, energy use and energy security are of vital concern to the international community,

R. whereas the global explosion in fuel and food prices has created serious economic difficulty and raised concerns about the prospect of social unrest,

S. whereas India is a participant in the EU Galileo project and the ITER project,

1. Welcomes the holding of the Ninth India EU-Summit meeting as an expression of a sustainable Strategic Partnership and strongly recommends that these annual summit meetings be preceded in the future by parliamentary pre-summit meetings in order to underline the democratic scrutiny of this process and to enhance understanding of the points of view and democratic systems of both sides;

2. Reaffirms its strong support for strengthening the strategic relationship between the EU and India, and for exploring further ways to upgrade the relationship, and calls for concrete conclusions to emerge from the Summit on economic, political, security, trade and other issues of mutual interest;

3. Welcomes the review of the abovementioned Strategic Partnership Joint Action Plan, hopes that it will set clear priorities and deadlines for the activities agreed and reiterates its wish to be involved in the review process; is prepared to engage in discussions with the Commission in order to define the format of this involvement;

4. Notes that the EU and India intend to adopt a revised Strategic Partnership Joint Action Plan at the Summit; underlines the importance of giving real political substance to the joint actions proposed and of allocating sufficient resources to enable the priorities in the Plan to be fully attained;

5. Welcomes the establishment in June 2008 of the India-European Parliament Parliamentary Friendship Group, which will act within the Indian Parliament as a counterpart to the European Parliament Delegation for Relations with the Republic of India; hopes that this positive development will launch a meaningful and structured dialogue between the two Parliaments on issues of global and common interest through regular bilateral visits and round-table discussions;

6. Underlines its firm commitment to the establishment of a comprehensive, wide-ranging and ambitious FTA between the EU and India; notes that while negotiators have reached a broad consensus on trade in goods, further talks are required to find agreement on services, competition, intellectual property rights (IPR), public procurement, sustainable development, sanitary and phytosanitary (SPS) measures and non-tariff barriers; urges both sides to work towards bringing negotiations to a successful conclusion by the end of 2008; notes the enormous increase in bilateral trade and investment over the past decade and emphasises the huge potential for further growth arising out of such an agreement;

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7. Calls for the conclusion of a comprehensive FTA which will improve market access for goods and services, covering substantially all trade, and contain provisions on regulatory transparency in areas relevant to mutual trade and investment, including standards and conformity assessment, SPS, IPR, enforcement, trade facilitation and customs, public procurement, and trade and competition, as well as trade and development and human rights clauses as an essential element of that FTA;

8. Supports the FTA negotiations with India while fully respecting the differing economic positions of the two partners, the particular socio-economic situation of India and, especially, the situation of poor and subsistence farmers; considers an ambitious sustainable development chapter to be an essential part of any agreement and emphasises that this should be subject to the standard dispute settlement mechanism;

9. Notes that the EU is an important source of foreign direct investment (FDI) for India, accounting for approximately 19,5 % of India's total FDI flows, and that India's cumulative direct investments in joint ventures and wholly-owned subsidiaries in the EU (from April 1996 to 2006/2007) amounted to EUR 4 315,87 million, making the EU the largest destination of overseas investment for India; recognises that investment flows between the EU and India have been rising, and are due to rise even more following the successful conclusion of the FTA;

10. Recalls that the EU and India are important trading partners and founding members of the WTO; regrets the recent collapse of the Doha Development Agenda (DDA) multilateral trade negotiations and the dispute on agricultural tariffs between the US and India; notes that the costs of failure of the WTO negotiations would include: the loss of possible welfare gains from new WTO reforms; the serious threat that the credibility of the international trading system and the WTO will be undermined; and the possibility of expanding trade protectionism and the risk that WTO members will replace multilateralism with bilateral and regional agreements; urges the EU and India to renew their efforts to bring about a comprehensive trade deal that would benefit not only the EU and India but also the wider international community;

11. Calls on the Commission to give due weight in its ongoing FTA negotiations with India to human rights considerations, in particular the implementation of International Labour Organisation (ILO) Labour Standards in connection with child and bonded labour (Conventions No 138 and 182), the abolition of non-tariff barriers and ongoing restrictions in the field of FDI in important sectors, and intellectual property rights;

12. Notes the announcement on 28 August 2008 of an India-ASEAN Free Trade Agreement; expresses the hope that the agreement will lead to further economic growth, strengthen regional political relationships and underpin security in South East Asia;

13. Calls on the EU and India to make good progress on concluding maritime and aviation agreements which would further boost bilateral trade and investment; states that the Summit will also provide an opportunity for signing the Financing Agreement on the new civil aviation cooperation programme;

14. Welcomes the launch in New Delhi of the European Business and Technology Centre (EBTC), which will help to foster links between European and Indian businesses, as well as between science and technology actors, with a view to responding to the demands of the Indian market;

15. Requests that the Council make urgent progress on a visa facilitation regime;

16. Welcomes the foundation of the Indian Wildlife Crime Control Bureau, while remaining deeply concerned about the plight of the wild tiger, and calls on India to protect tigers from habitat loss and trafficking by transnational criminal networks; calls for specific EU assistance for this conservation effort in the form of technical expertise, financial support and the reinforcement of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);

17. Encourages the two sides to work closely together on the major environmental challenges facing the planet; urges, in this connection, the EU and India to develop as far as possible common approaches to the threat of climate change and a reduction in greenhouse gas (GHG) emissions; stresses the need for both sides to commit to a post-2012 agreement on GHG reductions while recognising the particular issues India faces as a developing nation;

18. Notes the soaring costs of global energy and the consequent impact on domestic consumers, business and industry; stresses the need for diversity of energy supply to be a major policy goal and emphasises the risks to political stability in Europe and South Asia posed by threats to energy security;

19. Notes the approval by the Nuclear Suppliers Group of the US-India civil nuclear accord (and of India's unilateral declaration of its intention to abide by its non-proliferation commitments and to uphold a voluntary moratorium on testing atomic weapons); calls on the Indian Government to transform its nuclear test moratorium into a legally binding commitment;

20. Recognises that India plays a major role in conflict prevention and peacekeeping in its neighbourhood and beyond; is concerned by the current volatile political situation in Pakistan and the increasingly insecure situation in Afghanistan and Sri Lanka and expresses the hope that India, as predominant country in the region, will act as a promoter of stability and peace; calls on India and the EU, particularly through the intermediary of the EU Special Envoy for Burma/Myanmar, to work together to prevail upon the Burmese military junta to release political prisoners and to respect human rights;

21. Regrets the outbreak of riots in Jammu and Kashmir in August 2008 and recommends that the authorities take all reasonable steps to ensure that elections can be held in Jammu and Kashmir in a stable environment; believes that the opening up of Kashmir to a free flow of trade and persons is essential in order to break the deadlock of repression and violence; looks forward to the time when there can be a reduction in the military presence which would be conducive to the normal functioning of civil society, business and tourism;

22. Is deeply concerned at the disaster caused by floods in north-east India, affecting in particular the state of Bihar, but also neighbouring Nepal and Bangladesh; deplores the fact that the disaster has claimed huge number of victims and left more than one million homeless; welcomes the granting of emergency aid by the EU; calls on the EU and India to intensify cooperation on measures to mitigate the effects of climate change and, notably, to step up cooperation on renewable energies;

23. Welcomes the efforts of the Indian Government and civil society in the rescue and evacuation process, coordination and distribution of food and relief camp management; emphasises that shelter and water sanitation must now be the top priorities in order to stabilise the public health situation; advocates greater international cooperation with India to support the urgent implementation of climate adaptation actions, since natural and man-made disasters, such as floods, are on the increase, making it necessary to step up prevention and recovery measures;

24. Recognises that India provides a model for handling cultural and religious pluralism, despite intermittent and local difficulties among religions, including those between Hindus and Christians; expresses, however, deep concern at the current situation of Christian minorities, and regrets the impact that the anti-conversion laws that have spread among several Indian states may have on freedom of religion;

25. Expresses deep concern at the recent attacks on Christians in Orissa (many of whom were of Dalit origin), and Kandhamal district in particular; underlines the need to guarantee immediate assistance and support to the victims, including compensation to the Church for damage inflicted on its property and to individuals whose private property has similarly been damaged; urges the authorities to enable those who were forced to flee from their villages to return safely; stresses the need for all those accused, including

senior members of the police, to be tried speedily through the judicial system; deplores the killing of at least 35 people since the outbreak of the violence, and calls on the state and national authorities to do all in their power fully to protect the Christian minority;

26. Expresses its deep sympathy for the victims of terrorist bomb outrages in India, both on its own territory and in Afghanistan, and particularly its Embassy in Kabul; recalls in particular the latest bomb attack of 13 September 2008 in the Indian capital, and the deaths of over 180 people in Mumbai in 2006 and of over 60 people in Jaipur in May 2008; condemns these and all terrorist attacks;

27. Reaffirms the role which must be played by civil society in the debates on questions of principle in the present bilateral negotiations; insists, in this connection, on the reinforcement of the role of the EU-India Civil Society Round Table set up in 2001, and calls, in particular, for it to be given the means of effectively exercising its tasks of consulting civil society in the EU and India; calls for greater account to be taken of the results of these exchanges in the EU's decision-making process;

28. Welcomes, with regard to respect for human rights, India's cooperation with the UN Human Rights Council; also commends the Indian National Human Rights Commission on its independent and rigorous work on religious discrimination and other issues; regrets that India has not yet ratified the international Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or its optional protocol; recommends that India ratify both instruments without delay; urges the Indian Government immediately to abolish the death penalty by imposing a moratorium on executions; encourages the Indian Government to sign and ratify the optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women; urges India to sign up to the International Criminal Court; urges the Indian authorities to reform the Armed Forces Special Powers Act, which grants impunity to soldiers and police officers;

29. Calls for a progress report to be drawn up on the human rights policy implemented with India, recalling that the EU-India human rights dialogue is presented as a model in the field; is surprised, in this context, that India is not on the list of countries eligible for European Instrument for Democracy and Human Rights (EIDHR) ([1]) funding for civil society microprojects;

30. Calls on the EU and India to make clear their joint commitment to dealing with the scourge of terrorism, which is one of the main threats to international peace and security; urges enhanced cooperation on intelligence-sharing, and requests that serious consideration be given to India having privileged status within Europol;

31. Stresses that India's food security remains an area of concern; calls on the Indian Government to bridge the demand-supply gap by accelerating the pace of domestic production of food grains and ensuring public and private investment, the introduction of new technologies and crop diversification;

32. Welcomes the progress achieved by India towards poverty eradication (Millennium Development Goal 1 (MDG 1)); notes, however, the slow progress towards the MDGs on education, health, gender equality and empowerment of women; reiterates its concerns that child mortality and maternal health (MDGs 4 and 5) are the areas showing least progress and are unlikely to be achieved by 2015; calls on the Council, the Commission and the Government of India to prioritise actions on gender equality, reduction of child mortality and improvement of maternal health;

33. Calls on the EU and India to put greater emphasis on people-to-people exchanges and greater cultural dialogue;

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

([1]) Regulation (EC) No 1889/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide (OJ L 386, 29.12.2006, p. 1).

Thursday 25 September 2008

Community Media in Europe

P6_TA(2008)0456

European Parliament resolution of 25 September 2008 on Community Media in Europe (2008/2011(INI))

(2010/C 8 E/14)

The European Parliament,

— having regard to Articles 150 and 151 of the EC Treaty,

— having regard to the Treaty of Amsterdam amending the Treaty of the European Union, the Treaties establishing the European Communities and certain related acts, signed on 2 October 1997 and Protocol No 9 on the system of public broadcasting in the Member States ([1]),

— having regard to Article 11 of the Charter of Fundamental Rights of the European Union,

— having regard to the Unesco Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which recognises the legitimacy of public policies for the recognition and promotion of pluralism,

— having regard to Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) ([2]),

— having regard to Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) ([3]),

— having regard to Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) ([4]),

— having regard to Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) ([5]),

— having regard to Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities ([6]),

— having regard to Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision) ([7]),

— having regard to the White Paper presented by the Commission on a European communication policy (COM(2006)0035),

— having regard to the Commission Communication of 20 December 2007 on a European approach to media literacy in the digital environment (COM(2007)0833),

([1]) OJ C 340, 10.11.1997, p. 109.
([2]) OJ L 108, 24.4.2002, p. 33.
([3]) OJ L 108, 24.4.2002, p. 7.
([4]) OJ L 108, 24.4.2002, p. 21.
([5]) OJ L 108, 24.4.2002, p. 51.
([6]) OJ L 332, 18.12.2007, p. 27.
([7]) OJ L 108, 24.4.2002, p. 1.

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— having regard to its resolution of 14 July 1995 on the Green Paper strategy options to strengthen the European programme industry in the context of the audiovisual policy of the European Union ([1]),

— having regard to the Commission Staff Working Document on Media Pluralism in the Member States of the European Union (SEC(2007)0032),

— having regard to its resolution of 22 April 2004 on the risks of violation, in the EU and especially in Italy, of freedom of expression and information (Article 11(2) of the Charter of Fundamental Rights) ([2]),

— having regard to the study 'The State of Community Media in the European Union', commissioned by the European Parliament,

— having regard to the Council of Europe Recommendation (Community Media/Rec(2007)2) of the Committee of Ministers to member states on media pluralism and diversity of media content,

— having regard to the Council of Europe Declaration (Decl-31.01.2007E) of the Committee of Ministers on protecting the role of the media in democracy in the context of media concentration,

— having regard to the Joint Declaration on Diversity in Broadcasting drafted by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR (African Commission on Human Rights and Peoples' Rights) Special Rapporteur on Freedom of Expression and Access to Information, adopted on 12 December 2007,

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

— having regard to the report of the Committee on Culture and Education (A6-0263/2008),

A. whereas community media are non-profit organisations accountable to the community that they seek to serve,

B. whereas their non-profit nature means that the primary objective of such media is to engage in activities of public or private interest without any commercial or monetary profit,

C. whereas being accountable to the community means that community media must inform the community about their actions and decisions, justify them, and be penalised in the event of any misconduct,

D. whereas there are major differences between Member States regarding community media dissemination and impact, which are the most extensive in those Member States which clearly recognise their legal status and are aware of their added value,

E. whereas community media should be open to participation in the creation of content by members of the community, and thereby foster the active participation of volunteers in media production rather than passive media consumption,

F. whereas community media very often do not represent a majority of those in society but serve instead a variety of smaller, specific target groups overlooked by other media, which are in many cases locally or regionally based,

G. whereas community media fulfil a broad yet largely unacknowledged role in the media landscape, particularly as a source of local content, and encourage innovation, creativity and diversity of content,

([1]) OJ C 249, 25.9.1995, p. 219.
([2]) OJ C 104 E, 30.4.2004, p. 1026.

H. whereas community media are obliged to present a clearly defined mandate, such as providing a social benefit, which also has to be reflected in the content they produce,

I. whereas one of the main weaknesses of community media in the European Union is their lack of legal recognition by many national legal systems, and whereas, moreover, none of the relevant Community legal acts have yet addressed the issue of community media,

J. whereas the introduction of a code of practice, in addition to legal recognition, would clarify sector status, procedures and role, contributing to sector certainty while also ensuring independence and preventing misconduct,

K. whereas the Internet has propelled the sector into a new age with new possibilities and challenges, and whereas the costs of switching from analogue to digital transmission put a considerable burden on community media,

L. whereas 2008 has been designated European Year of Intercultural Dialogue, which means that the media in the Union have a particularly important role to play, providing an eminently suitable means of expression and information for smaller cultural entities within society as a whole and for continuation of the intercultural dialogue throughout 2008 and beyond,

M. whereas community media are an important means of empowering citizens and encouraging them to become actively involved in civic society; whereas they enrich social debate, representing a means of internal pluralism of ideas; and whereas concentration of ownership presents a threat to in-depth media coverage of issues of local interest for all groups within the community,

1. Stresses that community media are an effective means of strengthening cultural and linguistic diversity, social inclusion and local identity, which explains the diversity of the sector;

2. Points out that community media help to strengthen the identities of specific interest groups, while at the same time enabling members of those groups to engage with other groups in society, and therefore play an important role in fostering tolerance and pluralism in society and contribute to intercultural dialogue;

3. Stresses also that community media promote intercultural dialogue by educating the general public, combating negative stereotypes and correcting the ideas put forward by the mass media regarding communities within society threatened with exclusion, such as refugees, migrants, Roma and other ethnic and religious minorities; stresses that community media are one of the existing means of facilitating the integration of immigrants and also enabling disadvantaged members of society to become active participants by engaging in debates that are important to them;

4. Points out that community media can play a significant role in training programmes involving external organisations, including universities, and unskilled community members, and act as a valuable hub for work experience; points out that training people in digital, web and editorial skills through their participation in community media activities provides useful and transferable skills;

5. Points out that community media act as a catalyst for local creativity, providing artists and creative entrepreneurs with a public platform for testing new ideas and concepts;

6. Considers that community media contribute to the goal of improving citizens' media literacy through their direct involvement in the creation and distribution of content and encourages school-based community outlets to develop a civic attitude among the young, to increase media literacy, as well as to build up a set of skills that could be further used for community media participation;

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7. Stresses that community media help to strengthen media pluralism, as they provide additional perspectives on issues that lie at the heart of a given community;

8. Points out that, in light of the withdrawal or non-existence of public and commercial media in some areas, including remote areas, and the tendency of commercial media to reduce local content, community media may provide the only source of local news and information and the sole voice of local communities;

9. Welcomes the fact that community media can make citizens more aware of existing public services and can help to foster civil participation in public discourse;

10. Considers that community media may serve as an effective means of bringing the Union closer to its citizens by addressing specially targeted audiences; and recommends also that the Member States collaborate more actively with community media in order to enter into a closer dialogue with citizens;

11. Points out that good quality community media are essential in order for the sector to fulfil its potential and stresses the fact that without proper financial resources there cannot be such quality; notes that the financial resources of community media vary greatly but are in general rather scarce, and acknowledges that additional funding and digital adaptation would enable the community media sector to extend its innovative profile and to provide new and vital services that bring added value to the existing analogue services;

12. Notes that the sector lacks the support needed for it to be able to make major efforts to improve its representation to, and contact with, EU and national decision-makers;

13. Stresses the need for community media to be politically independent;

14. Calls on the Commission and the Member States to take into account the contents of the resolution by defining community media as:

(a) non-profit making and independent, not only from national, but also from local power, engaging primarily in activities of public and civil society interest, serving clearly defined objectives which always include social value and contribute to intercultural dialogue;

(b) accountable to the community which they seek to serve, which means that they are to inform the community about their actions and decisions, to justify them, and to be penalised in the event of any misconduct, so that the service remains controlled by the interests of the community and the creation of 'top-down' networks is prevented;

(c) open to participation in the creation of content by members of the community, who may participate in all aspects of operation and management, although those in charge of editorial content must have professional status;

15. Advises Member States, without causing detriment to traditional media, to give legal recognition to community media as a distinct group alongside commercial and public media where such recognition is still lacking;

16. Calls on the Commission to take into account community media as an alternative, bottom-up solution for increasing media pluralism when designing indicators for media pluralism;

17. Calls on Member States to support community media more actively in order to ensure media pluralism, provided that such support is not to the detriment of public media;

18. Stresses the role that may be played by local, regional and national authorities in supporting and promoting community media by providing suitable infrastructure, together with support within the context of programmes encouraging exchanges of best practice, such as the Community 'Regions for Economic Change' (formerly Interreg) programme;

19. Calls on Member States to make television and radio frequency spectrum available, both analogue and digital, bearing in mind that the service provided by community media is not to be assessed in terms of opportunity cost or justification of the cost of spectrum allocation but rather in the social value it represents;

20. Acknowledges that on the one hand only a small portion of the sector has the knowledge and experience to apply for and benefit from EU support, while on the other hand funding officers are not aware of community media's potential;

21. Recognises that the sector could make more use of Community funding schemes in so far as they contribute to the objectives of community media, through the implementation of a number of specific programmes, such as those of the European Regional Development Fund and the European Social Fund as well as the opportunities for educating and training journalists through the Lifelong Learning Programmes and others; stresses, however, that funding must come principally from national, local and other sources;

22. Urges community media to establish a European Internet platform through which useful and relevant information for the sector can be diffused, and to facilitate networking and exchange of best practices;

23. Instructs its President to forward this resolution to the Council, the Commission, the European Economic and Social Committee, and the Committee of the Regions, and to the governments and parliaments of the Member States.

Area of Freedom, Security and Justice (AFSJ) 2007

P6_TA(2008)0458

European Parliament 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)

(2010/C 8 E/15)

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 basis for the development of the EU and the Community as an area of freedom, security and justice,

— having regard to Oral Questions B6-0006/2008 and B6-0007/2008,

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

A. whereas Member States have prime responsibility for ensuring freedom, security and justice for their citizens; whereas, however, following the entry into force of the Treaty of Maastricht and, even more so, that of the Treaty of Amsterdam, the Union is required to contribute to the achievement of those same objectives, bearing in mind the expectations of citizens of the Union as regards the protection of fundamental rights and the application within the Union of the principles of the rule of law and loyal and effective cooperation between Member States;

B. whereas the ratification of the Treaty of Lisbon is an essential and urgent precondition for ensuring that the Union is an area of freedom, security and justice (AFSJ), as it contains fundamental improvements to the legitimacy and effectiveness of EU action,

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C. whereas the comments made both at the preparatory meeting of 26 November 2007 with the national parliaments and during the most recent debate in plenary on 31 January 2008 underlined the importance of laying thorough groundwork for the transition to the new legal framework that will result from the ratification of the Treaty of Lisbon, signed on 13 December 2007, which will amend the EU Treaty and establish a Treaty on the Functioning of the European Union (TFEU),

D. whereas, however, the establishment of a genuine AFSJ is far from having been completed and still faces major difficulties and obstacles, as confirmed in the Communication from the Commission of 2 July 2008 entitled 'Report on Implementation of the Hague Programme for 2007' (COM(2008)0373),

E. whereas, as that Report stresses and notwithstanding the adoption of a number of major measures, the programme established by the Hague European Council in 2004 is seriously behind schedule and, in particular,

— there is still a serious lack of mutual trust and, above all, solidarity between Member States, especially as regards policies on legal and illegal immigration and police and judicial cooperation in criminal matters,

— these problems also affect the phase of transposition of the few measures adopted since 'an insufficient level of achievement was evident in the following areas: Visa Policy, Sharing of Information among Law Enforcement and Judicial Authorities, Prevention of and the Fight against Organised Crime, Management of Crises within the European Union, Police and Customs Cooperation and Judicial Cooperation in Criminal Matters',

F. whereas the Member States themselves mention these problems in the context of their preparatory work for the future AFSJ programme for the period 2010-2014, recognising that the *acquis* in the field of Home Affairs, which was developed step by step, is necessarily unstructured and therefore difficult to explain to citizens of the Union; whereas it is sometimes hard even for specialists to understand and some of the instruments overlap and the legal basis for some actions can be found in different acts; whereas, finally, it is becoming increasingly difficult and time-consuming to monitor the proper implementation of EC directives by as many as 27 Member States,

G. whereas Parliament is convinced, however, like the Council, that the Union has no other choice but to insist on implementing the AFSJ, which touches the core of the national constitutional orders, and that Member States have a special interest in maintaining a dialogue with each other as much as with the European institutions,

H. whereas, in this transitional phase pending the conclusion of the ratification of the Treaty of Lisbon, it is necessary to adopt before the end of 2009 certain general measures which, while drawing their inspiration from the Treaty of Lisbon, could still be adopted under the existing Treaties in full compliance with Article 18 of the Vienna Convention on the Law of Treaties, and which could reduce the adverse effects of the problems mentioned above; whereas these would include measures to:

— take account of the institutions' procedures, structures and decisions, and of the principles and objectives set out in the Charter of Fundamental Rights of the European Union, proclaimed in Strasbourg on 12 December 2007 ([1]),

— promote decision-making transparency at Union and national level, in particular in connection with the AFSJ, in accordance with the recent judgment of the Court of Justice of the European Communities (ECJ) on legislative transparency (Turco case ([2])),

— effectively involve national parliaments in the establishment and implementation of the AFSJ, including as regards assessment of these policies in the other Member States and by European Union agencies,

([1]) OJ C 303, 14.12.2007, p. 1.
([2]) Judgment of 1 July 2008 in Joined cases C-39/05 P and C-52/05 P Kingdom of Sweden and Maurizio Turco v Council of the European Union.

— ensure respect for the primacy of Community law over EU law (Article 47 of the EU Treaty) in the conclusion of international agreements, especially in the case of sanctions affecting nationals of third countries or where citizens of the Union are liable to be discriminated against (visa waiver); Parliament should systematically be associated with the conclusion by the EU of international agreements relating to police and judicial cooperation in criminal matters,

— strengthen loyal cooperation and solidarity between Member States in implementing policies and measures taken by the Union by strengthening and democratising the mutual assessment mechanisms already provided for as part of Schengen cooperation and in the fight against terrorism,

— initiate enhanced cooperation under the first pillar where the required unanimity is impossible to achieve (see the debate concerning the proposal from the Commission of 17 July 2006 for a Council Regulation amending Regulation (EC) No 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters (COM(2006)0399)),

— go beyond the as yet embryonic and uncertain nature of initiatives conducted by the agencies set up by the Union and cooperation with national administrations,

— set up a genuine communication policy enabling citizens of the Union to be better informed about initiatives established at Union and national level and to become familiar with the relevant Union and national authorities which they can contact without prejudice to court action with regard to aspects liable to affect citizens' fundamental rights,

I. whereas, during this transitional period, it is all the more important, in the interests of the citizens of the Union, to take account of the improvements which the Treaty of Lisbon will bring in terms of:

— the protection of fundamental rights, as laid down in the Charter of Fundamental Rights of the European Union,

— the judicial control exercised by the ECJ, including over legislation pertaining to police and judicial control,

— the democratic control resulting from the extension of codecision by Parliament and from the involvement of national parliaments in the Union's law-making process and in the assessment of its impact, including with regard to AFSJ-related policies

J. whereas, under the existing Treaties, the means of redress for citizens of the Union in relation to AFSJ measures are still more limited than in other areas of EU activity, whereas the ECJ's powers are limited, in particular in the area of police and judicial cooperation in criminal matters and whereas, in addition, some Member States still restrict dialogue between the EU courts and national courts in this area; whereas the Council should postpone the adoption of any measure which might affect fundamental rights until the Treaty of Lisbon has been ratified,

1. Calls on the European Council, the Council and the Commission to:

(a) initiate forthwith the process of determining priorities for the forthcoming AFSJ multiannual programme for the period 2010-2014, on the basis of an ambitious and coherent approach, going far beyond ministerial thinking, and drawing its inspiration from the objectives and principles laid down in the Charter of Fundamental Rights of the European Union;

(b) join Parliament in its dialogue with national parliaments on the priorities for the period 2010-2014, taking into account the problems encountered in implementing the Tampere and Hague Programmes, the work carried out within the Council and the European Council's initial strategic indications regarding immigration, asylum and integration; with a view to completing this initial phase of dialogue at Parliament's annual debate on the progress made in 2008 in the Area of Freedom, Security and Justice and with a view to a Commission communication subsequently being issued, on the understanding that it will be for the newly elected Parliament and the European Council to adopt the final programme at the appropriate time;

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(c) agree with Parliament a list of texts or proposals that could or should be adopted as a matter of priority before the Treaty of Lisbon enters into force and, at any rate, before the end of the current Parliamentary term;

(d) make progress in negotiations on proposals for police and judicial cooperation (which will be subject to codecision) by seeking a political agreement with Parliament, and ensure that, once agreement is reached:

— either their formal adoption is postponed until the entry into force of the Treaty of Lisbon,

— or the Council adopts the decisions or framework decisions in question under the EU Treaty as it currently stands, while agreeing to re-adopt them under the EU Treaty as amended by the Treaty of Lisbon, which would enable the ECJ to exercise full judicial control; should a political agreement already have been reached, Parliament could agree not to re-open negotiations on the substance, as is the case in the adoption procedure for official codification ([3]);

2. Proposes the following as priorities regarding areas subject or to be subject to codecision/ assent during the transition period:

In the area of fundamental rights and citizenship

— defining more transparent criteria at Union level, in particular where EU measures might undermine guarantees protected under the constitutions of the Member States (Article 52 of the Charter of Fundamental Rights of the European Union and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)) and revising EU measures censured by the ECJ (see Cases T-228/02 Organisation des Modjahedines du peuple d'Iran v Council, T-47/03 Sison v Council, T-253/04 KONGRA-GEL and Others v Council, T-229/02 PKK v Council, on black lists),

— systematically taking account of the impact on fundamental rights of EU legislation and national implementing measures, in particular with regard to the fight against terrorism, taking account of the replies recently sent to the Commission in this area by the Member States,

— initiating the preparatory dialogues for the negotiating mandate for the EU's accession to the ECHR (Article 6(2) of the EU Treaty),

— revising the programme of activities of the European Union Agency for Fundamental Rights, taking account of the priorities indicated by the institutions, and in particular by Parliament, in the area of police and judicial cooperation and respect for EU principles (Article 7 of the EU Treaty) (see the interinstitutional declaration adopted at the time of adoption of Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights ([4])),

— putting forward a legislative proposal to restrict direct and indirect discrimination affecting the movement of citizens of the Union, access to justice in a country other than the country of origin and consular and diplomatic protection in third countries (Article 20 of the TFEU),

— submitting a proposal concerning the transparency and confidentiality of information and documents handled by the EU institutions,

— submitting a proposal concerning data protection (providing for the consolidation of measures that currently vary according to which pillar is concerned), in response to concern about the rapid erosion of data protection standards in the Union, with particular reference to inadequate standards for the protection of transatlantic data transfers, and urging the Council to adapt the Framework Decision on Data Protection in the third pillar in line with Parliament's recommendations,

([3]) Paragraph 4 of the Interinstitutional Agreement of 20 December 1994 on the accelerated working method for official codification of legislative texts (OJ C 102, 4.4.1996, p. 2).
([4]) OJ L 53, 22.2.2007, p. 1.

— strengthening the internal structures of institutions responsible for protecting fundamental rights in the Union, in particular within the Council (conversion of the Council's Ad hoc Working Party on Fundamental Rights and Citizenship into a Standing Working Party, as proposed by the Slovenian Presidency),

— strengthening, through administrative cooperation (Article 66 of the EC Treaty), the dialogue between the Member States, mutual knowledge of legal systems, the activation of the dialogue procedure to involve national parliaments and Parliament, in particular where difficulties arise in the implementation of EU strategies and measures affecting the AFSJ;

Regarding the European judicial area

— revising the legislative proposal on the rights of individuals in criminal procedure (Article 69 A TFEU),

— submitting a proposal on the rights of victims of crime and terrorism (Article 69 E TFEU),

— improving mutual recognition among the Member States both of measures taken in absentia and of evidence (Article 69 E TFEU),

— interconnecting criminal records,

— revising the status of Europol, Eurojust and the European Judicial Network in the light of the new legal basis,

Regarding border protection

— adopting appropriate measures to ensure the full entry into use of the second generation Schengen Information System (SIS II) and the entry into force of the decisions linked to the Prüm Treaty ([5]),

— strengthening Frontex and assessing the impact of the Commission's new proposals for border controls,

— strengthening Frontex's information on the agreements which it has signed with third countries and on the evaluation reports on joint operations, and ensuring that border checks are respectful of human rights; amending Frontex's mandate to include sea rescue operations,

— establishing structured cooperation between Frontex and the United Nations High Commissioner for Refugees (UNHCR) to simplify the operations involved, taking into account the protection of human rights;

Regarding migration and asylum

— swift and ambitious action by the Commission and the Council to drive the Union's forward-looking strategy on:

  — legal migration: the forthcoming legal migration package (Blue Card Single Application procedure, seasonal workers, and the Intra-Corporate Transferees and remunerated trainees proposal as well as others),

  — illegal migration: proposals including sanctions and an EU resettlement scheme,

([5]) Treaty of 27 May 2005 between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Republic of Austria on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration.

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— asylum: implementation of Phase II, including revision of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status [1] and Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted [2], and the establishment of a European Asylum Support Office,

— development of a Community policy on migration and asylum based on the opening up of channels for legal migration and on the definition of common standards for the protection of migrants' and asylum seekers' fundamental rights in the Union,

— inclusion, within EC decisions and framework decisions, of all the provisions laid down by the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families adopted by the UN General Assembly on 18 December 1990,

3. Welcomes the proposal for the completion of the anti-discrimination package and urges Council to act in the spirit of the Treaty of Lisbon and incorporate Parliament's recommendations;

4. Considers that, from now on, national parliaments and civil society should be involved in a structured manner in drafting these legislative measures and in evaluating these policies in the Member States; asks the Commission and the Council, with this aim in mind, to re-examine with Parliament the networks, agencies and instruments that would assess the impact of AFSJ policies and to aid closer interaction with European civil society;

5. Stresses that the Treaty of Lisbon will recognise Parliament's role in the conclusion of international agreements concerning AFSJ policies; asks, in this context:

— to be consulted in good time on all agreements with third countries that have not been concluded by 31 December 2008,

— to receive regular updates on the negotiations under way,

— as a matter of urgency, that a debate be held on the external dimension of the AFSJ, as the Union is creating *de facto* police and judicial cooperation with third countries, notably the US, by means of bilateral agreements on a range of issues, thereby circumventing formal democratic decision-making procedures and Parliamentary scrutiny;

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6. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States, and to invite those parliaments to submit their comments, suggestions and proposals by 15 November 2008, in time for the December 2008 annual debate on the progress made in 2008 in the Area of Freedom, Security and Justice.

[1] OJ L 326, 13.12.2005, p. 13.
[2] OJ L 304, 30.9.2004, p. 2.

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Concentration and pluralism in the media in the European Union

P6_TA(2008)0459

European Parliament resolution of 25 September 2008 on concentration and pluralism in the media in the European Union (2007/2253(INI))

(2010/C 8 E/16)

The European Parliament,

— having regard to Article 11 of the Charter of Fundamental Rights of the European Union,

— having regard to the protocol to the Treaty of Amsterdam on the system of public broadcasting in the Member States ([1]) (Amsterdam Treaty Protocol),

— having regard to the Commission staff working document entitled 'Media pluralism in the Member States of the European Union' (SEC(2007)0032),

— having regard to Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities ([2]),

— having regard to its resolution of 20 November 2002 on media concentration ([3]),

— having regard to the 2005 Unesco Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Unesco Convention on cultural diversity),

— having regard to its resolution of 22 April 2004 on the risks of violation, in the EU and especially in Italy, of freedom of expression and information (Article 11(2) of the Charter of Fundamental Rights) ([4]),

— having regard to the Communication from the Commission of 2001 on the application of State aid rules to public service broadcasting ([5]),

— having regard to the Council Resolution of 25 January 1999 concerning public service broadcasting ([6]),

— having regard to the Recommendation Rec(2007)3 of 31 January 2007 of the Committee of Ministers of the Council of Europe to Member States on the remit of public service media in the information society,

— having regard to the Recommendation Rec 1466(2000) of 27 June 2000 of the Parliamentary Assembly of the Council of Europe on media education;

— having regard to the Recommendation Rec(2007)2 of the Committee of Ministers of the Council of Europe of 31 January 2007 on media pluralism and diversity of media content;

— having regard to its resolution of 13 November 2007 on the interoperability of digital interactive television services ([7]),

([1]) OJ C 340, 10.11.1997, p. 109.
([2]) OJ L 332, 18.12.2007, p. 27.
([3]) OJ C 25 E, 29.1.2004, p. 205.
([4]) OJ C 104 E, 30.4.2004, p. 1026.
([5]) OJ C 320, 15.11.2001, p. 5.
([6]) OJ C 30, 5.2.1999, p. 1.
([7]) Texts Adopted, P6_TA(2007)0497.

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

— having regard to the report of the Committee on Culture and Education and the opinions of the Committee on Economic and Monetary Affairs, the Committee on Industry, Research and Energy and the Committee on Civil Liberties, Justice and Home Affairs and (A6-0303/2008),

A. whereas the European Union has confirmed its commitment to the defence and the promotion of media pluralism, as an essential pillar of the right to information and freedom of expression enshrined in Article 11 of the Charter of Fundamental Rights of the European Union, which remain fundamental principles for preserving democracy, civic pluralism and cultural diversity,

B. whereas Parliament has repeatedly expressed its view that the Commission should establish a stable legal framework, both in the media and in the information society as a whole, aimed at ensuring an equivalent level of protection of pluralism in the Member States and enabling operators to benefit from the opportunities created by the single market,

C. whereas, as the Commission stressed in its abovementioned staff working document, the concept of media pluralism cannot be limited to the issue of concentration of ownership of companies, but also includes issues related to public broadcasting services, political power, competition in the economy, cultural diversity, the development of new technologies, transparency, and the working conditions of journalists in the Union,

D. whereas public broadcasting services need to have the necessary resources and institutions to allow them to be genuinely independent of political pressures and market forces,

E. whereas as things stand public broadcasting services are under pressure, unjustifiably and to the detriment of content quality, to compete for ratings with commercial channels, whose objective is ultimately not quality but satisfaction of majority public taste,

F. whereas the Unesco Convention on cultural diversity attaches considerable importance to, inter alia, the creation of conditions conducive to media diversity,

G. whereas the Unesco Convention on cultural diversity recognises the right of its parties to take measures aimed at enhancing diversity of the media, including through public service broadcasting,

H. whereas the important role of the public audiovisual media in ensuring pluralism is recognised in the Unesco Convention on cultural diversity and in the Amsterdam Treaty protocol, which stipulates that the system of public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and the need to preserve media pluralism, while the Member States are responsible for determining the remit of public television broadcasting and providing for its funding,

I. whereas the abovementioned Commission Communication of 2001 fully recognises the central role played by public broadcasting bodies in promoting plurality and cultural and linguistic diversity and stresses that, in examining the state aids in question, the Commission will apply criteria such as the importance of promoting cultural diversity and meeting the democratic, social and cultural needs of each society,

J. whereas the abovementioned Council Resolution of 25 January 1999 reiterates the vital role of public service broadcasting in ensuring pluralism and demands that Member States give it a wide remit that reflects its role of bringing to the public the benefits of new audiovisual and information services and new technologies,

K. whereas the Amsterdam Treaty protocol has been adopted to ensure Member States' competence to organise their national public service broadcasting system in a way tailored to the democratic and cultural needs of their society, so as to best serve the aim of preserving media pluralism,

L. whereas the abovementioned Recommendation Rec(2007)3 underlines the specific role of public service broadcasting as a source of impartial and independent information and comment, and of innovative and varied content which complies with high ethical and quality standards, and as a forum for public discussion and a means of promoting broader democratic participation of individuals, and thus demands that Member States remain empowered to adapt that remit to fulfil its purpose in a new media environment,

M. whereas media pluralism can only be guaranteed by a proper political balance in the content of public service television,

N. whereas experience shows that the unrestricted concentration of ownership jeopardises pluralism and cultural diversity and whereas a system purely based on free market competition alone is not able to guarantee media pluralism,

O. whereas in Europe the two-pillar arrangements for private and public television and audiovisual media services have proved their value in consolidating media pluralism and should be further developed,

P. whereas concentration of ownership is generating increased dependence by media professionals on the owners of large media enterprises,

Q. whereas new technologies, and in particular the shift to digital technology for the production and dissemination of audiovisual content and the entry on the market of new communications and information services have significantly influenced the quantity of available products and means of dissemination; whereas, however, a quantitative increase in media and services does not automatically guarantee content diversity; whereas new updated means of ensuring media pluralism and cultural diversity and the provision of prompt and objective information to the public are therefore necessary,

R. whereas the current telecommunications regulatory framework, reflecting the direct relationship and interdependence between infrastructure and content regulation, provides Member States with suitable technical instruments for the protection of media and content plurality, such as access and must-carry rules,

S. whereas, however, respect for pluralism of information and diversity of content is not automatically guaranteed by technological advances, but must come about through an active, consistent and vigilant policy on the part of the national and European public authorities,

T. whereas, while the Internet has greatly increased access to various sources of information, views and opinions, it has not yet replaced traditional media as a decisive public opinion former,

U. whereas due to technological developments, newspaper publishers are increasingly disseminating content via the Internet and are therefore largely dependent on (online) advertising revenue,

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V. whereas the media remains a tool of political influence, and whereas there is a considerable risk concerning the media's ability to carry out its functions as a watchdog of democracy, as private media enterprises are predominantly motivated by financial profit; whereas this carries the danger of a loss of diversity, quality of content and multiplicity of opinions, therefore the custody of media pluralism should not be left purely to market mechanisms,

W. whereas large media enterprises have built substantial and often dominant positions in some Member States, and whereas the existence of press groups owned by enterprises that may award public procurement contracts represents a threat to media independence,

X. whereas the contribution of multinational media enterprises in some Member States is essential for revitalising the media landscape, but whereas certain improvements are also needed in working conditions and remuneration,

Y. whereas working conditions and the quality of media professionals' work must be improved and whereas, in the absence of social guarantees, a growing number of journalists are employed under precarious conditions,

Z. whereas EU competition law is somewhat limited in its ability to address media concentration issues because the activities creating concentration of media ownership at vertical and horizontal level in the new Member States have not reached the financial threshold at which EU competition law would apply,

AA. whereas the introduction of over-restrictive rules on media ownership risks reducing the competitiveness of European enterprises on the world market and increasing the influence of non-European media groups,

AB. whereas media consumers should have access to a wide choice of content,

AC. whereas media creators strive to produce the highest quality content possible but the conditions are not uniformly satisfactory for achieving this in all Member States,

AD. whereas the proliferation of new media (broadband Internet, satellite channels, digital terrestrial television, etc.) and the varied forms of media ownership are not sufficient in themselves to guarantee pluralism in terms of media content,

AE. whereas the rules on content quality and on the protection of minors should be applied both at public and commercial levels,

AF. whereas media enterprises are indispensable as regards media pluralism and the preservation of democracy and should thus be more actively concerned with practices relating to business ethics and social responsibility,

AG. whereas in commercial media outlets private user-generated content, especially audiovisual content, is increasingly utilised for a nominal fee or without any payment, raising problems of ethics and protection of privacy, a practice putting journalists and other media professionals under undue competitive pressure,

AH. whereas weblogs represent an important new contribution to freedom of expression and are increasingly used by media professionals as well as by private persons,

AI. whereas public broadcasters have to be given stable funding, must act in a fair and balanced way and be given the means to promote the public interest and social values,

AJ. whereas the Member States have wide scope for interpreting the remit of the public service media and its financing,

AK. whereas the public service media have a noticeable market presence only in the audiovisual and non-linear areas,

AL. whereas the enduring basis of the European audiovisual model must be the balance between a strong, independent and pluralist public service and a dynamic commercial sector; whereas the continuity of this model is essential for the vitality and quality of creation, the pluralism of the media and respect for and promotion of cultural diversity,

AM. whereas sometimes the public service media of the Member States suffer from both inadequate funding and political pressure,

AN. whereas the tasks assigned to public sector broadcasting by each Member State require long-term funding and guaranteed independence, which is far from being the case in all Member States,

AO. whereas in certain Member States the public service media may play a pre-eminent role in terms of both quality and audience,

AP. whereas universal public access to high-quality, diverse content is becoming even more crucial in this context of technological changes and increased concentration and in an ever more competitive and globalised environment; whereas public audiovisual services are essential for democratic opinion-forming, to enable people to familiarise themselves with cultural diversity and to guarantee pluralism; and whereas these services must be able to use the new broadcasting platforms to carry out the task they are given, to reach out to all the groups that make up society, whatever means of access are used,

AQ. whereas public service media need to have sufficient public funding to enable them to compete with commercial media, in terms of offering a high standard of cultural and news content,

AR. whereas new media channels have emerged over the last decade and whereas a rising share of advertising revenues going to Internet outlets is a source of concern for traditional media outlets,

AS. whereas public service broadcasters and commercial broadcasters will continue to play complementary roles, together with new players, in the new audiovisual landscape characterised by a multiplicity of delivery platforms,

AT. whereas the EU has no intrinsic competence to regulate media concentration, nevertheless its competence in various policy fields enables it to play an active role in safeguarding and promoting media pluralism; whereas competition and state aid law, audiovisual and telecommunication regulation as well as external (trade) relations are areas in which the EU can and should actively pursue a policy to strengthen and foster media pluralism,

AU. whereas there are a growing number of conflicts concerning freedom of expression,

AV. whereas, in the information society, media education is an essential means of empowering citizens to make an informed and active contribution to democracy,

AW. whereas the increased supply of information (particularly thanks to the Internet) is making the interpretation and assessment thereof increasingly important,

AX. whereas the promotion of media literacy among the citizens of the European Union needs much more support,

AY. whereas the European media are now operating on a globalised market, which means that comprehensive restrictions regarding their ownership will considerably detract from their ability to compete with third-country undertakings not bound by similar restrictions; whereas it is therefore necessary to strike a balance between the consistent implementation of fair competition rules and the provision of pluralist safety valves on the one hand and ensuring that businesses have the necessary flexibility to compete on the international media market on the other,

AZ. whereas we live in a society in which we are constantly being inundated with information, instant communications and unfiltered messages, while the selection of information requires particular abilities,

BA. whereas measures to consolidate and promote pluralism in the media must be fundamental to EU foreign relations (in the field of trade and elsewhere), particularly in the context of the European Neighbourhood Policy, enlargement strategy and bilateral partnership agreements,

1. Urges the Commission and the Member States to safeguard media pluralism, to ensure that all EU citizens can access free and diversified media in all Member States and to recommend improvements when needed;

2. Firmly believes that a pluralistic media system is an essential requirement for the continued existence of the democratic European social model;

3. Notes that the European media landscape is subject to continuing convergence, as regards both the media and markets;

4. Highlights that the concentration of ownership of the media system creates an environment favouring the monopolisation of the advertising market, introduces barriers to the entry of new market players and also leads to uniformity of media content;

5. Points out that the development of the media system is increasingly driven by profit-making and that, therefore, societal, political or economic processes, or values expressed in journalists' codes of conduct, are not adequately safeguarded; considers, therefore, that competition law must be interlinked with media law, in order to guarantee access, competition and quality and avoid conflicts of interests between media ownership concentration and political power, which are detrimental to free competition, a level playing field and pluralism;

6. Reminds the Member States that a balance must always be sought, in the decisions of the national regulatory authorities, between their duties and freedom of expression, the protection of which is ultimately the responsibility of the courts;

7. Calls on the Commission to commit itself to promoting a stable legal framework with a guaranteed high standard of protection of pluralism in all the Member States;

8. Calls, therefore, both for a balance between public and private broadcasters — in those Member States where public broadcasters presently exist — and for the interlinking of competition and media law to be guaranteed in order to strengthen the plurality of the media;

9. Believes that the main objectives of public authorities should be to create conditions that ensure a high level of media quality (including in the public media), secure media diversity and guarantee the full independence of journalists;

10. Calls for measures to improve the competitiveness of European media concerns in order to make a significant contribution to economic growth, to be fostered also through raising the level of awareness and knowledge of economic and financial issues among citizens;

11. Highlights the growing influence of third-country media investors in the EU, especially in the new Member States;

12. Calls for the consistent application of competition legislation at EU and national level in order to ensure a high level of competition and to enable new competitors to enter the market;

13. Takes the view that EU competition law has helped to restrict media concentration; nevertheless stresses the importance of independent, Member State supervision of the media and urges, to that end, that media regulation at a national level be effective, clear, transparent and of a high standard;

14. Welcomes the Commission's intention to develop specific indicators to evaluate media pluralism;

15. Calls for further indicators, in addition to media pluralism, to be drawn up as criteria for analysing the media, including its orientation as regards democracy, the rule of law, human and minority rights and professional codes of conduct for journalists;

16. Considers that the rules on media concentration should govern not only the ownership and production of media content, but also the (electronic) channels and mechanisms for access to and dissemination of content on the Internet, such as search engines.

17. Underlines the need for ensuring access to information for disabled people;

18. Recognises that self-regulation has an important role in ensuring media pluralism; welcomes existing industry initiatives in this area;

19. Encourages the creation of a charter for media freedom to guarantee freedom of expression and pluralism;

20. Calls for media freedom to be respected and for media reporting to comply consistently with ethical codes;

21. Stresses the need to institute monitoring and implementation systems for media pluralism based on reliable and impartial indicators;

22. Stresses the need for the EU and Member State authorities to ensure journalistic and editorial independence by appropriate and specific legal and social guarantees, and points out the importance of the creation and uniform application of editorial charters in Member States, and all markets where EU-based media companies operate, to prevent owners, shareholders, or outside bodies such as governments, from interfering with news content;

23. Calls on the Member States to ensure through appropriate means a suitable balance among political and social sensibilities, in particular in the context of news and current affairs programmes;

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24. Welcomes the dynamics and diversity brought into the media landscape by the new media and encourages responsible use of all the new technology such as mobile TV as a platform for commercial, public and community media;

25. Encourages an open discussion on all issues relating to the status of weblogs;

26. Supports the protection of copyrights at the level of online media, with third parties having to mention the source when taking over declarations;

27. Recommends the inclusion of media literacy among the European key competences and supports the development of the European core curriculum for media literacy while underlining their role in overcoming any form of digital divide;

28. Maintains that the purpose of media education must be, as is laid down in the abovementioned Recommendation Rec 1466(2000), to provide citizens with the means of bringing critical interpretation to bear on, and utilising, the ever growing volume of information being imparted to them; considers that this learning process will thus enable citizens to formulate messages and select the most appropriate media for communicating them, and hence to exercise their rights to the full where freedom of information and expression is concerned;

29. Urges the Commission, in adopting a European approach to media literacy, to pay sufficient attention to standards of critical content assessment and exchanges of best practice in this connection;

30. Calls on the Commission and the Member States to consolidate an objective framework for granting broadcasting licences in the areas of cable and satellite TV and analogue and digital broadcasting markets, on the basis of transparent and fair criteria, in order to establish a system of pluralist competition and prevent abuses by companies enjoying monopolies or dominant positions;

31. Reminds the Commission that on several occasions, it has been asked to draw up a directive that would aim to ensure pluralism, encourage and preserve cultural diversity as defined in the Unesco Convention on cultural diversity, as well as to safeguard access for all media companies to the technical elements that can enable them to reach the public in its entirety;

32. Calls on the Member States to support high-quality public broadcasting services which can offer a real alternative to the programmes of commercial channels and can, without necessarily having to compete for ratings or advertising revenue, occupy a more high-profile place on the European scene as pillars of the preservation of media pluralism, democratic dialogue and access to quality content for all citizens;

33. Calls on the Commission and the Member States to support greater cooperation between European regulatory authorities and to intensify the formal and informal discussions and exchanges of views between regulatory authorities in the broadcasting field;

34. Recommends that, where appropriate, public service media in the Member States reflect the multi-cultural nature of regions;

35. Encourages the disclosure of ownership of all media outlets to help achieve greater transparency regarding the aims and background of the broadcaster and publisher;

36. Encourages the Member States to ensure that the application of national competition law to the media as well as to the Internet and communication technology sector facilitates and promotes media pluralism; calls on the Commission, in implementing EU competition rules, to take account of their impact on media pluralism;

37. Recommends that regulations governing state aid are devised and implemented in a way which allow the public service and community media to fulfil their function in a dynamic environment, while ensuring that public service media carry out the function entrusted to them by Member States in a transparent and accountable manner, avoiding the abuse of public funding for reasons of political or economic expediency;

38. Asks the Commission, when making a decision about the necessity of a revision of the abovementioned Commission Communication of 2001, to take due account of the Unesco Convention on cultural diversity and the abovementioned Recommendation Rec(2007)3; in the event that the Commission decides to revise the existing guidelines, asks that any measure or clarification proposed is assessed as far as its impact on media pluralism is concerned and duly respects Member States' competences;

39. Recommends that the Commission use the process of revising the abovementioned Commission Communication of 2001 — if it considers it necessary — as a way to strengthen public service broadcasting as an important guarantor of media pluralism in the EU;

40. Considers that, in order to enable the public audiovisual media to fulfil their task in the era of digital technology, it is necessary for them to develop new information services and media over and above traditional programmes and to be able to interact with every digital network and platform;

41. Welcomes the implementation in certain Member States of provisions requiring cable television providers to include state-run channels and to allocate a section of the digital spectrum to public providers;

42. Urges the Commission to apply a broad understanding of the remit of public service broadcasters in line with a dynamic and future-proof interpretation of the Amsterdam Treaty protocol, in particular with regard to an unconstrained participation of public service broadcasting in technological developments and deriving forms of content production and presentation (in the form of both linear and non-linear services); whereas this should also include adequate funding for new services as part of the public service broadcasting remit;

43. Reiterates that the regulation of spectrum use must take account of public interest objectives such as media pluralism and thus cannot be subjected to a purely market based regime; considers in addition that Member States should remain responsible for deciding on frequency allocation to serve the specific needs of their societies in particular with respect to safeguarding and promoting media pluralism;

44. Recommends during the revision of the Telecom Package to retain and, where necessary, to extend must-carry rules;

45. Agrees with the abovementioned Recommendation Rec(2007)2 that fair access by content providers to electronic communication networks should be ensured;

46. Draws attention to its abovementioned resolution of 13 November 2007, as interoperability is of fundamental importance for media pluralism;

47. Calls for a balanced approach to the allocation of the digital dividend to ensure equitable access for all players, thereby safeguarding media pluralism;

48. Is concerned about the dominance of a few large online players, which restricts new market entrants and thereby stifles creativity and entrepreneurship in this sector;

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49. Calls for greater transparency with respect to personal data and information on users stored by Internet search engines, email providers and social networking sites;

50. Considers that regulation at EU level sufficiently safeguards the accessibility of electronic programme guides and similar overview and navigation facilities, but that further action could be considered with regard to the way that information about the available programmes is presented to ensure that services of general interest are easily accessible; calls on the Commission to ascertain by means of consultative procedures whether minimal guidelines or sector-specific regulation are needed to safeguard media pluralism;

51. Calls for safeguarding of the balance between public law and private broadcasters, and of the coherent application of competition and media law, to strengthen media pluralism.

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

Controlling energy prices

P6_TA(2008)0460

European Parliament resolution of 25 September 2008 on getting a grip on energy prices

(2010/C 8 E/17)

The European Parliament,

— having regard to its resolution of 29 September 2005 on oil dependency [1] and its resolution of 19 June 2008 on the crisis in the fisheries sector caused by rising fuel prices [2],

— having regard to the Commission Communication of 13 June 2008 entitled 'Facing the challenge of higher oil prices' (COM(2008)0384),

— having regard to the Presidency conclusions of the European Council of 19-20 June 2008,

— having regard to the agreement at the informal Ecofin Council of 12-13 September 2008 in Nice,

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

A. whereas in the summer oil prices reached their all-time highest level in real terms, prices of other energy products have also risen and consumer fuel prices have been following the trend of the crude oil price; whereas the weak US dollar has contributed to pressure on oil prices,

B. whereas estimates indicate that oil prices may stay high in the medium- to long-term and that this will have a negative impact on inflation and the growth of the EU economy,

C. whereas the higher energy price levels are undermining the purchasing power of EU citizens, with the most negative impact being on the lowest income households and energy-intensive industry sectors,

D. whereas the hike in energy prices is influenced by a combination of complex sets of factors: structural shift of oil supply and demand, shrinking number and size of new oilfields; limited oil production expansion; geopolitical factors; less investment in technology advances; higher investment costs; and lack of qualified workforce in the main producing countries; whereas some oil producing countries tend to use their natural resources for political purposes,

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[1] OJ C 227 E, 21.9.2006, p. 580.
[2] Texts Adopted, P6_TA(2008)0308.

E. whereas the increased transparency, reliability and more frequent publication of data on commercial oil stocks are important for the efficient functioning of oil markets,

F. whereas the current financial turmoil has pushed investors to seek alternative investments and has contributed to increased short-term price volatility,

G. whereas the EU economy is still highly dependent on imported oil, and potential new fields are mostly in 'unconventional deposits', making investment costs higher for their development,

H. whereas a common European foreign policy on energy, based on solidarity and diversification of supply, would create synergies ensuring security of supply for the European Union and would enhance the EU's strength, capacity for action in foreign policy matters and credibility as a global actor,

1. Emphasises, that unless there is a global concerted shift in energy policy and consumption, the energy demand will continue to grow in the coming decades; expresses its concern at the increase in energy prices, notably because of its negative effect on the world economy and consumers, which is also hampering the attainment of the Lisbon Strategy objectives;

2. Underlines the necessity to take measures that will enable the EU economy to maintain its competitiveness and to adapt to the new energy price environment;

3. Calls for strong political commitment to take concrete measures towards cutting energy demand, to promote renewables and energy efficiency, and to pursue diversification of energy supply and reduce dependence on imported fossil fuels; considers this shift to be the most appropriate response to higher energy prices, to increase stability in the energy markets, to deliver long-term cost benefits to consumers and to meet the objectives of the UN Framework Convention on Climate Change and its related Kyoto Protocol; endorses the need for those strategic measures necessarily to be followed up by commensurate financial resources in R&D;

4. Considers that short-term and targeted measures should be taken by Member States to alleviate the negative impact on the poorest households; highlights the fact, however, that measures inducing more inflation should be avoided as they can be a detriment to public finance sustainability and neutralised by higher prices of oil;

5. Reiterates its first-reading position of 18 June 2008 on the proposal for a directive of the European Parliament and of the Council amending Directive 2003/54/EC concerning common rules for the internal market in electricity [1] and of 9 July 2008 on the proposal for a directive of the European Parliament and of the Council amending Directive 2003/55/EC concerning common rules for the internal market in natural gas [2]; considers that the Commission should bring forward a communication on tackling energy poverty in the European Union; calls on Member States to provide national definitions of energy poverty and to develop national action plans to eradicate energy poverty; calls on the Commission to monitor and coordinate the data provided by Member States, in addition to ensuring that universal and public service obligations are respected;

6. Calls on the Commission to ensure that the proposed Energy Consumers Charter clearly sets out consumers' rights; calls on the national regulatory authorities to use the powers at their disposal to help consumers;

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[1] Texts Adopted, P6_TA(2008)0294.
[2] Texts Adopted, P6_TA(2008)0347.

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7. Notes the drop in crude oil prices to USD 100 per barrel in the last few weeks, breaking the trend of continuous rising oil prices; notes with concern, however, that consumers are continuing to pay higher energy prices, not always fully reflecting downward fluctuations in crude oil prices; calls on the Commission to monitor price developments, in particular with regard to how price increases or reductions affect consumers;

8. Calls on the Commission to guarantee compliance with existing EU competition rules, with particular focus on investigating and fighting anti-competitive practices in the gas and electricity sectors, as well as in oil refining and distribution to points of consumption;

9. Calls on the Commission to investigate the linkage between oil and gas prices in long-term gas contracts and to produce an adequate policy response;

10. Calls on Ecofin to introduce reduced VAT for energy-saving goods and services;

11. Encourages measures that help the adjustment process of energy-intensive industries and services so that they can be more energy-efficient; asks the Commission, however, to monitor the impact of such measures and to take appropriate action in the event of competition distortion;

12. Stresses, furthermore, that renewable energy sources, combined with energy conservation measures, including incentives to improve household energy efficiency, reduce Europe's dependence on energy imports and thus diminish the political and economic risks resulting from these imports;

13. Calls on the Commission to ensure that energy saving, energy efficiency and renewable energies are prioritised in the design of future EU energy policy, in particular under the forthcoming 2nd Strategic Energy Review;

14. Considers that the European Investment Bank should have a more prominent role in providing funding for energy efficiency, renewables and R&D projects, with a particular focus on small and medium-sized enterprises;

15. Notes the increase in tax revenues on energy in some Member States due to recent oil price increases; underlines the importance of adequate fiscal policies, as a means of reducing dependence on fossil fuels, addressing climate change and creating incentives for investments in energy-efficiency, renewable energy and environmentally friendly products;

16. Invites the Commission to present its proposal on review of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity [1] (the so-called 'Energy Tax Directive'), having carefully examined the effects that taxation measures could have on inflation, new investments, and on the transition to a low-carbon and EU energy-efficient economy;

17. Stresses the importance of the increased transparency and reliability of data on oil markets and oil commercial stocks; considers it important to improve the understanding of oil products price development; calls for a timely revision of the Community legislation on emergency oil stocks;

18. Stresses that the EU should speak with one voice as regards energy policy; reiterates the importance of an EU common energy policy and commitment to the European Neighbourhood Policy; believes in this respect that the EU should take the lead in the energy dialogue with key oil and gas supply countries; welcomes the idea of a high-level summit between oil and gas consuming and producing countries, aimed at greater stability of prices, more predictability in supplies and payment for sales in euros;

[1] OJ L 283, 31.10.2003, p. 51.

19. Encourages EU companies to be more proactive, by making further investments, and to take the lead in new technology know-how and engineering skills in order to remain key partners with the main oil producing countries; notes that investments are particularly needed to develop the refining and exploration capabilities in order to cope with increasing demand;

20. Notes that Corporate Social Responsibility should be improved within the major energy companies in order to channel more private investment in the energy industry into energy-saving programmes and alternative energy technologies and related R&D;

21. Invites the Member States to coordinate policy interventions in tackling the increase in energy prices; calls on the Commission to prepare an analysis based on Member States' best practice policy measures in their response to high energy price challenges;

22. Calls on the Council to reach an agreement as soon as possible on the next key steps towards achieving a fully liberalised internal energy market, as this will contribute to reducing EU vulnerability to energy prices and enhance security of supply; reaffirms in this respect its strong support for the completion of the EU internal energy market;

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

White Paper on Nutrition, Overweight and Obesity-related health issues

P6_TA(2008)0461

European Parliament resolution of 25 September 2008 on the White Paper on nutrition, overweight and obesity-related health issues (2007/2285(INI))

(2010/C 8 E/18)

The European Parliament,

— having regard to the Commission's White Paper of 30 May 2007 entitled 'A Strategy for Europe on Nutrition, Overweight and Obesity related health issues' (COM(2007)0279),

— having regard to its resolution of 1 February 2007 on promoting healthy diets and physical activity [1],

— having regard to the Second World Health Organisation (WHO) European Action Plan for Food and Nutrition Policy 2007-2012, adopted by the WHO Regional Committee for Europe in Belgrade, 17-20 September 2007, and the European Charter on Counteracting Obesity, adopted by the WHO Regional Office in 2006,

— having regard to the objectives set by the WHO European Ministerial Conference held in Istanbul on 15-17 November 2006, with the European Charter on Counteracting Obesity,

— having regard to the Global Strategy on Diet, Physical Activity and Health, adopted by the 57th World Health Assembly on 22 May 2004,

— having regard to the conclusions of the Employment, Social Policy, Health and Consumer Affairs Council of 2 and 3 June 2005 concerning obesity, nutrition and physical activity,

[1] OJ C 250 E, 25.10.2007, p. 93.

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— having regard to the conclusions of the Employment, Social Policy, Health and Consumer Affairs Council of 5 and 6 December 2007 entitled 'Putting an EU strategy on Nutrition, Overweight and Obesity related Health Issues into operation',

— having regard to the WHO Regional Office for Europe publication of 2006 entitled 'Physical activity and health in Europe: evidence for action',

— having regard to the Commission's White Paper on sport of 11 July 2007 (COM(2007)0391),

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

— 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 opinions of the Committee on the Internal Market and Consumer Protection, the Committee on Agriculture and Rural Development and the Committee on Women's Rights and Gender Equality (A6-0256/2008),

A. whereas overweight and obesity and diet-related disease are becoming growing epidemics and are major contributors to the leading causes of mortality and morbidity in Europe,

B. whereas it is scientifically proven that the incidence rate and the gravity of nutrition-related diseases affect men and women differently,

C. whereas, according to the WHO, more than 50 % of the European adult population are overweight or obese,

D. whereas more than 5 million children are obese and almost 22 million are overweight and these figures are rising rapidly, so that by 2010 a further 1,3 million children per year are predicted to become overweight or obese,

E. whereas obesity and overweight-related diseases are thought to take up 6 % of government health care expenditure in some Member States; whereas the indirect costs of those conditions, through reduced productivity and sick leave for example, are considerably higher,

F. whereas abdominal obesity is scientifically recognised as one of the main predictors of several weight-related diseases, such as cardiovascular disease and type 2 diabetes,

G. whereas eating habits established in childhood often endure into adulthood and research has shown that obese children are more likely to become obese adults,

H. whereas European citizens are living in an 'obesogenic' environment in which sedentary lifestyles have raised the risk of obesity,

I. whereas poor diet is a major risk factor for other diet-related diseases that are the major killers across the EU including coronary heart-disease, cancers, diabetes and stroke,

J. whereas the WHO's 2005 report on health in Europe analytically demonstrates that a large number of deaths and illnesses are caused by seven major risk factors, six of which (hypertension, cholesterol, the body mass index, inadequate fruit and vegetable consumption, lack of physical activity and excessive alcohol consumption) are related to diet and physical exercise, and whereas those health determinants must be acted upon simultaneously with a view to preventing a significant number of deaths and illnesses,

K. whereas physical activity, coupled with a healthy balanced diet, is the primary method of prevention against overweight; whereas an alarming one in three Europeans do not exercise at all in their free time, while the average European spends over five hours a day sitting down; whereas many Europeans do not consume a balanced diet,

L. whereas the number of lessons devoted to sport has decreased in the past decade at both primary and secondary school level, and there are major disparities among Member States with regard to facilities and equipment,

M. whereas with the European Charter on Counteracting Obesity the WHO has set the target of achieving visible progress in fighting child obesity over the next four or five years, with the objective of reversing the current trend by 2015 at the latest,

N. whereas a healthy diet must have certain quantitative and qualitative properties and be geared to individual needs and always in strict adherence to dietetic principles,

O. whereas a diet must include the following categories of criteria to be considered as having 'health value': (1) nutrient and energy content (nutritional value), (2) health and toxological criteria (food safety), (3) natural food properties ('aesthetic/gustatory' and 'digestive' qualities), (4) ecological nature of food production (sustainable agriculture),

P. whereas overweight and obesity should be tackled by means of a holistic approach acting across government policy areas and at different levels of government, especially at national, regional and local level, with all due regard for subsidiarity,

Q. whereas the significance of alcohol, with its high calorie intake, and of smoking, both of which distort the appetite for food and drink and carry many established hazards to health, should not be overlooked,

R. whereas account must be taken of the social dimension of the problem, and in particular the fact that the highest incidence rates of overweight and obesity are registered in lower socio-economic groups; whereas this situation could lead to greater health and socio-economic inequalities, particularly for the most vulnerable groups of the population, such as the disabled,

S. whereas socio-economic inequalities are taking on another dimension with the rise in raw material prices (such as cereals, butter and milk) which is unprecedented both in terms of the number of products concerned and the extent of the increases,

T. whereas the conjunction of higher raw material prices and the opacity of the rules governing large-scale distribution in some Member States has led to an escalation in the prices of basic food products of high nutritional value, such as fruit and vegetables and sugar-free dairy products, which is eroding the budgets of the majority of households in the EU, and whereas the EU needs to rise to this challenge,

U. whereas the disabled make up 15 % of the active population of the EU; whereas, moreover, studies show that the disabled are at greater risk of obesity owing, inter alia, to pathophysiological changes in the metabolism of energy and the composition of the body, and to muscle atrophy and physical inertia,

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V. whereas all multi-stakeholders' initiatives should be facilitated in order to improve dialogue, the exchange of best practice and self-regulation, for example through the EU Platform for Action on Diet, Physical Activity and Health as well as the Working Group on Sport and Health and the EU network Health-Enhancing Physical Activity (HEPA),

W. whereas different traditional cuisines should be promoted as part of our cultural heritage, but at the same time action should be taken to ensure that consumers are aware of their actual impact on health in order to facilitate informed decisions,

X. whereas consumers in Europe should have access to the information necessary to enable them to select the best sources of nutrition for an optimal diet in the light of their individual life-style and state of health,

Y. whereas recent industry initiatives on advertising self-regulation will address the balance and nature of food and beverage advertising; whereas self-regulatory measures need to cover all forms of marketing on the Internet and other new media; whereas food advertising accounts for around half of all advertising broadcast during children's TV viewing times and whereas there is clear evidence that TV advertising influences short-term consumption patterns of children aged between 2 and 11 years; whereas the use of new forms of marketing using all technological means and in particular the so-called 'advergames' involving cell phones, instant messaging, video games and interactive games on the Internet are a source of concern; whereas numerous food producers, advertising and marketing firms and health and consumer protection associations are now displaying considerable commitment in the EU Platform for Action on Diet, Physical Activity and Health and can already point to successful studies and projects,

Z. whereas malnutrition, which particularly affects older people, costs European healthcare systems similar amounts as obesity and overweight,

1. Welcomes the abovementioned White Paper on Nutrition as an important step in an overall strategy to stem the rise in obesity and overweight and address diet-related chronic diseases, such as cardiovascular disease including heart disease and stroke, cancer and diabetes, in Europe;

2. Reiterates its call to Member States to recognise obesity as a chronic disease; believes that care should be taken to avoid stigmatising individuals or groups of people who are vulnerable to nutrition, overweight and obesity-related health problems due to cultural factors, diseases such as diabetes or pathological consumption such as anorexia or bulimia, and advises Member States to ensure that these people have access to appropriate treatment under their national systems;

3. Considers a multilevel and comprehensive approach to be the best way to fight obesity among the EU population and points out that there are many European programmes (on research, health, education, life-long learning) that can help us to tackle this real scourge;

4. Considers that policy geared to food quality can make an important contribution to promoting health and reducing obesity and that comprehensible information on labels is the key to enabling consumers to choose between good, better and less good nutrition;

5. Approves the setting up of the High-Level Group on Nutrition and Physical Activity and European health survey systems collecting physical and biological measurements such as the Health Examination Survey (HES) and the European Health Interview Survey (EHIS) monitoring system, as effective tools for policy-makers and all actors involved in improving knowledge and the exchange of best practice in the fight against obesity;

6. Calls on the Commission to ensure balanced representation of women and men in the future High-Level Group on Nutrition and Physical Activity, so as to target the problems more closely and propose the best solutions in keeping with the gender dimension, i.e. for men on the one hand and for women on the other;

7. Recognises the substantial role of self-regulation in fighting obesity, and stresses the need for clear and concrete targets for all parties concerned and independent monitoring of these targets; notes that regulation is sometimes necessary to deliver substantive and meaningful change across all sectors of industry,

particularly when concerning children, in order to ensure consumer protection and high standards of public health; notes with interest 203 commitments undertaken in the context of the EU Platform for Action on Diet, Physical Activity and Health aiming at product reformulation, reduction in advertising to children and labelling for the promotion of a balanced diet; considers that membership of the platform should be extended to include manufacturers of computer games and consoles as well as Internet providers;

8. Calls, however, for more tangible measures especially targeted at children and at-risk groups;

9. Urges the Commission to take a more holistic approach to nutrition and make malnutrition, alongside obesity, a key priority in the fields of nutrition and health, incorporating it wherever possible into EU-funded research initiatives and EU-level partnerships;

10. Considers that European consumers should have access to the information necessary to allow them to choose the best sources of nutrients needed to achieve and maintain the optimal nutrition intake best suited to their individual lifestyle and health; believes that greater attention should be paid to improving the health literacy of citizens to empower them to make effective decisions about their own and their children's diets; considers that informing and educating parents on nutritional issues should be carried out via the relevant professionals (teachers, cultural events organisers and health professionals) at the appropriate locations; is convinced that consumer information, nutritional education and food labelling should be based on consumer research;

11. Draws attention, in this context, to the importance of linking a future school fruit programme to a broader educational strategy, for example by means of lessons on diet and health in primary schools;

12. Draws attention to the fundamental role played by parents in nutrition education in the family and the decisive contribution they can make to combating obesity;

13. Calls on Member States, regions and local entities to be more proactive in developing 'activity-friendly communities', especially in the context of urban planning to make municipalities conducive to physical exercise as a daily routine and by creating opportunities in the local environment that motivate people to engage in leisure time physical activity; this can be achieved by introducing local measures to reduce reliance on cars and promoting walking and by mixing in a sensible way commercial and residential development, by promoting public means of transport, parks and accessible sports facilities, biking trails and pedestrian crossings; invites municipalities to promote a network of 'towns for a healthy lifestyle' providing common actions to fight obesity;

14. Encourages Member States to adopt the notion of active commuting both by schoolchildren and workers; encourages local authorities to consider this notion as a priority when assessing urban transport and planning;

15. Notes that the provision of areas where children and young people can experience nature gives them an alternative to traditional leisure activities and at the same time enhances the faculties of imagination and creativity and the urge to explore;

16. Calls on sports organisations to bear in mind in particular that girls in their later teenage years often cease to participate actively in sporting activities; considers that sports organisations have a large role to play in maintaining the interest of girls and women in participating in various sports activities;

17. Stresses that the private sector has a role to play in reducing obesity by developing new and healthier products, but that it should also be further encouraged to develop clear information systems and improve labelling to enable consumers to make an informed choice;

18. Stresses that the European Union should take a leading role in formulating a common approach and promoting coordination and best practice between Member States; is convinced that an important European added value can be provided in fields such as consumer information, nutritional education, media advertising, agricultural production and food labelling in particular with indication of trans-fat content; calls for the development of European indicators such as waist size and any other risk factor relating to obesity (especially abdominal obesity);

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Our priority: children

19. Invites the Commission and all actors to set as a priority the fight against obesity from the early stages of life, bearing in mind that eating habits established in childhood often endure after many years;

20. Calls for information campaigns to raise awareness among pregnant women about the importance of a balanced and healthy diet, with an optimal provision of some nutrients during pregnancy, and for women and their partners to be made aware about the importance of breastfeeding; recalls that breastfeeding, delaying weaning until babies are six months old, introducing children to healthy foods and controlling portion sizes can all help to prevent children becoming overweight or obese; stresses, however, that breastfeeding is not the sole means of fighting obesity, and that balanced eating habits are acquired over a long period; emphasises that awareness campaigns should bear in mind that breastfeeding is a private matter and should respect women's free will and choice;

21. Calls on Member States to ensure that national health services promote specific nutritional advice for pregnant women and menopausal women, since pregnancy and the menopause are two important stages in women's lives when there is an increased risk of storing fat;

22. Urges Member States to propose guidelines drawn up by experts on how to improve physical activity as early as the pre-school period and to promote nutritional education already at this early stage;

23. Considers that it is primarily at school level that steps have to be taken to ensure that physical activity and balanced eating become part of the behaviour of a child; calls on the High Level Group on Nutrition and Physical Activity to develop guidelines on nutrition policies at school and for the promotion of nutritional education as well as the continuation of such education in the post-school period; calls on Member States to include the benefits of a balanced diet and physical exercise in school curricula;

24. Further, asks Member States, local entities and school authorities to monitor and to improve the quality and nutritional standards of school and kindergarten meals including by means of specific training and guidelines for catering staff, quality control of caterers and guidelines for healthy food in canteens; underlines the importance of adapting portion sizes to needs and including fruit and vegetables in these meals; asks for more nutrition education on a balanced diet and encourages a move away from the sale of foods and beverages high in fat, salt or sugar and of poor nutritional value in schools; advocates instead making fresh fruit and vegetables more available at points of sale; invites competent authorities to ensure that at least three hours a week of the school curriculum are devoted to physical activities, in accordance with the objectives of the abovementioned White Paper on sport, and asks those authorities to provide plans for the construction of new public sports facilities, accessible also to disabled persons, and for the safeguarding of existing sports facilities in schools; welcomes a possible 'fruit at school' project to be financially supported by the EU similar to the current school milk programme; calls for solutions to be found to continue the free distribution of fruit and vegetables to schools and charitable institutions during 2008 as requested by some Member States, pending the entry into application of the school fruit scheme on 1 January 2009;

25. Calls on Member States' local authorities to promote the availability and affordability of leisure facilities and to promote the creation of opportunities in the local environment that motivate people to engage in leisure time physical activity;

26. Asks Member States, local entities and school authorities to ensure that healthy options are provided in school vending machines; considers that sponsorship and advertising for so-called HSSF products (those high in sugar, salt, fat) of poor nutritional value in school buildings should be subject to the request or with the express permission of school authorities, and should be monitored by pupil-parent associations; considers that sport organisations and teams should set an example with regard to exercise and healthy diet, and calls for a voluntary commitment by all sports organisations and teams to promote balanced nutrition and physical activity especially among children; assumes that all sports organisations and teams promote balanced nutrition and physical activity; stresses, moreover, that the European sports movement should not be blamed for overweight and obesity in Europe;

27. Welcomes the reform of the Common Market Organisation of the Common Agricultural Policy (CAP) allowing more fruit and vegetables to be served in schools, provided that the quality and chemical safety of these products is monitored;

28. Urges the EU, and in particular the Ecofin Council, to be more flexible over Member States' application of lower VAT rates for necessities of a social, economic, environmental or health-oriented nature; in this respect, calls on those Member States which have not yet done so to cut VAT on fruit and vegetables, recalling that Community law authorises them to do so; calls, in addition, for current Community legislation to be amended to allow fruit and vegetables to benefit from a very low rate of VAT (under 5 %);

29. Welcomes EU initiatives such as the setting-up of the 'EU mini-chefs' website and the European Day for Healthy Food and Cooking held on 8 November 2007; recommends the organisation of information campaigns to improve awareness about the relationship between energy-dense products and the equivalent in time of physical activity needed to burn off their calories;

Informed choices and availability of healthy products

30. Believes that product reformulation is a powerful tool for reducing the intake of fat, sugar and salt in our diets and encourages food producers to further engage in reformulation of energy-dense, nutrient-poor foods in order to reduce fat, sugar and salt and enrich their fibre, fruit and vegetable content; welcomes commitments undertaken on a voluntary basis by producers to implement nutrition criteria for the formulation of foods;

31. Stresses that nutrition labelling must be mandatory and clear to help consumers make a healthy choice of food;

32. Calls for an EU-wide ban on artificial trans-fatty acids; urges Member States to follow good practice in controlling the content of substances (e.g. salt) in food and calls on the Commission to draw up a programme for exchanging best practice across Member States; points out that special exemptions should be provided for PDO (protected designation of origin), PGI (protected geographical indication), TSG (traditional speciality guaranteed) and other types of traditional products in order to preserve original recipes; to this end, has high expectations of the future Green Paper on quality policy in agriculture in terms of better quality and PGI schemes;

33. Stresses that the present state of scientific knowledge shows us that an excessive consumption of trans-fatty acids (over 2 % of total energy intake) is linked to significantly higher cardiovascular risks; deeply regrets, therefore, that only a few European governments to date have acted to reduce European consumers' cumulative exposure to the artificial trans-fatty acids and saturated fatty acids that are present in numerous processed products of low nutritional value;

34. Underlines the fact that industrially processed trans-fatty acids pose a serious, well documented and unnecessary threat to the health of Europeans and should be addressed with an appropriate legislative initiative seeking to eliminate effectively industrially processed trans-fatty acids from food products;

35. Calls for an analysis of the role played by artificial flavour enhancers such as glutamates, guanylates and inosinates, particularly in ready meals and industrially produced foodstuffs, in order to determine their influence on consumption patterns;

36. Calls on industry to review single-serving portion sizes, providing a broader range of smaller portion options;

37. Welcomes the Commission's new proposal for the revision of Council Directive 90/496/EEC of 24 September 1990 on nutrition labelling for foodstuffs [1]; urges it to ensure that labelling is visible, clear and easily understandable to the consumer;

[1] OJ L 276, 6.10.1990, p. 40.

38. Further asks the Commission to undertake a comprehensive review of the health impact of the CAP to assess whether policy changes could be made which would facilitate an improvement in diets across Europe;

Media and advertising

39. Calls on all operators in the media sector, in cooperation with the Member States and sports organisations, to create additional incentives for more physical exercise and taking up a sport in all media;

40. Is aware of the importance of the media in informing, educating and persuading in relation to promoting a healthy and balanced diet as well as their role in the creation of stereotypes and body image; considers the voluntary approach adopted in the Audiovisual Media Services Directive [1] on the advertising of food of poor nutritional value directed at children to be a step in the right direction, to be specifically monitored, and asks the Commission to bring forward stricter proposals if the 2011 review of the Directive declares the voluntary approach to have failed in this field; calls on Member States and the Commission to encourage media service providers to develop codes of conduct regarding inappropriate audiovisual commercial communication relating to food and beverage products and urges operators to come forward with concrete actions at national level to implement or to strengthen this directive;

41. Calls for the industry to exercise particular care when advertising food products specifically targeted at children; asks for protected times and for restrictions on commercials for unhealthy food specifically targeted at children; any such restrictions should also cover new forms of media such as online games, pop-ups and text messaging;

Health care and research

42. Acknowledges that health professionals, especially paediatricians and pharmacists, should be made aware of their essential role in the early identification of patients at risk of overweight and cardiovascular disease and considers that they should be major actors in the fight against the obesity epidemic and non-communicable diseases; calls, therefore, on the Commission to develop European anthropometric indicators and guidelines on cardiometabolic risk factors associated with obesity; emphasises the importance of carrying out systematic routine measurements in association with screening for other cardiometabolic risk factors, in order to evaluate overweight/obesity co-morbidities at primary care level;

43. Draws attention to the problem of malnutrition, a state in which a deficiency, excess or imbalance in the diet has a measurable adverse impact on tissue, body shape and body function; notes also that malnutrition is a heavy burden both for individual wellbeing and for society, particularly the health care system, and that it results in increased mortality, longer hospital stays, greater complications and reduced quality of life for patients; recalls that extra days in hospital and treatment of complications due to malnutrition cost billions of euros in public funding every year;

44. Highlights estimates that show that 40 % of patients in hospitals and between 40 and 80 % of people in elderly care homes are malnourished; calls on Member States to improve the quantity and quality of food in hospitals and elderly care homes which will lead to a reduction in the time spent in hospitals;

45. Is convinced of the need for full regulation of the qualification of medical professionals as 'clinical dieticians' as well as 'nutritionists';

46. Calls on the Commission to promote best medical practices, for example through the EU Health Forum, as well as information campaigns on obesity-related risks and abdominal obesity in particular drawing attention to the cardiovascular risks; urges the Commission to provide information about the dangers of 'home diets', especially if they involve the use of anti-obesity drugs taken without medical prescription; calls on the Commission to devote greater attention to the problems of malnutrition, inadequate nutrition and dehydration;

[1] Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 (OJ L 332, 18.12.2007, p. 27).

47. Calls on Member States to implement Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements ([1]);

48. Calls on the Commission and Member States to fund research into the links between obesity and chronic diseases such as cancer and diabetes as epidemiological research needs to identify the factors which are most associated with the increase in obesity prevalence, such as identification and evaluation of multivariate biomarkers in subgroups of subjects, to elucidate the biological mechanism leading to obesity; also calls for studies comparing and evaluating the effectiveness of different interventions, including psychological research; calls on Member States to set up a system to ensure access to and quality delivery of services for the prevention, screening and managing of overweight, obesity and associated chronic diseases;

49. Welcomes the inclusion of 'diabetes and obesity' as a priority in the context of the theme within the Seventh Framework Programme for Research and Technological Development (FP7) dedicated to health;

50. Encourages further scientific research into and monitoring of abdominal obesity in the context of FP7;

51. Calls on the Commission to promote Europe-wide information campaigns aimed at the general public and, in particular, at the medical profession, to raise awareness of the risks of abdominal obesity;

52. Calls for serious account to be taken of nutrition in all European policies and options;

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53. Instructs its President to forward this resolution to the Council and Commission and to the governments and parliaments of the Member States and candidate countries and to the World Health Organisation.

([1]) OJ L 183, 12.7.2002, p. 51.

Cross-border collective copyright management

P6_TA(2008)0462

European Parliament resolution of 25 September 2008 on collective cross-border management of copyright and related rights for legitimate online music services

(2010/C 8 E/19)

The European Parliament,

— having regard to Commission Recommendation 2005/737/EC of 18 October 2005 on collective cross-border management of copyright and related rights for legitimate online music services ([1]) (hereinafter 'the 2005 Recommendation'),

— having regard to the Treaty establishing the European Community, in particular Articles 95 and 151 thereof,

— having regard to Articles II-77 and II-82 of the Charter of Fundamental Rights of the European Union,

— having regard to Article 97a of the Lisbon Treaty,

([1]) OJ L 276, 21.10.2005, p. 54.

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— having regard to the international agreements in force which apply to music rights, namely the Rome Convention of 26 October 1961 for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, the Berne Convention for the Protection of Literary and Artistic Works, the WIPO Copyright Treaty of 20 December 1996, the WIPO Performances and Phonograms Treaty of 20 December 1996 and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of 15 April 1994,

— having regard to the body of EC law ('acquis communautaire') in the area of copyright and related rights which applies to music rights, namely Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and certain rights related to copyright in the field of intellectual property [1], Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission [2], 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] and 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],

— having regard to the Commission's Green Paper of 19 July 1995 on copyright and related rights in the Information Society (COM(1995)0382),

— having regard to its resolution of 15 May 2003 on the protection of audio-visual performers [5],

— having regard to its resolution of 15 January 2004 on a Community framework for collective management societies in the field of copyright and neighbouring rights [6],

— having regard to the Commission's Communication of 16 April 2004 on the Management of Copyright and Related Rights in the Internal Market (COM(2004)0261),

— having regard to its resolution of 5 July 2006 on implementing the Community Lisbon Programme: more research and innovation — investing for growth and employment: A common approach [7],

— having regard to the Commission's Communication of 3 January 2008 on Creative Content Online in the Single Market (COM(2007)0836),

— having regard to its resolution of 6 July 2006 on freedom of expression on the Internet [8],

— having regard to its resolution of 13 March 2007 on the Commission Recommendation of 18 October 2005 on collective cross-border management of copyright and related rights for legitimate online music services (2005/737/EC) [9],

— having regard to its resolution of 4 September 2007 on institutional and legal implications of the use of 'soft law' instruments [10],

— having regard to the summary report presenting the results of the monitoring of the 2005 Recommendation [11],

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

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[1] OJ L 376, 27.12.2006, p. 28.
[2] OJ L 248, 6.10.1993, p. 15.
[3] OJ L 372, 27.12.2006, p. 12.
[4] OJ L 167, 22.6.2001, p. 10.
[5] OJ C 67 E, 17.3.2004, p. 293.
[6] OJ C 92 E, 16.4.2004, p. 425.
[7] OJ C 303 E, 13.12.2006, p. 640.
[8] OJ C 303 E, 13.12.2006, p. 879.
[9] OJ C 301 E, 13.12.2007, p. 64.
[10] OJ C 187 E, 24.7.2008, p. 75.
[11] http://ec.europa.eu/internal_market/copyright/docs/management/monitoring-report_en.pdf.

A. whereas in its resolution of 13 March 2007 Parliament invited the Commission to make it clear that the 2005 Recommendation applied exclusively to online sales of music recordings, and to present as soon as possible — after consulting widely with interested parties — a proposal for a flexible directive to be adopted by Parliament and the Council in codecision with a view to regulating the collective management of copyright and related rights as regards cross-border online music services, while taking account of the specificity of the digital era and safeguarding European cultural diversity, small stakeholders and local repertoires, on the basis of the principle of equal treatment,

B. whereas in its resolution of 13 March 2007 Parliament considered that the interests of authors and therefore of cultural diversity in Europe would be best served by the introduction of a fair and transparent system of competition that avoids downward pressure on authors' revenues,

1. Recalls that in the light of the territorial nature of copyright and despite the existence of Directive 2001/29/EC, the situation in the field of collective management of copyright and related rights for online services is genuinely complex, owing mainly to the lack of European licenses;

2. Considers that, owing to the refusal to legislate — despite various European Parliament resolutions — and the decision to try to regulate the sector through a recommendation, a climate of legal uncertainty has been created for right-holders and for users, especially broadcasters;

3. Emphasises that, on the other hand, following a complaint from users, the Commission's Directorate-General for Competition intervened by instituting a procedure against CISAC (International Confederation of Societies of Authors and Composers), which includes 24 European collecting societies amongst its members; points out that the effect of the decision taken in this regard will be to preclude all attempts by the parties concerned to act together in order to find appropriate solutions — such as, for instance, a system for the clearing of rights at the European level — and to leave the way open to an oligopoly of a number of large collecting societies linked by exclusive agreements to publishers belonging to the worldwide repertoire; believes that the result will be a restriction of choice and the extinction of small collecting societies to the detriment of minority cultures;

4. Considers that the report presenting the results of the monitoring of the 2005 Recommendation does not reflect accurately the existing situation and does not take account of the opinion given by Parliament in its resolution of 13 March 2007;

5. Considers that this situation reflects the fact that the Commission has chosen to ignore the warnings given by Parliament, in particular in its resolution of 13 March 2007, which includes concrete proposals for controlled competition, as well as protection and incentives for minority cultures within the European Union;

6. Calls on the Commission to ensure that Parliament is involved effectively, as co-legislator, in the initiative on creative content online;

7. Instructs its President to forward this resolution to the Commission.

Wednesday 24 September 2008

II

(Information)

INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN PARLIAMENT

Proceedings before the Court of Justice (Amendment of Rule 121)

P6_TA(2008)0440

European Parliament decision of 24 September 2008 on amendment of Rule 121 of Parliament's Rules of Procedure on proceedings before the Court of Justice (2007/2266(REG))

(2010/C 8 E/20)

The European Parliament,

— having regard to the letter from the chairman of the Committee on Legal Affairs of 26 September 2007,

— having regard to Rules 201 and 202 of its Rules of Procedure,

— having regard to the report of the Committee on Constitutional Affairs (A6-0324/2008),

1. Decides to amend its Rules of Procedure as shown below;

2. Points out that the amendment will enter into force on the first day of the next part-session;

3. Instructs its President to forward this decision to the Council and the Commission, for information.

PRESENT TEXT	AMENDMENT
Amendment 1	
Parliament's Rules of Procedure Rule 121 — paragraph 3a (new)	
	3a. The President shall submit observations or intervene on behalf of Parliament in court proceedings after consulting the committee responsible. ***Where the President intends to depart from the recommendation of the committee responsible, he shall inform the committee accordingly and shall refer the matter to the Conference of Presidents, stating his reasons.*** ***Where the Conference of Presidents takes the view that Parliament should, exceptionally, not submit observations or intervene before the Court of Justice where the legal validity of an act of Parliament is being questioned, the matter shall be submitted to plenary without delay.***

PRESENT TEXT	AMENDMENT
	In cases of urgency, the President may take precautionary action in order to comply with the time limits prescribed by the court concerned. In such cases, the procedure provided for in this paragraph shall be implemented at the earliest opportunity.
	Interpretation:
	Nothing in the Rules prevents the committee responsible from deciding on appropriate procedural arrangements for the timely transmission of its recommendation in cases of urgency.

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III

(Preparatory acts)

EUROPEAN PARLIAMENT

Community statistics relating to external trade with non-member countries ***I

P6_TA(2008)0414

European Parliament legislative resolution of 23 September 2008 on the proposal for a regulation of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries and repealing Council Regulation (EC) No 1172/95 (COM(2007)0653 — C6-0395/2007 — 2007/0233(COD))

(2010/C 8 E/21)

(Codecision procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0653,

— having regard to Article 251(2) and 285(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0395/2007),

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on International Trade (A6-0267/2008),

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.

Tuesday 23 September 2008

P6_TC1-COD(2007)0233

Position of the European Parliament adopted at first reading on 23 September 2008 with a view to the adoption of Regulation *(EC) No …/2008* of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries and repealing Council Regulation (EC) No 1172/95

(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 consulted the European Economic and Social Committee,

Having regard to the opinion of the European Central Bank ([1]),

Acting in accordance with the procedure laid down in Article 251 of the Treaty ([2]),

Whereas:

(1) The statistical information on Member States' trade flows with non-member countries is of essential importance for the Community's economic and trade policies and for analysing market developments for individual commodities. The transparency of the statistical system should be improved in order for it to be able to react to the changing administrative environment, and to satisfy new user requirements. Council Regulation (EC) No 1172/95 of 22 May 1995 on the statistics relating to the trading of goods by the Community and its Member States with non-member countries ([3]) should therefore be replaced by a new Regulation in conformity with the requirements set out in Article 285(2) of the Treaty.

(2) External trade statistics are based on *data* obtained from customs declarations as provided for in Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ([4]), hereinafter referred to as the 'Customs Code'. Progress in European integration and the resulting changes in customs clearance, including single authorisations for the use of the simplified declaration or the local clearance procedure, as well as centralised clearance, which will emanate from the current process of modernisation of the Customs Code, make it necessary to adjust the way external trade statistics are compiled, to reconsider the concept of the importing or exporting Member State, and to define more precisely the data source for compiling Community statistics.

(3) In order to record the physical trade flow of goods between Member States and non-member countries and to ensure that *data* on imports and exports is available in the Member State concerned, arrangements between Customs and statistical authorities are necessary and have to be specified. This includes rules on the exchange of data between Member States' administrations.

(4) In order to allocate EU exports and imports to a given Member State, it is necessary to compile *data* on the 'Member State of final destination', for imports, and the 'Member State of actual export', for exports. In the medium term, those Member States should become the importing and the exporting Member State for external trade statistics purposes.

([1]) OJ C 70, 15.3.2008, p. 1.
([2]) *Position of the European Parliament of 23 September 2008*.
([3]) OJ L 118, 25.5.1995, p. 10.‖.
([4]) OJ L 302, 19.10.1992, p. 1.‖.

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(5) For the purpose of this Regulation commodities for external trade purposes should be classified in accordance with the 'Combined Nomenclature' established by Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff [5], hereinafter referred to as the 'Combined Nomenclature'.

(6) To meet the European Central Bank's and the Commission's need for information on the share of the euro in international merchandise trade, the invoicing currency of exports and imports should be reported at an aggregated level.

(7) For the purposes of trade negotiations and internal market management, the Commission should be provided with detailed *information* on the tariff treatment of goods imported into the European Union, including information on quotas.

(8) External trade statistics provide data for the compilation of balance of payments and national accounts. The characteristics which make it possible to adapt them to Balance of Payments purposes should become part of the mandatory and standard data set.

(9) Member States' statistics on customs warehouses and free zones are not subject to harmonised provisions. However, the compilation of these statistics for national purposes remains optional.

(10) Member States should provide Eurostat with annual aggregated data on trade broken down by business characteristics, one of the uses of which is to facilitate analysis of how European companies operate in the context of globalisation. The link between business and trade statistics is established by merging ***data*** on the importer and the exporter available on the customs declaration with ***data*** requested by ***Regulation (EC) No 177/2008 of the European Parliament and of the Council of 20 February 2008 establishing a common framework for business registers for statistical purposes*** [6], hereinafter referred to as 'Business Register legislation'.

(11) Council Regulation (EC) No 322/97 of 17 February 1997 on Community Statistics [7] provides a reference framework for the provisions laid down in this Regulation. However, the very detailed level of information on trade in goods requires specific confidentiality rules if these statistics are to be relevant.

(12) 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 [8]. 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 occurs when Community statistics are produced and disseminated.

(13) In the production and dissemination of Community statistics under this Regulation, the national and Community statistical authorities should take account of the principles set out in the European Statistics Code of Practice, which was adopted by the Statistical Programme Committee on 24 February 2005 and appended to the Commission Recommendation of 25 May 2005 on the independence, integrity and accountability of the national and Community statistical authorities.

(14) Specific provisions need to be formulated until such time as customs legislation changes yield additional *data* on the customs declaration and until the electronic exchange of customs *data* is required by Community legislation.

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[5] OJ L 256, 7.9.1987, p. 1. ‖.
[6] ***OJ L 61, 5.3.2008, s. 6.***
[7] OJ L 52, 22.2.1997, p. 1. ‖.
[8] ***OJ L 151, 15.6.1990, p. 1.***

(15) Since the objective of this Regulation cannot be achieved by the Member States and can 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 required to achieve this objective.

(16) The measures necessary for implementing this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 [9] laying down the procedures for the exercise of implementing powers conferred on the Commission.

(17) In particular ***the Commission should be empowered to adapt the list of*** customs procedures ***or customs approved treatment or use*** which determine an export or import for external trade statistics; to adopt different or specific rules for goods or movements which, for methodological reasons, call for specific provisions; ***to adapt the list of goods and movements excluded from external trade statistics; to specify the data sources other than the customs declaration for records on the import and export of specific goods or movements;*** to specify the statistical data, ***including the codes to be used; to establish requirements for data related to specific goods or movements; to establish requirements on the compilation of statistics; to specify characteristics of samples; to establish the reporting period and the level of aggregation for partner countries, commodities and currencies as well as to adapt the deadline for transmitting statistics, content, coverage and revision conditions for statistics already transmitted; and to establish the deadline for transmitting statistics on*** detail trade by business characteristics and ***statistics on*** trade broken down by invoicing currency. 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

Subject matter

This Regulation establishes a common framework for the systematic production of Community statistics relating to trade in goods with non-member countries (external trade statistics).

Article 2

Definitions

For the purpose of this Regulation, the following definitions shall apply:

(a) 'goods' means all movable property, including electricity;

(b) 'statistical territory of the Community' means the customs territory of the Community as defined in the Customs Code with the addition of the island of Heligoland in the territory of the Federal Republic of Germany;

(c) 'national statistical authorities' means the national statistical institutes and other bodies responsible in each Member State for producing Community external trade statistics;

(d) 'Customs authorities' means the 'customs authorities' as defined in the Customs Code;

(e) 'customs declaration' means the 'customs declaration' as defined in the Customs Code;

(f) 'decision by Customs' means any official act by Customs authorities relating to accepted customs declarations and having legal effect on one or more persons.

[9] OJ L 184, 17.7.1999, p. 23. ‖.

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Article 3

Scope

1. External trade statistics shall record imports and exports of goods.

An export shall be recorded by Member States when goods leave the statistical territory of the Community according to one of the following customs procedures or customs-approved treatment or use, laid down in the Customs Code:

(a) exportation;

(b) outward processing;

(c) re-exportation following either inward processing or processing under customs control.

An import shall be recorded by Member States when goods enter the statistical territory of the Community according to one of the following customs procedures laid down in the Customs Code:

(d) release for free circulation;

(e) inward processing;

(f) processing under customs control.

2. ***The measures designed to amend non-essential elements of this Regulation relating to the adaptation of the list*** of customs procedures or customs-approved treatment or use referred to in paragraph 1 ▌ in order to take into account changes in the Customs Code or provisions deriving from international conventions ▌ shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).

3. ***For methodological reasons, certain goods or movements*** call for specific provisions ('specific goods or movements'). ***This concerns industrial plants, vessels and aircraft, sea products, goods delivered to vessels and aircraft, staggered consignments, military goods, goods to or from offshore installations, spacecraft, electricity and gas and waste products.***

▌ *The* measures designed to amend non-essential elements of this ***Regulation*** inter alia by supplementing it, ***relating to specific goods and movements and to different or specific provisions applicable to them***, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).

4. ***For methodological reasons, certain*** goods or movements shall be excluded from external trade statistics. ***This concerns monetary gold and means of payment which are legal tender, goods by virtue of the diplomatic or similar nature of their intended use, goods movements between the importing and exporting Member State and their national armed forces stationed abroad as well as certain goods acquired and disposed of by foreign armed forces, particular goods which are not the subject of a commercial transaction, movements of satellite launchers before their launching, goods for and after repair, goods for or following temporary use, goods used as carriers of customised information and downloaded information, goods declared orally to customs authorities which are either of a commercial nature, provided that their value does not exceed the statistical threshold of EUR 1 000 or 1 000 kilograms, or of a non-commercial nature. The*** measures designed to amend non-essential elements of this ***Regulation***, inter alia, by supplementing it, ***relating to the exclusion of goods or movements from external trade statistics***, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).

Article 4

Data source

1. The data source for records on the imports and exports of goods referred to in Article 3(1) shall be the customs declaration, including possible amendments or changes to statistical data resulting from decisions by Customs authorities pertaining to it.

Where a simplified procedure as defined in the Customs Code is used and a supplementary declaration is furnished, the data source for records shall be this supplementary declaration.

▌

2. For ▌specific goods or movements ***as referred to in Article 3(3)***, data sources other than the customs declaration ***may be used***.

The measures designed to amend non-essential elements of this ***Regulation***, inter alia by supplementing it, ***relating to the specification of these other data sources***, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).

3. Member States may continue to use other data sources for the compilation of national statistics other than those defined in paragraphs 1 and 2 until a mechanism for mutual exchange of the relevant data by electronic means as referred to in Article 7(3) is in place. However, the compilation of Community external trade statistics under Article 6 should not be based on those other data sources.

Article 5

Statistical data

1. Member States shall obtain the following *set of* data from records on imports and exports referred to in Article 3(1):

(a) the trade flow (import, export);

(b) the monthly reference period;

(c) the statistical value of the goods at the national border of the importing or exporting Member States;

(d) the quantity expressed in net mass and in a supplementary unit when indicated on the customs declaration;

(e) the trader, being the importer/consignee on import and the exporter/consignor on export;

(f) the importing or exporting Member States, being the Member State where the customs declaration is lodged and, where indicated on the customs declaration:

(i) on import, the Member State of final destination;

(ii) on export, the Member State of actual export;

(g) the partner countries, that is, on imports, the country of origin and the country of consignment/dispatch, and, on export, the country of destination;

(h) the commodity according to the Combined Nomenclature being:

(i) on import, the goods code of the Taric subheading;

(ii) on export, the goods code of the Combined Nomenclature subheading;

(i) the customs procedure codes to be used for deriving the statistical procedure;

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(j) the nature of transaction *where* indicated on the customs declaration;

(k) if granted, the tariff treatment on import held by Customs authorities, that is the preferential code ▌;

(l) the invoicing currency *where* indicated on the customs declaration;

(m) the mode of transport, detailing:

(i) the mode of transport at the frontier;

(ii) the internal mode of transport;

(iii) the container.

2. ▌ *The* measures designed to amend non-essential elements of this ***Regulation*** by supplementing it, ***relating to further specification of the data referred to in paragraph 1, including the codes to be used***, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).

3. Where not otherwise stated and without prejudice to customs legislation, the data shall be contained in the customs declaration.

4. ▌ For 'specific goods or movements' ***as referred to in Article 3(3), limited sets of data may be required***.

The measures designed to amend non-essential elements of this ***Regulation*** by supplementing it, ***relating to these limited sets of data***, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).

Article 6

Compilation of external trade statistics

1. Member States shall compile for each monthly reference period statistics on imports and exports of goods expressed in value and quantity by:

(a) commodity;

(b) importing/exporting Member States;

(c) partner countries;

(d) statistical procedure;

(e) nature of transaction;

(f) tariff treatment, on import;

(g) mode of transport.

Implementing provisions for compiling the statistics may be determined by the Commission in accordance with the *regulatory* procedure referred to in Article 11(2).

2. Member States shall compile annual statistics on trade by business characteristics, ***namely economic activity carried out by the enterprise according to the section or 2-digit level of the common statistical classification of economic activities in the European Community (NACE) and size class measured in terms of number of employees***.

The statistics shall be compiled by linking data on business characteristics recorded according to the Business Register legislation with the data recorded according to Article 5(1) on import and export. ***To this end, national Customs authorities shall provide the relevant traders' identification number to national statistical authorities.***

▌*The* measures designed to amend non-essential elements of this ***Regulation*** by supplementing it, ***relating to the linking of the data and these statistics to be compiled***, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).

3. Every two years Member States shall compile statistics on trade broken down by invoicing currency.

Member States shall compile the statistics using a representative sample of records on imports and exports from customs declarations which contain the data on the invoicing currency. If the invoicing currency for exports is not available on the customs declaration, a survey shall be carried out to collect the required data.

The measures designed to amend non-essential elements of this Regulation inter alia by supplementing it, relating to the characteristics of the sample, the reporting period ▌and the level of aggregation for partner countries, commodities and currencies ▌shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).

4. The compilation by Member States of additional statistics ▌for national purposes may be determined when the data are available on the customs declaration.

▌

5. Member States shall not be obliged to compile and transmit to the Commission (Eurostat) external trade statistics on statistical data which, by virtue of the Customs Code or national instructions, are not yet ***recorded nor can be straightforwardly deduced from other data*** on the customs declaration lodged at their Customs authorities. ***The transmission of these statistics is optional for Member States.*** The following data are concerned:

(a) the Member State of final destination, on import;

(b) the Member State of actual export, on export;

(c) the Nature of Transaction.

Article 7

Data exchange

1. Without delay and at the latest during the month following the month the customs declarations were accepted or were subject to customs decisions pertaining to them, national statistical authorities shall obtain from their national Customs authority the records on import and export based on the declarations which are lodged with or furnished to that authority.

The records shall contain at least those statistical data listed in Article 5 which are, according to the Customs Code or national instructions, available on the customs declaration.

2. Member States shall ensure that records on imports and exports which are based on a customs declaration lodged at their national Customs authority are transmitted ***without delay from that Customs authority*** to the ***Customs authority*** of the Member State which is indicated on the record as:

(a) the Member State of final destination, on import

(b) the Member State of actual export, on export

Within a Member State, the data received by the national Customs authority shall be transmitted to the national statistical authority as provided for in paragraph 1.

3. A Member State shall not be required by *paragraph 2* to transmit records on imports and exports to another Member State until the Customs authorities in those Member States have established a mechanism for mutual exchange of the relevant data by electronic means.

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4. Implementing provisions for determining such transmission may be determined in accordance with the *regulatory* procedure referred to in Article 11(2).

5. If the national Customs authority cannot provide all the required data referred to in Article 5(1) to the national statistical authority as a result of several simplified procedures under Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code) ([10]) and Decision No 70/2008/EC of the European Parliament and of the Council of 15 January 2008 on a paperless environment for customs and trade ([11]), the national statistical authority shall not be obliged to provide such data as cannot be obtained from the national Customs authority to the Commission (Eurostat).

Article 8

Transmission of external trade statistics to the Commission (Eurostat)

1. Member States shall transmit to the Commission (Eurostat) the statistics referred to in Article 6(1) no later than 40 days after the end of each monthly reference period.

Member States shall ensure that the statistics contain information on all imports and exports in the reference period in question, making adjustments where records are not available.

Member States shall transmit updated statistics when statistics already transmitted are subject to revisions.

Member States shall include in the results transmitted to the Commission (Eurostat) any statistical information which is confidential.

▌*The* measures designed to amend non-essential elements of this ***Regulation***, inter alia by supplementing it, ***relating to the adaptation of the deadline, content, coverage and revisions of the statistics*** shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).

2. ▌*The* measures designed to amend non-essential elements of this Regulation, by supplementing it, ***relating to the deadline for transmitting statistics on trade by business characteristics referred to in Article 6(2) and statistics on trade broken down by invoicing currency referred to in Article 6(3)*** shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3).

3. Member States shall transmit the statistics in electronic form, in accordance with an interchange standard. The practical arrangements for the transmission of the results may be determined in accordance with the *regulatory* procedure referred to in Article 11(2).

Article 9

Quality assessment

1. For the purpose of this Regulation, the following quality assessment dimensions shall apply to the *data* transmitted.

— *'relevance' shall refer to the degree to which statistics meet the current and potential needs of users;*

— *'accuracy' shall refer to the closeness of estimates to the unknown true values;*

— *'timeliness' and 'punctuality' shall refer to the delay between the availability of the information and the event or phenomenon it describes;*

([10]) ***OJ L 145, 4.6.2008, p. 1.***
([11]) ***OJ L 23, 26.1.2008, p. 21.***

— *'accessibility' and 'clarity' shall refer to the conditions and modalities by which users can obtain, use and interpret data;*

— *'comparability' shall refer to the measurement of the impact of differences in applied statistical concepts and measurement tools and procedures when statistics are compared between geographical areas or sectoral domains, or over time;*

— *'coherence' shall refer to the adequacy of the data to be reliably combined in different ways and for various uses.*

2. Member States shall provide the Commission (Eurostat) with a report on the quality of the *data* transmitted every year.

3. In applying the quality *assessment* dimensions laid down in paragraph 1 to the *data* covered by this Regulation, the modalities ***and*** structure ▌ of the quality reports shall be defined in accordance with the *regulatory* procedure referred to in Article 11(2).

The Commission (Eurostat) shall assess the quality of the *data* transmitted.

Article 10

Dissemination of external trade statistics

1. ***At Community level, external*** trade statistics compiled in accordance with Article 6(1) and transmitted by the Member States shall be disseminated by the Commission ***(Eurostat)*** by Combined Nomenclature subheading at least.

Only where an importer or exporter so requests shall the national authorities of a given Member State decide whether such statistics of that State which may make it possible to identify the said importer or exporter are to be disseminated or are to be amended in such a way that their dissemination does not prejudice statistical confidentiality.

2. ***Without prejudice to data dissemination at national level detailed statistics by Taric subheading, preferences and quota shall not be disseminated by the Commission (Eurostat) if their disclosure would undermine the protection of the public interest as regards the commercial and agricultural policies of the Community.***

▌

Article 11

Committee procedure

1. The Commission shall be assisted by a Committee for external trade statistics.

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 12

Repeal

Regulation (EC) No 1172/95 is repealed with effect from ***1 January 2010***.

It shall continue to apply to data pertaining to reference periods before ***1 January 2010***.

Article 13

Entry into force

This Regulation shall enter into force on the twentieth day following its publication in the Official Journal of the European Union.

It shall apply as from ***1 January 2010***.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at …, on …

For the European Parliament	For the Council
The President	*The President*

Protection of species of wild fauna and flora by regulating trade therein ***I

P6_TA(2008)0415

European Parliament legislative resolution of 23 September 2008 on the proposal for a regulation of the European Parliament and of the Council on amending Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein as regards the implementing powers conferred on the Commission (COM(2008)0104 — C6-0087/2008 — 2008/0042(COD))

(2010/C 8 E/22)

(Codecision procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0104),

— having regard to Article 251(2) and Article 175(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0087/2008),

— 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 (A6-0314/2008),

1. Approves the Commission proposal;

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.

Statistical returns in respect of the carriage of goods by road as regards the implementing powers conferred on the Commission ***I

P6_TA(2008)0416

European Parliament legislative resolution of 23 September 2008 on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1172/98 on statistical returns in respect of the carriage of goods by road as regards the implementing powers conferred on the Commission (COM(2007)0778 — C6-0451/2007 — 2007/0269(COD))

(2010/C 8 E/23)

(Codecision procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0778),

— having regard to Article 251(2) and Article 285(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0451/2007),

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on Transport and Tourism (A6-0258/2008),

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(2007)0269

Position of the European Parliament adopted at first reading on 23 September 2008 with a view to the adoption of Regulation (EC) No …/2008 of the European Parliament and of the Council on amending Council Regulation (EC) No 1172/98 on statistical returns in respect of the carriage of goods by road, as regards the implementing powers conferred on the Commission

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, (EC) No …/2009.)

Tuesday 23 September 2008

European Year of Creativity and Innovation (2009) ***I

P6_TA(2008)0417

European Parliament legislative resolution of 23 September 2008 on the proposal for a decision ofthe European Parliament and of the Council concerning the European Year of Creativity and Innovation (2009) (COM(2008)0159 — C6-0151/2008 — 2008/0064(COD))

(2010/C 8 E/24)

(Codecision procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0159),

— having regard to Article 251(2) and Articles 149 and 150 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0151/2008),

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on Culture and Education (A6-0319/2008),

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)0064

Position of the European Parliament adopted at first reading on 23 September 2008 with a view to the adoption of Decision No …/2008/EC of the European Parliament and of the Council concerning the European Year of Creativity and Innovation (2009)

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Decision No 1350/2008/EC.)

Tuesday 23 September 2008

Amendment of Regulation (Euratom, ECSC, EEC) No 549/69 determining the categories of officials and other servants of the European Communities to whom the provisions of Article 12, the second paragraph of Article 13 and Article 14 of the Protocol on the Privileges and Immunities of the Communities apply *

P6_TA(2008)0418

European Parliament legislative resolution of 23 September 2008 on the proposal for a Council regulation amending Regulation (Euratom, ECSC, EEC) No 549/69 determining the categories of officials and other servants of the European Communities to whom the provisions of Article 12, the second paragraph of Article 13 and Article 14 of the Protocol on the Privileges and Immunities of the Communities apply (COM(2008)0305 — C6-0214/2008 — 2008/0102(CNS))

(2010/C 8 E/25)

(Consultation procedure)

The European Parliament,

— having regard to the Commission proposal to the Council (COM(2008)0305),

— having regard to Article 291 of the EC Treaty,

— having regard to Article 16 of the Protocol on the Privileges and Immunities of the European Communities, pursuant to which the Council consulted Parliament (C6-0214/2008),

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0339/2008),

1. Approves the Commission proposal;

2. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

3. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;

4. Instructs its President to forward its position to the Council and the Commission.

Draft amending budget No 6/2008 — executive agencies

P6_TA(2008)0419

European Parliament resolution of 23 September 2008 on Draft amending budget No 6/2008 of the European Union for the financial year 2008, Section III — Commission (12984/2008 — C6-0317/2008 — 2008/2166(BUD))

(2010/C 8 E/26)

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] (hereinafter 'the Financial Regulation'), and particularly Articles 37 and 38 thereof,

[1] OJ L 248, 16.9.2002, p. 1.

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— having regard to the general budget of the European Union for the financial year 2008, as finally adopted on 13 December 2007 ([1]),

— 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 ([2]),

— having regard to Preliminary draft amending budget No 6/2008 of the European Union for the financial year 2008, which the Commission presented on 1 July 2008 (COM(2008)0429),

— having regard to Draft amending budget No 6/2008, which the Council established on 15 September 2008 (12984/2008 — C6-0317/2008),

— having regard to Rule 69 of and Annex IV to its Rules of Procedure,

— having regard to the report of the Committee on Budgets (A6-0353/2008),

A. whereas Draft amending budget No 6 to the general budget 2008 covers the following items:

— the necessary budgetary adaptations (establishment plan) arising from the extension of the mandate of three executive agencies: the Education, Audiovisual and Culture Executive Agency (EACEA), the Executive Agency for the Public Health Programme (PHEA), and the Trans-European Transport Network Executive Agency (TEN-T EA),

— the creation of the necessary budgetary structure to accommodate the Fuel Cells and Hydrogen Joint Undertaking (FCH JU), and allocation of the corresponding budgetary needs,

— an increase of EUR 2 200 000 in commitment appropriations, to cover part of the costs of a new building for EUROJUST,

— an increase of EUR 3 900 000 in commitment appropriations for the Competitiveness and Innovation Programme (CIP) — Entrepreneurship and Innovation,

B. whereas the purpose of Draft amending budget No 6/2008 is to formally enter these budgetary adjustments into the 2008 budget,

1. Recalls that the appropriations for Joint Undertakings are paid from the operational budget of the programme concerned;

2. Notes that, according to Article 179(3) of the Financial Regulation, the European Parliament, as part of the budgetary authority, should have been informed of the rent for a new building for Eurojust, which has significant financial implications for the budget;

3. Expects to be provided with such information by the Commission in the future, should any further needs for buildings arise, in order to allow the budgetary authority to issue an opinion under Article 179(3) of the Financial Regulation;

4. Adopts Draft amending budget No 6/2008 unamended;

5. Instructs its President to forward this resolution to the Council and Commission.

([1]) OJ L 71, 14.3.2008, p. 1.
([2]) OJ C 139, 14.6.2006, p. 1.

Tuesday 23 September 2008

Amendment of Regulation (EC) No 999/2001 as regards the implementing powers conferred on the Commission ***I

P6_TA(2008)0427

European Parliament legislative resolution of 23 September 2008 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 999/2001 as regards the implementing powers conferred on the Commission (COM(2008)0053 — C6-0054/2008 — 2008/0030(COD))

(2010/C 8 E/27)

(Codecision procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0053),

— having regard to Article 251(2) and Article 154(4)(b) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0054/2008),

— 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 (A6-0279/2008),

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)0030

Position of the European Parliament adopted at first reading on 23 September 2008 with a view to the adoption of Regulation (EC) No …/2008 of the European Parliament and of the Council amending Regulation (EC) No 999/2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies, as regards the implementing powers conferred on the Commission

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Regulation (EC) No 220/2009.)

Tuesday 23 September 2008

Waste statistics ***I

P6_TA(2008)0428

European Parliament legislative resolution of 23 September 2008 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 2150/2002 on waste statistics, as regards the implementing powers conferred on the Commission (COM(2007)0777 — C6-0456/2007 — 2007/0271(COD))

(2010/C 8 E/28)

(Codecision procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0777),

— having regard to Article 251(2) and Article 285(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0456/2007),

— 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 (A6-0282/2008),

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 publish the report referred to in Article 8(1) of Regulation (EC) No 2150/2002 as soon as possible;

4. Calls on the Commission to present the proposal referred to in Article 8(2) of Regulation (EC) No 2150/2002 as soon as possible, in order to abolish overlapping reporting obligations;

5. Calls on the Commission to present further reports and proposals following up on those published pursuant to Article 8(3) of Regulation (EC) No 2150/2002, concerning the progress of the pilot studies referred to in Articles 4(3) and 5(1) of that Regulation, as soon as possible;

6. Instructs its President to forward its position to the Council and Commission.

P6_TC1-COD(2007)0271

Position of the European Parliament adopted at first reading on 23 September 2008 with a view to the adoption of Regulation (EC) No …/2008 of the European Parliament and of the Council amending Regulation (EC) No 2150/2002 on waste statistics, as regards the implementing powers conferred on the Commission

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Regulation (EC) No 221/2009.)

Tuesday 23 September 2008

Adaptation of a number of instruments to the regulatory procedure with scrutiny, 'omnibus' Regulation, Part Two ***I

P6_TA(2008)0429

European Parliament legislative resolution of 23 September 2008 on the proposal for a regulation of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC, as amended by Decision 2006/512/EC, with regard to the regulatory procedure with scrutiny — Part Two (COM(2007)0824 — C6-0476/2007 — 2007/0293(COD))

(2010/C 8 E/29)

(Codecision procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0824),

— having regard to Article 251(2) and Articles 37, 44(1), 71, 80(2), 95, 152(4)(b), 175(1), 179 and 285 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0476/2007),

— having regard to the undertakings given by the Council representative by letter of 17 September 2008 to adopt the proposal as amended, in accordance with Article 251(2), second subparagraph, first indent 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 opinions of the Committee on Development, the Committee on the Environment, Public Health and Food Safety, the Committee on Industry, Research and Energy, the Committee on the Internal Market and Consumer Protection, the Committee on Transport and Tourism, the Committee on Agriculture and Rural Development and the Committee on Civil Liberties, Justice and Home Affairs (A6-0100/2008),

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(2007)0293

Position of the European Parliament adopted at first reading on 23 September 2008 with a view to the adoption of Regulation (EC) No …/2008 of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny — Adaptation to the regulatory procedure with scrutiny — Part Two

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Regulation (EC) No 219/2009.)

Tuesday 23 September 2008

Natural mineral waters (recast version) ***I

P6_TA(2008)0430

European Parliament legislative resolution of 23 September 2008 on the proposal for a directive of the European Parliament and of the Council on the exploitation and marketing of natural mineral waters (recast) (COM(2007)0858 — C6-0005/2008 — 2007/0292(COD))

(2010/C 8 E/30)

(Codecision procedure — recast)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0858),

— having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0005/2008),

— having regard to the undertakings given by the Council representative by letter of 17 September 2008 to adopt the proposal as amended, in accordance with Article 251(2), second subparagraph, first indent of the EC Treaty,

— 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 Rules 80a and 51 of its Rules of Procedure,

— having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on the Environment, Public Health and Food Safety (A6-0298/2008),

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 hereunder;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and the Commission.

[1] OJ C 77, 28.3.2002, p. 1.

P6_TC1-COD(2007)0292

Position of the European Parliament adopted at first reading on 23 September 2008 with a view to the adoption of Directive 2008/…/EC of the European Parliament and of the Council on the exploitation and marketing of natural mineral waters (recast)

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Directive …/EC.)

Tuesday 23 September 2008

Colouring matters for medicinal products (recast version) ***I

P6_TA(2008)0431

European Parliament legislative resolution of 23 September 2008 on the proposal for a directive of the European Parliament and of the Council on the colouring matters which may be added to medicinal products (recast) (COM(2008)0001 — C6-0026/2008 — 2008/0001(COD))

(2010/C 8 E/31)

(Codecision procedure — recast)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0001),

— having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0026/2008),

— having regard to the undertakings given by the Council representative to adopt the proposal, in accordance with Article 251(2) of the EC Treaty and with the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission,

— 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 Rules 80a and 51 of its Rules of Procedure,

— having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on the Environment, Public Health and Food Safety (A6-0280/2008),

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;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and the Commission.

[1] OJ C 77, 28.3.2002, p. 1.

Tuesday 23 September 2008

Foodstuffs intended for particular nutritional uses (recast version) ***I

P6_TA(2008)0432

European Parliament legislative resolution of 23 September 2008 on the proposal for a directive of the European Parliament and of the Council on foodstuffs intended for particular nutritional uses (recast) (COM(2008)0003 — C6-0030/2008 — 2008/0003(COD))

(2010/C 8 E/32)

(Codecision procedure — recast)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0003),

— having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0030/2008),

— having regard to the undertakings given by the Council representative by letter of 17 September 2008 to adopt the proposal as amended, in accordance with Article 251(2), second subparagraph, first indent of the EC Treaty,

— 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 Rules 80a and 51 of its Rules of Procedure,

— having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on the Environment, Public Health and Food Safety (A6-0295/2008),

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 its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and the Commission.

[1] OJ C 77, 28.3.2002, p. 1.

P6_TC1-COD(2008)0003

Position of the European Parliament adopted at first reading on 23 September 2008 with a view to the adoption of Directive 2008/…/EC of the European Parliament and of the Council on foodstuffs intended for particular nutritional uses (recast)

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Directive 2009/39/EC.)

Tuesday 23 September 2008

Roadworthiness tests for motor vehicles and their trailers (recast version) ***I

P6_TA(2008)0433

European Parliament legislative resolution of 23 September 2008 on the proposal for a directive of the European Parliament and of the Council on roadworthiness tests for motor vehicles and their trailers (recast) (COM(2008)0100 — C6-0094/2008 — 2008/0044(COD))

(2010/C 8 E/33)

(Codecision procedure — recast)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0100),

— having regard to Article 251(2) and Article 71 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0094/2008),

— having regard to the undertakings given by the Council representative by letter of 3 September 2008 to adopt the proposal as amended, in accordance with Article 251(2), second subparagraph, first indent of the EC Treaty,

— 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 Rules 80a and 51 of its Rules of Procedure,

— having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Transport and Tourism (A6-0299/2008),

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.

[1] OJ C 77, 28.3.2002, p. 1.

P6_TC1-COD(2008)0044

Position of the European Parliament adopted at first reading on 23 September 2008 with a view to the adoption of Directive 2008/…/EC of the European Parliament and of the Council on roadworthiness tests for motor vehicles and their trailers (recast)

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Directive 2009/40/EC.)

Tuesday 23 September 2008

Extraction solvents used in the production of foodstuffs and food ingredients (recast version) ***I

P6_TA(2008)0434

European Parliament legislative resolution of 23 September 2008 on the proposal for a directive of the European Parliament and of the Council on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients (recast) (COM(2008)0154 — C6-0150/2008 — 2008/0060(COD))

(2010/C 8 E/34)

(Codecision procedure — recast)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0154),

— having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0150/2008),

— having regard to the undertakings given by the Council representative by letter of 17 September 2008 to adopt the proposal as amended, in accordance with Article 251(2), second subparagraph, first indent of the EC Treaty,

— 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 Rules 80a and 51 of its Rules of Procedure,

— having regard to the report of the Committee on Legal Affairs (A6-0284/2008),

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 its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and the Commission.

[1] OJ C 77, 28.3.2002, p. 1.

P6_TC1-COD(2008)0060

Position of the European Parliament adopted at first reading on 23 September 2008 with a view to the adoption of Directive 2008/…/EC of the European Parliament and of the Council on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients (recast)

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Directive2009/32/EC.)

Tuesday 23 September 2008

Combating terrorism *

P6_TA(2008)0435

European Parliament legislative resolution of 23 September 2008 on the proposal for a Council Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism (COM(2007)0650 — C6-0466/2007 — 2007/0236(CNS))

(2010/C 8 E/35)

(Consultation procedure)

The European Parliament,

— having regard to the Commission proposal (COM(2007)0650),

— having regard to the Council guideline of 18 April 2008 (8707/2008),

— having regard to Article 29, Article 31(1)(e) and Article 34(2)(b) of the EU Treaty,

— having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C6-0466/2007),

— 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 and the opinion of the Committee on Legal Affairs (A6-0323/2008),

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. Calls on the Council to consult Parliament again if it intends to amend the Commission proposal substantially;

5. Calls on the Council and the Commission, following the entry into force of the Treaty of Lisbon, to treat as a priority any subsequent proposal designed to amend this text pursuant to Article 10 of the Protocol on Transitional Provisions to be annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community and pursuant to Declaration No 50 relating to that Protocol;

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6. Declares itself already prepared — once the Treaty of Lisbon comes into force — to consider any such proposal if necessary in accordance with the urgency procedure and in close cooperation with Member States' parliaments; should the new proposal reflect the substance of this opinion, the procedure laid down in the interinstitutional agreement as regards codification could apply;

7. Instructs its President to forward this opinion to the Council and the Commission.

TEXT PROPOSED BY THE COMMISSION	AMENDMENTS
Amendment 1 **Proposal for a framework decision — amending act** **Recital 6a (new)**	
	(6a) Action by the European Union to combat terrorism should be taken in close cooperation with local and regional authorities who have a key role to play, particularly in relation to prevention, in so far as the instigators and perpetrators of terrorist acts live within local communities with whose population they interact, and whose services and instruments of democracy they employ.
Amendment 2 **Proposal for a framework decision — amending act** **Recital 7**	
(7) The current proposal foresees the criminalisation of terrorist linked offences in order to contribute to the more general policy objective of prevention of terrorism through reducing the dissemination of those materials ***which might*** incite persons to commit terrorist attacks.	(7) The current proposal foresees the criminalisation of terrorist linked offences in order to contribute to the more general policy objective of prevention of terrorism through reducing the dissemination of those materials ***with the intention and the likelihood of inciting*** persons to commit terrorist attacks.
Amendment 3 **Proposal for a framework decision — amending act** **Recital 10**	
(10) The definition of terrorist offences, including offences linked to terrorist activities, should be further approximated in all Member States, so that it will cover public ***provocation*** to commit a terrorist offence, recruitment for terrorism and training for terrorism, when committed intentionally.	(10) The definition of terrorist offences, including offences linked to terrorist activities, should be further approximated in all Member States, so that it will cover public ***incitement*** to commit a terrorist offence, recruitment for terrorism and training for terrorism, when committed intentionally. *(This amendment applies to the entire legislative text under consideration, with the exception of Recital 9.)*
Amendment 4 **Proposal for a framework decision — amending act** **Recital 11**	
(11) Penalties and sanctions should be provided for natural and legal persons having committed ***or being liable for*** public ***provocation*** to commit terrorist offences, recruitment for terrorism and training for terrorism, when committed intentionally. These forms of behaviour should be equally punishable in all Member States irrespective of whether they are committed through the Internet or not.	(11) Penalties and sanctions should be provided for natural and legal persons having committed public ***incitement*** to commit terrorist offences, recruitment for terrorism and training for terrorism, when committed intentionally. These forms of behaviour should be equally punishable in all Member States irrespective of whether they are committed through the Internet or not.

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TEXT PROPOSED BY THE COMMISSION	AMENDMENTS

Amendment 5
Proposal for a framework decision — amending act
Recital 11a (new)

	(11a) The failure of the Council to agree on procedural rights in criminal proceedings hampers European judicial cooperation; this deadlock urgently needs to be overcome.

Amendment 6
Proposal for a framework decision — amending act
Recital 12

(12) Additional jurisdictional rules should be established to ensure that public provocation to commit a terrorist offence, recruitment for terrorism and training for terrorism may be effectively prosecuted when they are directed towards or resulted in the commission of a terrorist offence which is subject to the jurisdiction of a Member State.	***deleted***

Amendment 7
Proposal for a framework decision — amending act
Recital 12a (new)

	(12a) This Framework Decision is complementary to the Council of Europe Convention on the Prevention of Terrorism of 16 May 2005, and it is therefore essential, in parallel with the entry into force of this Framework Decision, that all Member States ratify that Convention.

Amendment 8
Proposal for a framework decision — amending act
Recital 14

(14) The Union observes the principles recognised by Article 6(2) of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union, notably Chapters II and VI thereof. Nothing in this Framework Decision may be interpreted as being intended to reduce or restrict fundamental rights or freedoms such as freedom of expression, assembly, or of association, the right to respect for private and family life, including the right to respect of the confidentiality of correspondence.	(14) The Union observes the principles recognised by Article 6 (2) of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union, notably Chapters II and VI thereof. Nothing in this Framework Decision may be interpreted as being intended to reduce or restrict fundamental rights or freedoms such as freedom of expression, assembly, or of association, ***freedom of the press and freedom of expression of other media, or*** the right to respect for private and family life, including the right to respect of the confidentiality of correspondence, ***which also covers the content of e-mail and other kinds of electronic correspondence.***

Amendment 9
Proposal for a framework decision — amending act
Recital 15

(15) Public ***provocation*** to commit terrorist offences, recruitment for terrorism and training for terrorism are intentional crimes. Therefore, nothing in this Framework Decision may be interpreted as being intended to reduce or restrict the dissemination of information for scientific, academic or reporting purposes. The expression of radical, polemic or controversial views in the public debate on sensitive political questions, including terrorism, falls outside the scope of this Framework Decision and, in particular, of the definition of public ***provocation*** to commit terrorist offences,	(15) Public ***incitement*** to commit terrorist offences, recruitment for terrorism and training for terrorism are intentional crimes. Therefore, nothing in this Framework Decision may be interpreted as being intended to reduce or restrict the dissemination of information for scientific, academic***, artistic*** or reporting purposes. The expression of radical, polemic or controversial views in the public debate on sensitive political questions, including terrorism, falls outside the scope of this Framework Decision and, in particular, of the definition of public ***incitement*** to commit terrorist offences,

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TEXT PROPOSED BY THE COMMISSION	AMENDMENTS

Amendment 10
Proposal for a framework decision — amending act
Recital 15a (new)

	(15a) The criminalisation of the acts listed in this Framework Decision should be effected in such a way as to be proportionate to the legitimate aims pursued, necessary and appropriate in a democratic society, and non-discriminatory; it should, in particular, be compatible with the Charter of Fundamental Rights of the European Union and with the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Amendment 11
Proposal for a framework decision — amending act
Article 1 — point –1 (new)
Framework Decision 2002/475/JHA
Article 1 — paragraph 2

	(–1) Article 1(2) is amended as follows:
2. This Framework Decision shall not have the effect of altering the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union*, in the Charter of Fundamental Rights of the European Union and in the European Convention for the Protection of Human Rights and Fundamental Freedoms.*	

Amendment 12
Proposal for a framework decision — amending act
Article 1 — point 1
Framework Decision 2002/475/JHA
Article 3 — paragraph 1 — point a

(a) 'public ***provocation*** to commit a terrorist offence' means the distribution, or otherwise making available, of a message to the public, ***with the intent to incite*** the commission of one of the ***acts*** listed in Article 1(1)(a) to (h), where such conduct***, whether or not directly advocating terrorist offences,*** causes a danger that one or more such offences may be committed;	(a) 'public ***incitement*** to commit a terrorist offence' means the distribution, or otherwise making available, of a message to the public ***clearly and intentionally advocating*** the commission of one of the ***offences*** listed in Article 1(1)(a) to (h), where such conduct ***manifestly*** causes a danger that one or more such offences may be committed;

Amendment 13
Proposal for a framework decision — amending act
Article 1 — point 1
Framework Decision 2002/475/JHA
Article 3 — paragraph 1 — point b

(b) 'recruitment for terrorism' means to solicit another person to commit one of the ***acts*** listed in Article 1(1), or in Article 2(2);	(b) 'recruitment for terrorism' means ***intentionally*** to solicit another person to commit one of the ***offences*** listed in Article 1(1) ***(a) to (h)***, or in Article 2(2);

TEXT PROPOSED BY THE COMMISSION	AMENDMENTS

Amendment 14
Proposal for a framework decision — amending act
Article 1 — point 1
Framework decision 2002/475/JHA
Article 3 — paragraph 1 — point c

(c) 'training for terrorism' means to provide instruction in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of committing one of the ***acts*** listed in Article 1(1), knowing that the skills provided are intended to be used for this purpose.	(c) 'training for terrorism' means to provide instruction in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of committing one of the ***offences*** listed in Article 1(1)***(a) to (h)***, knowing that the skills provided are intended to be used for this purpose.

Amendment 15
Proposal for a framework decision — amending act
Article 1 — point 1
Framework decision 2002/475/JHA
Article 3 — paragraph 2 — point d

(d) aggravated theft with a view to committing one of the ***acts*** listed in Article 1(1);	(d) aggravated theft with a view to committing one of the ***offences*** listed in Article 1(1);

Amendment 16
Proposal for a framework decision — amending act
Article 1 — point 1
Framework decision 2002/475/JHA
Article 3 — paragraph 2 — point e

(e) extortion with a view to the perpetration of one of the ***acts*** listed in Article 1(1);	(e) extortion with a view to the perpetration of one of the ***offences*** listed in Article 1(1);

Amendment 17
Proposal for a framework decision — amending act
Article 1 — point 1
Framework decision 2002/475/JHA
Article 3 — paragraph 2 — point f

(f) drawing up false administrative documents with a view to committing one of the ***acts*** listed in Article 1(1)(a) to (h) and Article 2(2)(b).	(f) drawing up false administrative documents with a view to committing one of the ***offences*** listed in Article 1(1)(a) to (h) and Article 2(2)(b).

Amendment 18
Proposal for a framework decision — amending act
Article 1 — point 1
Framework decision 2002/475/JHA
Article 3 — paragraph 3a (new)

	3a. Member States shall ensure that the acts referred to in paragraph 2(a) to (c) of this Article are criminalised with due respect for the obligations relating to freedom of speech and freedom of association by which those States are bound, in particular the obligations relating to freedom of the press and freedom of expression in other media, and with due respect for the confidentiality of correspondence, including the content

TEXT PROPOSED BY THE COMMISSION	AMENDMENTS
	of e-mail and other kinds of electronic correspondence. The criminalisation of the acts covered in paragraph 2(a) to (c) shall not have the effect of reducing or restricting the dissemination of information for scientific, academic, artistic or reporting purposes, the expression of radical, polemic or controversial views in the public debate on sensitive political questions, including terrorism.

Amendment 19
Proposal for a framework decision — amending act
Article 1 — point 1
Framework decision 2002/475/JHA
Article 3 — paragraph 3b (new)

	3b. Member States shall also ensure that the criminalisation of the acts referred to in paragraph 2(a) to (c) of this Article is effected in a way which is proportionate to the nature and the circumstances of the offence, having regard to the legitimate aims pursued and the necessity thereof in a democratic society, and excludes any form of arbitrariness and discriminatory or racist treatment.

Amendment 20
Proposal for a framework decision — amending act
Article 1 — point 3
Framework decision 2002/475/JHA
Article 9 — paragraph 1 a

1a. ***Each*** Member State ***shall also establish its jurisdiction over*** the offences referred to in Article 3(2)(a) to (c) ***where the offence was directed towards or resulted in the carrying out of an offence referred to in Article 1 and such offence is subject to the jurisdiction of the Member State under any of the criteria set out in paragraph 1(a) to (e) of this Article.***	1a. ***A*** Member State ***may decide not to apply, or to apply only in specific cases or under specific circumstances, the jurisdictional provisions in paragraph 1(d) and (e) in respect of*** the offences referred to in Article 3(2)(a) to (c) ***and in Article 4, in so far as they are linked to the offences referred to in Article 3(2)(a) to (c).***

Protection of personal data *

P6_TA(2008)0436

European Parliament legislative resolution of 23 September 2008 on the draft Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (16069/2007 — C6-0010/2008 — 2005/0202(CNS))

(2010/C 8 E/36)

(Consultation procedure — renewed consultation)

The European Parliament,

— having regard to the draft Council Framework Decision (16069/2007),

— having regard to the Commission proposal (COM(2005)0475),

— having regard to its position of 27 September 2006 ([1]),

— having regard to its position of 7 June 2007 ([2]),

— having regard to Article 34(2)(b) of the EU Treaty,

— having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C6-0010/2008),

— having regard to Rules 93, 51 and 55(3) of its Rules of Procedure,

— having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0322/2008),

1. Approves the draft Council Framework Decision as amended;

2. Calls on the Commission to amend 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. Calls on the Council to consult Parliament again if it intends to amend the draft substantially or to replace it by another text;

5. Calls on the Council and the Commission, following the entry into force of the Treaty of Lisbon, to treat as a priority any subsequent proposal designed to amend this text pursuant to Article 10 of the Protocol on Transitional Provisions to be annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community and pursuant to Declaration No 50 relating to that Protocol, in particular with respect to the jurisdiction of the Court of Justice of the European Communities;

6. Instructs its President to forward its position to the Council and the Commission, and the governments of the Member States.

TEXT PROPOSED BY THE COUNCIL	AMENDMENTS

Amendment 1
Draft Council Framework Decision
Recital 4a (new)

	(4a) Article 16 of the Treaty on the Functioning of the European Union as introduced by the Treaty of Lisbon will enable data protection rules for the purposes of police and judicial cooperation in criminal matters to be strengthened.

([1]) OJ C 306 E, 15.12.2006, p. 263.
([2]) OJ C 125 E, 22.5.2008, p. 154.

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TEXT PROPOSED BY THE COUNCIL	AMENDMENTS

Amendment 2
Draft Council Framework Decision
Recital 5

(5) The exchange of personal data in the framework of police and judicial cooperation in criminal matters, notably under the principle of availability of information as laid down in the Hague Programme, should be supported by clear (…) rules enhancing mutual trust between the competent authorities and ensuring that the relevant information is protected ***in a way excluding any discrimination of this cooperation between the Member States while*** fully respecting fundamental rights of individuals. ***Existing instruments at the European level do not suffice. 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 does not apply to the processing of personal data in the course of an activity which falls outside the scope of Community law, such as those provided for by Title VI of the Treaty on European Union, or, in any case, to processing operations concerning public security, defence, State security and the activities of the State in areas of criminal law.***	(5) The exchange of personal data in the framework of police and judicial cooperation in criminal matters, notably under the principle of availability of information as laid down in the Hague Programme, should be supported by clear (…) rules enhancing mutual trust between the competent authorities and ensuring that the relevant information is protected fully respecting fundamental rights of individuals.

Amendment 3
Draft Council Framework Decision
Recital 5 a

(5a) The Framework Decision applies only to data gathered or processed by competent authorities for the purpose of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties. ***The Framework Decision leaves it to Member States to determine more precisely at national level which other purposes are to be considered incompatible with the purpose for which the personal data were originally collected.*** In general, further processing for historical, statistical or scientific purposes is not incompatible with the original purpose of the processing.	(5a) The Framework Decision applies only to data gathered or processed by competent authorities for the purpose of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties. In general, further processing for historical, statistical or scientific purposes is not incompatible with the original purpose of the processing.

Amendment 4
Draft Council Framework Decision
Recital 6 b

(6b) This Framework Decision shall not apply to personal data which a Member State has obtained within the scope of this Framework Decision and which originate in that Member State.	***deleted***

Amendment 5
Draft Council Framework Decision
Recital 7

(7) The approximation of Member States' laws should not result in any lessening of the data protection they afford but should, on the contrary, seek to ensure a high level of protection within the Union.	(7) The approximation of Member States' laws should not result in any lessening of the data protection they afford but should, on the contrary, seek to ensure a high level of protection within the Union***, in accordance with the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data ('Convention 108')***.

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TEXT PROPOSED BY THE COUNCIL	AMENDMENTS

Amendment 6
Draft Council Framework Decision
Recital 8 b

(8b) Archiving in a separate data set is permissible only if the data are no longer required and used for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties. Archiving in a separate data set is also permissible if the archived data are stored in a database with other data in such a way that they can no longer be used for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties. The appropriateness of the archiving period depends on the purposes of archiving and the legitimate interests of the data subjects. ***In the case of archiving for historical purposes a very long period may also be envisaged.***	(8b) Archiving in a separate data set is permissible only if the data are no longer required and used for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties. Archiving in a separate data set is also permissible if the archived data are stored in a database with other data in such a way that they can no longer be used for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties. The appropriateness of the archiving period depends on the purposes of archiving and the legitimate interests of the data subjects.

Amendment 7
Draft Council Framework Decision
Recital 11 a

(11a) Where personal data may be further processed after the Member State from which the data were obtained has given its consent, each Member State may determine the modalities of such consent***, including, for example, by way of general consent for categories of information or categories of further processing.***	(11a) Where personal data may be further processed after the Member State from which the data were obtained has given its consent, each Member State may determine the modalities of such consent.

Amendment 8
Draft Council Framework Decision
Recital 13 a

(13a) Member *State* should ensure that the data subject is informed that the personal data could be or are being collected, processed or transmitted to *an other* Member State for the purpose of prevention, investigation, detection, and prosecution of criminal offences or the execution of criminal penalties. The modalities of the right of the data subject to be informed and the exceptions thereto shall be determined by national law. This may take a general form, for example, through the law or through the publication of a list of the processing operations.	(13a) Member *States* should ensure that the data subject is informed that the personal data could be or are being collected, processed or transmitted to *another* Member State, ***to a third country or to a private entity*** for the purpose of prevention, investigation, detection, and prosecution of criminal offences or the execution of criminal penalties. The modalities of the right of the data subject to be informed and the exceptions thereto shall be determined by national law. This may take a general form, for example, through the law or through the publication of a list of the processing operations.

Amendment 9
Draft Council Framework Decision
Article 1 — paragraph 2 — point c a (new)

	(ca) are processed at national level.

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TEXT PROPOSED BY THE COUNCIL	AMENDMENTS

Amendment 10
Draft Council Framework Decision
Article 1 — paragraph 4

4. This Framework Decision is without prejudice to essential national security interests and specific intelligence activities in the field of national security.	***deleted***

Amendment 11
Draft Council Framework Decision
Article 2 — point l

(l) 'to make anonymous' shall mean to modify personal data in such a way that details of personal or material circumstances can no longer***, or only with disproportionate investment of time, cost and labour,*** be attributed to an identified or identifiable individual.	(l) 'to make anonymous' shall mean to modify personal data in such a way that details of personal or material circumstances can no longer be attributed to an identified or identifiable individual.

Amendment 12
Draft Council Framework Decision
Article 7

The processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade-union membership and the processing of data concerning health or sex life shall be ***permitted only when this is strictly necessary and when the domestic law provides adequate safeguards***.	***(1)*** The processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade-union membership and the processing of data concerning health or sex life shall be ***prohibited***. ***(2) By way of exception, such data may be processed if:*** — ***provided for by law, following prior authorisation by a competent judicial authority, on a case-by-case basis and if absolutely necessary for the prevention, investigation, detection or prosecution of terrorist offences and of other serious criminal offences,*** — ***Member States provide suitable specific safeguards, for example access to the data concerned only for personnel who are responsible for legitimate tasks which justify the processing.*** ***These specific categories of data may not be processed automatically unless domestic law provides appropriate safeguards. The same proviso shall also apply to personal data relating to criminal convictions.***

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TEXT PROPOSED BY THE COUNCIL	AMENDMENTS

Amendment 13
Draft Council Framework Decision
Article 11 — paragraph 1

1. All transmissions of personal data are to be logged or documented for the purposes of verification of the lawfulness of the data processing, self-monitoring and ensuring proper data integrity and security.	1. All transmissions***, access to and subsequent processing*** of personal data are to be logged or documented for the purposes of verification of the lawfulness of the data processing, self-monitoring and ensuring proper data integrity and security.

Amendment 14
Draft Council Framework Decision
Article 12 — paragraph 1 — introductory part

1. Personal data received from or made available by the competent authority of another Member State may, in accordance with the requirements of Article 3(2), be further processed only for the following purposes other than those for which they were transmitted or made available:	1. Personal data received from or made available by the competent authority of another Member State may, in accordance with the requirements of Article 3(2), be further processed only ***if necessary*** for the following purposes other than those for which they were transmitted or made available:

Amendment 15
Draft Council Framework Decision
Article 12 — paragraph 1 — point d

(d) any other purpose only with the prior consent of the transmitting Member State or with the consent of the data subject, given in accordance with national law.	(d) any other ***specified*** purpose ***provided that it is prescribed by law and is necessary in a democratic society for the protection of one of the interests set out in Article 9 of Convention 108, but*** only with the prior consent of the transmitting Member State or with the consent of the data subject, given in accordance with national law.

Amendment 16
Draft Council Framework Decision
Article 14 — paragraph 1 — introductory part

1. Member States shall provide that personal data transmitted or made available by the competent authority of another Member State may be transferred to third States or international bodies or organisations established by international agreements or declared as an international body only if	1. Member States shall provide that personal data transmitted or made available ***on a case-by-case basis*** by the competent authority of another Member State may be transferred to third States or international bodies or organisations established by international agreements or declared as an international body only if

Amendment 17
Draft Council Framework Decision
Article 14 — paragraph 1 — point d

(d) the third State or international body concerned ensures an adequate level of protection for the intended data processing.	(d) the third State or international body concerned ensures an adequate level of protection for the intended data processing ***equivalent to that afforded by Article 2 of the Additional Protocol to Convention 108 and by the corresponding case-law under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.***

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TEXT PROPOSED BY THE COUNCIL	AMENDMENTS

Amendment 18
Draft Council Framework Decision
Article 14 — paragraph 2

2. Transfer without prior consent in accordance with paragraph 1, point c, shall be permissible only if transfer of the data is essential for the prevention of an immediate and serious threat to public security of a Member State or a third State or to essential interests of a Member State and the prior consent cannot be obtained in good time. The authority responsible for giving consent shall be informed without delay.	2. Transfer without prior consent in accordance with paragraph 1, point c, shall be permissible only if transfer of the data is essential for the prevention of an immediate and serious threat to public security of a Member State or a third State or to essential interests of a Member State and the prior consent cannot be obtained in good time. ***In such a case, the personal data may be processed by the recipient only if absolutely necessary for the specific purpose for which the data were supplied.*** The authority responsible for giving consent shall be informed without delay. ***Such data transfers shall be notified to the competent supervisory authority.***

Amendment 19
Draft Council Framework Decision
Article 14 — paragraph 3

3. By way of derogation from paragraph 1, point d, personal data may be transferred if	3. By way of derogation from paragraph 1, point d, personal data may ***by way of exception*** be transferred if
(a) the national law of the Member State transferring the data so provides for it because of	(a) the national law of the Member State transferring the data so provides for it because of:
i. legitimate specific interests of the data subject, or	i. legitimate specific interests of the data subject, or
ii. legitimate prevailing interests, especially ***important public interests, or***	ii. legitimate prevailing interests, especially ***the urgent and essential interests of a Member State or for the purpose of averting imminent serious threats to public security, and***
(b) the third State or receiving international body or organisation provides safeguards which are ***deemed*** adequate ***by*** the Member State concerned according to its national law.	(b) the third State or receiving international body or organisation provides safeguards which the Member State concerned ***shall ensure are adequate*** according to its national law.
	(ba) Member States shall ensure that records are kept of such transfers and shall make them available to national data protection authorities on request.

Amendment 20
Draft Council Framework Decision
Article 14 — paragraph 4

4. The adequacy of the level of protection referred to in paragraph 1, point d, shall be assessed in the light of all the circumstances surrounding a data transfer operation or a set of data transfer operations. Particular consideration shall be given to the nature of the data, the purpose and duration of the proposed processing operation or operations, the State of origin and the State or international organisation of final destination of the data, the rules of law, both general and sectoral, in force in the third State or international organisation in question and the professional rules and security measures which are complied with there.	4. The adequacy of the level of protection referred to in paragraph 1, point d, shall be assessed ***by an independent authority*** in the light of all the circumstances surrounding a data transfer operation or a set of data transfer operations. Particular consideration shall be given to the nature of the data, the purpose and duration of the proposed processing operation or operations, the State of origin and the State or international organisation of final destination of the data, the rules of law, both general and sectoral, in force in the third State or international organisation in question and the professional rules and security measures which are complied with there.

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TEXT PROPOSED BY THE COUNCIL	AMENDMENTS

Amendment 21
Draft Council Framework Decision
Article 14a — title

Transmission to private parties in Member States	Transmission to private parties ***and access to data received by private parties*** in Member States

Amendment 22
Draft Council Framework Decision
Article 14a — paragraph 1 — introductory part

1. Member States shall provide that personal data received from or made available by the competent authority of another Member State may be transmitted to private parties only if:	1. Member States shall provide that personal data received from or made available ***on a case-by-case basis*** by the competent authority of another Member State may be transmitted to private parties only if:

Amendment 23
Draft Council Framework Decision
Article 14a — paragraph 2a (new)

	2a. Member States shall provide that their respective competent authorities may have access to and process personal data controlled by private persons only on a case-by-case basis, in specific circumstances, for specified purposes and subject to judicial scrutiny in the Member States.

Amendment 24
Draft Council Framework Decision
Article 14a — paragraph 2b (new)

	2b. The national legislation of the Member States shall provide that, where private persons receive and process data as part of a public service remit, they are subject to requirements which are at least equivalent to or otherwise more stringent than those imposed on the competent authorities.

Amendment 25
Draft Council Framework Decision
Article 17 — paragraph 1 — point a

(a) at least a confirmation from the controller or from the national supervisory authority as to whether or not data relating to him ***have been transmitted or made available*** and information on the recipients or categories of recipients to whom the data have been disclosed and communication of the data undergoing processing***; or***	(a) at least confirmation from the controller or from the national supervisory authority as to whether or not data relating to him ***or her are being processed*** and information on the ***purpose of the processing, the*** recipients or categories of recipients to whom the data have been disclosed and communication of the data undergoing processing***, and knowledge of the reasons for any automated decisions;***

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TEXT PROPOSED BY THE COUNCIL	AMENDMENTS

Amendment 26
Draft Council Framework Decision
Article 22 — paragraph 2 — point h

(h) prevent the unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media (transport control);	(h) prevent the unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media***, including by means of appropriate encryption techniques*** (transport control);

Amendment 27
Draft Council Framework Decision
Article 22 — paragraph 2 — point j a (new)

	(ja) monitor the effectiveness of the security measures referred to in this paragraph and take the necessary organisational measures relating to internal monitoring to ensure compliance with this Framework Decision (self-auditing).

Amendment 28
Draft Council Framework Decision
Article 24

Member States shall adopt suitable measures to ensure the full implementation of the provisions of this Framework Decision and shall in particular lay down effective, proportionate and dissuasive sanctions to be imposed in case of infringement of the provisions adopted pursuant to this Framework Decision.	Member States shall adopt suitable measures to ensure the full implementation of the provisions of this Framework Decision and shall in particular lay down effective, proportionate and dissuasive sanctions***, including administrative and/or criminal penalties in accordance with national law,*** to be imposed in case of infringement of the provisions adopted pursuant to this Framework Decision.

Amendment 29
Draft Council Framework Decision
Article 25 — paragraph 1a (new)

	1a. Each Member State shall ensure that the supervisory authorities are consulted when drawing up administrative measures or regulations relating to the protection of individuals' rights and freedoms with regard to the processing of personal data for the purpose of the prevention, investigation, detection and prosecution of criminal offences or the enforcement of criminal penalties.

Amendment 30
Draft Council Framework Decision
Article 25a (new)

	Article 25a
	Working Party on the Protection of Individuals with regard to the Processing of Personal Data for the purpose of the Prevention, Investigation, Detection and Prosecution of Criminal Offences

TEXT PROPOSED BY THE COUNCIL	AMENDMENTS
	1. A Working Party on the Protection of Individuals with regard to the Processing of Personal Data for the purpose of the Prevention, Investigation, Detection and Prosecution of Criminal Offences, ('the Working Party'), shall be established. It shall have advisory status and act independently.
	2. The Working Party shall be composed of a representative of the supervisory authority or authorities designated by each Member State, a representative of the European Data Protection Supervisor, and a representative of the Commission.
	Each member of the Working Party shall be designated by the institution, authority or authorities which he or she represents. Where a Member State has designated several supervisory authorities, they shall nominate a joint representative.
	The chairpersons of the joint supervisory bodies set up under Title VI of the Treaty on European Union shall be entitled to participate in or to be represented at the meetings of the Working Party. The supervisory authority or authorities designated by Iceland, Norway and Switzerland shall be entitled to be represented at meetings of the Working Party insofar as issues related to the Schengen acquis are concerned.
	3. The Working Party shall take its decisions by a simple majority of the representatives of the supervisory authorities.
	4. The Working Party shall elect its chairperson. The chairperson's term of office shall be two years. His or her appointment shall be renewable.
	5. The Working Party's secretariat shall be provided by the Commission.
	6. The Working Party shall adopt its own rules of procedure.
	7. The Working Party shall consider items placed on its agenda by its chairperson, either on his own initiative or at the request of a representative of the supervisory authorities, the Commission, the European Data Protection Supervisor or the chairpersons of the joint supervisory bodies.

Amendment 31
Draft Council Framework Decision
Article 25b (new)

	Article 25b
	Tasks
	1. The Working Party shall:
	(a) give an opinion on national measures, where necessary to ensure that the standard of data protection achieved in national data processing is equivalent to that provided for in this Framework Decision,

TEXT PROPOSED BY THE COUNCIL	AMENDMENTS
	(b) give an opinion on the level of protection between the Member States and third countries and international bodies, in particular to ensure that personal data are transferred in accordance with Article 14 of this Framework Decision to third countries or international bodies which provide an adequate level of data protection,
	(c) advise the Commission and the Member States on any proposed amendment to this Framework Decision, on any additional or specific measures to safeguard the rights and freedoms of natural persons with regard to the processing of personal data for the purpose of the prevention, investigation, detection and prosecution of criminal offences and on any other proposed measures affecting such rights and freedoms.
	2. If the Working Party finds differences between the laws and practices of Member States which are likely to affect the equivalence of protection for persons with regard to the processing of personal data in the European Union, it shall inform the Council and the Commission.
	3. The Working Party may, on its own initiative or that of the Commission or the Council, make recommendations on all matters relating to the protection of persons with regard to the processing of personal data in the European Union for the purpose of the prevention, investigation, detection and prosecution of criminal offences.
	4. The Working Party's opinions and recommendations shall be forwarded to the European Parliament, the Council and the Commission.
	5. The Commission shall, on the basis of the information provided by the Member States, report to the Working Party on the action taken in response to its opinions and recommendations. That report shall be made public and shall also be forwarded to the European Parliament and the Council. The Member States shall inform the Working Party of any action taken by them pursuant to paragraph 1.
	6. The Working Party shall draw up an annual report regarding the protection of natural persons with regard to the processing of personal data for the purpose of the prevention, investigation, detection and prosecution of criminal offences in the European Union and in third countries. The report shall be made public and shall be transmitted to the European Parliament, the Council and the Commission.

TEXT PROPOSED BY THE COUNCIL	AMENDMENTS

Amendment 32
Draft Council Framework Decision
Article 27a — paragraph 1

1. Three years after expiry of the period laid down in Article 28(1), Member States shall report to the Commission on the national measures they have taken to ensure full compliance with this Framework Decision, and particularly also with regard to those provisions that already have to be complied with when data is collected. The Commission shall examine in particular the ***implications of the provision on scope in*** Article 1(2).	1. Three years after expiry of the period laid down in Article 28(1), Member States shall report to the Commission on the national measures they have taken to ensure full compliance with this Framework Decision, and particularly also with regard to those provisions that already have to be complied with when data is collected. The Commission shall examine in particular the ***application of*** Article 1(2).

Amendment 33
Draft Council Framework Decision
Article 27a — paragraph 2a (new)

	2a. To this end, the Commission shall take into account the observations forwarded by the parliaments and governments of the Member States, the European Parliament, the Article 29 Working Party established by Directive 95/46/EC, the European Data Protection Supervisor and the Working Party established by Article 25a of this Framework Decision.

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Migration to the second generation Schengen Information System (SIS II) *

P6_TA(2008)0441

European Parliament legislative resolution of 24 September 2008 on the draft Council decision on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) (12059/1/2008 — C6-0188/2008 — 2008/0077(CNS))

(2010/C 8 E/37)

(Consultation procedure)

The European Parliament,

— having regard to the draft Council decision (12059/1/2008),

— having regard to the Commission proposal (COM(2008)0196),

— having regard to Articles 30(1)(a)(b), 31(1)(a)(b) and 34(2)(c) of the EU Treaty,

— having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C6-0188/2008),

— 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 (A6-0351/2008),

1. Approves the draft Council decision 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. Calls on the Council to consult Parliament again if it intends to amend the text submitted for consultation substantially;

5. Instructs its President to forward its position to the Council and Commission.

TEXT PROPOSED BY THE COUNCIL	AMENDMENTS

Amendment 1
Draft Council decision
Article 11A a (new)

	Article 11A a
	Reporting
	The Commission shall submit by the end of every six-month period, and for the first time by the end of the first six-month period of 2009, a progress report to the European Parliament and the Council concerning the development of SIS II and migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II).

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TEXT PROPOSED BY THE COUNCIL	AMENDMENTS

Amendment 2
Draft Council decision
Article 12

This Decision shall enter into force on the third day following its publication in the *Official Journal of the European Union*. It shall expire on the date to be fixed by the Council, acting in accordance with Article 71(2) of Council Decision 2007/533/JHA.	This Decision shall enter into force on the third day following its publication in the *Official Journal of the European Union*. It shall expire on the date to be fixed by the Council, acting in accordance with Article 71(2) of Council Decision 2007/533/JHA***, and in any event no later than on 30 June 2010.***

Migration to the second generation Schengen Information System (SIS II) *

P6_TA(2008)0442

European Parliament legislative resolution of 24 September 2008 on the draft Council regulation on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) (11925/2/2008 — C6-0189/2008 — 2008/0078(CNS))

(2010/C 8 E/38)

(Consultation procedure)

The European Parliament,

— having regard to the draft Council regulation (11925/2/2008),

— having regard to the Commission proposal (COM(2008)0197),

— having regard to Article 66 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0189/2008),

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0352/2008),

1. Approves the draft Council regulation 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 text submitted for consultation substantially;

5. Instructs its President to forward its position to the Council and Commission.

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TEXT PROPOSED BY THE COUNCIL	AMENDMENTS
Amendment 1 **Draft Council regulation** **Article 11A a (new)**	
	Article 11A a ***Reporting*** ***The Commission shall submit by the end of every six-month period, and for the first time by the end of the first six-month period of 2009, a progress report to the European Parliament and the Council concerning the development of SIS II and migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II).***
Amendment 2 **Draft Council regulation** **Article 12 — paragraph 1**	
This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Union*. It shall expire on the date to be fixed by the Council, acting in accordance with Article 55(2) of Regulation (EC) No 1987/2006.	This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Union*. It shall expire on the date to be fixed by the Council, acting in accordance with Article 55(2) of Regulation (EC) No 1987/2006***, and in any event no later than on 30 June 2010***.

Community vessel traffic monitoring and information system ***II

P6_TA(2008)0443

European Parliament legislative resolution of 24 September 2008 on the Council common position adopted with a view to the adoption of a directive of the European Parliament and of the Council amending Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system (5719/3/2008 — C6-0225/2008 — 2005/0239(COD))

(2010/C 8 E/39)

(Codecision procedure: second reading)

The European Parliament,

— having regard to the Council common position (5719/3/2008 — C6-0225/2008) [1],

— having regard to its position at first reading [2] on the Commission proposal to Parliament and the Council (COM(2005)0589),

— 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 (A6-0334/2008),

[1] OJ C 184 E, 22.7.2008, p. 1.
[2] OJ C 74 E, 20.3.2008, p. 533.

1. Approves the common position as amended;

2. Instructs its President to forward its position to the Council and Commission.

P6_TC2-COD(2005)0239

Position of the European Parliament adopted at second reading on 24 September 2008 with a view to the adoption of Directive *2008/…/EC* of the European Parliament and of the Council amending Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system

(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 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) With the adoption of Directive 2002/59/EC [4], the European Union reinforced its capacity for preventing situations posing a threat to the safety of human life at sea and to the protection of the marine environment.

(2) Since this Directive concerns the amendment of Directive 2002/59/EC, most of the obligations it contains will not be applicable to Member States without sea shores and sea ports. Consequently, the only obligations which will be applicable to Austria, the Czech Republic, Hungary, Luxembourg or Slovakia are those obligations concerning ships flying the flag of those Member States, without prejudice to Member States' duty of cooperation to ensure continuity between maritime and other modal traffic management services, in particular river information services.

(3) Under this Directive Member States that are coastal States should be able to exchange information, which they gather in the course of maritime traffic monitoring missions, which they carry out in their areas of competence. The Community maritime information exchange system SafeSeaNet (‖ 'SafeSeaNet'), developed by the Commission in agreement with the Member States, comprises, on the one hand, a data exchange network and, on the other hand, a standardisation of the main information available on ships and their cargo (advance notice and reporting). It thus makes it possible to locate at source and communicate to any authority accurate and up-to-date information on ships in European waters, their movements and their dangerous or polluting cargoes, as well as marine incidents.

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[1] OJ C 318, 23.12.2006, p. 195.
[2] OJ C 229, 22.9.2006, p. 38.
[3] *Position* of the European Parliament of 25 April 2007*(OJ C 74 E, 20.3.2008, p. 533)*, Council Common Position of *6 June 2008 (OJ C 184 E, 22.7.2008, p. 1)* and Position of the European Parliament of *24 September 2008*.
[4] OJ L 208, 5.8.2002, p. 10.

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(4) Accordingly, in order to guarantee operational use of the information gathered in this way, it is essential that the infrastructure necessary for the data collection and exchange referred to in this Directive and implemented by the national administrations be integrated into the SafeSeaNet.

(5) Of the information notified and exchanged pursuant to Directive 2002/59/EC, that concerning the precise characteristics of dangerous or polluting goods carried by sea is particularly important. Accordingly, and in the light of recent maritime accidents, coastal authorities should be allowed easier access to the characteristics of the hydrocarbons being carried by sea, an essential factor in choosing the most suitable control techniques, and, in an emergency, provided with a direct link with those operators who have the best knowledge of the goods being carried.

(6) The automatic ship identification systems (AIS — Automatic Identification System) referred to in the International Convention for the Safety of Life at Sea of 1 November 1974*(the 'SOLAS Convention')* make it possible not only to improve the possibilities of monitoring these ships but above all to make them safer in close navigation situations. AIS have accordingly been integrated into the enacting terms of Directive 2002/59/EC. Considering the large number of collisions involving fishing vessels that have clearly not been seen by merchant ships or which have not seen the merchant ships around them, extension of that measure to include fishing vessels with a length of more than 15 metres is very much to be desired. In the framework of the European Fisheries Fund, financial assistance may be provided for the fitting on board of fishing vessels of safety equipment such as AIS. ***The International Maritime Organisation (IMO) has recognised that the publication for commercial purposes on the Internet or elsewhere of AIS data transmitted by ships could be detrimental to the safety and security of ships and port facilities, and has urged its member governments, subject to the provisions of their national laws, to discourage those who make AIS data available to others for publication on the Internet or elsewhere from doing so. In addition, the availability of AIS information on ships' routes and cargoes should not be detrimental to fair competition between actors in the shipping industry.***

(7) The obligation to fit AIS should be understood also to require that AIS be maintained in operation at all times except where international rules or standards provide for the protection of navigational information.

(8) ***From surveys carried out on behalf of the Commission, it clearly emerges that it is neither useful nor feasible to incorporate AIS in the positioning and communications systems used for the purposes of the common fisheries policy.***

(9) Under Directive 2002/59/EC, a Member State which so requests is entitled to seek information from another Member State regarding a ship and the hazardous or pollutant cargo carried by it. It should be pointed out that this does not refer to systematic requests by one Member State to another, but rather means that such information can only be requested for reasons of maritime safety or security or the protection of the maritime environment.

(10) Directive 2002/59/EC provides that Member States are to adopt special measures in respect of ships posing a potential hazard due to their behaviour or condition. It therefore seems desirable to add to the list of these ships those which do not have satisfactory insurance cover or financial guarantees or which have been reported by pilots or port authorities as having apparent anomalies which may prejudice their safe navigation or create a risk for the environment.

(11) In accordance with Directive 2002/59/EC, it seems necessary, in relation to the risks posed by exceptionally bad weather, to take into account the potential danger to shipping from ice formation. Therefore, where a competent authority designated by a Member State considers, on the basis of an ice forecast provided by a qualified meteorological information service, that the sailing conditions are creating a serious threat to the safety of human life or a serious threat of pollution, it should so inform

the masters of the ships present in its area of competence or intending to enter or leave the port or ports in the area concerned. The authority concerned should be able to take any appropriate steps to ensure the safety of human life at sea and to protect the environment. ***In accordance with Regulation 3.1 of Part A-1 of Chapter II-1 of the SOLAS Convention, Member States are responsible for ensuring that ships flying their flag are designed, constructed and maintained in compliance with the structural, mechanical and electrical requirements of classification societies recognised by their administrations. Therefore, Member States should establish requirements for navigation on ice filled waters in accordance with those of organisations recognised under Council Directive 94/57/EC of 22 November 1994 on common rules and standards for ship inspection and survey organizations and for the relevant activities of maritime administrations*** [1] ***or equivalent national standards. Member States should be able to verify that the necessary documentation on board provides evidence that the ship complies with strength and power requirements commensurate with the ice situation in the area concerned.***

(12) Directive 2002/59/EC provides that Member States are to draw up plans to accommodate, if the situation so requires, ships in distress in their ports or in any other protected place in the best possible conditions, in order to limit the consequences of accidents at sea. However, taking into account the Guidelines on Places of Refuge for Ships in Need of Assistance annexed to Resolution A.949(23) of the International Maritime Organisation of 13 December 2003 (‖ 'IMO Resolution A.949(23)'), which were adopted subsequently to Directive 2002/59/EC and refer to ships in need of assistance ▌, rather than to ships in distress, that Directive should be amended accordingly. ***This Directive does not depart from the rules applicable to rescue operations, such as those laid down by the International Convention on Maritime Search and Rescue of 1979, where the safety of human life is at stake. That Convention hence continues to apply in full.***

(13) On the basis of IMO Resolution A.949(23) and following the work carried out jointly by the Commission, the European Maritime Safety Agency (‖ the 'Agency') and the Member States, it is necessary to lay down the basic provisions that plans for accommodating ships in need of assistance should contain in order to ensure a harmonised and effective implementation of this measure and clarify the scope of obligations incumbent on the Member States.

(14) IMO Resolution A.949(23) is to form the basis of any plans prepared by Member States in order to respond effectively to threats posed by ships in need of assistance. However, when assessing the risks associated with such threats, Member States may, in view of their special circumstances, take into consideration other factors, such as the use of sea water for the production of potable water as well as the generation of electricity.

(15) In order to obtain the full cooperation and trust of ships' masters and crew, it is necessary to ensure that masters and crew from a ship in need of assistance can rely on good and fair treatment from the competent authorities of the Member State concerned. To that end, it is desirable that Member States, in accordance with their national legislation, apply the relevant provisions of the IMO guidelines on fair treatment of seafarers in the event of a maritime accident.

(16) When a ship is in need of assistance, a decision may have to be taken as regards the accommodation of that ship in a place of refuge. ***This is particularly important in the event of a situation of distress at sea, that is to say a situation that could give rise to the loss of a vessel or an environmental or navigational hazard. In all such cases, it is necessary to be able to call on an independent authority in each Member State or region, depending on the internal structure of the Member State, with the necessary powers and expertise to take any necessary decisions and to assist the ship in need of assistance with a view to protecting human life and the environment and minimising economic loss. It is desirable that the competent authorities should be permanent in nature. In particular, the authority should be empowered to take an independent decision as regards the accommodation of a ship in need of assistance in a place of refuge.*** To this end, ***it*** should make a preliminary evaluation of the situation on the basis of the information contained in the relevant plan for accommodation of ships in a place of refuge.

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[1] ***OJ L 319, 12.12.1994, p. 20.***

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(17) Plans for accommodating ships in need of assistance should describe precisely the decision-making chain with regard to alerting and dealing with the situations in question. The authorities concerned and their remits should be clearly described, as should the means of communication between the parties involved. The applicable procedures should ensure that an appropriate decision can be taken quickly on the basis of ***specific maritime*** expertise ***in handling incidents where serious harmful consequences can be expected*** and adequate information available to the competent authority.

(18) When drawing up the plans, Member States should gather information on potential places of refuge on the coast so as to allow the competent authority, in the event of an accident or incident at sea, to identify clearly and quickly the most suitable areas for accommodating ships in need of assistance. This relevant information should contain a description of certain characteristics of the sites under consideration and the equipment and installations available to make it easier to accommodate ships in need of assistance or deal with the consequences of an accident or pollution.

(19) It is important for the list of competent authorities responsible for deciding whether to accommodate a ship in a place of refuge, and the list of authorities responsible for receiving and handling alerts, to be published appropriately. It may also prove useful for the parties involved in a maritime assistance operation, including assistance and towing companies, and the authorities of neighbouring Member States likely to be affected by an emergency at sea, to have access to relevant information.

(20) The absence of financial guarantees or insurance does not exonerate a Member State from its obligation to assist a ship in need of assistance and to accommodate it in a place of refuge if by doing so it can reduce risks to the crew and the environment. Though the competent authorities may verify whether the ship is covered by insurance or some other financial guarantee permitting appropriate compensation for costs and damages associated with its accommodation in a place of refuge, the act of requesting this information must not delay the rescue operation.

(21) Ports which accommodate a ship in need of assistance must be able to rely on prompt compensation in respect of costs and any damage associated with the operation. To that end, it is important that not only Directive 2008/…/EC of the European Parliament and of the Council of … [on the civil liability and financial guarantees of ship-owners] [1] and regulations of the International Oil Pollution Compensation Funds, but also the 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage, and the 2007 Wreck Removal Convention, be applied. Member States should therefore ratify those Conventions as soon as possible. In exceptional cases, Member States should ensure the compensation of costs and economic loss suffered by a port as a result of accommodating a ship in a place of refuge, particularly if such costs and economic loss are not covered by the financial guarantees of the ship-owners and other existing compensation mechanisms.

(22) The specific function of the vessel traffic monitoring and ship's routing measures is to allow Member States to obtain a true knowledge of the ships using the waters under their jurisdiction and thus enable them to take more effective action against potential risks if necessary. Sharing the information gathered helps to improve its quality and makes it easier to process.

(23) In accordance with Directive 2002/59/EC, Member States and the Commission have made substantial progress towards harmonising electronic data exchange, in particular as regards the transport of dangerous or polluting goods. SafeSeaNet, in development since 2002, should now be established as the reference network at Community level. ***It is important to ensure that SafeSeaNet does not result in increased administrative burdens or costs for industry, that there is harmonisation with international rules and that confidentiality in relation to any possible commercial implication is taken into account.***

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[1] ***OJ L …***

(24) The progress made in the new technologies and in particular in their space applications, such as ***satellite-based*** ship monitoring systems, imaging systems or ***Galileo***, now makes it possible to extend traffic monitoring further offshore and thereby to ensure better coverage of European waters. ***Furthermore, the IMO has amended the SOLAS Convention to take account of developments in maritime safety and security and the maritime environment with a view to developing a system for global long-range identification and tracking of ships (LRIT). In accordance with the architecture approved by the IMO and providing for the possibility of setting up regional LRIT Data Centres, and taking into account experience gained from SafeSeaNet, an LRIT European Data Centre should be set up for the collection and management of LRIT information. In order to retrieve LRIT data, Member States will need to be connected to the LRIT European Data Centre.***

(25) In order to enable cost savings and to avoid unnecessary fitting of equipment on board ships sailing in maritime areas within the coverage of AIS monitoring stations, AIS data should be integrated into the LRIT system. To this end, Member States and the Commission should take any appropriate initiatives, in particular within the IMO.

(26) In order to guarantee the best possible use, harmonised at Community level, of information gathered under Directive 2002/59/EC concerning maritime safety, the Commission should be able, if necessary, to process and use these data and disseminate them to the authorities designated by Member States.

(27) In this context, the development of the 'Equasis' system has shown how important it is to encourage a 'safe seas' culture, especially in maritime transport operators. The Commission should be able to contribute to the dissemination, particularly via this system, of any information in relation to maritime safety.

(28) Information gathered pursuant to this Directive may only be disseminated and used to prevent situations which threaten the safety of human life at sea and the protection of the marine environment. It is therefore desirable that the Commission investigate how to tackle any network and information security problems.

(29) Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) [1] centralises the tasks of the committees set up under the relevant Community legislation on maritime safety, prevention of pollution from ships and protection of living and working conditions on board. The existing committee should therefore be replaced by the COSS.

(30) Amendments to the international instruments referred to should also be taken into account.

(31) 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 to the Commission [2].

(32) In particular, the Commission should be empowered to amend Directive 2002/59/EC in order to apply subsequent amendments to the international conventions, protocols, codes and resolutions related thereto, ***to amend Annexes I, III and IV in the light of experience gained, to lay down requirements regarding the fitting of LRIT equipment on board ships sailing within the coverage of AIS fixed-based stations of Member States, to lay down policy rules and principles governing access to information held in the LRIT European Data Centre, and to amend the definitions, references or annexes so as to bring them into line with Community or international law***. Since those measures are of general scope and are designed to amend non-essential elements of that 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.

[1] OJ L 324, 29.11.2002, p. 1. ‖.
[2] OJ L 184, 17.7.1999, p. 23. ‖.

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(33) In accordance with Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency [1], the Agency provides the Commission and Member States with the necessary support in implementing Directive 2002/59/EC.

▌

(34) Directive 2002/59/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments

Directive 2002/59/EC is hereby amended as follows:

1) the title shall be replaced by the following:

'***Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel monitoring and information system and rules governing ship-owners' civil liability and financial guarantees, and repealing Council Directive 93/75/EEC***'

2) Article 1 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

'***The purpose of this Directive is to establish in the Community a vessel traffic monitoring and information system with a view to enhancing the safety and efficiency of maritime traffic, enhancing port and maritime security, improving the response of authorities to incidents, accidents or potentially dangerous situations at sea, including search and rescue operations, and contributing to better prevention and detection of pollution by ships.***'

(b) the following paragraph shall be inserted:

'***This Directive shall also lay down rules applicable to certain aspects of the obligations on operators in the maritime transport chain as regards civil liability, and shall introduce suitable financial protection for seafarers in the event of abandonment.***'

3) Article 2 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

'***1. This Directive shall apply:***

— to ships of 300 gross tonnage and upwards, unless stated otherwise, and

— pursuant to international law, to maritime areas under Member States' jurisdiction.'

(b) paragraph 2 shall be amended as follows:

(i) the introductory wording shall be replaced by the following:

'Unless otherwise provided, this Directive shall not apply to:'

(ii) point (c) shall be replaced by the following:

'***(c) ships' stores and equipment for use on board ships.***'

4) Article 3 shall be amended as follows:

(a) point (a) shall be amended as follows:

(i) the introductory wording shall be replaced by the following:

'"*Relevant international instruments*" means the following instruments, in their up-to-date163 version:'

[1] OJ L 208, 5.8.2002, p. 1. ‖.

(ii) the following indent shall be inserted after the fourth indent:

'— ***"1996 Convention" means the recapitulative text of the 1976 Convention on Limitation of Liability for Maritime Claims, adopted by the IMO, as amended by the 1996 protocol;'***

(iii) the following indents shall be added:

'— "*IMO Resolution A.917(22)*" means International Maritime Organisation Resolution 917(22) entitled "*Guidelines for the onboard use of AIS*", as amended by IMO Resolution A.956(23);

— ***"IMO Resolution A.930(22)" means the resolution of the IMO and the International Labour Office's Governing Body entitled "Guidelines on provision of financial security in case of abandonment of seafarers***"

— "IMO Resolution A.949(23)" means International Maritime Organisation Resolution 949(23) entitled "Guidelines on places of refuge for ships in need of assistance";

— "IMO Resolution A.950(23)" means International Maritime Organisation Resolution 950(23) entitled "Maritime assistance services (MAS)";

— ***"IMO guidelines on fair treatment of seafarers in the event of a maritime accident" means the guidelines annexed to Resolution LEG.3(91) of the IMO Legal Committee and the Governing Body of the International Labour Organisation of 27 April 2006***';

(b) point (k) shall be replaced by the following:

'(k) "competent authorities" means the authorities and organisations designated by Member States to perform functions under this Directive.'

(c) the following point shall be inserted:

'***(ka) "ship-owner" means the owner of the ship or any other organisation or person, such as the manager, agent or bareboat charterer, on whom the ship-owner has conferred responsibility for operation of the ship and who, on assuming such responsibility, has agreed to take over all the duties and responsibilities involved;'***

(d) the following points shall be added:

'(s) "SafeSeaNet" means the Community maritime information exchange system developed by the Commission in cooperation with the Member States to ensure the implementation of Community legislation;

(t) "scheduled service" means a series of ship crossings operated so as to serve traffic between the same two or more ports, either according to a published timetable or with crossings so regular or frequent that they constitute a recognisable systematic series;

(u) "fishing vessel" means any vessel equipped for commercial exploitation of living aquatic resources;

(v) "ship in need of assistance" means a ship in a situation ▌that could give rise to loss of the ship or an environmental or navigational hazard. ***The rescue of persons on board is, where necessary, governed by the SAR Convention, which takes precedence over the provisions of this Directive***;

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(w) "civil liability" for the purposes of the 1996 Convention means the liability by virtue of which a third party to the maritime transport operation responsible for the damage caused is entitled to make a claim subject to limitation under Article 2 of that Convention, with the exception of claims covered by Regulation (EC) No …/2008 of the European Parliament and of the Council [on the liability of carriers of passengers by sea in the event of an accident] (*);

(x) "LRIT" means a system that automatically transmits long-range identification and tracking information in accordance with Regulation 19 of Chapter V of the SOLAS Convention for maritime safety and security and maritime environmental purposes.

(*) *OJ L …*"

5) the following Article shall be inserted:

'*Article 4a*

Exemptions

1. Member States may exempt scheduled services performed between ports located on their territory from the requirements of Article 4, provided that the following conditions are met:

(a) the company operating the scheduled services keeps and updates a list of the ships concerned and sends that list to the competent authority concerned;

(b) for each voyage performed, the information listed in Annex I(1) is kept available for the competent authority upon request. The company shall establish an internal system to ensure that, upon request 24 hours a day and without delay, such information can be sent to the competent authority electronically, in accordance with Article 4(1);

(c) any deviations from the estimated time of arrival at the port of destination or pilot station of six hours or more are notified to the port of arrival in accordance with Article 4;

(d) exemptions are only granted to individual vessels on a specific service;

(e) a service is not regarded as a scheduled service unless it is intended to be operated for a minimum of one month;

(f) exemptions from the requirements of Article 4 are limited to voyages of up to 12 hours' scheduled duration.

2. When an international scheduled service is operated between two or more States, of which at least one is a Member State, any of the Member States involved may request the other Member States to grant an exemption for that service. All Member States involved, including the coastal States concerned, shall collaborate in granting an exemption for the service concerned in accordance with the conditions set out in paragraph 1.

3. Member States shall periodically check that the conditions set out in paragraphs 1 and 2 are being met. Where at least one of those conditions is no longer being met, Member States shall immediately withdraw the exemption from the company concerned.

4. Member States shall communicate to the Commission a list of companies and ships granted an exemption under this Article, as well as any updating of that list.'

6) the following *Articles* shall be inserted:

'Article 6a

Use of automatic identification systems (AIS) by fishing vessels

Any fishing vessel with an overall length of more than 15 metres and flying the flag of a Member State and registered in the Community, or operating in the internal waters or territorial sea of a Member State, or landing its catch in the port of a Member State shall, in accordance with the timetable set out in Annex II, part I(3), be fitted with an AIS (Class A) which meets the performance standards drawn up by the IMO.

Fishing vessels equipped with AIS shall maintain it in operation at all times. In exceptional circumstances, AIS may be switched off where the master considers this necessary in the interest of the safety or security of his vessel.

Article 6b

Use of long-range identification and tracking of ships (LRIT)

1. Any ship engaged in international voyages calling at a port of a Member State shall be fitted with an LRIT system in accordance with Regulation 19 of Chapter V of the SOLAS Convention and the performance standards and functional requirements adopted by the IMO.

The Commission shall lay down, acting in accordance with the regulatory procedure with scrutiny referred to in Article 28(2) and in cooperation with the Member States, the modalities and requirements for the fitting of LRIT equipment on board ships sailing in waters within the coverage of AIS fixed-based stations of Member States, and submit to the IMO any appropriate measures.

2. The Member States and the Commission shall cooperate to establish an LRIT European Data Centre in charge of processing long-range identification and tracking information.

The LRIT European Data Centre shall be a component of the European maritime information and exchange system SafeSeaNet. Costs related to modifications of national elements of SafeSeaNet so as to include LRIT information shall be borne by Member States.

Member States shall establish and maintain a connection to the LRIT European Data Centre.

3. The Commission shall determine the policy and principles for access to information held in the LRIT European Data Centre in accordance with the regulatory procedure with scrutiny referred to in Article 28(2).'

7) Article 12 shall be replaced by the following:

'Article 12

Obligations on the shipper

1. Shippers offering dangerous or polluting goods ▌for carriage ▌in the port of a Member State ***shall deliver to the master or operator of the ship irrespective of its size before the goods are taken on board*** a declaration ▌containing the following information:

(a) the information listed in Annex I(2);

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(b) for the substances referred to in Annex I to the Marpol Convention, the safety data sheet detailing the physico-chemical characteristics of the products ***(where applicable)***, including their viscosity expressed in cSt at 50 °C and their density at 15 °C ***and the other data contained in the safety data sheet in accordance with IMO Resolution MSC.150(77)***;

(c) the emergency numbers of the shipper or any other person or body in possession of information on the physico-chemical characteristics of the products and on the action to be taken in an emergency.

2. Vessels coming from a port outside the Community and heading for a port of a Member State or an anchorage in the territorial waters of a Member State which have dangerous or polluting goods on board shall be in possession of a declaration by the shipper containing the following information:

(a) the information listed in Section 3 of Annex I;

(b) the information required under paragraph 1(b) and (c) of this Article.

3. It shall be the duty ***and responsibility*** of the shipper ▌ to ensure that the shipment offered for carriage is the one declared in accordance with ***paragraphs 1 and 2***.'

8) in the second paragraph of Article 14, point (c) shall be replaced by the following:

'***(c) each Member State shall be able, upon request, to send SafeSeaNet information on the ship and on the dangerous or polluting goods on board without delay to the national and local competent authorities of another Member State if strictly needed for reasons of maritime safety or security or the protection of the maritime environment.***'

9) the following points shall be added to Article 16(1):

'(d) ships which have failed to notify, or do not have, insurance certificates or financial guarantees pursuant to ***this Directive*** and international rules;

(e) ships which have been reported by pilots or port authorities as having apparent anomalies which may prejudice their safe navigation or create a risk for the environment.'

10) the following Article shall be inserted:

'Article 18a

Measures in the event of risks posed by the presence of ice

1. Where the competent authorities consider, in view of ice conditions, that there is a serious threat to the safety of human life at sea or to the protection of their shipping areas or coastal zones, or of the shipping areas or coastal zones of other States:

(a) they shall supply the master of a ship which is in their area of competence, or intends to enter or leave one of their ports, with appropriate information on the ice conditions, the recommended routes and the icebreaking services in their area of competence;

(b) they may, without prejudice to the duty of assistance to ships in need of assistance and other obligations flowing from relevant international rules, request that a ship which is in the area concerned and intends to enter or leave a port or terminal or to leave an anchorage area ***document that it satisfies*** the strength and power requirements commensurate with the ice situation in the area concerned.

2. The measures taken pursuant to paragraph 1 shall be based, as regards the data concerning the ice conditions, upon ice and weather forecasts provided by a qualified meteorological information service recognised by the Member State.'

11) *Article 19 shall be amended as follows*:

(a) *the following subparagraph shall be added to paragraph 2:*

'To this end they shall communicate to the competent national authorities, on request, the information referred to in Article 12.'

(b) ***the following paragraph shall be added***:

'***3a. In accordance with their national law, Member States shall comply with the relevant provisions of the IMO guidelines on fair treatment of seafarers in the event of a maritime accident, in particular regarding the master and crew of a ship in need of assistance in the waters under their jurisdiction.***'

12) the following Article shall be inserted:

'***Article 19a***

Competent authority for accommodation of ships in need of assistance

1. Each Member State shall designate a competent authority which has the required expertise and is independent in that it has the power, at the time of the rescue operation, to take decisions on its own initiative concerning the accommodation of ships with a view to:

— ***the protection of human life,***

— ***coastal protection,***

— ***the protection of the marine environment,***

— ***safety at sea,***

— ***minimising economic loss.***

2. The authority referred to in paragraph 1 shall assume responsibility for the execution of the plans referred to in Article 20a.

3. The authority referred to in paragraph 1 may, inter alia,

(a) restrict the movement of the ship or direct it to follow a specific course. This requirement shall not affect the master's responsibility for the safe handling of the ship;

(b) give official notice to the master of the ship to put an end to the threat to the environment or maritime safety;

(c) come aboard or send an evaluation team aboard the ship to assess the damage to the ship and the degree of risk, help the master to remedy the situation and keep the competent coastal station informed;

(d) call on and deploy rescue workers where necessary;

(e) cause the ship to be piloted or towed.'

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13) Article 20 shall be replaced by the following:

'Article 20

Accommodation of ships in need of assistance in places of refuge

1. ***The authority referred to in Article 19a shall decide on the acceptance of a ship in a place of refuge. That authority shall ensure that ships in emergency situations are*** the subject of a prior assessment of the situation carried out on the basis of the *plans* referred to in Article 20a and ***are admitted to a place of refuge in cases where this makes it possible to reduce or avoid associated risks***.

2. The authorities referred to in paragraph 1 shall meet regularly to exchange their expertise and improve the measures taken pursuant to this Article. They may meet at any time, on account of specific circumstances.'

14) the following *Articles* shall be inserted:

'Article 20a

Plans for the accommodation of ships in need of assistance

1. Member States shall draw up plans for responding to threats presented by ships in need of assistance in the waters under their jurisdiction ***and for securing the accommodation of ships and the protection of human life***.

2. The plans referred to in paragraph 1 shall be prepared after consultation of the parties concerned *and* on the basis of IMO Resolutions A.949(23) and A.950(23), and shall contain at least the following:

(a) the identity of the authority or authorities responsible for receiving and handling alerts;

(b) the identity of the competent authority for assessing the situation and taking a decision on acceptance or refusal of a ship in need of assistance in the place of refuge selected;

(c) information on the coastline of Member States ***and all elements facilitating a swift assessment and a rapid decision regarding the choice of place of refuge for a ship in need of assistance***, including the description of environmental, economic and social factors and natural conditions;

(d) the assessment procedures for acceptance or refusal of a ship in need of assistance in a place of refuge;

(e) the resources and installations suitable for assistance, rescue and combating pollution;

(f) procedures for international coordination and decision-making;

(g) the financial guarantee and liability procedures in place for ships accommodated in a place of refuge.

3. Member States shall publish the *names* of the competent authority referred to in ***Article 19a*** and the authorities appointed for receiving and handling alerts, ***as well as their contact addresses***.

Member States shall communicate on request the relevant information concerning the plans to the neighbouring Member States.

In implementing the procedures provided for in the plans for accommodating ships in need of assistance, Member States shall ensure that relevant information is made available to the parties involved in the operations.

If requested by Member States, those receiving information in accordance with the second and third subparagraphs shall be bound by an obligation of confidentiality.

4. Member States shall inform the Commission by … (*) of the measures taken in application of this Article.

Article 20b

Liability and financial guarantee regime

1. Member States shall determine the regime of civil liability for ship-owners and shall ensure that the right of ship-owners to limit their liability is governed by all provisions of the 1996 Convention.

2. Member States shall take the necessary measures to ensure that every owner of a ship flying their flag provides a financial guarantee for civil liability in accordance with the ceiling laid down in the 1996 Convention.

3. Member States shall take the necessary measures to ensure that every owner of a ship flying the flag of a third country provides a financial guarantee in accordance with paragraph 2 as soon as that ship enters their exclusive economic area or equivalent area. That financial guarantee shall be valid for at least three months from the date it is required.

Article 20c

Financial guarantee in case of abandonment of seafarers

1. Member States shall take the necessary measures to ensure that every owner of a ship flying their flag provides a financial guarantee to protect seafarers employed or engaged on board the ship in case of abandonment, in accordance with IMO Resolution A.930(22).

2. Member States shall take the necessary measures to ensure that every owner of a ship flying the flag of a third country provides a financial guarantee in accordance with paragraph 1 as soon as that ship enters a port or an offshore terminal under their jurisdiction or drops anchor in an area under their jurisdiction.

3. Member States shall ensure that the system of financial guarantee in case of abandonment of seafarers is accessible, in accordance with IMO Resolution A.930(22).

Article 20d

Financial guarantee certificates

1. The existence of the financial guarantee referred to in Articles 20b and 20c and the validity thereof shall be proved by one or more certificates.

2. Certificates shall be issued by the competent authorities of the Member States once they are sure that the ship-owner complies with the requirements of this Directive. When issuing certificates, the competent authorities shall also consider whether a guarantor has business operations in the EU.

(*) 18 months from the *date of* entry into force of this Directive.

When a ship is registered in a Member State, certificates shall be issued or certified by the competent authority of the State in which the ship is registered.

When a ship is registered in a third country, certificates may be issued or certified by the competent authority of any Member State.

3. The conditions for the issue and the validity of certificates, in particular the criteria and conditions for issue, as well as the measures concerning the providers of financial guarantees, shall be determined by the Commission. Those measures, designed to amend non-essential elements of this Directive, inter alia by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 28(2).

4 Certificates shall include the following information:

(a) the name of the ship and the registry port;

(b) the ship-owner's name and principal place of business;

(c) the type of guarantee;

(d) the name and principal place of business of the insurer or other person granting the guarantee and, where appropriate, the place of business where the insurance or guarantee is established;

(e) the period of validity of the certificate, which shall not exceed the period of validity of the insurance or guarantee.

5. Certificates shall be drawn up in the official language or languages of the issuing Member State. If the language used is not English or French, the text shall include a translation into one of those languages.

Article 20e

Notification of the financial guarantee certificate

1. The certificate shall be carried on board the ship and a copy shall be deposited with the authority which keeps the record of the ship's registry or, if the ship is not registered in a Member State, with the authority of the State which issued or certified the certificate. The authority concerned shall forward a copy of the certification file to the Community Office provided for in Article 20i, so that the latter includes it in the register.

2. The operator, agent or captain of a ship entering the exclusive economic area or equivalent area of a Member State in the cases set out in Article 20b shall notify the authorities of that Member State that a financial guarantee certificate is being carried on board.

3. The operator, agent or captain of a ship bound for a port or offshore terminal under the jurisdiction of a Member State or which wishes to drop anchor in an area under the jurisdiction of a Member State in the cases set out in Article 20c shall notify the authorities of that Member State that a financial guarantee certificate is being carried on board.

4. The competent authorities of the Member States shall be able to share the information provided for in paragraph 1 through SafeSeaNet.

Article 20f

Penalties

Member States shall ensure compliance with the rules set out in this Directive and shall lay down penalties for infringement of those rules. The penalties shall be effective, proportionate and dissuasive.

Article 20g

Mutual recognition by Member States of financial guarantee certificates

Member States shall recognise certificates issued or certified by another Member State under Article 20d for the purposes of this Directive and shall consider them as having the same value as certificates which they issued or certified themselves, even when the ship concerned is not registered in a Member State.

A Member State may at any time request an exchange of views with the issuing or certifying State, should it believe that the insurer or guarantor named on the certificate is not financially capable of meeting the obligations imposed by this Directive.

Article 20h

Direct action against the provider of the financial guarantee for civil liability

Any request for compensation for damage caused by a ship may be addressed directly to the provider of the financial guarantee for civil liability covering the ship-owner's civil liability.

The provider of the financial guarantee may rely on any defence which the ship-owner himself would be entitled to raise, with the exception of those based on the ship-owner's bankruptcy or liquidation.

The provider of the financial guarantee may also rely on the fact that the loss or damage was the result of an act or omission of the ship-owner committed intentionally. However, it may not rely on any defence which it could have raised in an action brought against it by the ship-owner.

The provider of the financial guarantee may, in all cases, require the ship-owner to be joined in the proceedings.

Article 20i

Community Office

A Community Office shall be established which shall be responsible for keeping a full register of certificates issued, monitoring and updating their validity, and checking the existence of financial guarantees registered by third countries.

Article 20j

Financial guarantee and compensation

1. The absence of an insurance certificate or financial guarantee shall not exonerate Member States from the obligation to make a preliminary assessment and take a decision under Article 20(1), and shall not in itself be sufficient reason for a Member State to refuse to accommodate a ship in a place of refuge.

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2. Without prejudice to paragraph 1, when accommodating a ship in a place of refuge, a Member State may request the ship's operator, agent or master to present an insurance certificate or financial guarantee within the meaning of this Directive which covers the liability of such operator, agent or master for damage caused by the ship. The act of requesting the certificate shall not lead to a delay in accommodating a ship in need of assistance.

3. Member States shall ensure the compensation of costs and potential economic loss suffered by a port as a result of a decision taken pursuant to Article 20(1) if such costs or economic loss are not compensated within a reasonable time by the owner or operator of the ship pursuant to this Directive and existing financial compensation mechanisms.'

15) the following Article shall be inserted:

'Article 22a

SafeSeaNet

1. Member States shall establish maritime information management systems, at national or local level, to process the information referred to in this Directive.

2. The systems set up pursuant to paragraph 1 shall allow the information gathered to be used operationally and shall satisfy, in particular, the conditions laid down in Article 14.

3. To guarantee an effective exchange of the information referred to in this Directive, Member States shall ensure that the national or local systems set up to gather, process and preserve that information can be interconnected with SafeSeaNet. The Commission shall ensure that SafeSeaNet is operational on a 24 hours-a-day basis. ***The basic principles of SafeSeaNet are laid down in Annex III.***

4. When operating in the framework of regional agreements or cross-border interregional or transnational projects, Member States shall ensure that information systems or networks developed comply with the requirements of this Directive and are compatible and connected to SafeSeaNet'

16) Article 23 shall be amended as follows:

(a) point (c) shall be replaced by the following:

'(c) extending the cover of the Community vessel traffic monitoring and information system, and/or updating it, with a view to enhanced identification and monitoring of ships, taking into account developments in information and communication technologies. To this end, Member States and the Commission shall work together to put in place, where necessary, mandatory reporting systems, mandatory maritime traffic services and appropriate ship's routing systems, with a view to submitting them to the IMO for approval. They shall also collaborate, within the regional or international bodies concerned, on developing long-range identification and tracking systems;'

(b) the following point shall be added:

'(e) ensuring the interconnection and interoperability of the national systems used for managing the information referred to in Annex I, and developing and updating SafeSeaNet.'

17) the following Article shall be inserted:

'Article 23a

Processing and management of maritime safety information

1. The Commission shall ensure, where necessary, the processing, use and dissemination to the authorities designated by the Member States, of the information gathered under this Directive.

2. Where appropriate, the Commission shall contribute to the development and operation of systems for collecting and disseminating data relating to maritime safety, in particular through the 'Equasis' system or any other equivalent public system.'

18) in Article 24, the following paragraphs shall be added:

'***Member States shall, in accordance with their national legislation, verify that the publication of AIS and LRIT data transmitted by ships does not create a risk to safety or security or the protection of the environment or affect competition between ship operators. In particular, they shall not authorise the public dissemination of information concerning the details of the cargo or persons on board, unless the master or the operator of the vessel has agreed to such use.***

The Commission shall investigate possible network and information security problems which may be associated with the measures provided for under this Directive, and in particular Articles 6, 6a, 14 and 22a thereof, and propose any appropriate amendment to Annex III in order to improve the security of the network.'

19) ***Articles 27 and 28*** shall be replaced by the following:

'***Article 27***

Amendment procedure

1. The definitions in Article 3, the references to Community and IMO instruments and the Annexes may be amended in accordance with the regulatory procedure with scrutiny referred to in Article 28(2) in order to bring them into line with Community or international law which have been adopted, amended or brought into force, in so far as such amendments do not broaden the scope of this Directive.

2. In addition, Annexes I, III and IV may be amended in accordance with the regulatory procedure with scrutiny referred to in Article 28(2) in the light of experience gained with this Directive, in so far as such amendments do not broaden the scope of this Directive.

Article 28

Committee *procedure*

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by Regulation (EC) No 2099/2002 of the European Parliament and of the Council (*).

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.

(*) OJ L 324, 29.11.2002, p. 1. ‖'

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20) in point 4 of Annex I, indent X shall be replaced by the following:

'— ***X. miscellaneous:***

— ***characteristics and estimated quantity of bunker fuel for all vessels carrying it,***

— ***navigational status***'

21) the following point shall be added to Annex II(I):

'3. Fishing vessels

Fishing vessels with a length of more than 15 metres overall are subject to the carrying requirement laid down in Article 6a according to the following timetable:

— fishing vessels of overall length 24 metres and upwards but less than 45 metres: not later than … (*);

— fishing vessels of overall length 18 metres and upwards but less than 24 metres: not later than … (**);

— fishing vessels of overall length exceeding 15 metres but less than 18 metres: not later than … (***).

New built fishing vessels of overall length exceeding 15 metres are subject to the carrying requirement laid down in Article 6a as from … (****).

(*) 3 years from the entry into force of this Directive.
(**) 4 years from the entry into force of this Directive.
(***) 5 years from the entry into force of this Directive.
(****) 18 months from the entry into force of this Directive.'

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by … (*). They shall ▌ communicate to the Commission the text of those measures ***and a correlation table between them and this Directive***.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such 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 3

Entry into force

This Directive shall enter into force on the third day following that of its publication in the Official Journal of the European Union.

Article 4

Addressees

This Directive is addressed to the Member States.

Done at …, on …

For the European Parliament
The President

For the Council
The President

(*) ***12 months*** from the *date of* entry into force of this Directive.

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Investigation of accidents in the maritime transport sector ***II

P6_TA(2008)0444

European Parliament legislative resolution of 24 September 2008 on the Council common position adopted with a view to the adoption of a directive of the European Parliament and of the Council establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Directives 1999/35/EC and 2002/59/EC (5721/5/2008 — C6-0226/2008 — 2005/0240(COD))

(2010/C 8 E/40)

(Codecision procedure: second reading)

The European Parliament,

— having regard to the Council common position (5721/5/2008 — C6-0226/2008) [1],

— having regard to its position at first reading [2] on the Commission proposal to Parliament and the Council (COM(2005)0590),

— 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 (A6-0332/2008),

1. Approves the common position as amended;

2. Instructs its President to forward its position to the Council and Commission.

[1] OJ C 184 E, 22.7.2008, p. 23.
[2] OJ C 74 E, 20.3.2008, p. 546.

P6_TC2-COD(2005)0240

Position of the European Parliament adopted at second reading on 24 September 2008 with a view to the adoption of Directive *2008/…/EC* of the European Parliament and of the Council establishing the fundamental principles governing the investigation of accidents in the maritime transport sector, and amending *Council Directive* 1999/35/EC and *Directive* 2002/59/EC *of the European Parliament and of the Council*

(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 80(2) 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) A high general level of safety should be maintained in maritime transport in Europe and every effort should be made to reduce the number of marine casualties and incidents.

(2) The expeditious holding of technical investigations into marine casualties improves maritime safety, as it helps to prevent the recurrence of such casualties resulting in loss of life, loss of ships and pollution of the marine environment.

(3) The European Parliament, in its resolution of 21 April 2004 on improving safety at sea ([4]), ‖ urged the Commission to present a proposal for a directive on investigating shipping accidents.

(4) Article 2 of the United Nations Convention on the Law of the Sea of 10 December 1982 (‖'Unclos') establishes the right of coastal States to investigate the cause of any marine casualty occurring within their territorial seas which might pose a risk to life or to the environment, involve the coastal State's search and rescue authorities, or otherwise affect the coastal State.

(5) Article 94 of Unclos *provides* that flag States are to cause an inquiry to be held, by or before a suitably qualified person or persons, into certain casualties or incidents of navigation on the high seas.

(6) Regulation I/21 of *the* International Convention for the Safety of Life at Sea of 1 November 1974 (‖'SOLAS 74'), the International Convention of Load Lines of 5 April 1966 and the International Convention for the Prevention of Pollution from Ships of 2 November 1973*establish* the *responsibility* of flag States to conduct casualty investigations and to *provide* the International Maritime Organisation (IMO) with *the* relevant findings.

(7) The Code for the Implementation of Mandatory IMO Instruments annexed to Resolution A.973(24) of the IMO Assembly of 1 December 2005 recalls the obligation of flag States to ensure that marine safety investigations are conducted by suitably qualified investigators, competent in matters relating to marine casualties and incidents. That Code further requires flag States to be prepared to provide qualified investigators for that purpose, irrespective of the location of the casualty or incident.

(8) Account should be taken of the Code for the Investigation of Marine Casualties and Incidents annexed to Resolution A.849(20) of the IMO Assembly of 27 November 1997 (‖ the 'IMO Code for the Investigation of Marine Casualties and Incidents'), which provides for implementation of a common approach to the safety investigation of marine casualties and incidents and for cooperation between States in identifying the contributing factors leading to marine casualties and incidents. Account should also be taken of Resolution A.861(20) of the IMO Assembly of 27 November 1997 and Resolution MSC.163(78) of the Maritime Safety Committee of *the* IMO of 17 May 2004, which *lay down* a definition of voyage data recorders.

([1]) OJ C 318, 23.12.2006, p. 195.
([2]) OJ C 229, 22.9.2006, p. 38.
([3]) *Position* of the European Parliament of 25 April 2007*(OJ C 74 E, 20.3.2008, p. 546)*, Council Common Position of *6 June 2008 (OJ C 184 E, 22.7.2008, p. 23)* and Position of the European Parliament of *24 September 2008*.
([4]) OJ C 104 E, 30.4.2004, p. 730.

(9) While conducting safety investigations *into* marine casualties and incidents, Member States should take into account the Guidelines on fair treatment of seafarers in the event of a maritime accident annexed to Resolution *LEG.3(91)* of the IMO *Legal Committee* and the Governing Body of the International Labour Organisation of *27 April 2006* ▌.

(10) Council Directive 1999/35/EC of 29 April 1999 on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services [1] requires Member States to define, in the framework of their respective legal systems, a legal status that will enable them and any other substantially interested Member State to participate, ‖ cooperate in, or, where provided for under the IMO Code for the Investigation of Marine Casualties and Incidents, ‖ conduct any marine casualty or incident investigation involving a ro-ro ferry or high-speed passenger craft.

(11) Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system [2] requires Member States to comply with the IMO Code for the Investigation of Marine Casualties and Incidents and *to* ensure that the findings of *an investigation* are published as soon as possible after its conclusion.

(12) Conducting ‖ safety *investigations into* casualties and incidents involving seagoing vessels or other vessels in *ports* or other restricted maritime areas in an unbiased manner is of paramount importance *in order to* effectively *establish* the circumstances and causes of such *casualties* or *incidents*. Such ‖ *investigations* should therefore be carried out by qualified investigators under the control of an independent body or entity ***endowed with permanent decision-making powers,*** in order to avoid any conflict of interest.

(13) Member States should, in compliance with their legislation *on* the powers of the authorities responsible for the judicial inquiry and in collaboration with those authorities, where appropriate, ensure that those responsible for the technical inquiry are allowed to carry out their tasks under the best possible conditions.

(14) Member States should ensure that their legal systems enable them and any other substantially interested Member States to participate or cooperate in, or *to* conduct, *safety* investigations on the basis of the provisions of the IMO Code for the Investigation of Marine Casualties and Incidents.

(15) A Member State may delegate to another Member State the task of leading a marine casualty or incident safety investigation *(a*'safety investigation'), or specific tasks of such *an* investigation, if mutually agreed.

(16) Member States should make every effort not to charge for costs for assistance requested in the framework of safety investigations involving two or more Member States. Where assistance is requested from a Member State that is not involved in the safety investigation, Member States should agree on the reimbursement of costs incurred.

(17) Under Regulation V/20 of SOLAS 74, passenger ships and ships other than passenger ships of 3 000 gross tonnage and upwards constructed on or after 1 July 2002 must carry voyage data recorders to assist in accident investigations. Given its importance in the formulation of a policy to prevent shipping accidents, such equipment should be systematically required on board ships making national or international voyages which call at Community ports.

[1] OJ L 138, 1.6.1999, p. 1. ‖.
[2] OJ L 208, 5.8.2002, p. 10.

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(18) The data provided by a voyage data recording system, as well as by other electronic devices, can be used both retrospectively after a marine casualty or incident to investigate its causes and preventively to gain experience of the circumstances capable of leading to such events. Member States should ensure that such data, when available, are properly used for both purposes.

(19) Distress alerts from a ship or information from any source that a ship is, or persons on or from a ship are, imperilled, or that, as a result of an event in connection with the operation of a ship, there is a serious potential risk of damage to persons, the ship's structure or the environment, should be investigated or otherwise examined.

(20) Regulation (EC) No 1406/2002 of the European Parliament and of the Council [1] requires the European Maritime Safety Agency (‖'the Agency') to work with the Member States to develop technical solutions and provide technical assistance related to the implementation of Community legislation. In the field of *safety investigations*, the Agency has the specific task of facilitating cooperation between the Member States and the Commission in the development, with due regard to the different legal systems in the Member States, of a common methodology for investigating maritime accidents according to agreed international principles.

(21) In accordance with Regulation (EC) No 1406/2002, the Agency facilitates cooperation in the provision of support *to* the Member States in activities concerning investigations and in analysing existing accident investigation reports.

(22) Any conclusions drawn from analyses of existing accident reports which may be of use in the prevention of future disasters and the improvement of maritime safety in the European Union should be taken into account in the development or modification of a common methodology for investigating maritime accidents.

(23) The safety recommendations resulting from a safety investigation should be duly taken into account by the Member States ***and the Community***.

(24) Since the aim of *a* safety investigation is the prevention of marine casualties and incidents, *its* conclusions and ‖ safety recommendations should in no circumstances determine liability or apportion blame.

(25) Since the objective of this Directive, namely to improve marine safety in the Community and thereby reduce the risk of future marine casualties, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or the effects of *this Directive*, 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.

(26) 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].

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[1] OJ L 208, 5.8.2002, p. 1. ‖.
[2] OJ L 184, 17.7.1999, p. 23. ‖.

(27) In particular, the Commission should be empowered to amend this Directive in order to apply subsequent amendments to the international conventions, protocols, codes and resolutions related thereto and to adopt or modify the common methodology for investigating marine casualties and incidents. 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,

▌

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

1. The purpose of this Directive is to improve maritime safety and the prevention of pollution by ships, and so reduce the risk of future marine casualties, by:

(a) facilitating the expeditious holding of safety investigations and proper analysis of marine casualties and incidents in order to determine their causes; and

(b) ensuring the timely and accurate reporting of safety investigations and proposals for remedial action.

2. *Safety investigations initiated* under this Directive shall not be concerned with determining liability or apportioning blame. However, Member States shall ensure that the investigative body or entity (‖ the 'investigative body') *does* not *refrain* from fully reporting the causes of the casualty or incident because fault or liability may be inferred from the findings.

Article 2

Scope

1. This Directive shall apply to marine casualties***,*** incidents ***and distress alerts*** that:

(a) involve ships flying the flag of one of the Member States;

(b) occur within Member States' territorial sea and internal waters as defined in Unclos; or

(c) involve other substantial interests of the Member States.

2. This Directive shall not apply to marine casualties***,*** incidents ***and distress alerts*** involving only:

(a) ships of war and troop ships and other ships owned or operated by a Member State and used only on government non-commercial service;

(b) ships not propelled by mechanical means, wooden ships of primitive build, pleasure yachts and pleasure craft not engaged in trade, unless they are or will be crewed and carrying more than 12 passengers for commercial purposes;

(c) inland waterway vessels operating in inland waterways;

(d) fishing vessels with a length of less than 15 metres;

(e) fixed offshore drilling units.

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Article 3

Definitions

For the purposes of this Directive:

1) 'IMO Code for the Investigation of Marine Casualties and Incidents'*shall mean* the Code for the Investigation of Marine Casualties and Incidents annexed to Resolution A.849(20) of the IMO Assembly of 27 November 1997, in its up-to-date version.

2) The following terms shall be understood in accordance with the definitions contained in the IMO Code for the Investigation of Marine Casualties and Incidents:

(a) 'marine casualty';

(b) 'very serious casualty';

(c) 'marine incident';

(d) 'marine casualty or incident safety investigation';

(e) 'lead investigating State';

(f) 'substantially interested State'.

3) The terms 'serious casualty' and 'less serious casualty' shall be understood in accordance with the updated definitions contained in Circular 953 of the IMO Maritime Safety Committee.

4) The terms 'ro-ro ferry' and 'high-speed passenger craft' shall be understood in accordance with the definitions contained in Article 2 of Directive 1999/35/EC.

5) 'Voyage data recorder' (‖'VDR') shall be understood in accordance with the definition contained in Resolution A.861(20) of the IMO Assembly and Resolution MSC.163(78) of the IMO Maritime Safety Committee.

6) 'Distress alert' shall mean a signal given from a ship, or information from any source, indicating that a ship is, or that persons on or from a ship are, in distress at sea.

7) 'Safety recommendation' *shall mean* any proposal made***, including for the purposes of registration and control,*** by either of the following:

(a) the investigative body of the State conducting, or leading, the safety investigation on the basis of information derived from that investigation; or, where appropriate,

(b) the Commission, acting ***with the assistance of the Agency and*** on the basis of an abstract data analysis ***and the results of any safety investigations carried out***.

Article 4

Status of safety investigations

1. Member States shall define, in accordance with their legal systems, the legal status of ‖ safety *investigations* in such a way that *they* can be carried out as effectively and rapidly as possible.

Member States shall ensure, in accordance with their legislation and, where appropriate, through collaboration with the authorities responsible for the judicial inquiry, that safety investigations are:

(a) independent of criminal or other parallel investigations held to determine liability or apportion blame, ***allowing only the conclusions or recommendations resulting from safety investigations initiated under this Directive to be used in judicial investigations***; and

(b) not unduly precluded, suspended or delayed by reason of such investigations.

2. The rules to be established by the Member States shall include, in accordance with the permanent cooperation framework referred to in Article 10, provisions for allowing:

(a) cooperation and mutual assistance in safety investigations led by other Member States, or the delegation to another Member State of the task of leading such an investigation in accordance with Article 7; and

(b) coordination of the activities of their respective investigative bodies to the extent necessary to *achieve* the objective of this Directive.

Article 5

Obligation to investigate

1. Each Member State shall ensure that a safety investigation is carried out by the investigative body referred to in Article 8 after ***serious or*** very serious marine casualties:

(a) involving a ship flying its flag, irrespective of the location of the casualty;

(b) occurring within its territorial sea and internal waters as defined in Unclos, irrespective of the flag of the ship or ships involved in the casualty; or

(c) involving a substantial interest of *that* Member State, irrespective of the location of the casualty and of the flag of the ship or ships involved.

2. In addition ***to investigating serious and very serious casualties,*** the investigative body ***referred to in Article 8*** shall, ***having established the initial facts of the case,*** decide whether or not a safety investigation *into* ***a less serious casualty, a*** marine ▌incident ***or a distress alert*** *will* be undertaken.

In its decision, the investigative body shall take into account the seriousness of the casualty or incident, the type of vessel and/or cargo involved ***in the distress alert***, and ***any request from the search and rescue authorities***.

3. The scope and practical arrangements for the conduct of safety investigations shall be determined by the investigative body of the lead investigating Member State in cooperation with the equivalent bodies of the other substantially interested States, in such manner as appears to *that investigative body* most conducive to achieving the objective of this Directive, and with a view to preventing future casualties and incidents.

4. Safety investigations shall follow ▌the common methodology for investigating marine casualties and incidents developed pursuant to Article 2(e) of Regulation (EC) No 1406/2002. The Commission shall adopt or modify this methodology for the purposes of this Directive.

That measure, designed to amend non-essential elements of this Directive, inter alia by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in *Article 19(3)*.

The Commission ▌shall ***take into account the conclusions of accident reports and the safety recommendations contained therein when modifying*** the common methodology.▌

5. A safety investigation shall be started as promptly as is practicable after the marine casualty or incident occurs ***and, in any event, no later than two months after its occurrence***.

Article 6

Obligation to notify

A Member State shall require, in the framework of its legal system, that its investigative body be notified without delay, by the responsible authorities *or* by the parties involved, of the occurrence of all casualties**,** incidents ***and distress alerts*** falling within the scope of this Directive.

Article 7

Leading of, and participation in, safety investigations

1. ▌In cases of ***serious or very serious casualties with a substantial interest for*** two or more Member States, *those* Member States ‖ shall ▌rapidly ***agree*** which of them is to be the lead investigating Member State. ***Should they not be able to agree which of them is to be the lead investigating Member State, the Commission shall take a decision on the matter, based on an opinion of the Agency, which shall be immediately implemented.***

▌

2. Notwithstanding paragraph 1, each Member State shall remain responsible for *a* safety investigation and coordination with other substantially interested Member States until such time as ***either they agree, or the Commission decides,*** which of them is to be the lead investigating State.

3. Without prejudice to its obligations under this Directive and international law, a Member State may, on a case-by-case basis, delegate by mutual agreement to another Member State the task of leading a safety investigation or specific tasks for the conduct of such an investigation.

4. When a ro-ro ferry or high-speed passenger craft is involved in a marine casualty**,** incident ***or distress alert***, the safety investigation ‖ shall be launched by the Member State in whose territorial sea or internal waters, as defined in Unclos, *that casualty,* incident *or distress alert occurred* or, if *it occurred* in other waters, by the last Member State visited by that ferry or craft. That *Member* State shall remain responsible for the safety investigation and coordination with other substantially interested Member States until *such time as* ***either they agree, or the Commission decides,*** which of them is to be the lead investigating State.

Article 8

Investigative bodies

1. Member States shall ensure that safety investigations are conducted under the responsibility of an impartial permanent investigative body ***or entity***, ***endowed with the necessary powers and made up of investigators who are*** suitably qualified ▌in matters relating to marine casualties and incidents.

The investigative body shall be ***functionally*** independent ***of, in particular, national authorities responsible for seaworthiness, certification, inspection, manning, safe navigation, maintenance, sea traffic control, port state control and the operation of seaports, of bodies carrying out investigations for the purposes of establishing liability or law enforcement and, in general***, of any ***other*** party whose interests could conflict with the task entrusted to it.

Landlocked Member States which have neither ships nor vessels flying their flag *shall* identify an independent focal point to cooperate in the *safety* investigation pursuant to Article 5(1)(c).

2. The investigative body shall ensure that individual investigators have a working knowledge of, and practical experience in, those subject areas pertaining to their normal investigative duties. Additionally, the investigative body shall ensure ready access to appropriate expertise, as necessary.

3. The activities entrusted to the investigative body may be extended to the gathering and analysis of data relating to marine safety, in particular for prevention purposes, in so far as these activities do not affect its independence or entail responsibility in regulatory, administrative or standardisation matters.

4. Member States, acting in the framework of their respective legal systems, shall ensure that the investigators of its investigative body, or of any other investigative body to which it has delegated the task of safety investigation, where appropriate in collaboration with the authorities responsible for the judicial inquiry, *are* authorised to:

(a) have free access to any relevant area or casualty site as well as to any ship, wreck or structure including cargo, equipment or debris;

(b) ensure immediate listing of evidence and controlled search for and removal of wreckage, debris or other components or substances for examination or analysis;

(c) require examination or analysis of the items referred to in point (b), and have free access to the results of such examinations or analysis;

(d) have free access to, copy and have use of any relevant information and recorded data, including VDR data, pertaining to a ship, voyage, cargo, crew or any other person, object, condition or circumstance;

(e) have free access to the results of examinations of the bodies of victims or of tests made on samples taken from the bodies of victims;

(f) require and have free access to the results of examinations of, or tests made on samples taken from, people involved in the operation of a ship or any other relevant person;

(g) interview witnesses in the absence of any person whose interests could be considered as hampering the safety investigation;

(h) obtain survey records and relevant information held by the flag State, the owners, classification societies or any other relevant party, whenever those parties or their representatives are established in the Member State;

(i) call for the assistance of the relevant authorities in the respective States, including flag-State and port-State surveyors, coastguard officers, vessel traffic service operators, search and rescue teams, pilots or other port or maritime personnel.

5. The investigative body shall be *able* to respond immediately on being notified at any time of a casualty, and to obtain sufficient resources to carry out its functions independently. Its investigators shall be afforded status giving them the necessary guarantees of independence.

6. The investigating body may combine its tasks under this Directive with the work of investigating occurrences other than marine casualties on condition that such investigations do not endanger its independence.

Article 9

Non-disclosure of records

Member States, acting in the framework of their legal systems, shall ensure that the following records are not made available for purposes other than the safety investigation: ▌

(a) all witness evidence and other statements, accounts and notes taken or received by the investigative body in the course of the safety investigation;

(b) records revealing the identity of persons who have given evidence in the context of the safety investigation;

(c) medical or private information regarding persons involved in the casualty or incident.

Furthermore, Member States shall ensure that witness statements and other information provided by witnesses in the course of safety investigations are not obtained by third country authorities in order to prevent such statements and information from being used in criminal investigations in those countries.

Article 10

Permanent cooperation framework

1. Member States shall, in close cooperation with the Commission, establish a permanent cooperation framework enabling their respective investigative bodies to cooperate among themselves to the extent necessary to *achieve* the objective of this Directive.

2. The rules of procedure of the permanent cooperation framework and the organisation arrangements required therefor shall be decided in accordance with the regulatory procedure referred to in *Article 19(2)*.

3. Within the permanent cooperation framework, the investigative bodies in the Member States shall agree, in particular, upon the best modalities of cooperation in order to:

(a) enable investigative bodies to share installations, facilities and equipment for the technical investigation of wreckage and ship's equipment and other objects relevant to the safety investigation, including the extraction and evaluation of information from VDRs and other electronic devices;

(b) provide each other with the technical cooperation or expertise needed to undertake specific tasks;

(c) acquire and share information relevant for analysing casualty data and making appropriate safety recommendations at Community level;

(d) draw up common principles for the follow-up of safety recommendations and for the adaptation of investigative methods to the development of technical and scientific progress;

(e) provide for rapid alert measures in the event of a marine casualty or incident;

(f) establish confidentiality rules for the sharing, in the respect of national rules, of witness evidence and the processing of data and other records referred to in Article 9; ▌

(g) organise, where appropriate, relevant training activities for individual investigators;

(h) promote cooperation with the investigative bodies of third countries and with ‖ international maritime *accident* investigation organisations in the fields covered by this Directive.

▌

4. Any Member State, the facilities or services of which have been, or would normally have been, used by a ship prior to a casualty or an incident, and which has information pertinent to a safety investigation, shall provide that information to the investigative body conducting that investigation.

Article 11

Costs

1. Where safety investigations involve two or more Member States, the respective activities shall be free of charge.

2. Where assistance is requested of a Member State that is not involved in *a* safety investigation, Member States shall agree on the reimbursement of costs incurred.

Article 12

Cooperation with substantially interested third countries

1. Member States shall cooperate, to the maximum extent possible, with other substantially interested third countries in safety investigations.

2. Substantially interested third countries shall, by mutual agreement, be allowed to join a safety investigation led by a Member State under this Directive at any stage of the investigation.

3. The cooperation of a Member State in a safety investigation conducted by a substantially interested third country shall be without prejudice to the conduct *of,* and reporting requirements *relating to,* safety investigations under this Directive. Where a substantially interested third country is leading a safety investigation involving one or more Member States, Member States may decide not to carry out a parallel safety investigation, provided that the safety investigation led by the third country is conducted in accordance with the IMO Code for the Investigation of Marine Casualties and Incidents.

Article 13

Preservation of evidence

Member States shall adopt measures to ensure that the parties concerned by casualties and incidents *falling within* the scope of this Directive make every effort to:

(a) save all information from charts, log books, electronic and magnetic recording and video tapes, including information from VDRs and other electronic devices relating to the period preceding, during and after an accident;

(b) prevent the overwriting or other alteration of such information;

(c) prevent interference with any other equipment which might reasonably be considered pertinent to the safety investigation *into* the accident;

(d) collect and preserve all evidence expeditiously for the purposes of the safety investigations.

Article 14

Accident reports

1. Safety investigations carried out under this Directive shall result in a published report presented in a format defined by the competent investigative body and in accordance with the relevant sections of Annex I.

Investigative bodies may decide that a safety investigation, which does not concern a ***serious or*** very serious marine casualty and the findings of which do not have the potential to lead to the prevention of future casualties and incidents, shall result in a simplified *published* report ‖.

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2. Investigative bodies shall make every effort to make the report referred to in paragraph 1 available to the public***, and especially to the entire maritime sector, which shall receive specific conclusions and recommendations, when required,*** within 12 months *of* the day of the casualty. If it is not possible to produce the final report within that time, an interim report shall be published within 12 months *of* the date of the casualty.

3. The investigative body of the lead investigating Member State shall send a copy of the final, simplified or interim report to the Commission. It shall take into account the possible observations of the Commission on ▌improving the ▌quality ***of the report*** in the way most conducive to achieving the objective of this Directive.

4. Every three years, the Commission shall submit to the European Parliament a report providing information on the degree of implementation of and compliance with the provisions of this Directive, as well as any further steps considered necessary in the light of the recommendations set out in that report.

Article 15

Safety recommendations

1. Member States shall ensure that safety recommendations made by ‖ investigative bodies are duly taken into account by the addressees and, where appropriate, *are adequately followed-up* in accordance with Community and international law.

2. Where appropriate, an investigative body or the Commission shall***, acting with the assistance of the Agency,*** make safety recommendations on the basis of an abstract data analysis ***and of the results of any safety investigations carried out***.

3. A safety recommendation shall in no circumstances determine liability or apportion blame for a casualty.

Article 16

Early alert system

Without prejudice to its right to give an early alert, the investigative body of a Member State shall, at any stage of a safety investigation, if it takes the view that urgent action is needed at Community level to prevent the risk of new casualties, inform the Commission without delay of the need to give an early alert.

If necessary, the Commission shall issue a note of warning for the attention of the responsible authorities in all ‖ other Member States, the shipping industry, and ‖ any other relevant party.

Article 17

European database for marine casualties

1. Data on marine casualties and incidents shall be stored and analysed by means of a European electronic database to be set up by the Commission, which shall be known as the European Marine Casualty Information Platform (EMCIP).

2. Member States shall notify the Commission of the ‖ authorities *entitled to* have access to the database.

3. The investigative bodies of the Member States shall notify the Commission *of* marine casualties and incidents in accordance with the format *of* Annex II. They shall also provide the Commission with data resulting from safety investigations in accordance with the EMCIP database scheme.

4. The Commission and the Member States shall develop the database scheme and a method for the notification of data within the appropriate timescale.

Article 18

Fair treatment of seafarers

In accordance with their national law, Member States shall apply the relevant provisions of the IMO guidelines on fair treatment of seafarers in the event of a maritime accident.

Article 19

Committee

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by Regulation (EC) No 2099/2002 of the European Parliament and the Council ([1]).

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 two 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 20

Amending powers

The Commission may update *the* definitions *contained* in this Directive and ‖ references ‖ to Community acts and ‖ IMO instruments in order to bring them into line with Community or IMO measures which have entered into force, subject to observance of the limits of this Directive.

Those measures, designed to amend non-essential elements of this Directive, inter alia by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in *Article 19(3)*.

Acting in accordance with the same procedure, the Commission may also amend the Annexes.

Amendments to the IMO Code for the Investigation of Marine Casualties and Incidents may be excluded from the scope of this Directive pursuant to Article 5 of Regulation (EC) No 2099/2002.

Article 21

Additional measures

Nothing contained in this Directive shall prevent a Member State from taking additional measures on maritime safety which are not covered by *it*, provided that such measures do not infringe this Directive or in any way adversely affect the *achievement* of its objective ***or those of the Union***.

([1]) OJ L 324, 29.11.2002, p. 1. ‖.

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Article 22

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.

Article 23

Amendments to existing acts

1. Article 12 of Directive 1999/35/EC shall be deleted.

2. Article 11 of Directive 2002/59/EC shall be deleted.

Article 24

Transposition

1. 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 measures and a correlation table between them and this Directive.***

When Member States adopt those measures, 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 25

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 26

Addressees

This Directive is addressed to the Member States.

Done at …, on …

For the European Parliament
The President

For the Council
The President

(*) 24 months *from* the date of entry into force of this Directive.

ANNEX I

SAFETY INVESTIGATION REPORT CONTENT

Foreword

This identifies the sole objective of the safety investigation, that a safety recommendation shall in no case create a presumption of liability or blame, and that the report has not been written, in terms of content and style, with the intention of it being used in legal proceedings.

(The report should make no reference to witness evidence nor link anyone who is referred to in the report to a person who has given evidence during the course of the safety investigation.)

1. Summary

This part outlines the basic facts of the marine casualty or incident: what happened, when, where and how it happened; it also states whether any deaths, injuries, damage to the ship, cargo, third parties or environment occurred as a result.

2. Factual information

This part includes a number of discrete sections, providing sufficient information that the investigating body interprets to be factual, substantiate the analysis and ease understanding.

These sections include, in particular, the following information:

2.1. Ship particulars

Flag/register,

Identification,

Main characteristics,

Ownership and management,

Construction details,

Minimum safe manning,

Authorised cargo.

2.2. Voyage particulars

Ports of call,

Type of voyage,

Cargo information,

Manning.

2.3. Marine casualty or incident information

Type of marine casualty or incident,

Date and time,

Position and location of the marine casualty or incident,

External and internal environment,

Ship operation and voyage segment,

Place on board,

Human factors data,

Consequences (for people, ship, cargo, environment, other).

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2.4. Shore authority involvement and emergency response

Who was involved,

Means used,

Speed of response,

Actions taken,

Results achieved.

3. Narrative

This part reconstructs the marine casualty or incident through a sequence of events, in a chronological order leading up to, during and following the marine casualty or incident and the involvement of each actor (i.e. person, material, environment, equipment or external agent). The period covered by the narrative depends on the timing of those particular accidental events that directly contributed to the marine casualty or incident. This part also includes any relevant details of the safety investigation conducted, including the results of examinations or tests.

4. Analysis

This part includes a number of discrete sections, providing an analysis of each accidental event, with comments relating to the results of any relevant examinations or tests conducted during the course of the safety investigation and to any safety action that might already have been taken to prevent marine casualties.

These sections should cover issues such as:

— accidental event context and environment,

— human erroneous actions and omissions, events involving hazardous material, environmental effects, equipment failures, and external influences,

— contributing factors involving person-related functions, shipboard operations, shore management or regulatory influence.

The analysis and comment enable the report to reach logical conclusions, establishing all of the contributing factors, including those with risks for which existing defences aimed at preventing an accidental event, and/or those aimed at eliminating or reducing its consequences, are assessed to be either inadequate or missing.

5. Conclusions

This part consolidates the established contributing factors and missing or inadequate defences (material, functional, symbolic or procedural) for which safety actions should be developed to prevent marine casualties.

6. Safety recommendations

When appropriate, this part of the report contains safety recommendations derived from the analysis and conclusions and related to particular subject areas, such as legislation, design, procedures, inspection, management, health and safety at work, training, repair work, maintenance, shore assistance and emergency response.

The safety recommendations are addressed to those that are best placed to implement them, such as ship owners, managers, recognised organisations, maritime authorities, vessel traffic services, emergency bodies, international maritime organisations and European institutions, with the aim of preventing marine casualties.

This part also includes any interim safety recommendations that may have been made or any safety actions taken during the course of the safety investigation.

7. Appendices

When appropriate, the following non-exhaustive list of information is attached to the report in paper and/or electronic form:

— photographs, moving images, audio recordings, charts, drawings,

— applicable standards,

— technical terms and abbreviations used,

— special safety studies,

— miscellaneous information.

ANNEX II

MARINE CASUALTY OR INCIDENT NOTIFICATION DATA

(Part of the European Marine Casualty Information Platform)

Note: Bold numbers mean that data should be provided for each ship if more than one ship is involved in the marine casualty or incident.

01. Member Sate responsible / contact person
02. Member Sate investigator
03. Member State role
04. Coastal state affected
05. Number of substantially interested States
06. Substantially interested States
07. Notification entity
08. Time of the notification
09. Date of the notification
10. Name of the ship
11. IMO number/ distinctive letters
12. Ship flag
13. Type of marine casualty or incident
14. Type of ship
15. Date of the marine casualty or incident
16. Time of the marine casualty or incident
17. Position — Latitude
18. Position — Longitude
19. Location of the marine casualty or incident
20. Port of departure
21. Port of destination
22. Traffic separation scheme
23. Voyage segment
24. Ship operation
25. Place on board
26. Lives lost:
    — Crew
    — Passengers
    — Other
27. Serious injuries:
    — Crew
    — Passengers
    — Other
28. Pollution

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29. Ship damage
30. Cargo damage
31. Other damage
32. Brief description of the marine casualty or incident

The liability of carriers of passengers by sea in the event of an accident ***II

P6_TA(2008)0445

European Parliament legislative resolution of 24 September 2008 on the Council common position adopted with a view to the adoption of a regulation of the European Parliament and of the Council on the liability of carriers of passengers by sea in the event of accidents (6389/2/2008 — C6-0227/2008 — 2005/0241(COD))

(2010/C 8 E/41)

(Codecision procedure: second reading)

The European Parliament,

— having regard to the Council common position (6389/2/2008 — C6-0227/2008) ([1]),

— having regard to its position at first reading ([2]) on the Commission proposal to Parliament and the Council (COM(2005)0592),

— having regard to the amended Commission proposal (COM(2007)0645),

— 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 (A6-0333/2008),

1. Approves the common position as amended;

2. Instructs its President to forward its position to the Council and Commission.

([1]) OJ C 190 E, 29.7.2008, p. 17.
([2]) OJ C 74 E, 20.3.2008, p. 562.

P6_TC2-COD(2005)0241

Position of the European Parliament adopted at second reading on 24 September 2008 with a view to the adoption of Regulation *(EC) No …/2008* of the European Parliament and of the Council on the liability of carriers of passengers by sea in the event of *an accident*

(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 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) Within the framework of the common transport policy, *it is necessary to adopt* further measures ‖ to enhance safety in maritime transport. These measures include liability rules for damage caused to passengers, since it is important to ensure *an appropriate* level of compensation for passengers involved in maritime accidents.

(2) The Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 was adopted on 1 November 2002 under the auspices of the International Maritime Organization (IMO). The Community and its Member States are in the process of deciding whether to accede to or ratify that Protocol.

(3) The Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, as amended by *the* Protocol of 2002 (‖ 'the Athens Convention'), applies to international transport only. The distinction between national and international transport has been eliminated within the internal market *in* maritime transport services, and it is therefore appropriate *that* the same level and nature of liability *apply to* both international and national transport within the Community.

(4) The insurance arrangements required under the Athens Convention must be appropriate to the financial means of ship-owners and insurance companies. Ship-owners must be in a position to manage their insurance arrangements in an economically acceptable way and, particularly in the case of small shipping companies operating national transport services, account must be taken of the seasonal nature of their operations. The transitional period which is provided for in the application of this Regulation must be sufficiently long as to enable the compulsory insurance provided for by the Athens Convention to be arranged without affecting existing insurance schemes.

(5) It is appropriate to oblige the carrier to make an advance payment in the event of the death of or personal injury to a passenger, whereby advance payment does not constitute recognition of liability.

(6) Appropriate, full and comprehensible information on new rights being conferred on passengers should be provided to those passengers prior to their journey.

(7) Any amendment to the Athens Convention will be incorporated into Community legislation, unless that amendment is excluded following the procedure under Article 5(2) of Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) ([4]).

(8) The Legal Committee of the IMO adopted on 19 October 2006 the IMO Reservation and Guidelines for the Implementation of the Athens Convention (‖'the IMO Guidelines') to address *certain* issues *under* the Athens Convention, *such as,* in particular, compensation for terrorism-related damage. ‖ As such, the IMO Guidelines may be considered *a* lex specialis.

([1]) OJ C 318, 23.12.2006, p. 195.
([2]) OJ C 229, 22.9.2006, p. 38.
([3]) *Position* of the European Parliament of 25 April 2007 *(OJ C 74 E, 20.3.2008, p. 562)*, Council Common Position of *6 June 2008 (OJ C 190 E, 29.7.2008, p. 17)* and Position of the European Parliament of *24 September 2008*.
([4]) ***OJ L 324, 29.11.2002, p. 1.***

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(9) This Regulation incorporates and makes binding parts of the IMO Guidelines. To *achieve that result, where it occurs* in the provisions of the IMO Guidelines, the verb 'should' should, *in particular,* be understood as 'shall'.

(10) The provisions of the Athens Convention (Annex I) and of the IMO Guidelines (Annex II) should be understood, mutatis mutandis, in the context of Community legislation.

(11) The matters covered by Articles 17 and 17bis of the Athens Convention fall within the exclusive competence of the ‖ Community insofar as those Articles affect the rules established by Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [1]. To that extent, *those Articles* will form part of the Community legal order when the ‖ Community accedes to the Athens Convention.

(12) For the *purposes* of this Regulation, the expression 'or is registered in a Member State' should be interpreted *to mean* that the flag state *for the purposes of* bareboat charter-out registration is ‖ either a Member State or a contracting party to the Athens Convention. Necessary steps should be *taken* by the Member States and the Commission to invite the IMO to develop guidelines on the concept of bareboat charter-out registration.

(13) For the *purposes* of this Regulation, the expression 'mobility equipment' should be considered *as covering* neither ‖ luggage nor vehicles *within the meaning* of Article 8 of the Athens Convention.

(14) 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].

(15) In particular, the Commission should be empowered to amend this Regulation in order to incorporate subsequent amendments to the international conventions, protocols, codes and resolutions related thereto. 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.

(16) The European Maritime Safety Agency *('the Agency')*, established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 [3], should assist the Commission in preparing and drafting a progress report on the functioning of the new rules.

(17) Owing to the need for greater consultation among the Member States on matters of maritime safety, it is vital to reassess the Agency's competences and possibly to consider extending its powers.

(18) The national authorities, particularly the port authorities, play a fundamental and vital role in identifying and managing the various risks in relation to maritime safety.

▌

(19) Since the objective of this Regulation, namely to create a single set of rules governing the rights of carriers by sea and their passengers in the event of an accident, cannot be sufficiently achieved by the Member States and can therefore, by reason of the need to ensure identical limits of liability *for* accidents in all Member States, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

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[1] OJ L 12, 16.1.2001, p. 1. ‖.
[2] OJ L 184, 17.7.1999, p. 23. ‖.
[3] OJ L 208, 5.8.2002, p. 1. ‖.

HAVE ADOPTED THIS REGULATION:

Article 1

Subject-matter

This Regulation lays down the Community regime relating to liability and insurance for the carriage of passengers by sea as set out in the relevant provisions of:

(a) the Athens Convention *relating* to the Carriage of Passengers and their Luggage by Sea, 1974, as amended by the Protocol of 2002 (‖'the Athens Convention'), as set out in Annex I*;* and

(b) *the* IMO Reservation and Guidelines for *the* Implementation of the Athens Convention adopted by the Legal Committee of the IMO on 19 October 2006 (‖'the IMO Guidelines'), as set out in Annex II.

Furthermore, this Regulation extends the application of those provisions to carriage of passengers by sea within a single Member State, ▌ and lays down certain supplementary requirements.

Article 2

Scope

This Regulation shall apply to any international carriage within the meaning of Article 1(9) of the Athens Convention and to carriage by sea within a single Member State ▌, if:

(a) the ship is flying the flag of or is registered in a Member State; ‖

(b) the contract of carriage has been made in a Member State; or

(c) the place of departure or destination, according to the contract of carriage, is in a Member State.

▌

Article 3

Liability and insurance

1. The liability regime in respect of passengers, their luggage and ‖ vehicles and the rules on insurance or other financial security shall be governed by this Regulation and by Articles 1 and 1bis, Article 2(2), Articles 3 to 16***, with the exception of Article 7(2),*** and *Articles* 18, 20 and 21 of the Athens Convention set out in Annex I and the provisions of the IMO Guidelines set out in Annex II.

Article 7(2) of the Athens Convention shall not apply to the carriage of passengers falling within the scope of this Regulation, unless the European Parliament and the Council, acting in accordance with the procedure laid down in Article 251 of the Treaty, amend this Regulation to such effect.

2. The IMO Guidelines ‖ set out in Annex II shall be binding.

Article 4

Compensation in respect of mobility equipment or other specific equipment

In the event of loss of, or damage to, mobility equipment or other specific equipment used by a passenger with reduced mobility, the carrier's liability shall be governed by Article 3(3) of the Athens Convention. The compensation shall correspond to the replacement value of the equipment concerned or, where applicable, *to* the costs relating to repairs.

▌

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Article 5

Advance payment

Where the death of, or personal injury to, a passenger *is* caused by a shipping incident ▌, the carrier who actually performed ***the whole or a part of*** the carriage when the shipping incident occurred shall make an advance payment sufficient to cover immediate economic needs on a basis *proportionate* to the damage suffered, within 15 days from the identification of the person entitled to damages. In the event of *the* death ***or absolute and permanent invalidity of a passenger, or injuries to 75 % or more of a passenger's body which are considered clinically very serious,*** this payment shall not be less than EUR 21 000.

This *Article* shall also apply *where* the carrier is established within the Community.

An advance payment shall not constitute recognition of liability. *It* may be offset against any subsequent sums paid on the basis of this Regulation *and may* not *be returned*, except in the cases *described* in Article 3(1) *and* Article 6 of the Athens Convention *and* Appendix A of the IMO Guidelines, or where the person who received *it is* not the person entitled to damages.

Payment or receipt, as appropriate, of an advance payment shall entitle the carrier, the performing carrier or the passenger to initiate judicial proceedings to establish liability and fault.

Article 6

Information to passengers

The carrier and/or performing carrier shall ensure that passengers are provided with appropriate***, full*** and comprehensible information regarding their rights under this Regulation ***prior to their*** departure. To the extent that *such* information *has been provided* by *either* the carrier or the performing carrier, the other shall not be obliged to *provide it*. ***The*** information shall be provided in ***an*** appropriate***, full and comprehensible*** format ***and, in the case of information provided by tour operators, in accordance with Article 4 of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours*** [1].

In order to comply with this information requirement, the carrier and performing carrier may use a summary of the provisions of this Regulation prepared by the Commission and made public.

Article 7

Report

By … [2], the Commission shall draw up a report on the application of this Regulation, which shall, inter alia, take into account economic developments and developments in international *fora*.

That report may be accompanied by a proposal for amendment of this Regulation, or by a proposal for a submission to be made by the Community before the relevant international fora.

Article 8

Procedure

The measures designed to amend non-essential elements of this Regulation relating to the incorporation of amendments to the limits set out in Article 3(1), Article 4bis(1), Article 7(1) and Article 8 of the Athens Convention to take account of decisions taken pursuant to Article 23 of the Athens Convention and corresponding updates of Annex I shall be adopted in accordance with the regulatory procedure with scrutiny referred to in *Article 9(2)*.

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[1] ***OJ L 158, 23.6.1990, p. 59.***

[2] *Three years from the date of application of this Regulation.*

The measures designed to amend non-essential elements of this Regulation relating to the incorporation of amendments to the provisions of the IMO Guidelines set out in Annex II shall be adopted in accordance with the regulatory procedure with scrutiny referred to in *Article 9(2)*.

Article 9

Committee procedure

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS), established by Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002‖.

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 10

Transitional provision

In respect of carriage by sea within a single Member State ▌, Member States may choose to defer application of this Regulation ***for up to two years from the date of its application for carriage by regular ferry lines and*** *for up to* four years *from* the date of its application ***for carriage by regular ferry lines in the regions covered by Article 299(2) of the Treaty***.

Article 11

Entry into force

This Regulation shall enter into force on the day following *that of* its publication in the *Official Journal of the European Union*.

It shall apply from the date of the entry into force of the Athens Convention for the Community.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at …, on …

For the European Parliament
The President

For the Council
The President

ANNEX I

PROVISIONS OF THE ATHENS CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA RELEVANT FOR THE APPLICATION OF THIS REGULATION

(Consolidated text of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 and the Protocol of 2002 to the Convention)

Article 1

Definitions

In this Convention the following expressions have the meaning hereby assigned to them:

1) (a) 'carrier' means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by that person or by a performing carrier;

(b) 'performing carrier' means a person other than the carrier, being the owner, charterer or operator of a ship, who actually performs the whole or a part of the carriage; and

(c) 'carrier who actually performs the whole or a part of the carriage' means the performing carrier, or, in so far as the carrier actually performs the carriage, the carrier;

2) 'contract of carriage' means a contract made by or on behalf of a carrier for the carriage by sea of a passenger or of a passenger and his luggage, as the case may be;

3) 'ship' means only a seagoing vessel, excluding an air-cushion vehicle;

4) 'passenger' means any person carried in a ship:

(a) under a contract of carriage; or

(b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods not governed by this Convention;

5) 'luggage' means any article or vehicle carried by the carrier under a contract of carriage, excluding:

(a) articles and vehicles carried under a charter party, bill of lading or other contract primarily concerned with the carriage of goods; and

(b) live animals;

6) 'cabin luggage' means luggage which the passenger has in his cabin or is otherwise in his possession, custody or control. Except for the application of paragraph 8 of this Article and Article 8, cabin luggage includes luggage which the passenger has in or on his vehicle;

7) 'loss of or damage to luggage' includes pecuniary loss resulting from the luggage not having been re-delivered to the passenger within a reasonable time after the arrival of the ship on which the luggage has been or should have been carried, but does not include delays resulting from labour disputes;

8) 'carriage' covers the following periods:

(a) with regard to the passenger and his cabin luggage, the period during which the passenger and/or his cabin luggage are on board the ship or in the course of embarkation or disembarkation, and the period during which the passenger and his cabin luggage are transported by water from land to the ship or vice-versa, if the cost of such transport is included in the fare or if the vessel used for this purpose of auxiliary transport has been put at the disposal of the passenger by the carrier. However, with regard to the passenger, carriage does not include the period during which he is in a marine terminal or station or on a quay or in or on any other port installation;

(b) with regard to cabin luggage, also the period during which the passenger is in a marine terminal or station or on a quay or in or on any other port installation if that luggage has been taken over by the carrier or his servant or agent and has not been re-delivered to the passenger;

(c) with regard to other luggage which is not cabin luggage, the period from the time of its taking over by the carrier or his servant or agent on shore or on board until the time of its re-delivery by the carrier or his servant or agent;

9) 'international carriage' means any carriage in which, according to the contract of carriage, the place of departure and the place of destination are situated in two different States, or in a single State if, according to the contract of carriage or the scheduled itinerary, there is an intermediate port of call in another State;

10) 'Organization' means the International Maritime Organization;

11) 'Secretary-General' means the Secretary-General of the Organization.

Article 1bis

Annex

The Annex to this Convention shall constitute an integral part of the Convention.

Article 2

Application

1. […] (*)

2. Notwithstanding paragraph 1 of this Article, this Convention shall not apply when the carriage is subject, under any other international convention concerning the carriage of passengers or luggage by another mode of transport, to a civil liability regime under the provisions of such convention, in so far as those provisions have mandatory application to carriage by sea.

Article 3

Liability of the carrier

1. For the loss suffered as a result of the death of or personal injury to a passenger caused by a shipping incident, the carrier shall be liable to the extent that such loss in respect of that passenger on each distinct occasion does not exceed 250 000 units of account, unless the carrier proves that the incident:

(a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or

(b) was wholly caused by an act or omission done with the intent to cause the incident by a third party.

If and to the extent that the loss exceeds the above limit, the carrier shall be further liable unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.

2. For the loss suffered as a result of the death of or personal injury to a passenger not caused by a shipping incident, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. The burden of proving fault or neglect shall lie with the claimant.

3. For the loss suffered as a result of the loss of or damage to cabin luggage, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. The fault or neglect of the carrier shall be presumed for loss caused by a shipping incident.

4. For the loss suffered as a result of the loss of or damage to luggage other than cabin luggage, the carrier shall be liable unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.

(*) Not reproduced.

5. For the purposes of this Article:

(a) 'shipping incident' means shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship, or defect in the ship;

(b) 'fault or neglect of the carrier' includes the fault or neglect of the servants of the carrier, acting within the scope of their employment;

(c) 'defect in the ship' means any malfunction, failure or non-compliance with applicable safety regulations in respect of any part of the ship or its equipment when used for the escape, evacuation, embarkation and disembarkation of passengers, or when used for the propulsion, steering, safe navigation, mooring, anchoring, arriving at or leaving berth or anchorage, or damage control after flooding; or when used for the launching of life saving appliances; and

(d) 'loss' shall not include punitive or exemplary damages.

6. The liability of the carrier under this Article only relates to loss arising from incidents that occurred in the course of the carriage. The burden of proving that the incident which caused the loss occurred in the course of the carriage, and the extent of the loss, shall lie with the claimant.

7. Nothing in this Convention shall prejudice any right of recourse of the carrier against any third party, or the defence of contributory negligence under Article 6 of this Convention. Nothing in this Article shall prejudice any right of limitation under Articles 7 or 8 of this Convention.

8. Presumptions of fault or neglect of a party or the allocation of the burden of proof to a party shall not prevent evidence in favour of that party from being considered.

Article 4

Performing carrier

1. If the performance of the carriage or part thereof has been entrusted to a performing carrier, the carrier shall nevertheless remain liable for the entire carriage according to the provisions of this Convention. In addition, the performing carrier shall be subject and entitled to the provisions of this Convention for the part of the carriage performed by him.

2. The carrier shall, in relation to the carriage performed by the performing carrier, be liable for the acts and omissions of the performing carrier and of his servants and agents acting within the scope of their employment.

3. Any special agreement under which the carrier assumes obligations not imposed by this Convention or any waiver of rights conferred by this Convention shall affect the performing carrier only if agreed by him expressly and in writing.

4. Where and to the extent that both the carrier and the performing carrier are liable, their liability shall be joint and several.

5. Nothing in this Article shall prejudice any right of recourse as between the carrier and the performing carrier.

Article 4bis

Compulsory insurance

1. When passengers are carried on board a ship registered in a State Party that is licensed to carry more than twelve passengers, and this Convention applies, any carrier who actually performs the whole or a part of the carriage shall maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover liability under this Convention in respect of the death of and personal injury to passengers. The limit of the compulsory insurance or other financial security shall not be less than 250 000 units of account per passenger on each distinct occasion.

2. A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party, such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This certificate shall be in the form of the model set out in the annex to this Convention and shall contain the following particulars:

(a) name of ship, distinctive number or letters and port of registry;

(b) name and principal place of business of the carrier who actually performs the whole or a part of the carriage;

(c) IMO ship identification number;

(d) type and duration of security;

(e) name and principal place of business of insurer or other person providing financial security and, where appropriate, place of business where the insurance or other financial security is established; and

(f) period of validity of the certificate, which shall not be longer than the period of validity of the insurance or other financial security.

3. (a) A State Party may authorise an institution or an organization recognised by it to issue the certificate. Such institution or organization shall inform that State of the issue of each certificate. In all cases, the State Party shall fully guarantee the completeness and accuracy of the certificate so issued, and shall undertake to ensure the necessary arrangements to satisfy this obligation.

(b) A State Party shall notify the Secretary-General of:

(i) the specific responsibilities and conditions of the authority delegated to an institution or organization recognised by it;

(ii) the withdrawal of such authority; and

(iii) the date from which such authority or withdrawal of such authority takes effect.

An authority delegated shall not take effect prior to three months from the date on which notification to that effect was given to the Secretary-General.

(c) The institution or organization authorised to issue certificates in accordance with this paragraph shall, as a minimum, be authorised to withdraw these certificates if the conditions under which they have been issued are not complied with. In all cases the institution or organisation shall report such withdrawal to the State on whose behalf the certificate was issued.

4. The certificate shall be in the official language or languages of the issuing State. If the language used is not English, French or Spanish, the text shall include a translation into one of these languages, and, where the State so decides, the official language of the State may be omitted.

5. The certificate shall be carried on board the ship, and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authority of the State issuing or certifying the certificate.

6. An insurance or other financial security shall not satisfy the requirements of this Article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 5, unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or other financial security no longer satisfying the requirements of this Article.

7. The State of the ship's registry shall, subject to the provisions of this Article, determine the conditions of issue and validity of the certificate.

8. Nothing in this Convention shall be construed as preventing a State Party from relying on information obtained from other States or the Organization or other international organizations relating to the financial standing of providers of insurance or other financial security for the purposes of this Convention. In such cases, the State Party relying on such information is not relieved of its responsibility as a State issuing the certificate.

9. Certificates issued or certified under the authority of a State Party shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as having the same force as certificates issued or certified by them, even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the insurance certificate is not financially capable of meeting the obligations imposed by this Convention.

10. Any claim for compensation covered by insurance or other financial security pursuant to this Article may be brought directly against the insurer or other person providing financial security. In such case, the amount set out in paragraph 1 applies as the limit of liability of the insurer or other person providing financial security, even if the carrier or the performing carrier is not entitled to limitation of liability. The defendant may further invoke the defences (other than the bankruptcy or winding up) which the carrier referred to in paragraph 1 would have been entitled to invoke in accordance with this Convention. Furthermore, the defendant may invoke the defence that the damage resulted from the wilful misconduct of the assured, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the assured against the defendant. The defendant shall in any event have the right to require the carrier and the performing carrier to be joined in the proceedings.

11. Any sums provided by insurance or by other financial security maintained in accordance with paragraph 1 shall be available exclusively for the satisfaction of claims under this Convention, and any payments made of such sums shall discharge any liability arising under this Convention to the extent of the amounts paid.

12. A State Party shall not permit a ship under its flag to which this Article applies to operate at any time unless a certificate has been issued under paragraphs 2 or 15.

13. Subject to the provisions of this Article, each State Party shall ensure, under its national law, that insurance or other financial security, to the extent specified in paragraph 1, is in force in respect of any ship that is licensed to carry more than twelve passengers, wherever registered, entering or leaving a port in its territory in so far as this Convention applies.

14. Notwithstanding the provisions of paragraph 5, a State Party may notify the Secretary-General that, for the purposes of paragraph 13, ships are not required to carry on board or to produce the certificate required by paragraph 2 when entering or leaving ports in its territory, provided that the State Party which issues the certificate has notified the Secretary-General that it maintains records in an electronic format, accessible to all States Parties, attesting the existence of the certificate and enabling States Parties to discharge their obligations under paragraph 13.

15. If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this Article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate authorities of the State of the ship's registry, stating that the ship is owned by that State and that the liability is covered within the amount prescribed in accordance with paragraph 1. Such a certificate shall follow as closely as possible the model prescribed by paragraph 2.

Article 5

Valuables

The carrier shall not be liable for the loss of or damage to monies, negotiable securities, gold, silverware, jewellery, ornaments, works of art, or other valuables, except where such valuables have been deposited with the carrier for the agreed purpose of safe-keeping in which case the carrier shall be liable up to the limit provided for in paragraph 3 of Article 8 unless a higher limit is agreed upon in accordance with paragraph 1 of Article 10.

Article 6

Contributory fault

If the carrier proves that the death of or personal injury to a passenger or the loss of or damage to his luggage was caused or contributed to by the fault or neglect of the passenger, the Court seized of the case may exonerate the carrier wholly or partly from his liability in accordance with the provisions of the law of that court.

Article 7

Limit of liability for death and personal injury

1. The liability of the carrier for the death of or personal injury to a passenger under Article 3 shall in no case exceed 400 000 units of account per passenger on each distinct occasion. Where, in accordance with the law of the court seized of the case, damages are awarded in the form of periodical income payments, the equivalent capital value of those payments shall not exceed the said limit.

2. A State Party may regulate by specific provisions of national law the limit of liability prescribed in paragraph 1, provided that the national limit of liability, if any, is not lower than that prescribed in paragraph 1. A State Party, which makes use of the option provided for in this paragraph, shall inform the Secretary-General of the limit of liability adopted or of the fact that there is none.

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Article 8

Limit of liability for loss of or damage to luggage and vehicles

1. The liability of the carrier for the loss of or damage to cabin luggage shall in no case exceed 2 250 units of account per passenger, per carriage.

2. The liability of the carrier for the loss of or damage to vehicles including all luggage carried in or on the vehicle shall in no case exceed 1 200 units of account per vehicle, per carriage.

3. The liability of the carrier for the loss of or damage to luggage other than that mentioned in paragraphs 1 and 2 shall in no case exceed 3 375 units of account per passenger, per carriage.

4. The carrier and the passenger may agree that the liability of the carrier shall be subject to a deductible not exceeding 330 units of account in the case of damage to a vehicle and not exceeding 149 units of account per passenger in the case of loss of or damage to other luggage, such sum to be deducted from the loss or damage.

Article 9

Unit of Account and conversion

1. The Unit of Account mentioned in this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Article 3, paragraph 1, Article 4bis, paragraph 1, Article 7, paragraph l, and Article 8 shall be converted into the national currency of the State of the court seized of the case on the basis of the value of that currency by reference to the Special Drawing Right on the date of the judgment or the date agreed upon by the parties. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State Party.

2. Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 may, at the time of ratification, acceptance, approval of or accession to this Convention or at any time thereafter, declare that the Unit of Account referred to in paragraph 1 shall be equal to 15 gold francs. The gold franc referred to in this paragraph corresponds to sixty-five and a half milligrams of gold of millesimal fineness nine hundred. The conversion of the gold franc into the national currency shall be made according to the law of the State concerned.

3. The calculation mentioned in the last sentence of paragraph 1, and the conversion mentioned in paragraph 2 shall be made in such a manner as to express in the national currency of the States Parties, as far as possible, the same real value for the amounts in Article 3, paragraph 1, Article 4bis, paragraph 1, Article 7, paragraph 1, and Article 8 as would result from the application of the first three sentences of paragraph 1. States shall communicate to the Secretary-General the manner of calculation pursuant to paragraph 1, or the result of the conversion in paragraph 2, as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

Article 10

Supplementary provisions on limits of liability

1. The carrier and the passenger may agree, expressly and in writing, to higher limits of liability than those prescribed in Articles 7 and 8.

2. Interest on damages and legal costs shall not be included in the limits of liability prescribed in Articles 7 and 8.

Article 11

Defences and limits for carriers' servants

If an action is brought against a servant or agent of the carrier or of the performing carrier arising out of damage covered by this Convention, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the defences and limits of liability which the carrier or the performing carrier is entitled to invoke under this Convention.

Article 12

Aggregation of claims

1. Where the limits of liability prescribed in Articles 7 and 8 take effect, they shall apply to the aggregate of the amounts recoverable in all claims arising out of the death of or personal injury to any one passenger or the loss of or damage to his luggage.

2. In relation to the carriage performed by a performing carrier, the aggregate of the amounts recoverable from the carrier and the performing carrier and from their servants and agents acting within the scope of their employment shall not exceed the highest amount which could be awarded against either the carrier or the performing carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.

3. In any case where a servant or agent of the carrier or of the performing carrier is entitled under Article 11 of this Convention to avail himself of the limits of liability prescribed in Articles 7 and 8, the aggregate of the amounts recoverable from the carrier, or the performing carrier as the case may be, and from that servant or agent, shall not exceed those limits.

Article 13

Loss of right to limit liability

1. The carrier shall not be entitled to the benefit of the limits of liability prescribed in Articles 7 and 8 and paragraph 1 of Article 10, if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

2. The servant or agent of the carrier or of the performing carrier shall not be entitled to the benefit of those limits if it is proved that the damage resulted from an act or omission of that servant or agent done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

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Article 14

Basis for claims

No action for damages for the death of or personal injury to a passenger, or for the loss of or damage to luggage, shall be brought against a carrier or performing carrier otherwise than in accordance with this Convention.

Article 15

Notice of loss or damage to luggage

1. The passenger shall give written notice to the carrier or his agent:

(a) in the case of apparent damage to luggage:

(i) for cabin luggage, before or at the time of disembarkation of the passenger;

(ii) for all other luggage, before or at the time of its re-delivery;

(b) in the case of damage to luggage which is not apparent, or loss of luggage, within fifteen days from the date of disembarkation or re-delivery or from the time when such re-delivery should have taken place.

2. If the passenger fails to comply with this Article, he shall be presumed, unless the contrary is proved, to have received the luggage undamaged.

3. The notice in writing need not be given if the condition of the luggage has at the time of its receipt been the subject of joint survey or inspection.

Article 16

Time-bar for actions

1. Any action for damages arising out of the death of or personal injury to a passenger or for the loss of or damage to luggage shall be time-barred after a period of two years

2. The limitation period shall be calculated as follows:

(a) in the case of personal injury, from the date of disembarkation of the passenger;

(b) in the case of death occurring during carriage, from the date when the passenger should have disembarked, and in the case of personal injury occurring during carriage and resulting in the death of the passenger after disembarkation, from the date of death, provided that this period shall not exceed three years from the date of disembarkation;

(c) in the case of loss of or damage to luggage, from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later.

3. The law of the Court seized of the case shall govern the grounds for suspension and interruption of limitation periods, but in no case shall an action under this Convention be brought after the expiration of any one of the following periods of time:

(a) a period of five years beginning with the date of disembarkation of the passenger or from the date when disembarkation should have taken place, whichever is later; or, if earlier;

(b) a period of three years beginning with the date when the claimant knew or ought reasonably to have known of the injury, loss or damage caused by the incident.

4. Notwithstanding paragraphs 1, 2 and 3 of this Article, the period of limitation may be extended by a declaration of the carrier or by agreement of the parties after the cause of action has arisen. The declaration or agreement shall be in writing.

Article 17

Competent jurisdiction (*)

Article 17bis

Recognition and enforcement (*)

Article 18

Invalidity of contractual provisions

Any contractual provision concluded before the occurrence of the incident which has caused the death of or personal injury to a passenger or the loss of or damage to the passenger's luggage, purporting to relieve any person liable under this Convention of liability towards the passenger or to prescribe a lower limit of liability than that fixed in this Convention except as provided in Article 8, paragraph 4, and any such provision purporting to shift the burden of proof which rests on the carrier or performing carrier, or having the effect of restricting the options specified in Article 17, paragraphs 1 or 2, shall be null and void, but the nullity of that provision shall not render void the contract of carriage which shall remain subject to the provisions of this Convention.

Article 20

Nuclear damage

No liability shall arise under this Convention for damage caused by a nuclear incident:

(a) if the operator of a nuclear installation is liable for such damage under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by its Additional Protocol of 28 January 1964, or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, or any amendment or Protocol thereto which is in force; or

(b) if the operator of a nuclear installation is liable for such damage by virtue of a national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as either the Paris or the Vienna Conventions or any amendment or Protocol thereto which is in force.

Article 21

Commercial carriage by public authorities

This Convention shall apply to commercial carriage undertaken by States or Public Authorities under contract of carriage within the meaning of Article 1.

[Articles 22 and 23 of the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974]

Article 22

Revision and amendment (*)

(*) Not reproduced.

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Article 23

Amendment of limits

1. Without prejudice to the provisions of Article 22, the special procedure in this Article shall apply solely for the purposes of amending the limits set out in Article 3, paragraph 1, Article 4bis, paragraph 1, Article 7, paragraph 1 and Article 8 of the Convention as revised by this Protocol.

2. Upon the request of at least one half, but in no case less than six, of the States Parties to this Protocol, any proposal to amend the limits, including the deductibles, specified in Article 3, paragraph 1, Article 4bis, paragraph 1, Article 7, paragraph 1, and Article 8 of the Convention as revised by this Protocol shall be circulated by the Secretary-General to all Members of the Organization and to all States Parties.

3. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization (hereinafter referred to as 'the Legal Committee') for consideration at a date at least six months after the date of its circulation.

4. All States Parties to the Convention as revised by this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.

5. Amendments shall be adopted by a two-thirds majority of the States Parties to the Convention as revised by this Protocol present and voting in the Legal Committee expanded as provided for in paragraph 4, on condition that at least one half of the States Parties to the Convention as revised by this Protocol shall be present at the time of voting.

6. When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and, in particular, the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance.

7. (a) No amendment of the limits under this Article may be considered less than five years from the date on which this Protocol was opened for signature nor less than five years from the date of entry into force of a previous amendment under this Article.

(b) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as revised by this Protocol increased by six per cent per year calculated on a compound basis from the date on which this Protocol was opened for signature.

(c) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as revised by this Protocol multiplied by three.

8. Any amendment adopted in accordance with paragraph 5 shall be notified by the Organization to all States Parties. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification, unless within that period not less than one fourth of the States that were States Parties at the time of the adoption of the amendment have communicated to the Secretary-General that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.

9. An amendment deemed to have been accepted in accordance with paragraph 8 shall enter into force eighteen months after its acceptance.

10. All States Parties shall be bound by the amendment, unless they denounce this Protocol in accordance with Article 21, paragraphs 1 and 2 at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

11. When an amendment has been adopted but the eighteen-month period for its acceptance has not yet expired, a State which becomes a State Party during that period shall be bound by the amendment if it enters into force. A State which becomes a State Party after that period shall be bound by an amendment which has been accepted in accordance with paragraph 8. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

ANNEX TO ATHENS CONVENTION

CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF LIABILITY FOR THE DEATH OF AND PERSONAL INJURY TO PASSENGERS

Issued in accordance with the provisions of Article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002

Name of Ship	Distinctive number or letters	IMO Ship Identification Number	Port of Registry	Name and full address of the principal place of business of the carrier who actually performs the carriage

This is to certify that there is in force in respect of the above-named ship a policy of insurance or other financial security satisfying the requirements of Article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002.

Type of Security .....

Duration of Security .....

Name and address of the insurer(s) and/or guarantor(s)

Name .....

Address .....

This certificate is valid until .....

Issued or certified by the Government of .....

(Full designation of the State)

OR

The following text should be used when a State Party avails itself of Article 4bis, paragraph 3:

The present certificate is issued under the authority of the Government of .....

(full designation of the State) by ..... (name of institution or organization)

At .....On .....

(Place) (Date)

.....

(Signature and Title of issuing or certifying official)

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Explanatory Notes:

1. If desired, the designation of the State may include a reference to the competent public authority of the country where the Certificate is issued.

2. If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.

3. If security is furnished in several forms, these should be enumerated.

4. The entry 'Duration of Security' must stipulate the date on which such security takes effect.

5. The entry 'Address' of the insurer(s) and/or guarantor(s) must indicate the principal place of business of the insurer(s) and/or guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated.

ANNEX II

EXTRACT FROM THE IMO RESERVATION AND GUIDELINES FOR IMPLEMENTATION OF THE ATHENS CONVENTION, ADOPTED BY THE LEGAL COMMITTEE OF THE INTERNATIONAL MARITIME ORGANIZATION ON 19 OCTOBER 2006

IMO RESERVATION AND GUIDELINES FOR IMPLEMENTATION OF THE ATHENS CONVENTION

Reservation

1. The Athens Convention should be ratified with the following reservation or a declaration to the same effect:

'[1.1.] Reservation in connection with the ratification by the Government of … of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002 ('the Convention')

Limitation of liability of carriers, etc.

[1.2.] The Government of … reserves the right to and undertakes to limit liability under paragraph 1 or 2 of Article 3 of the Convention, if any, in respect of death of or personal injury to a passenger caused by any of the risks referred to in paragraph 2.2 of the IMO Guidelines for Implementation of the Athens Convention to the lower of the following amounts:

— 250 000 units of account in respect of each passenger on each distinct occasion,

or

— 340 million units of account overall per ship on each distinct occasion.

[1.3.] Furthermore, the Government of … reserves the right to and undertakes to apply the IMO Guidelines for Implementation of the Athens Convention paragraphs 2.1.1 and 2.2.2 *mutatis mutandis*, to such liabilities.

[1.4.] The liability of the performing carrier pursuant to Article 4 of the Convention, the liability of the servants and agents of the carrier or the performing carrier pursuant to Article 11 of the Convention and the limit of the aggregate of the amounts recoverable pursuant to Article 12 of the Convention shall be limited in the same way.

[1.5.] The reservation and undertaking in paragraph 1.2 will apply regardless of the basis of liability under paragraph 1 or 2 of Article 3 and notwithstanding anything to the contrary in Article 4 or 7 of the Convention; but this reservation and undertaking do not affect the operation of Articles 10 and 13.

Compulsory insurance and limitation of liability of insurers

[1.6.] The Government of … reserves the right to and undertakes to limit the requirement under paragraph 1 of Article 4*bis* to maintain insurance or other financial security for death or personal injury to a passenger caused by any of the risks referred to in paragraph 2.2 of the IMO Guidelines for Implementation of the Athens Convention to the lower of the following amounts:

— 250 000 units of account in respect of each passenger on each distinct occasion,

or

— 340 million units of account overall per ship on each distinct occasion.

[1.7.] The Government of … reserves the right to and undertakes to limit the liability of the insurer or other person providing financial security under paragraph 10 of Article 4*bis*, for death or personal injury to a passenger caused by any of the risks referred to in paragraph 2.2 of the IMO Guidelines for Implementation of the Athens Convention, to a maximum limit of the amount of insurance or other financial security which the carrier is required to maintain under paragraph 1.6 of this reservation.

[1.8.] The Government of … also reserves the right to and undertakes to apply the IMO Guidelines for Implementation of the Athens Convention including the application of the clauses referred to in paragraphs 2.1 and 2.2 in the Guidelines in all compulsory insurance under the Convention.

[1.9.] The Government of … reserves the right to and undertakes to exempt the provider of insurance or other financial security under paragraph 1 of Article 4*bis* from any liability for which he has not undertaken to be liable.

Certification

[1.10.] The Government of … reserves the right to and undertakes to issue insurance certificates under paragraph 2 of Article 4*bis* of the Convention so as:

— to reflect the limitations of liability and the requirements for insurance cover referred to in paragraphs 1.2, 1.6, 1.7 and 1.9; and

— to include such other limitations, requirements and exemptions as it finds that the insurance market conditions at the time of the issue of the certificate necessitate.

[1.11.] The Government of … reserves the right to and undertakes to accept insurance certificates issued by other States Parties issued pursuant to a similar reservation.

[1.12.] All such limitations, requirements and exemptions will be clearly reflected in the Certificate issued or certified under paragraph 2 of Article 4*bis* of the Convention.

Relationship between this Reservation and the IMO Guidelines for Implementation of the Athens Convention

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[1.13.] The rights retained by this reservation will be exercised with due regard to the IMO Guidelines for Implementation of the Athens Convention**,** or to any amendments thereto, with an aim to ensure uniformity. If a proposal to amend the IMO Guidelines for Implementation of the Athens Convention, including the limits, has been approved by the Legal Committee of the International Maritime Organization, those amendments will apply as from the time determined by the Committee. This is without prejudice to the rules of international law regarding the right of a State to withdraw or amend its reservation.'

Guidelines

2. In the current state of the insurance market, State Parties should issue insurance certificates on the basis of one undertaking from an insurer covering war risks, and another insurer covering non-war risks. Each insurer should only be liable for its part. The following rules should apply (the clauses referred to are set out in Appendix A):

2.1. Both war and non-war insurance may be subject to the following clauses:

2.1.1. Institute Radioactive Contamination, Chemical, Biological, Bio-chemical and Electromagnetic Weapons Exclusion Clause (Institute clause No 370);

2.1.2. Institute Cyber Attack Exclusion Clause (Institute clause No 380);

2.1.3. The defences and limitations of a provider of compulsory financial security under the Convention as modified by these guidelines, in particular the limit of 250 000 units of account per passenger on each distinct occasion;

2.1.4. The proviso that the insurance shall only cover liabilities subject to the Convention as modified by these guidelines; and

2.1.5. The proviso that any amounts settled under the Convention shall serve to reduce the outstanding liability of the carrier and/or its insurer under Article 4bis of the Convention even if they are not paid by or claimed from the respective war or non-war insurers.

2.2. War insurance shall cover liability, if any; for the loss suffered as a result of death or personal injury to passenger caused by:

— war, civil war, revolution, rebellion, insurrection, or civil strife arising there from, or any hostile act by or against a belligerent power,

— capture, seizure, arrest, restraint or detainment, and the consequences thereof or any attempt thereat,

— derelict mines, torpedoes, bombs or other derelict weapons of war,

— act of any terrorist or any person acting maliciously or from a political motive and any action taken to prevent or counter any such risk,

— confiscation and expropriation,

and may be subject to the following exemptions, limitations and requirements:

2.2.1. War Automatic Termination and Exclusion Clause

2.2.2. In the event the claims of individual passengers exceed in the aggregate the sum of 340 million units of account overall per ship on any distinct occasion, the carrier shall be entitled to invoke limitation of his liability in the amount of 340 million units of account, always provided that:

— this amount should be distributed amongst claimants in proportion to their established claims,

— the distribution of this amount may be made in one or more portions to claimants known at the time of the distribution, and

— the distribution of this amount may be made by the insurer, or by the Court or other competent authority seized by the insurer in any State Party in which legal proceedings are instituted in respect of claims allegedly covered by the insurance.

2.2.3. 30 days notice clause in cases not covered by 2.2.1.

2.3. Non-war insurance should cover all perils subject to compulsory insurance other than those risks listed in 2.2, whether or not they are subject to exemptions, limitations or requirements in 2.1 and 2.2.

3. An example of a set of insurance undertakings (Blue Cards) and an insurance certificate, all reflecting these guidelines, are included in Appendix B.

APPENDIX A

CLAUSES REFERRED TO IN GUIDELINES 2.1.1, 2.1.2 AND 2.2.1

Institute Radioactive Contamination, Chemical, Biological, Bio-chemical and Electromagnetic Exclusion Clause (Cl. 370, 10/11/2003)

This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith

1. In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from:

1.1. ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;

1.2. the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;

1.3. any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;

1.4. the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes;

1.5. any chemical, biological, bio-chemical, or electromagnetic weapon.

Institute Cyber Attack Exclusion Clause (Cl. 380, 10/11/2003)

1. Subject only to clause 10.2 below, in no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.

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2. Where this clause is endorsed on policies covering risks of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any person acting from a political motive, Clause 10.1 shall not operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.

War Automatic Termination and Exclusion

1.1. Automatic Termination of Cover

Whether or not such notice of cancellation has been given cover hereunder shall TERMINATE AUTOMATICALLY

1.1.1. upon the outbreak of war (whether there be a declaration of war or not) between any of the following: United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China;

1.1.2. in respect of any vessel, in connection with which cover is granted hereunder, in the event of such vessel being requisitioned either for title or use.

1.2. Five Powers War

This insurance excludes

1.2.1. loss damage liability or expense arising from the outbreak of war (whether there be a declaration of war or not) between any of the following: United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China;

1.2.2. requisition either for title or use.

APPENDIX B

I. Examples of insurance undertakings (Blue Cards) referred to in guideline 3

Blue Card issued by War Insurer

Certificate furnished as evidence of insurance pursuant to Article 4*bis* of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002.

Name of Ship: .....

IMO Ship Identification Number: .....

Port of registry: .....

Name and Address of owner: .....

This is to certify that there is in force in respect of the above named ship while in the above ownership a policy of insurance satisfying the requirements of Article 4*bis* of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002, subject to all exceptions and limitations allowed for compulsory war insurance under the Convention and the implementation guidelines adopted by the Legal Committee of the International Maritime Organization in October 2006, including in particular the following clauses: [Here the text of the Convention and the guidelines with appendices can be inserted to the extent desirable]

Period of insurance from: 20 February 2007

to: 20 February 2008

Provided always that the insurer may cancel this certificate by giving 30 days written notice to the above Authority whereupon the liability of the insurer hereunder shall cease as from the date of the expiry of the said period of notice but only as regards incidents arising thereafter.

Date: .....

War Risks, Inc

This certificate has been issued by:

[Address]

.....
Signature of insurer

As agent only for *War Risks, Inc.*

Blue Card issued by Non-War Insurer

Certificate furnished as evidence of insurance pursuant to Article 4 *bis* of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002

Name of Ship: .....

IMO Ship Identification Number: .....

Port of registry: .....

Name and Address of owner: .....

This is to certify that there is in force in respect of the above named ship while in the above ownership a policy of insurance satisfying the requirements of Article 4*bis* of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002, subject to all exceptions and limitations allowed for non-war insurers under the Convention and the implementation guidelines adopted by the Legal Committee of the International Maritime Organization in October 2006, including in particular the following clauses: [Here the text of the Convention and the guidelines with appendices can be inserted to the extent desirable]

Period of insurance from: 20 February 2007

to: 20 February 2008

Provided always that the insurer may cancel this certificate by giving three months written notice to the above Authority whereupon the liability of the insurer hereunder shall cease as from the date of the expiry of the said period of notice but only as regards incidents arising thereafter.

Date: .....

PANDI P&I

This certificate has been issued by:

[Address]

.....
Signature of insurer

As agent only for *PANDI P&I*

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II. Model of certificate of insurance referred to in guideline 3

CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY
IN RESPECT OF LIABILITY FOR THE DEATH OF AND PERSONAL INJURY TO PASSENGERS

Issued in accordance with the provisions of Article 4*bis* of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002

Name of Ship	Distinctive number or letters	IMO Ship Identification Number	Port of Registry	Name and full address of the principal place of business of the carrier who actually performs the carriage

This is to certify that there is in force in respect of the above-named ship a policy of insurance or other financial security satisfying the requirements of Article 4*bis* of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002.

Type of Security .....

Duration of Security .....

Name and address of the insurer(s) and/or guarantor(s)

The insurance cover hereby certified is split in one war insurance part and one non-war insurance part, pursuant to the implementation guidelines adopted by the Legal Committee of the International Maritime Organization in October 2006. Each of these parts of the insurance cover is subject to all exceptions and limitations allowed under the Convention and the implementation guidelines. The insurers are not jointly and severally liable. The insurers are:

For war risks: War Risks, Inc., [address]

For non-war risks: Pandi P&I, [address]

This certificate is valid until .....

Issued or certified by the Government of .....

(Full designation of the State)

OR

The following text should be used when a State Party avails itself of Article 4*bis*, paragraph 3:

The present certificate is issued under the authority of the Government of .....
(full designation of the State) by ..... (name of institution or organization)

At .....On .....

(Place) (Date)

.....

(Signature and title of issuing or certifying official)

Explanatory Notes:

1. If desired, the designation of the State may include a reference to the competent public authority of the country where the certificate is issued.

2. If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.

3. If security is furnished in several forms, these should be enumerated.

4. The entry 'Duration of Security' must stipulate the date on which such security takes effect.

5. The entry 'Address' of the insurer(s) and/or guarantor(s) must indicate the principal place of business of the insurer(s) and/or guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated.

Port State control (recast) ***II

P6_TA(2008)0446

European Parliament legislative resolution of 24 September 2008 on the Council common position adopted with a view to the adoption of a directive of the European Parliament and of the Council on port State control (Recast) (5722/3/2008 — C6-0224/2008 — 2005/0238(COD))

(2010/C 8 E/42)

(Codecision procedure: second reading)

The European Parliament,

— having regard to the Council common position (5722/3/2008 — C6-0224/2008) [1],

— having regard to its position at first reading [2] on the Commission proposal to Parliament and the Council (COM(2005)0588),

— having regard to the amended Commission proposal (COM(2008)0208),

— 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 (A6-0335/2008),

1. Approves the common position as amended;

2. Instructs its President to forward its position to the Council and Commission.

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[1] OJ C 184 E, 22.7.2008, p. 11.
[2] OJ C 74 E, 20.3.2008, p. 584.

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P6_TC2-COD(2005)0238

Position of the European Parliament adopted at second reading on 24 September 2008 with a view to the adoption of Directive *2008/…/EC* of the European Parliament and of the Council on port State control (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 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) Council Directive 95/21/EC of 19 June 1995 on port State control of shipping [4] has been substantially amended several times. Since further amendments are to be made, it should be recast in the interests of clarity.

(2) The Community is seriously concerned about shipping casualties and pollution of the seas and coastlines of Member States.

(3) The Community is equally concerned about on-board living and working conditions.

(4) Safety, pollution prevention and on-board living and working conditions may be effectively enhanced through a drastic reduction of substandard ships from Community waters, by strictly applying Conventions, international codes and resolutions.

(5) To this end, Member States should endeavour to take the necessary steps to ratify the Maritime Labour Convention, 2006, of the International Labour Organisation, which contains provisions related to port State obligations in regulation 5.2.1.

(6) Member States should take the necessary measures to adapt their national law to the provisions on limitation of liability of the recapitulative text of the 1976 International Maritime Organisation Convention on Limitation of Responsibility for Maritime Claims, as amended by the 1996 protocol (the 1996 Convention). Regarding the judgement of the Court of Justice of the European Communities in Case C-188/07 [5], it appears that compensation to third parties in respect of damage caused by waste falls under the 'polluter pays' principle enunciated in Council Directive 75/442/EEC of 15 July 1975 on waste [6] and in Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage [7], opening up the right to be compensated for the totality of the damage caused, including where there is not complete coverage and beyond the national provisions on incorporation of conventions.

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[1] OJ C 318, 23.12.2006, p. 195.
[2] OJ C 229, 22.9.2006, p. 38.
[3] *Position* of the European Parliament of 25 April 2007*(OJ C 74 E, 20.3.2008, p. 584)*, Council Common Position of *6 June 2008 (OJ C 198 E, 5.8.2008, p. 1)* and Position of the European Parliament of *24 September 2008*.
[4] OJ L 157, 7.7.1995, p. 1. ‖.
[5] ***Judgement of 24 June 2008 (Commune de Mesquer) — not yet published in the ECR.***
[6] ***OJ L 194, 25.7.1975, p. 39.***
[7] ***OJ L 143, 30.4.2004, p. 56.***

(7) Responsibility for monitoring the compliance of ships with the international standards for safety, pollution prevention and on-board living and working conditions lies primarily with the flag State. Relying, as appropriate, on recognised organisations, the flag State fully guarantees the completeness and efficiency of the inspections and surveys undertaken to issue the relevant certificates. Responsibility for maintenance of the condition of the ship and its equipment after survey to comply with the requirements of Conventions applicable to the ship lies with the ship company. However, there has been a serious failure on the part of a number of flag States to implement and enforce international standards. Henceforth, as a second line of defence against substandard shipping, the monitoring of compliance with the international standards for safety, pollution prevention and on-board living and working conditions should also be ensured by the port State, while recognising that port State control inspection is not a survey and the relevant inspection forms are not seaworthiness certificates.

(8) A harmonised approach to the effective enforcement of these international standards by Member States in respect of ships sailing in the waters under their jurisdiction and using their ports should avoid distortions of competition.

(9) The shipping industry is vulnerable to acts of terrorism. Transport security measures should be effectively implemented and Member States should vigorously monitor compliance with security rules by carrying out security checks.

(10) Advantage should be taken of the experience gained during the operation of the Paris Memorandum of Understanding on Port State Control (Paris MOU), signed in Paris on 26 January 1982.

(11) The European Maritime Safety Agency (EMSA) established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 [1], should provide the necessary support to ensure the convergent and effective implementation of the port State control system. *The* EMSA should in particular contribute to the development and implementation of the inspection database set up in accordance with this Directive and *to* a harmonised Community scheme for the training and assessment of competences of port State control inspectors by Member States.

(12) An efficient port State control regime should seek to ensure that all ships calling at a port within the European Union are regularly inspected. Inspection should concentrate on substandard ships, while quality ships, meaning those which have satisfactory inspection records or which fly the flag of a State complying with the Voluntary International Maritime Organisation (IMO) Member State Audit Scheme, should be rewarded by undergoing less frequent inspections. Such new inspection arrangements should be incorporated into the Community port State control regime as soon as its various aspects have been defined and on the basis of an inspection-sharing scheme whereby each Member State contributes fairly to the achievement of the Community objective of a comprehensive inspection scheme. Moreover, Member States should recruit and retain the requisite number of staff, including qualified inspectors, taking into account the volume and characteristics of shipping traffic at each port.

(13) The inspection regime set up by this Directive takes into account the work carried out by the Paris MOU. Since any developments arising from the Paris MOU should be agreed at Community level before being made applicable within the EU, close coordination should be established and maintained between the Community and the Paris MOU in order to facilitate as much convergence as possible.

[1] OJ L 208, 5.8.2002, p. 1. ‖.

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(14) The Commission should manage and update the inspection database, in close collaboration with the Paris MOU. The inspection database should incorporate inspection data of *the* Member States and all States Parties to the Paris MOU. Until the Community maritime information system, SafeSeaNet, is fully operational and allows for an automatic record of the data concerning ships' calls in the inspection database, Member States should provide the Commission with the information needed to ensure ‖proper monitoring of the application of this Directive, in particular concerning the movements of ships. On the basis of the inspection data provided by Member States, the Commission should retrieve from the inspection database data on the risk profile of ships, on ships due for inspections and on the movement of ships and should calculate the inspection commitments for each Member State. The inspection database should also be capable of interfacing with other Community maritime safety databases.

(15) Member States should endeavour to review the method of drawing the white, grey and black list of flag States in the framework of the Paris MOU, in order to ensure its fairness, in particular with respect to the way it treats flag States with small fleets.

(16) The rules and procedures for port State control inspections, including criteria for the detention of ships, should be harmonised to ensure consistent effectiveness in all ports, which would also drastically reduce the selective use of certain ports of destination to avoid the net of proper control.

(17) ▌Periodic and additional inspections ***should*** include an examination of pre-identified areas for each ship which, will vary according to the type of ship, the type of inspection and the findings of previous port State control inspections. The inspection database should indicate the elements to identify the risk areas to be checked at each inspection.

(18) Certain categories of ships present a major accident or pollution hazard when they reach a certain age and should therefore be subject to an expanded inspection. The details of such expanded *inspections* should be *specified.*

(19) Under the inspection regime set up by this Directive, the intervals between periodic inspections on ships depend on their risk profile *which* is determined by certain generic and historical parameters. For high-risk ships this interval should not exceed six months.

▌

(20) Some ships pose a manifest risk to maritime safety and the marine environment because of their poor condition, flag ▌and history. ***They should*** therefore ***be refused access to*** Community ports ***and anchorages, unless it can be demonstrated that they can be operated safely in Community waters. Guidelines should be established setting out the procedures applicable in the event of the imposition of such an access ban and of the lifting of the ban.*** In the interests of transparency, the list of ships refused access to ***Community ports and anchorages*** should be made public.

(21) With a view to reducing the burden placed on certain administrations and companies by repetitive inspections, surveys under Council Directive 1999/35/EC of 29 April 1999 on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services ([1]), carried out on ro-ro ferries or high-speed passenger craft by a host State which is not the flag State of the vessel, and which include at least all the items of an expanded inspection, should be taken into account when calculating the risk profile of a ship, the intervals between inspections and the fulfilment of the inspection commitment of each Member State. In addition, the Commission should examine whether it is appropriate that Directive 1999/35/EC be amended in the future with a view *to* enhancing the level of safety required for the operation of ro-ro ferries and high-speed passenger craft to and from ports of Member States.

([1]) OJ L 138, 1.6.1999, p. 1. ‖.

(22) Non-compliance with the provisions of the relevant Conventions should be rectified. Ships which need to be the subject of corrective action should, where the observed deficiencies are clearly hazardous to safety, health or the environment, be detained until the shortcomings are rectified.

(23) A right of appeal against detention orders by the competent authorities ***must*** be made available, in order to prevent unreasonable decisions which may cause undue detention and delay.

(24) Authorities and inspectors involved in port State control activities should have no conflict of interests with the port of inspection or with the ships inspected, or of related interests. Inspectors should be adequately qualified and receive appropriate training to maintain and improve their competence in the conduct of inspections. Member States should cooperate in developing and promoting a harmonised Community scheme for the training and assessment of competences of inspectors.

(25) Pilots and port authorities or bodies should be enabled to provide useful information on apparent anomalies found on board ships.

(26) Complaints ***from persons with a legitimate interest*** regarding on-board living and working conditions should be investigated. Any person lodging a complaint should be informed of the follow-up action given to that complaint.

(27) Cooperation between the competent authorities of Member States and other authorities or organisations is necessary *in order* to ensure an effective follow-up with regard to ships with deficiencies, which have been permitted to proceed, and for the exchange of information about ships in port.

(28) Since the inspection database is an essential part of port State control, Member States should ensure that it is updated in the light of Community requirements.

(29) Publication of information concerning ships and their operators or companies which do not comply with international standards on safety, health and protection of the marine environment may be an effective deterrent discouraging shippers from using such ships and an incentive to their owners to take corrective action. With regard to the information to be made available, the Commission should establish ‖ close collaboration with the Paris MOU and take account of any information published in order to avoid unnecessary duplication. Member States should have to provide the relevant information only once.

(30) All costs of inspecting, which warrant detention of ships, and those incurred in lifting a refusal of access, should be borne by the owner or the operator.

(31) 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]).

(32) In particular, the Commission should be empowered to amend this Directive in order to apply subsequent amendments to Conventions, international codes and resolutions related thereto and to establish the rules of implementation for the provisions of Articles 7 and 9. 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.

([1]) OJ L 184, 17.7.1999, p. 23. ‖.

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(33) Since the objectives of this Directive, namely to reduce substandard shipping in waters under Member States' jurisdiction through improvement of the Community's inspection system for seagoing ships and the development of the means of taking preventive action in the field of pollution of the seas, cannot be sufficiently achieved by Member States and may, therefore, on account of their scale and effects, be better achieved at Community level, the Community may take 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 to achieve those objectives.

(34) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with Directive 95/21/EC. The obligation to transpose the provisions which are unchanged arises under that Directive.

(35) This Directive should be without prejudice to the obligations of Member States relating to the time-limits for transposition into national law of the Directives set out in Annex XV, Part B.

(36) In accordance with point 34 of the Interinstitutional Agreement on better law-making [1], Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

(37) In order not to impose a disproportionate administrative burden on landlocked Member States, a de minimis rule should allow such Member States to derogate from the provisions of this Directive, which means that such Member States, as long as they meet certain criteria, are not obliged to transpose this Directive.

(38) In order to take into account the fact that the French overseas departments belong to a different geographical area, are to a large extent Parties to regional port State control memoranda other than the Paris MOU and have very limited traffic flows with mainland Europe, the Member State concerned should be allowed to exclude those ports from the port State control system applied within the Community,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Purpose

The purpose of this Directive is to help to drastically reduce substandard shipping in the waters under the jurisdiction of Member States by:

(a) increasing compliance with international and relevant Community legislation on maritime safety, maritime security, protection of the marine environment and on-board living and working conditions of ships of all flags;

(b) establishing common criteria for control of ships by the port State and harmonising procedures on inspection and detention, building upon the expertise and experience within the Paris MOU;

(c) implementing within the Community a port State control ***regime*** based on the inspections performed within the Community and the Paris MOU region, aiming at the inspection of all ships with *the* frequency depending on their risk profile, *whereby* ships posing a higher risk *shall be* subject to a more ***thorough*** inspection carried out at more frequent intervals.

[1] OJ C 321, 31.12.2003, p. 1.

Article 2

Definitions

For the purposes of this Directive the following definitions shall apply:

1) 'Conventions' means the following Conventions, with the Protocols and amendments thereto, and related codes of mandatory status, in their up-to-date version:

(a) the International Convention on Load Lines, 1966 (LL 66);

(b) the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74);

(c) the International Convention for the Prevention of Pollution from Ships, 1973, and the 1978 Protocol relating thereto (Marpol 73/78);

(d) the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW 78);

(e) the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (Colreg 72);

(f) the International Convention on Tonnage Measurement of Ships, 1969 (ITC 69);

(g) the Merchant Shipping (Minimum Standards) Convention, 1976 (ILO No 147);

(h) the International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC 92).

2) 'Paris MOU' means the Memorandum of Understanding on Port State Control, signed in Paris on 26 January 1982, in its up-to-date version.

3) 'Framework and procedures for the Voluntary IMO Member State Audit Scheme' means IMO Assembly Resolution A.974(24).

4) 'Paris MOU region' means the geographical area in which the States party to the Paris MOU conduct inspections in the context of the Paris MOU.

5) 'Port' means an area of land and water made up of such 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, and embarkation and disembarkation of passengers.

6) 'Ship' means any seagoing vessel to which one or more of the Conventions apply, flying a flag other than that of the port State.

7) 'Ship/port interface' means the interactions that occur when a ship is directly and immediately affected by actions involving the movement of persons or goods or the provision of port services to or from the ship.

8) 'Ship at anchor' means a ship in a port or another area within the jurisdiction of a port, but not at berth, carrying out a ship/port interface.

9) 'Inspector' means a public-sector employee or other person, duly authorised by the competent authority of a Member State to carry out port-State control inspections, and responsible to that competent authority.

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10) 'Competent authority' means a maritime authority responsible for port State control in accordance with this Directive.

11) 'Competent authority for maritime security' means a competent authority for maritime security as defined in *point 7 of Article 2*, of Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security ([1]).

▌

12) 'Initial inspection' means a visit on board a ship by an inspector, in order to check compliance with the relevant Conventions and regulations and including at least the checks required by *Article 13(1)*.

13) 'More detailed inspection' means an inspection where the ship, its equipment and crew as a whole or, as appropriate, parts thereof are subjected, in the circumstances specified in *Article 13(3)*, to an in-depth examination covering the ship's construction, equipment, manning, living and working conditions and compliance with on-board operational procedures.

14) 'Expanded inspection' means an inspection, which covers at least the items listed in Annex VII. An expanded inspection may include a more detailed inspection whenever there are clear grounds in accordance with *Article 13(3)*.

15) 'Complaint' means any information or report submitted by any ***natural or legal*** person with a legitimate interest in the safety of the ship, including an interest in safety or health hazards to its crew, on-board living and working conditions and the prevention of pollution.

16) 'Detention' means the formal prohibition for a ship to proceed to sea due to established deficiencies which, individually or together, make the ship unseaworthy.

17) 'Refusal of access order' means a decision issued to the master of a ship, to the company responsible for the ship and to the flag State notifying them that the ship will be refused access to ***all*** ports ***and anchorages*** of the Community.

18) 'Stoppage of an operation' means a formal prohibition for a ship to continue an operation due to established deficiencies which, individually or together, would render the continued operation hazardous.

19) 'Company' means the owner of the ship or any other organisation or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed by the International Safety Management (ISM) Code.

20) 'Recognised *organisation*'means a classification company or other private body, carrying out statutory tasks on behalf of a flag State administration.

21) 'Statutory certificate' means a certificate issued by or on behalf of a flag State in accordance with *the* Conventions.

22) 'Classification certificate' means a document confirming compliance with SOLAS 74, Chapter II-1, Part A-1, Regulation 3-1.

23) 'Inspection database' means the information system ***contributing to the implementation of*** the port State control ***regime*** within the Community and ***incorporating the data related to inspections carried out in*** the Paris MOU region.

24) '1996 Convention' shall mean the recapitulative text of the 1976 International Maritime Organisation Convention on Limitation of Responsibility for Maritime Claims, as amended by the 1996 protocol.

([1]) OJ L 129, 29.4.2004, p. 6.

Article 3

Scope

1. This Directive shall apply to any ship and its crew calling at a port ***or at an anchorage*** of a Member State to engage in a ship/port interface.

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France may decide that the ports covered by this paragraph do not include ports situated in the overseas departments referred to in Article 299(2) of the Treaty.

Where a Member State ***carries out*** an inspection ***on*** a ship in ***its territorial*** waters ***but outside*** a port, ***such a procedure*** shall be ***deemed to be*** an inspection for the purposes of this Directive.

Nothing in this Article shall affect the rights of intervention available to a Member State under the relevant ***international*** Conventions.

Member States ***without sea ports may derogate from the application of this Directive, under certain conditions. The Commission shall adopt, in accordance with the regulatory procedure with scrutiny referred to in Article 31(3), the measures for the implementation of this derogation mechanism***.

▌

2. Where the gross tonnage of a ship is less than 500, Member States shall apply those requirements of a relevant Convention which are applicable and shall, to the extent that a Convention does not apply, take such action as may be necessary to ensure that the ships concerned are not clearly hazardous to safety, health or the environment. In applying this paragraph, Member States shall be guided by Annex 1 to the Paris MOU.

3. When inspecting a ship flying the flag of a State which is not a party to *one of the Conventions*, Member States shall ensure that the treatment of *that* ship and its crew is not more favourable than that of a ship flying the flag of a State party to that Convention.

4. Fishing vessels, warships, naval auxiliaries, wooden ships of a primitive build, government ships used for non-commercial purposes and pleasure yachts not engaged in trade shall be excluded from the scope of this Directive.

Article 4

Inspection powers

1. Member States shall take all necessary measures, in order to be legally *in a position* to carry out the inspections referred to in this Directive on board foreign ships, in accordance with international law.

2. Member States shall maintain appropriate competent authorities, ***to which*** the requisite number of staff, in particular qualified inspectors, for the inspection of ships ***is assigned, including through recruitment***, and shall take appropriate measures to ensure that inspectors perform their duties as laid down in this Directive and in particular that they are available for carrying out the inspections required in accordance with this Directive.

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Article 5

Member States shall take the necessary measures to adapt their national law to the provisions on limitation of liability under the 1996 Convention.

The principle of compensation to third parties in respect of damage caused by waste falling under the 'polluter pays' principle enunciated in Directive 75/442/EEC and in Directive 2004/35/EC opens up the right to be compensated for the totality of the damage caused, including where there is not complete coverage and beyond the national provisions on incorporation of conventions.

Member States may maintain or introduce provisions that are stricter than those of this Article.

Article 6

Inspection regime and annual inspection commitment

1. Member States shall carry out inspections in accordance with the selection scheme described in *Article 12* and the provisions in Annex I.

2. In order to comply with its annual inspection commitment, each Member State shall

(a) inspect all Priority I ships, referred to in *Article 12(a)*, calling at its ports *or anchorages*, and

(b) carry out annually a total number of inspections of Priority I and Priority II ships, referred to in *Article 12*(a) and (b), corresponding at least to its share of the total number of inspections to be carried out annually within the Community and the Paris MOU region. The inspection share of each Member State shall be based on the number of individual ships calling at ports ***or anchorages*** of the Member State concerned in relation to the sum of the number of individual ships calling at the ports ***or anchorages*** of each State within the Community and the Paris MOU region.

3. With a view to calculating the share of the total number of inspections to be carried out annually within the Community and the Paris MOU region referred to in point (b) of paragraph 2, ships at anchor shall not be counted unless otherwise specified by the Member State concerned.

Article 7

▌Compliance with the *Community* inspection *regime*

In accordance with Article 5, each Member State shall:

(a) ***inspect all*** Priority I ships, ***as referred to in Article 12(a),*** calling at its ports ***and anchorages, and***

(b) ***carry out annually a*** total number of ***inspections on*** Priority I ***and Priority II*** ships***, as referred to in Article 12 (a) and (b), which correspond at least to its annual inspection commitment.***

▌

Article 8

Circumstances in which certain ships are not inspected

1. ***In the following circumstances***, a Member State may decide to postpone the inspection of a Priority I ship:

(i) if the inspection may be carried out at the next call of the ship in the same Member State, provided that the ship does not call at any other port ***or anchorage*** in the Community or the Paris MOU region in between and the postponement ***does not exceed*** 15 days, or

(ii) if the inspection may be carried out in another port of call within the Community or the Paris MOU region within 15 days, provided that the State in which *that* port of call is located has agreed ▌ to perform the inspection.

If an inspection is postponed, ***but not performed*** in accordance with ***points (i) and (ii)*** and ***not*** recorded in the inspection database, ***it*** shall be counted as a missed inspection against the Member State which postponed the inspection.

2. ***Under the following exceptional circumstances***, an inspection ▌ not performed on Priority I ships for operational reasons shall not be counted as a missed inspection, provided that the reason for missing the inspection is recorded in the inspection database, ***and if*** in the judgement of the competent authority the conduct of the inspection would create a risk to the safety of inspectors, the ship, its crew or to the port, or to the marine environment.

▌

3. If an inspection is not performed on a ship at anchor, it shall not be counted as a missed inspection ***provided that, if point (ii) applies, the reason for missing the inspection is recorded in the inspection database, and*** if:

(i) the ship is inspected in another port within the Community or the Paris MOU region in accordance with Annex I within 15 days, or

▌

(ii) in the judgement of the competent authority the conduct of the inspection would create a risk to the safety of inspectors, the ship, its crew or to the port, or to the marine environment ▌.

4. The measures designed to amend non-essential elements of this Directive, by supplementing it, relating to the rules for the implementation of this Article shall be adopted in accordance with the regulatory procedure with scrutiny referred to in *Article 31(3)*.

Article 9

Notification of arrival of ships

1. The operator, agent or master of a ship which, in accordance with *Article 14*, is eligible for an expanded inspection and bound for a port ***of call or anchorage*** of a Member State shall notify its arrival ***at the first port of call or anchorage*** *in the Community* in accordance with the provisions ***of*** Annex III.

2. On receipt of the notification referred to in paragraph 1 of this Article and in Article 4 of Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system [1], the port authority ***concerned*** shall ***transmit such information to the competent authority and to those of the ports of call or anchorages successively reached in the Community***.

3. Electronic means shall be used for ***the purposes of*** any communication provided for in this Article. ***Other means shall be used only when electronic means are not available.***

4. The procedures and formats developed by the Member States for the ***implementation*** of Annex III shall comply with ▌ Directive 2002/59/EC ▌.

[1] OJ L 208, 5.8.2002, p. 10.

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Article 10

Ship risk profile

1. All ships ***calling at a port or anchorage of a Member State shall***, in the inspection *database* be attributed a ship risk profile which determines their respective priority for inspection, the intervals between the inspections and the scope of inspections.

2. The risk profile of a ship shall be determined by a combination of generic and historical risk parameters as follows:

(a) Generic parameters

Generic parameters ***shall be*** based on the type, age, flag, ***recognised organisations involved*** and company performance in accordance with Annex I part I.1 and Annex II.

(b) *Historic* parameters

Historic parameters ***shall be*** based on the number of ***shortcomings*** and detentions during a given period, in accordance with Annex I part I.2 and Annex II.

3. ***The Commission shall adopt, in accordance with the regulatory procedure with scrutiny laid down in Article 31(3)***, the rules for the implementation of this Article, ***specifying*** in particular:

— ***the values attributed to each risk parameter,***

— ***the combination of risk parameters corresponding to each level of ship risk profile,***

— ***the conditions for implementing the flag State criteria referred to in Annex I part I.1 point (c) (iii) concerning the proof of compliance with the relevant instruments.***

I

Article 11

Frequency of inspections

‖ Ships calling at ***Community*** ports ***or anchorages*** shall be subject to periodic inspections or to additional inspections as follows:

(a) Ships shall be subject to periodic inspections at predetermined intervals depending on their risk profile in accordance with Annex I part I. The interval between periodic inspections of ***high risk*** ships shall ***not exceed six months***.

(b) Ships shall be subject to additional inspections regardless of the *period elapsed* since their last periodic inspection as follows:

— The competent authority shall ensure that ships to which overriding factors listed in Annex I part II 2A apply are inspected.

— Ships to which unexpected factors listed in Annex I part II 2B apply may be inspected. The decision to undertake such an additional inspection is left to the professional judgement of the competent authority.

Article 12

Selection of ships for inspection

The competent authority shall ensure that ships are selected for inspection on the basis of their risk profile as described in Annex I part I and when overriding or unexpected factors arise in accordance with Annex I part II 2A and 2B.

With a view to the inspection of ships, the competent authority:

(a) shall select ships which are due for a mandatory inspection, referred to as 'Priority I' ships, in accordance with the selection scheme described in Annex I part II 3A;

(b) may select ships which are eligible for inspection, referred to as 'Priority II' ships, in accordance with Annex I part II 3B.

Article 13

Initial and more detailed inspections

Member States shall ensure that ships which are selected for inspection in accordance with *Article 12* are subject to an initial inspection or a more detailed inspection as follows:

1. On each initial inspection of a ship, the competent authority shall ensure that the inspector, as a minimum:

   (a) checks the certificates and documents listed in Annex IV required to be kept on board in accordance with Community maritime legislation and Conventions relating to safety and security;

   (b) verifies, where appropriate, whether outstanding deficiencies found during the previous inspection carried out by a Member State or by a State signatory to the Paris MOU, have been rectified;

   (c) satisfies himself of the overall condition of the ship, including the hygiene of the ship, *and the* engine room and accommodation.

2. When, after an inspection referred to in paragraph 1, deficiencies to be rectified at the next port of call have been recorded in the inspection database, the competent authority of *that* next port may decide not to carry out the verifications referred to in paragraph 1(a) and (c).

3. A more detailed inspection shall be carried out, including further checking of compliance with on-board operational requirements, whenever there are clear grounds for believing, after the inspection referred to in paragraph 1, that the condition of a ship or of its equipment or crew does not substantially meet the relevant requirements of *one of the Conventions*.

'Clear grounds' shall exist when the inspector finds evidence which in his professional judgement warrants a more detailed inspection of the ship, its equipment or its crew.

Examples of 'clear grounds' are set out in Annex V.

Article 14

Expanded inspections

1. The following categories of ships are eligible *for* an expanded inspection in accordance with Annex I part II 3A and 3B:

— Ships with a high-risk profile,

— Passenger ships, oil tankers, gas or chemical tankers or bulk carriers, older than 12 years of age,

— Ships with a high-risk profile or passenger ships, oil tankers, gas or chemical tankers or bulk carriers, older than 12 years of age, *presenting* overriding or unexpected factors,

— Ships subject to a re-inspection following a refusal of access order issued in accordance with *Article 16*.

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2. ***The operator or master of the ship shall ensure that sufficient time is available in the operating schedule to allow the expanded inspection to be carried out.***

Without prejudice to control measures required for security purposes the ship shall remain in the port until the inspection is completed.

3. On receipt of a pre-notification provided by a ship eligible for a periodic expanded inspection, the competent authority shall inform the ship if no expanded inspection will be carried out.

4. The scope of an expanded inspection, including the risk areas to be covered, is set out in Annex VII. The Commission shall, in accordance with the procedures referred to in *Article 31(2)*, adopt measures for the implementation of Annex VII.

Article 15

Safety and security guidelines and procedures

1. Member States shall ensure that their inspectors follow the procedures and guidelines specified in Annex VI.

2. As far as security checks are concerned, Member States shall apply the relevant procedures set out in Annex VI of this Directive to all ships referred to in Articles 3(1), 3(2) and 3(3) of Regulation (EC) No 725/2004, calling at their ports, unless they fly the flag of the port State of inspection.

3. The provisions of *Article 14* of this Directive concerning expanded inspections shall apply to ro-ro ferries and high-speed passenger craft, referred to in Article 2(a) and (b) of Directive 1999/35/EC.

When a ship has been surveyed in accordance with Articles 6 and 8 of Directive 1999/35/EC by a host State which is not the flag State of the ship, *that* specific survey shall be recorded as a more detailed or *as* an expanded inspection, as relevant, in the inspection database and taken into account for the purposes of *Articles 10, 11 and 12* of this Directive and for calculating the fulfilment of the inspection commitment of each Member State in as much as all the items referred to in Annex VII are covered.

Without prejudice to a prevention of operation of a ro-ro ferry or a high-speed passenger craft decided in accordance with Article 10 of Directive 1999/35/EC, the provisions of this Directive concerning rectification of deficiencies, detention *and* refusal of access, follow-up to inspections, detentions and refusal of access, as appropriate, shall apply.

4. If necessary, the Commission may, in accordance with the procedure referred to in *Article 31(2)*, adopt the rules *necessary to ensure* harmonised implementation of paragraph 1 and 2 of this Article.

Article 16

Access refusal measures concerning certain ships

1. A Member State shall ensure that any ship ***meeting the criteria specified in this paragraph is refused access to its ports and anchorages, except in the situations described in Article 21(6) if the ship:***

— flies the flag of a State ***which appears on*** the black list ***or grey list as defined by*** the Paris MOU on the basis of information recorded in the inspection database and as published annually by the Commission, and

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— has been ***detained or*** issued with a prevention of operation order under Directive 1999/35/EC more than twice in the course of the preceding 36 months in a port of a Member State or of a State signatory of the Paris MOU.

For the purposes of this paragraph, the lists defined by the Paris MOU shall enter into force as from 1 July each year.

The refusal of access ***order*** shall ***be lifted only after a period of three months has passed from the date of issue of the order and when the conditions referred to in paragraphs 4 to 10 of Annex VIII are met***.

If the ship is subject to a second refusal of access, the period shall be increased to 12 months. Any subsequent detention in a Community port shall result in the ship being permanently refused access to any port or anchorage within the Community.

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2. For the purpose of this Article, Member States shall comply with the procedures laid down in Annex VIII.

Article 17

Report of inspection to the master

On completion of an inspection, a more detailed inspection or an expanded inspection, the inspector shall draw up a report in accordance with Annex IX. The ship's master shall be provided with a copy of the inspection report.

Article 18

Complaints

All complaints shall be subject to ***a rapid*** initial assessment ***by the competent authority. This assessment shall make it possible to determine whether a complaint is justified, concrete and manifestly grounded.***

Should that be the case, the competent authority shall take the necessary action on the complaint. It shall, in particular, ensure that the ship's master and owner, as well as anyone else directly concerned by the complaint, including the complainant, can make their views known.

Where the competent authority deems the complaint to be manifestly unfounded, it shall inform the complainant of its decision and of the reasons therefor.

The identity of the complainant shall not be revealed to the master or the shipowner of the ship concerned. The inspector shall ensure confidentiality during any interviews of crew members.

Member States shall inform the flag State administration, with a copy to the International Labour Organisation (ILO) if appropriate, of complaints *which are* not manifestly unfounded and of follow-up actions taken.

Article 19

Rectification and detention

1. The competent authority shall be satisfied that any deficiencies confirmed or revealed by the inspection are, or will be, rectified in accordance with the Conventions.

2. In the case of deficiencies which are clearly hazardous to safety, health or the environment, the competent authority of the port State where the ship is being inspected shall ensure that the ship is detained or that the operation in the course of which the deficiencies are revealed is stopped. The detention order or stoppage of an operation shall not be lifted until the hazard is removed or until such authority establishes that the ship can, subject to any necessary conditions, proceed to sea or the operation be resumed without risk to the safety and health of passengers or crew, or risk to other ships, or without there being an unreasonable threat of harm to the marine environment.

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3. When exercising his professional judgement as to whether or not a ship is to be detained, the inspector shall apply the criteria set out in Annex X.

4. If the inspection reveals that the ship is not equipped with a functioning voyage data recorder, when use of such *a* recorder is compulsory in accordance with Directive 2002/59/EC, the competent authority shall ensure that the ship is detained.

If *that* deficiency cannot be readily rectified in the port of detention, the competent authority may either allow the ship to proceed to the appropriate repair yard nearest to the port of detention where it may be readily rectified or require the deficiency to be rectified within a maximum period of 30 days, as provided for in the guidelines developed by the Paris MOU. For these purposes, the procedures laid down in *Article 21* shall apply.

5. In exceptional circumstances, where the overall condition of a ship is obviously substandard, the competent authority may suspend the inspection of that ship until the *parties* responsible‖ take the steps necessary to ensure that it complies with the relevant requirements of the Conventions.

6. In the event of detention, the competent authority shall immediately inform, in writing and including the *inspection* report ‖, the flag State administration or, when this is not possible, the Consul or, in his absence, the nearest diplomatic representative of that State, of all the circumstances in which intervention was deemed necessary. In addition, nominated surveyors or recognised organisations responsible for the issue of classification certificates or statutory certificates in accordance with *the* Conventions shall also be notified where relevant.

7. This Directive shall be without prejudice to the additional requirements of the Conventions concerning notification and reporting procedures related to port State control.

8. When port State control is exercised under this Directive, all possible efforts shall be made to avoid a ship being unduly detained or delayed. If a ship is unduly detained or delayed, the owner or operator shall be entitled to compensation for any loss or damage suffered. In any instance of alleged undue detention or delay the burden of proof shall lie with the owner or operator of the ship.

9. In order to alleviate port congestion, a competent authority may allow a detained ship to be moved to another part of the port if it is safe to do so. However, the risk of port congestion shall not be a consideration when deciding on a detention or on a release from detention.

The competent authority shall inform the port authorities or bodies at its earliest convenience when a detention order is issued.

Port authorities or bodies shall cooperate with the competent authority with a view to facilitating the accommodation of detained ships.

Article 20

Right of appeal

1. The owner or operator of a ship or his representative in the Member State shall have a right of appeal against detention or refusal of access by the competent authority. An appeal shall not cause the detention or refusal of access to be suspended.

2. Member States shall establish and maintain appropriate procedures for this purpose in accordance with their national legislation ***and shall cooperate in particular in order to ensure that appeals are dealt with in a reasonable time***.

3. The competent authority shall properly inform the master of a ship referred to in paragraph 1 of the right of appeal ***and the practical arrangements relating thereto***.

4. When, as a result of an appeal or of a request made by the owner or the operator of a ship or his representative, a detention order or a refusal of access order is revoked or amended:

(a) Member States shall ensure that the inspection database is amended accordingly without delay;

(b) the Member State where the detention order or refusal of access order is issued shall, within 24 hours of such a decision, ensure that the information published in accordance with *Article 26* is rectified.

Article 21

Follow-up to inspections and detentions

1. Where deficiencies referred to in *Article 19(2)* cannot be rectified in the port of inspection, the competent authority of that Member State may allow the ship concerned to proceed ***directly*** to the appropriate repair yard nearest to the port of detention where follow-up action can be taken, as chosen by the master and the authorities concerned, provided that the conditions determined by the competent authority of the flag State and agreed by that Member State are complied with. Such conditions shall ensure that the ship can proceed without risk to the safety and health of passengers or crew, or risk to other ships, or without there being an unreasonable threat of harm to the marine environment.

2. Where the decision to send a ship to a repair yard is due to a lack of compliance with IMO Resolution A. 744(18), *on Guidelines on the Enhanced Programme of Inspections during Surveys of Bulk Carriers and Oil Tankers*, either with respect to a ship's documentation or with respect to a ship's structural failures and deficiencies, the competent authority may require that the necessary thickness measurements be *ensured* in the port of detention before the ship is allowed to sail.

3. In the circumstances referred to in paragraph 1, the competent authority of the Member State in the port of inspection shall notify the competent authority of the State where the repair yard is situated, the parties mentioned in *Article 19(6)* and any other authority as appropriate of all the conditions for the voyage.

The competent authority of a Member State receiving *that* notification shall inform the notifying authority of the action taken.

4. Member States shall take measures to ensure that access to any port ***or anchorage*** within the Community is refused to ships referred to in paragraph 1 which proceed to sea:

(a) without complying with the conditions determined by the competent authority of any Member State in the port of inspection; or

(b) which refuse to comply with the applicable requirements of the Conventions by not calling into the ‖repair yard *indicated*.

Such refusal shall be maintained until the owner or operator provides evidence to the satisfaction of the competent authority of the Member State where the ship was found defective, demonstrating that the ship fully complies with all applicable requirements of the Conventions.

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5. In the circumstances referred to in paragraph 4(a), the competent authority of the Member State where the ship was found *to be* defective shall immediately alert the competent authorities of all the other Member States.

In the circumstances referred to in paragraph 4(b), the competent authority of the Member State in which the repair yard lies shall immediately alert the competent authorities of all the other Member States.

Before denying entry, the Member State may request consultations with the flag administration of the ship concerned.

6. By way of derogation from ***the provisions of*** paragraph 4, access to a specific port ***or anchorage*** may be permitted by the relevant authority of that port State in the event of force majeure or overriding safety considerations, or to reduce or minimise the risk of pollution or to have deficiencies rectified, provided that adequate measures to the satisfaction of the competent authority of such Member State ***have been*** implemented by the owner, the operator or the master of the ship to ensure safe entry.

Article 22

Professional profile of inspectors

1. Inspections shall be carried out only by inspectors who fulfil the qualification criteria specified in Annex XI and who are authorised to carry out port State control by the competent authority.

2. When the required professional expertise cannot be provided by the competent authority of the port State, the inspector of that competent authority may be assisted by any person with the required expertise.

3. The competent authority, the inspectors carrying out port State control and the persons assisting them shall have no commercial interest either in the port of inspection or in the ships inspected, nor shall the inspectors be employed by, or undertake work on behalf of, non-governmental organisations which issue statutory and classification certificates or which carry out the surveys necessary for the issue of those certificates to ships.

4. Each inspector shall carry a personal document in the form of an identity card issued by his competent authority in accordance with Commission Directive 96/40/EC of 25 June 1996 establishing a common model for an identity card for inspectors carrying out port State control ([1]).

5. Member States shall ensure that the competence of inspectors and their compliance with the minimum criteria referred to in Annex XI are verified, before authorising them to carry out inspections and periodically thereafter in the light of the training scheme referred to in paragraph 7.

6. Member States shall ensure that inspectors receive appropriate training in relation to changes to the port State control regime ***applied in the Community*** as laid down in this Directive and amendments to the Conventions.

7. In cooperation with Member States, the Commission shall develop and promote a harmonised Community scheme for the training and assessment of competences of port State control inspectors by Member States.

([1]) OJ L 196, 7.8.1996, p. 8.

Article 23

Reports from pilots and port authorities

1. Member States shall take appropriate measures to ensure that their pilots engaged on the berthing or unberthing of ships or engaged on ships bound for a port or in transit within a Member State immediately inform the competent authority of the port State or the coastal State, as appropriate, whenever they learn in the course of their normal duties that there are apparent anomalies which may prejudice the safe navigation of the ship, or which may pose a threat of harm to the marine environment.

2. If port authorities or bodies, in the course of their normal duties, learn that a ship within their port has apparent anomalies which may prejudice the safety of the ship or poses an unreasonable threat of harm to the marine environment, such authority or body shall immediately inform the competent authority of the port State concerned.

3. Member States shall require pilots and port authorities or bodies to report at least the following information, in electronic format whenever possible:

— ship information (name, IMO identification number, Call Sign and flag),

— sailing information (last port of call, port of destination),

— description of apparent anomalies found on board.

4. Member States shall ensure that proper follow-up action is taken on apparent anomalies notified by pilots and port authorities or bodies and shall record the details of action taken.

5. The Commission may, in accordance with the regulatory procedure referred to in *Article 31(2)*, adopt measures for the implementation of this Article, including a harmonised electronic format and procedures for the reporting of apparent anomalies by pilots and port authorities or bodies and of follow-up action taken by Member States.

Article 24

Inspection database

1. The Commission shall develop, maintain and update the inspection database, building upon the expertise and experience of the Paris MOU.

The inspection database shall contain all the information required for the implementation of the inspection system set up under this Directive and shall include the functionalities set out in Annex XII.

2. Member States shall take the appropriate measures to ensure that the information on the actual time of arrival and the actual time of departure of any ship calling at its ports is transferred to the inspection database through the national maritime information management systems referred to in Article 25(4) of Directive 2002/59/EC within one hour of the ship's arrival and within three hours of its departure respectively.

3. Member States shall ensure that the information related to inspections performed in accordance with this Directive is transferred to the inspection database as soon as the inspection report is completed or the detention lifted.

Within 72 hours, Member States shall ensure that the information transferred to the inspection database is validated for publication purposes.

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4. On the basis of the inspection data provided by Member States, the Commission shall be able to retrieve from the inspection database any relevant data concerning the implementation of this Directive, in particular on the risk profile of the ship, on ships' due for inspections, on ships' movement data and on the inspection commitments of each Member State.

Member States shall have access to all the information recorded in the inspection database which is relevant for implementing the inspection procedures of this Directive.

Member States and third States Parties to the Paris MOU shall be granted access to any data they have recorded in the inspection database and to data on ships flying their flag.

Article 25

Exchange of information and cooperation

Each Member State shall ensure that its port authorities or bodies and other relevant authorities or bodies provide the competent port State control authority with the following types of information in their possession:

— information notified in accordance with *Article 9* and Annex III,

— information concerning ships which have failed to notify any information according to the requirements of this Directive, and to Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues [1] and Directive 2002/59/EC, as well as, if appropriate, with Regulation (EC) No 725/2004,

— information concerning ships which have proceeded to sea without having complied with Article 7 or 10 of Directive 2000/59/EC,

— information concerning ships which have been denied entry or expelled from port on security grounds,

— information on apparent anomalies in accordance with *Article 23*.

Article 26

Publication of information

The Commission shall make available and maintain on a public website the information on inspections, detentions and refusals of access in accordance with Annex XIII, building upon the expertise and experience *under* the Paris MOU.

Article 27

Publication of a list of companies with a low and very low performance

The Commission shall establish and publish regularly on a public website information relating to companies whose performance, in view of determining the ship-risk profile referred to in Annex I part I, has been considered as low and very low for a period of three months or more.

The Commission shall adopt, in accordance with the regulatory procedure referred to in Article *31(2)*, the rules for the implementation of this Article, ***ensuring that they take account of companies' fleet size and*** specifying in particular the modalities of the publication.

[1] OJ L 332, 28.12.2000, p. 81. ‖.

Article 28

Reimbursement of costs

1. Should the inspections referred to in *Articles 13 and 14* confirm or reveal deficiencies in relation to the requirements of a Convention warranting the detention of a ship, all costs relating to the inspections in any normal accounting period shall be covered by the shipowner or the operator or by his representative in the port State.

2. All costs relating to inspections carried out by the competent authority of a Member State under the provisions of *Articles 16 and 21(4)* shall be charged to the owner or operator of the ship.

3. In the case of detention of a ship, all costs relating to the detention in port shall be borne by the owner or operator of the ship.

4. The detention shall not be lifted until full payment is made or a sufficient guarantee is given for reimbursement of *those* costs.

Article 29

Data to monitor implementation

Member States shall provide the Commission with the information listed in Annex XIV at the intervals stated in that Annex.

Article 30

Monitoring of compliance and performance of Member States

In order to ensure the effective implementation of this Directive and to monitor the overall functioning of the Community's port State control regime in accordance with Article 2(b)(i) of Regulation (EC) No 1406/2002, the Commission shall collect the necessary information and carry out visits to Member States.

Article 31

Committee procedure

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) created by Article 3 of Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 ([1]).

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.

([1]) OJ L 324, 29.11.2002, p. 1. ‖.

Article 32

Amendment procedure

The Commission shall:

(a) adapt the Annexes, except Annex I, in order to take into account amendments to Community legislation on maritime safety and security which have entered into force, and the Conventions, international codes and resolutions of relevant international organisations and developments in the Paris MOU;

(b) amend the definitions referring to Conventions, international codes and resolutions and Community legislation which are relevant for the purposes of this Directive.

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 31(3)*.

The amendments to the international instruments referred to in Article 2 may be excluded from the scope of this Directive, pursuant to Article 5 of Regulation (EC) No 2099/2002.

Article 33

Implementing rules

When establishing the implementing rules referred to in *Articles 8(4), 10(3), 14(3), 15(4), 23(5) and 27* in accordance with the procedures referred to in *Article 31(2)* and (3), the Commission shall take specific care that these rules take into account the expertise and the experience gained with the inspection system in the Community and *in* the Paris MOU.

Article 34

Penalties

Member States shall lay down a system of penalties for the breach of national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that those penalties are applied. The penalties provided for shall be effective, proportionate and dissuasive.

Article 35

Review

The Commission shall review the implementation of this Directive, ***in particular with a view to a uniform application of the Community inspection regime***, no later than 18 months from … [1]. The review will examine, inter alia, the fulfilment of the overall Community inspection commitment laid down in *Article 6*, the number of port State control inspectors in each Member State, the number of inspections carried out, and the compliance with the annual inspection commitment by each Member State and the implementation of *Articles 7 and 8*.

The Commission shall communicate the findings of the review to the European Parliament and the Council and shall determine on the basis of the review whether it is necessary to propose an amending Directive or further legislation in this area.

[1] The date referred to in *Article 36(1)*.

Article 36

Implementation and notification

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with ***Articles … and points … of Annexes … [articles or subdivisions thereof, and points of Annexes which have been changed as to their substance by comparison with the earlier Directive] not later than 18 months after the date fixed in Article 38. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.***

2. When Member States adopt those measures, 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.

3. Member States shall communicate to the Commission the text of the main provisions of national law adopted in the field covered by this Directive.

4. In addition, the Commission shall inform the European Parliament and the Council on a regular basis of progress in the implementation of this Directive within the Member States.

Article 37

Repeal

Directive 95/21/EC, as amended by the Directives listed in Annex XV, Part A, is hereby repealed, with effect from … ([1]), without prejudice to the obligations of Member States relating to the time-limits for transposition into national law of the Directives set out in Annex XV, 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 set out in Annex XVI.

Article 38

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.

Articles … and points … of annexes … [articles or subdivisions thereof, and points of annexes which are unchanged by comparison with the earlier Directive] shall apply from … ([2]).

([1]) OJ: date of entry into force of this Directive.
([2]) ***Date of entry into force of this Directive.***

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Article 39

Addressees

This Directive is addressed to the Member States.

Done at …, on …

For the European Parliament
The President

For the Council
The President

ANNEX I

ELEMENTS OF THE COMMUNITY PORT STATE INSPECTION REGIME

(referred to in *Article 6*)

The following elements shall be included in the Community Port State Inspection Regime:

I. Ship risk profile

The risk profile of a ship shall be determined by a combination of the following generic and historical parameters:

1. Generic parameters

(a) Type of ship

Passenger ships, oil and chemical tankers, gas carriers and bulk carriers shall be considered as posing a higher risk.

(b) Age of ship

Ships of more than *12* years old shall be considered as posing a higher risk.

(c) Flag State performance

(i) Ships flying the flag of a State with a high detention rate within the EU and Paris MOU region shall be considered as posing a higher risk.

(ii) Ships flying the flag of a State with a low detention rate within the EU and Paris MOU region shall be considered as posing a lower risk.

(iii) Ships flying the flag of a State for which an audit has been completed and, where relevant, a corrective action plan submitted, both in accordance with the Framework and procedures for the Voluntary IMO Member State Audit Scheme shall be considered as posing a lower risk. As soon as the measures referred to in Article *10*(3) are adopted, the flag State of such a ship shall demonstrate compliance with the Code for the implementation of mandatory IMO instruments.

(d) Recognised organisations

(i) Ships which have been *issued with* certificates *by* recognised organisations having a low or very low performance level in relation *to* their detention rates within the EU and the Paris MOU region shall be considered as posing a higher risk.

(ii) Ships which have been *issued with* certificates *by* recognised organisations having a high performance level in relation *to* their detention rates within the EU and the Paris MOU region shall be considered as posing a lower risk.

(iii) Ships with certificates issued by organisations recognised under the terms of Directive 94/57/EC shall be considered as posing a lower risk.

(e) Company performance

(i) Ships of a company with a low or very low performance as determined by its ships' deficiency and detention rates within the *EU* and the Paris MOU region shall be considered as posing a higher risk.

(ii) Ships of a company with a high performance as determined by its ships' deficiency and detention rates within the *EU* and the Paris MOU region shall be considered as posing a lower risk.

2. Historical parameters

(i) Ships which have been detained more than once shall be considered as posing a higher risk.

(ii) Ships which, during inspection(s) carried out within the period referred to in Annex II have had less than the number of deficiencies referred to in Annex II, shall be considered as posing a lower risk.

(iii) Ships which have not been detained during the period referred to in Annex II, shall be considered as posing a lower risk.

The risk parameters shall be combined by using a weighting which reflects the relative influence of each parameter on the overall risk of the ship in order to determine the following ship risk profiles:

— high risk,

— standard risk,

— low risk.

In determining these risk profiles greater emphasis shall be given to the parameters for type of ship, flag State performance, recognised organisations and company performance.

II. Inspection of ships

1. Periodic inspections

Periodic inspections shall be carried out at predetermined intervals. Their frequency shall be determined by the ship risk profile. The interval between periodic inspections of high risk ships shall not exceed *six* months. The interval between periodic inspections of ships of other risk profiles shall increase as the risk decreases.

Member States shall carry out a periodic inspection on:

— Any ship with a high risk profile which has not been inspected in a port of the *EU* or of the Paris MOU region during the last six months. High risk ships become eligible for inspection as from the fifth month.

— Any ship with a standard risk profile which has not been inspected in a port of the *EU* or of the Paris MOU region during the last 12 months. Standard risk ships become eligible for inspection as from the 10th month.

— Any ship with a low risk profile which has not been inspected in a port of the EU or of the Paris MOU region during the last ***30 months***. Low risk ships become eligible for inspection as from the 24th month.

2. Additional inspections

Ships, to which the following overriding or unexpected factors apply, are subject to an inspection regardless of the period since their last periodic inspection. However, the need to undertake an additional inspection on the basis of unexpected factors is left to the professional judgement of the inspector.

2A. Overriding factors

Ships to which the following overriding factors apply shall be inspected regardless of the period since their last periodic inspection:

— Ships which have been suspended or withdrawn from their class for safety reasons since the last inspection in the European Union or in the Paris MOU region.

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— Ships which have been the subject of a report or notification by another Member State.

— Ships which cannot be identified in the inspection database.

— ***Ships which have failed to comply with the relevant notification requirements referred to in Article 9 of this Directive, in Directive 2000/59/EC, Directive 2002/59/EC and if appropriate in Regulation (EC) No 725/2004.***

— ***Ships which have been reported with outstanding deficiencies, except those for which deficiencies had to be rectified before departure.***

— Ships which:

  — have been involved in a collision, grounding or stranding on their way to ‖ port;

  — have been accused of an alleged violation of the provisions on discharge of harmful substances or effluents, or

  — have manoeuvred in an erratic or unsafe manner whereby routing measures, adopted by the IMO, or safe navigation practices and procedures have not been followed.

2B. Unexpected factors

Ships to which the following unexpected factors apply may be subject to inspection regardless of the period since their last periodic inspection. The decision to undertake such an additional inspection is left to the professional judgement of the competent authority.

— Ships which have:

  — been operated in such a manner as to pose a danger to persons, property or the environment, or

  — not complied with the recommendation on navigation through the entrances to the Baltic Sea as *set out* in the Annexes to Resolution MSC.138(76) of the IMO.

— Ships carrying certificates issued by a formerly recognised organisation whose recognition has been withdrawn since the last inspection in the European Union or in the Paris MOU region.

— Ships which have been reported by pilots or port authorities or bodies as having apparent anomalies which may prejudice their safe navigation or pose a threat of harm to the environment in accordance with *Article 23* of this Directive.

— Ships which have failed to comply with the relevant notification requirements referred to in *Article 9* of this Directive, in Directive 2000/59/EC, Directive 2002/59/EC and if appropriate in Regulation (EC) No 725/2004.

— Ships which have been the subject of a report or complaint by the master, a crew member, or any person or organisation with a legitimate interest in the safe operation of the ship, on-board living and working conditions or the prevention of pollution, unless the Member State concerned deems the report or complaint to be manifestly unfounded.

— Ships which have been previously detained more than three months ago.

— Ships which have been reported with outstanding deficiencies, except those for which deficiencies had to be rectified within 14 days after departure, and for deficiencies which had to be rectified before departure.

— Ships which have been reported with problems concerning their cargo, in particular noxious and dangerous cargoes.

— Ships which have been operated in a manner posing a danger to persons, property or the environment.

— Ships where information from a reliable source became known, to the effect that their risk parameters differ from those recorded and the risk level is thereby increased.

3. Selection scheme

3A. Priority I ships shall be inspected as follows:

(a) An expanded inspection shall be carried out on:

— any ship with a high risk profile not inspected in the last six months,

— any passenger ship, oil tanker, gas or chemical tanker or bulk carrier, older than 12 years of age, with a standard risk profile not inspected in the last 12 months.

(b) An initial or a more detailed inspection, as appropriate, shall be carried out on:

— Any ship other than a passenger ship, an oil tanker, a gas or chemical tanker or a bulk carrier, older than 12 years of age, with a standard risk profile not inspected in the last 12 months.

(c) In case of an overriding factor:

— A more detailed or an expanded inspection, according to the professional judgement of the inspector, shall be carried out on any ship with a high risk profile and on any passenger ship, oil tanker, gas or chemical tanker or bulk carrier, older than 12 years of age.

— A more detailed inspection shall be carried out on any ship other than a passenger ship, an oil tanker, a gas or chemical tanker or a bulk carrier, older than 12 years of age.

3B. ***If the competent authority selects a Priority II ship for inspection, the following selection scheme shall apply***:

(a) An expanded inspection ***shall*** be carried out on:

— any ship with a high risk profile not inspected in the last five months,

— any passenger ship, oil tanker, gas or chemical tanker or bulk carrier, older than 12 years of age, with a standard risk profile not inspected in the last 10 months, or

— any passenger ship, oil tanker, gas or chemical tanker or bulk carrier, older than 12 years of age, with a low risk profile not inspected in the last 24 months.

(b) An initial or a more detailed inspection, as appropriate, ***shall*** be carried out on:

— any ship other than a passenger ship, an oil tanker, a gas or chemical tanker or a bulk carrier, older than 12 years of age, with a standard risk profile not inspected in the last 10 months, or

— any ship other than a passenger ship, an oil tanker, a gas or chemical tanker or a bulk carrier, older than 12 years of age, with a low risk profile not inspected in the last 24 months.

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(c) In case of an unexpected factor:

— a more detailed or an expanded inspection according to the professional judgement of the inspector, ***shall*** be carried out on any ship with a high risk profile or any passenger ship, oil tanker, gas or chemical tanker or bulk carrier, older than 12 years of age,

— a more detailed inspection ***shall*** be carried out on any ship other than a passenger ship, an oil tanker, a gas or chemical tanker or a bulk carrier, older than 12 years of age.

ANNEX II

DESIGN OF SHIP RISK PROFILE

(referred to in Article 10(2))

				Profile			
				High Risk Ship (HRS)		Standard Risk Ship (SRS)	Low Risk Ship (LRS)
Generic Parameters				Criteria	Weighting points	Criteria	Criteria
1	Type of ship			Chemical tank-ship Gas Carrier Oil tankship Bulk carrier Passenger ship	2	neither a high risk nor a low risk ship	All types
2	Age of ship			all types > 12 y	1		All ages
3a	Flag	BGW-list		Black — VHR, HR, M to HR	2		White
				Black — MR	1		
3b		IMO-Audit		—	—		Yes
4a	Recognised Organisation	Performance	H	—	—		High
			M	—	—		—
			L	Low	1		—
			VL	Very Low			—
4b		EU recognised		—	—		Yes
5	Company	Performance	H	—	—		High
			M	—	—		—
			L	Low	2		—
			VL	Very low			—
Historical parameters							
6	Number of def. recorded in each insp. within previous 36 months		Deficiencies	Not eligible	—		< 5 (and at least one inspection carried out in previous 36 months)
7	Number of Detention within previous 36 months		Detentions	> 2 detentions	1		No detention

HRS are ships which meet criteria to a total value of 5 or more weighting points.

LRS are ships which meet all the criteria of the Low Risk Parameters.

SRS are ships which are neither HRS nor LRS.

ANNEX III

NOTIFICATION

(referred *to* in *Article 9(1)*)

Information to be provided in accordance with *Article 9(1)*:

The information listed below shall be submitted to the port authority or body or to the authority or body designated for that purpose at least three days before the expected time of arrival in the port ***or anchorage*** or before leaving the previous port if the voyage is expected to take fewer than three days:

(a) ship identification (name, call sign, IMO identification number or MMSI number);

(b) planned duration of the call ***and list of Community ports successively visited on the same voyage***;

(c) for tankers:

(i) configuration: single hull, single hull with SBT, double hull;

(ii) condition of the cargo and ballast tanks: full, empty, inerted;

(iii) volume and nature of the cargo;

(d) planned operations at the port ***or anchorage*** of destination (loading, unloading, other);

(e) ports of call or anchorages in the Community successively reached during the same voyage;

(*f*) planned statutory survey inspections and substantial maintenance and repair work to be carried out whilst in the port ***or anchorage*** of destination;

(*g*) date of last expanded inspection in the Paris MOU.

ANNEX IV

LIST OF CERTIFICATES AND DOCUMENTS

(referred to in *Article 13(1)*)

1. International Tonnage Certificate (1969).

2. — Passenger Ship Safety Certificate,

— Cargo Ship Safety Construction Certificate,

— Cargo Ship Safety Equipment Certificate,

— Cargo Ship Safety Radio Certificate,

— Exemption certificate, including, where appropriate, the list of cargoes,

— Cargo Ship Safety Certificate.

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3. International Ship Security Certificate (ISSC).

4. Continuous Synopsis Record.

5. International Certificate of Fitness for Carriage of Liquefied Gases in Bulk;

   Certificate of Fitness for the Carriage of Liquefied Gases in Bulk.

6. International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk;

   Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk.

7. International Oil Pollution Prevention Certificate.

8. International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk.

9. International Load Line Certificate (1966);

   International Load Line Exemption Certificate.

10. Oil record book, parts I and II.

11. Cargo record book.

12. Minimum Safe Manning Document.

13. Certificates or any other documents required in accordance with the provisions of the STCW Convention.

14. Medical certificates, (see ILO Convention No 73 concerning Medical Examination of Seafarers).

15. Table of shipboard working arrangements (ILO Convention No.180 and STCW 95).

16. Records of hours of work and rest of seafarers (ILO Convention No.180).

17. Stability information.

18. Copy of the Document of Compliance and the Safety Management Certificate issued, in accordance with the International Management Code for the Safe Operation of Ships and for Pollution Prevention (SOLAS 74, Chapter IX).

19. Certificates as to the ship's hull strength and machinery installations issued by the recognised organisation in question (only to be required if the ship maintains its class with a recognised organisation).

20. Document of compliance with the special requirements for ships carrying dangerous goods.

21. High speed craft safety certificate and permit to operate high speed craft.

22. Dangerous goods special list or manifest, or detailed stowage plan.

23. Ship's log book with respect to the records of tests and drills, including security drills, and the log for records of inspection and maintenance of lifesaving appliances and arrangements and of fire fighting appliances and arrangements.

24. Special purpose ship safety certificate.

25. Mobile offshore drilling unit safety certificate.

26. For oil tankers, the record of oil discharge monitoring and control system for the last ballast voyage.

27. The muster list, fire control plan, and for passenger ships, a damage control plan.

28. Shipboard oil pollution emergency plan.

29. Survey report files (in case of bulk carriers and oil tankers).

30. Reports of previous port State control inspections.

31. For ro-ro passenger ships, information on the A/A-maximum ratio.

32. Document of authorisation for the carriage of grain.

33. Cargo securing manual.

34. Garbage management plan and garbage record book.

35. Decision support system for masters of passenger ships.

36. SAR cooperation plan for passenger ships trading on fixed routes.

37. List of operational limitations for passenger ships.

38. Bulk carrier booklet.

39. Loading and unloading plan for bulk carriers.

40. Certificate of insurance or any other financial security in respect of civil liability for oil pollution damage (International Convention on Civil Liability for Oil Pollution Damage, 1992).

41. Certificates required under Directive 2008/XX/EC of the European Parliament and of the Council of … concerning civil liability and financial guarantees of shipowners.

42. Certificates required under Directive 2008/XX/EC of the European Parliament and the Council of … [amending Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system and a regime for civil liability and financial guarantees for shipowners].

43. Certificate required under Regulation (EC) No XXXX/2008 on the liability of carriers of passengers by sea and inland waterways in the event of accidents ([1]).

44. International Air Pollution Prevention Certificate.

45. International Sewage Pollution Prevention Certificate.

([1]) Inclusion of items 41 ‖, 42. *and 43.* pending the adoption of respective legislation contained in the Third Maritime Package.

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ANNEX V

EXAMPLES OF 'CLEAR GROUNDS'

(referred to in *Article 13(3)*

A. Examples of clear grounds for a more detailed inspection

1. Ships identified in Annex I part II 2A and 2B.

2. The oil record book has not been properly kept.

3. During examination of the certificates and other documentation, inaccuracies have been revealed.

4. Indications that the crew members are unable to comply with the requirements related to on-board communication set out in Article 17 of Directive 2001/25/EC of the European Parliament and of the Council of 4 April 2001 on the minimum level of training of seafarers [1].

5. A certificate has been fraudulently obtained or the holder of a certificate is not the person to whom that certificate was originally issued.

6. The ship has a master, officer or rating holding a certificate issued by a country which has not ratified the STCW Convention.

7. Evidence of cargo and other operations not being conducted safely, or in accordance with IMO guidelines, e.g. the content of oxygen in the inert-gas main supply to the cargo tanks is above the prescribed maximum level.

8. Failure of the master on an oil tanker to produce the record of the oil discharge monitoring and control system for the last ballast voyage.

9. Absence of an up-to-date muster list, or crew members not aware of their duties in the event of fire or an order to abandon the ship.

10. The emission of false distress alerts not followed by proper cancellation procedures.

11. The absence of principal equipment or arrangements required by the Conventions.

12. Excessively unsanitary conditions on board the ship.

13. Evidence from the inspector's general impression and observations that serious hull or structural deterioration or deficiencies exist that may place at risk the structural, watertight or weathertight integrity of the ship.

14. Information or evidence that the master or crew is not familiar with essential shipboard operations relating to the safety of ships or the prevention of pollution, or that such operations have not been carried out.

15. The absence of a table of shipboard working arrangements or of records of hours of work or rest of seafarers.

B. Examples of clear grounds for the control of ships on security aspects

1. The inspector may establish clear grounds for further control measures on security during the initial PSC inspection as follows:

1.1. ISSC is not valid or it has expired.

1.2. The ship is at a lower security level than the port.

[1] OJ L 136, 18.5.2001, p. 17. ‖.

1.3. Drills related to the security of the ship have not been carried out.

1.4. Records for the last 10 ship/port or ship/ship interfaces are incomplete.

1.5. Evidence or observation that key members of ship's personnel cannot communicate with each other.

1.6. Evidence from observations that serious deficiencies exist in security arrangements.

1.7. Information from third parties such as a report or a complaint concerning security-related information.

1.8. The ship holds a subsequent, consecutively issued Interim ‖ISSC‖ and in the professional judgement of the inspector one of the purposes of the ship or company in requesting such a certificate is to avoid full compliance with SOLAS 74 Chapter XI-2 and part A of the ISPS Code, beyond the period of the initial Interim Certificate. ISPS Code Part A specify the circumstances when an Interim Certificate may be issued.

2. If clear grounds as described above are established, the inspector shall immediately inform the competent security authority (unless the inspector is also *an* Officer Duly Authorised for Security). The competent security authority shall then decide on what further control measures are necessary taking into account the security level in accordance with Regulation 9 of SOLAS 74, Chapter XI.

3. Clear grounds other than those above are a matter for the Officer Duly Authorised for Security.

ANNEX VI

PROCEDURES FOR THE CONTROL OF SHIPS

(referred to in *Article 15(1)*)

Annex I, 'Port State Control Procedures', to the Paris MOU and the following instructions from the Paris MOU, in their up-to-date version:

— Instruction 33/2000/02: Operational Control on Ferries and Passenger Ships,

— Instruction 35/2002/02: Guidelines for PSCOs on Electronic Charts,

— Instruction 36/2003/08: Guidance for Inspection on Working and Living Conditions,

— Instruction 37/2004/02: Guidelines in Compliance with STCW 78/95 Convention as Amended,

— Instruction 37/2004/05: Guidelines on the Inspection of Hours of Work/Rest,

— Instruction 37/2004/10: Guidelines for Port State Control Officers on Security Aspects,

— Instruction 38/2005/02: Guidelines for PSCO's Checking a Voyage Data Recorder (VDR),

— Instruction 38/2005/05: Guidelines on Marpol 73/78 Annex I,

— Instruction 38/2005/07: Guidelines on Control of the Condition Assessment Scheme (CAS) of Single Hull Oil Tankers,

— Instruction 39/2006/01: Guidelines for the Port State Control Officer on the ISM-Code,

— Instruction 39/2006/02: Guidelines for Port State Control Officers on Control of GMDSS,

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— Instruction 39/2006/03: Optimisation of Banning and Notification Checklist,

— Instruction 39/2006/10: Guidelines for PSCOs for the Examination of Ballast Tanks and Main Power Failure Simulation (black-out test),

— Instruction 39/2006/11: Guidance for Checking the Structure of Bulk Carriers,

— Instruction 39/2006/12: Code of Good Practice for Port State Control Officers,

— Instruction 40/2007/04: Criteria for Responsibility Assessment of Recognised Organisations (R/O),

— Instruction 40/2007/09: Guidelines for Port State Control Inspections for Compliance with Annex VI of Marpol 73/78.

ANNEX VII

EXPANDED INSPECTIONS OF SHIPS

(referred to in *Article 14*)

An expanded inspection concerns in particular the overall condition of the following risk areas:

— Documentation.

— Structural condition.

— Weathertight condition.

— Emergency systems.

— Radio communication.

— Cargo operations.

— Fire safety.

— Alarms.

— Living and working conditions.

— Navigation equipment.

— Life saving appliances.

— Dangerous Goods.

— Propulsion and auxiliary machinery.

— Pollution prevention.

In addition, subject to their practical feasibility or any constraints relating to the safety of persons, the ship or the port, an expanded inspection shall include the verification of specific items of risk areas depending on the type of vessel inspected, as established in accordance with *Article 14(3)*.

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ANNEX VIII

PROVISIONS CONCERNING REFUSAL OF ACCESS TO PORTS *AND ANCHORAGES* WITHIN THE COMMUNITY

(referred to in *Article 16*)

1. If the conditions described in Article *16*(1) are met, the competent authority of the port in which the ship is detained for the third time shall inform the master of the ship in writing that a refusal of access order will be issued which will become applicable immediately after the ship has left the port. The refusal of access order shall become applicable immediately after the ship has left the port after the deficiencies leading to the detention have been remedied.

2. The competent authority shall send a copy of the order of refusal of access to the flag State administration, the recognised organisation concerned, the other Member States, and the other signatories to the MOU, the Commission and the Paris MOU Secretariat. The competent authority shall also update the inspection database with information on the refusal of access without delay.

3. In order to have the access refusal order lifted, the owner or the operator must address a formal request to the competent authority of the Member State that imposed the access refusal order. This request must be accompanied by a document from the flag State administration issued following an on-board visit by a surveyor duly authorised by the flag State administration, showing that the ship fully conforms to the applicable provisions of the Conventions. The flag State administration shall provide evidence to the competent authority that a visit on board has taken place.

4. The request for the lifting of the access refusal order must also be accompanied, where appropriate, by a document from the classification society which has the ship in class following an on-board visit by a surveyor from the classification society, showing that the ship conforms to the class standards stipulated by that society. The classification society shall provide evidence to the competent authority that a visit on board has taken place.

5. The access refusal order may be lifted only, after the period referred to *Article 16* of this Directive has elapsed and following a re-inspection of the ship at an agreed port. If the agreed port is located in a Member State, the competent authority of that State may, at the request of the competent authority which issued the access refusal order, authorise the ship to enter the agreed port in order to carry out the re-inspection. In such cases, no cargo operations shall take place at the port until the refusal of access order has been lifted.

6. If the detention which led to the issue of a refusal of access order included deficiencies in the ship's structure, the competent authority which issued the refusal of access order may require that certain spaces, including cargo spaces and tanks, are made available for examination during the re-inspection.

7. The re-inspection shall be carried out by the competent authority of the Member State that imposed the refusal of access order, or by the competent authority of the port of destination with the agreement of the competent authority of the Member State that imposed the refusal of access order. The competent authority may require up to 14 days notice for the re-inspection. Evidence shall be provided to the satisfaction of this Member State that the ship fully complies with the applicable requirements of the Conventions.

8. The re-inspection shall consist of an expanded inspection that must cover at least the relevant items of Annex VII.

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9. All costs of this expanded inspection will be borne by the owner or the operator.

10. If the results of the expanded inspection satisfy the Member State in accordance with Annex VII, the access refusal order must be lifted and the company of the ship informed thereof in writing.

11. The competent authority shall also notify its decision in writing to the flag State administration, the classification society concerned, the other Member States, the other signatories to the Paris MOU, the Commission and the Paris MOU Secretariat. The competent authority must also update the inspection database with information on the removal of the access without delay.

12. Information relating to ships that have been refused access to ports within the Community must be made available in the inspection database and published in conformity with the provisions of *Article 26* and of Annex XIII.

ANNEX IX

INSPECTION REPORT

(referred to in *Article 17*)

The inspection report must contain at least the following items.

I. General

1. Competent authority that wrote the report
2. Date and place of inspection
3. Name of the ship inspected
4. Flag
5. Type of ship (as indicated in the Safety Management Certificate)
6. IMO identification number
7. Call sign
8. Tonnage (gt)
9. Deadweight tonnage (where relevant)
10. Year of construction as determined on the basis of the date indicated in the ship's safety certificates
11. The classification society or classification societies as well as any other organisation, where relevant, which has/have issued to this ship the classification certificates, if any
12. The recognised organisation or recognised organisations and/or any other party which has/have issued to this ship certificates in accordance with the applicable Conventions on behalf of the flag State
13. Name and address of the ship's company or the operator
14. Name and address of the charterer responsible for the selection of the ship and type of charter in the case of ships carrying liquid or solid cargoes in bulk

15. Final date of writing the inspection report

16. Indication that detailed information on an inspection or a detention may be subject to publication.

II. Information relating to inspection

1. Certificates issued in application of the relevant Conventions, authority or organisation that issued the certificate(s) in question, including the date of issue and expiry

2. Parts or elements of the ship that were inspected (in the case of more detailed or expanded inspection)

3. Port and date of the last intermediate or annual or renewal survey and the name of the organisation which carried out the survey

4. Type of inspection (inspection, more detailed inspection, expanded inspection)

5. Nature of the deficiencies

6. Measures taken.

III. Additional information in the event of detention

1. Date of detention order

2. Date of lifting the detention order

3. Nature of the deficiencies warranting the detention order (references to Conventions, if relevant)

4. Indication, where relevant, of whether the recognised organisation or any other private body that carried out the survey has a responsibility in relation to the deficiencies which, alone or in combination, led to detention

5. Measures taken.

ANNEX X

CRITERIA FOR DETENTION OF A SHIP

(referred to in *Article 19(3)*)

INTRODUCTION

Before determining whether deficiencies found during an inspection warrant detention of the ship involved, the inspector must apply the criteria mentioned below in points 1 and 2.

Point 3 includes examples of deficiencies that may *of* themselves warrant detention of the ship involved (see *Article 19(4)*).

Where the ground for detention is the result of accidental damage suffered on the ship's voyage to a port, no detention order shall be issued, provided that:

(a) due account has been given to the requirements contained in Regulation I/11(c) of SOLAS 74 regarding notification to the flag State administration, the nominated surveyor or the recognised organisation responsible for issuing the relevant certificate;

(b) prior to entering a port, the master or shipowner has submitted to the port State control authority details on the circumstances of the accident and the damage suffered and information about the required notification of the flag State administration;

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(c) appropriate remedial action, to the satisfaction of the *authority*, is being taken by the ship; and

(d) the authority has ensured, having been notified of the completion of the remedial action, that deficiencies which were clearly hazardous to safety, health or the environment have been rectified.

1. MAIN CRITERIA

When exercising ‖professional judgement as to whether or not a ship should be detained the inspector must apply the following criteria:

Timing:

Ships which are unsafe to proceed to sea must be detained upon the first inspection irrespective of how much time the ship will stay in port.

Criterion:

The ship is detained if its deficiencies are sufficiently serious to merit an inspector returning to satisfy himself that they have been rectified before the ship sails.

The need for the inspector to return to the ship is a measure of the seriousness of the deficiencies. However, it does not impose such an obligation *in* every case. It implies that the authority must verify one way or another, preferably by a further visit, that the deficiencies have been rectified before departure.

2. APPLICATION OF MAIN CRITERIA

When deciding whether the deficiencies found in a ship are sufficiently serious to merit detention the inspector must assess whether:

1. the ship has relevant, valid documentation;

2. the ship has the crew required in the Minimum Safe Manning Document.

During inspection the inspector must further assess whether the ship and/or crew is able to:

3. navigate safely throughout the forthcoming voyage;

4. safely handle, carry and monitor the condition of the cargo throughout the forthcoming voyage;

5. operate the engine room safely throughout the forthcoming voyage;

6. maintain proper propulsion and steering throughout the forthcoming voyage;

7. fight fires effectively in any part of the ship if necessary during the forthcoming voyage;

8. abandon ship speedily and safely and effect rescue if necessary during the forthcoming voyage;

9. prevent pollution of the environment throughout the forthcoming voyage;

10. maintain adequate stability throughout the forthcoming voyage;

11. maintain adequate watertight integrity throughout the forthcoming voyage;

12. communicate in distress situations if necessary during the forthcoming voyage;

13. provide safe and healthy conditions on board throughout the forthcoming voyage;

14. provide the maximum *amount* of information in case of accident.

If the answer to any of these assessments is negative, taking into account all deficiencies found, the ship must be *seriously* considered for detention. A combination of deficiencies of a less serious nature may also warrant the detention of the ship.

3. To assist the inspector in the use of these guidelines, there follows a list of deficiencies, grouped under relevant Conventions and/or codes, which are considered of such a serious nature that they may warrant the detention of the ship involved. This list is not intended to be exhaustive.

3.1. General

The lack of valid certificates and documents as required by the relevant instruments. However, ships flying the flag of States not party to a relevant Convention or not having implemented another relevant instrument, are not entitled to carry the certificates provided for by the Convention or other relevant instrument. Therefore, absence of the required certificates should not by itself constitute reason to detain these ships; however, in applying the 'no more favourable treatment' clause, substantial compliance with the provisions is required before the ship sails.

3.2. Areas under SOLAS 74

1. Failure of the proper operation of propulsion and other essential machinery, as well as electrical installations.

2. Insufficient cleanliness of engine room, excessive amount of oily-water mixtures in bilges, insulation of piping including exhaust pipes in engine room contaminated by oil, improper operation of bilge pumping arrangements.

3. Failure of the proper operation of emergency generator, lighting, batteries and switches.

4. Failure of the proper operation of the main and auxiliary steering gear.

5. Absence, insufficient capacity or serious deterioration of personal life-saving appliances, survival craft and launching arrangements.

6. Absence, non-compliance or substantial deterioration of fire detection systems, fire alarms, fire-fighting equipment, fixed fire-extinguishing installation, ventilation valves, fire dampers, quick-closing devices to the extent that they cannot comply with their intended use.

7. Absence, substantial deterioration or failure of proper operation of the cargo deck area fire protection on tankers.

8. Absence, non-compliance or serious deterioration of lights, shapes or sound signals.

9. Absence or failure of the proper operation of the radio equipment for distress and safety communication.

10. Absence or failure of the proper operation of navigation equipment, taking the provisions of SOLAS 74, Regulation V/16.2 into account.

11. Absence of corrected navigational charts, and/or all other relevant nautical publications necessary for the intended voyage, taking into account that a type approved electronic chart display and information system (ECDIS) operating on official data may be used as a substitute for the charts.

12. Absence of non-sparking exhaust ventilation for cargo pump rooms.

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13. Serious deficiency in the operational requirements, as described in Section 5.5 of Annex I to the Paris MOU.

14. Number, composition or certification of crew not corresponding with the safe manning document.

15. Failure to carry out the enhanced survey programme in accordance with SOLAS 74, Chapter XI, Regulation 2.

3.3. Areas under the IBC Code

1. Transport of a substance not mentioned in the Certificate of Fitness or missing cargo information.

2. Missing or damaged high-pressure safety devices.

3. Electrical installations not intrinsically safe or not corresponding to code requirements.

4. Sources of ignition in hazardous locations.

5. Contraventions of special requirements.

6. Exceeding of maximum allowable cargo quantity per tank.

7. Insufficient heat protection for sensitive products.

3.4. Areas under the IGC Code

1. Transport of a substance not mentioned in the Certificate of Fitness or missing cargo information.

2. Missing closing devices for accommodation or service spaces.

3. Bulkhead not gastight.

4. Defective air locks.

5. Missing or defective quick-closing valves.

6. Missing or defective safety valves.

7. Electrical installations not intrinsically safe or not corresponding to code requirements.

8. Ventilators in cargo area not operable.

9. Pressure alarms for cargo tanks not operable.

10. Gas detection plant and/or toxic gas detection plant defective.

11. Transport of substances to be inhibited without valid inhibitor certificate.

3.5. Areas under the Load Lines Convention

1. Significant areas of damage or corrosion, or pitting of plating and associated stiffening in decks and hull affecting seaworthiness or strength to take local loads, unless proper temporary repairs for a voyage to a port for permanent repairs have been carried out.

2. A recognised case of insufficient stability.

3. The absence of sufficient and reliable information, in an approved form, which by rapid and simple means, enables the master to arrange for the loading and ballasting of his ship in such a way that a safe margin of stability is maintained at all stages and at varying conditions of the voyage, and that the creation of any unacceptable stresses in the ship's structure are avoided.

4. Absence, substantial deterioration or defective closing devices, hatch closing arrangements and watertight doors.

5. Overloading.

6. Absence of draft mark or draft mark impossible to read.

3.6. Areas under the Marpol Convention, Annex I

1. Absence, serious deterioration or failure of proper operation of the oily-water filtering equipment, the oil discharge monitoring and control system or the 15 ppm alarm arrangements.

2. Remaining capacity of slop and/or sludge tank insufficient for the intended voyage.

3. Oil Record Book not available.

4. Unauthorised discharge bypass fitted.

5. Survey report file missing or not in conformity with Regulation 13G(3)(b) of the Marpol Convention.

3.7. Areas under the Marpol Convention, Annex II

1. Absence of the P&A Manual.

2. Cargo is not categorised.

3. No cargo record book available.

4. Transport of oil-like substances without satisfying the requirements or without an appropriately amended certificate.

5. Unauthorised discharge bypass fitted.

3.8. Areas under the Marpol Convention, Annex V

1. Absence of the garbage management plan.

2. No garbage record book available.

3. Ship's personnel not familiar with disposal/discharge requirements of garbage management plan.

3.9. Areas under the STCW Convention and Directive 2001/25/EC.

1. Failure of seafarers to hold a certificate, to have an appropriate certificate, to have a valid dispensation or to provide documentary proof that an application for an endorsement has been submitted to the flag State administration.

2. Evidence that a certificate has been fraudulently obtained or the holder of a certificate is not the person to whom that certificate was originally issued.

3. Failure to comply with the applicable safe manning requirements of the flag state administration.

4. Failure of navigational or engineering watch arrangements to conform to the requirements specified for the ship by the flag State administration.

5. Absence in a watch of a person qualified to operate equipment essential to safe navigation, safety radio communications or the prevention of marine pollution.

6. Failure to provide proof of professional proficiency for the duties assigned to seafarers for the safety of the ship and the prevention of pollution.

7. Inability to provide for the first watch at the commencement of a voyage and for subsequent relieving watches persons who are sufficiently rested and otherwise fit for duty.

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3.10. Areas under the ILO Conventions

1. Insufficient food for voyage to next port.
2. Insufficient potable water for voyage to next port.
3. Excessively unsanitary conditions on board.
4. No heating in accommodation of a ship operating in areas where temperatures may be excessively low.
5. Insufficient ventilation in accommodation of a ship.
6. Excessive garbage, blockage by equipment or cargo or otherwise unsafe conditions in passageways/ *accommodation.*
7. Clear evidence that watch keeping and other duty personnel for the first watch or subsequent relieving watches are impaired by fatigue.

3.11. Areas which may not warrant a detention, but where e.g. cargo operations have to be suspended.

Failure of the proper operation (or maintenance) of inert gas system, cargo-related gear or machinery are considered sufficient grounds for stopping cargo operation.

ANNEX XI

MINIMUM CRITERIA FOR INSPECTORS

(referred to in *Article 22(1) and (5)*)

1. Inspectors must have appropriate theoretical knowledge and practical experience of ships and their operation. They must be competent in the enforcement of the requirements of *the* Conventions and of the relevant port State control procedures. This knowledge and competence in enforcing international and Community requirements must be acquired through documented training programmes.

2. Inspectors must, as a minimum, have either:

   (a) appropriate qualifications from a marine or nautical institution and relevant seagoing experience as a certificated ship officer holding or having held a valid STCW II/2 or III/2 certificate of competency not limited as regards the operating area or propulsion power or tonnage; or

   (b) passed an examination recognised by the competent Authority as a naval architect, mechanical engineer or an engineer related to the maritime fields and worked in that capacity for at least five years; or

   (c) a relevant university degree or equivalent and have properly trained and qualified as ship safety inspectors.

3. The inspector must have:

   — completed a minimum of one year's service as a flag-State inspector either dealing with surveys and certification in accordance with the Conventions or involved in the monitoring of the activities of recognised organisations to which statutory tasks have been delegated, or

   — gained an equivalent level of competence by following a minimum of one year's field training participating in Port State Control inspections under the guidance of experienced Port State Control Officers.

4. The inspectors mentioned under 2(a) must have gained maritime experience of at least *five* years including periods served at sea as officers in the deck- or engine- department respectively, or as a flag state inspector or as an assistant port State control inspector. Such experience shall include a period of at least two years at sea as a deck or engine officer.

5. The inspectors must have the ability to communicate orally and in writing with seafarers in the language most commonly spoken at sea.

6. Inspectors not fulfilling the above criteria are also accepted if they are employed by the competent authority of a Member State for port State control at the date of adoption of this Directive.

7. Where in a Member State inspections referred to in *Article 15(1) and (2)* are performed by port State control inspectors; those inspectors shall have appropriate qualifications, which shall include sufficient theoretical and practical experience in maritime security. This shall normally include:

   (a) a good understanding of maritime security and how it is applied to the operations being examined;

   (b) a good working knowledge of security technologies and techniques;

   (c) a knowledge of inspection principles, procedures and techniques;

   (d) a working knowledge of the operations being examined.

ANNEX XII

FUNCTIONALITIES OF THE INSPECTION DATABASE

(referred to in *Article 24(1)*)

1. The inspection database shall include at least the following functionalities:

   — Incorporate inspection data of Member States and all States Parties to the Paris MOU,

   — Provide data on the ship risk profile and on ships due for inspections,

   — Calculate the inspection commitments for each Member State,

   — Produce the white as well as the grey and black list of flag States, referred to in *Article 16(1)*,

   — Produce data on the performance of companies,

   — Identify the items in risk areas to be checked at each inspection.

2. The inspection database shall have the capability to adapt to future developments and to interface with other Community maritime safety databases, including SafeSeaNet, which shall provide data on ships' actual calls to ports of Member States and, where appropriate, to relevant national information systems.

3. A deep hyperlink shall be provided from the inspection database to the Equasis information system. Member States shall encourage *the consultation of* the public and private databases relating to ship inspection accessible through Equasis‖ by the inspectors.

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ANNEX XIII

PUBLICATION OF INFORMATION RELATED TO INSPECTIONS, DETENTIONS AND REFUSALS OF ACCESS IN PORTS OF MEMBER STATES

(referred to in *Article 26*)

1. Information published in accordance with *Article 26* must include the following:

   (a) name of the ship;

   (b) IMO identification number;

   (c) type of ship;

   (d) tonnage (gt);

   (e) year of construction as determined on the basis of the date indicated in the ship's safety certificates;

   (f) name and address of the company of the ship;

   (g) in the case of ships carrying liquid or solid cargoes in bulk, the name and address of the charterer responsible for the selection of the ship and the type of charter;

   (h) flag State;

   (i) classification and statutory certificates issued in accordance with the relevant Conventions, and the authority or organisation that issued each one of the certificates in question, including the date of issue and expiry;

   (j) port and date of the last intermediate or annual survey for the certificates in point (i) above and the name of the authority or organisation which carried out the survey;

   (k) date, country, port of detention.

2. For ships which have been detained, information published in accordance with *Article 26* must also include:

   (a) number of detentions during the previous 36 months;

   (b) date when the detention was lifted;

   (c) duration of detention, in days;

   (d) the reasons for detention, in clear and explicit terms;

   (e) indication, where relevant, of whether the recognised organisation that carried out the survey has a responsibility in relation to the deficiencies which, alone or in combination, led to detention;

   (f) description of the measures taken in the case of a ship which has been allowed to proceed to the nearest appropriate repair yard;

   (g) if the ship has been refused access to any port within the Community, the reasons for the measure in clear and explicit terms.

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ANNEX XIV

DATA PROVIDED IN THE CONTEXT OF MONITORING IMPLEMENTATION

(referred to in *Article 29)*

1. Every year Member States must provide the Commission with the following data for the preceding year by 1 April at the latest.

1.1. Number of inspectors acting on their behalf in the framework of port State control

This information must be communicated to the Commission using the following model table [1] [2]

Port/area	Number of full-time inspectors (A)	Number of part-time inspectors (B)	Conversion of (B) to full-time (C)	Total (A+C)
Port X /or Area X …				
Port Y /or Area Y …				
TOTAL				

[1] Where the inspections carried out in the context of port State control represent only part of the inspectors' work, the total number of inspectors must be converted to a number equivalent to full-time inspectors. Where the same inspector works in more than one port or geographical area the applicable part-time equivalent must be counted in each port.

[2] This information must be provided at national level and for each port of the Member State concerned. For the purposes of this Annex, a port is taken to mean an individual port or the geographical area covered by an inspector or team of inspectors, comprising several individual ports where appropriate.

1.2. Total number of individual ships that entered their ports at national level. The figure shall be the number of ships covered by this Directive that entered their ports at national level counted only once.

2. Member States must:

(a) provide the Commission every six months with a list of calls at port of individual ships, other than regular passenger and freight ferry services, that entered their ports or which have notified to a port authority or body their arrival in an anchorage, containing for each movement of the ship its IMO identification number, its date of arrival and the port. The list shall be provided in the form of a spreadsheet programme enabling an automatic retrieval and processing of the abovementioned information. The list shall be provided within *four* months from the end of the period to which data pertained,

and

(b) provide the Commission with separate lists of regular passenger ferry services and regular freight ferry services referred to in point (a), not later than six months following the implementation of this Directive, and thereafter each time changes take place in such services. The list shall contain for each ship its IMO identification number, its name and the route covered by the ship. The list shall be provided in the form of a spreadsheet programme enabling an automatic retrieval and processing of the abovementioned information.

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ANNEX XV

PART A

REPEALED DIRECTIVE WITH ITS SUCCESSIVE AMENDMENTS

(referred to in *Article 37*)

Council Directive 95/21/EC	(OJ L 157, 7.7.1995, p. 1)
Council Directive 98/25/EC	(OJ L 133, 7.5.1998, p. 19)
Commission Directive 98/42/EC	(OJ L 184, 27.6.1998, p. 40)
Commission Directive 1999/97/EC	(OJ L 331, 23.12.1999, p. 67)
Directive 2001/106/EC of the European Parliament and of the Council	(OJ L 19, 22.1.2002, p. 17)
Directive 2002/84/EC of the European Parliament and of the Council	(OJ L 324, 29.11.2002, p. 53) Only Article 4

PART B

LIST OF TIME-LIMITS FOR TRANSPOSITION INTO NATIONAL LAW

(referred to in *Article 37*)

Directive	Time-limit for transposition
Directive 95/21/EC	30 June 1996
Directive 98/25/EC	30 June 1998
Directive 98/42/EC	30 September 1998
Directive 1999/97/EC	13 December 2000
Directive 2001/106/EC	22 July 2003
Directive 2002/84/EC	23 November 2003

ANNEX XVI

CORRELATION TABLE

(referred to in *Article 37*)

Directive 95/21/EC	This Directive
Article 1, introductory wording	Article 1, introductory wording
Article 1, first indent	Article 1(a)
Article 1, second indent	Article 1(b)
—	Article 1(c)
Article 2, introductory wording	Article 2, introductory wording
Article 2(1), introductory wording	Article 2(1), introductory wording
Article 2(1), first indent	Article 2(1)(a)
Article 2(1), second indent	Article 2(1)(b)
Article 2(1), third indent	Article 2(1)(c)
Article 2(1), fourth indent	Article 2(1)(d)
Article 2(1), fifth indent	Article 2(1)(e)
Article 2(1), sixth indent	Article 2(1)(f)
Article 2(1), seventh indent	Article 2(1)(g)
—	Article 2(1)(h)
Article 2(1), *last sentence*	—
Article 2(2)	Article 2(2)
—	Article 2(3)
—	Article 2(4)
—	Article 2(5)
Article 2(3)	Article 2(6)
Article 2(4)	—
—	Article 2(7)
—	Article 2(8)
Article 2(5)	Article 2(9)
—	Article 2(10)
—	Article 2(11)

Directive 95/21/EC	This Directive
Article 2(6)	Article 2(12)
Article 2(7)	Article 2(13)
Article 2(8)	Article 2(14)
—	Article 2(15)
Article 2(9)	Article 2(16)
—	Article 2(17)
Article 2(10)	Article 2(18)
—	Article 2(19)
—	Article 2(20)
—	Article 2(21)
—	Article 2(22)
—	Article 2(23)
—	Article 2(24)
Article 3(1), first subparagraph, first indent	Article 3(1), first subparagraph
Article 3(1), first subparagraph, second indent	Article 3(1), second subparagraph
—	Article 3(1), third subparagraph
Article 3(1), second subparagraph	Article 3(1), fourth subparagraph
—	Article 3(1), fifth subparagraph
Article 3(2) to (4)	Article 3(2) to (4)
—	Article 4(1)
Article 4	Article 4(2)
Article 5	—
—	Article 6
—	Article 7
—	Article 8
—	Article 9
—	Article 10
—	Article 11
—	Article 12
Article 6(1), introductory wording	—
—	Article 13(1), introductory wording
Article 6(1)(a)	Article 13(1)(a)
—	Article 13(1)(b)
Article 6(1)(b)	Article 13(1)(c)
Article 6(2)	—
—	Article 13(2)
Article 6(3)	Article 13(3)
Article 6(4)	—
Article 7	—
Article 7a	—
Article 7b	—
—	Article 14
—	Article 15
—	Article 16
Article 8	Article 17
—	Article 18
Article 9(1) and (2)	Article 19(1) and (2)
Article 9(3), first sentence	Article 19(3)
Article 9(3), sentences 2 to 4	Article 19(4)
Article 9(4) to (7)	Article 19(5) to (8)
—	Article 19(9)
Article 9a	—
Article 10(1) to (3)	Article 20(1) to (3)
—	Article 20(4)
Article 11(1)	Article 21(1)
—	Article 21(2)
Article 11(2)	Article 21(3), first subparagraph
Article 11(3), first subparagraph	—
Article 11(3), second subparagraph	Article 21(3), second subparagraph
Article 11(4) to (6)	Article 22(4) to (6)
Article 12(1) to (3)	Article 22(1) to (3)

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Directive 95/21/EC	This Directive
Article 12(4)	Article 22(4)
—	Article 22(5) to (7)
Article 13(1) to (2)	Article 23(1) to (2)
—	Article 23(3) to (5)
Article 14	—
Article 15	—
—	Article 24
—	Article 25
—	Article 26
—	Article 27
Article 16(1) and (2)	Article 28(1) and (2)
Article 16(2a)	Article 28(3)
Article 16(3)	Article 28(4)
Article 17	Article 29
—	Article 30
Article 18	Article 31
Article 19	Article 32
—	Article 33
Article 19a	Article 34
—	Article 35
Article 20	Article 36
—	Article 37
Article 21	Article 38
Article 22	Article 39
Annex I	—
—	Annex I
—	Annex II
—	Annex III
Annex II	Annex IV
Annex III	Annex V
Annex IV	Annex VI
Annex V	Annex VII
Annex VI	Annex X
Annex VII	Annex XI
—	Annex XII
Annex VIII	Annex XIII
Annex IX	Annex IX
Annex X	Annex XIV
Annex XI	Annex VIII
Annex XII	—
—	Annex XV
—	Annex XVI

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Ship inspection and survey organisations (Directive recast) ***II

P6_TA(2008)0447

European Parliament legislative resolution of 24 September 2008 on the Council common position adopted with a view to the adoptiong of a directive of the European Parliament and of the Council on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations (recast) (5724/2/2008 — C6-0222/2008 — 2005/0237A(COD))

(2010/C 8 E/43)

(Codecision procedure: second reading)

The European Parliament,

— having regard to the Council common position (5724/2/2008 — C6-0222/2008) [1],

— having regard to its position at first reading [2] on the Commission proposal to Parliament and the Council (COM(2005)0587),

— 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 (A6-0331/2008),

1. Approves the common position as amended;

2. Instructs its President to forward its position to the Council and Commission.

[1] OJ C 184 E, 22.7.2008, p. 11.
[2] OJ C 74 E, 20.3.2008, p. 632.

P6_TC2-COD(2005)0237A

Position of the European Parliament adopted at second reading on 24 September 2008 with a view to the adoption of Directive *2008/…/EC* of the European Parliament and of the Council *on compliance with flag State requirements and* on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations (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 80(2) 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 318, 23.12.2006, p. 195.

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Having regard to the opinion of the Committee of the Regions [1],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [2],

Whereas:

(1) Council Directive 94/57/EC of 22 November 1994 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations [3] has been significantly amended on several occasions. Since further amendments are to be made, it should be recast in the interests of clarity.

(2) In view of the nature of the provisions of Directive 94/57/EC it seems appropriate that its provisions be recast in two different Community legal instruments, namely a Directive and a Regulation.

(3) In its Resolution of 8 June 1993 on a common policy on safe seas [4], the Council set the objective of removing all substandard vessels from Community waters and gave priority to Community action designed to secure the effective and uniform implementation of international rules by drawing up common standards for classification societies***, defined as ship inspection and survey organisations (hereinafter 'recognised organisations')***.

(4) Safety and pollution prevention at sea may be effectively enhanced by strictly applying international conventions, codes and resolutions while furthering the objective of freedom to provide services.

(5) The control of compliance of ships with the uniform international standards for safety and prevention of pollution of the seas is the responsibility of flag and port States.

(6) Member States are responsible for the issuing of international certificates for safety and the prevention of pollution provided for under conventions such as the International Convention for the Safety of Life at Sea of 1 November 1974 (SOLAS 74), the International Convention on Load Lines of 5 April 1966 and the International Convention for the Prevention of Pollution from Ships of 2 November 1973 (Marpol), and for the implementation of those conventions.

(7) In compliance with such conventions all Member States may authorise to a varying extent recognised organisations for the certification of such compliance and may delegate the issue of the relevant certificates for safety and the prevention of pollution.

(8) Worldwide a large number of the existing ***recognised organisations*** do not ensure either adequate implementation of the rules or ***the necessary*** reliability when acting on behalf of national administrations as they do not have ▌adequate structures and experience to enable them to carry out their ***tasks*** in a highly professional manner.

(9) In addition, these ***recognised organisations*** produce and implement rules for the design, construction, maintenance and inspection of ships and they are responsible for inspecting ships on behalf of the flag States and certifying that those ships meet the requirements of the international conventions for the issue of the relevant certificates. To enable them to carry out that duty in a satisfactory manner they need to have strict independence, highly specialised technical competence and rigorous quality management.

(10) Recognised organisations should be able to offer their services throughout the Community and compete with each other while providing equal levels of safety and of environmental protection. The necessary professional standards for their activities should therefore be uniformly established and applied across the Community.

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(1) OJ C 229, 22.9.2006, p. 38.
(2) *Position* of the European Parliament of 25 April 2007 (OJ C 74 E, 20.3.2008, p. 632), Council Common Position of *6 June 2008 (OJ C 184 E, 22.7.2008, p. 11)* and Position of the European Parliament of *24 September 2008*.
(3) OJ L 319, 12.12.1994, p. 20. ‖.
(4) ***OJ C 271, 7.10.1993, p. 1.***

(11) The issue of the cargo ship safety radio certificate may be entrusted to private bodies having sufficient expertise and qualified personnel.

(12) A Member State may restrict the number of recognised organisations it authorises in accordance with its needs, based on objective and transparent grounds, subject to control exercised by the Commission in accordance with a committee procedure.

(13) This Directive should ensure freedom to provide services in the Community; accordingly the ***Commission*** should be entitled to negotiate, with those third countries where some of the recognised organisations are located, ▌ equal treatment for the recognised organisations ***domiciled*** in the Community.

(14) A tight involvement of the national administrations in ship surveys and in the issue of the related certificates is necessary to ensure full compliance with the international safety rules even if the Member States rely upon recognised organisations, which are not part of their administration for carrying out statutory duties. It is appropriate, therefore, to establish a close working relationship between the administrations and the recognised organisations authorised by them, which may require that the recognised organisations have a local representation on the territory of the Member State on behalf of which they perform their duties.

(15) Divergence in ***terms of*** financial liability regimes ***among*** the recognised organisations working on behalf of the Member States would impede the proper implementation of this Directive. In order to contribute to solving this problem it is appropriate to bring about a degree of harmonisation at Community level of the liability arising out of any marine casualty caused by a recognised organisation, as decided by a court of law, including settlement of a dispute through arbitration procedures.

(16) 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]).

(17) In particular the Commission should be empowered to amend this Directive in order to incorporate subsequent amendments to the international conventions, protocols, codes and resolutions related thereto. 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.

(18) Member States should nevertheless be left with the possibility of suspending ▌ their authorisation of a recognised organisation ***for reasons of serious danger to safety or the environment. The Commission should decide without delay, in accordance with a committee procedure, whether any national measure to the above effect should be overruled***.

(19) Member States should periodically assess the performance of the recognised organisations working on their behalf and provide the Commission and all the other Member States with precise information related to such performance.

(20) As port authorities, Member States are required to enhance safety and prevention of pollution in Community waters through priority inspection of ships carrying certificates of organisations which do not fulfil the common criteria, thereby ensuring that ships flying the flag of a third State do not receive more favourable treatment.

([1]) OJ L 184, 17.7.1999, p. 23. ‖.

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(21) At present there are no uniform international standards to which all ships must conform either at the building stage or during their entire lifetime, as regards hull, machinery and electrical and control installations. Such standards may be fixed according to the rules of recognised organisations or to equivalent standards to be decided by the national administrations in accordance with the procedure laid down in 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 [1].

(22) Since the objective of this Directive, namely to establish measures to be followed by the Member States in their relationship with organisations entrusted with the inspection, survey and certification of ships, operating in the Community, 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.

(23) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the Directive 94/57/EC. The obligation to transpose the provisions which are unchanged arises under that Directive.

(24) This Directive should be without prejudice to the obligations of the Member States relating to the time limits for transposition into national law of the Directives set out in Annex I, Part B.

(25) In accordance with point 34 of the Interinstitutional Agreement on better law-making [2], Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables, illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

(26) Measures to be followed by ***recognised organisations*** are laid down in Regulation (EC) No …/… of the European Parliament and the Council of … [3]*[*on common rules and standards for ship inspection and survey organisations*]* [4]‖,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

The purpose of this Directive ***is:***

(a) to ensure that Member States effectively and consistently discharge their obligations as flag States in accordance with international conventions;

(b) to establish measures to be followed by the Member States in their relationship with ***recognised*** organisations ***which they have*** entrusted with the inspection, survey and certification of ships for compliance with the international conventions on safety at sea and prevention of marine pollution, while furthering the objective of freedom to provide services. This ***process*** includes the development and implementation of safety requirements for hull, machinery and electrical***, radiotelephone,*** and control installations of ships falling under the scope of ***those*** international conventions.

Article 2

For the purpose of this Directive the following definitions shall apply:

(a) 'ship' means a ship falling within the scope of the international conventions;

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[1] OJ L 204, 21.7.1998, p. 37. ‖.
[2] OJ C 321, 31.12.2003, p. 1.
[3] OJ … ‖ .
[4] OJ L …

(b) 'ship flying the flag of a Member State' means a ship registered in and flying the flag of a Member State in accordance with its legislation. Ships not corresponding to this definition are assimilated to ships flying the flag of a third country;

(c) 'inspections and surveys' means inspections and surveys that are mandatory under the international conventions ***and under this Directive and other Community legislation concerning maritime safety***;

(d) 'international conventions' means the International Convention for the Safety of Life at Sea of 1 November 1974, (SOLAS 74) ▌ the International Convention of Load Lines of 5 April 1966**,** the International Convention for the Prevention of Pollution from Ships of 2 November 1973 (Marpol), ***the International Convention on Tonnage Measurement of Ships, 1969 (Tonnage 69), the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW 1978), and the Convention on International Regulations for Preventing Collisions at Sea, 1972 (COLREG 72),*** together with the protocols and amendments thereto, and the related codes of mandatory status in all Member States, in their up-to-date version;

(e) 'Flag State Code' means parts 1 and 2 of the 'Code for the Implementation of Mandatory IMO Instruments', adopted by the IMO through Assembly Resolution A.996(25) on 29 November 2007, in its up-to-date version;

(f) 'administration' means the competent authorities of the Member State whose flag the ship is flying, including departments, agencies, and bodies, in charge of the implementation of the Flag State-related provisions of the IMO Conventions;

(g) 'organisation' means a legal entity, its subsidiaries and any other entities under its control, which jointly or separately carry out tasks falling under the scope of this Directive;

(h) 'control' means, for the purpose of *point (g)*, rights, contracts or any other means, in law or in fact, which, either separately or in combination confer the possibility of exercising decisive influence on a legal entity or enable that entity to carry out tasks falling under the scope of this Directive;

(i) 'recognised organisation' means an organisation recognised in accordance with Regulation (EC) No …/… ([1]) *[on common rules and standards for ship inspection and survey organisations]*;

(j) 'authorisation' means an act whereby a Member State grants an authorisation or delegates powers to a recognised organisation;

(k) 'statutory certificate' means a certificate issued by or on behalf of a flag State in accordance with the international conventions;

(l) 'rules and procedures' means a recognised organisation's requirements for the design, construction, equipment, maintenance and survey of ships;

(m) '***classification*** certificate' means a document issued by a recognised organisation certifying the fitness of a ship for a particular use or service in accordance with the rules and ***regulations*** laid down and made public by that recognised organisation;

(n) 'cargo ship safety radio certificate' means the certificate introduced by the 1988 Protocol amending SOLAS, adopted by the International Maritime Organisation (IMO).

Article 3

1. In assuming their responsibilities and obligations under the international conventions, Member States shall ensure that their competent administrations can ensure appropriate enforcement of the provisions thereof, ***in accordance with paragraphs 2 to 4***.

([1]) OJ … ‖ .

2. Member States shall apply the provisions of the Flag State Code.

3. Member States shall take the necessary measures to ensure that an independent audit of their administration is carried out at least once every five years in accordance with the provisions of Resolution A.974 (24), adopted by the IMO Assembly on 1 December 2005. They shall ensure, on the basis of the audit findings, that, if appropriate, a comprehensive corrective plan is drawn up in accordance with section 8 of Part II of the Annex to that Resolution and ensure implementation in a timely and effective manner.

4. Member States shall take the necessary measures with regard to the inspection and survey of ships and the issue of statutory certificates and exemption certificates as provided for by the international conventions.

5. Where for the purpose of paragraph 1a Member State decides with respect to ships flying its flag:

(i) to authorise organisations to undertake fully or in part inspections and surveys related to statutory certificates including those for the assessment of compliance with the rules referred to in *Article 15(2)* and, where appropriate, to issue or renew the related certificates; or

(ii) to ***entrust recognised*** organisations ***with the task of undertaking*** fully or in part the inspections and surveys referred to in point (i);

it shall entrust these duties only to recognised organisations.

The competent administration shall in all cases approve the first issue of the exemption certificates.

However, for the cargo ship safety radio certificate these duties may be entrusted to a private body recognised by a competent administration and having sufficient expertise and qualified personnel to carry out specified safety assessment work on radio-communication on its behalf.

6. This Article does not concern the certification of specific items of marine equipment.

Article 4

Flag State requirements

1. Prior to allowing the operation of a ship, which has been granted the right to fly its flag, the Member State concerned shall take the appropriate measures to ensure that the ship in question complies with the applicable international rules and regulations. In particular, it shall verify the safety records of the ship by all reasonable means. It shall, if necessary, consult with the administration of the losing flag State in order to establish whether any outstanding deficiencies or safety issues identified by that administration remain unresolved.

2. Whenever a flag State requests information concerning a ship which was previously flying the flag of a Member State, the requested Member State shall promptly provide details of outstanding deficiencies and any other relevant safety-related information to the requesting flag State.

3. When the administration is informed that a ship flying the flag of the Member State concerned has been detained by a port State, it shall oversee the appropriate corrective measures to bring the ship into compliance with the applicable regulations and IMO Conventions. For that purpose, that administration shall establish the applicable procedures.

Article 5

Member States shall ensure that at least the following information concerning the ships flying their flag is kept under the direct control of a public authority and remains at all times readily accessible to the administration by appropriate electronic means:

(a) particulars of the ship (name, IMO number, etc.);

(b) dates of the surveys, including additional and supplementary surveys, if any, and audits;

(c) identification of the recognised organisations involved in the certification and classification of the ship;

(d) identification of the body which has inspected the ship under Port State control provisions and dates of the inspections;

(e) outcome of the port State control inspections (deficiencies: yes or no; detentions: yes or no);

(f) information on casualties;

(g) identification of the ships which have ceased to fly the flag of the Member State concerned during the previous 12 months.

Member States shall, upon request, provide the Commission with the above- mentioned data.

Article 6

1. Each Member State shall, within the framework of a quality management system, continuously evaluate and review its performance as a flag State. Those evaluations shall, over a [36] month period, cover all aspects of the quality management system for the operational parts of the administration.

As a minimum, the following performance indicators shall be included in the evaluation:

— port State control detention rates,

— flag State inspection results, and

— performance indicators, as may be appropriate, to determine whether staffing, resources and administrative procedures are adequate to meet the flag State obligations.

2. Member States which have carried out evaluations in accordance with paragraph 1, second subparagraph and appear on the black [or grey] list as published in the annual report of the Paris Memorandum of Understanding (MOU) on Port State Control on 1 July of the year of completion of the evaluations shall provide the Commission with a report on their performance as flag States no later than 1 November of the year of completion of the evaluation.

The report shall identify and analyse the main reasons for the lack of performance; it shall also include a plan for remedial and corrective actions, including supplementary surveys where appropriate, that will be carried out at the earliest opportunity.

3. The quality management system shall be set up and certified within … [1].

[1] *Three years from the entry into force of this Directive.*

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Article 7

The Commission shall, before the end of [2010], submit to the European Parliament and the Council a report on the feasibility of establishing a Memorandum of Understanding on flag State control obligations, aiming at ensuring a level playing field between flag States which have committed themselves to implementing in a mandatory way the Flag State Code and agreed to be audited in accordance with the provisions of Resolution A. 974 (24), adopted by the IMO Assembly on 1 December 2005.

Article 8

Relationship with recognised organisations

1. In applying *Article 3(5)*, Member States shall in principle not refuse to authorise any of the recognised organisations to undertake such functions, subject to the provisions of paragraph 2 of this Article and *Articles 9 and 13*. However, they may restrict the number of organisations they authorise in accordance with their needs provided *that* there are transparent and objective grounds for so doing.

At the request of a Member State, the Commission shall, in accordance with the regulatory procedure referred to in *Article 10(2)*, adopt appropriate measures.

2. In order for a Member State to accept that a recognised organisation located in a third State is to carry out***, on its behalf,*** the duties mentioned in Article 3***, or part of those duties,*** it may ***require*** the third State in question to grant reciprocal treatment for those recognised organisations which are located in the Community.

In addition, the Community may request the third State where a recognised organisation is located to grant reciprocal treatment to those recognised organisations which are located in the Community.

Article 9

1. Member States which take a decision as described in *Article 3(5)* shall *establish* a 'working relationship' between their competent administration and the organisations acting on their behalf.

2. The working relationship shall be regulated by a formalised written and non-discriminatory agreement or equivalent legal arrangements setting out the specific duties and functions assumed by the organisations and including at least:

(a) the provisions set out in Appendix II of IMO Resolution A.739(18) on guidelines for the authorisation of organisations acting on behalf of the administration, while drawing inspiration from the Annex, Appendices and Attachment to IMO MSC/Circular 710 and MEPC/Circular 307 on a model agreement for the authorisation of recognised organisations acting on behalf of the administration.

Accordingly, when a recognised organisation, its inspectors, or its technical staff issue the required certificates on behalf of the administration, they shall be subject to legal safeguards and judicial protection, including the exercise of any rights of defence, in the same manner as those to which the administration and its members could have had recourse had the administration issued the required certificates itself;

(b) the following provisions concerning financial liability:

(i) if liability arising out of any marine casualty is finally and definitely imposed on the administration by a court of law or as part of the settlement of a dispute through arbitration procedures, together with a requirement to compensate the injured parties for loss of or damage to property or personal injury or death, which is proved in that court of law to have been caused by a wilful act or omission or gross negligence of the recognised organisation, its bodies, employees, agents or others who act on behalf of the recognised organisation, the administration shall be entitled to financial compensation from the recognised organisation to the extent that that loss, damage, injury or death was, as decided by that court, caused by the recognised organisation;

(ii) if liability arising out of any marine casualty is finally and definitely imposed on the administration by a court of law or as part of the settlement of a dispute through arbitration procedures, together with a requirement to compensate the injured parties for personal injury ***not resulting in*** death, which is proved in that court of law to have been caused by any negligent or reckless act or omission of the recognised organisation, its employees, agents or others who act on behalf of the recognised organisation, the administration shall be entitled to ***claim*** financial compensation from the recognised organisation to the extent that that personal injury ***not resulting in*** death was, as decided by that court, caused by the recognised organisation; the Member States may limit the maximum amount payable by the recognised organisation, which must, however, be at least equal to EUR 4 million***, except where the amount determined in the judgment or settlement is lower, in which case this latter amount shall constitute the compensation payable***;

(iii) if liability arising out of any marine casualty is finally and definitely imposed on the administration by a court of law or as part of the settlement of a dispute through arbitration procedures, together with a requirement to compensate the injured parties for loss of or damage to property, which is proved in that court of law to have been caused by any negligent or reckless act or omission of the recognised organisation, its employees, agents or others who act on behalf of the recognised organisation, the administration shall be entitled to ***claim*** financial compensation from the recognised organisation, to the extent that that loss or damage was, as decided by that court, caused by the recognised organisation; the Member States may limit the maximum amount payable by the recognised organisation, which must, however, be at least equal to EUR 2 million***, except where the amount determined in the judgment or settlement is lower, in which case this latter amount shall constitute the compensation payable***;

(c) provisions for a periodical audit by the administration or by an impartial external body appointed by the administration into the duties the organisations are undertaking on its behalf, as referred to in *Article 13(1)*;

(d) the possibility for random and detailed inspections of ships;

(e) provisions for ***compulsory*** reporting ***of*** essential information about their classed fleet, and changes, suspensions and withdrawals of class.

3. The agreement or equivalent legal arrangement may require the recognised organisation to have a local representation on the territory of the Member State on behalf of which it performs the duties referred to in Article 3. A local representation with legal personality under the law of the Member State and subject to the jurisdiction of its national courts may satisfy such a requirement.

4. Each Member State shall provide the Commission with precise information on the working relationship established in accordance with this Article. The Commission shall subsequently inform the other Member States thereof.

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Article 10

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by Regulation (EC) No 2099/2002 ([1]).

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 11

1. This Directive may, without broadening its scope, be amended in order to:

(a) incorporate, for the purposes of this Directive, subsequent amendments to the international conventions, protocols, codes and resolutions related thereto referred to in Articles 2(d), 3(1) and *9(2)*, which have entered into force;

(b) alter the amounts specified in points (ii) and (iii) of *Article 9(2)(b)*.

These 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 10(3)*.

2. Following the adoption of new instruments or protocols to the international conventions referred to in Article 2(d), the Council, acting on a proposal from the Commission, shall decide, taking into account the Member States' parliamentary procedures as well as the relevant procedures within the IMO, on the detailed arrangements for ratifying those new instruments or protocols, while ensuring that they are applied uniformly and simultaneously in the Member States.

The amendments to the international instruments referred to in Articles 2(d) and 9 may be excluded from the scope of this Directive, pursuant to Article 5 of Regulation (EC) No 2099/2002.

Article 12

Notwithstanding the ▌criteria specified in ‖Annex I of Regulation (EC) No …/… ([2]) *[on common rules and standards for ship inspection and survey organisations]*, where a Member State considers that a recognised organisation can no longer be authorised to carry out on its behalf the tasks specified in Article 3 it may suspend ▌such authorisation ***by the following procedure:***

(a) the Member State shall inform the Commission and the other Member States of its decision without delay and shall give substantiated reasons *therefor****;***

(b) the Commission, having regard to safety and pollution prevention, must assess the reasons put forward by the Member State for suspending its authorisation of the recognised organisation;

([1]) Regulation (EC) No 2099/2002 of the European Parliament and of the Council establishing a Committee on Safe Seas and the prevention of pollution from Ships (COSS) (OJ L 324, 29.11.2002, p. 1). ‖.
([2]) OJ … ‖ .

(c) acting in accordance with the regulatory procedure referred to in Article 10(2), the Commission shall inform the Member State whether or not its decision to suspend the authorisation is sufficiently justified for reasons of serious danger to safety or the environment. If the decision is not justified, the Commission shall request the Member State to withdraw the suspension. If the decision is justified and the Member State, pursuant to Article 8(1), has restricted the number of organisations acting on its behalf, the Commission shall request the Member State to grant a new authorisation to another recognised organisation to replace the suspended organisation.

Article 13

1. Each Member State shall ***check*** that the recognised organisations acting on its behalf for the *purposes* of *Article 3(5)* effectively carry out the functions referred to in that Article to the satisfaction of its competent administration.

2. Each Member State shall ▌, at least on a biennial basis***, monitor every organisation acting on its behalf*** and shall provide the other Member States and the Commission with a report on the results of ***these*** monitoring ***activities*** at the latest by 31 March of the year following the years ***in*** which ***they are carried out***.

Article 14

In exercising their inspection rights and obligations as port States, Member States shall report to the Commission and to other Member States, and inform the flag State concerned, if they find that valid statutory certificates have been issued by recognised organisations acting on behalf of a flag State to a ship which does not fulfil the relevant requirements of the international conventions, or in the event of any failure of a ship carrying a valid class certificate and relating to items covered by that certificate. Only cases of ships representing a serious threat to safety and the environment or showing evidence of particularly negligent behaviour of the recognised organisations shall be reported for the purposes of this Article. The recognised organisation concerned shall be advised of the case at the time of the initial inspection so that it can take appropriate follow-up action immediately.

Article 15

1. Each Member State shall ensure that ships flying its flag are designed, constructed, equipped and maintained in accordance with the rules and procedures relating to hull, machinery and electrical and control installation requirements of a recognised organisation.

2. A Member State may decide to use rules it considers equivalent to the rules and procedures of a recognised organisation only on the proviso that it immediately notifies them to the Commission in conformity with the procedure under Directive 98/34/EC and to the other Member States and they are not objected to by another Member State or the Commission and are held, through the regulatory procedure referred to in *Article 10(2)* of this Directive, not to be equivalent.

3. Member States shall cooperate with the recognised organisations they authorise in the development of the rules and procedures of those organisations. They shall confer with the recognised organisations with a view to achieving consistent interpretation of the international conventions.

Article 16

Final provisions

The Commission shall, on a biennial basis, inform the European Parliament and the Council of progress in the implementation of this Directive in the Member States.

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Article 17

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with ***Articles […] and points […] of Annex I [articles or subdivisions thereof and points of Annex I marking a substantive change from Directive 94/57/EC] within*** … (*). They shall forthwith inform the Commission thereof ***and shall, in addition, supply a table showing the correlation between those provisions and this Directive***.

When they are adopted by Member States, these measures shall contain a reference to this Directive or shall be accompanied by such 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 directives repealed by this Directive shall be construed as references to this Directive. The methods of making such references shall be laid down by Member States.

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 18

Directive 94/57/EC, as amended by the Directives listed in Annex I, Part A, shall be repealed with effect from … ([1]), without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex I, Part B.

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

Article 19

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 20

This Directive is addressed to the Member States.

Done at …, on …

For the European Parliament
The President

For the Council
The President

(*) ***18 months*** *from* the date of entry into force of this Directive.
([1]) ‖ Date of entry into force of this Directive.

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ANNEX I

PART A

REPEALED DIRECTIVE WITH ITS SUCCESSIVE AMENDMENTS

(referred to in *Article 18*)

Council Directive 94/57/EC	OJ L 319, 12.12.1994, p. 20
Commission Directive 97/58/EC	OJ L 274, 7.10.1997, p. 8
Directive 2001/105/EC of the European Parliament and of the Council	OJ L 19, 22.1.2002, p. 9
Directive 2002/84/EC of the European Parliament and of the Council	OJ L 324, 29.11.2002, p. 53

PART B

LIST OF TIME-LIMITS FOR TRANSPOSITION INTO NATIONAL LAW

(referred to in *Article 18*)

Directive	Time-limit for transposition
94/57/EC	31 December 1995
97/58/EC	30 September 1998
2001/105/EC	22 July 2003
2002/84/EC	23 November 2003

ANNEX II

CORRELATION TABLE

Directive 94/57/EC	This Directive	Regulation (EC) No …/… [1][*on common rules and standards for ship inspection and survey organisations*]
Article 1	Article 1	Article 1
Article 2(a)	Article 2(a)	Article 2(a)
Article 2(b)	Article 2(b)	—
Article 2(c)	Article 2(c)	—
Article 2(d)	Article 2(d)	Article 2(b)
Article 2(e)	*Article 2(g)*	Article 2(c)
—	*Article 2(h)*	Article 2(d)
Article 2(f)	*Article 2(i)*	Article 2(e)
Article 2(g)	*Article 2(j)*	Article 2(f)
Article 2(h)	*Article 2(k)*	Article 2(g)
Article 2(i)	*Article 2(m)*	Article 2(i)
—	*Article 2(l)*	Article 2(h)
Article 2(j)	*Article 2(n)*	—
Article 2(k)	—	Article 2(j)
Article 3	Article 3	—
Article 4(1) first phrase	—	Article 3(1)
Article 4(1) second phrase	—	Article 3(2)
Article 4(1) third phrase	—	—
Article 4(1) fourth phrase	—	Article 4(1)

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Directive 94/57/EC	This Directive	Regulation (EC) No …/… [1][*on common rules and standards for ship inspection and survey organisations*]
—	—	Article 3(3)
—	—	Article 4(2), (3), (4)
—	—	Article 5
—	—	Article 6
—	—	Article 7
Article 5(1)	*Article 8(1)*	—
Article 5(3)	*Article 8(2)*	—
Article 6(1), (2), (3), (4)	*Article 9 (1), (2), (3), (4)*	—
Article 6(5)	—	—
Article 7	*Article 10*	Article 12
Article 8(1) first indent	*Article 11(1), point (a) of first subparagraph*	—
Article 8(1) second indent	—	Article 13(1)
Article 8(1) third indent	*Article 11(1), point (b) of first subparagraph*	—
—	*Article 11(1) second subparagraph*	Article 13(1) (second subparagraph)
Article 8(2)	*Article 11(2)*	—
Article 8(2) second subparagraph	—	Article 13(2)
Article 9(1)	—	—
Article 9(2)	—	—
Article 10(1) *introduction*	*Article 12*	—
Article 10(1)(a), (b), (c), (2), (3), (4)	—	—
Article 11(1), (2)	*Article 13(1), (2)*	—
Article 11(3), (4)	—	Article 8(1)(2)
Article 12	*Article 14*	—
Article 13	—	—
Article 14	*Article 15(1), (2)*	—
—	*Article 15(3)*	—
—	*Article 16*	—
—	—	Article 9
Article 15(1)	—	—
—	—	Article 10(1)(2)
Article 15(2)	—	Article 10(3)
Article 15(3)	—	Article 10(4)
Article 15(4)	—	Article 10(5)
Article 15(5)	—	Article 10(6) first, second, third, fifth subparagraphs
—		Article 10(6) fourth subparagraph

Directive 94/57/EC	This Directive	Regulation (EC) No …/… [1][*on common rules and standards for ship inspection and survey organisations*]
Article 16	*Article 17*	—
Article 17	*Article 20*	—
—	*Article 18*	—
—	*Article 19*	—
—	—	Article 11
—	—	Article 14
—	—	Article 15
—	—	Article 16
—	—	Article 17
—	—	Article 18
—	—	Article 19
Annex	—	Annex I
—	Annex I	—
—	Annex II	Annex II

[1] OJ … ‖ .

Ship inspection and survey organisations (Regulation recast) ***II

P6_TA(2008)0448

European Parliament legislative resolution of 24 September 2008 on the Council common position adopted with a view to the adoption of a regulation of the European Parliament and of the Council on common rules and standards for ship inspection and survey organisations (recast) (5726/2/2008 — C6-0223/2008 — 2005/0237B(COD))

(2010/C 8 E/44)

(Codecision procedure: second reading)

The European Parliament,

— having regard to the Council common position (5726/2/2008 — C6-0223/2008) [1],

— having regard to its position at first reading [2] on the Commission proposal to Parliament and the Council (COM(2005)0587),

— having regard to Article 251(2) of the EC Treaty,

— having regard to Rules 62 of its Rules of Procedure,

— having regard to the recommendation for second reading of the Committee on Transport and Tourism (A6-0330/2008),

[1] OJ C 190 E, 29.7.2008, p. 1.
[2] OJ C 74 E, 20.3.2008, p. 632.

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1. Approves the common position as amended;

2. Instructs its President to forward its position to the Council and Commission.

P6_TC2-COD(2005)0237B

Position of the European Parliament adopted at second reading on 24 September 2008 with a view to the adoption of Regulation *(EC) No …/2008* of the European Parliament and of the Council on common rules and standards for ship inspection and survey organisations (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 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) Council Directive 94/57/EC of 22 November 1994 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations [4] has been significantly amended on several occasions. Since further amendments are to be made, it should be recast in the interests of clarity.

(2) In view of the nature of the provisions of Directive 94/57/EC it seems appropriate that its provisions be recast in two different Community legal instruments, namely a Directive and a Regulation.

▌

(3) Ship inspection and survey organisations should be able to offer their services throughout the Community and compete with each other while providing equal levels of safety and of environmental protection. The necessary professional standards for their activities should therefore be uniformly established and applied across the Community.

(4) This objective should be pursued through measures that adequately tie in with the work ***and activities*** of the International Maritime Organisation (IMO) and, where appropriate, build on and complement ***them***.

(5) Minimum criteria for recognition of organisations should be laid down with a view to enhancing the safety of, and preventing pollution from, ships. The minimum criteria laid down in Directive 94/57/EC should therefore be strengthened.

(6) In order to grant initial recognition to the organisations wishing to be authorised to work on behalf of the Member States, compliance with the minimum criteria laid down in this Regulation could be assessed more effectively in a harmonised and centralised manner by the Commission together with the Member States requesting the recognition.

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[1] OJ C 318, 23.12.2006, p. 195.
[2] OJ C 229, 22.9.2006, p. 38.
[3] *Position* of the European Parliament of 25 April 2007 (OJ C 74 E, 20.3.2008, p. 632), Council Common Position of *6 June 2008 (OJ C 190 E, 29.7.2008, p. 1)* and Position of the European Parliament of *24 September 2008*.
[4] OJ L 319, 12.12.1994, p. 20. ‖.

(7) Recognition should be granted only on the basis of the quality and safety performance of the organisation ***in question***. It should be ensured that the extent of that recognition be at all times in keeping with the actual capacity of the organisation concerned. Recognition should furthermore take into account the differences in legal status and corporate structure of recognised organisations while continuing to ensure uniform application of the minimum criteria ***mentioned previously*** and the effectiveness of the Community controls. ▌

(8) 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].

(9) In particular, the Commission should be empowered to amend this Regulation in order to incorporate subsequent amendments to the international conventions, protocols, codes and resolutions related thereto, to update the minimum criteria in Annex I and to adopt the criteria to measure the effectiveness of the rules and procedures as well as the performance of the recognised organisations as regards the safety of, and the prevention of pollution from, their classed ships. 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.

(10) It is of the utmost importance that failure by a recognised organisation to fulfil its obligations can be addressed in a prompt, effective and proportionate manner. The primary objective should be to correct any deficiencies with a view to removing any potential threat to safety or the environment at an early stage. The Commission should therefore be given the necessary powers to require that the recognised organisation undertake the necessary preventive and remedial action, and to impose fines and periodic penalty payments as coercive measures. When exercising these powers, the Commission should do so in a manner that complies with fundamental rights and should ensure that the organisation can make its views known throughout the procedure.

(11) In accordance with the Community-wide approach, the decision to withdraw the recognition of an organisation which fails to fulfil the obligations set out in this Regulation if the above measures prove ineffective or the organisation otherwise presents an unacceptable threat to safety or the environment, has to be taken at Community level, and therefore by the Commission, on the basis of a committee procedure.

(12) The continuous *a posteriori* monitoring of the recognised organisations to assess their compliance with this Regulation can be carried out more effectively in a harmonised and centralised manner. Therefore, it is appropriate that the Commission, together with the Member State requesting the recognition, be entrusted with this task on behalf of the Community.

(13) As part of the monitoring of the operations of recognised organisations, it is crucial that Commission inspectors have access to ships and ship files regardless of the ship's flag in order to ascertain whether the recognised organisations are complying with the minimum criteria laid down in this Regulation in respect of all ships in their respective classes.

(14) The ability of recognised organisations to identify rapidly and correct weaknesses in their rules, processes and internal controls is critical for the safety of the ships they inspect and certify. That ability should be enhanced by means of ***an*** independent ***assessment committee which can*** propose ▌ action for the sustained improvement of all recognised organisations and ensure fruitful ***interaction*** with the Commission.

[1] OJ L 184, 17.7.1999, p. 23. ‖.

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(15) The rules and procedures of recognised organisations are a key factor for increasing safety and preventing accidents and pollution. *Accordingly the* recognised organisations have initiated a process that should lead to harmonisation of their rules and procedures. That process should be encouraged and supported by Community legislation, as it should have a positive impact on maritime safety as well as on the competitiveness of the European shipbuilding industry.

▌

(16) Recognised organisations should be obliged to update their technical standards and enforce them consistently in order to harmonise safety rules and ensure uniform implementation of international rules within the Community. Where the technical standards of recognised organisations are identical or very similar, mutual recognition of certificates for materials, equipment and components should be considered in appropriate cases, taking the most demanding and rigorous standard as the reference.

▌

(17) Since transparency and exchange of information between interested parties, as well as public right of access to information, are fundamental tools for preventing accidents at sea, recognised organisations should provide all relevant statutory information concerning the conditions of the ships in their class to the port State control authorities and make it available to the general public.

(18) In order to prevent ships from changing class to avoid carrying out ▌ repairs ***called for by a recognised organisation in its inspection, prior arrangements should be made for the exchange of*** all relevant information ***by recognised organisations*** among themselves concerning the conditions of ships ***for which a change of class is sought*** and involve the flag State when necessary.

▌

(19) The European Maritime Safety Agency (EMSA) established by Regulation (EC) No 1406/2002 [1] should provide the necessary support to ensure the application of this Regulation.

(20) Since the objective of this Regulation, namely the establishment of measures to be followed by organisations entrusted with the inspection, survey and certification of ships, operating in the Community, 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 Regulation does not go beyond what is necessary in order to achieve that objective.

(21) Measures to be followed by the Member States in their relationship with ship inspection and survey organisations are laid down in Directive …/…/EC of the European Parliament and the Council of … [2]*[on compliance with flag State requirements and* on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations*]* [3]‖,

HAVE ADOPTED THIS REGULATION:

Article 1

This Regulation establishes measures to be followed by organisations entrusted with the inspection, survey and certification of ships for compliance with the international conventions on safety at sea and prevention of marine pollution, while furthering the objective of freedom to provide services. This includes the development and implementation of safety requirements for hull, machinery and electrical and control installations of ships falling under the scope of the international conventions.

[1] OJ L 208 5.8.2002, p. 1. ‖.
[2] OJ … ‖ .
[3] OJ L …

Article 2

For the purpose of this Regulation the following definitions shall apply:

(a) 'ship' means a ship falling within the scope of the international conventions;

(b) 'international conventions' means the International Convention for the Safety of Life at Sea of 1 November 1974 (SOLAS 74) with the exception of chapter XI-2 of the Annex thereto, the International Convention of Load Lines of 5 April 1966 and the International Convention for the Prevention of Pollution from Ships of 2 November 1973 (Marpol), together with the protocols and amendments thereto, and the related codes of mandatory status in all Member States, in their up-to-date version;

(c) 'organisation' means a legal entity, its subsidiaries and any other entities under its control, which jointly or separately carry out tasks falling under the scope of this Regulation;

(d) 'control' means, for the purpose of point (c), rights, contracts or any other means, in law or in fact, which, either separately or in combination confer the possibility of exercising decisive influence on a legal entity or enable that entity to carry out tasks falling under the scope of this Regulation;

(e) 'recognised organisation' means an organisation recognised in accordance with this Regulation;

(f) 'authorisation' means an act whereby a Member State grants an authorisation or delegates powers to a recognised organisation;

(g) 'statutory certificate' means a certificate issued by or on behalf of a flag State in accordance with the international conventions;

(h) 'rules and procedures' means a recognised organisation's requirements for the design, construction, equipment, maintenance and survey of ships;

(i) 'class certificate' means a document issued by a recognised organisation certifying the fitness of a ship for a particular use or service in accordance with the rules and ***regulations*** laid down and made public by that recognised organisation;

(j) '***country of*** location' means the ***state where*** the registered office, central administration or principal place of business of ***a recognised*** organisation ***is located***.

Article 3

1. Member States which wish to grant an authorisation to any organisation which is not yet recognised shall submit a request for recognition to the Commission together with complete information on, and evidence of, the organisation's compliance with the minimum criteria set out in Annex I and on the requirement and its undertaking that it shall comply with the provisions of Articles 8(4), 9, 10 and 11.

2. The Commission, together with the respective Member States submitting the request, shall carry out assessments of the organisations for which the request for recognition was received in order to verify that the organisations meet and undertake to comply with the requirements referred to in paragraph 1.

3. The Commission shall, in accordance with the regulatory procedure referred to in Article 12(3), refuse to recognise organisations which fail to meet the requirements referred to in paragraph 1 or whose performance is considered an unacceptable threat to safety or the environment on the basis of the criteria laid down in accordance with Article 14.

Article 4

1. Recognition shall be granted by the Commission in accordance with the regulatory procedure referred to in Article 12(3).

▌

2. Recognition shall be granted to the relevant legal entity, which is the parent entity of all legal entities that constitute the recognised organisation. The recognition shall encompass all legal entities that contribute to ensuring that that organisation provides cover for their services worldwide.

3. The Commission, acting in accordance with the regulatory procedure referred to in Article 12(3), may limit the recognition as regards certain types of ships, ships of a certain size, certain trades, or a combination thereof, in accordance with the proven capacity and expertise of the organisation concerned. In such a case, the Commission shall state the reasons for the limitation and the conditions under which the limitation shall be removed or can be widened. The limitation may be reviewed at any time.

4. The Commission shall draw up and regularly update a list of the organisations recognised in accordance with this Article. That list shall be published in the Official Journal of the European Union.

Article 5

Where the Commission considers that a recognised organisation has failed to fulfil the minimum criteria set out in Annex I or its obligations under this Regulation, or that the safety and pollution prevention performance of a recognised organisation has worsened significantly, without, however, it constituting an unacceptable threat to safety or the environment, it shall require the recognised organisation concerned to undertake the necessary preventive and remedial action within specified deadlines to ensure full compliance with those minimum criteria and obligations and, in particular, remove any potential threat to safety or the environment, or to otherwise address the causes of the worsening performance.

The preventive and remedial action may include interim protective measures when the potential threat to safety or the environment is immediate.

However, and without prejudice to their immediate implementation, the Commission shall give to all Member States which have granted an authorisation to the recognised organisation concerned, advance notice of the measures that it intends to take.

Article 6

1. In addition to the measures taken under Article 5, the Commission may, in accordance with the advisory procedure referred to in Article 12(2), impose fines on a recognised organisation:

(a) whose serious or repeated failure to fulfil the minimum criteria set out in Annex I or its obligations under Articles 8(4), 9, 10 and 11 or whose worsening performance reveals serious shortcomings in its structure, systems, procedures or internal controls; or

(b) which has deliberately provided incorrect, incomplete or misleading information to the Commission in the course of its assessment pursuant to Article 8(1) or otherwise obstructed that assessment.

2. Without prejudice to paragraph 1, where a recognised organisation fails to undertake the preventive and remedial action required by the Commission, or incurs unjustified delays, the Commission may impose periodic penalty payments on that organisation until the required action is fully carried out.

3. The fines and periodic penalty payments referred to in paragraphs 1 and 2 shall be dissuasive and proportionate to both the gravity of the case and the economic capacity of the recognised organisation concerned, taking into account, in particular, the extent to which safety or the protection of the environment has been compromised.

They shall be imposed only after the recognised organisation and the Member States concerned have been given the opportunity to submit their observations.

The aggregate amount of the fines and periodic penalty payments imposed shall not exceed 5 % of the total average turnover of the recognised organisation in the preceding three business years for the activities falling under the scope of this Regulation.

▌

Article 7

1. The Commission shall withdraw the recognition of an organisation:

(a) whose repeated and serious failure to fulfil the minimum criteria set out in Annex I or its obligations under this Regulation is such that it constitutes an unacceptable threat to safety or the environment;

(b) whose repeated and serious failure in its safety and pollution prevention performance is such that it constitutes an unacceptable threat to safety or the environment;

(c) which prevents or repeatedly obstructs the assessment by the Commission; *or*

(d) which fails to pay the fines and/or periodic penalty payments referred to in Article 6(1) and (2). ‖

▌

2. For the purpose of points (a) and (b) of paragraph 1, the Commission shall decide on the basis of all the available information, including:

(a) the results of its own assessment of the recognised organisation concerned pursuant to Article 8(1);

(b) reports submitted by Member States pursuant to *Article 14* of Directive …/ …/EC [1]*[on compliance with flag State requirements and on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations]*;

(c) analyses of casualties involving ships classed by the recognised organisations;

(d) any recurrence of the shortcomings referred to in point (a) of Article 6(1);

(e) the extent to which the fleet in the recognised organisation's class is affected; and

(f) the ineffectiveness of the measures referred to in Article 6(2).

3. Withdrawal of recognition shall be decided by the Commission, upon its own initiative or at the request of a Member State, in accordance with the regulatory procedure referred to in Article 12(3) and after the recognised organisation concerned has been given the opportunity to submit its observations.

Article 8

1. All the recognised organisations shall be assessed by the Commission, together with the Member State which submitted the relevant request for recognition, on a regular basis and at least every two years to verify that they meet the obligations under this Regulation and fulfil the minimum criteria set out in Annex I. The assessment shall be confined to those activities of the recognised organisations, which fall within the scope of this Regulation.

2. In selecting the recognised organisations for assessment, the Commission shall pay particular attention to the safety and pollution prevention performance of the recognised organisation, to the casualty records and to the reports produced by Member States in accordance with *Article 14* of Directive …/ …/EC [2]*[on compliance with flag State requirements and on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations]*.

3. The assessment may include a visit to regional branches of the recognised organisation as well as random inspection of ships, both in service and under construction, for the purpose of auditing the recognised organisation's performance. In *that* case the Commission shall, where appropriate, inform the Member State in which the regional branch is located. The Commission shall provide the Member States with a report on the results of the assessment.

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[1] OJ … ‖ .
[2] OJ … ‖ .

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4. Each recognised organisation shall make available the results of its quality system management review to the Committee referred to in Article 12(1), on an annual basis.

Article 9

1. ***No clauses in a contract of a recognised organisation with a third party or in an authorisation agreement with a flag State may be invoked to restrict the*** access ***of the Commission*** to the information necessary for the purposes of the assessment referred to in Article 8(1). ▌

2. Recognised organisations shall ensure in their contracts with ***third parties*** for the issue of statutory certificates or class certificates to a ship that such issue shall be made conditional on the parties not opposing the access of the ***Community*** inspectors on board that ship for the purposes of Article 8(1).

Article 10

1. The recognised organisations shall consult with each other periodically with a view to maintaining equivalence and aiming for harmonisation of their rules and ***regulations*** and the implementation thereof. They shall cooperate with each other with a view to achieving consistent interpretation of the international conventions, without prejudice to the powers of the flag States. Recognised organisations shall, in appropriate cases, agree on the technical and procedural conditions under which they will mutually recognise ***their respective classification*** certificates ▌based on equivalent ***models***, taking the most demanding and rigorous standards as their reference ***and particularly taking into account marine equipment bearing the mark of conformity in accordance with Council Directive 96/98/EC of 20 December 1996 on marine equipment*** [1].

▌

Recognised organisations shall recognise, for classification purposes, certificates of marine equipment bearing the *mark of conformity* in accordance with ‖Directive 96/98/EC ‖.

They shall provide the Commission and the Member States with periodic reports on fundamental progress in standards and mutual recognition of certificates for materials, equipment and components.

2. The Commission shall submit a report to the European Parliament and the Council by … [2], based on an independent study, on the level reached in the process of harmonising the rules and ***regulations*** and on mutual recognition. ***In the event of failure by the recognised organisations to fulfil the provisions of this Article, the Commission shall propose to the European Parliament and the Council the appropriate measures***.

3. The recognised organisations shall cooperate with port State control administrations where a ship of their class is concerned, in particular in order to facilitate the rectification of reported deficiencies or other discrepancies.

4. The recognised organisations shall provide to all Member States' administrations which have granted any of the authorisations provided for in Article 3 of Directive …/…/EC [3]*[on compliance with flag State requirements and on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations]* and to the Commission all relevant information about their classed fleet, transfers, changes, suspensions and withdrawals of class, irrespective of the flag the ships fly.

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[1] ***OJ L 46, 17.2.1997, p. 25.***
[2] ***Three years*** from the entry into force of this Regulation.
[3] OJ … ‖ .

Information on transfers, changes, suspensions, and withdrawals of class, including information on all overdue surveys, overdue recommendations, conditions of class, operating conditions or operating restrictions issued against their classed ships, irrespective of the flag the ships fly, shall also be communicated electronically to the common inspection database used by the Member States for the implementation of Directive …/…/EC *[on compliance with flag State requirements and on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations]* at the same time as it is recorded within the recognised organisation's own systems and in any case no later than 72 hours after the event that gave rise to the obligation to communicate the information. That information, with the exception of recommendations and conditions of class which are not overdue, shall be published on the website of these recognised organisations.

5. The recognised organisations shall not issue statutory certificates to a ship, irrespective of its flag, which has been declassed or is changing class for safety reasons, before giving the opportunity to the competent administration of the flag State to give its opinion within a reasonable time as to whether a full inspection is necessary.

6. In cases of transfer of class from one recognised organisation to another, the losing organisation shall, without undue delay, provide the gaining organisation with the complete history file of the ship and, in particular, inform it of:

(a) any overdue surveys;

(b) any overdue recommendations and conditions of class;

(c) operating conditions issued against the ship; and

(d) operating restrictions issued against the ship.

New certificates for the ship can be issued by the gaining organisation only after all overdue surveys have been satisfactorily completed and all overdue recommendations or conditions of class previously issued in respect of the ship have been completed as specified by the losing organisation.

Before completing the ***new*** certificates, the gaining organisation must advise the losing organisation of ***their*** date of issue ***and, for*** each overdue survey, overdue recommendation and overdue condition of class, ***confirm the action taken, specifying its starting place and date and the place where, and the date when, it was satisfactorily completed***.

Recognised organisations shall establish and implement appropriate common requirements concerning cases of transfer of class where special precautions are necessary. Those cases shall, as a minimum, include the transfer of class of ships of 15 years of age or over and the transfer from a non-recognised organisation to a recognised organisation.

Recognised organisations shall cooperate with each other in properly implementing the provisions of this paragraph.

Article 11

1. ***The Member States, together with the*** recognised organisations shall set up by … (*) an ***Assessment Committee*** in accordance with the ▌quality standards ***EN 45012***. The relevant professional associations working in the shipping industry may participate in an advisory capacity.

(*) ***18 months*** *from* ‖ the entry into force of this Regulation.

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2. The ***Assessment Committee*** shall carry out the following tasks:

(a) ***regulation and continuous*** assessment of the quality management systems of recognised organisations, in accordance with the ISO 9001 quality standard criteria;

(b) certification of the quality ***system*** of recognised organisations ▌;

(c) issue of ***binding*** interpretations of internationally recognised quality management standards, in particular to take account of the specific features of the nature and obligations of recognised organisations; and

(d) ***adoption*** of individual and collective recommendations for the improvement of recognised organisations' ***rules,*** processes and internal control mechanisms.

3. The ***Assessment Committee shall be independent,*** shall have the necessary ▌competences to act independently of the recognised organisations and shall have the necessary means to carry out its duties effectively and to the highest professional standards. The ***Assessment Committee shall*** lay down its working methods and rules of procedure.

▌

4. The ***Assessment Committee*** shall provide the interested parties, including ▌the Commission, with full information on its annual work plan as well as on its findings and recommendations, particularly with regard to situations where safety might have been compromised.

5. The ***Assessment Committee*** shall be periodically ***audited*** by the Commission***, which may, acting in accordance with the regulatory procedure referred to in Article 12(3), require the Assessment Committee to adopt measures which the Commission deems necessary to ensure full compliance with paragraph 1.***

6. The Commission shall report to the Member States on the results and follow-up of its assessment.

Article 12

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by Regulation (EC) No 2099/2002 ([1]).

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, 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.

4. 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.

([1]) OJ L 324, 29.11.2002, p. 1. ‖.

Article 13

1. This Regulation may, without broadening its scope, be amended***, in accordance with the regulatory procedure with scrutiny referred to in Article 12(4),*** in order to update the minimum criteria set out in Annex I taking into account, in particular, the relevant decisions of the IMO.

These 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 12(4).

2. Amendments to the international conventions defined in Article 2(b) of this Regulation may be excluded from the scope of this Regulation, pursuant to Article 5 of Regulation (EC) No 2099/2002.

Article 14

1. The Commission shall adopt and publish:

(a) criteria to measure the effectiveness of the rules and procedures as well as the performance of the recognised organisations as regards the safety of, and the prevention of pollution from, their classed ships, having particular regard to the data produced by the Paris Memorandum of Understanding on Port State Control and/or by other similar schemes; and

(b) criteria to determine when such performance is to be considered an unacceptable threat to safety or the environment, which may take into account specific circumstances affecting smaller-sized or highly specialised organisations.

These 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(4).

2. The measures designed to amend non-essential elements of this Regulation by supplementing it relating to the implementation of Article 6 and, if appropriate, Article 7 shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 12(4).

3. Without prejudice to the immediate application of the minimum criteria set out in Annex I, the Commission may, in accordance with the regulatory procedure referred to in Article 12(3), adopt rules on their interpretation and may consider the establishment of objectives for the general minimum criteria referred to in point 3, Part A of Annex I.

Article 15

1. The organisations which, at the entry into force of this Regulation, had been granted recognition in accordance with Directive 94/57/EC shall retain their recognition, subject to the provisions of paragraph 2.

2. Without prejudice to Articles 5 and 7, the Commission shall re-examine all limited recognitions granted under Directive 94/57/EC in light of *Article 4(2)* of this Regulation by … (*), with a view to deciding, in accordance with the regulatory procedure referred to in Article 12(3), whether the limitations are to be replaced by others or removed. The limitations shall continue to apply until the Commission has taken a decision.

(*) ‖ Twelve months *from* the entry into force of this Regulation.

Article 16

In the course of the assessment pursuant to Article 8(1), the Commission shall verify that the holder of the recognition is the relevant legal entity within the organisation to which the provisions of this Regulation shall apply. If that is not the case, the Commission shall take a decision amending that recognition.

Where the Commission amends the recognition, the Member States shall adapt their agreements with the recognised organisation to take account of the amendment.

Article 17

The Commission shall, on a biennial basis, inform the European Parliament and the Council on the application of this Regulation.

Article 18

References in Community and national law to Directive 94/57/EC shall be construed, as appropriate, as being made to this Regulation and shall be read in accordance with the correlation table in Annex II.

Article 19

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 …, on …

For the European Parliament
The President

For the Council
The President

ANNEX I

MINIMUM CRITERIA FOR ORGANISATIONS

(REFERRED TO IN ARTICLE 3)

A. GENERAL MINIMUM CRITERIA

1. ***To be eligible to obtain or to continue to enjoy Community recognition,*** a recognised organisation must have legal personality in the State *where it is located*. Its accounts shall be certified by independent auditors.

2. The recognised organisation must be able to document extensive experience in assessing the design and construction of merchant ships.

3. The recognised organisation must be equipped at all times with significant managerial, technical, support and research staff commensurate with the size of the fleet in its class, its composition and the organisation's involvement in the construction and conversion of ships. The recognised organisation must be capable of assigning to every place of work, when and as needed, means and staff commensurate with the tasks to be carried out in accordance with general minimum criteria under points 6 and 7 and with the specific minimum criteria under part B.

4. The recognised organisation must have and apply a set of own comprehensive rules and procedures, or the demonstrated ability thereto, for the design, construction and periodic survey of merchant ships, having the quality of internationally recognised standards. They must be published and continually upgraded and improved through research and development programmes.

5. The recognised organisation must have its register of ships published on an annual basis or maintained in *a database* accessible to the public.

6. The recognised organisation must not be controlled by shipowners or shipbuilders, or by others engaged commercially in the manufacture, equipping, repair or operation of ships. The recognised organisation is not substantially dependent on a single commercial enterprise for its revenue. The recognised organisation does not carry out class or statutory work if it is identical to or has business, personal or family links to the shipowner or operator. This incompatibility shall also apply to surveyors employed by the recognised organisation.

7. The recognised organisation must operate in accordance with the provisions set out in the Annex to IMO Resolution A.789(19) on specifications on the survey and certification functions of recognised organisations acting on behalf of the administration, insofar as they cover matters falling within the scope of this Regulation.

B. SPECIFIC MINIMUM CRITERIA

1. The recognised organisation ***shall*** provide worldwide coverage by its exclusive ***technical staff*** or, in ▌ duly justified cases, through exclusive ***technical staff*** of other ▌ organisations.

2. The recognised organisation must be governed by a code of ethics.

3. The recognised organisation must be managed and administered in such a way as to ensure the confidentiality of information required by the administration.

4. The recognised organisation must provide relevant information to the administration, to the Commission and to the interested parties.

5. The recognised organisation, its surveyors and its technical staff shall carry out their work without in any way harming the intellectual property rights of shipyards, equipment suppliers, and shipowners, including patents, licences, know-how, or any other kind of knowledge whose use is legally protected at Community or national level. *Without prejudice to the assessment powers of Member States and the Commission and in particular under Article* 9, *the recognised organisation, and the surveyors and technical staff employed by it may under no circumstances* pass on or divulge commercially relevant data obtained in the course of their work of inspecting, checking, and monitoring ships under construction or repair.

6. The recognised organisation's management must define and document its policy and objectives for, and commitment to, quality and must ensure that this policy is understood, implemented and maintained at all levels in the recognised organisation. The recognised organisation's policy must refer to safety and pollution prevention performance targets and indicators.

7. The recognised organisation must ensure that:

(a) its rules and procedures are established and maintained in a systematic manner;

(b) its rules and procedures are complied with and an internal system to measure the quality of service in relation to these rules and procedures is put in place;

(c) the requirements of the statutory work for which the recognised organisation is authorised are satisfied and an internal system to measure the quality of service in relation to compliance with the international conventions is put in place;

(d) the responsibilities, powers and interrelation of personnel whose work affects the quality of the recognised organisation's services are defined and documented;

(e) all work is carried out under controlled conditions;

(f) a supervisory system is in place which monitors the actions and work carried out by surveyors and technical and administrative staff employed by the recognised organisation;

(g) surveyors have an extensive knowledge of the particular type of ship on which they carry out their work as relevant to the particular survey to be carried out and of the relevant applicable requirements;

(h) a system for qualification of surveyors and continuous updating of their knowledge is implemented;

(i) records are maintained, demonstrating achievement of the required standards in the items covered by the services performed, as well as the effective operation of the quality system;

(j) a comprehensive system of planned and documented internal audits of the quality related activities is maintained in all locations;

(k) the statutory surveys and inspections required by the Harmonised System of Survey and Certification for which the recognised organisation is authorised are carried out in accordance with the provision set out in the Annex and Appendix to IMO Resolution A.948(23) on Survey Guidelines under the Harmonised System of Survey and Certification;

(l) clear and direct lines of responsibility and control are established between the central and the regional offices of the recognised organisation and between the recognised organisations and their surveyors.

8. The ▌ organisation must have developed ***and*** implemented and must maintain an effective internal quality system based on appropriate parts of internationally recognised quality standards and in compliance with EN ISO/IEC 17020:2004 (inspection bodies) and with EN ISO 9001:2000 ▌, as interpreted and certified by the ***Assessment Committee*** referred to in Article 11(1).

The Assessment Committee must act independently and must accordingly have access to all the resources needed to be able to operate properly and carry out thorough and consistent work. It must possess highly specialised and extensive technical skills and a code of conduct that safeguards the independence of the auditors' activities.

9. The rules and ***regulations*** of the ▌ organisation must be implemented in such a way that the organisation remains in a position to derive from its own direct knowledge and judgement a reliable and objective declaration on the safety of the ships concerned by means of class certificates on the basis of which statutory certificates can be issued.

10. The recognised organisation must have the necessary means of assessing, through the use of qualified professional staff and pursuant to the provisions set out in the Annex to IMO Resolution A.913(22) on Guidelines on implementation of the International Safety Management (ISM) Code by administrations, the application and maintenance of the safety management system, both shore-based and on board ships, intended to be covered in the certification.

11. The recognised organisation must allow participation in the development of its rules and procedures by representatives of the administration and other parties concerned.

ANNEX II

CORRELATION TABLE

Directive 94/57/EC	Directive …/…/EC [1] *[on compliance with flag State requirements and on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations]*	This Regulation
Article 1	Article 1	Article 1
Article 2(a)	Article 2(a)	Article 2(a)
Article 2(b)	Article 2(b)	—
Article 2(c)	Article 2(c)	—
Article 2(d)	Article 2(d)	Article 2(b)
Article 2(e)	*Article 2(g)*	Article 2(c)
—	*Article 2(h)*	Article 2(d)
Article 2(f)	*Article 2(i)*	Article 2(e)
Article 2(g)	*Article 2(j)*	Article 2(f)
Article 2(h)	*Article 2(k)*	Article 2(g)
Article 2(i)	*Article 2(m)*	Article 2(i)
—	*Article 2(j)*	Article 2(h)
Article 2(j)	*Article 2(n)*	—
Article 2(k)	—	Article 2(j)
Article 3	Article 3	—
Article 4(1) first phrase	—	Article 3(1)
Article 4(1) second phrase	—	Article 3(2)
Article 4(1) third phrase	—	—
Article 4(1) fourth phrase	—	Article 4(1)
—	—	Article 3(3)
—	—	Article 4(2), (3), (4)
—	—	Article 5
—	—	Article 6
—	—	Article 7
Article 5(1)	*Article 8(1)*	—
Article 5(3)	*Article 8(2)*	—
Article 6(1), (2), (3), (4)	*Article 9(1), (2), (3), (4)*	—
Article 6(5)	—	—

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Directive 94/57/EC	Directive …/…/EC [1] *[on compliance with flag State requirements and on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations]*	This Regulation
Article 7	*Article 10*	Article 12
Article 8(1) first indent	*Article 11(1), point (a) of first subparagraph*	—
Article 8(1) second indent	—	Article 13(1)
Article 8(1) third indent	*Article 11(1), point (b) of first subparagraph*	—
—	*Article 11(1) second subparagraph*	Article 13(1) second subparagraph
Article 8(2)	*Article 11(2)*	—
Article 8(2) second subparagraph	—	Article 13(2)
Article 9(1)	—	—
Article 9(2)	—	—
Article 10(1) *introduction*	*Article 12*	—
Article 10(1)(a), (b), (c), (2), (3), (4)	—	—
Article 11(1), (2)	*Article 13(1), (2)*	—
Article 11(3), (4)	—	Article 8(1), (2)
Article 12	*Article 14*	—
Article 13	—	—
Article 14	*Article 15(1), (2)*	—
—	*Article 15(3)*	—
—	*Article 16*	—
—		Article 9
Article 15(1)		
		Article 10(1), (2)
Article 15(2)		Article 10(3)
Article 15(3)	—	Article 10(4)
Article 15(4)		Article 10(5)
Article 15(5)		Article 10(6) first, second, third, fifth subparagraphs
—		Article 10(6) fourth subparagraph
Article 16	*Article 17*	—
Article 17	*Article 20*	—
—	*Article 18*	—
—	*Article 19*	—

Directive 94/57/EC	Directive …/…/EC [1] *[on compliance with flag State requirements and on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations]*	This Regulation
		Article 11
		Article 14
		Article 15
		Article 16
		Article 17
		Article 18
		Article 19
Annex		Annex I
	Annex I	
	Annex I	Annex II

[1] OJ … ‖ .

Electronic communications networks and services ***I

P6_TA(2008)0449

European Parliament legislative resolution of 24 September 2008 on the proposal for a directive of the European Parliament and of the Council amending Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services, Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and Directive 2002/20/EC on the authorisation of electronic communications networks and services (COM(2007)0697 — C6-0427/2007 — 2007/0247(COD))

(2010/C 8 E/45)

(Codecision procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0697),

— having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0427/2007),

— 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 Economic and Monetary Affairs, the Committee on Internal Market and Consumer Protection, the Committee on Culture and Education, the Committee on Legal Affairs and the Committee on Civil Liberties, Justice and Home Affairs (A6-0321/2008),

Wednesday 24 September 2008

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(2007)0247

Position of the European Parliament adopted at first reading on 24 September 2008 with a view to the adoption of Directive *2008/…/EC* of the European Parliament and of the Council amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services

(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) The functioning of the five directives comprising the existing regulatory framework for electronic communications networks and services (Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services [4] (Framework Directive), Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities [5] (Access Directive), Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of ‖ electronic communications networks and services [6] (Authorisation Directive), Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services [7] (Universal Service Directive), 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 [8] (Directive on privacy and electronic communications) *(together referred to as 'the Framework Directive and the Specific Directives')*) is subject to periodic review by the Commission, with a view in particular to determining the need for modification in the light of technological and market developments.

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[1] *OJ C 224, 30.8.2008, p. 50.*
[2] *Opinion of 19 June 2008 (not yet published in the Official Journal).*
[3] *Position of the European Parliament of 24 September 2008.*
[4] OJ L 108, 24.4.2002, p. 33.
[5] OJ L 108, 24.4.2002, p. 7.
[6] OJ L 108, 24.4.2002, p. 21.
[7] OJ L 108, 24.4.2002, p. 51.
[8] OJ L 201, 31.7.2002, p. 37.

(2) A revision of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) [1] was carried out in 2007 with the intention of ensuring optimal conditions of competitiveness and legal certainty for information technologies and media industries and services in the European Union, as well as respect for cultural and linguistic diversity. In this context, a fair and balanced regulatory framework for electronic communications networks and services constitutes an essential pillar of the EU audiovisual sector.

(3) In that regard, the Commission presented its initial findings in its Communication to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 29 June 2006 on the review of the EU regulatory framework for electronic communications networks and services. On the basis of these initial findings, a public consultation was held, which identified the continued lack of an internal market for electronic communications as the most important aspect needing to be addressed. In particular, regulatory fragmentation and inconsistencies between the activities of the national regulatory authorities were found to jeopardise not only the competitiveness of the sector, but also the substantial consumer benefits from cross-border competition.

(4) The EU regulatory framework for electronic communications networks and services should therefore be reformed in order to complete the internal market for electronic communications by strengthening the Community mechanism for regulating operators with significant market power in the key markets. ▌ The reform also includes the definition of an efficient ***and coordinated*** spectrum management strategy in order to achieve a Single European Information Space and the reinforcement of provisions for users with disabilities in order to obtain an inclusive information society.

(5) A primary objective of the EU regulatory framework for electronic communications networks and services is to create a sustainable ecosystem for electronic communications based on supply and demand, the former through effective and competitive infrastructure and service markets and the latter through information society developments.

(6) A further objective of the EU regulatory framework for electronic communications networks and services is to progressively reduce ex ante sector specific-rules as competition in markets in electronic communications develops and, ultimately, for electronic communications to be governed by competition law only. While electronic communications markets have shown strong competitive dynamics in recent years, it is essential that ex ante regulatory obligations only be imposed where there is no effective and sustainable competition. The necessity of the continuation of ex ante regulation should be reviewed no later than three years from the date of transposition of this Directive.

(7) In order to ensure a proportionate and suitable approach to varying competitive conditions, national regulatory authorities should be able to define markets on a sub-national basis and to lift regulatory obligations in markets or geographic areas where there is effective infrastructure competition. This should apply even where geographic areas are not defined as separate markets.

(8) In order to achieve the goals of the Lisbon Agenda it is necessary to give appropriate incentives for investment in high-speed networks that support innovation in content-rich Internet services and strengthen the international competitiveness of the European Union. Such networks have enormous potential to deliver benefits to consumers and businesses across the European Union. It is therefore vital to promote sustainable investment in the development of such networks, while safeguarding competition and boosting consumer choice through regulatory predictability and consistency.

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[1] ***OJ L 298, 17.10.1989, p. 23.***

Wednesday 24 September 2008

(9) In its Communication of 20 March 2006 entitled 'Bridging the Broadband Gap' [1], the Commission acknowledged that there is a territorial divide in the European Union regarding access to high-speed broadband services. Despite the general increase in broadband connectivity, access in various regions is limited on account of high costs resulting from low population densities and remoteness. Commercial incentives to invest in broadband deployment in these areas often turn out to be insufficient. However, technological innovation reduces deployment costs. In order to ensure investment in new technologies in underdeveloped regions, electronic communications regulation should be consistent with other policies, such as state aid policy, structural funds or the aims of wider industrial policy.

(10) Investment in research and development is of vital importance for the development of next generation fibre optics networks and for achieving flexible and efficient radio access, which enhances competition and innovation in applications and services for the benefit of consumers. The challenge is to deliver the next generation of ubiquitous and converged network and service infrastructures for electronic communications, information technology and media.

(11) Public policy should play a role in complementing the effective functioning of electronic communications markets, addressing both the supply and demand sides so as to stimulate a virtuous circle where development of better content and services follows from infrastructure deployment, and vice versa. Public intervention should be proportionate, should neither distort competition nor inhibit private investment, should increase incentives to invest and should lower entry barriers. In this respect, public authorities may support the roll-out of future-proof high-capacity infrastructure. In so doing, public support should be given by means of open, transparent and competitive procedures, should not favour any given technology a priori and should provide access to infrastructure on a non-discriminatory basis.

(12) The EU regulatory framework for electronic communications networks and services should also promote consumer protection in the electronic communications sector by providing for accurate and comprehensive information by all possible means, by providing for transparency in fees and charges and by providing for high standards in the delivery of services. It should also fully recognise the role of consumer associations in public consultations and ensure that the competent authorities are provided with the powers necessary to prevent bid-rigging and act with the necessary effectiveness to stamp out any instances of fraud.

(13) The views of national regulatory authorities and industry stakeholders should be taken into account by the Commission when adopting measures pursuant to this Directive through the use of effective consultation ensuring transparency and proportionality. The Commission should issue detailed consultation documents which explain the different courses of action being considered, and stakeholders should be given a reasonable time in which to respond. Following the consultation, and after having considered the responses, the Commission should give reasons for the decision it takes in a statement which should include a description of how the views of respondents were taken into account.

(14) In order to allow national regulatory authorities to meet the objectives set out in the Framework Directive and the Specific Directives, in particular concerning end-to-end interoperability, the scope of the Framework Directive should be extended to cover radio equipment and telecommunications terminal equipment as defined in Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity [2] as well as consumer equipment used for digital television.

(15) Without prejudice to Directive 1999/5/EC, it is necessary to clarify the application of aspects of terminal equipment which concern access for disabled end-users so as to ensure interoperability between terminal equipment and electronic communications networks and services.

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[1] ***OJ C 151, 29.6.2006, p. 15.***
[2] OJ L 91, 7.4.1999, p. 10.

(16) Certain definitions should be clarified or changed to take account of market and technological developments and to eliminate ambiguities identified in implementing the regulatory framework.

(17) The activities of national regulatory authorities and of the Commission in the context of the EU regulatory framework for electronic communications networks and services contribute to the fulfilment of broader public policy objectives in the areas of culture, employment, the environment, social cohesion, regional development and town and country planning.

(18) National electronic communications markets will continue to differ within the European Union. It is therefore essential that national regulatory authorities and the Body of European Regulators in Telecom (BERT) possess the powers and knowledge necessary to build a competitive EU ecosystem in electronic communications markets and services while at the same time understanding national and regional differences and complying with the principle of subsidiarity.

(19) The independence of the national regulatory authorities should be strengthened in order to ensure a more effective application of the regulatory framework and increase their authority and the predictability of their decisions. To this end, express provision should be made in national law to ensure that, in the exercise of its tasks, a national regulatory authority is protected against external intervention or political pressure liable to jeopardise its independent assessment of matters coming before it. Such outside influence makes a national legislative body unsuited to act as a national regulatory authority under the regulatory framework. For that purpose rules should be laid down in advance regarding the grounds for the dismissal of the head of the national regulatory authority in order to remove any reasonable doubt as to the neutrality of that body and its imperviousness to external factors. It is important that national regulatory authorities should have their own budget allowing them, in particular, to recruit a sufficient number of qualified staff. In order to ensure transparency, this should be published annually.

(20) There has been a wide divergence in the manner in which appeal bodies have applied interim measures to suspend the decisions of the national regulatory authorities. In order to achieve greater consistency of approach common standards should be applied in line with Community jurisprudence. Given the importance of appeals for the overall working of the regulatory framework, a mechanism should be set up for collecting information on appeals and decisions to suspend decisions taken by the regulatory authorities in all the Member States and for the reporting of that information to the Commission.

(21) In order to *ensure that national regulatory authorities* carry out their regulatory tasks in an effective manner, the data *which they* gather should include accounting data on the retail markets that are associated with wholesale markets where an operator has significant market power and as such are regulated by the national regulatory authority, and should also include data to enable the national regulatory authority to assess the possible impact of planned upgrades or changes to network topology on the development of competition or on wholesale products made available to other parties.

(22) The national consultation provided for under Article 6 of the Framework Directive should be conducted prior to the Community consultation provided for under Article 7 of that Directive, in order to allow the views of interested parties to be reflected in the Community consultation. This would also avoid the need for a second Community consultation in the event of changes to a planned measure as a result of the national consultation.

(23) The discretion of national regulatory authorities needs to be reconciled with the development of consistent regulatory practices and the consistent application of the regulatory framework in order to contribute effectively to the development and completion of the internal market. National regulatory authorities should therefore support the internal market activities of the Commission and those of ***BERT***, which should serve as the exclusive forum for cooperation between national regulatory authorities in the exercise of their responsibilities under the regulatory framework.

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(24) The Community mechanism allowing the Commission to require national regulatory authorities to withdraw planned measures concerning market definition and the designation of operators having significant market power, has contributed significantly to a consistent approach in identifying the circumstances in which ex-ante regulation may be applied and operators are subject to such regulation. However, there is no equivalent mechanism for the remedies to be applied. Monitoring of the market by the Commission and, in particular, the experience *of* the procedure under Article 7 of the Framework Directive, has shown that inconsistencies in the national regulatory authorities' application of remedies, even under similar market conditions, undermine the internal market in electronic communications, do not ensure a level playing field between operators established in different Member States, and prevent the realisation of consumer benefits from cross-border competition and services. The Commission should be given powers to require national regulatory authorities to withdraw draft measures on the remedies chosen by national regulatory authorities. In order to ensure the consistent application of the regulatory framework in the Community, the Commission should consult ***BERT*** prior to its decision.

(25) It is important that the regulatory framework is implemented in a timely manner. When the Commission has taken a decision requiring a national regulatory authority to withdraw a planned measure, national regulatory authorities should submit a revised measure to the Commission. A deadline should be laid down for the notification of the revised measure to the Commission under Article 7 of the Framework Directive *so* that market players know the duration of the market review and ‖ to increase legal certainty.

(26) Likewise, in view of the need to avoid a regulatory vacuum in a sector characterised by its fast-moving nature, if adoption of the re-notified draft measure would still create a barrier to the single market or be incompatible with Community law, the Commission, after having consulted ***BERT***, should be able to require the national regulatory authority concerned to impose a specific remedy within a specified time.

(27) Having regard to the short time limits in the Community consultation mechanism, powers should be conferred on the Commission to adopt implementing measures to simplify the procedures for exchanging information between the Commission and national regulatory authorities — for example in cases concerning stable markets, or involving only minor changes to previously notified measures — or to allow for the introduction of a notification exemption in order to streamline procedures in certain cases.

(28) In line with the objectives of the Charter of *Fundamental* Rights *of the European Union* and the United Nations Convention on the Rights of ‖ Persons with Disabilities, the regulatory framework should ensure that all users, including disabled end-users, the elderly, and users with special social needs, have easy access to affordable high quality services. Declaration 22 annexed to the final Act of Amsterdam provides that the institutions of the Community shall take account of the needs of persons with a disability in drawing up measures under Article 95 of the Treaty.

(29) Radio frequencies should be considered a scarce public resource that has an important public and market value. It is in the public interest that spectrum is managed as efficiently and effectively as possible from an economic, social and environmental perspective, ***taking account of the objectives of cultural diversity and media pluralism***, and that obstacles to its efficient use are gradually withdrawn.

(30) Although spectrum management remains the competence of the Member States, only coordination and, where appropriate, harmonisation at Community level can ensure that spectrum users derive the full benefits of the internal market and that EU interests can be effectively defended world-wide.

(31) The provisions of this Directive relating to spectrum management should be consistent with the work of international and regional organisations dealing with radio spectrum management, such as the International Telecommunications Union (ITU) and the European Conference of Postal and Telecommunications Administrations (CEPT), so as to ensure the efficient management and harmonisation of the use of spectrum across the Community and globally.

(32) In order to contribute to the fulfilment of the objectives laid down in Article 8a of Directive 2002/21/EC (Framework Directive), a spectrum summit should be convened in 2010, driven by Member States and including the European Parliament, the Commission and all stakeholders. The summit should in particular contribute to ensuring greater consistency in EU spectrum policies, providing guidance regarding the switchover from analogue to digital terrestrial television, and freeing spectrum for new electronic communications services once the digital switchover has taken place.

(33) The switchover from analogue to digital terrestrial television should, as a result of the superior transmission efficiency of digital technology, free up a significant amount of spectrum in the European Union, the so-called 'digital dividend'. Member States should release their digital dividends as quickly as possible, allowing citizens to benefit from the deployment of new, innovative and competitive services. To this end, obstacles existing at national level for the efficient allocation or reallocation of the digital dividend should be removed, and a more coherent and integrated approach to the allocation of the digital dividend in the Community should be pursued.

(34) Radio frequencies should be managed so as to ensure that harmful interference is avoided. The basic concept of harmful interference should therefore be properly defined ***by reference to existing internationally agreed frequency plans*** to ensure that regulatory intervention is limited to the extent necessary to prevent such interference.

(35) The current spectrum management and distribution system is generally based on administrative decisions that are insufficiently flexible to cope with technological and economic evolution, in particular with the rapid development of wireless technology and the increasing demand for bandwidth. The undue fragmentation amongst national policies results in increased costs and lost market opportunities for spectrum users, and slows down innovation, to the detriment of the internal market, consumers and the economy as a whole. Moreover, the conditions for access to, and use of, radio frequencies may vary according to the type of operator, while electronic services provided by these operators increasingly overlap, thereby creating tensions between rights holders, discrepancies in the cost of access to spectrum, and potential distortions in the functioning of the internal market.

(36) National borders are increasingly irrelevant in determining optimal radio spectrum use. Fragmentation of the management of access to spectrum rights limits investment and innovation and does not allow operators and equipment manufacturers to realise economies of scale, thereby hindering the development of an internal market for electronic communications networks and services using radio spectrum.

(37) Flexibility in spectrum management and access to spectrum should be increased through technology- and service-neutral authorisations to *enable* spectrum users *to* choose the best technologies and services to apply in ▌ frequency ***bands available for electronic communications services as identified in national frequency allocation plans and the ITU Radio Regulations*** (the 'principles of technology and service neutrality'). The administrative determination of technologies and services should ***apply whenever general interest objectives are at stake***.

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(38) ***Restrictions on*** the principle of technology neutrality should be ***appropriate*** and justified by the need to avoid harmful interference, for example by imposing emission masks and power levels, to ensure the protection of public health by limiting public exposure to electromagnetic fields, to ensure proper sharing of spectrum, in particular where its use is only subject to general authorisations, or ▌ to comply with ***a general interest objective in conformity with Community law***.

(39) Spectrum users should also be able to choose *freely* the services they wish to offer over the spectrum subject to transitional measures *designed* to ***deal*** with previously acquired rights ***and the provisions of national frequency allocation plans and the ITU Radio Regulations***. *Exceptions* to the principle of service neutrality which require the provision of a specific service ***in order to take account of national public policy considerations or*** to meet clearly defined general interest objectives such as safety of life, the need to promote social, regional and territorial cohesion or ***the efficient use of radio frequencies and the effective management of*** spectrum *should be permitted where necessary*. Those objectives should include the promotion of ***national audiovisual and media policies***, cultural and linguistic diversity and media pluralism as defined in national legislation in conformity with Community law. Except where necessary to protect safety of life, ***or to ensure that these objectives are fulfilled***, exceptions should not result in exclusive use for certain services, but rather *should give them* priority so that other services or technologies may coexist in the same band insofar as possible. In order that the holder of the authorisation may choose freely the most efficient means to carry the content of services provided over radio frequencies, the content should not be regulated in the authorisation to use radio frequencies.

(40) It lies within the competence of the Member States to define the scope and nature of any exception regarding the promotion of cultural and linguistic diversity***, national audiovisual and media policies*** and media pluralism in accordance with their own national law.

(41) As the allocation of spectrum to specific technologies or services is an exception to the principles of technology and service neutrality and reduces the freedom to choose the service provided or technology used, any proposal for such allocation should be transparent and subject to public consultation.

(42) In the interests of flexibility and efficiency, national regulatory authorities should, in bands which will be identified on a harmonised basis, also allow spectrum users to freely transfer or lease their usage rights to third parties, which would allow spectrum valuation by the market. In view of their power to ensure effective use of spectrum, national regulatory authorities should take action so as to ensure that trading does not lead to a distortion of competition where spectrum is left unused.

▌

(43) For internal market purposes it may also be necessary to harmonise at Community level the identification of tradable frequency bands, the conditions for tradability or the transition to tradable rights in specific bands, a minimum format for tradable rights, requirements to ensure the central availability, accessibility, and reliability of information necessary for spectrum trading, and requirements to protect competition and to prevent spectrum hoarding. The Commission should therefore be given powers to adopt implementing measures for that harmonisation. Such implementing measures should take due account of whether individual rights of use have been granted on a commercial or non-commercial basis.

(44) The introduction of technology and service neutrality and trading for existing spectrum usage rights may require transitional rules, including measures to ensure fair competition, as the new system may entitle certain spectrum users to start competing with spectrum users having acquired their spectrum rights under more *onerous* terms and conditions. Conversely, where rights have been granted as a derogation from the general rules or according to criteria other than *those which are* objective, transparent, proportionate and non-discriminatory with a view to achieving general interest objectives, the situation of the holders of such rights should not be improved to the detriment of their new competitors beyond what is necessary to achieve such general interest objectives. Any spectrum that has become unnecessary for the achievement of public interest objectives should be recovered and re-assigned in accordance with the Authorisation Directive.

(45) In order to promote the functioning of the internal market, and to support the development of cross-border services, the Commission should be ***able to consult BERT****regarding* numbering. Furthermore, to *enable* citizens of the Member States, including travellers and disabled users, ‖ to reach certain services by using the same recognisable numbers at similar prices in all Member States, the powers of the Commission to adopt technical implementing measures should also cover, where necessary, the applicable tariff principle or mechanism, ***as well as the establishment of a single EU front-up call number ensuring user-friendly access to those services***.

(46) Permits issued to undertakings providing electronic communications networks and services allowing them to gain access to public or private property are essential factors for the establishment of electronic communications networks or new network elements. Unnecessary complexity and delay in the procedures for granting rights of way may therefore represent important obstacles to the development of competition. Consequently, the acquisition of rights of way by authorised undertakings should be simplified. National regulatory authorities should be able to coordinate the acquisition of rights of way, making relevant information accessible on their websites.

(47) It is necessary to strengthen the powers of the Member States vis-à-vis holders of rights of way to ensure the entry or roll out of new network in ***a fair, efficient and*** environmentally responsible way and independently of any obligation on an operator with significant market power to grant access to its electronic communications network. National regulatory authorities should be able to impose, on a case-by-case basis, the sharing of ***network elements and associated facilities such as*** ducts, masts and antennas, entry into buildings and better coordination of civil works. Improving facility sharing can significantly improve competition and lower the overall financial and environmental cost *for undertakings* of deploying electronic communications infrastructure, ***in particular new fibre optic access networks. National regulatory authorities should be able to impose on operators with significant market power obligations to provide a reference offer for granting fair and non-discriminatory access to their ducts.***

(48) Reliable and secure communication of information over electronic communications networks is increasingly central to the whole economy and society in general. System complexity, technical failure or human *error*, accidents or attacks may all have consequences for the functioning and availability of the physical infrastructures that deliver important services to EU citizens, including e-Government services. National regulatory authorities should therefore ensure *that* the integrity and security of public communications networks are maintained. ***The European Network and Information Security Agency (ENISA) [1]*** should contribute to *an* enhanced level of security of electronic communications by, among other things, providing expertise and advice, and promoting the exchange of best practice. Both ***ENISA*** and the national regulatory authorities should have the necessary means to perform their duties, including powers to obtain sufficient information to be able to assess the level of security of networks or services as well as comprehensive and reliable data about actual security incidents that have had a significant impact on the operation of networks or services. Bearing in mind that the successful application of adequate security is not a one-off exercise but a continuous process of implementation, review and updating, the providers of electronic communications networks and services should be required to take measures to safeguard their integrity and security in accordance with the assessed risks, taking into account the state of the art of such measures.

(49) Where there is a need to agree on a common set of security requirements, power should be conferred on the Commission to adopt technical implementing measures to achieve an adequate level of security of electronic communications networks and services in the internal market. ***ENISA*** should contribute to the harmonisation of appropriate technical and organisational security measures by providing expert advice. National regulatory authorities should have the power to issue binding instructions relating to the technical implementing measures adopted pursuant to the Framework Directive. In order to perform their duties, they should have the power to investigate and to impose penalties in cases of non-compliance.

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[1] ***Regulation (EC) No 460/2004 of the European Parliament and of the Council (OJ L 77, 13.3.2004, p. 1).***

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(50) Experience in the implementation of the regulatory framework indicates that the market into which significant market power is being leveraged is not the source of the problem but rather the object of its effect. Therefore, the significant market power enjoyed on one market should be addressed by national regulatory authorities at source and not on adjacent markets where its effects are felt.

(51) In the case of markets that are identified as trans-national, the market review procedure should be simplified and rendered more effective by enabling the Commission, taking into account the opinion of ***BERT***, to designate the undertaking(s) with significant market power and *to* impose one or more specific obligations, thereby allowing regulatory issues with trans-national characteristics to be addressed directly at Community level.

(52) In order to provide market players with certainty as to regulatory conditions, a time limit for market reviews is necessary. It is important to conduct a market analysis on a regular basis and within a reasonable and appropriate timeframe. The timeframe should take account of whether the particular market has previously been subject to market analysis and duly notified. Failure of a national regulatory authority to analyse a market within the time limit may jeopardise the internal market, and normal infringement proceedings may not produce their desired effect in time. The Commission should therefore be able to ask ***BERT*** to assist in the tasks of the national regulatory authority concerned, in particular to issue an opinion including a draft measure, the analysis of the relevant market and the appropriate obligations that the Commission could then impose.

(53) Due to ‖ a high level of technological innovation and highly dynamic markets in the electronic communications sector there is a need to be able to adapt regulation rapidly in a coordinated and harmonised way at European level, as experience shows that divergence among the national regulatory authorities in the implementation of the regulatory framework may create a barrier to the development of the internal market. Therefore, power should be conferred on the Commission to adopt implementing measures in areas such as the regulatory treatment of new services, numbering, naming and addressing, consumer issues including e-Accessibility, and regulatory accounting measures.

(54) One important task assigned to ***BERT*** is to issue opinions in relation to cross-border disputes where appropriate. National regulatory authorities should therefore take account of any opinions of ***BERT*** in such cases.

(55) Experience in the implementation of the regulatory framework indicates that existing provisions empowering national regulatory authorities to impose fines have failed to provide an adequate incentive to comply with regulatory requirements. Adequate enforcement powers can contribute to the timely implementation of the regulatory framework and therefore foster regulatory certainty, which is an important driver for investment. The lack of effective powers in the event of non-compliance applies across the regulatory framework. The introduction of a new provision in the Framework Directive to deal with breaches of obligations under the Framework and Specific Directives should therefore ensure the application of consistent and coherent principles to enforcement and penalties for the whole regulatory framework.

(56) Both investment and competition should be encouraged in order to safeguard consumer choice.

(57) The existing regulatory framework included certain provisions to facilitate the transition from the old regulatory framework of 1998 to the new 2002 framework. This transition has been completed in all Member States and these measures should be repealed as they are now redundant.

(58) Annex I to the Framework Directive identified the list of markets to be included in the Recommendation on relevant product and service markets which may warrant ex ante regulation. This Annex should be repealed since its purpose of serving as a basis for drawing up the initial version of the Recommendation ([1]) has been fulfilled.

(59) Annex II to the Framework Directive listed the criteria to be used by the national regulatory authorities when assessing joint dominance in accordance with the second subparagraph of Article 14(2) of that Directive. *That Annex* may be misleading for national regulatory authorities conducting market analysis. Furthermore, the concept of joint dominance also depends on the case law of the Court of Justice *of the European Communities.* Annex II *should therefore be amended.*

(60) The purpose of functional separation, whereby the vertically integrated operator is required to establish operationally separate business entities, is to ensure the provision of fully equivalent access products to all downstream operators, including the vertically integrated operator's own downstream divisions. Functional separation ***may have*** the capacity to improve competition in several relevant markets by significantly reducing the incentive for discrimination and by making it easier for compliance with non-discrimination obligations to be verified and enforced. ▌ In order to avoid distortions of competition in the internal market, proposals for functional separation should be approved in advance by the Commission.

(61) The implementation of functional separation should not prevent appropriate coordination mechanisms between ‖ different separate business entities in order to ensure that the economic and management supervision rights of the parent company are protected.

(62) Continuing integration of the internal market in electronic communications networks and services requires better coordination in the application of the ex ante regulation provided for by the EU regulatory framework for electronic communications networks and services.

(63) Where a vertically integrated undertaking chooses to *transfer* a substantial part or all of its local access network assets to a separate legal entity under different ownership or by establishing a separate business entity for dealing with access products, the national regulatory authority should assess the effect of the intended transaction on all existing regulatory obligations imposed on the vertically integrated operator in order to ensure the compatibility of any new arrangements with Directive 2002/19/EC (Access Directive) and Directive 2002/22/EC (Universal Service Directive). The national regulatory authority concerned should undertake a new analysis of the markets in which the segregated entity operates, and impose, maintain, amend or withdraw obligations accordingly. To this end, the national regulatory authority should be able to request information from the undertaking.

(64) While it is appropriate in some circumstances for a national regulatory authority to impose obligations on operators that do not have significant market power in order to achieve goals such as end-to-end connectivity or interoperability of services, ***or in order to promote efficiency and sustainable competition and to ensure the maximum benefit for end-users***, it is however necessary to ensure that such obligations are imposed in conformity with the regulatory framework and in particular its notification procedures.

(65) The Commission has the power to adopt implementing measures with a view to adapting the conditions for access to digital television and radio services set out in Annex I to market and technological developments. This is also the case for the minimum list of items in Annex II that must be made public to meet the obligation of transparency.

(66) The Commission should submit a proposal to the European Parliament and to the Council for the adoption of those harmonisation measures for the implementation of Community electronic communications policy which go beyond technical implementing measures.

([1]) Commission Recommendation of 11 February 2003 on Relevant Product and Service Markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services *(OJ L 114, 8.5.2003, p. 45).*

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(67) Facilitating access to radio frequencies resources for market players will contribute to removing the barriers to market entry. Moreover, technological progress is reducing the risk of harmful interference in certain frequency bands and therefore reducing the need for individual rights of use. Conditions for using spectrum to provide electronic communication services should therefore normally be laid down in general authorisations unless individual rights are necessary, considering the use of the spectrum, to protect against harmful interference or to meet a specific general interest objective. Decisions on the need for individual rights should be made in a transparent and proportionate manner.

(68) The introduction of the requirements of service and technology neutrality in assignment and allocation decisions, together with the increased possibility to transfer rights between undertakings, should increase the freedom and means to deliver electronic communications and audiovisual media services to the public, thereby also facilitating the achievement of general interest objectives. ***However***, certain general interest obligations imposed on broadcasters for the delivery of audiovisual media services ***may require the*** use of specific criteria ***for*** spectrum ***allocation*** where this ***appears*** essential *in order* to meet a ***specific*** general interest objective set out in national law. Procedures associated with the pursuit of general interest objectives should in all circumstances be transparent, objective, proportionate and non-discriminatory.

(69) ***Any exemption, full or partial***, from the obligation to pay ***the*** fees or charges set for the use of ‖ spectrum ***should be objective and transparent and based on other general interest obligations set out in national law***.

(70) Considering its restrictive impact on free access to radio frequencies, the validity of an individual right of use that is not tradable should be limited in time. Where rights of use contain provision for renewing their validity, Member States should first carry out a review, including a public consultation, taking into account market, coverage and technological developments. In view of spectrum scarcity, individual rights granted to undertakings should be regularly reviewed. In carrying out this review, Member States should balance the interests of the rights holders with the need to foster the introduction of spectrum trading as well as the more flexible use of spectrum through general authorisations where possible.

(71) National regulatory authorities should have the power to ensure effective use of spectrum and numbers and, where spectrum or numbering resources are left unused, to take action to prevent anti-competitive hoarding, which can hinder new market entry.

(72) Removing legal and administrative barriers to a general authorisation or rights of use for spectrum or numbers with European implications should favour technology and service development and contribute to improving competition. While the coordination of technical conditions for the availability and efficient use of radio frequencies is organised pursuant to the *Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community* (Radio Spectrum Decision) [1], it may also be necessary, in order to achieve internal market objectives, to coordinate or harmonise the selection procedures and conditions applicable to rights and authorisations in certain bands, to rights of use for numbers and to general authorisations. This applies in particular to electronic communications services that by their nature have an internal market dimension or cross-border potential, such as satellite services, the development of which would be hampered by discrepancies in spectrum assignment between Member States ***or between the European Union and third countries, taking into account the decisions of the ITU and the CEPT***. The Commission, assisted by the Communications Committee and taking the utmost account of the opinion of ***BERT***, should therefore be able to adopt technical implementing measures to achieve such objectives. Implementing measures adopted by the Commission may require Member States to make available rights of use for spectrum and/or numbers throughout their territory and where necessary *to* withdraw any other existing national rights of use. In such cases, Member States should not grant any new right of use for the relevant spectrum band or number range under national procedures.

[1] OJ L 108, 24.4.2002, p. 1.

(73) Technological and market developments have made it possible to deploy electronic communications services extending across the geographical frontiers of Member States. Article 16 of the Authorisation Directive required the Commission to review the functioning of the national authorisation systems and the development of cross-border service provision within the Community. The provisions of Article 8 of the Authorisation Directive concerning the harmonised assignment of radio frequencies have proved to be ineffective in coping with the needs of an undertaking wishing to provide services on a cross-Community basis and should therefore be amended.

(74) While the granting of authorisations and the monitoring of compliance with usage conditions should remain the responsibility of each Member State, Member States should refrain from imposing any further conditions, criteria or procedures that would restrict, alter or delay the correct implementation of a harmonised or coordinated selection or authorisation procedure. Where justified to facilitate their implementation, such coordination or harmonisation measures could include transitional derogations or, in the case of spectrum, transitional spectrum sharing mechanisms that would exempt a Member State from the application of such measures, provided that this would not create undue differences in the competitive or regulatory situations between Member States.

(75) National regulatory authorities should be able to take effective action to monitor and secure compliance with the terms and conditions of the general authorisation or of rights of use, including the power to impose effective financial penalties and/or administrative sanctions in the event of breaches of those terms and conditions.

(76) The conditions that may be attached to authorisations should cover specific conditions governing accessibility for users with disabilities and the need of public authorities ***and emergency services*** to communicate ***between themselves and*** with the general public before, during and after major disasters. Also, considering the importance of technical innovation, Member States should be able to issue authorisations to use spectrum for experimental purposes, subject to specific restrictions and conditions strictly justified by the experimental nature of such rights.

(77) Regulation (EC) No 2887/2000 of the European Parliament and of the Council of 18 December 2000 on unbundled access to the local loop [1] has proved to be effective in the initial stage of market opening. The Framework Directive calls upon the Commission to monitor the transition from the regulatory framework of 1998 to the 2002 framework and to bring forward proposals to repeal that Regulation at an appropriate time. Under the 2002 framework, national regulatory authorities have a duty to analyse the market for wholesale unbundled access to metallic loops and sub-loops for the purpose of providing broadband and voice services as defined in the Recommendation on Relevant Product and Service Markets. Since all Member States have analysed this market at least once and the appropriate obligations based on the 2002 framework are in place, Regulation (EC) No 2887/2000 has become unnecessary and should therefore be repealed.

(78) Measures necessary for the implementation of the Framework, Access and Authorisation Directives 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].

[1] OJ L 336, 30.12.2000, p. 4.
[2] OJ L 184, 17.7.1999, p. 23. ‖.

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(79) In particular, the Commission *should be empowered* to adopt implementing measures in relation to notifications under Article 7 of the Framework Directive; harmonisation in the fields of spectrum and numbering as well as in matters related to security of networks and services; the identification of transnational markets; the implementation of ‖ standards; *and* the harmonised application of the provisions of the regulatory framework. Power should also be conferred to adopt implementing measures to update Annexes I and II to the Access Directive to market and technological developments and for adopting implementing measures to harmonise the authorisation rules, procedures and conditions for the authorisation of electronic communications networks and services. Since those measures are of general scope and are designed to *amend non-essential elements of those* Directives by *supplementing them 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. ***Given that the conduct of the regulatory procedure with scrutiny within*** the normal time-limits ***measures, the European Parliament, the Council and*** the Commission should ***act speedily in order to ensure the timely adoption of those measures***,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2002/21/EC (Framework Directive)

Directive 2002/21/EC *shall be* amended as follows:

(1) Article 1(1) *shall be* replaced by the following:

‘1. This Directive establishes a harmonised framework for the regulation of electronic communications services, electronic communications networks, associated facilities and associated services, and certain aspects of terminal equipment ***to facilitate access for disabled users and encourage the use of electronic communications by less favoured users***. It lays down tasks of national regulatory authorities and establishes a set of procedures to ensure the harmonised application of the regulatory framework throughout the Community.’

(2) Article 2 *shall be* amended as follows:

(a) Point (b) *shall be* replaced by the following:

‘(b) “transnational markets” means markets covering the Community or a substantial part thereof located in more than one Member State.’

(b) Point (d) *shall be* replaced by the following:

‘(d) “public communications network” means an electronic communications network used wholly or mainly for the provision of electronic communications services available to the public which support the transfer of information between network termination points, including network elements which are not active;’

(c) Point (e) *shall be* replaced by the following:

‘(e) ‘associated facilities’ means those facilities associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of services via that network and/or service or have the potential to do so, and include number or address translation systems, conditional access systems and electronic programme guides, as well as physical infrastructure such as ***entries to buildings, building wiring, towers and other supporting constructions***, ducts, ***conduits,*** masts, ***antennae, manholes and*** cabinets ***and all other network elements which are not active***;’

(d) Point (l) *shall be* replaced by the following:

'(l) 'Specific Directives' means Directive 2002/20/EC (Authorisation Directive), Directive 2002/19/EC (Access Directive), Directive 2002/22/EC (Universal Service Directive) 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) (*)

(*) *OJ L 201, 31.7.2002, p. 37*'

(e) The following points (q), (r), and (s) *shall be* added:

'(q) 'allocation' means the designation of a given frequency band or number range for use by one or more types of services, where appropriate, under specified conditions;

(r) 'assignment' means the authorisation given by a national regulatory authority to a legal or natural person to use a radio frequency or radio frequency channel, or a number (or block(s) of numbers);

(s) 'harmful interference' means interference which endangers the functioning of a radionavigation service or of other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a radiocommunications service operating in accordance with the applicable ***international***, Community or national regulations.'

(3) Article 3(3) *shall be* replaced by the following:

'3. Member States shall ensure that national regulatory authorities exercise their powers independently, impartially, transparently ***and in a timely manner***. National regulatory authorities shall not seek or take instructions from any other body in relation to the day-to-day performance of the tasks assigned to them under national law implementing Community law. Only appeal bodies *established* in accordance with Article 4 or national courts shall have the power to suspend or overturn decisions by the national regulatory authorities.

Member States shall ensure that the head of a national regulatory authority or his/her replacement may be dismissed only if he no longer fulfils the conditions required for the performance of his duties laid down in advance in national law, or if he has been guilty of serious misconduct. The decision to dismiss the head of the national regulatory authority shall contain a statement of reasons and be made public at the time of dismissal.

Member States shall ensure that national regulatory authorities have adequate financial and human resources to carry out the tasks assigned to them and that they have separate annual budgets. The budgets shall be made public.

3a. Member States shall ensure that the goals of the Body of European Regulators in Telecom ('BERT') of promoting greater regulatory coordination and coherence are actively supported by the national regulatory authorities.

Member States shall ensure that national regulatory authorities have adequate financial and human resources to carry out the tasks assigned to them and to enable them to actively participate in and contribute to BERT. National regulatory authorities shall have separate annual budgets and those budgets shall be made public.

3b. Member States shall ensure that national regulatory authorities take utmost account of common positions issued by BERT when adopting their own decisions for their home markets.'

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(4) Article 4 *shall be* amended as follows:

(a) Paragraph 1 is replaced by the following:

'1. Member States shall ensure that effective mechanisms exist at national level under which any user or undertaking providing electronic communications networks and/or services *which* is affected by a decision of a national regulatory authority has the right of appeal against the decision to an appeal body that is independent of the parties involved. This body, which may be a court, shall have the appropriate expertise ▌to enable it to carry out its functions ***effectively***. Member States shall ensure that the merits of the case are duly taken into account, that there is an effective appeal mechanism ***and that proceedings before the appeal body are not unduly lengthy. Member States shall set time limits for consideration of such appeals.***

Pending the outcome of any appeal, the decision of the national regulatory authority shall stand, unless interim measures are granted. Interim measures may be granted***, in accordance with the relevant national legislation,*** if there is an urgent need to suspend the effect of the decision in order to prevent serious and irreparable damage to the party applying for those measures and the balance of interests so requires.'

(b) The following paragraphs shall be added:

'***3. Appeal bodies shall be entitled to request the opinion of BERT before reaching a decision in the course of an appeal proceeding.***

4. Member States shall collect information on the subject of appeals, the number of requests for appeal, the duration of the appeal proceedings, the number of decisions to grant interim measures taken in accordance with paragraph 1 and the reasons for such decisions. Member States shall make available such information to the Commission and ***BERT*** on an annual basis.'

(5) Article 5(1) *shall be* replaced by the following:

'1. Member States shall ensure that undertakings providing electronic communications networks and services provide all the information, including financial information, necessary for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with, this Directive and the Specific Directives. ▌These undertakings shall provide such information promptly on request and to the timescales and level of detail required by the national regulatory authority. The information requested by the national regulatory authority shall be proportionate to the performance of that task. The national regulatory authority shall give the reasons justifying its request for information ***and shall comply with Community and national law on business confidentiality.***'

(6) Articles 6 and 7 *shall be* replaced by the following:

'Article 6

Consultation and transparency mechanism

Except in cases falling within Articles 7(10), 20, or 21, and unless otherwise provided in the implementing measures adopted pursuant to Article 9c, Member States shall ensure that, where national regulatory authorities intend to take measures in accordance with this Directive or the Specific Directives ▌or where they intend to provide for restrictions in accordance with Article 9(3) and 9(4) ***which have a significant impact on the relevant market***, they give interested parties the opportunity to comment on the draft measure within a reasonable period.

National regulatory authorities shall publish their national consultation procedures.

Member States shall ensure the establishment of a single information point through which all current consultations can be accessed.

The results of the consultation procedure shall be made publicly available by the national regulatory authority, except in the case of confidential information in accordance with Community and national law on business confidentiality. ***In the event of unwarranted dissemination of confidential information, the national regulatory authorities shall ensure that they adopt appropriate measures as soon as possible, at the request of the undertakings concerned.***

Article 7

Consolidating the internal market for electronic communications

1. In carrying out their tasks under this Directive and the Specific Directives, national regulatory authorities shall take the utmost account of the objectives set out in Article 8, including *to the extent that* they relate to the functioning of the Internal Market.

2. National regulatory authorities shall contribute to the development of the *internal market* by working with the Commission and ***BERT in a transparent manner*** so as to ensure the consistent application, in all Member States, of the provisions of this Directive and the Specific Directives. To this end, they shall, in particular, work with the Commission and ***BERT*** to identify the types of instruments and remedies best suited to address particular types of situations in the marketplace.

3. Except where otherwise provided in implementing provisions adopted pursuant to *Article 7b*, upon completion of the consultation referred to in Article 6, where a national regulatory authority intends to take a measure which:

(a) falls within the scope of Articles 15 or 16 of this Directive, Articles 5 or 8 of Directive 2002/19/EC (Access Directive), and

(b) would affect trade between Member States,

it shall make the draft measure accessible to the Commission, ***BERT*** and the national regulatory authorities in other Member States, ***at the same time***, together with the reasoning on which the measure is based, in accordance with Article 5(3), and inform the Commission, ***BERT*** and other national regulatory authorities thereof. National regulatory authorities, ***BERT*** and the Commission may make comments to the national regulatory authority concerned only within one month. The one-month period may not be extended.

4. Where an intended measure covered by paragraph 3 aims at:

(a) defining a relevant market which differs from those defined in the Recommendation in accordance with Article 15(1); or

(b) deciding whether or not to designate an undertaking as having, either individually or jointly with others, significant market power, under Article 16(3), (4) or (5); ‖

▌

and would affect trade between Member States, and the Commission has indicated to the national regulatory authority that it considers that the draft measure would create a barrier to the single market or if it has serious doubts as to its compatibility with Community law and in particular the objectives referred to in Article 8, ‖ the draft measure shall not be adopted for a further two months. This period may not be extended.

5. Within the two month period referred to in paragraph 4, the Commission may take a decision requiring the national regulatory authority concerned to withdraw the draft measure. The Commission shall take the utmost account of the opinion of ***BERT*** submitted in accordance with Article 5 of Regulation *(EC) No …/2008 of the European Parliament and of the Council of … [establishing the Body of European Regulators in Telecom (BERT)]* (*), before issuing a decision. The decision shall be accompanied by a detailed and objective analysis of why the Commission considers that the draft measure should not be adopted together with specific proposals for amending the draft measure.

6. Within three months of the Commission issuing a decision in accordance with paragraph 5 requiring the national regulatory authority to withdraw a draft measure, the national regulatory authority shall amend or withdraw the draft measure. If the draft measure is amended, the national regulatory authority shall undertake a public consultation in accordance with the procedures referred to in Article 6, and re-notify the amended draft measure to the Commission in accordance with the provisions of paragraph 3.

7. The national regulatory authority concerned shall take the utmost account of comments of other national regulatory authorities, ***BERT*** and the Commission and may, except in cases covered by paragraph 4, adopt the resulting draft measure and, where it does so, shall communicate it to the Commission. Any other national body exercising functions under this Directive or the Specific Directives shall also take the utmost account of the comments of the Commission.

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8. In exceptional circumstances, where a national regulatory authority considers that there is an urgent need to act, by way of derogation from the procedure set out in paragraphs 3 and 4, in order to safeguard competition and protect the interests of users, it may immediately adopt proportionate and provisional measures. It shall, without delay, communicate those measures, with full reasons, to the Commission, the other national regulatory authorities and ***BERT***. A decision by the national regulatory authority to render such measures permanent or extend the time for which they are applicable shall be subject to the provisions of paragraphs 3 and 4.

([1]) *OJ L …'*

(7) The following Articles shall be inserted:

'Article 7a

Procedure for the consistent application of remedies

1. Where a national regulatory authority intends to adopt a measure to impose, amend or withdraw an obligation on an operator in application of Article 16 in conjunction with Articles 5 and 9 to 13a of Directive 2002/19/EC (Access Directive), and Article 17 of Directive 2002/22/EC (Universal Service Directive) the Commission and the national regulatory authorities of the other Member States shall have a period of one month from the date of notification of the draft measure in which to make comments to the national regulatory authority concerned.

2. If the draft measure concerns the imposition, amendment or withdrawal of an obligation other than the obligation laid down in Article 13a of Directive 2002/19/EC (Access Directive), the Commission may, within the same period, notify the national regulatory authority concerned and BERT of the reasons why it considers that the draft measure would create a barrier to the single market or why it has serious doubts as to its compatibility with Community law. In such case, the draft measure shall not be adopted for a further two months following the Commission's notification.

In the absence of such notification, the national regulatory authority concerned may adopt the draft measure, taking utmost account of any comments made by the Commission or by any other national regulatory authority.

3. Within the two-month period referred to in paragraph 2, the Commission, BERT and the national regulatory authority concerned shall cooperate closely with the objective of identifying the most appropriate and effective measure in the light of the objectives laid down in Article 8, whilst taking due account of the views of market participants and the need to ensure the development of consistent regulatory practice.

Within the same two-month period, BERT shall, acting by an absolute majority, adopt an opinion confirming the appropriateness and effectiveness of the draft measure or indicating that the draft measure should be amended and providing specific proposals to that end. This opinion shall be reasoned and made public.

If BERT has confirmed the appropriateness and effectiveness of the draft measure, the national regulatory authority concerned may adopt the draft measure, taking utmost account of any comments made by the Commission and BERT. The national regulatory authority shall make public how it has taken these comments into account.

If BERT has indicated that the draft measure should be amended, the Commission may, taking utmost account of the opinion of BERT, adopt a decision requiring the national regulatory authority concerned to amend the draft measure and providing reasons and specific proposals to that end.

4. If the draft measure concerns the imposition, amendment or withdrawal of the obligation laid down in Article 13a of Directive 2002/19/EC (Access Directive), the draft measure shall not be adopted for a further two-month period starting at the end of the one-month period referred to in paragraph 1.

Within the two-month period referred to in the first subparagraph, the Commission, BERT and the national regulatory authority concerned shall cooperate closely with the objective of determining whether the proposed draft measure complies with the provisions of Article 13a of Directive 2002/19/EC (Access Directive), and, in particular, whether it is the most appropriate and effective measure. To that end, due account shall be taken of the views of market participants and of the need to ensure the development of consistent regulatory practice. At the reasoned request of BERT or the Commission, this two-month period shall be extended by up to a further two months.

Within the maximum period set out in the second subparagraph, BERT shall, acting by an absolute majority, adopt an opinion confirming the appropriateness and effectiveness of the draft measure or indicating that the draft measure should not be adopted. This opinion shall be reasoned and made public.

Only if the Commission and BERT have confirmed the appropriateness and effectiveness of the draft measure, the national regulatory authority concerned may adopt the draft measure, taking utmost account of any comments made by the Commission and BERT. The national regulatory authority shall make public how it has taken these comments into account.

5. Within three months of the adoption by the Commission in accordance with the fourth subparagraph of paragraph 3 of a reasoned decision requiring a national regulatory authority to amend the draft measure, the national regulatory authority concerned shall amend or withdraw the draft measure. If the draft measure is to be amended, the national regulatory authority shall undertake a public consultation in accordance with the consultation and transparency procedure referred to in Article 6, and re-notify the amended draft measure to the Commission in accordance with Article 7.

6. The national regulatory authority may withdraw the proposed draft measure at any stage of the procedure.

Article 7b

Implementing provisions

‖ The Commission, ***taking utmost account of the opinion of BERT***, may lay down ***recommendations and/or guidelines*** in relation to Article 7 that define the form, content and level of details to be given in the notifications required in accordance with Article 7(3), the circumstances in which notifications would not be required, and the calculation of the time limits.

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(8) Article 8 *shall be* amended as follows:

(a) In paragraph 1, the second subparagraph *shall be* replaced by the following:

'Unless otherwise provided *for* in Article 9 regarding radio frequencies ***or unless otherwise required in order to fulfil the objectives laid down in paragraphs 2 to 4***, Member States shall take the utmost account of the desirability of making regulations technologically neutral and shall ensure that, in carrying out the regulatory tasks specified in this Directive and the Specific Directives, in particular those designed to ensure effective competition, national regulatory authorities do likewise.'

(b) In paragraph 2, points (a), (b) ***and (c)****shall be* replaced by the following:

'(a) ensuring that users, including disabled users, elderly users, and users with special social needs derive maximum benefit in terms of choice, price, and quality***, and that providers are compensated for any additional net cost that they can show that they incurred as a result of the imposition of such public service obligations***;

(b) ensuring that there is no distortion or restriction of competition in the electronic communications sector, in particular for the delivery of ***and access to*** content ***and services across all networks***;

(c) ***encouraging and facilitating efficient market-driven investment in infrastructure, and promoting innovation; and***'

(c) paragraph 3 shall be amended as follows:

(i) point (c) shall be deleted;

(ii) point (d) *shall be* replaced by the following:

'(d) working with the Commission and ***BERT*** so as to ensure the development of consistent regulatory practice and the consistent application of this Directive and the Specific Directives.'

(d) ‖ paragraph 4 *shall be amended as follows*:

(i) point (e) *shall be* replaced by the following:

'(e) addressing the needs of specific social groups, in particular disabled users, elderly users and users with special social needs;'

(ii) points (g) ***and (h)****shall be* added:

'(g) applying the principle that end-users should be able to access and distribute any lawful content and use any lawful applications and/or services of their choice ***and for this purpose contributing to the promotion of lawful content in accordance with Article 33 of Directive 2002/22/EC (Universal Service Directive)***.

(h) applying the principle that no restriction may be imposed on the fundamental rights and freedoms of end-users without a prior ruling of the judicial authorities, notably in accordance with Article 11 of the Charter of Fundamental Rights of the European Union on freedom of expression and information, except when public security is threatened, in which case the ruling may be subsequent.'

(e) the following paragraph shall be added:

'***5. The national regulatory authorities shall, in pursuit of the policy objectives referred to in paragraphs 2, 3 and 4, apply objective, transparent, non-discriminatory and proportionate regulatory principles by, inter alia:***

(a) promoting regulatory predictability through the continuity of remedies over several market reviews as appropriate;

(b) ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services;

(c) safeguarding competition to the benefit of consumers and promoting infrastructure-based competition wherever possible;

(d) promoting market driven investment and innovation in new and enhanced infrastructures including by encouraging sharing of investment and by ensuring appropriate sharing of risk between investors and those undertakings enjoying access to the new facilities;

(e) taking due account of the variety of conditions relating to competition and consumers that exist in the different geographic areas within a Member State;

(f) imposing ex-ante regulatory obligations only where there is no effective and sustainable competition, and relaxing or lifting such obligations as soon as that condition is fulfilled.'

(9) The following Articles shall be inserted:

'Article 8a

Radio Spectrum Policy Committee

1. A Radio Spectrum Policy Committee (RSPC) is hereby established in order to contribute to the fulfilment of the objectives set out in paragraphs 1, 3 and 5 of Article 8b.

The RSPC shall provide advice to the European Parliament, the Council and the Commission on radio spectrum policy issues.

The RSPC shall be composed of high-level representatives from the competent national authorities responsible for radio spectrum policy in each Member State. Each Member State shall have one vote and the Commission shall not vote.

2. At the request of the European Parliament, the Council or the Commission or on its own initiative, the RSPC, acting by an absolute majority, shall adopt opinions.

3. The RSPC shall submit an annual activity report to the European Parliament and to the Council.

Article 8b

Strategic planning and coordination of radio spectrum policy in the European Union

1. Member States shall cooperate with each other and with the Commission in the strategic planning, coordination and harmonisation of the use of radio spectrum in the European Union. To this end, they shall take into consideration, inter alia, economic, safety, health, public interest, freedom of expression, cultural, scientific, social and technical aspects of the EU policies as well as the various interests of radio spectrum user communities with the aim of optimising the use of radio spectrum and of avoiding harmful interference

2. Radio spectrum policy activities in the European Union shall be without prejudice to:

(a) measures taken at Community or national level, in compliance with Community law, to pursue general interest objectives, in particular with regard to content regulation and audio-visual and media policies;

(b) the provisions of Directive 1999/5/EC; and

(c) the right of Member States to organise and use their radio spectrum for the purposes of public order, public security and defence.

3. Member States shall ensure the coordination of radio spectrum policy approaches in the European Union and, where appropriate, harmonised conditions with regard to the availability and efficient use of radio spectrum necessary for the establishment and functioning of the internal market in EU policy areas such as electronic communications, transport and research and development.

4. The Commission, taking due account of the opinion of the RSPC, may submit a legislative proposal for establishing a radio spectrum action programme with regard to the strategic planning and harmonisation of the use of radio spectrum in the European Union or other legislative measures with the aim of optimising the use of radio spectrum and of avoiding harmful interference.

5. Member States shall ensure the effective coordination of the interests of the European Union in international organisations competent in radio spectrum matters. Whenever necessary for ensuring such effective coordination, the Commission, taking due account of the opinion of the RSPC, may propose to the European Parliament and the Council common policy objectives, including, if necessary, a negotiation mandate.'

(10) Article 9 *shall be* replaced by the following:

'Article 9

Management of radio frequencies for electronic communications services

1. ***Taking due account of the fact that radio frequencies are a public good that has an important social, cultural and economic value,*** Member States shall ensure the effective management of radio frequencies for electronic *communications* services in their territory in accordance with ***Articles 8 and 8b***. They shall ensure that the allocation and assignment of such radio frequencies by national regulatory authorities are based on objective, transparent, non discriminatory and proportionate criteria. ***In so doing, they shall act in accordance with international agreements and may take public policy considerations into account.***

2. Member States shall promote the harmonisation of use of radio frequencies across the Community, consistent with the need to ensure effective and efficient use thereof ***and in pursuit of benefits for the consumer such as economies of scale and interoperability of services. In so doing, they shall act*** in accordance with ***Articles 8b and 9c of this Directive and*** Decision No 676/2002/EC (Radio Spectrum Decision).

3. Unless otherwise provided in the second subparagraph or in the measures adopted pursuant to Article 9c, Member States shall, ensure that all types of ▌technology ***used for electronic communications services*** may be used in the radio frequency bands ***available for*** electronic communications services ***in accordance with the ITU Radio Regulations***.

Member States may, however, provide for proportionate and non-discriminatory restrictions on the types of ▌technology used ***for electronic communications services*** where this is necessary to:

(a) avoid ***the possibility of*** harmful interference,

(b) protect public health against electromagnetic fields,

(c) ensure technical quality of service,

(d) ensure maximisation of radio frequency sharing ▌,

(e) safeguard the efficient use of radio frequencies,

(f) ***fulfil a general interest objective*** in accordance with paragraph 4.

4. Unless otherwise provided in the second subparagraph ▌, Member States shall ensure that all types of electronic communications services may be provided in the radio frequency bands ***available for*** electronic communications ***services in accordance with their national frequency allocation plans and with the ITU Radio Regulations***. Member States may, however, provide for proportionate and non discriminatory restrictions on the types of electronic communications services to be provided.

Measures that require ***an electronic communications*** service to be provided in a specific band ***available for electronic communications services*** shall be justified in order to ensure the fulfilment of a general interest objective ***as defined in national legislation*** in conformity with Community law, such as safety of life, the promotion of social, regional or territorial cohesion, the avoidance of inefficient use of radio frequencies or ▌ the promotion of ***cultural and media policy objectives such as*** cultural and linguistic diversity and media pluralism.

A ***measure*** which prohibits the provision of any other ***electronic communications*** service in a specific band may only be provided for where justified by the need to protect safety of life services.

5. Member States shall regularly review the necessity of the restrictions ***and measures*** referred to in paragraphs 3 and 4 ***and shall make the results of these reviews public***.

6. Paragraphs 3 and 4 shall apply to ***the*** allocation and assignment of radio frequencies ***from … (*)***

(*) ***The date of transposition of this Directive.***'

(11) The following Articles 9a, 9b, and 9c shall be inserted:

'Article 9a

Review of restrictions to existing rights

1. For a period of five years starting on … (*)', Member States ***may*** ensure that holders of rights to use radio frequencies which were granted before that date ***and which will remain valid for a period of not less than five years after that date*** may submit an application to the competent national ▌ authority for a reassessment of the restrictions to their rights in accordance with Article 9(3) and (4).

Before adopting its decision the competent national ▌ authority shall notify the right holder of its reassessment of the restrictions, indicating the extent of the right after reassessment, and allow him a reasonable time limit to withdraw his application.

If the right holder withdraws his application, the right shall remain unchanged until its expiry or *until* the end of the 5 year period, whichever is the earlier date.

2. Where the right holder mentioned in paragraph 1 is a provider of radio or television broadcast content services, and the right to use radio frequencies has been granted for the fulfilment of a specific general interest objective, ***including the delivery of broadcasting services***, ***the right to use*** the part of the radio frequencies which is necessary for the fulfilment of *that* objective ***shall remain unchanged***. The part of the radio frequencies which becomes unnecessary for the fulfilment of that objective ▌ shall be subject to a new assignment procedure in ***accordance*** with ***Article 9(3) and (4) of this Directive and*** Article 7(2) of the Authorisation Directive.

3. After the five-year period referred to in paragraph 1, Member States shall take all appropriate measures to ensure that Article 9(3) and (4) apply to all remaining assignments and allocations of radio frequencies which existed at the date of entry into force of this Directive.

4. In applying this Article, Member States shall take appropriate measures to guarantee fair competition.

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Article 9b

Transfer of Individual Rights to Use radio frequencies

1. Member States shall ensure that undertakings may transfer or lease to other undertakings individual rights to use radio frequencies in the bands for which this is provided in the implementing measures adopted pursuant to Article 9c, ***provided that such transfer or lease is in accordance with national procedures and national frequency allocation plans***.

In other bands, Member States may also make provision for undertakings to transfer or lease individual rights to use radio frequencies to other undertakings ***in accordance with national procedures***.

2. Member States shall ensure that an undertaking's intention to transfer rights to use radio frequencies, ***as well as the effective transfer thereof***, is notified to the ***competent*** national ▌ authority responsible for ***granting individual rights to use radio frequencies***, and ***that it*** is made public. Where radio frequency use has been harmonised through the application of ***Article 9c and*** the Radio Spectrum Decision or other Community measures, any such transfer shall comply with such harmonised use.

Article 9c

Radio Frequency Management Harmonisation Measures

In order to contribute to the development of the internal market, for the achievement of the principles of ***Articles 8b, 9, 9a and 9b***, the Commission may adopt appropriate ***technical*** implementing measures to:

(a) apply the radio spectrum action programme established pursuant to Article 8b(4);

(b) ***identify*** the bands for which usage rights may be transferred or leased between undertakings;

(c) harmonise the conditions attached to such rights ▌; ▌

(d) ***identify the bands to which*** the principle of ***service*** neutrality ***applies***.

These 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(3). ▌

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(*) ***The date of transposition of this Directive***

(12) Article 10 *shall be* amended as follows:

(a) Paragraph 2 *shall be* replaced by the following:

'2. National regulatory authorities shall ensure that numbering plans and procedures are applied in a manner that gives equal treatment to all providers ***and users of numbers across the European Union***. In particular, Member States shall ensure that an undertaking assigned a range of numbers does not discriminate against other providers ***and users*** as regards the number sequences used to give access to their services.'

(b) Paragraph 4 *shall be* replaced by the following:

'4. Member States shall support harmonisation ***of specific numbers or numbering ranges*** within the Community where that promotes the functioning of the internal market or supports the development of pan-European services. The Commission may take appropriate technical implementing measures on this matter, which may include ***ensuring cross-border access to national numbering used for essential services such as directory enquiries***. The implementing measures may grant ***BERT*** specific responsibilities in the application of those measures.

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(3). ▌'

(13) In Article 11(1), the words 'acts on the basis of transparent and publicly available procedures, applied without discrimination and without delay, and'*shall be* replaced by the following:

'acts on the basis of simple, transparent and publicly available procedures, applied without discrimination and without delay, and in any event makes its decision within four months of the application, and'

(14) Article 12 *shall be* replaced by the following:

'Article 12

Co-location and sharing *of network elements and associated facilities* for providers of electronic communications networks

1. Where an undertaking providing electronic communications networks has the right under national legislation to install facilities on, over or under public or private property, or may take advantage of a procedure for the expropriation or use of property, national regulatory authorities shall, ***taking full account of the principle of proportionality***, be able to impose the sharing of such facilities or property, including entries to buildings, ***building wiring***, masts, antennae, ***towers and other supporting constructions,*** ducts, ***conduits***, manholes, ▌cabinets ***and all other network elements which are not active***.

2. Member States may require the holders of the rights referred to in paragraph 1 *to* share facilities or property (including physical co-location) or *to* take measures to facilitate the coordination of public works in order to protect the environment, public health, public security or to meet town and country planning objectives only after an appropriate period of public consultation during which all interested parties *are* given an opportunity to express their views. Such sharing or coordination arrangements may include rules for apportioning the costs of facility or property sharing.

3. Member States shall ensure that national regulatory authorities have the powers to require, after an appropriate period of public consultation during which all interested parties are given the opportunity to state their views, the holders of the rights referred to in paragraph 1 to share facilities or property, including by means of physical co-location, in order to encourage efficient investment in infrastructure and the promotion of innovation. Such sharing or coordination arrangements may include rules for apportioning the costs of facility or property sharing and shall ensure that there is an adequate sharing of risks between the undertakings concerned.

4. Member States shall ensure that national regulatory authorities establish a detailed inventory of the nature, availability and geographical location of the facilities referred to in paragraph 1 based on information provided by the holders of the rights referred to in that paragraph, and that they make that inventory available to interested parties.

5. Member States shall ensure that the competent authorities establish appropriate coordination procedures, in cooperation with national regulatory authorities, with respect to the public works referred to in paragraph 2 and to other appropriate public facilities or property. Those procedures may include procedures that ensure that interested parties have information concerning appropriate public facilities or property and on-going and planned public works, that they are notified in a timely manner of such works, and that sharing is facilitated to the maximum extent possible.

6. Measures taken by a national regulatory authority in accordance with ***this Article*** shall be objective, transparent, ***non-discriminatory*** and proportionate.'

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(15) The following Chapter IIIa *shall be* inserted:

'Chapter IIIa

SECURITY AND INTEGRITY OF NETWORKS AND SERVICES

Article 13a

Security and integrity

1. Member States shall ensure that undertakings providing public communications networks or publicly available electronic communications services take appropriate technical and organisational measures to safeguard the security of their networks or services. Having regard to the *latest technological developments*, these measures shall ensure a level of security appropriate to the risk presented. In particular, measures shall be taken to prevent ***and*** minimise the impact of security incidents on users and on interconnected networks.

2. Member States shall ensure that undertakings providing public communications networks take ***appropriate*** steps to *guarantee* the integrity of their networks so as to ensure the continuity of supply of services provided over those networks. ***The competent national authorities shall consult with electronic communications services providers prior to adopting specific measures for the security and integrity of electronic communications networks***.

3. Member States shall ensure that undertakings providing public communications networks or publicly available electronic communications services notify the ***competent*** national ▌authority of ***a*** breach of security or ***loss of*** integrity that had a significant impact on the operation of networks or services.

Where appropriate, the ***competent*** national ▌authority concerned shall inform the ***competent*** national ▌authorities in other Member States ***and the European Network and Information Security Agency (ENISA)***. Where disclosure of the breach is in the public interest, the ***competent*** national ▌authority may inform the public.

Once a year, the ***competent*** national ▌authority shall submit a summary report to the Commission on notifications received and action taken in accordance with this paragraph.

4. The Commission, taking the utmost account of the opinion of ***ENISA***, may adopt appropriate technical implementing measures with a view to harmonising the measures referred to in paragraphs 1, 2, and 3, including measures defining the circumstances, format and procedures applicable to *notifications*. ***The adoption of such technical implementing measures shall not prevent Member States from adopting additional requirements in order to pursue the objectives set out in paragraphs 1 and 2.***

Technical implementing measures relating to notifications shall comply with the provisions of Directive 2002/58/EC.

These implementing measures, designed to amend non-essential elements of this Directive by supplementing it *with new non-essential elements*, shall be adopted in accordance with the *regulatory* procedure *with scrutiny* referred to in Article 22(3). ‖.

Article 13b

Implementation and enforcement

1. Member States shall ensure that ***the competent*** national ▌authorities have the power to issue binding instructions to undertakings providing public communications networks or publicly available electronic communications services in order to implement *the provisions of* Article 13a. ***These binding instructions shall be proportionate and economically and technically sustainable and shall be implemented within a reasonable timeframe.***

2. Member States shall ensure that ***the competent*** national ▌authorities have the power to require undertakings providing public communications networks or publicly available electronic communications services to:

(a) provide *the* information needed to assess the security ***and integrity*** of their services and networks, including documented security policies; and

(b) instruct a qualified independent body to carry out a security audit and make the results thereof available to the national regulatory authority.

3. Member States shall ensure that ***the competent*** national ▌authorities have all the powers necessary to investigate cases of non-compliance ***and their effects on the security and integrity of the networks***.

4. These provisions shall be without prejudice to Article 3 of this Directive.'

(16) ***Article 14(3) shall be replaced by the following:***

'***Where an undertaking has significant market power on a specific market and where the links between the two markets are such as to allow the market power held in one market to be leveraged into the other market, thereby strengthening the market power of the undertaking, remedies aimed at preventing such leverage may be imposed in the linked market pursuant to Articles 9, 10, 11 and 13 of Directive 2002/19/EC (Access Directive). Where such remedies prove insufficient, remedies may be imposed pursuant to Article 17 of Directive 2002/22/EC (Universal Service Directive)***.'

(17) Article 15 *shall be* amended as follows:

(a) The heading *shall be* replaced by the following:

'Procedure for identification and definition of markets**'**

(b) In paragraph 1, the first subparagraph *shall be* replaced by the following:

'1. After public consultation and consultation with ***BERT***, the Commission shall adopt a Recommendation on Relevant Product and Service Markets (hereinafter 'the Recommendation'). The Recommendation shall identify those product and service markets within the electronic communications sector the characteristics of which may be such as to justify the imposition of regulatory obligations set out in the Specific Directives, without prejudice to markets that may be defined in specific cases under competition law. The Commission shall define markets in accordance with the principles of competition law.'

(c) the following paragraph shall be inserted:

'***2a. By … (*), the Commission shall publish guidelines for national regulatory authorities as regards decisions aimed at imposing, amending or withdrawing obligations on undertakings with significant market power.***

(*) ***The date of the entry into force of Directive 2008/…/EC of the European Parliament and of the Council of … [amending Directive 2002/21/EC].***'

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(d) Paragraph 3 *shall be* replaced by the following:

'3. National regulatory authorities shall, taking the utmost account of the Recommendation and the Guidelines, define relevant markets appropriate to national circumstances, in particular relevant geographic markets within their territory, in accordance with the principles of competition law. National regulatory authorities shall follow the procedures referred to in Articles 6 and 7 before defining the markets that differ from those identified in the Recommendation.'

(e) Paragraph 4 *shall be* replaced by the following:

'4. The Commission may, taking the utmost account of the opinion of ***BERT*** submitted in accordance with Article 7 of Regulation *(EC) No …/2008 [establishing the Body of European Regulators in Telecom (BERT)]*, adopt a Decision identifying transnational markets.

This Decision, 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) ▌.'

(18) Article 16 *shall be* amended as follows:

(a) Paragraphs 1 and 2 *shall be* replaced by the following:

'1. National regulatory authorities shall carry out an analysis of the relevant markets, ***taking account of the markets*** listed in the Recommendation ***and*** taking the utmost account of the Guidelines. Member States shall ensure that this analysis is carried out, where appropriate, in collaboration with the national competition authorities.

2. Where a national regulatory authority is required under paragraphs 3 or 4, Article 17 of Directive 2002/22/EC (Universal Service Directive), or Article 8 of Directive 2002/19/EC (Access Directive) to determine whether to impose, maintain, amend or withdraw obligations on undertakings, it shall determine on the basis of its market analysis referred to in paragraph 1 of this Article whether a relevant market is effectively competitive.'

(b) Paragraphs 5 and 6 *shall be* replaced by the following:

'5. In the case of transnational markets identified in the Decision referred to in Article 15(4), the Commission shall request ***BERT*** to conduct the market analysis taking the utmost account of the Guidelines and deliver an opinion on any imposition, maintenance, amendment or withdrawal of regulatory obligations as referred to in paragraph 2 of this Article.

The Commission, taking the utmost account of the opinion of ***BERT***, may issue a decision designating one or more undertakings as having significant market power on that market, and imposing one or more specific obligations under Articles 9 to 13a of Directive 2002/19/EC (Access Directive) and Article 17 of Directive 2002/22/EC (Universal Service Directive). In so doing, the Commission shall pursue the policy objectives set out in Article 8.

6. Measures taken according to the provisions of paragraphs 3 and 4 of this Article shall be subject to the procedures referred to in Articles 6 and 7. National regulatory authorities shall carry out an analysis of the relevant market:

(a) within two years *of* a previous notification of a draft measure relating to that market;

(b) for markets not previously notified to the Commission, within one year *of* the adoption of a revised Recommendation on relevant markets, or;

(c) for Member States that have newly joined the Union, within one year *of* their accession.'

(c) The following paragraph 7 *shall be* inserted:

'7. Where a national regulatory authority has not completed its analysis of a relevant market identified in the Recommendation within the time limit laid down in Article 16(6), the Commission may request ***BERT*** to issue an opinion, including a draft measure, on the analysis of the specific market and the specific obligations to be imposed. ***BERT*** shall carry out a public consultation on the draft measure concerned.

▌'

(19) Article 17 *shall be* amended as follows:

(a) *in* paragraph 1, ***in the first sentence the term 'Article 22(2)' shall be replaced by the term 'Article 22(3)' and*** in the second sentence the words 'acting in accordance with the procedure referred to in Article 22(2)'*shall be* replaced by *the words*'‖ take appropriate implementing measures and'.

(b) in paragraph 2, subparagraph 3 shall be replaced by the following:

'***In the absence of such standards and/or specifications, Member States shall encourage the implementation of international standards or recommendations adopted by the International Telecommunication Union (ITU), the European Conference of Postal and Telecommunications Administrations (CEPT), the International Organisation for Standardisation (ISO) or the International Electrotechnical Commission (IEC).***'

(c) In paragraph 6, the words 'acting in accordance with the procedure referred to in Article 22(3), remove them from this List of standards and/or specifications referred to in paragraph 1'*shall be* replaced by 'take the appropriate implementing measures and remove those standards and/or specifications from the list of standards and/or specifications referred to in paragraph 1'.

(d) The following paragraph 6a *shall be* inserted:

'6a. The implementing measures ***referred to in paragraphs 1, 4 and 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 22(3). ▌'

(20) Article 18 *shall be* amended as follows:

(a) In paragraph 1, the following point (c) is added:

'(c) providers of digital TV services and equipment to cooperate in the provision of interoperable TV services for disabled end-users.'

(b) Paragraph 3 *shall be* deleted.

(21) Article 19 *shall be* replaced by the following:

'Article 19

Harmonisation procedures

1. Without prejudice to Article 9 of this Directive and to Articles 6 and 8 of Directive 2002/20/EC (Authorisation Directive), where the Commission finds that divergences in the implementation by national regulatory authorities of the regulatory tasks specified in this Directive and the Specific Directives ***creates*** a barrier to the internal market, *it* may, taking the utmost account of the opinion of ***BERT***, if any, issue ▌a decision on the harmonised application of the provisions in this Directive and the Specific Directives in order to further the achievement of the objectives set out in Article 8.

▌

2. The decision *referred to* in paragraph 1, 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). ▌

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3. Measures adopted pursuant to paragraph 1 may include the identification of a harmonised or coordinated approach *to deal* with the following issues:

(a) *the consistent* implementation of regulatory approaches, including *the* regulatory treatment of new services, ***sub-national markets and cross-border business electronic communications services***;

(b) *numbering*, naming and addressing issues, including number ranges, portability of numbers and identifiers, number and address translation systems, and access to 112 emergency services;

(c) *consumer* issues ***not covered by Directive 2002/22/EC (Universal Service Directive)***, including ***in particular****access* to electronic communications services and equipment by disabled end-users;

(d) *regulatory* accounting***, including the calculation of investment risk***.

▌

(22) Article 20(1) *shall be* replaced by the following:

'1. In the event of a dispute between service providers arising in connection with existing obligations imposed under this Directive or the Specific Directives where one of the parties is an undertaking providing electronic communications networks or services in a Member State, the national regulatory authority concerned shall, at the request of either party, and without prejudice to the provisions of paragraph 2, issue a binding decision to resolve the dispute in the shortest possible timeframe and in any case within four months, except in exceptional circumstances. The Member State concerned shall require that all parties cooperate fully with the national regulatory authority.'

(23) Article 21 *shall be* replaced by the following:

'Article 21

Resolution of cross-border disputes

1. In the event of a cross-border dispute arising under this Directive or the Specific Directives between parties in different Member States, where the dispute lies within the competence of national regulatory authorities from more than one Member State, the provisions set out in paragraphs 2, 3 and 4 shall be applicable.

2. Any party may refer the dispute to the national regulatory authorities concerned. The competent national regulatory authorities shall coordinate their efforts ***within BERT*** in order to bring about a resolution of the dispute, ***as far as possible through the adoption of a joint decision***, in accordance with the objectives set out in Article 8. ***Any obligations imposed on undertakings by the national regulatory authorities as part of the resolution of a dispute shall comply with the provisions of this Directive and the Specific Directives.***

Any national regulatory authority which has competence in such a dispute may request ***BERT*** to issue a recommendation pursuant to Article 18 of Regulation *(EC) No …/2008 [establishing the Body of European Regulators in Telecom (BERT)]* as to the action to be taken in accordance with the provisions of the Framework Directive and/or the *Specific* Directives to resolve the dispute.

Where such a request has been made to ***BERT***, any national regulatory authority with competence in any aspect of the dispute shall await ***BERT***'s recommendation pursuant to Article 18 of Regulation *(EC) No …/2008 [establishing the Body of European Regulators in Telecom (BERT)]* before taking action to resolve the dispute, without prejudice to the possibility for national regulatory authorities to take urgent measures where necessary.

Any obligations imposed on an undertaking by the national regulatory authority in resolving a dispute shall respect the provisions of this Directive or the Specific Directives and take the utmost account of the recommendation issued by ***BERT*** in accordance with Article 18 of Regulation *(EC) No …/2008 [establishing the Body of European Regulators in Telecom (BERT)].*

3. Member States may make provision for the competent national regulatory authorities jointly to decline to resolve a dispute where other mechanisms, including mediation, exist and would better contribute to resolution of the dispute in a timely manner in accordance with the provisions of Article 8.

They shall inform the parties without delay. If after four months the dispute is not resolved, if the dispute has not been brought before the courts by the party ***whose rights have been violated*** and if either party requests it, the national regulatory authorities shall coordinate their efforts in order to bring about a resolution of the dispute, ***as far as possible through the adoption of a joint decision***, in accordance with the provisions set out in Article 8 and taking the utmost account of any recommendation issued by ***BERT*** in accordance with Article 18 of Regulation *(EC) No …/2008 [establishing the Body of European Regulators in Telecom (BERT)].*

4. The procedure referred to in paragraph 2 shall not preclude either party from bringing an action before the courts.'

(24) The following Article 21a *shall be* inserted:

'Article 21a

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and the Specific Directives and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be ***appropriate***, effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by … [1] at the latest and shall notify it without delay of any subsequent amendment affecting them.'

(25) Article 22 *shall be* amended as follows:

(a) the following paragraph shall be inserted:

'***1a. By way of derogation from paragraph 1, for the adoption of measures pursuant to Article 9c, the Commission shall be assisted by the Radio Spectrum Committee established under Article 3(1) of Decision No 676/2002/EC.***'

(b) Paragraph 3 *shall be* replaced by the following:

'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.'

(c) Paragraph 4 *shall be* replaced by the following:

'4. Where reference is made to this paragraph, Article 5a(1), (2), (4) and (6), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.'

(26) Article 27 *shall be* deleted.

(27) ***Annex I shall be*** deleted ***and Annex II shall be amended in accordance with the Annex to this Directive.***

[1] *The time-limit for the implementation of Directive 2008/…/EC [amending Directive 2002/21/EC].*

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Article 2

Amendments to Directive 2002/19/EC (Access Directive)

Directive 2002/19/EC *shall be* amended as follows:

(1) Article 2 *shall be amended as follows*:

(a) point (a) *shall be* replaced by the following:

'(a) 'access' means the making available of facilities and/or services to another undertaking, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services***, including the delivery of*** information society services or broadcast content services. It covers inter alia: access to network elements and associated facilities, which may involve the connection of equipment by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop); access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems; access to number translation or systems offering equivalent functionality; ***access to necessary subscriber information and to mechanisms for paying back sums invoiced to end-users to the providers of directory services;*** access to fixed and mobile networks, in particular for roaming; access to conditional access systems for digital television services; *and* access to virtual network services.'

(b) point (e) shall be replaced by the following:

'***(e) 'local loop' means the physical circuit connecting the network termination point to a distribution frame or equivalent facility in the fixed public electronic communications network.***'

(2) Article 4(1) *shall be* replaced by the following:

'1. Operators of public communications networks shall have a right and, when requested by other undertakings so authorised in accordance with Article 4 of Directive 2002/20/EC (Authorisation Directive), an obligation to negotiate interconnection with each other for the purpose of providing publicly available electronic communications services ***or delivering broadcast content or information society services***, in order to ensure provision and interoperability of services throughout the Community. Operators shall offer access and interconnection to other undertakings on terms and conditions consistent with obligations imposed by the national regulatory authority pursuant to Articles 5 to 8. ***However the terms and conditions of interconnection shall not introduce unjustified barriers to interoperability***.'

(3) Article 5 *shall be* amended as follows:

(a) ***Paragraphs 1 and 2 are*** replaced by the following:

'***National regulatory authorities shall, acting in pursuit of the objectives set out in Article 8 of Directive 2002/21/EC (Framework Directive), encourage and where appropriate ensure, in accordance with the provisions of this Directive, adequate access and interconnection, and interoperability of services, exercising their responsibility in a way that promotes efficiency, sustainable competition, investment and innovation, and gives the maximum benefit to end-users.***

In particular, without prejudice to measures that may be taken regarding undertakings with significant market power in accordance with Article 8, national regulatory authorities shall be able to impose:

(a) to the extent that is necessary to ensure end-to-end connectivity or fair and reasonable access to third-party services such as directory services, obligations on undertakings that control access to end-users, including in justified cases the obligation to interconnect their networks where this is not already the case or to make their services interoperable including through mechanisms for paying back to service providers sums invoiced to end-users, on fair, transparent and reasonable terms.

(b) to the extent that is necessary to ensure accessibility for end-users to digital radio and television broadcasting services specified by the Member State, obligations on operators to provide access to the other facilities referred to in Annex I, Part II on fair, reasonable and non-discriminatory terms.

2. Obligations and conditions imposed in accordance with paragraph 1 shall be objective, transparent, proportionate and non-discriminatory, and shall be implemented in accordance with the procedures referred to in ***Articles 6, 7 and 7a*** of Directive 2002/21/EC (Framework Directive).

When assessing the proportionality of the obligations and conditions to be imposed, national regulatory authorities shall take into account the different competitive conditions existing in the different areas within their Member States.'

(b) Paragraphs 3 and 4 *shall be* deleted.

(4) Article 6(2) *shall be* replaced by the following:

'2. In the light of market and technological developments, the Commission may adopt implementing measures to amend Annex I. The 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 14(3). ▌

In preparing the provisions referred to in this paragraph, the Commission may be assisted by ***the Body of European Regulators in Telecom ('BERT')***.'

(5) Article 7 *shall be* deleted.

(6) Article 8 *shall be* amended as follows:

(a) In paragraph 1, 'Articles 9 to 13'*shall be* replaced by 'Articles 9 to 13a'

(b) Paragraph 2 shall be replaced by the following:

'***2. Where an operator is designated as having significant market power on a specific market as a result of a market analysis carried out in accordance with Article 16 of Directive 2002/21/EC (Framework Directive), national regulatory authorities shall, as appropriate, impose the obligations set out in Articles 9 to 13 of this Directive in accordance with the procedure laid down in Article 7a of Directive 2002/21/EC (Framework Directive).***'

(c) Paragraph 3 *shall be* amended as follows:

(i) *the* first subparagraph *shall be* amended as follows:

— *in* the first indent, 'Articles 5(1), 5(2) and 6'*shall be* replaced by 'Articles 5(1) and 6';

— in the second indent, 'Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector (*)' *shall be* replaced by '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) (**)

(*) OJ L 24, 30.1.1998, p. 1.
(**) OJ L 201, 31.7.2002, p. 37. '.

(ii) *the* following sentence *shall be* included as the second sentence of the second subparagraph:

'The Commission shall take the utmost account of the opinion of ***BERT*** submitted in accordance with Article 4(3)(m) of Regulation *(EC) No …/2008 [establishing the Body of European Regulators in Telecom (BERT)]*.'

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(7) Article 9 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

'***1. National regulatory authorities may, in accordance with the provisions of Article 8, impose obligations for transparency in relation to interconnection and/or access, requiring operators to make public specified information, such as accounting information, technical specifications, network characteristics, restrictions on access to services and applications, traffic management policies, terms and conditions for supply and use, and prices.***'

(b) paragraph 4 shall be replaced by the following:

'***4. Notwithstanding paragraph 3, where an operator has been found, in accordance with Article 14 of Directive 2002/21/EC (Framework Directive), to have significant market power in a relevant market relating to local access at a fixed location, national regulatory authorities shall ensure the publication of a reference offer containing at least the elements set out in Annex II.***'

(c) paragraph 5 shall be replaced by the following:

'5. The Commission may adopt the necessary amendments to Annex II in order to adapt it to technological and market developments. The 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 14(3). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 14(4). In implementing the provisions of this paragraph, the Commission may be assisted by ***BERT***.'

(8) ***Article 12 shall be replaced by the following***:

'***Article 12***

Obligations of access to, and use of, specific network facilities

1. A national regulatory authority may, in accordance with the provisions of Article 8, impose obligations on operators to meet reasonable requests for access to, and use of, specific network elements and associated facilities, inter alia in situations where the national regulatory authority considers that denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level, or would not be in the end-user's interest.

Operators shall be required inter alia:

(a) to give third parties access to specified network elements and/or facilities, including unbundled access to the local loop;

(b) to negotiate in good faith with undertakings requesting access;

(c) not to withdraw access to facilities already granted;

(d) to provide specified services on a wholesale basis for resale by third parties;

(e) to grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or virtual network services;

(f) to provide co-location or other forms of facility sharing, including the sharing of ducts, buildings or entry to buildings, antennae ***towers and other supporting constructions,*** masts, manholes, cabinets ***and other network elements which are not active***;

(fa) to provide third parties with a reference offer for the granting of access to ducts;

(g) to provide specified services needed to ensure interoperability of end-to-end services to users, including facilities for intelligent network services or roaming on mobile networks;

(h) to provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services;

(i) to interconnect networks or network facilities;

(j) to provide access to associated services such as identity, location and presence capability.

National regulatory authorities may attach to those obligations conditions covering fairness, reasonableness and timeliness.

2. When national regulatory authorities are considering whether to impose the obligations referred in paragraph 1, and in particular when assessing whether such obligations would be proportionate to the objectives set out in Article 8 of Directive 2002/21/EC (Framework Directive), they shall take account in particular of the following factors:

(a) the technical and economic viability of using or installing competing facilities, in the light of the rate of market development, taking into account the nature and type of interconnection and access involved, including the viability of other upstream access products such as access to ducts;

(b) the feasibility of providing the access proposed, in relation to the capacity available;

(c) the initial investment by the facility owner, bearing in mind any public investment made and the risks involved in making the investment, including an appropriate risk-sharing among those undertakings enjoying access to these new facilities;

(d) the need to safeguard competition in the long term, in particular infrastructure-based competition;

(e) where appropriate, any relevant intellectual property rights;

(f) the provision of pan-European services.

3. When imposing obligations on an operator to provide access in accordance with the provisions of this Article, national regulatory authorities may lay down technical or operational conditions to be met by the provider and/or beneficiaries of such access where necessary to ensure normal operation of the network. Obligations to follow specific technical standards or specifications shall be in compliance with the standards and specifications laid down in accordance with ***Article 17*** of Directive 2002/21/EC (Framework Directive).'

(9) Article 13 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

'***1. A national regulatory authority may, in accordance with the provisions of Article 8, impose obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of interconnection and/or access, in situations where a market analysis indicates that a lack of effective competition means that the operator concerned might sustain prices at an excessively high level, or apply a price squeeze, to the detriment of end-users. National regulatory authorities shall take into account the investment made by the operator and allow him a reasonable rate of return on adequate capital employed and, without prejudice to Article 19(3)(d) of Directive 2002/21/EC, take into account the risks involved and the appropriate sharing of risk between investors and those undertakings enjoying access to the new facilities, including differentiated short-term and long-term risk-sharing arrangements.***'

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(b) the following paragraph shall be added:

'5. National regulatory authorities shall ensure that access price regulation for long-term risk-sharing contracts is in line with the long-term incremental cost of an efficient operator, taking into account the operator's calculated rate of penetration of new markets and the risk premium included in access prices for short-term contracts. Risk premium shall be phased out as market penetration increases. Margin squeeze tests shall not be applied to short-term contracts when a risk premium is charged.'

(10) The following Articles 13a and 13b *shall be* inserted:

'Article 13a

Functional separation

1. A national regulatory authority may, in accordance with the provisions of Article 8, and in particular the second subparagraph of Article 8(3), impose***, as an exceptional measure***, an obligation on vertically integrated undertakings to place activities related to the wholesale provision of ***fixed*** access products in an independently operating business unit.

That business unit shall supply access products and services to all undertakings, including other business units within the parent company, on the same timescales, terms and conditions, including with regard to price and service levels, and by means of the same systems and processes.

2. When a national regulatory authority intends to impose an obligation for functional separation, it shall submit a ***proposal*** to the Commission that includes:

(a) evidence that the imposition ***and enforcement over a reasonable period, taking due account of regulatory best practice***, of appropriate obligations amongst those identified in *Articles 9 to 13*, to achieve effective competition following a coordinated analysis of the relevant markets in accordance with the market analysis procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive), has failed and would fail on a persistent basis to achieve effective competition and that there are important and persisting ***competition problems and market failures*** identified in several of ***the wholesale*** product markets ***analysed***;

(b) evidence that there is little or no prospect of infrastructure-based competition within a reasonable period;

(c) an analysis of the expected impact on the regulatory authority, the undertaking, ***in particular its workforce*** and its incentives to invest in its network, and other stakeholders, including in particular *analysis of* the expected impact on infrastructure competition and any potential *consequential* effects on consumers;

(d) an analysis of the reasons justifying that this obligation would be the most efficient means to enforce remedies aimed at addressing the competition problems/market failures identified.

▌

3. The ***national regulatory authority shall include in its proposal a*** draft ***of the proposed*** measure, ***which*** shall include the following elements:

(a) the precise nature and level of separation ▌;

(b) identification of the assets of the separate business entity, and the products or services to be supplied by this entity;

(c) the governance arrangements to ensure the independence of the staff employed by the separate business entity, and the corresponding incentive structure;

(d) rules for ensuring compliance with the obligations;

(e) rules for ensuring transparency of operational procedures, in particular towards other stakeholders;

(f) a monitoring programme to ensure compliance, including publication of an annual report.

4. Following the Commission's decision on the draft measure taken in accordance with Article 8(3), the national regulatory authority shall conduct a coordinated analysis of the different markets related to the access network in accordance with the procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive). On the basis of its assessment, the national regulatory authority shall impose, maintain, amend or withdraw obligations, in accordance with Articles 6 and 7 of Directive 2002/21/EC (Framework Directive).

5. An undertaking on which functional separation has been imposed may be subject to any of the obligations identified in Articles 9–13 in any specific market where it has been designated as having significant market power in accordance with Article 16 of Directive 2002/21/EC (Framework Directive), or any other obligations authorised by the Commission pursuant to paragraph 3 of Article 8.

Article 13b

Voluntary separation by a vertically integrated undertaking

1. Undertakings which have been designated as having significant market power in one or several relevant markets in accordance with Article 16 of Directive 2002/21/EC (Framework Directive) shall inform the national regulatory authority in advance if they intend to transfer their local access network assets or a substantial part of them to a separate legal entity under different ownership, or to establish a separate business entity in order to provide to all retail providers, including its own retail divisions, fully equivalent access products.

2. The national regulatory authority shall assess the effect of the intended transaction on existing regulatory obligations under Directive 2002/21/EC (Framework Directive).

For that purpose, the national regulatory authority shall conduct a coordinated analysis of the different markets related to the access network in accordance with the procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive).

On the basis of its assessment, the national regulatory authority shall impose, maintain, amend or withdraw obligations, in accordance with Articles 6 and 7 of Directive 2002/21/EC (Framework Directive).

3. The legally and/or operationally separate business entity may be subject to any of the obligations identified in Articles 9-13 in any specific market where it has been designated as having significant market power in accordance with Article 16 of Directive 2002/21/EC (Framework Directive), or any other obligations authorised by the Commission pursuant to paragraph 3 of Article 8.'

(11) In Article 14, *paragraph 3 shall be replaced by the following*:

'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.'

▌

(12) Annex II is amended in accordance with the Annex to this Directive.

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Article 3

Amendments to Directive 2002/20/EC (Authorisation Directive)

Directive 2002/20/EC *shall be* amended as follows:

(1) Article 2(2) *shall be* replaced by the following:

'2. The following definition shall also apply:

'general authorisation' means a legal framework established by the Member State ensuring rights for the provision of electronic communications networks or services and laying down sector specific obligations that may apply to all or to specific types of electronic communications networks and services, in accordance with this Directive.'

2) ‖ Article 3(2) *shall be amended as follows:*

(a) 'Articles 5, 6 and 7'*shall be* replaced by 'Articles 5, 6, 6a and 7.';

(b) the following subparagraph shall be added:

'***Undertakings providing cross-border electronic communications services to undertakings located in several Member States shall be treated in the same way in all Member States and shall be subject to no more than one simplified notification per Member State concerned.***'

(3) Article 5 *shall be* replaced by the following:

'Article 5

Rights of use for radio frequencies and numbers

1. Member States shall ***facilitate the*** usage of ▌radio frequencies ***by means of*** general ***authorisations. Member States may*** grant individual rights ***of use*** in order to:

(a) avoid ***the possibility*** of harmful interference;

(b) ensure the technical quality of services;

(c) ensure the efficient use of spectrum;

(d) fulfil other objectives of general interest ***defined in national legislation in accordance with Community law; or***

(e) comply with a measure adopted pursuant to Article 6a.

2. ▌Member States shall grant ***individual*** rights ***of use***, upon request, to any undertaking ▌, subject to the provisions of Articles 6, 6a, 7 and 11(1)(c) of this Directive and any other rules ensuring the efficient use of those resources in accordance with Directive 2002/21/EC (Framework Directive).

Without prejudice to specific criteria ***and procedures adopted*** by Member States to grant rights of use of radio frequencies to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with Community law, such rights of use shall be granted through ***open***, objective, transparent, non-discriminatory and proportionate procedures, and, in the case of radio frequencies, in accordance with the provisions of Article 9 of Directive 2002/21/EC (Framework Directive). The procedures ***may, exceptionally, not be*** open in cases where the granting of individual rights of use for radio frequencies to the providers of radio or television broadcast content services can be shown to be essential to meet a particular obligation defined ***and justified*** in advance by the Member State which is necessary to achieve a general interest objective in conformity with Community law.

When granting rights of use, Member States shall specify whether those rights can be transferred by the holder of the rights, and under which conditions. In the case of radio frequencies, such provisions shall be in accordance with ***Articles 9 and 9b*** of Directive 2002/21/EC (Framework Directive).

Where Member States grant rights of use for a limited period of time, the duration shall be appropriate for the service concerned in view of the objective pursued, ***taking due account of the need to allow for an appropriate period for amortisation of investment***.

Where individual rights to use radio frequencies ***are*** granted for ten years or more and ***cannot*** be transferred or leased between undertakings *pursuant to* Article 9b of *Directive 2002/21/EC* (Framework Directive), ***the competent national authority shall ensure that*** the criteria ***to grant individual rights of use apply and are complied with for the duration of the license***. If ***those*** criteria ▌ are no longer applicable, the individual right of use shall be changed into a general authorisation for the use of radio frequencies, subject to prior notice ***and after a reasonable period of time***, or shall be made freely transferable or *capable of being leased* between undertakings.

3. Decisions on ***the granting of*** rights of use shall be taken, communicated and made public as soon as possible after receipt of the complete application by the national regulatory authority, within three weeks in the case of numbers that have been allocated for specific purposes within the national numbering plan and within six weeks in the case of radio frequencies that have been allocated for electronic communications ***services*** within the national frequency plan. The latter time limit shall be without prejudice to any applicable international agreements relating to the use of radio frequencies or of orbital positions.

4. Where it has been decided, after consultation with interested parties in accordance with Article 6 of Directive 2002/21/EC (Framework Directive), that rights for use of numbers of exceptional economic value are to be granted through competitive or comparative selection procedures, Member States may extend the maximum period of three weeks by up to ***a further*** three weeks.

With regard to competitive or comparative selection procedures for radiofrequencies, Article 7 shall apply.

5. Member States shall not limit the number of rights of use to be granted except where this is necessary to ensure the efficient use of radio frequencies in accordance with Article 7.

6. ***Competent national*** authorities shall ensure that radio frequencies are efficiently and effectively used in accordance with ***Articles 8(2) and 9(2)*** of Directive 2002/21/EC (Framework Directive). They shall also ensure competition is not distorted as a result of any transfer or accumulation of *rights of usage of* radio frequencies. ▌'

(4) Article 6 *shall be* amended as follows:

(a) Paragraph 1 *shall be* replaced by the following:

'1. The general authorisation for the provision of electronic communications networks or services and the rights of use for radio frequencies and rights of use for numbers may be subject only to the conditions listed in Annex I. Such conditions shall be non-discriminatory, proportionate and transparent and, in the case of rights of use for radio frequencies, shall be in accordance with Article 9 of Directive 2002/21/EC (Framework Directive).'

(b) In paragraph 2, 'Articles 16, 17, 18 and 19 of Directive 2002/22/EC (Universal Service Directive)' *shall be* replaced by 'Article 17 of Directive 2002/22/EC (Universal Service Directive)'.

(c) In paragraph 3, the word 'Annex' *shall be* replaced by 'Annex I'.

(5) The following *Article* 6a ▌ *shall be* inserted:

'Article 6a

Harmonisation measures

1. ***Without*** prejudice to ***Article 5(1) and (2)*** of this Directive ***and Articles 8b and 9 of Directive 2002/21/EC (Framework Directive)***, the Commission may adopt implementing measures:

(a) to identify radio frequency bands, the use of which is to be made subject to general *authorisation* ▌;

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(b) to identify the numbering ranges to be harmonised at Community level;

(c) to harmonise procedures for the granting ***to undertakings providing pan-European electronic communications networks or services*** of general authorisations or individual rights of use for radio frequencies or numbers;

(d) to harmonise the conditions specified in Annex II relating to ***the granting to undertakings providing pan-European electronic communications networks or services of*** general authorisations or individual rights of use for radio frequencies or numbers.

▌

These 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 14a(3) ▌.

2. The measures referred to in paragraph 1 may, where appropriate, *allow* the Member States to make a reasoned request for a partial exemption and/or a temporary derogation from those measures.

The Commission shall assess the justification for the request, taking into account the specific situation in the Member State, and may grant a partial exemption or temporary derogation or both provided this does not unduly defer the implementation of the implementing measures referred to in paragraph 1 or create undue differences in the competitive or regulatory situations between Member States.

▌

(6) Article 7 *shall be* amended as follows:

(a) Paragraph 1 *shall be* amended as follows

(i) The introductory phrase *shall be* replaced by the following:

'1. Where a Member State is considering whether to limit the number of rights of use to be granted for radio frequencies or whether to extend the duration of existing rights other than in accordance with the terms specified in such rights, it shall *inter alia*:'

(ii) Point (c) *shall be* replaced by the following:

'(c) publish any decision to limit the granting of rights of use or the renewal of rights of use, stating the reasons therefore;'

(b) Paragraph 3 *shall be* replaced by the following:

'3. Where the granting of rights of use for radio frequencies needs to be limited, Member States shall grant such rights on the basis of selection criteria which must be objective, transparent, non-discriminatory and proportionate. Any such selection criteria must give due weight to the achievement of the objectives of Article 8 of Directive 2002/21/EC (Framework Directive) and of the requirements of Article 9 of that Directive.'

(c) In paragraph 5 'Article 9'*shall be* replaced by 'Article 9b'.

▌

(7) Article 10 *shall be* amended as follows:

(a) Paragraph 1, 2 and 3 *shall be* replaced by the following:

'1. National regulatory authorities shall monitor and supervise compliance with the conditions of the general authorisation or of rights of use and with the specific obligations referred to in Article 6(2), in accordance with Article 11.

National regulatory authorities shall have the power to require undertakings providing electronic communications networks or services covered by the general authorisation or enjoying rights of use for radio frequencies or numbers to provide all information necessary to verify compliance with the conditions of the general authorisation or of rights of use or with the specific obligations referred to in Article 6(2), in accordance with Article 11.

2. Where a national regulatory authority finds that an undertaking does not comply with one or more of the conditions of the general authorisation or of rights of use, or with the specific obligations referred to in Article 6(2), it shall notify the undertaking of those findings and give the undertaking the opportunity to state its views, within a reasonable time limit.

3. The relevant authority shall have the power to require the cessation of the breach referred to in paragraph 2 either immediately or within a reasonable time limit and shall take appropriate and proportionate measures aimed at ensuring compliance.

In this regard, Member States shall empower the relevant authorities to impose:

(a) dissuasive financial penalties where appropriate, ***which may include periodic penalties having retroactive effect; and***

(b) orders to cease provision of a service or bundle of services which, if continued, would result in significant harm to competition, pending compliance with access obligations imposed following a market analysis carried out in accordance with Article 16 of Directive 2002/21/EC (Framework Directive).'

(b) Paragraph 4 *shall be* replaced by the following:

'4. Notwithstanding the provisions of paragraphs 2 and 3, Member States shall empower the relevant authority to impose financial penalties where appropriate on undertakings for failure to provide information in accordance with obligations imposed under Article 11(1)(a) or (b) of this Directive or Article 9 of Directive 2002/19/EC (Access Directive) within a reasonable period stipulated by the national regulatory authority.'

(c) Paragraph 5 *shall be* replaced by the following:

'5. In cases of serious ***or*** repeated breaches of the conditions of the general authorisation or of the rights of use, or specific obligations referred to in Article 6(2), where measures aimed at ensuring compliance as referred to in paragraph 3 of this Article have failed, national regulatory authorities may prevent an undertaking from continuing to provide electronic communications networks or services or suspend or withdraw rights of use. Sanctions and penalties which are effective, proportionate and dissuasive may be applied to cover the period of any breach, even if the breach has subsequently been rectified.'

(d) Paragraph 6 *shall be* replaced by the following:

'6. *Notwithstanding* the provisions of paragraphs 2, 3 and 5, where the relevant authority has evidence of a breach of the conditions of the general authorisation or *of the* specific obligations referred to in Article 6(2) that represents an immediate and serious threat to public safety, public security or public health or will create serious economic or operational problems for other providers or users of electronic communications networks or services ***or other users of radio spectrum***, it may take urgent interim measures to remedy the situation in advance of reaching a final decision. The undertaking concerned shall thereafter be given a reasonable opportunity to state its views and propose any remedies. Where appropriate, the relevant authority may confirm the interim measures, which shall be valid for a maximum of 3 months.'

(e) the following paragraph shall be inserted:

'***6a. In accordance with their national law, Member States shall ensure that measures taken by the national authorities pursuant to paragraphs 5 and 6 are subject to judicial review.***'

(8) Article 11(1) shall be amended as follows:

(a) In points (a) and (b) ‖ the word 'Annex'*shall be* replaced by 'Annex I':

(b) In the first subparagraph, the following point shall be added:

'***(g) encouraging the efficient use and ensuring the effective management of radio frequencies.***'

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(9) Article 14 *shall be* replaced by the following:

'Article 14

Amendment of rights and obligations

1. Member States shall ensure that the rights, conditions and procedures concerning general authorisations and rights of use or rights to install facilities may only be amended in objectively justified cases and in a proportionate manner, taking into consideration, where appropriate, the specific conditions applicable to transferable rights of use for radio frequencies. Notice shall be given in an appropriate manner of the intention to make such amendments and interested parties, including users and consumers, shall be allowed a sufficient period of time to express their views on the proposed amendments, which shall be no less than four weeks except in exceptional circumstances.

2. Member States shall not restrict or withdraw rights to install facilities or rights of use for radio frequencies before expiry of the period for which they were granted except where justified and where applicable in conformity with relevant national provisions regarding compensation for withdrawal of rights.'

(10) The following Article 14a *shall be* inserted:

'Article 14a

Committee

1. The Commission shall be assisted by the Communications Committee.

2. By way of derogation from paragraph 1, for the adoption of measures pursuant to Article 6a (1), points (a), (c) and (d), the Commission shall be assisted by the Radio Spectrum Committee established under Article 3(1) of Decision No 676/2002/EC.

3. 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.

4. 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.

■

(11) Article 15(1) *shall be* replaced by the following:

'1. Member States shall ensure that all relevant information on rights, conditions, procedures, charges, fees and decisions concerning general authorisations, rights of use and rights to install facilities is published and kept up to date in an appropriate manner so as to provide easy access to that information for all interested parties.'

(12) In Article 17 paragraphs 1 and 2 *shall be* replaced by the following:

'1. Without prejudice to Article 9a of Directive 2002/21/EC (Framework Directive), Member States shall bring authorisations already in existence on 31 December 2009 into conformity with Articles 5, 6, 7, and Annex I of this Directive by [31 December 2010] at the latest.

2. Where application of paragraph 1 results in a reduction of the rights or an extension of the obligations under authorisations already in existence, Member States may extend the validity of those rights and obligations till [30 September 2011] at the latest, provided that the rights of other undertakings under Community law are not affected thereby. Member States shall notify such extensions to the Commission and state the reasons therefore.'

(13) The Annex *shall be* amended as set out in *the Annex* to this Directive.

(14) A new Annex II, the text of which is set out in *the Annex* to this Directive, *shall be* added.

Article 4

Review procedure

1. The Commission shall periodically review the functioning of this Directive and of Directives 2002/21/EC (Framework Directive), 2002/19/EC (Access Directive) and 2002/20/EC (Authorisation Directive) and report to the European Parliament and to the Council no later than three years after the date of application referred to in Article 6(1). In its report, the Commission shall assess whether, in the light of developments in the market and with regard to both competition and consumer protection there is continued need for the provisions on sector specific ex ante regulation laid down in Articles 8 to 13a of Directive 2002/19/EC (Access Directive) and Article 17 of Directive 2002/22/EC (Universal Service Directive) or whether they should be amended or repealed. For this purpose, the Commission may request information from the national regulatory authorities and BERT, which shall be supplied without undue delay.

2. If the Commission finds that the provisions referred to in paragraph 1 need to be amended or repealed it shall submit a proposal to the European Parliament and the Council without undue delay.

Article 5

Repeal

Regulation (EC) No 2887/2000 is repealed.

Article 6

Transposition

1. Member States shall adopt and publish 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 and a correlation table between those provisions and this Directive.

They shall apply those provisions from […].

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 7

Entry into force

This Directive shall enter into force on the […] day following that of its publication in the Official Journal of the European Union.

Article 8

Addressees

This Directive is addressed to the Member States.

Done at …, on …

For the European Parliament
The President

For the Council
The President

Wednesday 24 September 2008

ANNEX

1. Annex II to Directive 2002/21/EC shall be replaced by the following:

'***ANNEX II***

Criteria to be used by national regulatory authorities in making an assessment of joint dominance in accordance with Article 14(2), second subparagraph

Two or more undertakings can be found to be in a joint dominant position within the meaning of Article 14 if, even in the absence of structural or other links between them, they operate in a market which is characterised by a lack of effective competition and in which no single undertaking has significant market power. Without prejudice to the case law of the Court of Justice of the European Communities on joint dominance, this is likely to be the case where the market is concentrated and exhibits a number of appropriate characteristics of which the following may be the most relevant in the context of electronic communications:

— low elasticity of demand,

— similar market shares,

— high legal or economic barriers to entry,

— vertical integration with collective refusal to supply,

— lack of countervailing buyer power,

— lack of potential competition.

The above is not an exhaustive list, nor are the criteria cumulative. Rather, the list is intended to illustrate only the sorts of evidence that could be used to support assertions concerning the existence of joint dominance.'

2. In Annex II to Directive 2002/19/EC, the title, definitions, part A and part B, point 1 shall replaced by the following:

'***Annex II***

Minimum list of items to be included in a reference offer for wholesale network infrastructure access, including shared or fully unbundled access at a fixed location, to be published by operators with significant market power (SMP)

For the purposes of this Annex the following definitions apply:

(a) 'local sub-loop' means a partial local loop connecting the network termination point to a concentration point or a specified intermediate access point in the fixed public electronic communications network;

(b) 'unbundled access to the local loop' means full unbundled access to the local loop and shared access to the local loop; it does not entail a change in ownership of the local loop;

(c) 'full unbundled access to the local loop' means the provision to a beneficiary of access to the local loop or local sub-loop of the SMP operator allowing the use of the full capacity of the network infrastructure;

(d) 'shared access to the local loop' means the provision to a beneficiary of access to the local loop or local sub-loop of the SMP operator allowing the use of a specified part of the capacity of the network infrastructure such as part of the frequency or an equivalent;

A. Conditions for unbundled access

1. Network elements to which access is offered covering in particular the following elements together with appropriate associated facilities:

(a) unbundled access to local loops and local sub-loops;

(b) shared access at appropriate points in the network permitting equivalent functionality to unbundled access in circumstances where such access is not technically or economically feasible;

(c) duct access enabling installation of access and backhaul networks.

2. Information concerning the locations of physical access sites including street cabinets and distribution frames, availability of local loops and sub-loops, ducts and backhaul in specific parts of the access network and availability within ducts;

3. Technical conditions related to access and use of local loops and sub-loops and ducts, including the technical characteristics of the twisted pair, optical fibre or an equivalent, and of the cable distributors, ducts and associated facilities;

4. Ordering and provisioning procedures, usage restrictions.

B. Co-location services

1. Information on the SMP operator's existing relevant sites or equipment locations and planned updates thereto.'

3. The Annex to Directive 2002/20/EC (Authorisation Directive) *shall be* amended as follows:

(1) The heading 'Annex' *shall be* replaced by the heading 'Annex I'.

(2) The first paragraph *shall be* replaced by the following heading:

'The conditions listed in this Annex provide the maximum list of conditions which may be attached to general authorisations (Part A), rights to use radio frequencies (Part B) and rights to use numbers (Part C) as referred to in Article 6(1) and Article 11(1)(a), within the limits allowed under Articles 5, 6, 7, 8 and 9 of Directive 2002/21/EC (the Framework Directive).'

(3) Part A *shall be* amended as follows:

(a) Point 4 *shall be* replaced by the following:

'4. Accessibility of numbers from the national numbering ***plans of Member States*** to end users, numbers from ETNS and UIFN, and conditions in conformity with Directive 2002/22/EC (Universal Service Directive).'

(b) Point 7 *shall be* replaced by the following:

'7. Personal data and privacy protection specific to the electronic communications sector in conformity with 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) (*)'

(*) *OJ L 201, 31.7.2002, p. 37.*

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(c) Point 8 *shall be* replaced by the following:

'8. Consumer protection rules specific to the electronic communications sector, including conditions in conformity with Directive 2002/22/EC (Universal Service Directive), and conditions on accessibility for users with disabilities in accordance with Article 7 of that Directive.'

(d) In points 11 and 16, 'Directive 97/66/EC' *shall be* replaced by 'Directive 2002/58/EC'.

(e) The following point 11a *shall be inserted*:

'11a. Terms of use for communications from public authorities to the general public for warning the public of imminent threats and for mitigating the consequences of major catastrophes.'

(f) In point 12 the terms 'and broadcasts to the general public' *shall be* deleted.

▌

(g) the following point shall be added:

'***19. Transparency obligations on public communications network providers to ensure end-to-end connectivity, including unrestricted access to content, services and applications, in conformity with the objectives and principles set out in Article 8 of Directive 2002/21/EC, disclosure regarding restrictions on access to services and applications and regarding traffic management policies and, where necessary and proportionate, access by national regulatory authorities to such information needed to verify the accuracy of such disclosure.***'

(4) Part B *shall be* amended as follows:

(a) Point 1 *shall be* replaced by the following:

'1. Obligation to provide a service or to use a type of technology for which the rights of use for the frequency has been granted, including, where appropriate, coverage requirements.'

(b) Point 2 *shall be* deleted.

▌

(c) Point 7 *shall be* replaced by the following:

'7. Voluntary commitments which the undertaking obtaining the right *of use* has made in the course of a competitive or comparative selection procedure. ***If such a commitment corresponds de facto to one or more of the obligations listed in Articles 9 to 13a of Directive 2002/19/EC (Access Directive), that commitment shall be considered as having expired by 1 January 2010 at the latest.***'

(d) The following point 9 is added:

'9. Obligations specific to an experimental use of radio frequencies.'

(5) Part C shall be amended as follows:

(a) Point 1 shall be replaced by the following:

'***1. Designations of service for which the number shall be used, including any requirements linked to the provision of that service and, for the avoidance of doubt, tariff principles and maximum prices that can apply to specific number ranges for the purposes of ensuring consumer protection in accordance with Article 8(4)(b) of Directive 2002/21/EC (Framework Directive).***'

(b) point 8 *shall be* replaced by the following:

'8. Voluntary commitments which the undertaking obtaining the usage right has made in the course of a competitive or comparative selection procedure.'

4. The following Annex II *shall be* added to Directive 2002/20/EC (Authorisation Directive):
'ANNEX II

Conditions which may be harmonised in accordance with point (d) of Article 6a, paragraph 1

(1) Conditions attached to rights of use for radio frequencies:

(a) the duration of the rights of use of the radio frequencies;

(b) the territorial scope of the rights;

(c) the possibility to transfer the right to other radio frequencies users, as well as the conditions and procedures relating thereto;

(d) the method of determining usage fees for the right***, without prejudice to systems defined by Member States where the obligation to pay usage fees is replaced by an obligation to fulfil specific general interest objectives;***

(e) the number of rights of use to be granted to each undertaking;

(f) conditions listed in Part B of Annex I.

(2) Conditions attached to rights of use for numbers:

(g) the duration of the rights of use of the number(s) concerned;

(h) the territory within which they are valid;

(i) any specific services or uses for which the numbers are to be reserved;

(j) the transfer and portability of the rights of use;

(k) the method of determining usage fees (if any) for the rights of use for the numbers;

(l) conditions listed in Part C of Annex I.'

European Electronic Communications Market Authority ***I

P6_TA(2008)0450

European Parliament legislative resolution of 24 September 2008 on the proposal for a regulation of the European Parliament and of the Council establishing the European Electronic Communications Market Authority (COM(2007)0699 — C6-0428/2007 — 2007/0249(COD))

(2010/C 8 E/46)

(Codecision procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0699),

— having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0428/2007),

— 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 Budgets, the Committee on Budgetary Control, the Committee on Economic and Monetary Affairs, the Committee on the Internal Market and Consumer Protection, the Committee on Culture and Education, the Committee on Legal Affairs and the Committee on Civil Liberties, Justice and Home Affairs (A6-0316/2008),

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1. Approves the Commission proposal as amended;

2. Notes that the Commission has communicated its intention to finance the new Body of European Regulators in Telecom (BERT) within subheading 1a of the current Multiannual Financial Framework 2007 — 2013 partly through redeployment and partly by an increase for the period 2009-2013; points out, however, that the budgetary authority has not yet received any information as to the details of this exercise so that it remains unclear, to date, which programmes or priorities are affected and what consequences arise from this throughout the financial period and whether a sufficient margin will remain in subheading 1a;

3. Points out that the proposed BERT will also fulfil administrative tasks and assist the Commission; is consequently of the opinion that all possibilities of the Multiannual Financial Framework 2007 — 2013, including Heading 5 where sufficient margins still seem to be available, should be explored to finance the body;

4. Underlines that the provisions of Point 47 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management [1] (IIA) will apply for the setting-up of BERT; stresses that, should the legislative authority decide in favour of the setting-up of such an agency, Parliament will enter into negotiations with the other arm of the budgetary authority with a view to coming to a timely agreement on the financing of this agency in line with the relevant provisions of the IIA;

5. 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;

6. Instructs its President to forward its position to the Council and Commission.

[1] OJ C 139, 14.6.2006, p. 1.

P6_TC1-COD(2007)0249

Position of the European Parliament adopted at first reading on 24 September 2008 with a view to the adoption of Regulation *(EC) No …/2008* of the European Parliament and of the Council establishing the *Body of European Regulators in Telecom (BERT)*

(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],

[1] *OJ C 224, 30.8.2008, p. 50.*
[2] OJ C 257, 9.10.2008, p. 51.

Acting in accordance with the procedure laid down in Article 251 of the Treaty [1],

Whereas:

(1) Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) [2], Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) [3], Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) [4], Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) [5] 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) [6] (hereinafter together referred to as 'the Framework Directive and the Specific Directives'), ***as well as the resolution of the European Parliament of 21 June 2007 on consumer confidence in the digital environment*** ***[7]***, aim to create an internal market for electronic communications within the Community while ensuring a high level of investment, innovation and consumer protection through enhanced competition.

(2) The 2002 regulatory framework for electronic communications establishes a system of regulation undertaken by national regulatory authorities ***('NRAs')*** and provides for those authorities to cooperate with each other and with the Commission in order to ensure the development of consistent regulatory practice and the consistent application across the Community of the regulatory framework ***but leaving room for regulatory competition between the NRAs in light of specific national market conditions***.

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(3) ***NRAs*** exercise considerable discretion in implementing the regulatory framework reflecting their expert knowledge of local market conditions, but this discretion has to be reconciled with the need to ensure the development of coherent regulatory practice and the consistent application of the regulatory framework in order to contribute effectively to the development and completion of the internal market.

(4) The Body of European Regulators in Telecom ('BERT') should be established to accomplish coordination between NRAs of Members States without harmonising existing regulatory approaches to a degree which undermines regulatory competition.

(5) In view of the need to apply the relevant rules consistently in all Member States, the Commission established the European Regulators Group (ERG) by Commission Decision 2002/627/EC [8] to advise and assist the Commission in consolidating the internal market and, more generally, to provide an interface between ***NRAs*** and the Commission.

(6) The ERG has made a positive contribution by *facilitating* moves towards consistent regulatory practice, in *so* far as this has proved possible. By its nature, however, the ERG is *an informal* grouping relying essentially on voluntary cooperation whose existing institutional status does not reflect the important responsibilities exercised by the ***NRAs*** in implementing the regulatory framework.

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[1] *Position of the European Parliament of 24 September 2008.*
[2] OJ L 108, 24.4.2002, p. 33.
[3] OJ L 108, 24.4.2002, p. 7.
[4] OJ L 108, 24.4.2002, p. 21.
[5] OJ L 108, 24.4.2002, p. 51.
[6] OJ L 201, 31.7.2002, p. 37. ‖.
[7] ***OJ C 146 E, 12.6.2008, p. 370.***
[8] OJ L 200, 30.7.2002, p. 38.

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(7) A more substantial institutional basis *is necessary* for the establishment of a body *with a clearly defined set of competencies, to* bring together the expertise and experience of the ***NRAs***, taking account of the need for this body to exercise ▌authority in the eyes of its members and *for* the sector *to be* regulated through the quality of its output.

(8) The need to enhance the mechanisms for ensuring consistent regulatory practice in order to complete the internal market in electronic communications and services has been underlined by the findings of the Commission's reports *of 20 February 2006 and of 29 March 2007* on the implementation of the 2002 regulatory framework [1] and by the public consultation on the Communication of the Commission of 29 June 2006 to the Council, the European Parliament the European Economic and Social Committee and the Committee of the Regions on the Review of the EU Regulatory Framework for electronic communications networks and services. These identified the continuing lack of an internal market for electronic communications as the most important issue that needed to be addressed by the reform of the regulatory framework. Regulatory fragmentation and inconsistencies resulting from the loosely coordinated activities of the ***NRAs*** risk jeopardising the competitiveness of the sector as well as the substantial consumer benefits resulting from cross-border competition and trans-national and even cross-Community services.

(9) In particular, delays in carrying out market analyses pursuant to Directive 2002/21/EC (Framework Directive), divergent approaches by ***NRAs*** towards the imposition of obligations designed to remedy a lack of effective competition found by the market analysis, the heterogeneous conditions attached to rights of use, the varying selection procedures for cross-Community services, different numbers within the Community for cross-Community services, and problems faced by ***NRAs*** in dealing with cross-border disputes lead to inefficient solutions and create obstacles to the internal market.

(10) The current approach to developing greater consistency among NRAs by exchanging information and knowledge on practical experience has proved to be successful in the short term following its deployment. However, more intense coordination between all regulatory authorities at national and European level will be required to understand and further develop the internal market in electronic communication services in order to enhance regulatory consistency.

(11) This calls for the establishment of a new ▌body, ***BERT. BERT*** would make an effective contribution to furthering the completion of the internal market through the assistance it provides to the Commission and ***NRAs***. It would operate as a point of reference and would establish confidence by virtue of its independence, the quality of the advice it delivers and the information it disseminates, the transparency of its procedures and methods of operation, and its diligence in performing the tasks assigned to it.

(12) ***BERT*** should, through the pooling of expertise, reinforce the capacities of the ***NRAs*** without replacing their existing functions or duplicating work already being undertaken, for the further benefit of assisting the Commission in the execution of its responsibilities.

(13) ***BERT is to*** replace the ERG and ***act*** as ***an*** exclusive forum for cooperation *among****NRAs and between those authorities and the Commission,*** in the exercise of the full range of their responsibilities under the regulatory framework.

(14) ***BERT*** should be established within the Community's existing institutional structure and balance of powers. It should be independent in relation to technical matters and have legal, administrative and financial autonomy. To that end, it is necessary ▌that it should be a Community body having legal personality and exercising the tasks conferred on it by this Regulation.

(15) ***BERT*** should build on national and Community efforts and therefore perform its tasks in full cooperation with ***NRAs*** and the Commission, and be open to contacts with industry, consumer groups, ***cultural interest groups*** and other relevant stakeholders.

[1] *OJ C 104, 3.5.2006, p. 19* and *OJ C 191, 17.8.2007, p. 17.*

(16) ***BERT*** has ▌ an important role to play in the mechanisms envisaged for consolidating the internal market for electronic communications and for carrying out market analyses in certain circumstances.

(17) ***BERT*** should accordingly advise the Commission and the ***NRAs, as well as the European Parliament, at its request***, in accordance with the Community regulatory framework for electronic communications and thereby assist in *the* effective implementation *of that framework*.

▌

18) ***BERT's*** annual review would identify best practice and remaining bottlenecks and would contribute to *improving* the level of ***benefits to*** citizens travelling in the European Union.

(19) In the context of pursuing the aims of Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision) ([1]), the Commission may seek the independent expert advice of ***BERT, where appropriate***, *on* the use of ‖ radio frequencies in the Community. This advice could involve specific technical investigations, as well as economic or social impact assessment and analysis *of* frequencies polici*es*. It could also include matters relating to the implementation of Article 4 of Decision No 676/2002/EC, where ***BERT*** may be asked to provide advice to the Commission on the results obtained under Commission mandates to the European Conference of Postal and Telecommunications Administrations (CEPT).

(20) While ***the electronic communications sector is a key sector in the move towards a more advanced European knowledge-based economy, and*** technological and market developments have increased the potential for the deployment of electronic communications services beyond the geographical boundaries of individual Member States, there is a risk that the existence of differing legal and regulatory conditions for the deployment of those services under national laws will increasingly hold back the provision of such cross-border services. ▌

(21) The Commission has recognised the global and trans-border nature of the global telecommunications market, noting that this market is different from telecommunications services provided merely on a national basis and that a single market for all global telecommunications services (GTSs) is assumed which has to be distinguished from merely national telecommunications services. GTSs are a particular case where harmonising conditions of authorisation might be necessary. It is generally recognised that these services, consisting of managed business data and voice services for multinational companies with locations in different countries, and often different continents, are inherently cross-border and, within Europe, pan-European. BERT should develop a common regulatory approach so that the economic benefits of integrated, seamless services can accrue to all parts of Europe.

(22) Where disputes with a cross-border nature arise between undertakings in respect of rights or obligations under the regulatory framework for electronic communications, ***BERT*** should be able to investigate *those* disputes and *to* advise the ***NRAs*** concerned *on the most appropriate means of resolving them*, in accordance with the provisions of the regulatory framework.

(23) ***Investment and innovation are strongly linked in the electronic communications sector. BERT*** should contribute to the development of best regulatory practice and consistency in the application of regulation in the electronic communications sector by fostering the exchange of information between national authorities and *by* making appropriate information available to the public in an easily accessible manner. ***BERT*** should *be able* to address economic and technical matters and to access the most *up-to-date* information available in order to be able to respond to the economic and technical challenges posed by the developing information society ▌.

▌

([1]) OJ L 108, 24.4.2002, p. 1.

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(24) ▌In order to improve the transparency of retail prices for making and receiving regulated roaming calls within the Community and to help roaming customers make decisions on the use of their mobile telephones while abroad, ***BERT*** should ensure that up-to-date information on the application of Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community [1] ‖is made available to interested parties and *should* publish the results of such monitoring on an annual basis.

(25) ***BERT*** should also be able to commission studies necessary for the accomplishment of its tasks, while ensuring *its* links with the Commission and the Member States prevent duplication of effort.

▌

(26) The structure of ***BERT*** should be ***lean and*** suitable for the tasks it is to perform. ***It*** should be adapted to meet the specific needs of the Community system for the regulation of electronic communications. In particular, the specific role of ***NRAs*** and their independent nature***, both at national and at European level, should*** be fully ***respected***.

(27) ***BERT*** should have the necessary powers to perform ***its*** functions in an efficient and, above all, independent manner. Reflecting the situation on a national level, the Board of Regulators should therefore act independently from any market interest and *should* not seek or take instructions from any government or other public or private entity.

(28) The smooth functioning of ***BERT*** requires its ***Managing*** Director *to* be appointed on the grounds of merit and documented administrative and managerial skills, as well as competence and experience relevant to electronic communications networks, services and markets and that he/she performs his/her duties with complete independence and flexibility as to the organisation of the internal functioning of ***BERT***. The ***Managing*** Director should ensure the efficient execution of ***BERT's*** tasks in an independent manner.

(29) In order to ensure that the tasks of ***BERT*** are carried out effectively, its ***Managing*** Director should be entrusted with the necessary powers to adopt all opinions, subject to the assent of the Board of Regulators, and to ensure that ***BERT*** works in accordance with the general principles laid down to this end.

▌

(30) In addition to its operating principles based on independence and transparency, ***BERT*** should be ▌ open to contacts with, ***inter alia***, industry, consumers, ***trade unions, public sector bodies, research centres*** and other interested stakeholders. ***Where appropriate, BERT should assist the Commission in the dissemination and exchange of best practice among undertakings.***

(31) ***BERT's*** procedures should therefore ensure that ***it*** has access to specialist expertise and experience in the electronic communications sector, particularly in areas of technical complexity and rapid change ▌.

▌

(32) In order to guarantee the full autonomy and independence of ***BERT***, it should receive an autonomous budget. ***Whilst one third of its funding should come from*** the general budget of the European Union, ***the other two thirds should be provided by NRAs. Member States should ensure that NRAs have adequate and unconditional funding for this purpose. This method of financing should be without prejudice to BERT's independence of both the Member States and the Commission.***

(33) ***BERT*** should, where appropriate, consult interested parties and provide them with an opportunity to comment on draft measures within a reasonable period.

[1] OJ L 171, 29.6.2007, p. 32.

(34) The Commission should be *able* to ***take the necessary measures in case*** undertakings ***fail to*** provide the information that is necessary for ***BERT*** to achieve its tasks effectively. Also, Member States should ensure that they have an appropriate framework for imposing on undertakings effective, proportionate and dissuasive penalties for non-compliance with obligations arising from this Regulation.

(35) Within its scope, in pursuing its objectives and in the performance of its tasks, ***NRAs should ensure that BERT complies*** in particular with the provisions applicable to the Community institutions regarding the treatment of sensitive documents. Where relevant, it is appropriate to ensure a coherent and secure information exchange in the framework of this Regulation.

(36) ***NRAs should ensure that BERT applies*** the relevant Community legislation concerning public access to documents as set out in Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [1] and the protection of individuals with regard to the processing of personal data as set out in 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 [2].

(37) By 1 January 2014, a review should take place to evaluate whether there is a need to extend the mandate of BERT. In case an extension is justified, budgetary and procedural regulations, as well as human resources, should be reviewed,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT-MATTER, SCOPE, DEFINITIONS AND TASKS

Article 1

Subject-matter and scope

1. ***The Body of European Regulators in Telecom ('BERT') shall be*** established with the responsibilities laid down in this Regulation. ***The Commission shall consult BERT in carrying out its functions under the Framework Directive and the Specific Directives, as set out in this Regulation.***

2. ***BERT*** shall act within the scope of the Framework Directive and the Specific Directives and draw upon expertise available in the ***NRAs***. It shall contribute ***to improvement of national regulation in the electronic communications sector and*** to the better functioning of the internal market for electronic communications networks and services, including in particular ***the promotion of an effective and consistent application of the regulatory framework of electronic communications and*** the development of cross-Community electronic communications, ▌through the tasks listed in Chapters II and III.

3. ***BERT*** shall carry out its tasks in cooperation with ***NRAs*** and the Commission ▌.

BERT shall serve as a means for the exchange of information and the adoption of consistent decisions by NRAs. It shall provide an organisational basis for the decision-making of NRAs. It shall adopt common positions and comments. Furthermore, it shall advise the Commission and assist the NRAs in all matters within the scope of the tasks assigned to the NRAs by the Framework Directive and the Specific Directives.

4. In all its activities, and in particular in the drawing up of its opinions, ***BERT*** shall pursue the same objectives as those addressed to the ***NRAs*** by Article 8 of *Directive 2002/21/EC* (Framework Directive).

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[1] OJ L 145, 31.5.2001, p. 43.
[2] OJ L 8, 12.1.2001, p. 1.

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5. ***A decision containing the following provisions, shall be adopted establishing an office to ensure appropriate resources for BERT:***

(a) a provision stipulating that the office is part of the Community administration with regard to the terms and conditions of employment and budgetary responsibilities;

(b) specific staff regulations for the office, as far as is required to ensure the autonomous fulfilment of the tasks of BERT; and

(c) rules for the first assembly and the first chairmanship of BERT.

The office shall be established in Brussels.

Article 2

Definitions

For the purposes of this Regulation, the definitions set out in Article 2 of Directive 2002/21/EC, Article 2 of Directive 2002/19/EC, Article 2 of Directive 2002/20/EC, Article 2 of Directive 2002/22/EC, Article 2 of Directive 2002/58/EC and Article 2 of Decision No 676/2002/EC ‖ shall apply.

Article 3

Functions of ***BERT***

BERT shall, in the furtherance of its tasks under this Regulation:

(a) issue opinions at the request of ***the European Parliament***, the Commission, or on its own initiative, and assist ***the European Parliament and*** the Commission by providing ***them*** with additional technical support in all matters regarding electronic communications;

(b) develop common positions, guidelines and best practice for the imposition of regulatory remedies at the national level and monitor their implementation across Member States;

(c) assist the Community, its Member States and the ***NRAs*** in relations, discussions and exchanges with third parties;

(d) provide advice *to* market players ***(including consumers and consumer organisations)*** and ***NRAs*** on regulatory issues;

(e) exchange, disseminate and collect information and undertake studies in areas relevant to its activities;

(f) exchange experience and promote innovation in the field of electronic communications;

(g) ***advise NRAs*** on cross-border disputes and***, where appropriate***, on e-Accessibility matters;

(h) develop common positions on pan-European issues such as GTSs in order to increase regulatory consistency and promote a pan-European market and pan-European rules.

CHAPTER II

TASKS OF ***BERT*** RELATING TO STRENGTHENING THE INTERNAL MARKET

Article 4

Role of ***BERT*** in the application of the regulatory framework

1. At the request of the Commission, ***BERT*** shall deliver opinions on all matters regarding electronic communications ***as set out in this Regulation. BERT may also, on its own initiative, provide opinions on these matters to the Commission or to NRAs.***

2. ***In order to promote*** the harmonised application of the provisions of the Framework Directive and the Specific Directives, the Commission ***shall also request the assistance of BERT*** in the preparation of recommendations or decisions to be adopted by the Commission in accordance with Article 19 of Directive 2002/21/EC (Framework Directive). ***The European Parliament may also request such assistance from BERT as it may reasonably require in relation to any enquiry or legislation within the scope of BERT's functions.***

3. *The m*atters referred to in paragraph 1 shall ***be***:

(a) draft measures of ***NRAs*** concerning market definition, designation of undertakings with significant market power and imposition of remedies, in accordance with Article 7 of Directive 2002/21/EC (Framework Directive);

▌

(b) identification of transnational markets, in accordance with Article 15 of Directive 2002/21/EC (Framework Directive);

(c) standardisation issues in accordance with Article 17 of Directive 2002/21/EC (Framework Directive);

(d) analyses of specific national markets in accordance with Article 16 of Directive 2002/21/EC (Framework Directive), ***and, where appropriate, of sub-national markets***;

(e) transparency and information for end-users, in accordance with Article 21 of Directive 2002/22/EC (Universal Service Directive);

(f) quality of service, in accordance with Article 22 of Directive 2002/22/EC (Universal Service Directive);

(g) effective implementation of the emergency call number '112', in accordance with Article 26 of Directive 2002/22/EC (Universal Service Directive);

▌

(h) number portability, in accordance with Article 30 of Directive 2002/22/EC (Universal Service Directive);

(i) the improvement of disabled end-users' access to electronic communication services and equipment, in accordance with Article 33 of Directive 2002/22/EC (Universal Service Directive);

(j) measures of ***NRAs*** taken in accordance with Articles 5, and 8(3) of Directive 2002/19/EC (Access Directive);

(k) transparency measures for the implementation of unbundling of the local loop, in accordance with Article 9 of Directive 2002/19/EC (Access Directive);

(l) conditions for access to digital television and radio services, in accordance with Article 6 of Directive 2002/19/EC (Access Directive), and interoperability of interactive digital television services in accordance with Article 18 of Directive 2002/21/EC (Framework Directive);

(m) matters that are the responsibility of BERT as identified in the Framework Directive and the Specific Directives, in so far as they affect management of the spectrum or are affected by its management;

(n) measures to ensure the development of common pan-European rules and requirements for GTSs providers.

4. In addition, the ***Commission may request BERT to*** undertake the specific tasks set out in Articles 5 to *18*.

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5. The Commission and NRAs shall take the utmost account of the opinion of BERT. Where BERT proposes alternative solutions in the light of different market conditions and path dependence of different regulatory approaches, NRAs shall consider which solution fits best into their regulatory approach. NRAs and the Commission shall make public the manner in which the opinion of BERT has been taken into account.

Article 5

Consultation of ***BERT*** on the definition and analysis of national markets, and on remedies

1. The Commission shall inform ***BERT*** when it acts in accordance with Article 7(4) and (8) of Directive 2002/21/EC (Framework Directive).

2. ***BERT*** shall deliver an opinion to the Commission on the draft measure concerned within *four* weeks of being so informed. The opinion shall include a detailed and objective analysis of whether the draft measure constitutes a barrier to the single market and its compatibility with Community law, in particular with the objectives referred to in Article 8 of Directive 2002/21/EC (Framework Directive). Where appropriate the ***Commission*** shall ***ask BERT to*** indicate what changes should be made to the draft measure so as to ensure that these objectives are most effectively met.

3. ***BERT*** shall *upon request* provide the Commission with all the information available to carry out the tasks referred in paragraph 2.

Article 6

Reviews of national markets by ***BERT***

1. If ***BERT*** receives a request from the Commission pursuant to Article 16(7) of Directive 2002/21/EC (Framework Directive) to analyse a specific relevant market within a Member State, it shall deliver an opinion and provide the Commission with the necessary information, including the results of the public consultation and the analysis of the market. If ***BERT*** finds that competition on that market is not effective, its opinion shall, following a public consultation, include a draft measure specifying the undertaking(s) it considers should be designated as having significant market power on that market and the appropriate obligations to be imposed.

2. ***BERT*** may, where appropriate, consult the relevant national competition authorities before issuing its opinion to the Commission.

3. ***BERT*** shall *upon request* provide the Commission with all the information available to carry out the tasks referred in paragraph 1.

Article 7

Definition and analysis of transnational markets

1. Upon request, ***BERT*** shall deliver an opinion to the Commission on the appropriate definition of transnational markets.

2. Where the Commission has identified a transnational market in accordance with Article 15(4) of Directive 2002/21/EC (Framework Directive), ***BERT may, upon request, assist the NRAs involved in the joint market analysis*** in accordance with Article 16(5) of that Directive ▌.

▌

3. ***BERT*** shall *upon request* provide the Commission with all the information available to carry out the tasks referred in *paragraphs 1 and 2*.

Article 8

Harmonisation of numbering and number portability

▌

1. ***At the Commission's request, BERT*** shall work with the ***NRAs*** on issues relat*ing* to fraud or the misuse of numbering resources within the Community, in particular for cross-border services. It may issue an opinion on action that could be taken at Community or national level to address fraud and misuse and other consumer concerns about numbering.

2. ***BERT*** shall, at the request of the Commission, deliver an opinion to the Commission on the scope of, and technical parameters for, obligations regarding the porting of numbers or subscriber identifiers and associated information between networks and the appropriateness of extending such obligations at Community level.

Article 9

Implementation of the European Emergency Number 112

▌

1. ***BERT*** shall at the request of the Commission, deliver an opinion to the Commission on the technical issues related to the implementation of the European emergency call number '112' in accordance with Article 26 of Directive 2002/22/EC (Universal Service Directive).

2. Prior to delivering its opinion under *paragraph 1*, ***BERT*** shall consult with competent national authorities and conduct a public consultation in accordance with *Article 31*.

Article 10

Advice on radio frequencies issues in relation to electronic communications

1. Upon request, ***BERT*** shall provide advice to the Commission, ***the Radio Spectrum Policy Group ('RSPG') or the Radio Spectrum Committee ('RSC'), as appropriate, in relation to matters within the scope of its functions which affect or are affected by*** the use of radio frequencies for electronic communications in the Community. ***It shall work in close cooperation with the RSPG and the RSC as appropriate.***

2. The activities referred to in paragraph 1 may be undertaken on matters relating to the implementation of Decision *No* 676/2002/EC (Radio Spectrum Decision) and shall be without prejudice to the division of tasks under Article 4 of that Decision.

3. ***The Commission may request BERT to*** provide advice ***to the RSPG or the RSC in relation to advice of the RSC*** to the Commission regarding the drawing up of common policy objectives referred to in Article 6(3) of Decision *No* 676/2002/EC (Radio Spectrum Decision), when these fall within the electronic communications sector.

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4. ***BERT*** shall ***contribute to reports published by the Commission, the RSPG, the RSC or any other relevant body, as appropriate***, on prospective frequencies developments in the electronic communications sector and policies in which it shall identify the potential needs and challenges.

Article 11

Harmonisation of conditions and procedures relating to general authorisations and rights of use

1. ***The Commission may request BERT to deliver to the Commission, the RSPG or the RSC*** an opinion on the scope and content of any of the implementation measures provided for in Article 6a of Directive 2002/20/EC (Authorisation Directive). This may include in particular ***BERT's*** assessment of the benefits that may accrue for the single market in electronic communications networks and services from the implementing measures adopted by the Commission pursuant to Article 6a of Directive 2002/20/EC (Authorisation Directive) and the identification of the services with cross-Community potential which would benefit from those measures.

▌

2. If the Commission, ***the RSPG, the RSC or any other relevant body*** so requests, ***BERT*** shall explain or supplement any opinion issued pursuant to paragraph 1 within the time period specified in that request.

▌

Article 12

Withdrawal of rights of use of radio frequencies and numbers issued under common procedures

The Commission may request BERT to deliver an opinion to the Commission, ***the RSPG or the RSC*** on the withdrawal of rights of use issued under the common procedures provided for Article 6b of Directive 2002/20/EC (Authorisation Directive).

This opinion shall examine whether there have been serious and repeated breaches of the conditions attached to the rights of use.

▌

Article 13

Own initiative

BERT may, on its own initiative, deliver an opinion to ***the European Parliament and*** the Commission***, in particular*** on the matters referred to in *Articles* 4(2), 7(1), ***8(2)***, 10(1), 12, 14, 21 and 22 ***or on any other matter that it deems relevant***.

CHAPTER III

COMPLEMENTARY TASKS OF ***BERT*** ▌

Article 14

Cross-border disputes

1. If ***BERT*** receives a request from a ***NRA*** pursuant to Article 21 of Directive 2002/21/EC (Framework Directive) for a recommendation as to the resolution of a dispute it shall inform all parties to the dispute and all ***NRAs*** concerned.

2. ***BERT*** shall investigate the reasons for the dispute and request appropriate information from the parties and the ***NRAs*** concerned.

3. ***BERT*** shall, *except in exceptional circumstances,* issue its recommendation within three months of the request. The recommendation shall identify any measures that ***BERT*** considers appropriate to be taken by the ***NRAs*** concerned in accordance with the provisions of the Framework Directive and/or the Specific Directives.

4. ***BERT*** may decline to issue a recommendation where it considers that other mechanisms would better contribute to the resolution of the dispute in a timely manner in accordance with the provisions of Article 8 of Directive 2002/21/EC (Framework Directive). In such cases it shall inform the parties and the ***NRAs*** concerned without delay.

If after four months the dispute is not resolved, or if the parties have not had recourse to any other mechanism, ***BERT*** shall, *at the request of any****NRA***, act in accordance with paragraphs 2 and 3.

Article 15

Exchange, dissemination and collection of information

1. ***BERT*** shall, taking account of the Community's electronic communications policy, promote the exchange of information both between the Member States, and between the Member States, ***NRAs*** and the Commission on the situation and development of regulatory activities regarding electronic communications networks and services. ***In the light of different market conditions and path dependence of different national regulatory approaches, BERT may develop alternative solutions within the harmonised regulatory framework***.

2. ***BERT*** shall encourage the exchange of information and promote best regulatory practice and technical development within the Community and beyond, in particular by:

(a) collecting, processing and *publishing* information relating to the technical characteristics, quality and pricing of electronic communications services, and relating to electronic communications markets in the Community,

(b) commissioning or conducting studies on electronic communications networks and services and the regulation ▌ thereof, and

(c) organising or promoting training ***for NRAs*** *in* matters ***that are within the scope of the functions of BERT as laid down in the Framework Directive and the Specific Directives***.

3. ***BERT*** shall make such information available to the public in an easily accessible form. ***Confidentiality shall be duly respected.***

▌

Article 16

Monitoring and reporting on the electronic communications sector

1. ***The Commission may request BERT to*** monitor developments in the electronic communications market, and in particular the retail prices of products and services most commonly used by consumers.

2. ***BERT*** shall publish an annual report on developments in the electronic communications sector, including consumer issues, in which it shall identify remaining barriers to the completion of the single market for electronic communications. The report shall also include an overview and analysis of the information on national appeal procedures provided by the Member States pursuant to Article 4(3) of Directive 2002/21/EC (Framework Directive), and of the extent to which the out-of-court dispute settlement procedures referred to in Article 34 of Directive 2002/22/EC (Universal *Service* Directive) are used in Member States. ***The report shall be presented to the European Parliament, which may issue an opinion thereon.***

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3. ***The Commission may request BERT to*** deliver an opinion on the measures that could be taken to overcome the problems identified in assessing the issues referred to in paragraph 1, ***in conjunction with the publication of the annual report. This opinion shall be presented to the European Parliament***.

4. ***The Commission may request BERT to*** periodically publish a report on the interoperability of digital interactive television services as referred to in Article 18 of Directive 2002/21/EC (Framework Directive).

Article 17

Electronic Accessibility

1. ***BERT*** shall, at the request of the Commission, advise the Commission and ***the NRAs*** on improving the interoperability of, access to, and use of electronic communications services and terminal equipment, and in particular cross-border interoperability issues, ***looking*** at the particular needs of disabled end-users and the elderly.

▌

Article 18

Additional tasks

BERT may ***subject to the consent of all its members***, take on specific additional tasks at the request of the Commission.

CHAPTER IV

ORGANISATION OF ***BERT***

Article 19

Bodies of **BERT**

BERT shall comprise:

(a) *a* ▌Board ***of Regulators;***

▌

(b) a ***Managing*** Director.

▌

Article 20

▌Board ***of Regulators***

1. The ▌Board ***of Regulators*** shall be composed of ***one member per Member State who shall be the head or nominated high-level representative of the independent NRA with responsibility for day-to-day application of the regulatory framework in that Member State. NRAs shall nominate one alternate per Member State. The Commission shall attend as an observer with the prior agreement of the Board.***

2. The ▌Board ***of Regulators*** shall appoint its Chairperson and its Vice-Chairperson from among its members. The Vice-Chairperson shall automatically replace the Chairperson if the latter is not in a position to perform his/her duties. The terms of office of the Chairperson and of the Vice-Chairperson shall be two and a half years, ***pursuant to the election procedures set out in the rules of procedure***.

3. Meetings of the ▌Board ***of Regulators***, convened by ***the*** Chairperson, ***shall occur*** at least ***four times*** a year in ordinary session. It ***may*** also meet ***exceptionally*** at the initiative of its Chairperson, at the request of the Commission or at the request of at least a third of its members. The ▌Board ***of Regulators*** may invite any person with potentially relevant opinions to attend its meetings in the capacity of an observer. The members of the ▌Board ***of Regulators*** may subject to the rules of procedure, be assisted by advisers or by experts.▌

4. Decisions of the ▌Board ***of Regulators*** shall be adopted on the basis of a two-thirds majority of the members present ***unless otherwise provided for in this Regulation, the Framework Directive and the Specific Directives. These decisions shall be communicated to the Commission.***

The Board of Regulators shall approve the rules of procedure of BERT by a two-thirds majority. Those rules of procedure shall guarantee that the members of the Board of Regulators are always provided with full agendas and draft proposals in advance of each meeting in order to have the chance to propose amendments prior to the vote.

5. Each member shall have one vote. The rules of procedure shall set out in greater detail the arrangements governing voting, especially the conditions whereby one member can act on behalf of another and also, where appropriate, the rules governing quorums.

6. When carrying out the tasks conferred upon it by this Regulation, the Board of Regulators shall act independently and shall not seek or take instructions from any Member State or any public or private interest group.

7. Secretarial services shall be provided for the Board of Regulators by BERT.

Article 21

Tasks of the ***Board*** of Regulators

1. The ▌Board ***of Regulators*** shall appoint the ***Managing*** Director in accordance with ***paragraph 7. The Board of Regulators shall take all decisions relating to the performance of BERT's functions as listed in Article 3.***

▌

2. ***After consulting the Commission, the*** ▌Board ***of Regulators*** shall, ***in accordance with Article 23(3) and in line with the draft budget established in accordance with Article 25***, adopt, before 30 September each year, ***BERT's*** work programme for the *following* year, and shall transmit it to the European Parliament, the Council and the Commission. ▌

▌

3. The ▌Board ***of Regulators*** shall exercise disciplinary authority over the ***Managing*** Director ▌.

▌

4. The ▌Board ***of Regulators*** shall adopt, ***on behalf of BERT***, the special provisions on right of access to the documents of ***BERT***, in accordance with *Article 36*.

5. The Board ***of Regulators*** shall adopt the annual report on ***BERT's*** activities ▌and shall transmit it to the European Parliament, the Council, the Commission, the European *Economic* and Social Committee and the Court of Auditors by 15 June at the latest. ***The European Parliament may request either the Chairperson of*** the Board of Regulators ***or the Managing Director to address it on relevant issues relating to BERT's*** activities ▌.

▌

6. The Board of Regulators shall provide guidance to the Managing Director in the execution of the Managing Director's tasks.

7. The Board of Regulators shall appoint the Managing Director. The Board of Regulators shall reach this decision on the basis of a majority of three quarters of its members. The Managing Director designate shall not participate in the preparation of, or vote on, such a decision.

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8. The Board of Regulators shall approve the independent section of the annual report on consultative activities provided for in paragraph 5 of this Article and Article 23(7).

▌

Article 22

The *Managing* Director

1. ***BERT*** shall be managed by its ***Managing*** Director, who shall ***be accountable to and*** act ***on the instructions of the Board of Regulators*** in the performance of his/her functions. ***The Managing*** Director shall not ***otherwise*** seek or accept any instruction from any government or any body.

2. ***The Managing*** Director shall be appointed by the ▌Board ***of Regulators*** on the basis of merit *and the* skills and experience relevant for electronic communications networks and services ▌. Before appointment, ***the suitability of*** the candidate selected by the ▌Board ***of Regulators*** may be ***subject to a non-binding opinion of the European Parliament and the Commission. To this end, the candidate shall be*** invited to make a statement before the *responsible* committee of the European Parliament and answer questions put by its members.

3. The ***Managing*** Director's term of office shall be five years. ▌

4. ***The*** Board of Regulators ▌may extend the term of office of the ***Managing*** Director once for not more than three years, taking into account the evaluation report and only in those cases where it can be justified by the duties and requirements of ***BERT***.

The ▌Board ***of Regulators*** shall inform the European Parliament about its intention to extend the ***Managing*** Director's term of office. Within a month before the extension of his/her term of office, the ***Managing*** Director may be invited to make a statement before the *responsible* committee of the Parliament and answer questions put before its members.

If the term of office is not extended, the ***Managing*** Director shall remain in office until the appointment of his/her successor.

5. The ***Managing*** Director may be removed from office only upon decision by the▌Board ***of Regulators***, ***taking into account the opinion of the European Parliament***. The▌Board ***of Regulators*** shall reach this decision on the basis of a majority of three quarters of its members.

6. The European Parliament and the Council may ***request*** the ***Managing*** Director to submit a report on the performance of his/*her* duties. ***Should this be necessary, the responsible committee of the European Parliament may invite the Managing Director to answer questions put by its members.***

Article 23

Tasks of the *Managing* Director

1. The ***Managing*** Director shall be responsible for representing ***BERT*** and shall be in charge of its management.

2. The ***Managing*** Director shall prepare the ***agenda*** of the ▌Board ***of Regulators***. He/she shall participate, without having the right to vote, in the work of the ▌Board ***of Regulators***.

▌

3. Each year the ***Managing*** Director shall prepare *the* draft work programme of ***BERT*** for the following year, and submit it to the Board of Regulators ▌before 30 June of that year. ***The Board of Regulators shall adopt the work programme in accordance with Article 21(2)***.

▌

4. The ***Managing*** Director shall be responsible for ***supervising the implementation of*** the annual work programme of ***BERT***, under the guidance of the Board of Regulators ▌.

5. The ***Managing*** Director shall take the necessary measures, notably the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of ***BERT*** in accordance with this Regulation.

6. The ***Managing*** Director shall make an estimate of the revenue and expenditure of ***BERT*** pursuant to *Article 25* and shall implement the budget of ***BERT*** pursuant to *Article 26*.

7. Each year the ***Managing*** Director shall prepare the draft annual report on the activities of ***BERT*** with a section on ***its consultative*** activities and a section on financial and administrative matters.

8. With regard to the staff of ***BERT***, ***the Board of Regulators may delegate to*** the ***Managing*** Director ***the*** exercise ***of*** the powers provided for in *Article 38(3)*.

▌

CHAPTER V

FINANCIAL REQUIREMENTS

Article 24

Budget of ***BERT***

1. The revenues ***and resources*** of ***BERT*** shall consist ***notably*** of:

(a) ***a subsidy from the Community, entered under the appropriate headings of the general budget of the European Union (Commission Section), as decided by the budgetary authority and in accordance with point 47 of the Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management [1];***

(b) ***a financial contribution from each NRA. Each Member State shall ensure that NRAs have the adequate financial resources required to participate in the work of BERT;***

(c) ***half of the professional staff shall be made up of seconded national experts (SNEs) from the national authorities;***

(d) ***the Board or Regulators shall agree, at the latest, six months after the entry into force of this Regulation, the level of the financial contribution to be made by each Member State under point (b);***

(e) ***the appropriateness of the budgetary structure and Member States' compliance shall be reviewed by 1 January 2014.***

2. The expenditure of ***BERT*** shall cover staff, administrative, infrastructure and operational expenses.

3. Revenue and expenditure shall be in balance.

4. All ▌ revenue and expenditure shall be the subject of forecasts for each financial year, coinciding with the calendar year, and shall be entered in its budget.

5. The organisational and financial structure of BERT shall be reviewed by 1 January 2014.

[1] ***OJ C 139, 14.6.2006, p. 1.***

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Article 25

Establishment of the budget

1. By 15 February of each year at the latest, the ***Managing*** Director shall draw up a preliminary draft budget covering the operational expenditure and the work programme anticipated for the following financial year, and shall forward it to the ▌Board ***of Regulators*** together with a list of provisional posts. Each year the ▌Board ***of Regulators*** shall, on the basis of the draft prepared by the ***Managing*** Director, make an estimate of revenue and expenditure of ***BERT for*** the following financial year. This estimate, including a draft establishment plan, shall be transmitted by the ▌Board ***of Regulators*** to the Commission by 31 March at the latest. ▌

2. The estimate shall be transmitted by the Commission to the European Parliament and to the Council (hereinafter referred to as the budgetary authority) together with the preliminary draft general budget of the European *Union*.

3. On the basis of the estimates, the Commission shall enter in the preliminary draft general budget of the European *Union* the forecasts it considers necessary in respect of the establishment plan and the amount of the grant to be charged to the general budget, in accordance with Article 272 of the Treaty.

4. The budgetary authority shall adopt the establishment plan for ***BERT***.

5. The budget of ***BERT*** shall be drawn up by the ▌Board ***of Regulators***. It shall become final after the final adoption of the general budget of the European *Union*. Where necessary, it shall be adjusted accordingly.

6. The ▌Board ***of Regulators*** shall, without delay, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of its budget, in particular any project relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof. If either branch of the budget authority intends to issue an opinion, it shall within two weeks after receipt of the information on the building project notify ***BERT*** of its intention to issue such an opinion. Failing a reply, ***BERT*** may proceed with the planned operation.

Article 26

Implementation and control of the budget

1. The ***Managing*** Director shall act as authorising officer and shall implement ***BERT***'s budget.

2. The Managing Director shall draw up an annual activity report for BERT, together with a statement of assurance. Those documents shall be made public.

3. By 1 March at the latest following the completion of each financial year, ***BERT***'s accounting officer shall forward to the Commission's accounting officer and the Court of Auditors the provisional accounts accompanied by the report on budgetary and financial management over the financial year. ***BERT's*** accounting officer shall also send the report on budgetary and financial management to the European Parliament and the Council by 31 March of the following year at the latest. The Commission's accounting officer shall then consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of ‖ Regulation (EC, Euratom) No 1605/2002.

4. By 31 March at the latest following the completion of each financial year, the Commission's accounting officer shall forward the provisional accounts of ***BERT*** accompanied by the report on the budgetary and financial management over the financial year to the Court of Auditors. The report on budgetary and financial management over the financial year shall also be forwarded to the European Parliament and the Council.

5. After receiving the observations of the Court of Auditors on the provisional accounts of ***BERT***, in accordance with Article 129 of ‖ Regulation (EC, Euratom) No 1605/2002, the ***Managing*** Director, acting on his/her own responsibility, shall draw up the final accounts of ***BERT*** and transmit them, for opinion, to the ▌Board ***of Regulators***.

6. The ▌Board ***of Regulators*** shall deliver an opinion on *the* final accounts of ***BERT***.

7. The ***Managing*** Director shall transmit these final accounts, accompanied by the opinion of the ▌Board ***of Regulators***, no later than 1 July following the completion of the financial year, to the European Parliament, the Council, the Commission and the Court of Auditors.

8. The final accounts shall be published.

9 The ***Managing*** Director shall *reply to* the Court of Auditors' observations by 15 October at the latest. He/she shall also send this reply to the▌Board ***of Regulators***, the European Parliament and the Commission.

10. The ***Managing*** Director shall submit to the European Parliament, at the latter's request, and as provided for in Article 146(3) of Regulation (EC, Euratom) No 1605/2002, any information necessary for the smooth running of the discharge procedure for the financial year in question.

11. The European Parliament shall, following a recommendation from the Council acting by a qualified majority, before 15 May of year N+2 grant a discharge to the ***Managing*** Director for the implementation of the budget for the financial year N.

Article 27

Internal control systems

The Internal Auditor of the Commission shall be responsible for auditing BERT's internal control systems.

Article 28

Financial rules

Financial rules applicable to ***BERT*** shall be drawn up by the ▌Board ***of Regulators*** after consultation with the Commission. Those rules may deviate from Commission Regulation (EC, Euratom) No 2343/2002 *of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities* [1] if the specific operational needs for the functioning of ***BERT*** so require and only with the prior agreement of the Commission.

Article 29

Anti- fraud measures

1. For the purpose of combating fraud, corruption and other illegal acts, the provisions 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] shall apply without any restriction.

2. ***BERT*** shall accede to the Inter-institutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF) [3] and shall immediately adopt appropriate provisions for all staff of ***BERT***.

[1] *OJ L 357, 31.12.2002, p. 72.*
[2] OJ L 136, 31.5.1999, p. 1.
[3] OJ L 136, 31.5.1999, p. 15.

3. The funding decisions and the agreements and implementing instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may, if*necessary*, carry out on-the-spot checks among the beneficiaries of monies disbursed by ***BERT*** as well as on the staff responsible for allocating these monies.

CHAPTER VI

GENERAL PROVISIONS

Article 30

Provision of information to **BERT**

1. Undertakings providing electronic communications networks and services shall provide all the information, including financial information, requested by ***BERT*** in order to perform its tasks as set out in this Regulation. The undertakings shall provide that information promptly on request and to the time-scales and level of detail required by ***BERT. The Commission may require BERT to*** give reasons justifying its request for information.

2. ***NRAs*** shall provide ***BERT*** with the information necessary to carry out its tasks under this Regulation. Where the information provided refers to information previously provided by undertakings at the request of the ***NRA***, those undertakings shall be informed.

3. ***Where necessary, the confidentiality of information provided pursuant to this Article shall be guaranteed. Article 35 shall apply.***

Article 31

Consultation

BERT shall, when it intends to ***issue an opinion*** in accordance with the provisions *of* this Regulation, consult where appropriate interested parties and give them the opportunity to comment on the draft ***opinion*** within a reasonable period. ***BERT shall make the*** results of the consultation procedure ▌ publicly available ▌, except in the case of confidential information.

Article 32

Supervision, enforcement and penalties

▌

1. The ***NRAs*** in cooperation with ***BERT*** shall be responsible for verifying compliance by undertakings with obligations arising from the provisions *of* this Regulation.

2. ***The Commission shall draw the attention of undertakings to the fact that they fail to comply with the request for information referred to in Article 30. If appropriate, and upon the request by BERT, the Commission may*** publish the names of ***those*** undertakings.

▌

Article 33

Declaration of interests

BERT's staff, ***the members of the Board of Regulators and the Managing*** Director ***of BERT*** shall make ***an annual*** declaration of commitments and a declaration of interests indicating any direct or indirect interests, which might be considered prejudicial to their independence. Such declarations shall be made in writing.

Article 34

Transparency

1. ***BERT*** shall carry out its activities with a high level of transparency.

2. ***BERT*** shall ensure that the public and any interested parties are given objective, reliable and easily accessible information, in particular with regard to the results of its work, where appropriate. It shall also make public the declarations of interests made by the ***members of the Board of Regulators and the Managing*** Director ▌.

3. The Board of Regulators, acting on a proposal from the ***Managing*** Director, may authorise interested parties to observe the proceedings of some of ***BERT***'s activities.

4. ***BERT*** shall lay down in its internal rules of procedure the practical arrangements for implementing the transparency rules referred to in paragraphs 1 and 2.

Article 35

Confidentiality

1. ***BERT*** shall not divulge to third parties information that it processes or receives for which confidential treatment has been requested.

2. Members of ***BERT's Board of Regulators***, the ***Managing*** Director, external experts, and members of the staff of ***BERT*** *shall be* subject to the requirements of confidentiality pursuant to Article 287 of the Treaty, even after their duties have ceased.

3. ***BERT*** shall lay down in its internal rules of procedure the practical arrangements for implementing the confidentiality rules referred to in paragraphs 1 and 2.

4. Without prejudice to *Article 36*, ***BERT*** shall take appropriate measures, in accordance with Decision 2001/844/EC, ECSC, Euratom [1], to protect information subject to the requirement of confidentiality to which it has access or which is communicated to it by Member States or ***NRAs***. Member States shall take equivalent measures in accordance with relevant national legislation. Due account shall be given to the gravity of the potential prejudice to the essential interests of the Community or *to* one or more of its Member States. Each Member State and the Commission shall respect the relevant security classification given by the originator of a document.

Article 36

Access to documents

1. Regulation (EC) No 1049/2001 ‖ shall apply to documents held by ***BERT***.

2. The ▌Board ***of Regulators*** shall adopt practical measures for applying Regulation (EC) No 1049/2001 within six months from the date of the effective start of operations of ***BERT***.

▌

Article 37

Legal status

1. ***BERT*** shall be a body of the Community with legal personality.

2. In *every* Member State ***BERT*** shall enjoy the most extensive legal capacity accorded to legal persons under national law. It may in particular, acquire and dispose of movable and immovable property and be a party to legal proceedings.

[1] OJ L 317, 3.12.2001, p. 1.

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3. ***BERT*** shall be represented by its ***Managing*** Director.

4. The seat of ***BERT*** shall be located in […]. Until its premises are ready, it will be hosted on Commission premises.

Article 38

Staff

1. The Staff Regulations of Officials of the European Communities, the Conditions of employment of other servants of the European Communities and the rules adopted jointly by the European Community institutions for the purpose of applying these staff regulations and conditions of employment shall apply to the staff of ***BERT***.

2. The ▌Board ***of Regulators***, in agreement with the Commission, shall adopt the necessary implementing measures, in accordance with the arrangements provided for in Article 110 of the Staff Regulations of officials of the European Communities.

3. In respect of its staff, ***BERT*** shall exercise the powers conferred on the appointing authority by the Staff Regulations of officials of the European Communities and on the authority entitled to conclude contracts by the Conditions of employment of other servants of the European Communities.

4. The ▌Board *of* ***Regulators*** may adopt provisions to allow national experts from Member States to be *appointed* on secondment *to* ***BERT***.

Article 39

Privileges and immunities

The Protocol on Privileges and Immunities of the European Communities shall apply to ***BERT*** and its staff.

Article 40

Liability of **BERT**

1. In the case of non-contractual liability, ***BERT*** shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or its staff in the performance of their duties. The Court of Justice *of the European Communities* shall have jurisdiction in any dispute over the remedying of such damage.

2. The personal financial and disciplinary liability of ***BERT*** staff towards ***BERT*** shall be governed by the relevant provisions applying to the staff of ***BERT***.

Article 41

Protection of personal data

When processing data relating to individuals, ***BERT*** shall be subject to the provisions of Regulation (EC) No 45/2001.

Article 42

Participation of third countries

BERT shall be open to participation by European countries which have concluded agreements with the Community, where the countries concerned have adopted and are applying Community legislation in the field covered by this Regulation. In accordance with the relevant provisions of these agreements, arrangements shall be made which shall specify the detailed rules for participation by these countries in the work of ***BERT***, in particular the nature and extent of such participation. ***Pursuant to a decision of the Board of Regulators***, these arrangements ▌may provide for representation, without vote, ***at meetings of*** the Board of Regulators.

Article 43

Communications Committee

1. In implementing the provisions of this Regulation, the Commission shall be assisted by the Communications Committee, set up by Article 22 of Directive 2002/21/EC (Framework Directive).

2. Where reference is made to this paragraph, Articles 3 and 7 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] 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.

Article 44

Evaluation *and review*

Within ***three years*** *of* the effective start of operations ▌, the Commission shall publish ***an evaluation*** report on the experience acquired as a result of the operation of ***BERT***. The evaluation *report* shall cover the results achieved by ***BERT*** and its working methods, in relation *to* its objective, mandate and tasks defined in this Regulation and in its annual work programmes. The evaluation *report* shall take into account the views of stakeholders, at both Community and national level ***and*** shall be forwarded to the European Parliament and to the Council. ***The European Parliament shall issue an opinion on the evaluation report.***

By 1 January 2014 a review shall take place to evaluate whether it is necessary to extend the mandate of BERT. In case an extension is justified, budgetary and procedural regulations, as well as human resources, shall be reviewed.

Article 45

Entry into force

This Regulation shall enter into force on [31 December 2009].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at …, on …

For the European Parliament
The President

For the Council
The President

[1] *OJ L 184, 17.7.1999, p. 23.*

Electronic communications networks and services, protection of privacy and consumer protection ***I

P6_TA(2008)0452

European Parliament legislative resolution of 24 September 2008 on the proposal for a directive of the European Parliament and of the Council amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No2006/2004 on consumer protection cooperation (COM(2007)0698 — C6-0420/2007 — 2007/0248(COD))

(2010/C 8 E/47)

(Codecision procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0698),

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— having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0420/2007),

— 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 opinions of the Committee on Economic and Monetary Affairs, the Committee on Industry, Research and Energy, the Committee on Culture and Education, the Committee on Legal Affairs and the Committee on Civil Liberties, Justice and Home Affairs (A6-0318/2008),

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(2007)0248

Position of the European Parliament adopted at first reading on 24 September 2008 with a view to the adoption of Directive *2008/…/EC* of the European Parliament and of the Council amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on consumer protection cooperation

(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],

After having consulted the European Data Protection Supervisor [3],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [4],

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[1] *OJ C 224, 30.8.2008, p. 50.*
[2] *OJ C 257, 9.10.2008, p. 51.*
[3] *OJ C 181, 18.7.2008, p. 1.*
[4] *Position of the European Parliament of 24 September 2008.*

Whereas:

(1) The functioning of *Directives* 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) ([1]), 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) ([2]), 2002/21/EC of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) ([3]), 2002/22/EC of the European Parliament and the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) ([4]) and 2002/58/EC of the European Parliament and 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) ([5]), which constitute the existing regulatory framework for electronic communications networks and services, is subject to periodic review by the Commission, with a view in particular to determining the need for modification in the light of technological and market developments.

(2) In that regard, the Commission presented its findings in its Communication to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 29 June 2006 on the Review of the EU Regulatory Framework for electronic communications networks and services.

(3) The reform of the EU regulatory framework for electronic communications networks and service, including the reinforcement of provisions for users with disabilities, represents a key step towards achieving a Single European Information Space and at the same time an inclusive information society. These objectives are included in the strategic framework for the development of the information society as described in the ‖ Communication *of the Commission* to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions *of 1 June 2005* entitled 'i2010 – A European Information Society for growth and employment'.

(4) The universal service is a protective network for people whose financial resources, geographical location or special social needs do not permit them to access the basic services available to the majority of citizens. The basic universal service obligation laid down in Directive 2002/22/EC is to provide users who so request with a connection to the public telephone network from a fixed location and at an affordable price. As a result, it addresses neither mobile services nor broadband access to the Internet. This basic obligation is now confronted by technological and market developments in which mobile communications may be the primary form of access in many areas and networks are increasingly adopting the technology associated with mobile and broadband communications. These developments raise a need to assess whether the technical, social and economic conditions justifying the inclusion of mobile communications and broadband access in the universal service obligation are fulfilled, as well as related financing aspects. To this end, the Commission will present, no later than autumn 2008, a review of the scope of the universal service obligation and proposals for reform of Directive 2002/22/EC to meet the appropriate public interest objectives. That review will take account of economic competitiveness and include an analysis of social, commercial and technological conditions and of the risk of social exclusion. It will also address the technical and economic viability, estimated cost, cost allocation and funding models for any redefined universal service obligation. As questions relating to the scope of the universal service obligation will therefore be fully dealt with in that separate procedure, this Directive only deals with other aspects of Directive 2002/22/EC.

([1]) OJ L 108, 24.4.2002, p. 7.
([2]) OJ L 108, 24.4.2002, p. 21.
([3]) OJ L 108, 24.4.2002, p. 33.
([4]) OJ L 108, 24.4.2002, p. 51.
([5]) OJ L 201, 31.7.2002, p. 37.

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(5) For the sake of clarity and simplicity, the present act only deals with the amendments to Directives 2002/22/EC and 2002/58/EC.

(6) Without prejudice to Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity [1]***, and in particular the disability requirements laid down in Article 3(3)(f) thereof, certain aspects of terminal equipment, including equipment intended for disabled users, should be brought within the scope of Directive 2002/22/EC in order to facilitate access to networks and the use of services. Such equipment currently includes receive-only radio and television terminal equipment as well as special terminal devices for hearing-impaired users.***

(7) Member States should introduce measures to promote the creation of a market for widely available products and services incorporating facilities for disabled users. This can be achieved inter alia by referring to European standards, by introducing electronic accessibility (eAccessibility) requirements for public procurement procedures and the provision of services relating to calls for tender, and by implementing legislation upholding the rights of the disabled.

(8) Definitions need to be adjusted so as to conform to the principle of technology neutrality and to keep pace with technological development. In particular, conditions for the provision of a service should be separated from the actual definitional elements of a publicly available telephone service, i.e. ***an electronic communications*** service available to the public for originating and receiving, directly or indirectly via carrier selection or pre-selection or resale, national and/or international calls ***and means of communication specifically intended for disabled users using text relay or total conversation services*** through a number or numbers in a national or international telephone numbering plan***, whether such a service is based on circuit switching or packet switching technology. It is the nature of such a service that it is bidirectional, enabling both parties to communicate***. A service which does not fulfil all these conditions***, such as for example a 'click-through' application on a customer service website,*** is not a publicly available telephone service.

(9) It is necessary to clarify the application of certain provisions to take account of situations where a service provider resells or re-brands publicly available telephone services provided by another undertaking.

(10) As a result of technological and market evolutions, networks are increasingly moving to the 'Internet Protocol' (IP) technology and consumers are increasingly able to choose between a range of competing voice service providers. Therefore, Member States should be able to separate universal service obligations concerning the provision of a connection to the public communications network at a fixed location from the provision of a publicly available telephone service (including calls to emergency services via the number '112'). Such separation should not affect the scope of universal service obligations defined and reviewed at Community level. Member States that use other national emergency numbers besides '112' may impose on undertakings similar obligations for access to those national emergency numbers.

(11) National regulatory authorities should be able to monitor the evolution and the level of retail tariffs for services that fall under the scope of universal service obligations even when a Member State has not yet designated an undertaking to provide universal service.

(12) Redundant obligations designed to facilitate the transition from the old regulatory framework of 1998 to the one of 2002 should be deleted, together with other provisions that overlap with and duplicate those laid down in Directive 2002/21/EC.

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[1] ***OJ L 91, 7.4.1999, p. 10.***

(13) The requirement to provide a minimum set of leased lines at retail level, which was necessary to ensure the continued application of provisions of the regulatory framework of 1998 in the field of leased lines, which was not yet sufficiently competitive at the time the 2002 framework entered into force, is no longer necessary and should be repealed.

(14) Continuing to impose carrier selection and carrier pre-selection directly by Community legislation could hamper technological progress. These remedies should rather be imposed by national regulatory authorities as a result of market analysis in accordance with the procedures in Directive 2002/21/EC.

(15) The provisions on contracts should apply not only to consumers but also to other end-users, primarily micro enterprises and small and medium-sized enterprises (SMEs), which may prefer a contract adapted to consumer needs. To avoid unnecessary administrative burdens on providers and complexity related to the definition of SMEs, the provisions on contracts should not apply automatically to those other end-users, but only where they so request. Member States should take appropriate measures to promote awareness amongst SMEs of this possibility.

(16) Providers of electronic communications services should ensure that their customers are adequately informed as to whether or not access to emergency services ***and caller location information*** is provided, and are given clear and transparent information in the initial customer contract and at regular intervals thereafter, for example in customer billing information. ***This information should include any limitations as to territorial coverage, on the basis of the planned technical operating parameters of the service and the available infrastructure. Where the service is not provided over a switched telephony network, the information should also include the level of reliability of the access and of caller location information compared to a service that is provided over a switched telephony network, taking into account current technology and quality standards, as well as any quality of service parameters specified under Directive 2002/22/EC. Voice calls remain the most robust and reliable form of access to emergency services. Other means of contact, such as text messaging, may be less reliable and may suffer from lack of immediacy. Member States should however, if they deem it appropriate, be free to promote the development and implementation of other means of access to emergency services which are capable of ensuring access equivalent to voice calls.*** Customers should also be kept well informed of possible ***types of action*** that the provider of electronic communications service may take to address security threats or in response to a security or integrity incident, since such actions could have a direct or indirect impact on the customer's data, privacy or other aspects of the service provided.

(17) With respect to terminal equipment, the customer contract should specify any restrictions imposed by the provider on the customer's use of such equipment, such as by way of 'SIM-locking' mobile devices, and any charges due on termination of the contract, whether before or on the agreed expiry date, including any cost imposed in order to retain the equipment.

(18) Without imposing any obligation on the provider to take action over and above what is required under Community law, the customer contract should also specify the type of action, if any, the provider might take in case of security or integrity incidents, threats or vulnerabilities, as well as any arrangements implemented by the provider to provide compensation if such events occur.

(19) In order to address public interest issues with respect to the use of communications services, and to encourage protection of the rights and freedoms of others, the relevant national authorities should be able to produce and have disseminated, with the aid of providers, public interest information related to the use of communications services. This information should include public interest warnings regarding copyright infringement, other unlawful uses and dissemination of harmful content, and advice and means of protection against risks to personal security, which may for example arise from disclosure of personal information in certain circumstances, privacy and personal data. The information could be coordinated by way of the cooperation procedure established by Article 33(2a) of Directive 2002/22/EC. Such public interest information should be

updated whenever necessary and should be presented in easily comprehensible printed and electronic formats, as determined by each Member State, and on the websites of the national public authorities. National regulatory authorities should be able to oblige providers to disseminate this standardised information to all their customers in a manner deemed appropriate by the national regulatory authorities. Significant additional costs incurred by service providers for dissemination of such information should be agreed between the providers and the relevant authorities and met by those authorities. The information should also be included in contracts.

(20) The right of subscribers to withdraw from their contracts without penalty refers to modifications in contractual conditions which are imposed by the providers of electronic communications networks and/or services.

(21) Community rules on consumer protection and national rules in conformity with Community law should apply to Directive 2002/22/EC without exception.

(22) ***End-users should decide what lawful content they want to be able to send and receive, and which services, applications, hardware and software they want to use for such purposes, without prejudice to the need to preserve the integrity and security of networks and services.*** A competitive market ***with transparent offerings as provided for in Directive 2002/22/EC*** should ensure that end-users are able to access and distribute any lawful content and to use any lawful applications and/or services of their choice, as stated in Article 8 of Directive 2002/21/EC. Given the increasing importance of electronic communications for consumers and businesses, users should in any case be fully informed of any restrictions and/or limitations imposed on the use of electronic communications services by the service and/or network provider. ***Such information should, at the option of the provider, specify the type of content, application or service concerned, individual applications or services, or both. Depending on the technology used and the type of restriction and/or limitation, such restrictions and/or limitations may require user consent under Directive 2002/58/EC.***

(23) A competitive market should also ensure that users are able to have the quality of service they require, but in particular cases it may be necessary to ensure that public communications networks attain minimum quality levels so as to prevent degradation of service, usage restrictions and/or limitations and the slowing of traffic. Where there is a lack of effective competition, national regulatory authorities should use the remedies available to them under the directives establishing the regulatory framework for electronic communications networks and services to ensure that users' access to particular types of content or applications is not unreasonably restricted. It should also be possible for national regulatory authorities to issue guidelines setting minimum quality of service requirements under Directive 2002/22/EC and to take other measures where such other remedies have, in their judgement, not been effective with regard to the interests of users and all other relevant circumstances. Such guidelines or measures could include the provision of a basic tier of unrestricted services.

(24) In the absence of relevant rules of Community law, content, applications and services should be deemed lawful or harmful in accordance with national substantive and procedural law. It is the task of the relevant authorities of the Member States, not of providers of electronic communications networks or services, to decide, in accordance with due process, whether or not content, applications and services are lawful or harmful. Directive 2002/22/EC is without prejudice to 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]***, which inter alia contains a 'mere conduit' rule for intermediary service providers. Directive 2002/22/EC does not require providers to monitor information transmitted over their networks or to bring legal proceedings against their customers on grounds of such information, nor does it make providers liable for that information. Responsibility for punitive action or criminal prosecution remains with the relevant law enforcement authorities.***

(25) Directive 2002/22/EC is without prejudice to reasonable and non-discriminatory network management by providers.

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[1] ***OJ L 178, 17.7.2000, p. 1.***

(26) Since inconsistent remedies will significantly impair the achievement of the internal market, the Commission should assess any guidelines or other measures adopted by national regulatory authorities for possible regulatory intervention across the Community and, if necessary, adopt technical implementing measures in order to achieve consistent application throughout the Community.

(27) The availability of transparent, up-to-date and comparable tariffs is a key element for consumers in competitive markets with several providers offering services. Consumers of electronic communications services should be able to easily compare prices of various services offered on the market based on tariff information published in an easily accessible form. In order to allow them to make price comparisons easily, national regulatory authorities should have powers to require from operators better tariff transparency and to ensure that third parties have the right to use without charge publicly available tariffs published by undertakings providing electronic communications services. They should also***, themselves or through third parties,*** make price guides available where the market has not provided them ***free of charge or at a reasonable price***. Operators should not be entitled to any remuneration for such use of tariffs ***where they have*** already been published and thus belong to the public domain. In addition, users should be adequately informed of the price involved or the type of service offered before they purchase a service, in particular if a freephone number is subject to any additional charges. ***National regulatory authorities should be able to require that such information is provided generally, and, for certain categories of services determined by them, prior to connecting the call. When determining the categories of call requiring pricing information prior to connection, national regulatory authorities should take due account of the nature of the service, the pricing conditions which apply to it and whether it is offered by a provider who is not a provider of electronic communications services.***

(28) Customers should be informed of their rights with respect to the use of their personal information in directories of subscribers, and in particular of the purpose or purposes of such directories, as well as their right, free of charge, not to be included in a public subscriber directory, as provided for in Directive 2002/58/EC. Where systems exist allowing information to be included in the directory database but not disclosed to users of directory services customers should also be informed of that possibility.

(29) The Member States should introduce single information points for all user queries. These information points, which could be administered by the national regulatory authorities together with consumer associations, should also be able to provide legal assistance in case of disputes with operators. Access to these information points should be free of charge and users should be informed of their existence by regular information campaigns.

(30) In future IP networks where provision of a service may be separated from provision of the network, Member States should determine the most appropriate steps to be taken to ensure the availability of publicly available telephone services provided using public communications networks and uninterrupted access to emergency services in the event of catastrophic network breakdown or in cases of force majeure.

(31) Operator assistance services cover a range of different services for end-users. The provision of such services should be left to commercial negotiations between providers of public communications networks and operator assistance services, as is the case for any other customer support service, and there is no need to continue to mandate their provision. Therefore, the corresponding obligation should be repealed.

(32) Directory enquiry services should be, and frequently are, provided in competition, pursuant to Article 5 of Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services [1]***. Wholesale measures ensuring the inclusion of end-user data (both fixed and mobile) in databases, the cost-oriented supply of that data to service providers and the provision of network access in cost-oriented, reasonable and transparent conditions should be in place in order to ensure that end users benefit fully from competition with the ultimate aim of enabling the removal of retail regulation from these services.***

[1] ***OJ L 249, 17.9.2002, p. 21.***

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(33) End-users should be able to call and access the emergency services provided using any telephone service capable of originating voice calls through a number or numbers in the national or international telephone numbering plans. Emergency authorities should be able to handle and answer calls to the number '112' at least as expeditiously and effectively as calls to other national emergency numbers. It is important to increase awareness of '112' in order to improve the level of protection and security of citizens travelling in the European Union. To this end, citizens should be made fully aware that '112' can be used as a single emergency number when travelling in any Member *State*, in particular through information provided in international bus terminals, train stations, ports or airports and in telephone directories, payphone kiosks, subscriber and billing material. ***This is primarily the responsibility of the Member States, but the Commission should continue both to support and to supplement initiatives undertaken by the Member States to further awareness of '112' and periodically to assess knowledge of '112' by the public.*** The obligation to provide caller location information should be strengthened so as to increase the protection of citizens of the European Union. In particular, operators should provide caller location information to emergency services in a 'push' mode. In order to respond to technological developments, including those leading to increasingly precise accuracy of location information, the Commission should be able to adopt technical implementing measures in order to ensure the effective implementation of '112' in the Community for the benefit of citizens of the European Union.

(34) Member States should take specific measures to ensure that emergency services, including '112', are equally accessible to disabled persons, in particular deaf, hearing-impaired, speech-impaired and deaf-blind users. This could involve the provision of special terminal devices to hearing-impaired users, text relay services, or other specific equipment.

(35) ***Development of*** the international code '3883' ▌***(***the European Telephony Numbering Space (ETNS)***)*** ▌ is currently ***hindered*** by ***lack of demand,*** overly bureaucratic procedural requirements and ***insufficient awareness***. In order to foster the development of ETNS, ***the Commission should delegate responsibility for its management, number assignment and promotion either to the Body of European Regulators in Telecom (BERT) or, following the example of the implementation of the '.eu' top level domain, to a separate organisation, designated by the Commission on the basis of an open, transparent and non-discriminatory selection procedure, and with operating rules which form part of Community law***.

(36) Pursuant to its Decision 2007/116/EC of 15 February 2007 on reserving the national numbering range beginning with '116' for harmonised numbers for harmonised services of social value, [1] ***the Commission has reserved numbers in the '116' numbering range for certain services of social value. The numbers identified in that Decision cannot be used for purposes other than those set out therein, but there is no obligation for Member States to ensure that services associated with the reserved numbers are actually provided. The appropriate provisions of Decision 2007/116/EC should be reflected in Directive 2002/22/EC in order to integrate them more firmly into the regulatory framework for electronic communications networks and services and to ensure accessibility by disabled end-users as well. Considering the particular aspects related to reporting missing children and the currently limited availability of that service, Member States should not only reserve a number, but also ensure that a service for reporting missing children is actually available in their territories under the number 116000.***

(37) A single market implies that end-users are able to access all numbers included in the national numbering plans of other Member States, and to access services, including Information Society services, using non-geographic numbers within the Community, including among others freephone and premium rate numbers. End-users should also be able to access numbers from ‖ ETNS ‖ and universal international freephone numbers (UIFN). Cross-border access to numbering resources and to the associated service should not be prevented except in objectively justified cases, such as when this is necessary to combat fraud, and abuse e.g. in connection with certain premium-rate services, or when the number is defined as having a national scope only (e.g. national short code). Users should be fully informed in advance in a clear manner of any charges applicable to freephone numbers, such as international call charges for numbers accessible through standard international dialling codes. In order to ensure that end-users have effective access to numbers and services in the Community, the Commission should be able to adopt implementing measures. ***End-users should also be able to connect to other end-users (especially via IP numbers) in order to exchange data, regardless of the operator they choose.***

[1] ***OJ L 49, 17.2.2007, p. 30.***

(38) In order to take full advantage of the competitive environment, consumers should be able to make informed choices and to change providers when it is in their interest. It is essential to ensure that they can do so without being hindered by legal, technical or practical obstacles, including contractual conditions, procedures, charges etc. This does not preclude imposing reasonable minimum contractual periods in consumer contracts. Number portability is a key facilitator of consumer choice and effective competition in competitive markets for electronic communications, and should be implemented with the minimum of delay***, ordinarily within no more than one day of the request of the consumer. However, experience in certain Member States has shown that there is a risk of consumers being switched without consent. While that is a matter that should primarily be addressed by law-enforcement authorities, Member States should be able to impose such minimum proportionate measures regarding the switching process as are necessary to minimise such risks, without making the process less attractive for consumers***. In order to be able to adapt number portability to market and technological evolution, including the possible porting of subscriber's personal directories and profile information stored within the network, the Commission should be able to take technical implementing measures in this area. Assessment of whether technology and market conditions are such as to allow for porting of numbers between networks providing services at a fixed location and mobile networks should in particular take into account prices for users and switching costs for undertakings providing services at fixed locations and mobile networks.

(39) ▌Legal 'must-carry' obligations may be applied ▌to specified ***radio and audiovisual media services and complementary services*** supplied by a specified media service provider. ***Audiovisual media services are defined in Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities*** [1]. Member States should provide a clear justification for the 'must carry' obligations ▌so as to ensure that such obligations are transparent, proportionate and properly defined. In that regard, 'must carry' rules should be designed in a way which provides sufficient incentives for efficient investment in infrastructure. 'Must carry' rules should be periodically reviewed in order to keep them up-to-date with technological and market evolution in order to ensure that they continue to be proportionate to the objectives to be achieved. ***Complementary services include, but are not limited to,*** services to improve accessibility for users with disabilities, such as a videotext service, subtitling service, an audio description or sign language.

(40) In order to overcome existing shortcomings in terms of consumer consultation and appropriately address the interests of citizens, Member States should put in place▌appropriate consultation ***mechanisms***. Such ***mechanisms*** could take the form of a body which would, independently from the national regulatory authority as well as from service providers, carry out research on consumer-related issues, such as consumer behaviour and mechanisms for changing suppliers, and which would operate in a transparent manner and contribute to the existing mechanisms for stakeholders' consultation. ***Furthermore, a mechanism should be established for the purpose of enabling appropriate cooperation on issues relating to the promotion of lawful content. Any cooperation procedures agreed pursuant to such a mechanism should however not allow for systematic surveillance of Internet usage.*** Where there is a need to address the facilitation of the access to and use of electronic communications services and terminal equipment for disabled users, and without prejudice to Directive 1999/5/EC ‖ and in particular the disability requirements pursuant to ‖ Article 3(3)(f) *thereof*, the Commission should be able to adopt implementing measures.

(41) The procedure for out-of-court dispute resolution should be strengthened by ensuring that independent dispute resolution bodies are used, and that the procedure conforms at least to the minimum principles established by Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes [2]***. Member States may either use existing dispute resolution bodies for that purpose, provided those bodies meet the applicable requirements, or establish new bodies.***

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[1] ***OJ L 332, 18.12.2007, p. 27.***
[2] ***OJ L 115, 17.4.1998, p. 31.***

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(42) Obligations imposed on an undertaking designated as having universal service obligations should be notified to the Commission.

(43) Directive 2002/58/EC provides for the harmonisation of the provisions of the Member States required to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy and the right to confidentiality and security of information technology systems, with respect to the processing of personal data in the electronic communications sector, and to ensure the free movement of such data and of electronic communications equipment and services in the Community.

(44) The processing of traffic data for network and information security purposes, ensuring the availability, authenticity, integrity and confidentiality of stored or transmitted data, will enable the processing of such data in the legitimate interest of the data controller for the purpose of preventing unauthorized access and malicious code distribution and stopping denial-of-service attacks and damage to computer and electronic communication systems. The European Network and Information Security Agency (ENISA) should publish regular studies with the purpose of illustrating the types of processing allowed under Article 6 of Directive 2002/58/EC.

(45) When defining the implementing measures on the security of processing, in accordance with the regulatory procedure with scrutiny, the Commission should consult all relevant European authorities and organisations (ENISA, the European Data Protection Supervisor and the Article 29 Working Party) as well as all other relevant stakeholders, particularly in order to be informed of the best available technical and economic methods for improving the implementation of Directive 2002/58/EC.

(46) The provisions of Directive 2002/58/EC particularise and complement 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 [1] ***and provide for the legitimate interests of subscribers who are natural or legal persons.***

(47) Liberalisation of electronic communications networks and services markets and rapid technological development have combined to boost competition and economic growth and *have* resulted in a rich diversity of end-user services accessible via public ***and private*** electronic communications networks ***and publicly accessible private networks***.

(48) IP addresses are essential to the working of the Internet. They identify network participating devices, such as computers or mobile smart devices, by a number. Given the variety of scenarios in which IP addresses are used, and the related technologies which are rapidly evolving, questions have arisen about the use of such addresses as personal data in certain circumstances. The Commission should therefore, on the basis of a study regarding IP addresses and their uses, present such proposals as may be appropriate.

(49) Technological progress allows the development of new applications based on devices for data collection and identification, which may be contactless devices using radio frequencies. For example, Radio Frequency Identification Devices (RFID) use radio frequencies to capture data from uniquely identified tags, which can then be transferred over existing communications networks. The wide use of such technologies can bring considerable economic and social benefits and thus make a powerful contribution to the internal market if their use is acceptable to citizens. To achieve that, it is necessary to ensure that ***all*** fundamental rights of individuals, ***including*** the right to privacy and *the right to* data protection, are safeguarded. When such devices are connected to publicly available electronic communications networks or make use of electronic communications services as a basic infrastructure, the relevant provisions of Directive 2002/58/EC, including those on security, traffic and location data and ‖ confidentiality, should apply.

[1] ***OJ L 281, 23.11.1995, p. 31.***

(50) The provider of a publicly available electronic communications service should take appropriate technical and organisational measures to ensure the security of its services. Without prejudice to Directive 95/46/EC and Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks [1]***, such measures should ensure that personal data can be accessed only by authorised personnel for legally authorised purposes and that the personal data stored or transmitted as well as the network and services are protected. Moreover, a security policy with respect to the processing of personal data should be established in order to identify vulnerabilities in the system and regular monitoring and preventive, corrective and mitigating action should be carried out.***

(51) National regulatory authorities should monitor measures taken and disseminate best practices among providers of publicly available electronic communications services.

(52) A breach of security resulting in the loss or compromising personal data of ***a*** subscriber ***or individual*** may, if not addressed in an adequate and timely manner, result in substantial ▌ harm ***to users***. Therefore, ***the national regulatory authority or other competent national authority*** should be notified ***by the relevant service provider of any security breach*** without delay. ***The competent authority should determine the seriousness of the breach and should require the relevant service provider to give appropriate notification without undue delay to users affected by the breach. Furthermore, and in cases where there is an imminent and direct danger to consumers' rights and interests (such as in cases of unauthorized access to the content of e-mails, access to credit card records and so on), the relevant service provider should, in addition to the competent national authority, immediately notify affected users directly. Finally, providers should annually notify affected users of all breaches of security under Directive 2002/58/EC that occurred during the relevant time period.*** The ***notifications to the national authorities and to users*** should include information about measures taken by the provider to address the breach, as well as recommendations for ***the protection of*** *affected* users ‖.

(53) National regulatory authorities should promote the interests of the citizens of the European Union by inter alia contributing to ensuring a high level of protection of personal data and privacy. To this end, they must have the necessary means to perform their duties, including comprehensive and reliable data about actual security incidents that have led to the personal data of individuals being compromised.

(54) When implementing measures transposing Directive 2002/58/EC, the authorities and courts of the Member States should not only interpret their national law in a manner consistent with that Directive, but should also ensure that they do not rely on an interpretation of that Directive which would be in conflict with other fundamental rights or general principles of Community law, such as the principle of proportionality.

(55) Provision should be made for implementing measures to establish a common set of requirements to achieve an adequate level of privacy protection and security of personal data transmitted or processed in connection with the use of electronic communications networks in the internal market.

(56) In setting detailed rules concerning the format and procedures applicable to the notification of security breaches, due consideration should be given to the circumstances of the breach, including whether or not the personal data had been protected by encryption or other means, effectively limiting the likelihood of identity fraud or other forms of misuse. Moreover, such rules and procedures should take into account the legitimate interests of law enforcement authorities in cases where early disclosure could unnecessarily hamper the investigation of the circumstances of a breach.

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[1] ***OJ L 105, 13.4.2006, p. 54.***

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(57) Software that surreptitiously monitors actions of the user and/or subverts operation of the user's terminal equipment for the benefit of a third party (so-called 'spyware') poses a serious threat to users' privacy. A high and equal level of protection of the private sphere of users needs to be ensured, regardless of whether unwanted spying programmes are inadvertently downloaded via electronic communications networks or are delivered and installed hidden in software distributed on other external data storage media, such as CDs, CD-ROMs *and* USB keys. ***Member States should encourage end-users to take the necessary steps to protect their terminal equipment against viruses and spyware.***

(58) Electronic communications service providers have to make substantial investments in order to combat unsolicited commercial communications ('spam'). They are also in a better position than end-users in possessing the knowledge and resources necessary to detect and identify spammers. Email service providers and other service providers should therefore have the possibility to initiate legal action against spammers ***for such infringements*** and thus defend the interests of their customers, as well as their own legitimate business interests.

(59) Where location data other than traffic data can be processed, such data should be processed only when they are made anonymous or with the prior consent of the users or subscribers concerned, who should be given clear and comprehensive information concerning the possibility of withdrawing their consent at any time.

(60) The need to ensure an adequate level of protection of privacy and personal data transmitted and processed in connection with the use of electronic communications networks in the Community calls for effective implementation and enforcement powers in order to provide adequate incentives for compliance. National regulatory authorities should have sufficient powers and resources to investigate cases of non-compliance effectively, including the possibility to obtain any relevant information they might need, to decide on complaints and to impose sanctions in cases of non-compliance.

(61) Cross border cooperation and enforcement should be reinforced in line with existing Community cross border enforcement mechanisms such as that laid down by the Regulation (EC) No 2006/2004 of the European Parliament and of the Council *of 27 October 2004* on cooperation between national authorities responsible for enforcement of consumer protection laws (Regulation on consumer protection cooperation) ([1]) by way of an amendment to that *Regulation*.

(62) The measures necessary for the implementation of ‖ *Directives 2002/22/EC* and ‖ *2002/58/EC* 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]).

(63) The Commission should, provided that the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community ([3]) ***enters into force, present to the European Parliament and to the Council a new legislative proposal on privacy and data security in electronic communications, with a new legal basis.***

(64) In particular, the Commission *should be empowered* to adopt implementing measures on tariff transparency, minimum quality of service requirements, effective implementation of '112' services, effective access to numbers and services, *and* improvement of accessibility by disabled end-users, as well as amendments to adapt the Annexes to technical progress or changes in market demand. *It should also be empowered* to adopt implementing measures concerning information and notification requirements as well as cross-border cooperation. Since those measures are of ‖ general scope and are designed to *amend non-essential elements of Directive 2002/22/EC* 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. ***Given that the conduct of the regulatory procedure with scrutiny within*** the normal *time limits* ***could, in certain exceptional situations, impede the timely adoption of implementing measures, the European Parliament, the Council and*** the Commission should ***act speedily in order to ensure the timely adoption of those measures***.

([1]) OJ L 364, 9.12.2004, p. 1.
([2]) *OJ L 184, 17.7.1999, p. 23.*
([3]) ***OJ C 306, 17.12.2007, p. 1.***

(65) The purpose of Directive 2002/22/EC is to ensure a high level of protection of the rights of consumers and individual users in the provision of telecommunications services. Such protection is not required in the case of global telecommunications services. These are corporate data and voice services provided as a package to large undertakings, located in different countries within or outside the EU, on the basis of individual contracts negotiated by parties of equal strength.

(66) Directives 2002/22/EC and 2002/58/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2002/22/EC

(Universal Service Directive)

Directive 2002/22/EC (Universal Service Directive) is *hereby* amended as follows:

(1) Article 1 *shall be* replaced by the following:

'Article 1

Subject-matter and scope

1. Within the framework of Directive 2002/21/EC (Framework Directive), this Directive concerns the provision of electronic communications networks and services to end-users. The aim is to ensure the availability throughout the Community of good quality publicly available services through effective competition and choice and to deal with circumstances in which the needs of end-users are not satisfactorily met by the market. This Directive also includes provisions concerning consumer premises terminal equipment***, with particular attention being given to terminal equipment for users with special needs, including the disabled and the elderly***.

2. This Directive establishes the rights of end-users and the corresponding obligations on undertakings providing publicly available electronic communications networks and services. With regard to ensuring provision of universal service within an environment of open and competitive markets, this Directive defines the minimum set of services of specified quality to which all end-users have access, at an affordable price in the light of specific national conditions, without distorting competition. This Directive also sets out obligations with regard to the provision of certain mandatory services.

3. The provisions of this Directive shall apply without prejudice to Community rules on consumer protection, in particular Directives 93/13/EEC and 97/7/EC, and to national rules in conformity with Community law.'

(2) ‖ Article 2 *shall be amended as follows*:

(a) *point* (b) *shall be* deleted;

(b) ***points (c) and (d)*** *shall be* replaced by the following:

'(c) "publicly available telephone service" means a service available to the public for originating ***and/or*** receiving, directly or indirectly ▌, national and/or international calls ***and other means of communication specifically intended for disabled users using text relay or total conversation services*** through a number or numbers in a national or international telephone numbering plan;

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(d) "geographic number" means a number from the national telephone numbering plan where part of its digit structure contains geographic significance used for routing calls to the physical location of the network termination point (NTP);'

(c) point (e) shall be deleted;

(3) Article 4 *shall be* replaced by the following:

'Article 4

Provision of access at a fixed location and provision of telephone services

1. Member States shall ensure that all reasonable requests for connection at a fixed location to a public communications network are met by at least one undertaking.

2. The connection provided shall be capable of supporting voice, facsimile and data communications, at data rates that are sufficient to permit functional Internet access, taking into account prevailing technologies used by the majority of subscribers and technological feasibility.

3. Member States shall ensure that all reasonable requests for provision of a ***publicly available*** telephone service over the network connection referred to in paragraph 1, allowing originating and receiving of national and international calls and calls to emergency services via the number "112" ***as well as via any other national emergency number***, are met by at least one undertaking.'

(4) *Article 5(2) shall be* replaced by the following:

'2. The directories in paragraph 1 shall comprise, subject to the provisions of Article 12 of Directive 2002/58/EC, all subscribers of publicly available telephone services.'

(5) Article 6 shall be amended as follows:

(a) the title shall be replaced by the following:

'Public pay telephones and other telecommunication access points'

(b) paragraph 1 shall be replaced by the following:

'***1. Member States shall ensure that national regulatory authorities can impose obligations on undertakings in order to ensure that public pay telephones or other telecommunication access points are provided to meet the reasonable needs of end-users in terms of the geographical coverage, the number of telephones or other telecommunications access points, accessibility to disabled users and the quality of services.***'

(6) Article 7 *shall be* replaced by the following:

'Article 7

▌Measures for disabled users

1. Member States shall take specific measures for disabled end-users in order to ensure access to and affordability of ***electronic communications services***, including access to emergency services, directory enquiry services and directories, equivalent to that enjoyed by other end-users.

2. Member States ***may*** take specific measures, ***shown through an assessment by the national regulatory authorities to be needed*** in the light of national conditions ***and specific disability requirements***, to ensure that disabled end-users can ▌take advantage of the choice of undertakings and service providers available to the majority of end-users***, and to promote the availability of appropriate terminal equipment. They shall ensure that in any event the needs of specific groups of disabled users are met by at least one undertaking***.

3. In taking the measures referred to above, Member States shall encourage compliance with the relevant standards or specifications published in accordance with Articles 17, 18 and 19 of Directive 2002/21/EC (Framework Directive).

4. In order to be able to adopt and implement specific arrangements for disabled users, Member States shall encourage the production and availability of terminal equipment offering the necessary services and functions.'

(7) in Article 8, the following paragraph *shall be* added:

'3. When an operator designated in accordance with paragraph 1 intends to dispose of a substantial part or all of its local access network assets to a separate legal entity under different ownership, it shall inform in advance the national regulatory authority in a timely manner, in order to allow the national regulatory authority to assess the effect of the intended transaction on the provision of access at a fixed location and of telephone services pursuant to Article 4. The national regulatory authority may impose conditions in accordance with Article 6(2) of Directive 2002/20/EC (Authorisation Directive).'

(8) Article 9(1), (2) and (3) shall be replaced by the following:

'1. National regulatory authorities shall monitor the evolution and level of retail tariffs of the services identified in Articles 4, 5, 6 and 7 as falling under the universal service obligations and provided by designated undertakings, or if no undertakings are designated in relation to those services, otherwise available in the market, in particular in relation to national consumer prices and income.

2. Member States may, in the light of national conditions, require that designated undertakings provide tariff options or packages to consumers which depart from those provided under normal commercial conditions, in particular to ensure that those on low incomes or with special social needs are not prevented from accessing or using the network access referred to in Article 4(1), or the services identified in Articles 4(3), 5, 6 and 7 as falling under the universal service obligations and provided by designated undertakings.

3. Member States ***shall***, besides any provision for designated undertakings to provide special tariff options or to comply with price caps or geographical averaging or other similar schemes, ensure that support is provided to consumers identified as having low incomes, disability or special social needs.'

(9) Article 10(2) shall be replaced by the following:

'***2. Member States shall ensure that undertakings offering telecommunication services as defined in Article 2 of Directive 2002/21/EC (Framework Directive) provide the specific facilities and services set out in Annex I, Part A of this Directive, in order that subscribers can monitor and control expenditure and avoid unwarranted disconnection of service.***'

(10) Article 11(1) shall be replaced by the following:

'***1. National regulatory authorities shall ensure that all designated undertakings with obligations under Articles 4, 5, 6, 7 and 9(2) publish adequate and up-to-date information concerning their performance in the provision of universal service, based on the quality of service parameters, definitions and measurement methods set out in Annex III. The published information shall be supplied to the national regulatory authority on request.***'

(11) the title of Chapter III *shall be* replaced by the following:

'REGULATORY CONTROLS ON UNDERTAKINGS WITH SIGNIFICANT MARKET POWER IN SPECIFIC RETAIL MARKETS'

(12) Article 16 *shall be* deleted;

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(13) Article 17 *shall be* amended as follows:

(a) *paragraph* 1 *shall be* replaced by the following:

'1. Member States shall ensure that national regulatory authorities impose appropriate regulatory obligations on undertakings identified as having significant market power on a given retail market in accordance with Article 14 of Directive 2002/21/EC (Framework Directive):

(a) where as a result of a market analysis carried out in accordance with Article 16 of Directive 2002/21/EC (Framework Directive) a national regulatory authority determines that a given retail market identified in accordance with Article 15 of Directive 2002/21/EC (Framework Directive) is not effectively competitive, and

(b) where the national regulatory authority concludes that obligations imposed under Directive 2002/19/EC (Access Directive), would not result in the achievement of the objectives set out in Article 8 of Directive 2002/21/EC (Framework Directive).'

(b) the following paragraph shall be inserted:

'***2a. Without prejudice to obligations that may be imposed on operators identified as having significant market power on a given retail market pursuant to paragraph 1, national regulatory authorities may apply the obligations referred to in paragraph 2 for a transitional period to operators identified as having significant market power on a given wholesale market in circumstances where wholesale obligations have been imposed but are not yet effective in ensuring competition in the retail market.***'

(c) paragraph 3 *shall be* deleted;

(14) Articles 18 and 19 *shall be* deleted;

(15) Articles 20 and 21 *shall be* replaced by the following:

'Article 20

Contracts

▌

1. Member States shall ensure that, where subscribing to services providing connection to a public communications network and/or ***electronic communications*** services, consumers ***and other end-users so requesting*** have a right to a contract with an undertaking or undertakings providing such services and/or connection. The contract shall specify ***in a clear, comprehensive and easily accessible form*** at least:

(a) the identity and address of the supplier;

(b) the services provided, ***including in particular:***

— ***where access to emergency services and caller location information is to be provided under Article 26, the level of reliability of such access, where relevant, and whether access is provided in the whole of the national territory,***

— ***information on any restrictions imposed by the provider regarding a subscriber's ability to access, use or distribute lawful content or run lawful applications and services,***

— the service quality levels***, with reference to any parameters specified under Article 22(2) as appropriate,***

— ***types of maintenance and customer support services*** offered, as well as ***how to contact customer support,***

— the time for the initial connection***, and***

— ***any restrictions on the use of terminal equipment imposed by the provider***;

(c) ***the subscriber's decision as to whether or not to include his or her personal data in a directory, and the data concerned***;

(d) particulars of prices and tariffs and the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained***, payment methods offered and any differences in costs due to payment method***;

(e) the duration of the contract ***and*** the conditions for renewal and termination of services and of the contract, including:

— ***any charges related to*** portability of numbers and other identifiers; ***and***

— ***any charges due on termination of the contract, including any cost recovery with respect to terminal equipment;***

(f) any compensation and the refund arrangements which apply if contracted service quality levels are not met;

(g) the method of initiating procedures for settlement of disputes in accordance with Article 34;

(h) the ***type of*** action that might be taken by the undertaking providing connection and/or services in reaction to security or integrity incidents or threats and vulnerabilities***, as well as any compensation arrangements which apply if security or integrity incidents occur***.

The contract shall also include any information provided by the relevant public authorities on the use of electronic communications networks and services to engage in unlawful activities or to disseminate harmful content, and on the means of protection against risks to personal security, privacy and personal data referred to in Article 21(4) and relevant to the service provided.

▌

2. Subscribers shall have a right to withdraw from their contracts without penalty upon notice of modifications in the contractual conditions proposed by operators. Subscribers shall be given adequate notice, not shorter than one month, ahead of any such modifications and shall be informed at the same time of their right to withdraw, without penalty, from such contracts, if they do not accept the new conditions.

Article 21

Transparency and publication of information

▌

1. Member States shall ensure that undertakings providing ***connection to a*** public electronic communications ***network*** and/or ***electronic communications*** services publish ***transparent,*** comparable, adequate and up-to-date information on applicable prices and tariffs***, any charges due on termination of a contract and information on standard terms and conditions,*** in respect of access and use of their services provided to ***end-users and*** consumers ***in accordance with Annex II***. Such information shall be published in ***a clear, comprehensive and*** easily accessible form. ***National regulatory authorities may specify additional requirements regarding the form in which such information is to be published.***

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2. National regulatory authorities shall encourage the provision of ***comparable*** information to enable end-users and consumers to make an independent evaluation of the cost of alternative usage patterns, by means of interactive guides or similar techniques. Member States shall ensure that national regulatory authorities make such guides or techniques available ***themselves or through third parties***, ***free of charge or at a reasonable price***. Third parties shall have a right to use *free of* charge the ***information*** published by undertakings providing electronic communications networks and/or services, for the purposes of selling or making available such interactive guides or similar techniques.

3. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing ***connection to a public electronic communications network and/or*** electronic communications services to ***inter alia:***

(a) provide applicable tariff information to ***subscribers regarding any number or service subject to particular*** pricing conditions***; with respect to individual categories of services national regulatory authorities may require such information to be provided prior to connecting the call;***

(b) regularly remind subscribers of any lack of reliable access to emergency services or caller location information in the service they have subscribed to;

(c) inform subscribers of any change to any restrictions imposed by the undertaking on their ability to access, use or distribute lawful content or run lawful applications and services of their choice;

(d) inform subscribers of their right to include their personal data in a directory, and of the types of data concerned; and

(e) regularly inform disabled subscribers of details of current products and services aimed at them.

If deemed appropriate, national regulatory authorities may promote self-or co-regulatory measures prior to imposing any obligation.

4. Member States shall ensure that national regulatory authorities oblige the undertakings referred to in paragraph 3 to distribute public interest information to existing and new subscribers where appropriate. Such information shall be produced by the relevant public authorities in a standardised format and shall inter alia cover the following topics:

(a) the most common uses of electronic communications services to engage in unlawful activities or to disseminate harmful content, particularly where it may prejudice respect for the rights and freedoms of others, including infringements of copyright and related right, and their consequences; and

(b) means of protection against risks to personal security, privacy and personal data in using electronic communications services.

Significant additional costs incurred by an undertaking in complying with these obligations shall be reimbursed by the relevant public authorities.'

(16) Article 22 *shall be* amended as follows:

(a) ***paragraphs*** 1 ***and 2*** *shall be* replaced by the following:

'1. Member States shall ensure that national regulatory authorities are *able,* after taking account of the views of interested parties, ‖ to require undertakings that provide publicly available electronic communications networks and/or services to publish comparable, adequate and up-to-date information for end-users on the quality of their services ***and on measures taken to ensure*** equivalent access for disabled end-users. The information shall, on request, also be supplied to the national regulatory authority in advance of its publication.

2. National regulatory authorities may specify, inter alia, the quality of service parameters to be measured, and the content, form and manner of information to be published, including possible quality certification mechanisms, in order to ensure that end-users, including disabled end-users, have access to comprehensive, comparable, reliable and user-friendly information. Where appropriate, the parameters, definitions and measurement methods given in Annex III could be used.'

(b) the following paragraph *shall be* added:

'3. ***A national regulatory authority may issue guidelines setting minimum quality of service requirements, and, if appropriate, take other measures,*** in order to prevent degradation of service and slowing of traffic over networks, ***and to ensure that the ability of users to access or distribute content or to run applications and services of their choice is not unreasonably restricted. Those guidelines or measures shall take due account of any standards issued under Article 17 of Directive 2002/21/EC (Framework Directive).***

The Commission may, having ***examined such guidelines or measures and*** consulted ***the Body of European Regulators in Telecom (BERT),*** adopt technical implementing measures ***in that regard if it considers that the guidelines or measures may create a barrier to the internal market. 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 37(2). ▌'

(17) Article 23 *shall be* replaced by the following:

'Article 23

Availability of services

Member States shall take all necessary ***measures*** to ensure the ***fullest possible*** availability of publicly available telephone services ▌ in the event of catastrophic network breakdown or in cases of force majeure. Member States shall ensure that undertakings providing publicly available telephone services take all ***necessary measures*** to ensure uninterrupted access to emergency services ***from any place within the territory of the EU.***'

(18) Article 25 *shall be* amended as follows:

(a) *the* title *shall be* replaced by the following:

' ▌Directory enquiry services**'**

(b) paragraph 1 shall be replaced by the following:

'1. Member States shall ensure that ***all end-users of electronic communications networks and services*** have the right to have ***their information made available to providers of directory enquiry services and directories in accordance with the provisions of paragraph 2.***'

(c) ***paragraphs 3, 4 and 5*** *shall be* replaced by the following:

'3. Member States shall ensure that all end-users ***of an electronic communications*** service can access directory enquiry services ***and that operators controlling access to such services provide it on terms which are fair, cost-oriented, objective, non-discriminatory and transparent***.

4. ***Member States shall not maintain any regulatory restrictions which prevent end-users in one Member State from accessing directly the directory enquiry service in another Member State by voice call or SMS, and shall take measures to ensure such access pursuant to Article 28.***

5. Paragraphs 1, 2, 3 and 4 shall apply subject to the requirements of Community legislation on the protection of personal data and privacy and, in particular, Article 12 of Directive 2002/58/EC.'

(19) Articles 26 *and* 27 *shall be* replaced by the following:

'Article 26

Emergency services and the single European emergency call number

1. Member States shall ensure that, in addition to any other national emergency call numbers specified by the national regulatory authorities, all end-users of services referred to in paragraph 2, including users of public pay telephones, are able to call the emergency services free of charge and without having to use any means of payment, by using the single European emergency call number "112"

2. Member States***, in cooperation with national regulatory authorities, emergency services and providers,*** shall ensure that undertakings providing ***an electronic communications*** service for originating national and/or international calls through a number or numbers in a national or international telephone numbering plan provide ***reliable*** access to emergency services.

3. Member States shall ensure that ***the emergency services are able to appropriately respond to and handle all*** calls to the single European emergency call number '112' ▌in a manner best suited to the national organisation of emergency systems. Such calls shall be answered and handled at least as expeditiously and effectively as calls to national emergency number or numbers, where these continue in use.

4. Member States shall ensure that disabled end-users ***have*** access ***to*** emergency services ***equivalent to that enjoyed by other end-users***. *The measures taken* to ensure that disabled end-users are able to access emergency services while travelling in other Member States ***shall*** include ensuring compliance with relevant standards or specifications published in accordance with the provisions of Article 17 of Directive 2002/21/EC (Framework Directive).

5. Member States shall ensure that caller location information is made available free of charge ***and as soon as the emergency call reaches the authority*** handling ***the emergency. This shall also apply to*** all calls to the single European emergency call number "112".

▌

6. Member States shall ensure that***, in addition to information about their national numbers, all*** citizens ***of the Union*** are adequately informed *of* the existence and use of the single European emergency call number "112", in particular through initiatives specifically targeting persons travelling between Member States. ▌

7. In order to ensure the effective implementation of "112" services in the Member States, ▌the Commission, having consulted ***BERT***, may adopt technical implementing measures.

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 37(2). ▌

Article 27

European telephone access codes

1. Member States shall ensure that the "00" code is the standard international access code. Special arrangements for making calls between adjacent locations across borders between Member States may be established or continued. The end-users in the locations concerned shall be fully informed of such arrangements.

2. Those Member States to which the ITU assigned the international code "3883" shall entrust ***an organisation established by Community law and designated by the Commission on the basis of an open, transparent and non-discriminatory selection procedure, or BERT,*** with sole responsibility for management***, including number assignment, and promotion*** of the European Telephony Numbering Space *(ETNS)*.

3. Member States shall ensure that all undertakings that provide publicly available telephone services handle all calls to and from the *ETNS*, at rates that do not exceed the maximum rate they apply for calls to and from other Member States.'

(20) the following Article shall be inserted:

'Article 27a

Harmonised numbers for harmonised services of social value, including the missing children hotline number

1. Member States shall promote the specific numbers in the numbering range beginning with "116" identified by Commission Decision 2007/116/EC of 15 February 2007 on reserving the national numbering range beginning with "116" for harmonised numbers for harmonised services of social value (*) ***They shall encourage the provision within their territory of the services for which such numbers are reserved.***

2. Member States shall ensure that disabled end-users are able to access services provided under the "116" numbering range. In order to ensure that disabled end-users are able to access such services while travelling in other Member States, measures taken shall include ensuring compliance with relevant standards or specifications published in accordance with the provisions of Article 17 of Directive 2002/21/EC (Framework Directive).

3. Member States shall ensure that citizens are adequately informed about the existence and use of services provided under the "116" numbering range, in particular through initiatives specifically targeting persons travelling between Member States.

4. Member States shall, in addition to measures of general applicability to all numbers in the "116" numbering range taken pursuant to paragraphs 1, 2 and 3, ensure citizens' access to a service operating a hotline to report cases of missing children. The hotline shall be available on the number 116000.

5. In order to ensure the effective implementation of the "116" numbering range, in particular the missing children hotline number 116000, in the Member States, including access for disabled end-users when travelling in other Member States, the Commission, having consulted BERT, may adopt technical implementing measures.

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 37(2).

(*) ***OJ L 49, 17.2.2007, p. 30.***'.

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(21) Article 28 shall be replaced by the following:

'Article 28

Access to numbers and services

1. Member States shall ensure that***, where technically and economically feasible, and except where a called subscriber has chosen for commercial reasons to limit access by calling parties located in specific geographical areas,*** national regulatory authorities take all necessary steps to ensure that:

▌

(a) end-users are able to access all numbers provided in the Community ***regardless of the technology and devices used by the operator***, including those in the national numbering plans of Member States, those from the *ETNS* and Universal International Freephone Numbers***; and***

(b) connection services are provided for text telephones, video telephones and products which help to enable elderly people or people with disabilities to communicate, at least as regards emergency calls.

National regulatory authorities shall be able to block on a case-by-case basis access to numbers or services where this is justified by reasons of fraud or misuse***, and to ensure that in such cases, including where an investigation is pending, providers of electronic communications services withhold relevant interconnection or other service revenues***.

2. In order to ensure that end users have effective access to numbers and services in the Community, the Commission may ▌ adopt technical implementing measures. ***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 37(2). ▌

Any such technical implementing measure may be periodically reviewed to take account of market and technological developments.

3. Member States shall ensure that national regulatory authorities are able to require undertakings providing public communications networks to provide information regarding the management of their networks in connection with any limitations or restrictions on end-user access to or use of services, content or applications. Member States shall ensure that national regulatory authorities have all the powers necessary to investigate cases in which undertakings have imposed limitations on end-user access to services, content or applications.'

(22) Article 29 *shall be* amended as follows:

(a) *paragraph* 1 *shall be* replaced by the following:

'1. Member States shall ensure that national regulatory authorities are able to require all undertakings that operate publicly available telephone services and/or public communications networks to make available to end-users additional facilities listed in Annex I, Part B, subject to technical feasibility and economic viability.'

(b) *paragraph* 3 *shall be* replaced by the following:

'3. Without prejudice to Article 10(2), Member States may impose the obligations in Annex I, Part A, point (e), concerning disconnection as a general requirement on all undertakings providing access to public communications networks and/or publicly available telephone services.'

(23) Article 30 *shall be* replaced by the following:

'Article 30

Facilitating change of supplier

1. Member States shall ensure that all subscribers with numbers from the national ***telephone*** numbering plan who so request can retain their *number or numbers* independently of the undertaking providing the service in accordance with the provisions of Annex I, part C.

2. National regulatory authorities shall ensure that pricing between operators related to the provision of number portability is cost oriented and that direct charges to subscribers, if any, do not act as a disincentive for the use of these facilities.

3. National regulatory authorities shall not impose retail tariffs for the porting of numbers in a manner that would distort competition, such as by setting specific or common retail tariffs.

4. Porting of numbers and their subsequent activation shall be executed within the shortest possible delay, no later than one working day from the initial request by the subscriber. ***National regulatory authorities may extend the one day period and prescribe appropriate measures where necessary to ensure that subscribers are not switched against their will. National regulatory authorities may impose appropriate sanctions on providers, including an obligation to compensate customers, in case of delay in porting or abuse of porting by them or on their behalf.***

5. Member States shall ensure that the duration of contracts concluded between users and undertakings providing electronic communications services does not exceed 24 months. They shall also ensure that undertakings offer users the possibility to subscribe to a contract with a maximum duration of 12 months for all types of service and terminal equipment.

6. ***Member States*** shall ensure that ▌ procedures for termination of ***contracts*** do not act as a disincentive *against* changing suppliers of services.'

(24) Article 31(1) shall be replaced by the following:

'1. Member States may impose reasonable "must carry" obligations for the transmission of specified radio and ***audiovisual media services*** and ***complementary services, particularly*** accessibility services, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or ***audiovisual media services*** to the public where a significant number of end-users of such networks use them as their principal means *of receiving* radio and ***audiovisual media services***. Such obligations shall only be imposed where they are necessary to meet general interest objectives clearly and specifically defined by each Member State ▌ and shall be proportionate and transparent.

The obligations referred to in the first subparagraph shall be reviewed by the Member States at the latest within one year of *[*time-limit for implementation of the amending act*]*, except where Member States have carried out such a review within the previous 2 years.

Member States shall review "must carry" obligations ***on a regular basis***.'

(25) the following Article shall be inserted:

'***Article 31a***

Ensuring equivalent access and choice for disabled users

Member States shall ensure that national regulatory authorities are able to impose appropriate requirements on undertakings providing publicly available electronic communications services so as to ensure that disabled end-users:

(a) have access to electronic communication services equivalent to that enjoyed by the majority of end-users; and

(b) can take advantage of the choice of undertakings and services available to the majority of end-users.'

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(26) the following Article shall be inserted:

'Article 32a

Access to content, services and applications

Member States shall ensure that any restrictions on the rights of users to access content, services and applications, if such restrictions are necessary, are implemented by appropriate measures, in accordance with the principles of proportionality, effectiveness and dissuasiveness. Those measures shall not have the effect of hindering the development of the information society, in compliance with 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) (*)***, and shall not conflict with the fundamental rights of citizens, including the right to privacy and the right to due process.***

(*) ***OJ L 178, 17.7.2000, p. 1.;'***

(27) Article 33 *shall be* amended as follows:

(a) ‖ paragraph 1 *shall be amended as follows:*

(i) ***the first subparagraph shall be replaced by the following:***

'***1. Member States shall ensure as far as appropriate that national regulatory authorities take account of the views of end-users, consumers, manufacturers and undertakings that provide electronic communications networks and/or services on issues related to all end-user and consumer rights concerning publicly available electronic communications services, in particular where they have a significant impact on the market.***'

(ii) the following ‖ sub-paragraph *shall be* added:

'In particular, Member States shall ensure that national regulatory authorities establish ▌consultation ***mechanisms*** ensuring that due consideration is given to***, and account taken of, issues relating to end-users, including, in particular, disabled end-users,*** *in their decision-making process.*'

(b) the following paragraph shall be inserted:

'***2a. Without prejudice to national rules in conformity with Community law promoting cultural and media policy objectives, such as cultural and linguistic diversity and media pluralism, national regulatory authorities and other relevant authorities shall as far as appropriate promote cooperation between undertakings providing electronic communications networks and/or services and the sectors interested in the promotion of lawful content in electronic communication networks and services. That cooperation may also include coordination of the public interest information to be made available under Article 21(4) and Article 20(1).;'***

(c) the following ***paragraph*** *shall be* added:

'▌

3. Without prejudice to the application of Directive 1999/5/EC and in particular of disability requirements pursuant to its Article 3(3)(f), and in order to improve accessibility to electronic communications services and equipment by disabled end-users, the Commission may ▌take the appropriate technical implementing measures, following a public consultation ***and after having consulted BERT. 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 37(2). ▌'

(28) Article 34(1) *shall be* replaced by the following:

'1. Member States shall ensure that ***independent bodies provide*** transparent, simple and inexpensive out-of-court procedures ▌for dealing with ▌disputes between consumers and undertakings providing electronic communications networks and/or services relating to the contractual conditions and/or performance of contracts concerning *the* supply of such networks or services. ***Such*** procedures ***shall*** enable disputes to be settled fairly and promptly and ***shall take account of the requirements of Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes (*). Member States*** may, where warranted, adopt a system of reimbursement and/or compensation. Member States may extend these obligations to cover disputes involving other end-users.

Member States shall ensure that *the* bodies in charge of dealing with such disputes***, which can be single points of contact,*** provide relevant information for statistical purposes to the Commission and the ***authorities***.

With specific regard to the interaction of audiovisual and electronic communications, Member States shall encourage reliable out-of-court procedures.

_____

(*) ***OJ L 115, 17.4.1998, p. 31.'***

(29) Article 35 *shall be* replaced by the following:

'Article 35

Adaptation of annexes

Measures designed to amend non-essential elements of this Directive and necessary to adapt Annexes I, II, III, and VI to technological developments or to changes in market demand shall be adopted by the Commission in accordance with the *regulatory* procedure *with scrutiny* referred to in Article 37(2).'

(30) Article 36(2) shall be replaced by the following:

'2. National regulatory authorities shall notify to the Commission the obligations imposed upon undertakings designated as having universal service obligations. Any changes affecting the obligations imposed upon undertakings or of the undertakings affected under the provisions of this Directive shall be notified to the Commission without delay.'

(31) Article 37 *shall be* replaced by the following:

'Article 37

Committee *procedure*

1. The Commission shall be assisted by the Communications Committee, set up by Article 22 of Directive 2002/21/EC (Framework Directive).

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.

▌'

(32) Annexes I, II and III *shall be* replaced by Annexes I, II and III to this Directive;

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(33) in Annex VI, point 1 shall be replaced by the following:

'***1. Common scrambling algorithm and free-to-air reception***

All consumer equipment intended for the reception of conventional digital television signals (i.e. broadcasting via terrestrial, cable or satellite transmission which is primarily intended for fixed reception, such as DVB-T, DVB-C or DVB-S), for sale or rent or otherwise made available in the Community, capable of descrambling digital television signals, is to possess the capability to:

— ***allow the descrambling of such signals according to a common European scrambling algorithm as administered by a recognised European standards organisation, currently ETSI;***

— ***display signals that have been transmitted in the clear provided that, in the event that such equipment is rented, the rentee is in compliance with the relevant rental agreement.'***

(34) Annex VII *shall be* deleted.

Article 2

Amendments to Directive 2002/58/EC

(Directive on privacy and electronic communications)

Directive 2002/58/EC (Directive on privacy and electronic communications) is *hereby* amended as follows:

(1) Article 1(1) and (2) shall be replaced by the following:

'***1. This Directive provides for the harmonisation of the provisions of the Member States required to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy and the right to confidentiality and security of information technology systems, with respect to the processing of personal data in the electronic communication sector and to ensure the free movement of such data and of electronic communications equipment and services in the Community.***

2. The provisions of this Directive particularise and complement Directive 95/46/EC for the purposes mentioned in paragraph 1. Moreover, they provide for protection of the legitimate interests of subscribers who are natural or legal persons.'

(2) Article 2(e) *shall be* replaced by the following:

'(e) "call" means a connection established by means of a publicly available telephone service allowing two-way communication;'

(3) Article 3 *shall be* replaced by the following:

'Article 3

Services concerned

This Directive shall apply to the processing of personal data in connection with the provision of publicly available electronic communications services in public ***and private*** communications networks ***and publicly accessible private networks*** in the Community, including public ***and private*** communications networks ***and publicly accessible private networks*** supporting data collection and identification devices.'

(4) Article 4 *shall be* amended as follows:

(a) *the* title *shall be* replaced by the following:

'Security of processing'

(b) the following paragraphs shall be inserted:

'***1a. Without prejudice to the provisions of Directive 95/46/EC and Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks*** (*)***, these measures shall include:***

— ***appropriate technical and organisational measures to ensure that personal data can be accessed only by authorised personnel for legally authorised purposes and to protect personal data stored or transmitted against accidental or unlawful destruction, accidental loss or alteration and unauthorised or unlawful storage, processing, access or disclosure;***

— ***appropriate technical and organisational measures to protect the network and services against accidental, unlawful or unauthorised usage or interference with or hindering of their functioning or availability;***

— ***a security policy with respect to the processing of personal data;***

— ***a process for identifying and assessing reasonably foreseeable vulnerabilities in the systems maintained by the provider of electronic communications services, which shall include regular monitoring for security breaches; and***

— ***a process for taking preventive, corrective and mitigating action against any vulnerabilities discovered in the process described under the fourth indent and a process for taking preventive, corrective and mitigating action against security incidents that can lead to a security breach.***

1b. National regulatory authorities shall be able to audit the measures taken by providers of publicly available electronic communication services and information society services and to issue recommendations about best practices and performance indicators concerning the level of security which these measures should achieve.

(*) ***OJ L 105, 13.4.2006, p. 54.'***

(c) the following paragraphs ▌*shall be* added:

'3. In case of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with the provision of publicly available communications services in the Community, the provider of publicly available electronic communications services, ***as well as any undertaking operating on the Internet and providing services to consumers, which is the data controller and the provider of information society services*** shall, without undue delay, notify ▌the national regulatory authority ***or the competent authority according to the individual law of the Member State*** of such a breach. The notification to the ***competent authority*** shall at least describe the nature of the breach and recommend measures to mitigate its possible negative effects. The notification to the ***competent*** authority shall, in addition, describe the consequences of and the measures taken by the provider to address the breach.

The provider of publicly available electronic communications services, as well as any undertaking operating on the Internet and providing services to consumers, which is the data controller and the provider of information society services, shall notify their users beforehand to avoid imminent and direct danger to the rights and interests of consumers.

Notification of a security breach to a subscriber or individual shall not be required if the provider has demonstrated to the competent authority that it implemented appropriate technological protection measures and that those measures were applied to the data concerned by the security breach. Such technological protection measures shall render the data unintelligible to any person who is not authorized to access the data.

4. The competent authority shall consider and determine the seriousness of the breach. If the breach is deemed to be serious, the competent authority shall require the provider of publicly available electronic communications services and the provider of information society services to give an appropriate notification without undue delay to the persons affected by the breach. The notification shall contain the elements described in paragraph 3.

The notification of a serious breach may be postponed in cases where the notification may hinder the progress of a criminal investigation related to the serious breach.

Providers shall annually notify affected users of all breaches of security that have led to the accidental or unlawful destruction, loss or alteration or the unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with the provision of publicly available communications services in the Community.

National regulatory authorities shall also monitor whether companies have complied with their notification obligations under this Article and impose appropriate sanctions, including publication, as appropriate, in the event of a failure to do so.

5. The seriousness of a breach requiring notification to subscribers shall be determined according to the circumstances of the breach, such as the risk to the personal data affected by the breach, the type of data affected by the breach, the number of subscribers involved, and the immediate or potential impact of the breach on the provision of services.

6. In order to ensure consistency in implementation of the measures referred to in ***paragraphs 1 to 5***, the Commission ***shall***, following consultation with ▌ the European Data Protection Supervisor, ***relevant stakeholders and the European Network and Information Security Agency (ENISA), recommend*** technical implementing measures concerning inter alia the ***measures set out in paragraph 1a and the*** circumstances, format and procedures applicable to information and notification requirements referred to in ***paragraphs 4 and 5***.

The Commission shall involve all relevant stakeholders, particularly in order to be informed of the best available technical and economic methods for improving the implementation of this Directive. 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 14a(2)*. On imperative grounds of urgency, the Commission may *have recourse to* the urgency procedure referred to in *Article 14a(3)*.'

(5) Article 5(3) shall be replaced by the following:

'3. Member States shall ensure that the storing of information, or gaining access to information already stored, in the terminal equipment of a subscriber or user***, either directly or indirectly by means of any kind of storage medium, is prohibited unless*** the subscriber or user concerned ***has given his/her prior consent, taking into account that browser settings constitute prior consent, and*** is provided with clear and comprehensive information in accordance with Directive 95/46/EC, inter alia about the purposes of the processing and is offered the right to refuse such processing by the data controller. This shall not prevent any technical storage or access for the sole purpose of carrying out ▌ the transmission of a communication over an electronic communications network, or as strictly necessary in order to provide an information society service explicitly requested by the subscriber or user.'

***(6) Article 6 shall be amended as follows*:**

(a) paragraph 3 shall be replaced by the following:

'***3. For the purpose of marketing electronic communications services or for the provision of value added services, the provider of a publicly available electronic communications service may process the data referred to in paragraph 1 to the extent and for the duration necessary for such services or marketing, if the subscriber or user to whom the data relate has given his/her prior consent. Users or subscribers shall be given the possibility to withdraw their consent for the processing of traffic data at any time.***'

(b) the following paragraph shall be added:

'***7. Without prejudice to compliance with provisions other than Article 7 of Directive 95/46/EC and Article 5 of this Directive, traffic data may be processed in the legitimate interest of the data controller for the purpose of implementing technical measures to ensure the network and information security, as defined by Article 4(c) of Regulation (EC) No 460/2004 of the European Parliament and of the Council of 10 March 2004 establishing the European Network and Information Security Agency*** (*) ***, of a public electronic communication service, a public or private electronic communications network, an information society service or related terminal and electronic communication equipment, except where such interest is overridden by those of the fundamental rights and freedoms of the data subject. Such processing shall be restricted to that which is strictly necessary for the purposes of such security activity.***

(*) ***OJ L 77, 13.3.2004, p. 1.'***

(7) ‖ Article 13 *shall be amended as follows*:

(a) paragraph 1 shall be replaced by the following:

'***1. The use of automated calling and communication systems without human intervention (automatic calling machines), facsimile machines (fax) or electronic mail (including short message services (SMS) and multimedia messaging services (MMS)) for the purposes of direct marketing may be allowed only in respect of subscribers who have given their prior consent.***'

(b) paragraph 4 shall be replaced by the following:

'***4. In any event, the practice of sending electronic mail for purposes of direct marketing disguising or concealing the identity of the sender on whose behalf the communication is made, or in contravention of Article 6 of Directive 2000/31/EC, or that contain links to sites that have a malicious or fraudulent intent, or without a valid address to which the recipient may send a request that such communications cease, shall be prohibited.***'

(c) the following paragraph *shall be* added:

'6. Without prejudice to any administrative remedy for which provision may be made, inter alia under Article 15a(2), Member States shall ensure that any individual or legal person having a legitimate interest in combating infringements of national provisions adopted pursuant to this ***Directive***, including an electronic communications service provider protecting its legitimate business interests or the interests of its customers, may take legal action against such infringements before the courts.'

(8) Article 14(3) shall be replaced by the following:

'***3. Where required, measures may be adopted to ensure that terminal equipment is constructed in a way that is compatible with the right of users to protect and control the use of their personal data, in accordance with Directive 1999/5/EC and Council Decision 87/95/EEC of 22 December 1986 on standardisation in the field of information technology and communications*** (*)***. Such measures shall respect the principle of technology neutrality.***

(*) ***OJ L 36, 7.2.1987, p. 31***.'

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(9) the following Article *shall be* inserted:

'Article 14a

Committee *procedure*

1. The Commission shall be assisted by the Communications Committee set up by Article 22 of Directive 2002/21/EC (Framework Directive).

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 provision of Article 8 thereof.

3. Where reference is made to this paragraph, *Article 5a(1)*, (2), (4) and (6) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.'

(10) in Article 15, the following paragraph shall be inserted:

'***Providers of publicly available communications services and providers of information society services shall notify the independent data protection authorities, without undue delay, of all requests for access to users' personal data received pursuant to paragraph 1, including the legal justification given and the legal procedure followed for each request; the independent data protection authority concerned shall notify the appropriate judicial authorities of those cases in which it deems that the relevant provisions of national law have not been complied with.***'

(11) the following Article *shall be* inserted:

'Article 15a

Implementation and enforcement

1. Member States shall lay down the rules on penalties***, including penal sanctions where appropriate,*** 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. The Member States shall notify those provisions to the Commission by the [time-limit for implementation of the amending act] at the latest and shall notify it without delay of any subsequent amendment affecting them.

2. Without prejudice to any judicial remedy which might be available, Member States shall ensure that the national regulatory authority has the power to order the cessation of the infringements referred to in paragraph 1.

3. Member States shall ensure that national regulatory authorities have all the investigative powers and resources necessary, including the possibility to obtain any relevant information they might need to monitor and enforce national provisions adopted pursuant to this Directive.

4. In order to ensure effective cross-border cooperation in the enforcement of the national laws adopted pursuant to this Directive and to create harmonised conditions for the provision of services involving cross-border data flows, the Commission may adopt technical implementing measures, following consultation with ***ENISA***, ***the Article 29 Working Party*** and the relevant regulatory authorities.

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 14a(2)*. On imperative grounds of urgency, the Commission may *have recourse to* the urgency procedure referred to in *Article 14a(3)*.'

(12) Article 18 shall be replaced by the following:

'Article 18

Review

By … (*), the Commission shall submit to the European Parliament and the Council, having consulted the Article 29 Working Party and the European Data Protection Supervisor, a report on the application of this Directive and its impact on economic operators and consumers, in particular as regards the provisions on unsolicited communications, breach notifications and the use of personal data by public or private third parties for purposes not covered by this Directive, taking into account the international environment. For this purpose, the Commission may request information from the Member States, which shall be supplied without undue delay. Where appropriate, the Commission shall submit proposals to amend this Directive, taking account of the results of that report, any changes in the sector, the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (**), in particular the new competences in matters of data protection as laid down in Article 16 of the Treaty on the Functioning of the European Union, and any other proposal it may deem necessary in order to improve the effectiveness of this Directive.

No later than … (**), the Commission shall, following consultation of the European Data Protection Supervisor, the Article 29 Working Party and other stakeholders, including industry representatives, submit to the European Parliament, the Council and the European Economic and Social Committee a report, based on an in-depth study, with recommendations on standard uses of IP addresses and the application of the ePrivacy and Data Protection Directives as regards the collection and further processing of IP addresses.

(*) ***Two years from the date of entry into force of this Directive.***
(**) ***OJ C 306, 17.12.2007, p. 1.'***

Article 3

Amendment to Regulation (EC) No 2006/2004

In the Annex to Regulation (EC) No 2006/2004 ‖, the following point shall be added:

'17. As regards the protection of consumers, 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 communication sector: Article 13 (OJ L 201, 31.7.2002, p. 37).'

Article 4

Transposition

1. Member States shall adopt and publish by […] ‖ the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to ***the European Parliament and*** the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from […].

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 […] day following that of its publication in the *Official Journal of the European Union*.

Article 6

Addressees

This Directive is addressed to the Member States.

Done at …, on …

For the European Parliament
The President

For the Council
The President

ANNEX I

DESCRIPTION OF FACILITIES AND SERVICES REFERRED TO IN ARTICLE 10 (CONTROL OF EXPENDITURE), ARTICLE 29 (ADDITIONAL FACILITIES) ***AND ARTICLE 30 (FACILITATING CHANGE OF SUPPLIER)***

Part A

Facilities and services referred to in Article 10:

(a) Itemised billing

Member States are to ensure that national regulatory authorities, subject to the requirements of relevant legislation on the protection of personal data and privacy, may lay down the basic level of itemised bills which are to be provided by designated undertakings (as established in Article 8) to ***end-users*** free of charge in order that they can:

(i) allow verification and control of the charges incurred in using the public communications network at a fixed location and/or related publicly available telephone services, and

(ii) adequately monitor their usage and expenditure and thereby exercise a reasonable degree of control over their bills.

Where appropriate, additional levels of detail may be offered to subscribers at reasonable tariffs or at no charge.

Calls which are free of charge to the calling subscriber, including calls to helplines, are not to be identified in the calling subscriber's itemised bill.

(b) Selective call barring for outgoing calls, free of charge

i.e. the facility whereby the subscriber can, on request to a designated undertaking that provides telephone services, bar outgoing calls ***or other kinds of communication*** of defined types or to defined types of numbers free of charge.

(c) Pre-payment systems

Member States are to ensure that national regulatory authorities may require designated undertakings to provide means for consumers to pay for access to the public communications network and use of publicly available telephone services on pre-paid terms.

(d) Phased payment of connection fees

Member States are to ensure that national regulatory authorities may require designated undertakings to allow consumers to pay for connection to the public communications network on the basis of payments phased over time.

(e) Non payment of bills

Member States are to authorise specified measures, which are to be proportionate, non-discriminatory and published, to cover non-payment of bills of operators designated in accordance with Article 8. These measures are to ensure that due warning of any consequent service interruption or disconnection is given to the subscriber beforehand. ***Except*** in cases of fraud, persistent late payment or non-payment, ***these measures*** shall ensure, ***as far as is technically feasible***, that ***any service interruption is confined to the service concerned***. Disconnection for non-payment of bills should take place only after due warning is given to the subscriber. Member States may allow a period of limited service prior to complete disconnection, during which only services that do not incur a charge to the subscriber (e.g. '112' calls) are permitted. ***Access to emergency services through '112' may be blocked in case of repeated misuse by the user.***

(f) Cost control

Member States shall ensure that national regulatory authorities require all undertakings providing electronic communication services to offer means for subscribers to control the costs of telecommunication services, including free of charge alerts to consumers in case of abnormal consumption patterns.

(g) Best advice

Member States shall ensure that national regulatory authorities require all undertakings providing electronic communication services to recommend their best available tariff package to consumers once a year on the basis of the consumer's consumption pattern for the previous year.

Part B

List of facilities referred to in Article 29:

(a) Tone dialling or DTMF (dual-tone multi-frequency operation)

i.e. the public communications network supports the use of DTMF tones as defined in ETSI ETR 207 for end-to-end signalling throughout the network both within a Member State and between Member States.

(b) Calling-line identification

i.e. the calling party's number is presented to the called party prior to the call being established.

This facility should be provided in accordance with relevant legislation on protection of personal data and privacy, in particular Directive 2002/58/EC.

To the extent technically feasible, operators should provide data and signals to facilitate the offering of calling-line identity and tone dialling across Member State boundaries.

(c) Services in the event of theft

Member States shall ensure that a freephone number common to all mobile telephony service providers is set up for reporting the theft of a terminal and immediately suspending the services associated with the subscription. It must also be possible for disabled users to access this service. Users must be regularly informed of the existence of this number, which must be easy to remember.

(d) Protection software

Member States shall ensure that national regulatory authorities are able to require operators to make available free of charge to their subscribers reliable, easy-to-use and freely and fully configurable protection and/or filtering software to prevent access by children or vulnerable persons to content unsuitable to them.

Any traffic monitoring data that this software may collect is for the use of the subscriber only.

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Part C

Implementation of the number portability provisions referred to in Article 30

The requirement that all subscribers with numbers from the national numbering plan, who so request can retain their number(s) independently of the undertaking providing the service shall apply:

(a) in the case of geographic numbers, at a specific location; and

(b) in the case of non-geographic numbers, at any location.

This paragraph does not apply to the porting of numbers between networks providing services at a fixed location and mobile networks.

ANNEX II

INFORMATION TO BE PUBLISHED IN ACCORDANCE WITH ARTICLE 21 (TRANSPARENCY AND PUBLICATION OF INFORMATION)

The national regulatory authority has a responsibility to ensure that the information in this Annex is published, in accordance with Article 21. It is for the national regulatory authority to decide which information is to be published by the undertakings providing public communications networks and/or publicly available telephone services and which information is to be published by the national regulatory authority itself, so as to ensure that consumers are able to make informed choices. ▌

1. **Name(s) and address(es) of undertaking(s)**

i.e. names and head office addresses of undertakings providing public communications networks and/or publicly available telephone services.

2. **Description of services offered**

2.1. Scope of the services offered

2.2. Standard tariffs, ***indicating the services provided and the content of*** each tariff element (e.g. charges for access, all types of usage charges, maintenance charges) ▌. Details of standard discounts applied, special and targeted tariff schemes ***and any additional charges, as well as costs with respect to terminal equipment, shall also be included***.

2.3. Compensation/refund policy, including specific details of any compensation/refund schemes offered.

2.4. Types of maintenance service offered.

2.5. Standard contract conditions, including any minimum contractual period, termination of the contract, procedures and direct charges related to the portability of numbers and other identifiers, if relevant.

3. Dispute settlement mechanisms including those developed by the undertaking.

4. Information about rights as regards universal service, including where appropriate the facilities and services mentioned in Annex I.

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ANNEX III

QUALITY OF SERVICE PARAMETERS

SUPPLY-TIME AND QUALITY-OF-SERVICE PARAMETERS, DEFINITIONS AND MEASUREMENT METHODS REFERRED TO ARTICLES 11 AND 22

For undertaking designated to provide access to a public communications network		
PARAMETER (1)	DEFINITION	MEASUREMENT METHOD
Supply time for initial connection	ETSI EG ***202 057***	ETSI EG ***202 057***
Fault rate per access line	ETSI EG ***202 057***	ETSI EG ***202 057***
Fault repair time	ETSI EG ***202 057***	ETSI EG ***202 057***
For undertaking designated to provide a publicly available telephone service		
Call set up time (2)	ETSI EG ***202 057***	ETSI EG ***202 057***
Response times for operator services	ETSI EG ***202 057***	ETSI EG ***202 057***
Response times for directory enquiry services	ETSI EG ***202 057***	ETSI EG ***202 057***
Proportion of coin and card operated public pay-telephones in working order	ETSI EG ***202 057***	ETSI EG ***202 057***
Bill correctness complaints	ETSI EG ***202 057***	ETSI EG ***202 057***
Unsuccessful call ratio (2)	ETSI EG ***202 057***	ETSI EG ***202 057***

(1) Parameters should allow for performance to be analysed at a regional level (i.e. no less than level 2 in the Nomenclature of Territorial Units for Statistics (NUTS) established by Eurostat).
(2) Member States may decide not to require that up-to-date information concerning the performance for these two parameters be kept, if evidence is available to show that performance in these two areas is satisfactory.

Version number of ETSI EG ***202 057*** is 1.1.1 (April 2000)

International Tropical Timber Agreement 2006 *

P6_TA(2008)0453

European Parliament legislative resolution of 24 September 2008 on the draft Council decision onthe conclusion on behalf of the European Community of the International Tropical Timber Agreement, 2006 (11964/2007 — C6-0326/2007 — 2006/0263(CNS))

(2010/C 8 E/48)

(Consultation procedure)

The European Parliament,

— having regard to the draft Council decision (11964/2007),

— having regard to the draft International Tropical Timber Agreement, 2006 (11964/2007),

— having regard to Articles 133, 175 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 (C6-0326/2007),

— having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,

— having regard to Rules 51, 83(7) and 35 of its Rules of Procedure,

— having regard to the report of the Committee on International Trade (A6-0313/2008),

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1. Approves the draft Council decision as amended and approves conclusion of the agreement;

2. Reserves the right to defend its prerogatives as conferred by the Treaty;

3. Instructs its President to forward its position to the Council and Commission, and the governments and parliaments of the Member States and to the secretariat of the International Tropical Timber Organization (ITTO).

TEXT PROPOSED BY THE COUNCIL	AMENDMENTS BY PARLIAMENT
Amendment 1	
Citation 1	
Having regard to the Treaty establishing the European Community, and in particular Articles 133 and 175 thereof, read in conjunction with the first sentence of the first subparagraph of Article 300(2) and the ***first*** subparagraph of Article 300 (3) thereof,	Having regard to the Treaty establishing the European Community, and in particular Articles 133 and 175 thereof, read in conjunction with the first sentence of the first subparagraph of Article 300(2) and the ***second*** subparagraph of Article 300 (3) thereof,
Amendment 2	
Recital 4	
(4) The objectives of the new Agreement ***are*** consistent with both the common commercial policy and the environmental ***policy***.	(4) The objectives of the new Agreement ***should be*** consistent with both the common commercial policy and environmental ***and development policies***.
Amendment 3	
Recital 7a (new)	
	(7a) The Commission should submit to the European Parliament and the Council an annual report with an analysis of the implementation of the International Tropical Timber Agreement, 2006 and of measures to minimise the negative impact of trade on tropical forests, including bilateral agreements concluded pursuant to the Forest Law Enforcement, Governance and Trade (FLEGT) programme. Article 33 of the International Tropical Timber Agreement, 2006 provides for an evaluation of the implementation of this Agreement five years after its entry into force. In the light of this provision, the Commission should forward to the Parliament and the Council a review of the functioning of the International Tropical Timber Agreement, 2006 by the end of 2010.
Amendment 4	
Recital 7b (new)	
	(7b) When drafting the negotiating mandate for the revision of the International Tropical Timber Agreement, 2006, the Commission should propose that the current text be revised, placing the protection and sustainable management of tropical forests and the restoration of forest areas that have been degraded at the heart of the agreement, stressing the importance of education and information policy in the countries affected by the problem of deforestation in order to enhance public awareness of the negative consequences of exploiting timber resources in an abusive manner. Trade in tropical timber should only be encouraged to the extent compatible with these prior objectives.

TEXT PROPOSED BY THE COUNCIL	AMENDMENTS BY PARLIAMENT
	Amendment 5
	Recital 7c (new)
	(7c) In particular, this mandate for the revision of the International Tropical Timber Agreement, 2006 should propose a voting mechanism for the International Tropical Timber Council that clearly rewards the conservation and sustainable use of tropical forests.
	Amendment 6
	Recital 7d (new)
	(7d) The Commission should by October 2008 at the latest:
	(a) propose a comprehensive legislative proposal that prevents the placing of timber and timber products derived from illegal and destructive sources on the market;
	(b) present a Communication determining the EU's involvement and support for current and future global funding mechanisms for promoting forest protection and reducing emissions from deforestation under the United Nations Framework Convention on Climate Change (UNFCCC)/Kyoto Protocol. The Communication should outline the EU's commitment to provide funds to help developing countries protect their forests, finance a network of protected areas and promote economic alternatives to forest destruction. In particular, in order to ensure real benefits for the climate, biodiversity and people, it should outline the minimum principles and criteria that these instruments should adhere to. It should also identify priority actions and priority areas which should receive immediate funding under these incentive mechanisms.

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VAT on insurance and financial services *

P6_TA(2008)0457

European Parliament legislative resolution of 25 September 2008 on the proposal for a Council directive amending Directive 2006/112/EC on the common system of value added tax, as regards the treatment of insurance and financial services (COM(2007)0747 — C6-0473/2007 — 2007/0267(CNS))

(2010/C 8 E/49)

(Consultation procedure)
The European Parliament,

— having regard to the Commission proposal to the Council (COM(2007)0747),

— having regard to Article 93 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0473/2007),

— having regard to Rule 51 of its Rules of Procedure,

— having regard to the report of the Committee on Economic and Monetary Affairs (A6-0344/2008),

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	AMENDMENTS
Amendment 1 **Proposal for a directive — amending act** **Recital 1**	
(1) The financial service industry makes an important contribution to growth, competitiveness and job creation but can fulfil its role only under neutral conditions of competition in an internal market. It is necessary to provide a framework which provides ***legal certainty as*** to the value added tax (VAT) treatment of financial products and their marketing and management.	(1) The financial service industry makes an important contribution to growth, competitiveness and job creation but can fulfil its role only under neutral conditions of competition in an internal market. It is necessary to provide a framework which provides ***such neutral conditions in regard*** to the value added tax (VAT) treatment of financial products and their marketing and management.

TEXT PROPOSED BY THE COMMISSION	AMENDMENTS

Amendment 2

Proposal for a directive — amending act
Recital 2

(2) The existing rules governing the exemptions from VAT for financial and insurance services laid down in Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax are out of date and have led to uneven interpretation and application. The complexity of the rules and the variation in administrative practices generates legal uncertainty for economic operators and tax authorities. This uncertainty has led to considerable litigation and has increased the administrative burden. It is therefore necessary to clarify which insurance and financial services are exempt and thereby create greater legal certainty and reduce the administrative burden for operators and authorities.	(2) The existing rules governing the exemptions from VAT for financial and insurance services laid down in Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax are out of date and have led to uneven interpretation and application. The complexity of the rules and the variation in administrative practices generates legal uncertainty for economic operators and tax authorities ***and fails to secure a level playing field in the EU***. This uncertainty has led to considerable litigation and has increased the administrative burden. It is therefore necessary to clarify which insurance and financial services are exempt and thereby create greater legal certainty ***and a level playing field in the EU*** and reduce the administrative burden for operators and authorities.

Amendment 3

Proposal for a directive — amending act
Recital 5

(5) Insurance services and financial services require similar forms of intermediation. It is therefore appropriate for intermediation in insurance and intermediation in financial services to be treated in the same way.	(5) Insurance services and financial services require similar forms of intermediation. It is therefore appropriate for intermediation in insurance and intermediation in financial services to be treated in the same way***, including intermediation by an agent who has neither a contractual relationship nor any other direct contact with any of the parties to an insurance or financial transaction to whose conclusion the agent has contributed. In such cases the tax exemption should uniformly cover all activities that are typical of an insurance or financial services agent, including all activities preparatory and subsequent to concluding a contract***.

Amendment 4

Proposal for a directive — amending act
Recital5a (new)

	(5a) It is appropriate for activities constituting management of investment funds to continue to fall within the exemption if carried out by third-party economic operators.

Amendment 5

Proposal for a directive — amending act
Recital 7

(7) Suppliers of insurance and financial services are increasingly able to allocate input VAT on costs incurred by them precisely to the output to be taxed. Where the services they supply are fee-based, they can establish the taxable amount for these services easily. It is therefore appropriate to extend the possibility to opt for taxation for such operators.	(7) Suppliers of insurance and financial services are increasingly able to allocate input VAT on costs incurred by them precisely to the output to be taxed. Where the services they supply are fee-based, they can establish the taxable amount for these services easily. It is therefore appropriate to extend the possibility to opt for taxation for such operators***, preventing any double taxation concerns that may arise by coordinating such taxation with national taxes on insurance and financial services***.

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TEXT PROPOSED BY THE COMMISSION	AMENDMENTS

Amendment 6

Proposal for a directive — amending act
Recital 8a (new)

	(8a) In adopting measures under Directive 2006/112/EC governing the right of option for taxation, the Council should ensure the uniform application of such rules in the internal market. Pending the adoption of such rules by the Council, Member States should be able to lay down the detailed rules governing the exercise of the option. Member States should notify the Commission of draft measures in this regard six months before their adoption. During that period, the Commission should assess the draft measures and issue a recommendation.

Amendment 7

Proposal for a directive — amending act
Article 1 — point 1 — point a
Directive 2006/112/EC
Article 135 — paragraph 1 — point a

(a) insurance ***and*** reinsurance;	(a) insurance***, including*** reinsurance;

Amendment 8

Proposal for a directive — amending act
Article 1 — point 1 — point a
Directive 2006/112/EC
Article 135 — paragraph 1 — point d

(d) exchange of currency ***and*** provision of cash;	(d) exchange of currency***,*** provision of cash ***and cash claims transactions***;

Amendment 9

Proposal for a directive — amending act
Article 1 — point 1 — point a
Directive 2006/112/EC
Article 135 — paragraph 1 — point e

(e) ***supply of*** securities;	(e) ***transactions concerning trading in*** securities;

Amendment 10

Proposal for a directive — amending act
Article 1 — point 1 — point a
Directive 2006/112/EC
Article 135 — paragraph 1 — point g a (new)

	(ga) derivatives of all kinds;

TEXT PROPOSED BY THE COMMISSION	AMENDMENTS

Amendment 11

Proposal for a directive — amending act
Article 1 — point 1 — point b
Directive 2006/112/EC
Article 135 — paragraph 1a

1a. The exemption provided for in ***points (a) to (e)*** of paragraph 1 shall apply to the supply of any constituent element of an insurance or financial service, which constitutes a distinct whole and has the specific and essential character of the exempt service.	1a. The exemption provided for in ***points (a) to (f)*** of paragraph 1 shall apply to the supply of any constituent element of an insurance or financial service, which constitutes a distinct whole and has the specific and essential character of the exempt service.

Amendment 12

Proposal for a directive — amending act
Article 1 — point 2
Directive 2006/112/EC
Article 135a — point 1

(1) 'insurance ***and reinsurance***' means a commitment whereby ***a person is*** obliged, in return for a payment, to provide ***another person***, in the event of materialisation of a risk, with an indemnity or a benefit as determined by the commitment;	(1) 'insurance' means a commitment whereby ***one or more persons is or are*** obliged, in return for a payment, to provide ***one or more other persons***, in the event of materialisation of a risk, with an indemnity or a benefit as determined by the commitment;

Amendment 13

Proposal for a directive — amending act
Article 1 — point 2
Directive 2006/112/EC
Article 135a — point 8 — introductory part

(8) '***supply of*** securities' means the ***supply*** of tradable instruments other than an instrument establishing title to goods or to the rights referred to in Article 15(2), representing financial value and reflecting any one or more of the following:	(8) '***transactions concerning trading in*** securities' means the ***sale*** of tradable instruments other than an instrument establishing title to goods or to the rights referred to in Article 15(2), representing financial value and reflecting any one or more of the following:

Amendment 14

Proposal for a directive — amending act
Article 1 — point 2
Directive 2006/112/EC
Article 135a — point 8 — point c

(c) unit ownership in undertakings for collective investment ***in the securities referred to in points (a) or (b), in other exempted financial instruments referred to in points (a) to (d) of Article 135(1) or*** in other undertakings for collective investment;	(c) unit ownership in ***investment funds, as defined in point 10, or in*** undertakings for collective investment in other undertakings for collective investment;

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TEXT PROPOSED BY THE COMMISSION	AMENDMENTS

Amendment 15

Proposal for a directive — amending act
Article 1 — point 2
Directive 2006/112/EC
Article 135a — point 8 — point c a (new)

	(ca) title to cash-settled financial, credit, and commodity derivatives and related options;

Amendment 16

Proposal for a directive — amending act
Article 1 — point 2
Directive 2006/112/EC
Article 135a — point 9

(9) 'intermediation in insurance and financial transactions' means the supply of services rendered ***to, and remunerated by, a contractual party*** as a distinct act of mediation in relation to the insurance or financial transactions referred to in points (a) to (e) of Article 135(1), by ***a*** *third party* ***intermediary***;	(9) 'intermediation in insurance and financial transactions' means the supply of services rendered as a distinct***, direct or indirect*** act of mediation in relation to the insurance or financial transactions referred to in points (a) to (e) of Article 135(1), by *third-party* ***intermediaries, provided that none of the intermediaries is a counterparty to those insurance or financial transactions***;

Amendment 17

Proposal for a directive — amending act
Article 1 — point 2
Directive 2006/112/EC
Article 135a — point 10

(10) 'investment funds' means ***undertakings for collective investment in the exempted financial instruments referred to in points (a) to (e) of Article 135(1) and in real estate***;	(10) 'investment funds' means ***specially constituted investment vehicles created for the sole purpose of gathering assets from investors and investing those assets in a diversified pool of assets, including pension funds and vehicles used to implement and execute collective pension schemes***;

Amendment 18

Proposal for a directive — amending act
Article 1 — point 2
Directive 2006/112/EC
Article 135a — point 11

(11) 'management of investment funds' means activities aimed at realising the investment objectives of the investment fund concerned.	(11) 'management of investment funds' means activities aimed at realising the investment objectives of the investment fund concerned ***and shall include at least strategic and tactical asset management and asset allocation, including advisory services, as well as currency and risk management***.

Amendment 19

Proposal for a directive — amending act
Article 1 — point 3
Directive 2006/112/EC
Article 137 — paragraph 1 — point a

(3) In Article 137(1), point (a) is deleted.	***deleted***

TEXT PROPOSED BY THE COMMISSION	AMENDMENTS

Amendment 20

Proposal for a directive — amending act
Article 1 — point 4
Directive 2006/112/EC
Article 137a — paragraph 1

1. From 1 January 2012, Member States shall allow taxable persons a right of option for taxation in respect of the services referred to in ***points (a) to (g)*** of Article 135(1).	1. From 1 January 2012, Member States shall allow taxable persons ***in each individual case*** a right of option for taxation in respect of ***one*** of the services referred to in ***points (a) to (ga)*** of Article 135(1)***, where that service is provided to another taxable person established in the same Member State or elsewhere in the Community***.

Amendment 21

Proposal for a directive — amending act
Article 1 — point 4
Directive 2006/112/EC
Article 137a — paragraph 1a (new)

	1a. The Commission shall report to the European Parliament and the Council on the operation of the right of option under paragraph 1 by (*). If appropriate, the Commission shall present a legislative proposal concerning detailed rules governing the exercise of that right of option and any other amendments of this Directive in this regard.
	(*) *…Three years after the entry into force of Directive …/…/EC.*

Amendment 22

Proposal for a directive — amending act
Article 1 — point 4
Directive 2006/112/EC
Article 137a — paragraph 2

2. The Council shall adopt the measures necessary for the implementation of paragraph 1 pursuant to the procedure provided for in Article 397. So long as the Council has not adopted such measures, Member States may ***lay down*** the detailed rules governing exercise of the option under paragraph 1.	2. The Council shall adopt the measures necessary for the implementation of paragraph 1 pursuant to the procedure provided for in Article 397. So long as the Council has not adopted such measures, Member States may ***maintain*** the ***existing*** detailed rules governing exercise of the option under paragraph 1.

Amendment 23

Proposal for a directive — amending act
Article 1 — point 4
Directive 2006/112/EC
Article 137b — point 1

(1) the group itself ***and all its members are*** established ***or resident*** in the Community;	(1) the group itself ***is*** established in the Community;

TEXT PROPOSED BY THE COMMISSION	AMENDMENTS

Amendment 24

Proposal for a directive — amending act
Article 1 — point 4
Directive 2006/112/EC
Article 137b — point 3

(3) members of the group are supplying services which are exempt under ***Article 135(1)(a) to (g)*** or other services in respect of which they are not taxable persons;	(3) members of the group are supplying services which are exempt under ***Article 135(1)(a) to (ga)*** or other services in respect of which they are not taxable persons;

Amendment 25

Proposal for a directive — amending act
Article 1 — point 4
Directive 2006/112/EC
Article 137b — point 4

(4) the services ***are*** supplied by the group ***only to its members and*** are necessary to allow members to supply services which are exempt pursuant to ***Article 135(1)(a) to (g);***	(4) the services supplied by the group are necessary to allow members to supply services which are exempt pursuant to ***Article 135(1)(a) to (ga);***

Amendment 26

Proposal for a directive — amending act
Article 1 — point 4
Directive 2006/112/EC
Article 137b — point 5

(5) the group claims from its members only the exact reimbursement of their share of the joint expenses***, excluding any*** transfer-pricing adjustments made for the purposes of direct taxation.	(5) the group claims from its members only the exact reimbursement of their share of the joint expenses***;*** transfer-pricing adjustments made for the purposes of direct taxation ***shall not affect the group's exemption from turnover tax***.

Amendment 27

Proposal for a directive — amending act
Article 1 — point 4 a (new)
Directive 2006/112/EC
Article 169 — point c

	(4a) In Article 169, point (c) is replaced by the following:
	(c) **transactions which are exempt pursuant to *points (a) to (ga)* of Article 135(1), where the customer is established outside the Community or where those transactions relate directly to goods to be exported out of the Community.**

TEXT PROPOSED BY THE COMMISSION	AMENDMENTS

Amendment 28

Proposal for a directive — amending act
Article 2 — 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 2009 at the latest***. They shall forthwith communicate to the Commission the text of those provisions and correlation table between those provisions and Directive.	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive ***while ensuring that end-consumers benefit from the restructuring of the present VAT arrangement***. They shall forthwith communicate to the Commission the text of those provisions and correlation table between those provisions and Directive.