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<u>Notice No</u>	<u>Contents</u>	<u>Page</u>
	I <i>Resolutions, recommendations and opinions</i>	
	RESOLUTIONS	
	European Parliament	
	2009-2010 SESSION	
	Sittings of 5 to 7 May 2009	
	The Minutes of this session have been published in OJ C 263 E, 5.11.2009.	
	TEXTS ADOPTED	
	Tuesday 5 May 2009	
2010/C 212 E/01	Recommendation to the Commission in Complaint 185/2005/ELB European Parliament resolution of 5 May 2009 on the Special Report by the European Ombudsman to the European Parliament following his Draft Recommendation to the European Commission in Complaint 185/2005/ELB (2009/2016(INI))	1
	Wednesday 6 May 2009	
2010/C 212 E/02	Amendment of the Interinstitutional Agreement of 17 May 2006 European Parliament resolution of 6 May 2009 on the amended proposal for a decision of the European Parliament and of the Council amending the Interinstitutional Agreement of 17 May 2006 on budgetary discipline and sound financial management as regards the multiannual financial framework (2007-2013) (COM(2009)0171 – C6-0508/2008 – 2008/2332(ACI))	3
	ANNEX	4
2010/C 212 E/03	Energy labelling of televisions European Parliament resolution of 6 May 2009 on the draft Commission directive implementing and amending Council Directive 92/75/EEC with regard to energy labelling of televisions	6
2010/C 212 E/04	Non-State actors and local authorities in development European Parliament resolution of 6 May 2009 on the draft Commission decision establishing the 2009 Annual Action Programme for Non-State Actors and Local Authorities in Development (Part II: Targeted Projects)	8

EN

(Continued overleaf)

<u>Notice No</u>	Contents (continued)	Page
2010/C 212 E/05	Renewed Social Agenda European Parliament resolution of 6 May 2009 on the Renewed social agenda (2008/2330(INI))	11
2010/C 212 E/06	Active inclusion of people excluded from the labour market European Parliament resolution of 6 May 2009 on the active inclusion of people excluded from the labour market (2008/2335(INI))	23
Thursday 7 May 2009		
2010/C 212 E/07	Gender mainstreaming in EU external relations European Parliament resolution of 7 May 2009 on gender mainstreaming in EU external relations and peace-building/nation-building (2008/2198(INI))	32
2010/C 212 E/08	Parliament's new role and responsibilities in implementing the Lisbon Treaty European Parliament resolution of 7 May 2009 on Parliament's new role and responsibilities in implementing the Treaty of Lisbon (2008/2063(INI))	37
2010/C 212 E/09	Financial aspects of the Lisbon Treaty European Parliament resolution of 7 May 2009 on the financial aspects of the Lisbon Treaty (2008/2054(INI))	46
2010/C 212 E/10	Situation in the Republic of Moldova European Parliament resolution of 7 May 2009 on the situation in the Republic of Moldova	54
2010/C 212 E/11	Human rights in the world 2008 and the EU's policy on the matter European Parliament resolution of 7 May 2009 on the Annual Report on Human Rights in the World 2008 and the European Union's policy on the matter (2008/2336(INI))	60
2010/C 212 E/12	Institutional balance of the European Union European Parliament resolution of 7 May 2009 on the impact of the Treaty of Lisbon on the development of the institutional balance of the European Union (2008/2073(INI))	82
2010/C 212 E/13	Relations between the European Parliament and national parliaments under the Treaty of Lisbon European Parliament resolution of 7 May 2009 on the development of the relations between the European Parliament and national parliaments under the Treaty of Lisbon (2008/2120(INI))	94
2010/C 212 E/14	Implementation of the citizens' initiative European Parliament resolution of 7 May 2009 requesting the Commission to submit a proposal for a regulation of the European Parliament and of the Council on the implementation of the citizens' initiative (2008/2169(INI))	99
	ANNEX	103
2010/C 212 E/15	Draft Commission regulation on REACH, as regards Annex XVII European Parliament resolution of 7 May 2009 on draft Commission regulation amending Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), as regards Annex XVII	106
2010/C 212 E/16	Iran: the case of Roxana Saberi European Parliament resolution of 7 May 2009 on Iran: the case of Roxana Saberi	109



Tuesday 5 May 2009

I

(Resolutions, recommendations and opinions)

RESOLUTIONS

EUROPEAN PARLIAMENT

Recommendation to the Commission in Complaint 185/2005/ELB

P6_TA(2009)0340

European Parliament resolution of 5 May 2009 on the Special Report by the European Ombudsman to the European Parliament following his Draft Recommendation to the European Commission in Complaint 185/2005/ELB (2009/2016(INI))

(2010/C 212 E/01)

The European Parliament,

- having regard to the Special Report from the European Ombudsman to the European Parliament,
- having regard to Article 195(1), second subparagraph, of the EC Treaty,
- having regard to Decision 94/262/ECSC, EC, Euratom of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties ⁽¹⁾, particularly Article 3(7) thereof,
- having regard to the Charter of Fundamental Rights of the European Union, particularly Article 21 thereof,
- having regard to the European Code of Good Administrative Behaviour, particularly Article 5(3) thereof,
- having regard to Rule 195(2), first sentence, of its Rules of Procedure,
- having regard to the report of the Committee on Petitions (A6-0201/2009),

⁽¹⁾ OJ L 113, 4.5.1994, p. 15.

Tuesday 5 May 2009

- A. whereas according to the Court of Justice the principle of non-discrimination on grounds of age as enshrined in Article 21 of the Charter of Fundamental Rights of the European Union constitutes a general principle of Community law,
 - B. whereas a difference in treatment on grounds of age constitutes discrimination on those grounds, unless that difference in treatment is objectively justified and the means to achieve it are appropriate and necessary,
 - C. whereas according to the Ombudsman the Commission has failed to justify adequately its treatment of freelance auxiliary conference interpreters (ACIs) over 65 years of age, and continues to adhere to its current policy on hiring ACIs,
 - D. whereas the Ombudsman considers that this constitutes an instance of maladministration,
 - E. whereas Parliament's responsibility as the Union's sole elected body is to safeguard and protect the independence of the European Ombudsman in the conduct of his duties towards European citizens and to monitor the implementation of his recommendations,
 1. Endorses the critical remarks of the European Ombudsman and his recommendation concerning the Commission's policy on hiring ACIs over 65 years of age;
 2. Calls on the Commission to change its current policy of imposing an effective ban on the recruitment of ACIs over 65 years of age; does not, however, consider that compensation is warranted in the circumstances of this case;
 3. Notes that Parliament, after receiving a similar draft recommendation from the Ombudsman, acted immediately to change its practice as regards the hiring of ACIs over 65 years of age and interpreted the applicable rules in a manner that does not lead to discrimination;
 4. Considers that changing the applicable rules and removing age discrimination from the hiring process does not place a European institution under any obligation to recruit ACIs over 65 years of age, but would, if such a change were implemented, bring the Commission's rules into line with a general principle of European Union law; in addition, considers that, given the shortage of interpreters in specific official languages, it would enhance the institution's ability to secure the best possible service, as has been proven in the Parliament;
 5. Calls on the Commission to work together with Parliament in reviewing the rules applicable to hiring ACIs and other staff, so as to ensure that discrimination of any kind is avoided;
 6. Instructs its President to forward this resolution to the Commission, the Council and the European Ombudsman.
-

Wednesday 6 May 2009

Amendment of the Interinstitutional Agreement of 17 May 2006

P6_TA(2009)0354

European Parliament resolution of 6 May 2009 on the amended proposal for a decision of the European Parliament and of the Council amending the Interinstitutional Agreement of 17 May 2006 on budgetary discipline and sound financial management as regards the multiannual financial framework (2007-2013) (COM(2009)0171 – C6-0508/2008 – 2008/2332(ACI))

(2010/C 212 E/02)

The European Parliament,

- having regard to the amended Commission proposal to the European Parliament and the Council (COM(2009)0171),
 - 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 ⁽¹⁾ (IIA of 17 May 2006), and in particular to Points 21, 22 and 23 thereof,
 - having regard to its resolution of 25 March 2009 on the Mid-term Review of the 2007-2013 Financial Framework ⁽²⁾ and of 10 March 2009 on Guidelines for the 2010 budget procedure ⁽³⁾,
 - having regard to the Conclusions of the Trialogue held on 2 April 2009,
 - having regard to the report of the Committee on Budgets (A6-0278/2009),
1. Approves the conclusions of the Trialogue of 2 April 2009;
 2. Stresses that the agreement reached on the revision of the multiannual financial framework is the result of successful interinstitutional cooperation in responding to the financial and economic crisis that Member States are experiencing, through the promotion of solidarity in the energy resources field and the promotion of broadband in rural areas as well as the support to the agriculture sector;
 3. Recalls that with this agreement the Parliament, in its double capacity of legislative and budgetary authority, has protected its existing priorities, as it did during the 2008 budgetary procedure when an agreement on Galileo financing was reached;
 4. Agrees to the political compromise which provides for a compensation mechanism planned for the 2010 budgetary procedure, as well as - but only if necessary - for the 2011 budgetary procedure; recalls that, as stated in the Joint Declaration adopted by the European Parliament, the Council and the Commission during Trilogue on 2 April 2009, the compensation mechanism will be without prejudice to the financial envelopes of the co-decided programmes and the annual budgetary procedure and will be financed by using all budgetary means available in the budgetary legal framework;
 5. Reiterates that deficits and leftovers are still unresolved from the outcome of the negotiations of the IIA of 17 May 2006 and that these deficits should be addressed in the 2008-2009 mid-term review, as provided for in Declaration 3 of the IIA of 17 May 2006, as well as in the course of the annual budgetary procedures, if possible through more flexibility and in any case by all means foreseen by the IIA of 17 May 2006; recalls, as stated by Parliament in its unilateral declaration during Trilogue on 2 April 2009, that the Commission should take on board during the mid-term review process the principles laid down in its resolution adopted on 25 March 2009;

⁽¹⁾ OJ C 139, 14.6.2006, p. 1.

⁽²⁾ Texts adopted, P6_TA(2009)0174.

⁽³⁾ Texts adopted, P6_TA(2009)0095 and 0096.

Wednesday 6 May 2009

6. Cautions against the regular use of margins under heading 2 to finance other headings, since this could jeopardise the interests of the agricultural sector, in light of unexpected decreases in market prices;
7. Regrets that the agreement with the Council was reached only two months before the end of parliamentary term, leaving less space for the negotiations, and regrets that this put the institutions under pressure, even if in the usual climate of loyal cooperation;
8. Approves the decision annexed to this resolution;
9. Instructs its President to sign the decision with the President of the Council and arrange for its publication in the *Official Journal of the European Union*;
10. Instructs its President to forward this resolution, including its annex, to the Council and the Commission.

ANNEX

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 6 May 2009

amending the Interinstitutional Agreement of 17 May 2006 on budgetary discipline and sound financial management as regards the multiannual financial framework (2007-2013)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Interinstitutional Agreement between the European Parliament, the Council and the Commission of 17 May 2006 on budgetary discipline and sound financial management ⁽¹⁾, and in particular to Points 21, 22, first and second paragraphs, and 23 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) At the trilogue meeting of 2 April 2009 the European Parliament, the Council and the Commission have agreed on the financing, in the framework of the European Economic Recovery Plan for modernisation of infrastructures and energy solidarity, of projects in the field of energy and broadband internet, as well as for strengthening operations related to the 'new challenges' defined in the context of the assessment of the 2003 mid-term reform of the Common Agricultural Policy ('Health Check'). The financing requires, as a first step, a revision of the multiannual financial framework 2007-2013 in accordance with Points 21, 22, and 23 of the Interinstitutional Agreement, so as to raise the ceiling for the year 2009 for commitment appropriations under sub-heading 1a by an amount of EUR 2 000 000 000 in current prices.
- (2) The increase of the ceiling for sub-heading 1a will be fully offset by decreasing the ceiling for commitment appropriations under heading 2 for the year 2009 by EUR 2 000 000 000.
- (3) In order to keep an appropriate relationship between commitments and payments, the annual ceilings for payment appropriations will be adjusted. The adjustment will be neutral.
- (4) Annex I of the Interinstitutional Agreement on budgetary discipline and sound financial management should therefore be amended accordingly ⁽²⁾,

⁽¹⁾ OJ C 139, 14.6.2006, p. 1.

⁽²⁾ For that purpose, the figures resulting from the above agreement are converted into 2004 prices.

Wednesday 6 May 2009

HAVE DECIDED AS FOLLOWS:

Sole Article

Annex I to the Interinstitutional Agreement on budgetary discipline and sound financial management is replaced by the Annex to this Decision.

Done at Strasbourg on 6 May 2009,

For the European Parliament
The President

For the Council
The President

ANNEX

**FINANCIAL FRAMEWORK 2007-2013 REVISED FOR EUROPEAN ECONOMIC RECOVERY PLAN
(CONSTANT 2004 PRICES)**

(EUR million - constant 2004 prices)

COMMITMENT APPROPRIATIONS	2007	2008	2009	2010	2011	2012	2013	Total 2007-2013
1. Sustainable growth	50 865	53 262	55 883	54 860	55 400	56 866	58 256	385 392
1a Competitiveness for growth and employment	8 404	9 595	12 021	11 000	11 306	12 122	12 914	77 362
1b Cohesion for growth and employment	42 461	43 667	43 862	43 860	44 094	44 744	45 342	308 030
2. Preservation and Management of Natural Resources	51 962	54 685	52 205	53 379	52 528	51 901	51 284	367 944
of which: market-related expenditure and direct payments	43 120	42 697	42 279	41 864	41 453	41 047	40 645	293 105
3. Citizenship, freedom, security and justice	1 199	1 258	1 380	1 503	1 645	1 797	1 988	10 770
3a Freedom, Security and Justice	600	690	790	910	1 050	1 200	1 390	6 630
3b Citizenship	599	568	590	593	595	597	598	4 140
4. EU as a global player	6 199	6 469	6 739	7 009	7 339	7 679	8 029	49 463
5. Administration ⁽¹⁾	6 633	6 818	6 973	7 111	7 255	7 400	7 610	49 800
6. Compensation	419	191	190					800
TOTAL COMMITMENT APPROPRIATIONS	117 277	122 683	123 370	123 862	124 167	125 643	127 167	864 169
as a percentage of GNI	1,08 %	1,09 %	1,07 %	1,05 %	1,03 %	1,02 %	1,01 %	1,048 %
TOTAL PAYMENT APPROPRIATIONS	115 142	119 805	110 439	119 126	116 552	120 145	119 391	820 600
as a percentage of GNI	1,06 %	1,06 %	0,96 %	1,01 %	0,97 %	0,98 %	0,95 %	1,00 %
Margin available	0,18 %	0,18 %	0,28 %	0,23 %	0,27 %	0,26 %	0,29 %	0,24 %
Own Resources Ceiling as a percentage of GNI	1,24 %	1,24 %	1,24 %	1,24 %	1,24 %	1,24 %	1,24 %	1,24 %

⁽¹⁾ The expenditure on pensions included under the ceiling for this heading is calculated net of the staff contributions to the relevant scheme, within the limit of EUR 500 million at 2004 prices for the period 2007-2013.

Wednesday 6 May 2009

Energy labelling of televisions

P6_TA(2009)0357

European Parliament resolution of 6 May 2009 on the draft Commission directive implementing and amending Council Directive 92/75/EEC with regard to energy labelling of televisions

(2010/C 212 E/03)

The European Parliament,

- having regard to Council Directive 92/75/EEC of 22 September 1992 on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances ⁽¹⁾, and in particular Articles 9 and 12 thereof,
 - having regard to the draft Commission directive implementing and amending Council Directive 92/75/EEC with regard to energy labelling of televisions,
 - having regard to the opinion delivered on 30 March 2009 by the committee referred to in Article 10 of Directive 92/75/EEC,
 - having regard to the Commission Communication of 19 October 2006 entitled 'Action Plan for Energy Efficiency: Realising the Potential' (COM(2006)0545),
 - having regard to the Commission proposal of 13 November 2008 for a directive of the European Parliament and of the Council on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (COM(2008)0778),
 - having regard to its position of 5 May 2009 on the proposal for a directive of the European Parliament and of the Council on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (recast) ⁽²⁾,
 - having regard to Article 5a(3)(b) of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽³⁾,
 - having regard to Rule 81(2) and (4)(b) of its Rules of Procedure,
- A. whereas the main aim of Directive 92/75/EEC (the Framework Directive), as stated in Article 1 thereof, is to 'enable the harmonisation of national measures on the publication, particularly by means of labelling and of product information, of information on the consumption of energy and of other essential resources, and additional information concerning certain types of household appliances, thereby allowing consumers to choose more energy-efficient appliances',
- B. whereas the Framework Directive also states that 'the provision of accurate, relevant and comparable information on the specific energy consumption of household appliances may influence the public's choice in favour of those appliances which consume less energy',
- C. whereas, as pointed out in the Commission Impact Assessment accompanying the proposal for a directive of the European Parliament and of the Council on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (SEC(2008)2862), the original, successful A-G label has been followed as a model in different countries around the world, such as Brazil, China, Argentina, Chile, Iran, Israel and South Africa,

⁽¹⁾ OJ L 297, 13.10.1992, p. 16.

⁽²⁾ Texts adopted, P6_TA(2009)0345.

⁽³⁾ OJ L 184, 17.7.1999, p. 23.

Wednesday 6 May 2009

- D. whereas televisions are high energy consuming appliances and consequently there is considerable potential for saving energy by adding this category to the energy labelling scheme under Article 1(2) of the Framework Directive,
- E. whereas the energy labelling of televisions should be as consistent as possible with the established energy labelling schemes for other household appliances,
- F. whereas it is stated in the above-mentioned Commission Communication that 'the existing labelling classifications will be upgraded and re-scaled every 5 years or when new technological developments justify it, based on eco-design studies, with a view to reserve A-label status for the top 10-20 % best performing equipment',
- G. whereas it is essential for the successful implementation of the energy labelling scheme to introduce measures that will provide information on the energy efficiency of household appliances that is clear, comprehensive, comparable and easily understandable to the consumer,
- H. whereas the consumer purchasing of greater numbers of efficient appliances in place of less efficient appliances would increase the revenues of appliance manufacturers,
- I. whereas the draft Commission directive, in particular as regards the energy label design and energy efficiency classes, introduces another change by adding new A classes (A-20 %, A-40 %, A-60 %, for example) which have the potential to confuse consumers further, to hamper their proper understanding of the energy labelling scheme and to undermine their ability to choose appliances with higher energy efficiency,
- J. whereas a small number of technical adjustments to the label could result in a label which would be much clearer and more understandable to consumers,
- K. whereas evidence shows that consumers find the A-G scale clear, but the Commission has not conducted any impact assessment to show whether A-20 %, A-40 %, A-60 % alongside empty lower classes is helpful or misleading for consumers,
- L. whereas re-scaling the existing products in a closed A-G scale would, in particular, prevent the creation of empty lower classes that may mislead consumers,
- M. whereas the introduction of these additional efficiency classes on existing A-G labels, including for other products, is likely to add to confusion about whether class A represents an efficient or an inefficient product,
- N. whereas such a measure does not serve the aim of the basic instrument in providing accurate, relevant and comparable information to consumers,
- O. whereas the Commission has put forward its proposal for a recast of the Framework Directive which could introduce further changes that would have an effect on the proposed implementing measures,
1. Opposes the adoption of the draft Commission directive implementing and amending Council Directive 92/75/EEC with regard to energy labelling of televisions;
 2. Considers that the draft Commission directive is not compatible with the aim of the basic instrument;
 3. Calls on the Commission to withdraw the draft directive and to submit a new one, based on a closed A-G scale, to the committee referred to in Article 10 of Directive 92/75/EEC as soon as possible, and in any case no later than 30 September 2009;

Wednesday 6 May 2009

4. Considers the label layout an essential element of the energy labelling directive, which should be decided as part of the revision and recast currently being considered under the codecision procedure.
5. Instructs its President to forward this resolution to the Council and the Commission, and to the governments and the parliaments of the Member States.

Non-State actors and local authorities in development

P6_TA(2009)0358

European Parliament resolution of 6 May 2009 on the draft Commission decision establishing the 2009 Annual Action Programme for Non-State Actors and Local Authorities in Development (Part II: Targeted Projects)

(2010/C 212 E/04)

The European Parliament,

- having regard to Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation ⁽¹⁾, and in particular Article 14(1)(b) thereof,
 - having regard to the draft Commission decision establishing the 2009 Annual Action Programme for Non-State Actors and Local Authorities in Development (Part II: Targeted Projects) (CMTD(2009)0387 – D004766/01),
 - having regard to the opinion delivered on 15 April 2009 by the committee referred to in Article 35(1) of Regulation (EC) No 1905/2006 ('the Development Cooperation Instrument (DCI) management committee'),
 - having regard to the 'General Evaluation of Actions to Raise Public Awareness of Development Issues in Europe / Development Education' (EC Reference No 2007/146962. Final Report),
 - having regard to its resolution of 13 March 2008 on the challenge of EU development cooperation policy for the new Member States ⁽²⁾,
 - having regard to Article 8 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽³⁾,
 - having regard to Rule 81 of its Rules of Procedure,
- A. whereas, on 15 April 2009, the DCI management committee voted by written procedure in favour of the draft 2009 Annual Action Programme for Non-State Actors and Local Authorities in Development (Part II: Targeted Projects) (CMTD(2009)0387 – D004766/01),

⁽¹⁾ OJ L 378, 27.12.2006, p. 41.

⁽²⁾ Texts adopted, P6_TA(2008)0097.

⁽³⁾ OJ L 184, 17.7.1999, p. 23.

Wednesday 6 May 2009

- B. whereas, pursuant to Article 7(3) of Decision 1999/468/EC and Article 1 of the Agreement of 3 June 2008 between the European Parliament and the Commission on procedures for implementing Council Decision 1999/468/EC, Parliament received the draft implementing measures submitted to the DCI management committee and the results of the voting,
- C. whereas Article 14(1)(b) of Regulation (EC) No 1905/2006 stipulates that one of the objectives of the thematic programme on non-State actors and local authorities in development is to 'increase the level of awareness of the European citizen regarding development issues and mobilise active public support in the Community and acceding countries for poverty reduction and sustainable development strategies in partner countries',
- D. whereas concerns were raised by 11 Member States in a 'Joint Statement of Member States on DCI Non-State Actors and Local Authorities', sent to the Commission on 19 March 2009, about the Commission's intention to stop the direct financing ('targeted projects' procedure) of the TRIALOG and DEEEP⁽¹⁾ projects, which has been ongoing since 1998 and 2003 respectively, and instead oblige them to participate in a 'call for proposals',
- E. whereas the 'Joint Statement' of the 11 Member States, including 9 'new' Member States, warns that the timing of the Commission's plan to discontinue direct support for TRIALOG and DEEEP is 'most inconvenient', 'taking into account the current financial situation in many of the "new" Member States and the effects that it has on the NGOs' capability to function and to develop', and expressing concern that 'a gap in financing may occur which will harm these projects by causing the loss of qualified staff as well as know-how and already established networks',
- F. whereas similar concerns were raised by the Chairman of the Committee on Development in a letter of 19 March 2009, pointing out that 'information and capacity building in the field of development cooperation in the new Member States, and development education for the European public have been constant priorities for the committee', and requesting the Commission to provide Parliament 'with the objective and transparent criteria on which it decides which activities and projects qualify for direct financing', and further requesting that 'the implementation of this proposed measure be delayed by at least one year in order to avoid possible funding gaps and putting at risk the very survival of these very useful projects',
- G. whereas the above-mentioned 'General Evaluation of Actions to Raise Public Awareness of Development Issues in Europe / Development Education' concludes that 'the strategic use of targeted projects has helped to achieve the objectives of the "Co-financing with European Development NGOs" programme' and that 'DEEEP has been an important coordination mechanism for increasing dialogue, promoting exchanges of best practice and building networks and partnerships at EU level and between national platforms and the EU', and further that 'the contribution of TRIALOG in improving dialogue and building capacity in its work with new Member States and accession states has been effective',
- H. whereas the TRIALOG programme contributes to meeting the need, highlighted in Parliament's resolution of 13 March 2008 on the challenge of EU development cooperation policy for the new Member States, for an overall communication and education strategy to remedy the lack of public recognition of development cooperation priorities in the new Member States, and the DEEEP programme responds to its call for increased development education and awareness raising in European education mentioned in the same resolution,
- I. whereas, under the above-mentioned 2009 Annual Action Programme, the Commission also proposes to allocate a direct grant for a project on 'Strengthening Cuban Managerial Capabilities', to be implemented by the European Foundation of Management Development; whereas, under the DCI Thematic Programme for Non-State Actors and Local Authorities in Development, the targeted project procedure has never previously been used for activities in partner countries,

⁽¹⁾ DEEEP: 'Development Education Exchange in Europe' - <http://www.deeep.org/>
TRIALOG: 'Development NGOs in the enlarged EU' - <http://www.trialog.or.at/start.asp?ID=96>

Wednesday 6 May 2009

J. whereas the Commission subsequently released an 'Explanatory note for the DCI NSA-LA committee' ⁽¹⁾, in which it clarifies the selection criteria for targeted actions, explaining that these are based on Article 168 of the Implementing rules of the Financial Regulation ⁽²⁾, and that grants may, in particular, be awarded 'to bodies with a *de jure* or *de facto* monopoly' and 'for actions with specific characteristics that require a particular type of body on account of its technical competence, its high degree of specialisation or its administrative power',

1. Opposes the adoption of the draft Commission decision establishing the 2009 Annual Action Programme for Non-State Actors and Local Authorities in Development (Part II: Targeted Projects) (CMTD(2009)0387 – D004766/01) in its current form;

2. Requests the Commission to clarify the criteria for determining the existence of a '*de jure* or *de facto* monopoly' situation, given that, in their 'Joint Statement', the 11 Member States mention that, from the perspective of the 'new' Member States, a '*de facto* monopoly' situation still exists with respect to the Europe-wide activities carried out by Trialog and DEEEP;

3. Insists on open, transparent and horizontal application of the criteria for awarding direct grants for targeted projects in order to ensure a level playing field for all; insists, therefore, that the same criteria be applied for Trialog, DEEEP and the project on 'Strengthening Cuban Managerial Capabilities';

4. Insists that uninterrupted funding be assured, through a strategic, Europe-wide programme, for the valuable activities of promoting exchanges of best practice, and building networks and partnerships at EU level and between national platforms and the EU, and for improving dialogue and building capacity in the work with 'new' Member States and accession states;

5. Invites the Commission to engage in a dialogue with Parliament in the context of its forthcoming review ⁽³⁾ of the system of calls for proposals for the Thematic Programmes; considers it to be inappropriate to anticipate any recommendations for modifications or improvements of the system that may result from the review; calls, therefore, for existing arrangements on directly funded actions to be left unchanged for a 12-month period, and for any future changes to reflect the outcome of the review process and to ensure long-term, predictable and sustainable development cooperation activities;

6. Calls on the Commission to adapt its draft decision establishing the 2009 Annual Action Programme for Non-State Actors and Local Authorities in Development (Part II: Targeted Projects) (CMTD(2009)0387 – D004766/01) in order to include EU-wide projects for raising awareness of development issues in the enlarged EU and for development education exchange in the EU;

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

⁽¹⁾ AIDCO/F1/NC D(2009) of 6.4.2009 (D004766-01-EN-02).

⁽²⁾ Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 357, 31.12.2002, p. 1).

⁽³⁾ The 'Palermo II process'.

Wednesday 6 May 2009

Renewed Social Agenda

P6_TA(2009)0370

European Parliament resolution of 6 May 2009 on the Renewed social agenda (2008/2330(INI))

(2010/C 212 E/05)

The European Parliament,

- having regard to the Commission communication of 2 July 2008 on the Renewed social agenda: Opportunities, access and solidarity in 21st century Europe (COM(2008)0412) (Communication on the Renewed Social Agenda),
- having regard to its resolution of 18 November 2008 with recommendations to the Commission on the application of the principle of equal pay for men and women ⁽¹⁾,
- having regard to its resolution of 22 October 2008 on challenges to collective agreements in the EU ⁽²⁾,
- having regard to the Commission communication of 2 July 2008 entitled 'A renewed commitment to social Europe: Reinforcing the Open Method of Coordination for Social Protection and Social Inclusion' (COM(2008)0418),
- having regard to its resolution of 3 February 2009 on non-discrimination based on sex and intergenerational solidarity ⁽³⁾,
- having regard to the Commission communication of 2 July 2008 entitled 'Non-discrimination and equal opportunities: A renewed commitment' (COM(2008)0420),
- having regard to the Commission communication of 26 November 2008 on a European Economic Recovery Plan (COM(2008)0800),
- having regard to the Commission communication of 3 October 2008 entitled 'A better work-life balance: stronger support for reconciling professional, private and family life' (COM(2008)0635),
- having regard to the Commission communication of 12 October 2006 entitled 'The long-term sustainability of public finances in the EU' (COM(2006)0574), and to Parliament's resolution of 20 November 2008 on the future of social security systems and pensions: their financing and the trend towards individualisation ⁽⁴⁾,
- having regard to the Commission communication of 17 October 2007 entitled 'Modernising social protection for greater social justice and economic cohesion: taking forward the active inclusion of people furthest from the labour market' (COM(2007)0620), and to Parliament's resolution of 9 October 2008 on promoting social inclusion and combating poverty, including child poverty, in the EU ⁽⁵⁾,
- having regard to Council Recommendation 92/441/EEC of 24 June 1992 on common criteria concerning sufficient resources and social assistance in social protection systems ⁽⁶⁾,

⁽¹⁾ Texts adopted, P6_TA(2008)0544.

⁽²⁾ Texts adopted, P6_TA(2008)0513.

⁽³⁾ Texts adopted, P6_TA(2009)0039.

⁽⁴⁾ Texts adopted, P6_TA(2008)0556.

⁽⁵⁾ Texts adopted, P6_TA(2008)0467.

⁽⁶⁾ OJ L 245, 26.8.1992, p. 46.

Wednesday 6 May 2009

- having regard to the Commission communication of 27 June 2007 entitled ‘Towards Common Principles of Flexicurity: More and better jobs through flexibility and security’ (COM(2007)0359), and to Parliament’s resolution of 29 November 2007 on Common Principles of Flexicurity ⁽¹⁾,
 - having regard to the Commission communication of 25 June 2008 entitled ‘Think Small First - A “Small Business Act” for Europe’ (COM(2008)0394),
 - having regard to the Commission communication of 26 February 2007 entitled ‘Social reality stocktaking – Interim report to the 2007 Spring European Council’ (COM(2007)0063), and to Parliament’s resolution of 15 November 2007 on social reality stocktaking ⁽²⁾,
 - having regard to the Commission communication of 24 May 2006 entitled ‘Promoting decent work for all - The EU contribution to the implementation of the decent work agenda in the world’ (COM(2006)0249), and to Parliament’s resolution of 23 May 2007 on promoting decent work for all ⁽³⁾,
 - having regard to its resolution of 13 October 2005 on women and poverty in the European Union ⁽⁴⁾, and the definition of poverty therein,
 - having regard to its position of 17 June 2008 on the proposal for a decision of the European Parliament and of the Council on the European Year for Combating Poverty and Social Exclusion (2010) ⁽⁵⁾,
 - having regard to the Charter of Fundamental Rights of the European Union, and in particular to the provisions therein regarding social rights, and to Article 136 of the EC Treaty,
 - having regard to the Commission Green Paper of 22 November 2006 entitled ‘Modernising labour law to meet the challenges of the 21st century’ (COM(2006)0708),
 - having regard to the Commission Green Paper of 18 July 2001 entitled ‘Promoting a European framework for Corporate Social Responsibility’ (COM(2001)0366), to the Commission communication of 22 March 2006 entitled ‘Implementing the partnership for growth and jobs: making Europe a pole of excellence on Corporate Social Responsibility’ (COM(2006)0136), and to Parliament’s resolution of 13 March 2007 on corporate social responsibility: a new partnership ⁽⁶⁾,
 - having regard to its declaration of 22 April 2008 on ending street homelessness ⁽⁷⁾,
 - having regard to the UN International Covenant on Economic, Social and Cultural Rights 1966,
 - having regard to Rule 45 of its Rules of Procedure,
 - having regard to the report of the Committee on Employment and Social Affairs and the opinions of the Committee on Economic and Monetary Affairs, the Committee on the Environment, Public Health and Food Safety, the Committee on Culture and Education and the Committee on Women’s Rights and Gender Equality (A6-0241/2009),
- A. whereas the major negative consequence for the EU arising from the current financial and economic crisis will be the dramatic increase of unemployment which will more severely affect the most vulnerable social groups; whereas higher levels of unemployment are associated with the increase in poverty, health inequalities, exclusion, criminality, insecurity and lack of trust,

⁽¹⁾ OJ C 297 E, 20.11.2008, p. 174.

⁽²⁾ OJ C 282 E, 6.11.2008, p. 463.

⁽³⁾ OJ C 102 E, 24.4.2008, p. 321.

⁽⁴⁾ OJ C 233 E, 28.9.2006, p. 130.

⁽⁵⁾ Texts adopted, P6_TA(2008)0286.

⁽⁶⁾ OJ C 301 E, 13.12.2007, p. 45.

⁽⁷⁾ Texts adopted, P6_TA(2008)0163.

Wednesday 6 May 2009

- B. whereas, regardless of the current crisis, the EU already faced difficulties as a result of weak economic growth, an explosive demographic situation and the difficulty of living in an increasingly globalised economy,
- C. whereas in 2007, 15,2 % of the citizens of the Union aged between 18 and 24 were early school leavers,
- D. whereas employment still does not guarantee a route out of poverty for many people in the EU, with 8 % of people at work at risk of poverty in 2006,
- E. whereas in 2006, 16 % of European citizens were at risk of poverty; whereas children, large families, single parents, unemployed people, people with disabilities, young people, elderly people, ethnic minorities and migrants are particularly vulnerable,
- F. whereas women still face a higher risk of poverty than men, because of factors such as their economic dependency the gender pay gap and women's higher presence in lower-paid jobs; whereas that situation increases the risk of perpetuating poverty into the next generations,
- G. whereas price increases in recent years have had a considerable effect on household budgets and have disproportionately affected vulnerable social groups,
- H. whereas various studies (such as the Future of Work Research of the Russell Sage Foundation) have shown that one in four of those working in the most developed economies may soon be low-paid and find themselves at increased risk of poverty; whereas low-wage jobs appear to exhibit much uniformity as they often take the form of a non-standard employment relationships with low-skilled workers, part-timers, women, immigrants and young workers at a higher risk; whereas there is a tendency for low-wage work to be passed on from generation to generation and whereas low-wage work limits access to good education, good health care and other basic living conditions,
- I. whereas Article 2 of the EC Treaty provides that equality between men and women is one of the fundamental principles of the European Union,
- J. whereas the EU faces a demographic change of which the most important features are an increase in life expectancy and a decreasing fertility rate although some countries are showing signs of reversing the trend of decreasing fertility,
- K. whereas the demographic change is expected to lead to the doubling of the old age dependency ratio until 2050 with consequences regarding in particular the physical and mental health of the population,
- L. whereas the Commission 'Demography Report 2008: Meeting Social Needs in an Ageing Society' (SEC(2008)2911), recognises the pivotal role that informal carers play in society; whereas the Commission should consider the strong social arguments for the inclusion of carers in the formulation of future policy,
- M. whereas the effects of the financial crisis on the real economy are not fully known but it will be impossible to reach the target of creating 5 million jobs in the EU between 2008 and 2009; whereas an economic recession will lead to higher unemployment and will certainly lead to more poverty and will present challenges to the European social model,
- N. whereas the financial and economic crisis is causing increasing unemployment and insecurity, in which social cohesion across the EU is under substantial strain with social fractures and tensions in numerous Member States,

Wednesday 6 May 2009

- O. whereas the EU has committed itself to the aim of socially and environmentally sustainable development, and whereas the opportunities for job creation that can arise from that commitment should be fully exploited,
- P. whereas social dialogue can be important to tackle the crisis in confidence that is being aggravated by the economic crisis as many people in our society are afraid of the future; whereas equal priority must also be given to those who are already excluded and whose current position is worsening in the current crisis,
- Q. whereas the EU's more interventionist institutional arrangements, characterised by a certain degree of income redistribution and the common notion of a 'European social model', have a positive effect on the quality of the working lives of millions of men and women in the more disadvantaged segment of our labour markets,
- R. whereas respect for national legal and conventional frameworks, characterised by balancing labour law and collective agreements, which regulate those models, are a precondition for harmonised values in a diversity of systems,
- S. whereas in the case of non-standard employment relationships the rules and procedures defined by the partners in collective bargaining no longer apply,
- T. whereas the renewed social agenda should be based on the principle that effective and efficient social policies contribute to economic growth and prosperity, and whereas this can also help restore the declining support of citizens for the EU,
- U. whereas it is regrettable that the renewed social agenda does not deal with the question of legal security for social services of general interest,
- V. whereas considerable concern has been voiced about the role and visibility of the renewed social agenda, including the lack of clarity of its purpose or how it will be followed up on as well as the lessening of the prominence given to the social Open Method of Coordination (OMC),
- W. whereas the European social models are a unity of values in a diversity of systems and are, in general, within the competence of the Member States; whereas the aims of social Europe, provided for in the EC Treaty, the Charter of Fundamental Rights and in the Lisbon Treaty, must be emphasised as the overarching goal for the EU, if they are to meet with the expectations and allay the fears of its citizens; whereas successive Spring European Council meetings have reiterated the objective of the eradication of poverty and social exclusion and the need to reinforce the social dimension in the Lisbon Strategy; whereas the failure and success of national social and employment policies also have an impact on other Member States, therefore, the debate on the reform of the European social model must be placed at the heart of the interaction between the EU and the Member States,
- X. whereas the failure of the Lisbon Strategy to decrease poverty - currently 78 000 000 people in the EU are living in poverty - and rising inequality must be of central concern; whereas the EU must make progress in relation to the development and implementation of EU and national targets on reducing poverty and social exclusion, and in key areas where indicators currently exist if people are to be convinced that the EU is there to serve the people first and only then businesses and banks,
- Y. whereas in several proceedings before the Court of Justice of the European Communities, the notion 'provisions that are crucial for the protection of the political, social and economic order' has been used without clarifying who can decide, in this regard, which provisions are crucial for the protection of the general public policy provisions in a Member State,

Wednesday 6 May 2009

- Z. whereas in the Court of Justice held that it is not up to the Member States to define unilaterally the notion of public policy or to impose unilaterally all the mandatory provisions of their employment law on suppliers of services established in another Member State and whereas it is unclear in whose hands that competence lies if not with the Member States,
- AA. whereas there is no clear distinction between labour-only subcontracting and dubious trafficking and provision of services that is based on lawful contracts with genuinely self-employed people; whereas the difference between fraudulent practices and true civil and commercial business relationships should be addressed,

Priority actions*European social models*

1. Calls upon the Council and the Commission, given the economic recession, to reaffirm the importance of a strong social Europe, incorporating sustainable, effective and efficient social and employment policies; calls on the Commission to develop an ambitious social policy agenda for the period of 2010-2015;
2. Urges the Commission to put forward a coherent policy plan on decent work in line with the Charter of Fundamental Rights of the European Union;
3. Stresses the importance of putting job creation and promotion at the top of the social agenda in these difficult times; considers that greater flexibility in the workplace is now more important than ever;
4. Invites the Commission to combine the renewed social agenda with other initiatives such as the European pact for gender equality, the European Youth Pact and the European Alliance for families, in order for disadvantaged social groups to have better access to social benefits;
5. Is concerned that the measures proposed in the Commission Communication on the Renewed Social Agenda are insufficiently coherent to impact on the current levels of poverty and exclusion in the EU and to address the current challenges to social cohesion;
6. Regrets, in particular, that the Commission Communication on the Renewed Social Agenda lacks proposals on the following issues, which are crucial in order to achieve a balance between economical freedoms and social rights:
 - a directive providing for basic labour rights for all workers, regardless of employment status, to protect the ever-increasing numbers of atypical workers;
 - a review of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ⁽¹⁾, accompanied by a gender-neutral work evaluation system, in order to reduce gender pay gaps both within and between economic sectors; and
 - a directive on cross-border collective bargaining, in accordance with the realities of cross-border business operations;
7. Stresses the need to further develop minimum standards in employment rights; is aware that neither economic freedoms nor competition rules prevail over fundamental social rights;
8. Notes that social policy should cover key actions such as a better balance between stronger social rights and freedoms, combating discrimination and promoting equality, modernising and reforming the European social models while strengthening their values;

⁽¹⁾ OJ L 303, 2.12.2000, p. 16.

Wednesday 6 May 2009

9. Notes that the delineation of what constitutes Member State provisions that are crucial for the protection of the political, social and economic order' is a political matter and should be defined in a democratically legitimised process; therefore calls upon the Commission to initiate an open debate in order to clarify the notion of what constitutes those general public policy provisions and propose legislation where necessary;
10. Considers that this is not the time to reduce social expenditure but rather to reinforce structural reforms; adds that the EU should support the infrastructures of the Member States' social models, including social services of general interest, by reaffirming the importance of their universal access, quality and sustainability;
11. Regrets that although the financial crisis demonstrates the importance of State action in regard to maintaining economic activity and strengthening social cohesion, the Commission has not ensured the future of and the crucial role played by public services in the EU by proposing a framework directive on services of general interest;
12. Calls on the Commission to submit a legislative proposal seeking to guarantee the legal security of social services of general interest;
13. Emphasises the need to find ways to modernise and reform the national security systems to eradicate poverty with a long-term perspective, especially concerning adequate minimum income, pensions and health care services; stresses that there is potential to strengthen the financial sustainability of the minimum wage and pensions systems and the quality and efficiency of health care services by improving their organisation and access and increasing partnership between the public and private sector, respecting the principle of subsidiarity, and supporting increased efforts to establish progressive taxation systems in order to reduce inequality;
14. Notes that some Member States have introduced the concept of a minimum wage; suggests that other Member States might benefit from studying their experience; calls on the Member States to safeguard the preconditions for social and economic participation for all and, in particular, to provide for regulations on such matters as minimum wages or other legal and generally binding arrangements or through collective agreements in accordance with national traditions that enable full-time workers to make a decent living from their earnings;
15. Calls on the Commission and the Member States to ensure that all citizens have access to basic banking services;
16. Maintains that sport and cultural activity are essential instruments of social inclusion and help to foster personal development, promote the good of society, and nurture talents;
17. Asks the Commission to ensure that environmental and health issues are rapidly integrated in all EU policies in order to ensure a high level of health and environmental protection, in accordance with the provisions of the EC Treaty;
18. Shares the Commission's determination to extend the social agenda to include new areas; deplores the fact that the environment is too often being considered only from the point of view of climate change; welcomes the renewed declarations by the Commission in favour of a sustainable economy with low CO₂ emissions, but regrets the fact that the Commission's proposal contains no specific measure to take into account the social and health consequences of the environmental and climate crises;
19. Stresses that extreme poverty and the ensuing social exclusion cannot be understood in economic terms on the basis of figures alone, but must also be understood in terms of human rights and citizenship; recognises that the principle of the free movement of capital and goods cannot, in itself, eradicate poverty and, in particular, persistent poverty and that extreme poverty deprives those affected of opportunities and prevents them from fully taking part in the community life by making them indifferent to their surroundings;

Wednesday 6 May 2009

Social and employment policies

20. Welcomes the proposals included in the Commission's work-life balance package launched at the end of 2008; encourages the Commission to make recommendations to the Member States that are clearly lagging behind the objectives of the 2002 Barcelona European Council as regards the provision of childcare for 2010; invites the Commission further to encourage employers' openness regarding flexible work arrangements, optimising the use and knowledge of ICT and new forms of work organisation thus promoting the flexibility of work schedules and its compatibility with business, administration and school hours;
21. Invites the Commission to put forward a proposal on a better reconciliation between private, family and professional life optimising the use and knowledge of ICT and new forms of work organisation, taking into consideration the needs and well-being of children, whilst promoting more effective employment protection, which confirms parents' and carers' right to flexible working patterns, corresponding to their needs and paying particular attention to access for those on low incomes and in precarious or low-quality employment;
22. Deplores the weakness of EU and Member State policies in the face of growing poverty, especially child poverty;
23. Encourages Member States to provide for guaranteed minimum income schemes for social inclusion, in accordance with the principles of subsidiarity and proportionality;
24. Suggests that new demographic challenges could be tackled by addressing the situation of women who live in poverty, who have unequal and inadequate access to nutrition, housing, education and pay, and who face difficulties in reconciling work, family and private life;
25. Calls for a more effective prevention and combating of early school leaving under the motto that 'school pays off'; calls for effectively organised education systems and school curricula adapted to tomorrow's job market which take account of society's needs and technological developments; calls for the further promotion of and assistance to the concept of Second Chance Schools and informal and non-formal learning that have proved to lead to higher participation of young people and adults than traditional school environments contributing to lower the drop-out rate in the EU; for that purpose, calls for the long-awaited elimination of any and all inequalities of opportunities in educational systems in the EU, in particular, the elimination of low-level and segregated education which has irreversible negative effects on marginalised groups, particularly on Roma;
26. Insists on the need for more effective lifelong learning and training actions aiming better to equip citizens, especially the less qualified, to (re-)enter the job market smoothly and without discrimination and to contribute to social innovation; suggests emphasising entrepreneurial skills principally the entrepreneurship of women and young people, ICT and communication competences, financial literacy and language skills;
27. Stresses the need to improve education in the EU by mobilising the process of compatibility and comparability of the Member States' educational systems with a view to facilitating the mutual recognition of professional qualifications and standards;
28. Considers that active social inclusion policies must make a decisive impact on the eradication of poverty and social exclusion, both for those in paid employment (the 'working poor') and for those not in paid employment;
29. Highlights the necessity of promoting University-business cooperation as it is important to ensure that these partners cooperate and that they support each other for the benefit of their own organisations, of their staff and their students; considers that bridges should be built between university curricula and the world of enterprise, and that businesses should have the possibility, inter alia, to complement study programmes, to offer internships, organise open days for students, etc.;

Wednesday 6 May 2009

30. Draws attention to the need for a more balanced approach between flexibility, security and the need to ensure decent wages aiming at integrating young and elderly people, women, long-term unemployed people and disadvantaged groups into the labour market; suggests that the Member States take into consideration Parliament's resolution of 29 November 2007 on Common Principles of Flexicurity when implementing national flexicurity strategies;

31. Considers that especially in a time of financial and economic crises, often resulting in redundancy and restructuring, worker participation in the decision-making process within companies that affect their jobs and livelihoods is of the utmost importance; welcomes the recent revision ⁽¹⁾ of Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees ⁽²⁾; reiterates its call for the further strengthening of the functioning of European works councils as laid down in its resolution of 4 September 2001 on the application of Directive 94/45/EC ⁽³⁾;

32. Stresses that social and employment policies should foster job creation and be quickly activated as a response to the current economic crisis, should provide job and education opportunities, and should mitigate loss of income; considers that those policies should actively motivate people to look for job opportunities or to start their own entrepreneurial activity; to this end considers that Member States should consider affordable financing channels, such as credit guarantees, reduced interest rates or providing a lump sum of unemployment benefits which, while also mitigating income loss, provide opportunities for education which will help unemployed people to find new jobs; recalls the Commission's holistic approach to active inclusion which encompasses adequate income support, access to inclusive labour markets and high-quality social services;

33. Invites the Commission to take initiatives that will lead to a clear distinction between employers, genuine self-employed and small entrepreneurs on the one hand and employees on the other;

34. Stresses the vital need to support mothers, by means of family allowances during infancy and the creation of a suitable framework for their return to the labour market, paying particular attention to single mothers in view of their vulnerability;

35. Points out that the social economy, as another form of entrepreneurship, plays an essential role in contributing to a sustainable European economy, by combining profitability with solidarity; adds that social economy enterprises need a secure legal framework; highlights the very important contribution of volunteer work in the social field particularly in the fight against poverty and social exclusion and in the support to the more disadvantaged groups in society;

36. Stresses that not all people are able to work, nor are there currently jobs for all, and restates the importance of implementing Recommendation 92/441/EEC, endorsed by the European Council meeting on 11 and 12 December 2008, on providing 'sufficient resources and social assistance to live in a manner compatible with human dignity', through the extension of minimum income schemes to all Member States and increasing levels to ensure access and adequacy;

37. Believes that the development of microcredit can play an important role in supporting (long-term) unemployed people to move into self employment; points out that microcredit has already helped in many such situations with reintegration into working life and that this is in line with the Lisbon Strategy; calls on the Commission to improve the generation of and access to information on the possibilities and availability of micro-credit and to target actively those groups in society that could benefit most from and that have most need of micro-credit supply;

38. Calls for the promotion of a stronger link between the implementation of flexicurity and the enhancement of social dialogue, respecting national customs and practices;

⁽¹⁾ Directive 2009/38/EC (not yet published in the Official Journal).

⁽²⁾ OJ L 254, 30.9.1994, p. 64.

⁽³⁾ OJ C 72 E, 21.3.2002, p. 68.

Wednesday 6 May 2009

39. Insists on the removal of bureaucratic obstacles for small and medium enterprises; calls for the further implementation of the principles proposed in the Commission's communication on a Small Business Act for Europe;

40. While fully recognising that Member States have competence for wage policy, suggests that the social partners at national level discuss new methodologies for wage policies which could reverse the current declining percentage relation between salaries and profits and include higher financial participation of employees in companies' proceeds through the use of schemes that mitigate the impact of inflation; considers that such schemes could allow for channelling employees' extra earnings to special capital funds created by companies; calls for a debate regarding ways of encouraging companies to engage in those methodologies, and furthermore calls for a debate regarding legal frameworks that regulate the access of employees to those funds in a gradual way over time; suggests to social partners the importance of a renewed commitment to 'decent living wages' which guarantee minimum wages significantly above the adequate income level, to enable people to move out of poverty and to benefit positively from work;

41. Insists that advancing non-discrimination and equal opportunities relies both on a sound legislative basis and on a range of policy tools and that non-discrimination and equal opportunities must be mainstreamed into all aspects of the renewed social agenda;

42. Asks the Commission to conduct studies on the medium and long-term impact of knowledge mobility, in order to use the results as a strong basis for measures to mitigate negative effects;

Immigration

43. Draws attention to the negative impact (possible brain drain) that immigration may have in the development process of the countries of origin including family structures, health, education and research; recalls, on the other hand, the effects of the economic crisis in terms of imbalances in the employment markets of the host countries;

44. Stresses the importance of ethical recruitment from third countries, particularly with regard to health-care professionals and calls on those Member States that have not already done so to develop a code of practice for international recruitment;

45. Emphasises that the long-term impact of immigration on the demographic change is uncertain since it depends on the volatility of migration flows, family reunification and fertility rates;

46. Considers that immigrants can, when legally employed, contribute to the sustainable development of social security systems and also guarantee their own pension and social rights;

47. Stresses that a successful human rights based immigration policy should promote a coherent and efficient strategy for the integration of migrant people on the basis of equal opportunities rooted in guaranteeing their fundamental rights and ensuring a balance between rights and obligations;

48. Welcomes the Commission proposal to impose sanctions on employers who employ illegally staying third-country nationals; emphasises the importance of combating the exploitation of illegally staying third country nationals whilst respecting the rights of those in vulnerable positions; in that context calls upon the Commission to promote the opportunities for lawful employment of legally staying third-country nationals;

49. Welcomes the proposal for a directive on the application of patients' rights in cross-border health care (COM(2008)0414); draws attention, however, to the fact that the directive, in turn, must not lead to a greater discrimination of citizens of the Union on grounds of their economic status;

50. Considers that strengthening of the implementation and enforcement of existing labour laws under national and Community law and under International Labour Organization (ILO) conventions must be a priority for the EU institutions and the Member States;

Wednesday 6 May 2009

51. Stresses the need further to strengthen anti-discrimination laws throughout the EU; calls on the Commission to stimulate the exchange of best practises between the Member States with regard to promoting further the successful integration of migrants; notes that, especially in times of economic hardship, the most vulnerable people in society, who often include migrants, are disproportionately affected;

The EU at an external level

52. Believes that in its external relations the EU could have a more proactive role in promoting core social and environmental standards; is convinced that additional efforts need to be made regarding mechanisms on the prevention, surveillance and sanction of infringements;

53. Considers that the EU could do more to influence the international agenda concerning the decent work agenda and actively promote compliance with ILO conventions, human rights and fundamental freedoms, and that this could contribute to achieving world peace and also to the protection of the EU's interests and values;

54. Emphasises the fact that the development of the Community legal framework, either through primary or secondary legislation must not contradict international obligations under the ILO conventions;

55. Notes that the EU should aim for a globalisation process that is more socially inclusive and economically and environmentally sustainable; notes that the way in which corporations conduct business not only has a large economic impact but also has a significant social impact, within the EU as well as in third countries, in particular in developing countries; therefore urges the Commission actively to promote the concept of corporate social responsibility, either by means of the promotion of soft law or, where appropriate, by means of legislative proposals where;

Structural funds

56. Suggests strengthening the potential of structural funds, through simplification, flexibility and improvement of procedures, and the social integration dimension, with the aim to help Member States optimise the output of social and employment policies; calls on the Member States and the regions to involve the partners fully pursuant to Article 16 of the General Regulation on the Structural Funds ⁽¹⁾; strongly recommends making the European Social Fund (ESF) accessible to the partners in order to build up capacity;

57. Stresses that the renewed social agenda must make a clear commitment that EU structural and cohesion funds will help to achieve its objectives; therefore asks the Member States to use the ESF and all the other structural funds in order to improve not only employability but also the social infrastructure;

58. Recognises that the structural funds remain largely the main funding instrument to fulfil social objectives, asks the Commission and the Member States to promote synergies with other programmes and support coherence across the multiannual framework programmes, such as Daphne, Progress, the Public Health Programme, and the 'Europe for citizens' programme;

59. Calls for particular attention to be given to the regions that are most affected by globalisation as well as to regions in the new Member States that are in the process of social convergence;

60. Suggests that Progress could contribute to a better assessment of the modernisation of European social models through the evaluation of pilot projects;

61. Considers that, as a result of the freedom of movement for persons, new problems are emerging in some parts of the EU, and, in particular, in larger cities, in connection with the provision of emergency social protection for people who are unable to support themselves, putting extra pressure on (charitable) private and public services which provide emergency assistance, for example for the homeless or for marginalised population groups in society;

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

Wednesday 6 May 2009

Instrumental actions*Social and civil dialogue*

62. Stresses that flexibility and the acceptance of change by citizens can increase through more mutual trust which can be enhanced by a more effective and transparent social dialogue and by ensuring more effective participative democracy in policy design and delivery;
63. Considers it particularly important for the social dialogue to encourage policies on health and safety at work and, in general, to promote improvements in the quality of life at the workplace; calls on the Commission to launch a debate on how workers who are not in full-time employment (such as temporary workers, part-time workers or workers on fixed-term contracts) can be brought into the social dialogue;
64. Given that the results of the negotiations of the European social partners are not well-known or disclosed, calls for the promotion of awareness of the results of social dialogue to improve its impact and promote its development;
65. Believes that the culture of cooperation, which has been replacing the conflict-based culture in the labour market, should continue to be encouraged through the promotion of the social dialogue;
66. Believes that civil society organisations, and people experiencing poverty and social exclusion, must be more directly involved in the debates on the economic and social model, on an equal basis;
67. Notes that the social partners should make an effort to work with multiannual plans with specific calendars and deadlines aiming at a long-term sustainable strategy;
68. Calls for a wide debate between European stakeholders, national public authorities, employers, employees and civil society organisations, about the social agenda for the post-2010 period;
69. Notes that Member States should support new measurable, binding and quantitative social targets and indicators for the post-2010 Lisbon Strategy, including commitments to working towards the eradication of poverty and social exclusion, and the development of a new social progress pact which would establish the goals and architecture for a new social sustainable and globally fair EU, which should build on and reinforce the social OMC as a key pillar;
70. Notes that undertakings play an important role not only in economic terms but also in social terms in the EU; draws attention, therefore, to the promotion of corporate social responsibility and the need to make urgent progress as regards high-quality work, including a decent living wage, to underpin the social model and to prevent social dumping;
71. Favours an effective dialogue between Parliament and civil society organisations; suggests that such a dialogue is also needed within Member States at a central, regional and local level;
72. Notes that a European Year of Volunteering would be an ideal opportunity for the EU to connect with civil society organisations; calls on the Commission to prepare the ground for 2011 to be declared as the European Year of Volunteering by submitting an appropriate legislative proposal to this effect as soon as possible;
73. Considers that civil society organisations should be involved from the beginning of decision-making processes, and that information should be publicly accessible, feedback should be reciprocal, and scope for change should be made clear to participants;
74. Stresses the importance and value of the consultation process as an effective tool by which to empower citizens by enabling them to feed directly into the policy process at EU level; calls on the Commission to take further steps to raise awareness of future EU consultations via the media and other appropriate forums at national, regional and local level;

Wednesday 6 May 2009

75. Suggests that there is an urgent need for the European institutions, the social partners at national level, and civil society organisations to adopt a 'social pact' encompassing social actions with realistic, binding targets and indicators;

76. Notes that civic participation starts during childhood and calls for the promotion and support of participation structures and initiatives at local, regional and national level for children and youth;

EU law

77. Stresses the need to make progress and finalise the regulation regarding the coordination of social security systems and the directive on portability of pension rights and the proposal for a directive on implementing the principle of equal treatment irrespective of religion or belief, disability, age or sexual orientation;

78. Calls for an improvement of the legislative process at the EU level, by making it clear why action is needed at that level, ensuring the quality of the content and delivering strong and independent impact assessments covering the social, environmental and economic effects; calls, in particular, for the effective implementation of the 2003 Inter-institutional Agreement on Better Law-Making ⁽¹⁾;

79. Emphasises that effective cooperation between Member States and effective monitoring of the transposition of EU law should be a priority;

80. Considers that a better legislative process at the EU level should actively seek the involvement of civil society organisations and address the concerns of citizens, thus bringing them closer to the EU;

OMC

81. Considers that there should be a better link at the EU level between economic, environmental and social policies, with a reaffirmation of the original Lisbon Strategy goals and the need to ensure that economic and employment policies actively contribute to the eradication of poverty and social exclusion;

82. Emphasises the need for the adoption of a legally binding charter of fundamental social rights;

83. Notes that the Lisbon Treaty establishes that very relevant aspects of social policy should be taken into account when defining and implementing EU policies;

84. Considers that the post-2010 Lisbon Strategy should include a strengthened OMC and invites the Commission further to encourage Member States to define national quantified targets, namely as regards the reduction of poverty and the enhancement of social inclusion, particularly supported by new measurable and quantitative indicators;

85. Calls on the Council and the Commission to open up opportunities for Parliament's real involvement in the post-2010 Lisbon Strategy;

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

⁽¹⁾ OJ C 321, 31.12.2003, p. 1.

Wednesday 6 May 2009

Active inclusion of people excluded from the labour market

P6_TA(2009)0371

European Parliament resolution of 6 May 2009 on the active inclusion of people excluded from the labour market (2008/2335(INI))

(2010/C 212 E/06)

The European Parliament,

- having regard to the Commission Communication of 3 October 2008 on a Commission Recommendation on the active inclusion of people excluded from the labour market (COM(2008)0639),
- having regard to the Treaty establishing the European Community, and in particular Articles 99, 137 and 141 thereof,
- having regard to Commission Recommendation 2008/867/EC of 3 October 2008 on the active inclusion of people excluded from the labour market ⁽¹⁾,
- having regard to Council Recommendation 92/441/EEC of 24 June 1992 on common criteria concerning sufficient resources and social assistance in social protection systems ⁽²⁾,
- having regard to the Presidency Conclusions following the meeting of the Brussels European Council of 11 and 12 December 2008,
- having regard to the Commission Communication of 13 February 2009 entitled 'Proposal for the Joint Report on Social Protection and Social Inclusion 2009' (COM(2009)0058) and the Commission staff working document of 24 February 2009 entitled 'Joint Report on Social Protection and Social Inclusion 2008; Country Profiles' (SEC(2009)0255),
- having regard to its resolution of 30 November 2006 on the situation of people with disabilities in the enlarged European Union: the European Action Plan 2006-2007 ⁽³⁾,
- having regard to its resolution of 6 September 2006 on improving the mental health of the population. Towards a strategy on mental health for the European Union ⁽⁴⁾,
- having regard to progress made in equal opportunities and non-discrimination in the EU concerning the transposition of Directives 2000/43/EC and 2000/78/EC,
- having regard to the UN Convention relating to the Status of Refugees,
- having regard to the Council of Europe Convention on Action against Trafficking in Human Beings,
- having regard to the UN Convention on the Rights of Persons with Disabilities,
- having regard to Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ⁽⁵⁾,

⁽¹⁾ OJ L 307, 18.11.2008, p. 11.

⁽²⁾ OJ L 245, 26.8.1992, p. 46.

⁽³⁾ OJ C 316 E, 22.12.2006, p. 370.

⁽⁴⁾ OJ C 305 E, 14.12.2006, p. 148.

⁽⁵⁾ OJ L 303, 2.12.2000, p. 16.

Wednesday 6 May 2009

- having regard to the Presidency Conclusions following the meeting of the Barcelona European Council on 15 and 16 March 2002,
- having regard to the Commission Communication of 17 October 2007 entitled ‘Modernising social protection for greater social justice and economic cohesion: taking forward the active inclusion of people furthest from the labour market’ (COM(2007)0620) and to Parliament’s resolution of 9 October 2008 on promoting social inclusion and combating poverty, including child poverty, in the EU ⁽¹⁾,
- having regard to the European social partners’ recommendations in the report of 18 October 2007 entitled Key Challenges Facing European Labour Markets: A Joint Analysis of European Social Partners,
- having regard to the Commission Communication of 26 February 2007 entitled ‘Social reality stock-taking – Interim report to the 2007 Spring European Council’ (COM(2007)0063) and to Parliament’s resolution of 15 November 2007 thereon ⁽²⁾,
- having regard to the Commission Communication of 2 July 2008 entitled ‘Renewed social agenda: Opportunities, access and solidarity in 21st century Europe’ (COM(2008)0412) and to Parliament’s resolution of 6 May 2009 thereon ⁽³⁾,
- having regard to the Commission Communication of 12 October 2006 entitled ‘The long-term sustainability of public finances in the EU’ (COM(2006)0574) and to Parliament’s resolution of 20 November 2008 on the future of social security systems and pensions: their financing and the trend towards individualisation ⁽⁴⁾,
- having regard to its declaration of 22 April 2008 on ending street homelessness ⁽⁵⁾,
- having regard to its resolution of 23 May 2007 on promoting decent work for all ⁽⁶⁾,
- having regard to Decision No 1098/2008/EC of the European Parliament and of the Council of 22 October 2008 on the European Year for Combating Poverty and Social Exclusion (2010) ⁽⁷⁾,
- having regard to its resolution of 19 February 2009 on Social Economy ⁽⁸⁾,
- having regard to Recommendation 2006/962/EC of the European Parliament and of the Council of 18 December 2006 on key competences for lifelong learning ⁽⁹⁾,
- 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 ⁽¹⁰⁾,
- having regard to its resolution of 16 January 2008 on adult learning: it is never too late to learn ⁽¹¹⁾,
- having regard to the Protocol, annexed to the Treaty of Lisbon, on services of general interest ⁽¹²⁾,

⁽¹⁾ Texts adopted, P6_TA(2008)0467.

⁽²⁾ OJ C 282 E, 6.11.2008, p. 463.

⁽³⁾ Texts adopted, P6_TA(2009)0370.

⁽⁴⁾ Texts adopted, P6_TA(2008)0556.

⁽⁵⁾ Texts adopted, P6_TA(2008)0163.

⁽⁶⁾ OJ C 102 E, 24.4.2008, p. 321.

⁽⁷⁾ OJ L 298, 7.11.2008, p. 20.

⁽⁸⁾ Texts adopted, P6_TA(2009)0062.

⁽⁹⁾ OJ L 394, 30.12.2006, p. 10.

⁽¹⁰⁾ OJ L 327, 24.11.2006, p. 45.

⁽¹¹⁾ OJ C 41 E, 19.2.2009, p. 46.

⁽¹²⁾ OJ C 306, 17.12.2007, p. 158.

Wednesday 6 May 2009

- having regard to Rule 45 of its Rules of Procedure,
- having regard to the report of the Committee on Employment and Social Affairs (A6-0263/2009),
- A. whereas active inclusion must not replace social inclusion, as vulnerable groups unable to participate in the labour market have a right to a dignified life and full participation in society, and therefore a minimum income and accessible and affordable high-quality social services must be available regardless of a person's ability to participate in the labour market,
- B. whereas active inclusion is not only related to the capacity of the individual, but also to the way in which society is organised; whereas, therefore, the structural causes of exclusion, including discrimination and inadequate service provision, also need to be addressed,
- C. whereas apparent exclusion from the labour market may be the result of a lack of availability of sufficient decent employment possibilities rather than the result of a lack of individual effort,
- D. whereas integration into the labour market must not be a precondition for the entitlement to a minimum income and access to high-quality social services; whereas a minimum income and access to high-quality social services are necessary preconditions for integration into the labour market,
- E. whereas those furthest from the labour market are often people with multiple and complex needs, difficulties or disadvantages such as long-term dependence on low or inadequate income, long-term unemployment, a low level of education and illiteracy, growing up in a vulnerable family, disability, poor health, living in areas of multiple disadvantages, precarious housing conditions and homelessness, and racism and discrimination and therefore strategies for inclusion need to reflect the diversity of those excluded,
- F. whereas social exclusion and exclusion from the labour market have a serious impact on the mental health of people affected, and whereas long-term unemployed people have a greater risk of experiencing depression and other mental health disorders,
- G. whereas those distant from the labour market have a great need for vocational training either because their schooling was inadequate or because, having spent a long time away from the labour market, they are no longer able to make effective use of their education,
- H. whereas the most vulnerable are often affected by conditionality in activation policies and whereas those effects need to be monitored and negative impacts on vulnerable groups need to be avoided,
- I. whereas active inclusion measures must also work in conjunction with the development of EU and national targets concerning the fight against poverty and social exclusion,
- J. whereas most heads of households are women, most single parents are women and most carers are women; whereas, therefore, active inclusion policies require an all-encompassing set of measures to enable women furthest from the labour market to benefit in practice from active inclusion strategies; whereas the labour market situation for women has direct links to age-related poverty which mainly affects women,
- K. whereas in times of economic downturn and growing unemployment, there is a risk of large numbers of new people made redundant swelling those already suffering from poverty and exclusion from the labour market, especially for the most vulnerable social groups such as women, elderly people, people with disabilities; whereas it is essential that social inclusion and related labour market policy be pursued by way of an integrated and coherent approach within the European Economic Recovery Plan; whereas part of public funds should be used to maintain and improve social, health and education investments and other essential social services and services of general interest,

Wednesday 6 May 2009

- L. whereas the view that the best way out of exclusion is to be in work can only be truly effective if that work is sustainable, high-quality work, which is adequately remunerated; whereas the principle of equal pay for equal work also remains poorly implemented,
- M. whereas family carers provide essential services of care, education and support outside the system of employment, without income or social rights, and lack the right to re-enter the labour market and to obtain recognition of skills acquired or developed during periods of family caring,
1. Welcomes the fact that the Commission based its Recommendation 2008/867/EC on Recommendation 92/441/EEC which recognises the individual's fundamental right to sufficient resources and assistance to live in human dignity and defines common principles for implementing that right; endorses the common principles and practical guidelines presented in Recommendation 2008/867/EC on the active inclusion strategy based on three pillars, namely adequate income support, inclusive labour markets and access to quality services; and in particular points out that any active inclusion strategy has to be built on the principles of individual rights, respect for human dignity and non-discrimination, equality of opportunities and gender equality, on the promotion of labour market integration combined with full participation in society, and on the realisation of the principles of quality, adequacy and accessibility across all three pillars;
2. Agrees with the Council that the implementation of Recommendation 92/441/EEC needs to be improved in relation to minimum income and social transfers, that social assistance should provide an adequate minimum income for a dignified life, at least at a level which is above the 'at risk of poverty' level and sufficient to lift people out of poverty, and that the take-up of benefits should be improved;
3. Welcomes the ruling of the Court of Justice of the European Communities of 17 July 2008 in Case C-303/06 concerning carers suffering discrimination by association; calls on the Commission and the Member States to take adequate measures to ensure that carers are protected from such discrimination in accessing the labour market and encourages the Member States to take the necessary steps to ensure that the Court's judgment is complied with;
4. Calls on the Member States to implement adequate income support so as to fight poverty and social exclusion; points to the need for an adequate income support level based on Recommendations 92/441/EEC and 2008/867/EC which must be adequate, transparent, accessible to all, and sustainable over time;
5. Considers it vital that the Commission and the Member States implement Directive 2000/78/EC, which establishes a legal framework for equal treatment in employment to combat discrimination in employment and occupation on the grounds of religion or belief, disability, age or sexual orientation, effectively;
6. Underlines its request to the Council to agree an EU target for minimum income schemes and contributory replacement income schemes of providing income support of at least 60 % of national median equalised income and, furthermore, to agree a timetable for achieving this target in all Member States;
7. Recognises that the interaction of social assistance and labour market activity is complex: in particular when the available work may be short-term, seasonal, precarious or part-time and when entitlement conditions and social protection systems or marginal tax rates may have a disincentive effect on the take-up of paid employment and the social assistance system is too rigid to respond; therefore urges the development of systems, which effectively support individuals in a period of transition rather than penalising or discouraging them or removing assistance too rapidly when an individual takes up work;
8. Points to the importance of providing for welfare benefits for vulnerable persons in a position to work; points out, however, that by virtue of the subsidiarity principle such benefits are a matter for the Member States;

Wednesday 6 May 2009

9. Points out that the recipients of adequate income support and their family members will have the opportunity to avoid the risk of poverty and to become active citizens who contribute to social and economic life as well as to intergenerational solidarity;
10. Suggests that the Member States actively consider a minimum wage policy in order to tackle the growing number of 'working poor' and make work a viable prospect for those distant from the labour market;
11. Believes that active inclusion necessitates the reduction of inequalities between regions and areas within the Community, through accelerated rehabilitation of the areas affected by the economic crisis and development of rural regions;
12. Calls on the Member States to take action to fight clandestine or 'submerged' employment, which excludes those affected from certain social facilities and services;
13. Requests that active inclusion policies should:
- be consistent with a lifecycle approach to education, life-long learning, social and employment policies;
 - be tailor-made, targeted and needs-oriented;
 - be based on an integrated approach and participative; and
 - respect pre-conditions which are essential to allow participation without creating conditions that endanger a minimum living income;
14. Invites the Commission to consider whole-cost accounting in the field of active and social inclusion as experience has shown that early investment and preventive action can reduce overall cost for society in the long term; welcomes the fact that Recommendation 2008/867/EC proposes to increase investment in social inclusion accordingly;
15. Considers that the Member States should provide targeted additional benefits for disadvantaged groups (such as people with disabilities or chronic diseases, single parents, or households with many children) which cover extra costs in connection, inter alia, with personal support, the use of specific facilities and medical and social care, establishing inter alia affordable price levels for medicines for less advantaged social groups; stresses the need to ensure decent invalidity and retirement pension levels;
16. Agrees, especially in the light of people's often complex needs, that there is a need to design and implement tailor-made active inclusion measures that combine minimum income, labour market inclusion and social services, that there must be a focus on early identification and preventive action, and that priority should be given to targeting the most vulnerable persons;
17. Considers that in designing and implementing such measures, the views of those at whom these measures are aimed should be taken into account; calls on the Member States to support the empowerment of social non-governmental organisations in order to facilitate their participation in the formulation and implementation of inclusion policies;
18. Calls on the Member States to develop a more constructive approach to drugs policy with the emphasis on prevention, education and treatment for addiction rather than criminal sanctions;
19. Calls for the de-stigmatisation of people with mental health problems and learning disabilities, the promotion of mental health and well-being, the prevention of mental disorders as well as for increased resources for treatment and care;

Wednesday 6 May 2009

20. Considers that, because problems associated with exclusion are in many cases present from the earliest years of life, preventive action is essential to identify from an early age those children and young people most at risk, well before they drop out of education and training; notes that young people excluded from school are more likely to get involved in anti-social and criminal behaviour, compounding the challenges of entering the labour market at a later date; considers that a broad stakeholder dialogue and support for preventive action and social services to improve opportunities for vulnerable children and young adults are critical to the success of inclusion policies; also stresses the importance of problems of exclusion affecting older people who lose their jobs and cannot rejoin the labour market;

21. Considers that the needs of young people seeking a first job should be taken into careful consideration and that policies and measures that can foster the transition from education into the labour market should be taken at national level; considers further that structured dialogue with youth organisations should be continuously associated with the work of the EU institutions and of the Member States;

22. Calls on the Member States to do more to address issues faced by carers, including the right to choose freely whether they want to be a carer and the extent of the care that they provide, the possibility of combining caring with paid work and employment as well as access to social security schemes and pensions, in order to avoid impoverishment as a consequence of caring;

23. Welcomes the recognition of the need for universal access to affordable and high-quality social services as a fundamental right and as an essential element of the European Social Model as well as to support the maintenance of people in work and the principles set out in Recommendation 2008/867/EC; considers that such social services include stable, affordable housing, accessible public transport, basic vocational training, and healthcare provision as well as access to affordable energy and other network services; notes that progress must be made on guaranteeing universal service obligations in services of general interest; considers that the development of a plan of action to establish an EU framework directive on services of general interest to guarantee these obligations is necessary; notes that progress remains inadequate in reaching the Barcelona targets set for affordable, high-quality childcare provision, which should be strengthened to cover all children in primary education; also notes that the care needs for other dependants are also inadequately met and should be subject to a similar process;

24. Believes that tackling discrimination faced by people in the context of access to goods, services and facilities is central to achieving inclusion and therefore welcomes the proposal for a comprehensive directive to combat discrimination outside of employment on the grounds of age, disability, sexual orientation and religion or belief;

25. Encourages Member States to consider social default tariffs for vulnerable groups, for example in the fields of energy and public transport and also facilities for obtaining microcredits, so as to promote active inclusion, as well as free healthcare and education for people with difficulties of a material nature;

26. Calls on the Member States to increase the profile of credit unions to help offer individuals a safe and regulated environment for people to save and borrow money and to counter increasingly problematic personal debt; calls on the Member States to ensure that individuals have the right to open an affordable bank account, which is an essential means by which to participate in both economic activities and society;

27. Calls on the Member States to provide people with disabilities with the additional support necessary both in order to access the labour market and while working; calls on those Member States that have not yet done so to sign and ratify both the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol; notes that the Member States should establish appropriate procedures and structures for effective implementation of that Convention in their territory;

28. Believes that young people face specific obstacles to active inclusion including unjustified age-related discrimination and difficulties in relation to access to affordable vocational training schemes;

29. Welcomes the deinstitutionalisation of people with disabilities but notes that this requires a sufficient level of community-based services favouring independent living, the right to personal assistance, the right to economic independence and full participation in society within the Member States;

Wednesday 6 May 2009

30. Calls on the Commission and the Member States to provide adequate resources to facilitate access to life-long learning programmes as a means of limiting the exclusion of older people among others from employment and to foster their continuous participation in social, cultural and civic life;
31. Believes that more action should be taken to tackle domestic violence and the abuse of children and older people;
32. Calls on the Commission and the Member States to ensure that the existing Community legislation on gender equality, equality generally, and non-discrimination is fully, properly and effectively implemented; calls for its extension and enforcement to remove structural barriers to employment and professional education and training;
33. Believes that high-quality education is a vital prerequisite for successful future employment and integration; calls on the Member States to extend legislation on public education with a view to eliminating any and all barriers to education, ensuring integrated education and access for all; believes that those who have been excluded from the labour market for a long time must have greater entitlements to funding for lifelong learning, especially where 'key competences' are concerned;
34. Calls on the Commission and the Member States to apply the principle of gender mainstreaming throughout the Active Inclusion strategy;
35. Considers that training offered should take account of the needs of the individuals concerned and be appropriate to them; calls for targeted rather than standardised training and integration measures which often disregard the needs of people with disabilities, those with caring responsibilities or persons with health problems; points to best practices from the European Social Fund (ESF) and EQUAL as regards targeted needs-based training approaches for those furthest from the labour market, recognising non-documented skills and skills acquired through non-formal education;
36. Recommends improving the quality of education and integrating education systems with the labour market and social participation criteria, as well as reducing inequalities in access to all forms of education and in the quality of the education offered;
37. Considers that training should also ensure that individuals are aware of their rights and obligations at work, including sound preparation in terms of health and safety and their rights to trade union membership as well as their rights to information and consultation and to lifelong learning and training;
38. Notes that there is a risk that more imaginative approaches to prepare those furthest from the labour market for eventual access to it may be deprived of funding in favour of a more narrow approach based on easily quantifiable outcomes; calls on the Commission, therefore, to improve the funding for bottom-up approaches under Structural Funds, and particularly under the ESF, and the development of indicators that measure the progress made to social and active inclusion, so as to target innovative grass-roots initiatives to promote active inclusion, as part of the social inclusion objectives highlighted as part of the Lisbon earmarking of Structural Funds, the proposed funding on social innovation, and through other funding streams;
39. Notes that as a result of changing demographics, it is estimated that by 2030 the ratio of active to inactive people will be 2:1; calls on the Commission and the Member States to develop active inclusion policies to ensure that carers, many of whom will be obliged to withdraw from the labour market due to caring responsibilities, are not adversely affected in later years;
40. Points to the necessity of creating an inclusive labour market as the core of any active inclusion strategy, a labour market with decent working conditions and job diversity for all workers taking into account different workplace needs, individual workers' requirements, working patterns and time models, differing skill levels, and different needs in terms of reconciliation of family, private and professional life; notes that high-quality employment is essential to promote job retention;

Wednesday 6 May 2009

41. Calls on the Member States to promote a competitive labour market favouring the development of public and private social protection systems at reasonable cost, enabling those concerned, including members of ethnic minorities, to have the choice of reducing the risks of exclusion from the labour market;
42. Calls on the Member States to use tools and instruments so as to motivate all actors to create inclusive labour markets and improve the participation of those farthest from the labour market; points to instruments in the context of localised social dialogue, financial incentives, tax benefits and the development of the social economy; welcomes the Commission's recommendation to provide support for the social economy as a vital source of entry jobs for disadvantaged people;
43. Points out that the role of local and regional authorities in promoting active inclusion is threefold: as employers, promoters of economic development and employment, and as providers of public services, including services for the most vulnerable groups; calls on the Member States to establish networks at regional and local levels to advise and refer people on where they can receive help in accessing the labour market as well as specific social services (i.e. social benefits schemes, health, mental health and social care services, and vocational training) according to their particular situation;
44. Strongly believes that more should be done to tackle the barriers to inclusion faced by asylum seekers; calls on the Member States to work to end asylum seekers' dependence on benefits by allowing them to work and consider the development of more legal immigration routes;
45. Urges all Member States to safeguard human rights-based asylum policies in accordance with the Convention relating to the Status of Refugees and other relevant human rights legislation;
46. Recognises that human trafficking results in immense suffering and social exclusion and calls on the Member States to do more to enforce anti-trafficking and anti-discrimination legislation, reintegrate the victims of trafficking into society and, in particular, to sign, ratify and implement the Convention on Action against Trafficking in Human Beings;
47. Urges the Commission and the Member States to reject the misleading blurring of economic migration with asylum-seeking, and of economic migration and asylum-seeking with illegal immigration;
48. Believes that the imprisonment of people without adequate rehabilitation and education creates barriers to inclusion and often only leads to further social exclusion, unemployment and crime;
49. Believes strongly that the retention of a mandatory retirement age acts as a barrier to active inclusion and forces many people, who may want to choose to continue to work, out of the labour market unnecessarily;
50. Calls on the Commission to coordinate closely the policy process in relation to active inclusion, in particular as regards high-quality social services, with the ongoing development of a voluntary framework on high-quality social services of general interest, and to examine without delay all possible means of clarifying the legal context in which social services general interest operate and providing them with a legal framework to serve as a point of reference, in particular by adopting legislative instruments including a framework directive;
51. Underlines its recent request to the Commission and the Council to set targets for the reduction of poverty (poverty in general, child poverty, in-work poverty and persistent long-term poverty), for a minimum level of income provided through pensions and for access to health care and for its quality (reducing infant mortality, improving health and increasing life expectancy, etc.); reiterates its requests to set an EU target to reduce child poverty by 50 % by 2012 and to end street homelessness of children, youth and adults alike by 2015;

Wednesday 6 May 2009

52. Calls for a concrete roadmap for the implementation of active inclusion strategies based on the participation of civil society and other stakeholders, including people experiencing poverty; considers that the roadmap should specify time lines and realistic qualitative and quantitative targets based on specific indicators and on detailed dialogue between the interested parties; considers also that the roadmap should set out how active inclusion is to be implemented and monitored through the Open Method of Coordination for social protection and social inclusion, particularly at local, regional and national level; therefore welcomes the initiative of the Commission to involve local authorities in monitoring the implementation of active inclusion strategies through financing a network of local authorities' observatories on active inclusion by the Progress programme; asks the Commission and the Member States to give those observatories a strong role in the future policy process and mainstream active inclusion programmes through the national reform programmes of the revised Lisbon Strategy and in particularly the European Employment Strategy;

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

Thursday 7 May 2009

Gender mainstreaming in EU external relations

P6_TA(2009)0372

European Parliament resolution of 7 May 2009 on gender mainstreaming in EU external relations and peace-building/nation-building (2008/2198(INI))

(2010/C 212 E/07)

The European Parliament,

- having regard to the principles laid down in Articles 2, 3(2), 13, 137(1)(i) and 141 of the EC Treaty,
- having regard to the Charter of Fundamental Rights of the European Union proclaimed on 7 December 2000,
- having regard to the Lisbon Treaty, signed on 13 December 2007 in Lisbon,
- having regard to the United Nations Convention of 18 December 1979 on the Elimination of All Forms of Discrimination against Women,
- having regard to the Fourth World Conference on Women held in Beijing in September 1995, the Declaration and Platform for Action adopted in Beijing and the subsequent outcome documents adopted at the United Nations Beijing +5 and Beijing +10 Special Sessions on further actions and initiatives to implement the Beijing Declaration and Platform for Action, adopted on 9 June 2000 and 11 March 2005 respectively,
- having regard to the EU Agenda for Action on Millennium Development Goals, adopted by the Council on 18 June 2008,
- having regard to United Nations Security Council Resolutions (UNSCR) S/RES/1325 (2000), adopted on 31 October 2000, and S/RES/1820 (2008), adopted on 19 June 2008, on women and peace and security,
- having regard to the Conclusions of the General Affairs and External Relations Council of 23 and 24 May 2005 on European Security,
- having regard to the Council document of 8 December 2008 entitled 'Implementation of UNSCR 1325 as reinforced by UNSCR 1820 in the context of ESDP',
- having regard to the Conclusions of the General Affairs Council of 13 November 2006 on promoting gender equality and gender mainstreaming in crisis management,
- having regard to the Conclusions of the General Affairs Council of 8 December 2008 on combating violence against women, particularly in the European Security and Defence Policy (ESDP) framework, and all forms of discrimination against them,
- having regard to the 'Comprehensive approach to the EU implementation of the United Nations Security Council Resolutions 1325 and 1820 on women, peace and security' approved by the General Affairs Council on 8 December 2008,
- having regard to the ongoing work on a Commission Staff Working Paper entitled 'Towards an EU Action Plan on Gender Equality and Women's Empowerment in EU External Action',

Thursday 7 May 2009

- having regard to the development of the European Neighbourhood Policy (ENP) since 2004, and in particular the Commission's progress reports on its implementation, and to the action plans adopted jointly with Armenia, Azerbaijan, Egypt, Georgia, Israel, Jordan, Lebanon, Moldova, Morocco, the Palestinian Authority, Tunisia and Ukraine,
 - having regard to the enlargement process and to the Commission's progress reports,
 - having regard to its previous resolutions on women's empowerment in international and development policy and their role in security and peace, in particular that of 1 June 2006 ⁽¹⁾, that of 16 November 2006 ⁽²⁾ and that of 13 March 2008 ⁽³⁾,
 - having regard to its resolutions on the ENP, on the EU's enlargement strategy and on the neighbouring countries and regions of the EU,
 - having regard to its resolutions on external assistance instruments,
 - having regard to its resolution of 18 December 2008 on development perspectives for peace-building and nation building in post-conflict situations ⁽⁴⁾,
 - having regard to Rule 45 of its Rules of Procedure,
 - having regard to the report of the Committee on Foreign Affairs and the opinion of the Committee on Women's Rights and Gender Equality (A6-0225/2009),
- A. whereas the realisation of women's human rights, women's empowerment and agency is not only important for addressing gender inequality and implementing a true gender dimension in the EU's external relations but essential to the successful implementation of the EU's external policies, including in the areas of aid, development, enlargement, neighbourhood policy, conflict resolution, security and peace-building and international trade,
- B. whereas although the Member States are party to all major international frameworks on gender equality and women's rights, and although a number of policy documents exist at the EU level, the practical commitment to furthering gender mainstreaming and women's empowerment in external policies is still weak, the implementation of the existing policy documents is modest and the budgetary resources earmarked specifically for gender issues are insufficient,
- C. whereas despite considerable improvements in the promotion of gender equality over the recent years, the main EU institutions – that is to say, Parliament, the Council and the Commission – do not have enough staff appointed specifically to implement the declared gender objectives in the areas of external policy and enlargement, and most of the existing staff responsible for gender issues have to combine that activity with at least one, and sometimes two, other sets of duties,
- D. whereas the EU needs a holistic and coherent approach to gender mainstreaming,

General remarks

1. Recognises that the EU institutions have attached increasing importance to gender mainstreaming and women's empowerment but underlines that much remains to be done to put the political commitments into practice, and stresses the importance of adequate funding and of adequate staff responsible for implementing gender objectives;
2. Recalls that gender mainstreaming requires not only high-level policy statements but also the political will of the EU and the Member States' leadership, prioritisation of objectives and monitoring of the progress made;

⁽¹⁾ OJ C 298 E, 8.12.2006, p. 287.

⁽²⁾ OJ C 314 E, 21.12.2006, p. 347.

⁽³⁾ Texts adopted, P6_TA(2008)0103.

⁽⁴⁾ Texts adopted, P6_TA(2008)0639.

Thursday 7 May 2009

3. Welcomes the adoption of the above-mentioned 'Comprehensive approach to the EU implementation of the UNSCR 1325 (2000) and 1820 (2008) on women, peace and security', as well as the adoption by the General Affairs Council of 8 December 2008 of the guidelines on violence against women and girls and combating all forms of discrimination against them; calls on those Member States which have not yet adopted their national action plans on UNSCR 1325 to comply as a matter of urgency with the request by the Security Council that the States do so; invites the Commission to provide technical assistance and aid to third countries willing to develop national strategies for the implementation of the above-mentioned Security Council resolutions;
4. Is pleased that the revised text of the European Security Strategy includes a reference to the above-mentioned Security Council Resolutions S/RES/1325 (2000) and S/RES/1820 (2008), as well as Resolution S/RES/1612(2005);
5. Calls on the Commission to speed up its work and to propose by July 2009, in close cooperation with the Member States and the Council Secretariat, an 'EU Action Plan on Gender Equality and Women's Empowerment in EU External Action', to be applied in the 27 Member States and in negotiations with third countries, together with a set of effective monitoring instruments;
6. Calls on the Council and the Commission to systematically include gender equality and women's empowerment in the EU's political dialogue and policy discussions with partner countries;
7. Asks Parliament's delegations to address the issues related to gender equality and women's empowerment in its relations with third-country parliaments; underlines the importance of providing support and assistance to national parliaments of third countries, with a view to strengthening their capacity to introduce the gender perspective into their legislative work;
8. Underlines the importance of civil society organisations in women's empowerment; calls on the Commission to channel adequate financial support to them and to promote the participation of women's non-governmental organisations in political dialogue processes with partner countries, as well as in peace negotiations around the world;
9. Calls on the Commission and the Member States to promote coherence in their policy approach relating to gender mainstreaming and women's empowerment; asks that the existing diverse policy frameworks in this field be collated into an EU Consensus on Gender, covering both internal and external policies;
10. Encourages the regular holding of conferences to debate issues relating to equal opportunities for women and men, with the participation of delegations at the national parliament level, made up of both women and men, together with the establishment of common strategies to implement projects relating to this topic;
11. Asks the Commission to address and prioritise, in a more consistent and systematic manner, gender inequalities in the programming and implementation of the external assistance instruments, in particular as regards the provision of assistance for the reform of the security sector; insists that gender-specific objectives, activities and funding must be included in country strategy papers and that mainstreaming of gender issues through those strategy papers must be improved; underlines the need for a holistic approach in the use of external assistance instruments, including the Instrument for Pre-Accession Assistance, the European Neighbourhood Policy Instrument, the European Instrument for Democracy and Human Rights, the Instrument for Stability and thematic programmes such as 'Investing in People', in order optimally to achieve the goals of gender equality and women's empowerment;

Thursday 7 May 2009

12. Considers that the resources allocated to the health sector, and consequently to girls' and women's health, are insufficient in view of the EU's development policy commitments; underlines the need to earmark further financial resources under the external assistance instruments for women's health programmes; points out that, according to the Court of Auditors' Special Report on EC Development Assistance to Health Services in sub-Saharan Africa, published in January 2009, allocations to the health sector for that region have not increased since 2000 as a proportion of total EC assistance for health, while the Millennium Development Goals 2007 Progress Chart still identifies very high levels of maternal mortality there;
13. Points out that effective gender mainstreaming requires enhanced coordination between donors and actors, accountability mechanisms and increased ownership of the development process by national governments; highlights in this regard the added value of the EC/UN Partnership on Gender Equality for Development and Peace, and of gender-responsive budgeting initiatives; welcomes the setting-up of a task force on women, peace and security as provided for in the above-mentioned comprehensive approach to the EU implementation of Security Council Resolutions S/RES1325 (2000) and S/RES/1820 (2008);
14. Reiterates the need to focus not only on women but also on gender relations between men and women that generate and perpetuate gender inequalities; believes that, as a consequence, projects should take into consideration both men and women;
15. Stresses that the EU should pay special attention to the needs of the most vulnerable and socially excluded women, in particular disabled women, refugees and women from minority groups;
16. Calls on the Commission to further develop procedures, benchmarks and indicators in order to ensure that it fulfils its commitments with regard to gender equality in its external policy;
17. Considers that the European Institute on Gender Equality, established in 2006, should become operational as soon as possible and that its mandate should be extended to external policies;
18. Calls on the Commission and the Member States to implement the 'Brussels Call for Action to Address Sexual Violence in Conflict and Beyond';
19. Calls on the Commission and the Member States to take action to prevent and combat trafficking in human beings;
20. Underlines that rape and sexual violence are used as a weapon of war; stresses that they should be punished as war crimes and crimes against humanity; calls for more support programmes for victims of these crimes;
21. Underlines the need to capitalise on the EU's partnership with the UN, drawing on the latter's global expertise in advancing gender equality and empowerment of women, with a view to enhancing the effectiveness and impact of EU policies and aid, and to ensure coherence of external support for partner countries to help them fulfil their relevant obligations;

Gender mainstreaming in the EU's decision-making

22. Considers that the number of personnel currently working on gender issues within the Council and the Commission is inadequate; calls on those institutions to allocate more staff to the structures in charge of the EU's external action with specific responsibility for gender mainstreaming and women's empowerment;
23. Notes the continued lack of women in high-level posts within the Council and the Commission, and calls, in particular, for greater efforts to boost the number of women among the heads of EU delegations and the EU Special Representatives; stresses that the future External Action Service should have a better balance of men and women, particularly as regards high-level posts, and that it should include more staff responsible for gender issues;

Thursday 7 May 2009

24. Calls on the Member States to include more women in ESDP missions and operations, and asks that the participation of women at all levels and in all phases of the planning and implementation be increased; underlines the need to include gender expertise from the very start of the planning of a mission or operation, as well as the importance of systematic and substantial gender training prior to the deployment of staff in missions and operations;

25. Notes that a great deal of effort is currently being made to mainstream a gender-sensitive approach into the culture of the ESDP, inter alia by developing the quantitative dimension of gender mainstreaming within that policy (e.g. through questionnaires, the development of check-lists, counting the number of men and women in ESDP operations, etc); however, stresses the need to develop the qualitative conceptual framework required in order to understand the socio-economic context in which ESDP missions are deployed (i.e. areas of conflict) and gender-sensitive concerns in the implementation of operations and programmes;

26. Welcomes the appointment of a gender adviser to nearly all ESDP missions, in line with the above-mentioned Council conclusions of November 2006; nevertheless emphasises that the work of such gender advisers may be undermined by the lack of a concrete EU gender policy – in particular, a lack of gender awareness and/or an unwillingness to consider its importance – and the lack of gender-specific budget lines in the financing of ESDP missions;

27. Commends the initiatives to provide gender-related training to staff deployed on ESDP missions and in the corresponding headquarters, and the considerable effort made by the Commission to train its staff, particularly within delegations; reiterates that all staff at every level of the planning, programming and implementation of the EU's external policies should be adequately trained; asks the Commission and the Member States to ensure that compulsory training is provided for all staff in missions and delegations, including the management, and that they are given guidance on gender issues and women's empowerment;

28. Is convinced that ESDP mission planning should take account of the inclusion of local women's organisations in the peace process, so as to build on the specific contribution which they can make and to recognise the particular ways in which women are affected by conflicts;

29. Stresses that, currently, quotas are an indispensable means of ensuring gender equality in peace and security missions and in decision-making in national and international reconstruction processes, and of guaranteeing the political presence of women at the negotiating table;

30. Underlines the importance of gender-sensitive budgeting; points out that gender should be developed as a thematic issue in major external assistance instruments, that special appropriations should be earmarked for gender issues and that benchmarks should be defined in order to measure how efficiently the funds provided are being used;

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

Thursday 7 May 2009

Parliament's new role and responsibilities in implementing the Lisbon Treaty

P6_TA(2009)0373

European Parliament resolution of 7 May 2009 on Parliament's new role and responsibilities in implementing the Treaty of Lisbon (2008/2063(INI))

(2010/C 212 E/08)

The European Parliament,

- having regard to the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed on 13 December 2007,
- having regard to the Treaty on the European Union and the Treaty establishing the European Community as amended by the Single European Act and the Treaties of Maastricht, Amsterdam and Nice,
- having regard to the Charter of Fundamental Rights of 12 December 2007,
- having regard to the Laeken Declaration of 15 December 2001 on the Future of the European Union,
- having regard to the Treaty establishing a Constitution for Europe, signed in Rome on 29 October 2004,
- having regard to its resolution of 7 June 2007 on the roadmap for the Union's Constitutional Process ⁽¹⁾,
- having regard to its resolution of 11 July 2007 on the convening of the Intergovernmental Conference (IGC): the European Parliament's opinion (Article 48 of the EU Treaty) ⁽²⁾,
- having regard to its resolution of 20 February 2008 on the Treaty of Lisbon ⁽³⁾,
- having regard to Rule 45 of its Rules of Procedure,
- having regard to the report of the Committee on Constitutional Affairs and the opinions of the Committee on Foreign Affairs, the Committee on Development, the Committee on International Trade, the Committee on Budgetary Control, the Committee on Economic and Monetary Affairs, the Committee on Employment and Social Affairs, 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 Regional Development, the Committee on Agriculture and Rural Development, the Committee on Fisheries, the Committee on Culture and Education, the Committee on Legal Affairs, the Committee on Civil Liberties, Justice and Home Affairs, the Committee on Women's Rights and Gender Equality and the Committee on Petitions (A6-0145/2009),

New policies

New objectives and horizontal clauses

1. Welcomes the binding character that the Treaty of Lisbon gives to the Charter of Fundamental Rights and welcomes the recognition of the rights, freedoms and principles set out for all EU citizens and residents; underlines that Parliament will be committed to ensuring full respect of the Charter;

⁽¹⁾ OJ C 125 E, 22.5.2008, p. 215.

⁽²⁾ OJ C 175 E, 10.7.2008, p. 347.

⁽³⁾ Texts adopted, P6_TA(2008)0055.

Thursday 7 May 2009

2. Welcomes the strengthening of representative and participatory democracy arising from the introduction of, inter alia, the so-called 'citizens' initiative' (Article 11 of the EU Treaty as amended by the Treaty of Lisbon (TEU)), whereby not less than one million citizens from a significant number of Member States may ask the Commission to submit a proposal for a legal act;
3. Welcomes the fact that environmental protection has been given a prominent position in all EU policies and that an explicit reference is made in Article 191 of the Treaty on the Functioning of the European Union (TFEU) to combating climate change at the international level; stresses that Parliament should continue to push the European Union to take a leading role in all policies relating to fighting climate change and global warming;
4. Welcomes the fact that the new TFEU links the building of an area of freedom, security and justice to the protection of fundamental rights and the legal order of the European Union and of its Member States (Article 67 of the TFEU);
5. Takes particular note of the objective of establishing a 'highly competitive social market economy, aiming at full employment and social progress and a high level of protection and improvement of the quality of the environment' (Article 3(3) of the TEU), thereby linking the aim of completing the internal market with other objectives;
6. Notes with satisfaction that equality between women and men has been included among the Union's values (Article 2 of the TEU) and aims (Article 3(3) of the TEU);
7. Welcomes the fact that, according to Article 208(1) of the TFEU, the 'Union's development cooperation policy and that of the Member States complement and reinforce each other', whereas, according to the current Article 177(1) of the Treaty establishing the European Community, 'Community policy in the sphere of development cooperation [...] shall be complementary to the policies pursued by the Member States'; stresses the increased responsibility of Parliament, given that the Union will have a greater role to play in terms of initiative in policy-setting, which should lead to improved donor coordination and division of labour and to greater aid effectiveness for the 'reduction and, in the long term, the eradication of poverty' in the context of the Millennium Development Goals;
8. Believes that the inclusion of territorial cohesion as an objective of the Union (Article 3 of the TEU) complements the objectives of economic and social cohesion and that the introduction of legal bases in those respective areas will increase the competence of Parliament to assess the territorial impact of key Union policies; is pleased to note that the special status of the outermost regions is confirmed by Articles 349 and 355 of the TFEU;
9. Welcomes the introduction of horizontal provisions on a high level of employment, social protection, the fight against social exclusion, a high level of education, training and protection of human health, combating discrimination, and environmental protection, which will act as general principles underlying the European Union's policy-making (Articles 9, 10 and 11 of the TFEU);
10. Also welcomes the fact that consumer protection has been strengthened to the extent that it is to be mainstreamed into the other Union policies to be laid down and implemented, and, as a cross-cutting task, now occupies a much more prominent place by virtue of Article 12 of the TFEU;
11. Welcomes the solidarity provision expressly contained in Article 122 of the TFEU, whereby the Council may decide on appropriate measures if severe difficulties arise in the supply of certain products, notably in the area of energy;
12. Welcomes the fact that Article 214 of the TFEU recognises humanitarian aid as a fully-fledged Union policy; takes the view that Part Five, Title III, Chapter 1 (Development cooperation) and Chapter 3 (Humanitarian aid) of the TFEU provide a clear legal basis for development and humanitarian assistance to which the ordinary legislative procedure applies;

Thursday 7 May 2009

13. Welcomes, moreover, the reinforcement of the European Union's power, in the area of civil protection, to provide ad hoc assistance and disaster relief in third countries (Article 214 of the TFEU);

New legal bases

14. Underlines that the broadening of the Union's external action under the Lisbon Treaty, including the provision of new legal bases and instruments affecting areas related to foreign policy (external action and the Common Foreign and Security Policy (CFSP)/European Security and Defence Policy), necessitates a new interinstitutional balance guaranteeing adequate democratic scrutiny by Parliament;

15. Welcomes the fact that energy matters will now be covered by a separate Title XXI in Part Three of the TFEU and that action in that field will thus have a legal basis (Article 194 of the TFEU); notes, however, that, while the ordinary legislative procedure will be followed as a general rule, decisions on the energy mix will remain within the competence of the Member States, while fiscal measures in that field will continue to require only consultation of Parliament;

16. Notes positively the shared values of the Union as regards services of general economic interest and welcomes the legal basis allowing for the definition of principles and conditions governing the provision of services of general economic interest under the ordinary legislative procedure (Article 14 of the TFEU and Protocol No 26 on services of general interest);

17. Considers that the changes introduced by the Treaty of Lisbon in the area of the common commercial policy (CCP) (Articles 206 and 207 of the TFEU) contribute overall to the enhancement of its democratic legitimacy and its efficiency, in particular by introducing the ordinary legislative procedure and the requirement that consent be obtained for all agreements; notes that all matters falling under the CCP will come within the exclusive competence of the Union, with the effect that there will no longer be any mixed trade agreements concluded by both the Union and the Member States;

18. Expresses its satisfaction at the insertion of a provision on a European space policy (Article 189 of the TFEU) and welcomes the opportunity given to Parliament and to the Council to adopt, under the ordinary legislative procedure, the necessary measures establishing a European space programme; considers, however, that the words 'excluding any harmonisation of the laws and regulations of the Member States in this field' which appear in that article may pose certain obstacles to the implementation of a common European space policy;

19. Points out that the Treaty of Lisbon includes a new legal basis providing for codecision in respect of intellectual property rights (Article 118 of the TFEU);

20. Welcomes the extension of the scope of EU action in the field of youth policy, encouraging the participation of young people in democratic life in Europe (Article 165 of the TFEU);

21. Welcomes the new legal basis laid down in Article 298 of the TFEU, which provides that 'in carrying out their missions, the institutions, bodies, offices and agencies of the Union shall have the support of an open, efficient and independent European administration', since this provides the basis for a regulation governing the Union's administrative procedure;

22. Welcomes the strengthening of the legal basis for the adoption of European Union measures in the fields of the prevention of and fight against fraud affecting the financial interests of the Union (Article 325 of the TFEU); highlights the fact that the Treaty of Lisbon removes the qualification, contained in the current Article 280 of the EC Treaty, that such measures 'shall not concern the application of national criminal law or the national administration of justice';

23. Points out that the new Treaty provisions concerning judicial cooperation in civil and criminal matters include a legal basis for the adoption of measures to support the training of the judiciary and judicial staff (Articles 81 and 82 of the TFEU);

Thursday 7 May 2009

24. Emphasises that the Treaty of Lisbon also provides for the possible establishment of a European Public Prosecutor's Office in order to combat crimes affecting the financial interests of the Union (Article 86 of the TFEU);

25. Welcomes the fact that the Treaty of Lisbon introduces binding provisions for the protection of the rights of the child in the internal and external objectives of the European Union (Article 3(3), second subparagraph, and Article 3(5) of the TEU);

26. Welcomes the inclusion of tourism as a new title in the Lisbon Treaty (Article 195 of the TFEU), which provides that the Union is to complement the action of the Member States; further welcomes the provision that the ordinary legislative procedure will govern the adoption of legislative proposals falling under that title;

27. Welcomes the fact that the Treaty of Lisbon has included sport amongst the areas in respect of which a legal basis is laid down (Article 165 of the TFEU); stresses in particular that the Union can at last take action for the development of sport and its European dimension and can take due account of the specific nature of sport when applying other European policies;

New powers for Parliament

New codecision powers

28. Welcomes the fact that the Treaty of Lisbon will strengthen the democratic legitimacy of the European Union considerably by extending Parliament's codecision powers;

29. Welcomes the fact that the area of freedom, security and justice is fully integrated into the TFEU (Articles 67 to 89), formally putting an end to the third pillar; welcomes the fact that most decisions in the area of civil justice, asylum, immigration and visa policies, as well as justice and police cooperation in criminal matters, will be covered by the ordinary legislative procedure;

30. Believes that the introduction of the ordinary legislative procedure in the field of the common agricultural policy (CAP) improves the democratic accountability of the European Union, inasmuch as Parliament will be co-legislating on an equal footing with the Council; emphasises that codecision will apply to all legislation in the field of agriculture under Article 43(2) of the TFEU, and that this will notably be the case in respect of the four main horizontal texts in the field of agriculture (the single common market organisation, the direct payments regulation, the rural development regulation and financing of the CAP); points out, moreover, that legislation on quality, organic farming and promotion will also fall within the scope of Article 43(2) of the TFEU;

31. Stresses that any power of the Council to adopt measures pursuant to Article 43(3) of the TFEU is subject to the prior adoption, in accordance with the ordinary legislative procedure, of a legislative act pursuant to Article 43(2) of the TFEU, which prescribes the conditions and limitations attaching to the powers conferred on the Council; takes the view that Article 43(3) of the TFEU does not provide for a legal basis or for any autonomous power which would allow the adoption or amendment of any of the Council acts presently in force in the field of the CAP; calls on the Council to refrain from adopting any of the measures referred to in Article 43(3) of the TFEU without prior consultation of Parliament;

32. Notes that the Treaty of Lisbon introduces far-reaching changes in the decision-making system for the common fisheries policy (CFP) and will also increase its democratic accountability; welcomes the fact that Parliament and the Council will establish, under the ordinary legislative procedure, the necessary rules for achieving the objectives of the CFP (Article 43(2) of the TFEU); considers, in this respect, that any subject formally included in the annual regulation other than the setting of catch possibilities and the distribution of quotas, such as technical measures or fishing effort, or the incorporation of agreements adopted within the regional fisheries organisations, which have their own legal basis, should be subject to the ordinary legislative procedure;

Thursday 7 May 2009

33. Welcomes the introduction of the ordinary legislative procedure for the adoption of detailed rules on the multilateral surveillance procedure (Article 121(6) of the TFEU), which should strengthen economic coordination;

34. Believes that the responsibility of the European Central Bank (ECB) to report on monetary policy is now greater, since the ECB is recognised as an institution of the European Union; welcomes the fact that several provisions of the Statute of the European System of Central Banks (ESCB) and of the ECB can be modified after consulting Parliament in accordance with Article 40.2 of that Statute; affirms that this does not constitute an encroachment on the independence of the ECB in the field of monetary policy or the priorities set out in the Treaty;

35. Considers Article 182 of the TFEU to be an improvement because the multiannual framework programme and the implementation of a European research area, referred to therein, will be covered by the ordinary legislative procedure; notes, however, that the specific programmes mentioned in that article will be adopted via a special legislative procedure, implying mere consultation of Parliament (Article 182(4) of the TFEU);

36. Welcomes the fact that, as regards the implementation of the Structural Funds, the Lisbon Treaty places Parliament on an equal footing with the Council by replacing the current assent procedure by the ordinary legislative procedure; considers that this is especially significant as regards the Structural Funds in the period after 2013, in that it enhances transparency and increases accountability in respect of those funds vis-à-vis citizens;

37. Notes that legislation prohibiting discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation will become subject to a special legislative procedure and will require Parliament's consent (Article 19 of the TFEU);

38. Welcomes the fact that the ordinary legislative procedure will cover measures to combat trafficking in human beings, in particular women and children, and sexual exploitation (Articles 79(2) and 83(1) of the TFEU);

39. Welcomes the extension of qualified majority decision-making to the field of education, including sport (Article 165(4) of the TFEU);

40. Welcomes the fact that codecision will henceforth apply to the Staff Regulations of Officials of the European Union (Article 336 of the TFEU), inasmuch as this will allow Parliament to take part on an equal footing with the Council in the adjustment of those regulations;

New budgetary powers

41. Notes that the Treaty of Lisbon makes sweeping changes in the area of the Union's finances, particularly as regards interinstitutional relations and decision-making procedures;

42. Points out that the Council and Parliament must agree, within the limits of own resources, on the programming of expenditure which becomes legally binding (Article 312 of the TFEU); welcomes the fact that the budget as a whole must be adopted jointly by Parliament and the Council, in compliance with the multiannual financial framework; welcomes the abolition of the distinction between compulsory and non-compulsory expenditure (Article 314 of the TFEU); welcomes the fact that the adoption of the financial regulation will be subject to the ordinary legislative procedure (Article 322 of the TFEU);

Thursday 7 May 2009

43. Refers to its resolution of 7 May 2009 on the financial aspects of the Treaty of Lisbon ⁽¹⁾;

New consent procedure

44. Welcomes the fact that the simplified revision procedure with regard to the introduction of qualified majority voting and the introduction of the ordinary legislative procedure in a given area under Title V of the TEU or under the TFEU requires the consent of Parliament;

45. Notes the introduction of an 'exit clause' for the Member States (Article 50 of the TEU); underlines that the agreement laying down the arrangements for the withdrawal of a Member State from the Union may not be concluded until after Parliament has given its consent;

46. Welcomes the fact that Parliament's consent will be required for a wide range of international agreements signed by the Union; underlines its intention to request the Council, where appropriate, not to open negotiations on international agreements until Parliament has stated its position, and to allow Parliament, on the basis of a report from the committee responsible, to adopt at any stage in the negotiations recommendations which are to be taken into account before the conclusion of negotiations;

47. Urges that any future 'mixed' agreement combining non-CFSP and CFSP elements must normally be dealt with under a single legal basis, which should be the one directly related to the main subject-matter of the agreement; notes that Parliament will have the right to be consulted, except where the agreement relates exclusively to the CFSP;

New powers of scrutiny

48. Welcomes the fact that the President of the Commission will be elected by Parliament, on a proposal of the European Council, taking into account the elections to the European Parliament; refers to its resolution of 7 May 2009 on the impact of the Treaty of Lisbon on the development of the institutional balance of the European Union ⁽²⁾;

49. Welcomes the fact that the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy, together with the other members of the Commission, as a body, will be subject to a vote of consent by Parliament, as well as to a vote of censure, and will therefore be accountable to Parliament;

50. Welcomes the new procedure for the appointment of Judges and Advocates-General of the Court of Justice and the General Court as provided for in Article 255 of the TFEU, under which the national governments' decision is to be preceded by an opinion on candidates' suitability to perform their duties given by a panel of seven experts, one of whom is to be proposed by Parliament;

51. Underlines the need for transparency and democratic scrutiny concerning the setting-up of the European External Action Service (EEAS) in accordance with Article 27(3) of the TEU, and recalls its right to be consulted on its establishment; is of the opinion that, administratively, the EEAS should be attached to the Commission;

52. Expects clarifications with regard to the criteria for, and the appointment and evaluation of, EU Special Representatives, including the definition and purpose of their tasks, the length of their mandate, and coordination and complementarity with the Union's future delegations;

53. Underlines the need for transparency and democratic scrutiny concerning the European Defence Agency (EDA) and the activities undertaken it, namely by ensuring a regular exchange of information between the Chief Executive of the EDA and Parliament's committee responsible;

⁽¹⁾ Texts adopted, P6_TA(2009)0374.

⁽²⁾ Texts adopted, P6_TA(2009)0387.

Thursday 7 May 2009

54. Welcomes the new consultation role it will have under Article 40.2 of the Statute of the ESCB and of the ECB with regard to changing the composition of the ECB Governing Council;

55. Welcomes the fact that agencies, notably Europol and Eurojust, will be subject to greater parliamentary scrutiny (Articles 85 and 88 of the TFEU); believes, therefore, that the retention of the consultation procedure for the setting-up of joint undertakings in the area of research and technological development (Articles 187 and 188 of the TFEU) may not conform to the spirit of the legal acts of the Union establishing agencies;

New rights to be informed

56. Calls on the President of the European Council to keep Parliament fully informed about the preparations for European Council meetings and to give a report on the results of meetings, where possible within two working days (if necessary to a special sitting of Parliament);

57. Calls on the President of the rotating Council Presidency to inform Parliament about the Presidency programmes and about the results achieved;

58. Urges the future Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy to agree, with Parliament, upon adequate methods of keeping Parliament fully informed of, and consulted on, the Union's external action, duly involving all committees of Parliament which are responsible for areas falling under the remit of the High Representative;

59. Stresses that, as regards the negotiation and conclusion of international agreements, the Commission will be under a legal obligation to inform Parliament of the progress of negotiations in the same way as the special committee designated by the Council as referred to in Article 218 of the TFEU; calls for this information to be provided to the same extent, and at the same time, as it is supplied to the relevant Council committee under that article;

New rights of initiative

60. Welcomes Parliament's new role in initiating amendments to the Treaties; will make use of this right and put forward new ideas for the future of Europe, when new challenges make this necessary;

61. Welcomes the fact that Parliament will have the right of initiative as regards proposals concerning its own composition, respecting the principles laid down in the Treaties (Article 14 of the TEU);

62. Notes that the Treaty of Lisbon introduces a special legislative procedure for the adoption of provisions laying down the modalities and powers of temporary committees of inquiry (Article 226 of the TFEU);

New procedures

Scrutiny by national parliaments

63. Welcomes the new rights conferred on national parliaments with regard to prior scrutiny of application of the principle of subsidiarity in all legislation of the Union; takes the view that strengthening the scrutiny of European policies by national parliaments will also raise public awareness of the Union's activities;

64. Stresses that the national parliaments' new prerogatives have to be fully respected as from the entry into force of the Treaty of Lisbon;

Thursday 7 May 2009

65. Welcomes the requirement for local and regional authorities to respect the principle of subsidiarity; notes the right of the Committee of the Regions to bring actions before the Court of Justice when it considers that the principle of subsidiarity has been infringed (second paragraph of Article 8 of Protocol No 2);

Delegated acts

66. Appreciates the improvements flowing from the new provisions on legal acts and the hierarchy of norms, in particular the creation of the delegated act (Article 290 of the TFEU), which makes it possible to delegate to the Commission the power to adopt non-legislative acts of general application or to amend non-essential elements of a legislative act; points out that the objectives, content, scope and duration of any such delegation must be clearly defined by Parliament and by the Council in the legislative act;

67. Welcomes in particular the provisions of Article 290(2) of the TFEU, which envisages Parliament (and the Council) having the right both to revoke the delegation of powers and to object to individual delegated acts;

68. Notes that the Treaty of Lisbon and, through it, the TFEU, do not provide a legal basis for a framework measure for delegated acts, but proposes that the institutions could agree on a standard formula for such delegations that would be regularly inserted by the Commission in the draft legislative act itself; stresses that this would preserve the freedom of the legislator;

69. Asks the Commission to clarify how it intends to interpret Declaration 39 annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, concerning the consultation of experts in the area of financial services, and how it intends to apply that interpretation, beyond the provisions on delegated acts contained in the TFEU;

Implementing acts

70. Notes that the Treaty of Lisbon repeals the current Article 202 of the EC Treaty concerning implementing powers and introduces in Article 291 of the TFEU a new procedure – ‘implementing acts’ – that provides for the possibility of conferring implementing powers on the Commission in cases where ‘uniform conditions for implementing legally binding Union acts’ are needed;

71. Notes that Article 291(3) of the TFEU requires Parliament and the Council to adopt, in advance, general rules and principles concerning mechanisms for ‘control by Member States’ of the exercise of implementing powers by the Commission;

72. Notes that the Treaty of Lisbon no longer provides a basis for the present comitology procedures and that pending legislative proposals which are not adopted before its entry into force must be modified in order to satisfy the requirements of Articles 290 and 291 of the TFEU;

73. Is of the opinion that an interim solution could be negotiated with the Council for the initial period, so that no obstacle would occur as a result of a possible legal lacuna and the new regulation could be adopted by the legislator after due consideration of the Commission proposals;

Priorities for the transition period

74. Asks the Commission to transmit to the co-legislators all pending proposals in respect of which new legal bases and changes in the legislative procedures apply;

Thursday 7 May 2009

75. Points out that Parliament will decide what position it takes regarding opinions that have already been adopted in consultation procedures on matters which henceforth are to be dealt with under the ordinary legislative procedure, whether this involves confirmation of its previous position or the adoption of a new one; stresses that any confirmation of opinions as Parliament's position at first reading can be voted on by Parliament only after the Lisbon Treaty has entered into force;

76. Insists on the conclusion of an interinstitutional agreement precluding the adoption of pending 'third pillar' legislative proposals having a fundamental rights dimension until the entry into force of the Treaty of Lisbon, so that full judicial scrutiny will be possible in respect of such matters, while measures having no impact, or only a limited impact, on fundamental rights can still be adopted prior to its entry into force;

Proposals

77. Calls on the other institutions to enter into negotiations for an interinstitutional agreement covering:

(a) the main objectives to be achieved by the European Union after 2009, e.g. in the form of a framework agreement between the three political institutions on a work programme for the parliamentary and Commission term starting in 2009;

(b) the implementing measures to be adopted in order to make the new Treaty a success for the institutions and for citizens of the Union;

78. Requests an update of the interinstitutional agreement between Parliament and the Council defining their working relations concerning foreign policy, including the sharing of confidential information on the basis of Articles 14 and 36 of the TEU and Article 295 of the TFEU;

79. Calls on the Council and the Commission to consider the negotiation with Parliament of a new interinstitutional agreement providing Parliament with a substantive definition of its involvement in every stage leading to the conclusion of an international agreement;

80. Calls, as a consequence of the new provisions on the multiannual financial framework (Article 312 of the TFEU) and on the financial regulation (Article 322 of the TFEU), for the Interinstitutional Agreement on budgetary discipline and sound financial management to be reviewed;

81. Considers that all necessary steps should be taken to create a European information and communication policy, and regards the joint political declaration given by the three institutions on communication as a useful first step towards the attainment of that objective;

82. Calls on the Commission to rapidly present an initiative for implementation of the 'citizens' initiative', laying down clear, simple and user-friendly conditions for the exercise of this citizens' right; refers to its resolution of 7 May 2009 requesting the Commission to submit a proposal for a regulation of the European Parliament and of the Council on the implementation of the citizens' initiative⁽¹⁾;

83. Calls on the Commission to adopt regulations implementing Article 298 of the TFEU on good administration, which will answer a long-standing call by Parliament and by the European Ombudsman for a common system of administrative law governing the European administration;

84. Notes that the Treaty of Lisbon allows for the inclusion of the European Development Fund in the budget of the Union, which will enhance the democratic legitimacy of an important part of the EU's development policy; calls on the Council and the Commission to take the necessary steps for the budget of the European Union at the 2008/2009 mid-term review;

⁽¹⁾ Texts adopted, P6_TA(2009)0389.

Thursday 7 May 2009

85. Recommends urgent re-examination and reinforcement of the Union's status in international organisations once the Treaty of Lisbon is in force and the Union has succeeded the European Communities;
86. Calls on the Council and the Commission to agree with Parliament on a strategy aimed at ensuring coherence between legislation adopted and the Charter of Fundamental Rights as well as the rules contained in the Treaties on policies such as preventing discrimination, protecting asylum seekers, improving transparency, data protection, the rights of minorities and the rights of victims and suspects;
87. Asks the Council and the Commission to contribute to the improvement of relations between European and national authorities, especially in the legislative and judicial fields;
88. Calls on the Council and the Commission to provide for the establishment of an effective common energy policy with the objective of efficiently coordinating the energy markets of the EU Member States and the development of those markets, whilst integrating external aspects focusing on the sources and routes of energy supply;
89. Calls on the Council to consider, together with Parliament, what use should be made of the provisions of Article 127(6) of the TFEU, which allow the Council to confer specific tasks upon the European Central Bank 'relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings';
90. Pledges to adapt its internal organisation with a view to optimising and rationalising the exercise of the new powers conferred on it by the Treaty;

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

Financial aspects of the Lisbon Treaty

P6_TA(2009)0374

European Parliament resolution of 7 May 2009 on the financial aspects of the Lisbon Treaty (2008/2054(INI))

(2010/C 212 E/09)

The European Parliament,

- having regard to the Lisbon Treaty amending the Treaty on European Union and the Treaty establishing the European Community, signed on 13 December 2007 ('the Lisbon Treaty'),
- having regard to the Treaty on European Union and the Treaty establishing the European Community, as amended by the Single European Act and the Maastricht, Amsterdam and Nice Treaties,
- 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 ⁽¹⁾,

⁽¹⁾ OJ C 139, 14.6.2006, p. 1.

Thursday 7 May 2009

- having regard to its resolution of 11 March 2003 on reform of the budgetary procedure: possible options in view of the revision of the treaties ⁽¹⁾,
 - having regard to its resolution of 29 March 2007 on the future of the European Union's own resources ⁽²⁾,
 - having regard to its resolution of 8 June 2005 on Policy Challenges and Budgetary Means of the enlarged Union 2007-2013 ⁽³⁾,
 - having regard to the conclusions of the European Council of 11 and 12 December 2008 on the approach to resuming work on the Treaty of Lisbon,
 - having regard to Rule 45 of its Rules of Procedure,
 - having regard to the report of the Committee on Budgets and the opinions of the Committee on Foreign Affairs and the Committee on Agriculture and Rural Development (A6-0183/2009),
- A. whereas the Lisbon Treaty introduces major changes in the area of the Union's finances, in particular as regards interinstitutional relations and decision-making procedures,
- B. whereas it establishes a clear hierarchy among the basic acts governing the financial and budgetary life of the Union, thereby bringing about a much-needed clarification of the decision-making system,
- C. whereas the multiannual financial framework (MFF), which translates the Union's political priorities into expenditure programmed over a number of years and places a ceiling on Union expenditure over a given period, becomes in the Lisbon Treaty a legally binding act based on a new specific legal basis for the adoption of the regulation setting out the MFF,
- D. whereas the fact that the MFFs, on the one hand, and Parliament's parliamentary term and the Commission's term of office, on the other, do not coincide has thus far served to deprive Parliament of part of its budgetary powers, because it is often bound by a financial framework negotiated and adopted during the previous parliamentary term,
- E. whereas, if no change is made to the timetable, some Parliaments will never be able to take fundamental budgetary decisions, since the financial framework adopted by their predecessors covers the entire parliamentary term in question,
- F. whereas the current small margins available under each heading and the paltry sums allocated to the flexibility mechanisms which can be employed make it very difficult for the Union to respond appropriately to unexpected political events and may deprive the annual budgetary procedure of its substance,
- G. whereas the entry into force of the Lisbon Treaty makes it essential that the institutions responsible for the Union's financial and budgetary decision-making should reach an agreement on an optimum transition to the arrangements introduced by the new legal acts and the new decision-making procedures,
- H. whereas, in the interests of the smooth functioning of the Economic and Monetary Union, the EU budget must be taken into account when coordinating Member States' budgetary strategies,

⁽¹⁾ OJ C 61 E, 10.3.2004, p. 143.

⁽²⁾ OJ C 27 E, 31.1.2008, p. 214.

⁽³⁾ OJ C 124 E, 25.5.2006, p. 373.

Thursday 7 May 2009

1. whereas the European Council of 11 and 12 December 2008 reaffirmed that the Lisbon Treaty is necessary in order to help the enlarged Union to function more efficiently, more democratically and more effectively, including in international affairs, and whereas it defined an approach and legal guarantees which meet the concerns expressed by the Irish electorate, with a view to enabling the Treaty to enter into force before the end of 2009, while respecting the aims and objectives of the Treaties,

Overall appraisal

1. Welcomes the advances brought about by the Lisbon Treaty in the area of the democratic scrutiny and transparency of the Union's finances; draws attention to the need to enhance and adapt interinstitutional conciliation mechanisms and internal cooperation procedures in order to enable Parliament to exercise its new powers to the full;

Own resources

2. Regrets that, as regards the Union's own resources, the Member States have failed to take the opportunity to establish a system of genuine own resources that is fairer, more transparent, more readily understandable to the public and subject to a more democratic decision-making procedure;
3. Regrets, in particular, that no progress has been made in involving Parliament in the process of determining the limits to and the nature of the own resources available to the Union; points out that decision making on revenue and decision making on expenditure remain separate;
4. Welcomes, however, the efforts made to ensure that measures implementing the decision on own resources can be adopted by means of a special legislative procedure under which the Council acts by a qualified majority only after securing Parliament's consent;
5. Calls on the Council to employ that arrangement wherever possible in order to make the decision-making procedure more flexible;

Multiannual financial framework

6. Welcomes the formal status granted in the Lisbon Treaty to the MFF, which becomes a legally binding act; points out that the MFF programmes EU expenditure and places a ceiling on Union spending over a given period, thereby helping to strengthen budgetary discipline;
7. Welcomes the fact that the regulation laying down the MFF will have to be jointly approved by Parliament and the Council, under a special procedure;
8. Regrets, however, that the Lisbon Treaty has retained the requirement that the Council should act unanimously when adopting the MFF, rendering the decision-making procedure very difficult and encouraging negotiations on the basis of the 'lowest common denominator'; urges the European Council, therefore, to make use as soon as possible of the provision which enables it, by means of a unanimous decision, to impose a switch to qualified-majority voting for the adoption of the MFF;
9. Regrets, further, that under the new procedure Parliament has only a right of approval and no genuine power of codecision; however, emphasises the fact that the Lisbon Treaty stipulates that the institutions must take any measure necessary, throughout the procedure, to ensure that is ultimately successful; calls on the Council, therefore, to demonstrate its willingness, from the start of the procedure, to develop a structured political dialogue with Parliament in order to take full account of the latter's priorities;

Thursday 7 May 2009

10. Notes that the Lisbon Treaty stipulates that the MFF will determine not only the 'amounts' of the 'annual ceilings on commitment appropriations by category of expenditure and of the annual ceiling on payment appropriations', but will also lay down 'any other provisions required for the annual budgetary procedure to run smoothly' ⁽¹⁾;

Duration of the MFF

11. Welcomes the fact that the Lisbon Treaty provides for the possibility of financial programming over five years, so that, if the necessary changes are introduced, the MFF can be made to match, as far as possible, Parliament's parliamentary term and the Commission's term of office, as democratic logic requires; emphasises that particular arrangements to cope with the needs of specific policies for longer-term financial periods could be required;

12. Supports, therefore, the switch to a five-year MFF, but is aware that a full coincidence between the MFF and the term of the European Parliament and the term of Office of the Commission might be difficult, as it considers that a negotiating period of at least one year may be necessary to allow each new Parliament and each new Commission to take fundamental financial policy decisions during their terms of office;

13. Takes a very favourable view of the incorporation of the MFF into a comprehensive approach to interinstitutional strategic programming - one which, moreover, is consolidated in the Lisbon Treaty - as suggested in the report by the Committee on Constitutional Affairs on the institutional balance ⁽²⁾;

14. Endorses the proposal made in that report that the new College of Commissioners, when presenting its 'programme for its term of office', should submit proposals concerning the guidelines for the financial framework which it regards as necessary to achieve political priorities for its term of office - priorities which, once the programme for the parliamentary term has been agreed between the institutions, would be developed through its proposals in the MFF;

15. Takes the view, moreover, that at debates in plenary and hearings before the parliamentary committees the nominee for the post of President of the Commission should already be in a position to provide an outline of the likely financial implications of the political objectives the new Commission intends to pursue;

16. Emphasises that the switch to five-year financial programming, as referred to above, could necessitate the prolongation and adjustment of the current MFF to 2016 inclusive, so that the next five-year MFF can enter into force, at the latest, in early 2017 ⁽³⁾; recommends that the negotiations for the next MFF be in any case concluded by the end of the first trimester of 2016, in order to allow for the budgetary procedure for 2017 to run already within the parameters of the framework that will be in force in 2017;

17. Stresses that the negotiations should be conducted in such a way as to allow the institutions to envisage the entry into force of a new MFF already in 2016;

18. Considers that the prolongation and adjustment of the current MFF should be considered when the next mid-term review is carried out in 2010;

⁽¹⁾ Article 312(3) of the Treaty on the Functioning of the European Union.

⁽²⁾ Dehaene report of 18 March 2009 on the impact of the Lisbon Treaty on the development of the institutional balance of the European Union (A6-0142/2009).

⁽³⁾ In keeping with the model described in the following table taken from the Committee on Budgets' report of 26 February 2009 on the mid-term review of the financial framework 2007-2013 (A6-0110/2009):

Year	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
budget prep	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Parliamentary term				2004 / 2009			2009 / 2014			2014 / 2019		
MFF				Review 2007 / 2013			2013 / 2016			2017 / 2021		

Thursday 7 May 2009

Flexibility

19. Emphasises that the legally binding nature of the MFF necessitates, even more than before, the introduction of more flexible implementing arrangements so that the Union can respond sufficiently flexibly and effectively to unforeseen challenges, both within and outside the Union;

20. Draws attention to the fact that the Lisbon Treaty stipulates that the ceilings corresponding to the last year of the existing MFF and other provisions will be extended if the new MFF has not been adopted before the preceding MFF expires; regards this as a further argument in favour of increased flexibility;

21. Emphasises, in that connection, the importance of strengthening flexibility mechanisms operating within and between each heading and through specific flexibility instruments which can be mobilised outside the margins;

22. Points out that the Committee on Budgets will give its views on these matters when adopting its report on the mid-term review of the 2007-2013 MFF;

Transition from the interinstitutional agreement to the MFF

23. Draws attention to the need, in good time prior to the entry into force of the Lisbon Treaty, for the institutions to reach agreement on the arrangements for making the transition from the current interinstitutional agreement to an MFF contained in a legislative act, as provided for by the Lisbon Treaty; recalls that a period of eight weeks is required for scrutiny by national parliaments of draft legislative acts;

24. Takes the view, in that connection, that agreement will have to be reached as to which of the provisions that currently form part of the interinstitutional agreement should be switched to the MFF, which should be incorporated into the future Financial Regulation and which might justify the retention of an interinstitutional agreement - possibly incorporating new provisions - on budgetary cooperation; points out that this process of dividing up the provisions of the current interinstitutional agreement will have to take account of the criteria laid down in the Lisbon Treaty itself;

Annual budgetary procedure

25. Warmly welcomes the abolition of the distinction between compulsory expenditure (CE) and non-compulsory expenditure (NCE), as a result of which Parliament now has the right to take decisions concerning all Union expenditure on an equal footing with the Council;

26. Emphasises that the abolition of the distinction between CE and NCE is not at odds with the Union's obligation to honour its financial commitments, and welcomes the fact that the Lisbon Treaty acknowledges that it is for Parliament, the Council and the Commission to ensure 'that the financial means are made available to allow the Union to fulfil its legal obligations in respect of third parties' ⁽¹⁾;

27. Notes that the changes to the annual budgetary procedure should serve to make it more simple by laying down the principle of a single reading for each institution and by introducing a number of mechanisms designed to help the two arms of the budgetary authority reach agreement; emphasises that these changes should lead to less bureaucracy;

Role of the Commission

28. Emphasises the strengthening of the role conferred on the Commission, which acquires a right of initiative in the budgetary sphere and may amend its draft budget until such time as the Conciliation Committee is convened;

⁽¹⁾ Article 323 of the Treaty on the Functioning of the European Union.

Thursday 7 May 2009

29. Welcomes the fact that the Treaty also acknowledges that it is for the Commission to take all the necessary initiatives with a view to reconciling the positions of Parliament and the Council during the proceedings of the Conciliation Committee, thus inviting it to play to the full its role of mediator between Parliament and the Council with a view to securing an agreement;

A completely new approach

30. Draws attention to the fact that the new procedure provides for only a single reading of the draft budget by each institution; emphasises that the new procedure and the single reading will no longer make it possible in de facto terms for the institutions to adjust their standpoints at second reading, as they were able to hitherto; is convinced, therefore, that this procedure will require Parliament to fine-tune its political priorities at an earlier stage and adapt accordingly its operational approach and organisational arrangements so as to enable it to achieve all the objectives set;

31. Points out that this single reading must be used to assert Parliament's political priorities, but must also enable it to reach agreement with the Council by the time the Conciliation Committee has completed its work (or enable it to adopt its amendments again by a large majority, in the event of approval by Parliament and rejection by the Council of the text drawn up by the Conciliation Committee);

32. Emphasises, in that connection, the importance of retaining a pragmatic timetable similar to the current one, whilst calling for conciliation to be initiated in good time; points out, moreover, that the introduction of informal arrangements for dialogue between the institutions is crucial to facilitating agreement before the procedure starts and then throughout its duration;

33. Is convinced that the Lisbon Treaty will strengthen Parliament's powers, provided that it equips itself with the means to manage effectively both the tighter timetable and the greater need to plan ahead thoroughly which will result from the introduction of the new procedure;

34. Takes the view that in future its resolution before the first conciliation meeting will take on increased importance, since it will enable Parliament formally to set out its budgetary priorities for the coming financial year, unencumbered by tactical considerations linked to the Council's position on the draft budget; takes the view that that resolution will thus give the other institutions a clear picture of Parliament's priorities before the interinstitutional negotiations start; adds that this will also provide Parliament with an opportunity to set out some initial guidelines concerning pilot projects and preparatory actions;

35. Points out that these priorities will also be of great value to Parliament both as guidelines for its reading of the draft budget and as a negotiating mandate for its delegation to the Conciliation Committee;

36. Stresses the importance of organising a triologue in July of each year in order to enable each institution to gain a clear insight into the priorities of the other parties and to enable Parliament to apprise the other institutions of the substance of the resolution on the draft budget to be adopted in July;

37. Highlights the political value of the establishment – in keeping with each body's respective powers – of in-depth dialogue with the counterpart committees from the national parliaments on the draft budget and Parliament's priorities for the annual budgetary procedure;

Conciliation Committee

38. Emphasises the importance which the Conciliation Committee will have in the future as the body in which political disagreements between the two arms of the budgetary authority are resolved; points out that this committee will have the task of finding, within 21 days, an agreement on a compromise text which will enter into force if it is not rejected by the budgetary authority; takes the view that the members of this committee must be drawn from the very highest political level;

Thursday 7 May 2009

39. Welcomes the fact that the Lisbon Treaty confers a decisive role on Parliament at the end of the procedure; points out that:

- the Conciliation Committee text ('joint text') will not be regarded as having been adopted if Parliament rejects it (by a majority of its component members);
- if the Council rejects the joint text whilst Parliament approves it, either it enters into force unchanged, or Parliament may confirm the amendments it adopted at its reading of the draft budget, by a qualified majority (a majority of its component members and three-fifths of the votes cast);

40. Emphasises that it would be desirable for Parliament's delegation to the Conciliation Committee to be headed by the chair of the Committee on Budgets and for it to incorporate, if required and without prejudice to the political nature of the procedure for the appointment of its members by the political groups, in addition to the members of that committee, members of specialist parliamentary committees in cases where the negotiations concern a specific issue within their policy area;

41. Calls on the Council to reach agreement with Parliament quickly on the Conciliation Committee's working arrangements;

42. Takes the view, for its part, that the Conciliation Committee should be able to meet at least twice at the highest political level, if that is necessary for agreement to be reached, its meetings to be preceded by a preparatory political dialogue, in keeping with the traditional arrangement; reiterates the need for the Council's representatives at these meetings to be issued with a political negotiating mandate;

43. Proposes that these proceedings should be prepared by an interinstitutional preparatory working party comprising the general rapporteur and representatives of the political groups, for Parliament, and the Permanent Representative of the country holding the EU Presidency, who may be accompanied by representatives of the two other Presidencies in the troika;

44. Points out, further, that the institutions must reach agreement on the composition of the Conciliation Committee secretariat, which should probably consist of officials from the two arms of the budgetary authority, assisted by the Commission;

Agricultural matters

45. Draws attention to the fact that the rule stipulating that the Commission may no longer amend its draft budget once the Conciliation Committee has been convened will preclude the use of the traditional autumn letter of amendment to take account of the updated forecasts for agricultural policy and their budgetary implications; takes the view that, if these circumstances arise, the most appropriate procedure would involve the submission by the Commission – if necessary – of a specific draft amending budget (an 'agricultural AB') once all the agricultural data have been finalised;

Relations with the legislative authority

46. Emphasises that the parallelism between the extension of Parliament's budgetary powers to cover all Union expenditure and the widening of the codecision procedure to encompass almost all legislation calls for greater account to be taken of the budgetary dimension to legislative activity; with that aim in view, regards it as essential that cooperation between the Committee on Budgets and the sectoral committees should be stepped up in order to take due account of the financial impact of Parliament's legislative activity, in particular its impact on the MFF and the annual budget; proposes, accordingly, that the legislative conciliation committees on matters with financial implications should include a member of the Committee on Budgets; to that end, draws attention to the work of the Working Party on Parliamentary Reform, not least as regards the specific forms of cooperation between parliamentary committees set out in the third interim report;

Thursday 7 May 2009

47. Points out, moreover, that the Lisbon Treaty extends to all Union institutions the obligation to enforce budgetary discipline; points out that Parliament's Rules of Procedure already lay down a specific procedure designed to ensure that that principle is observed; takes the view that this procedure will have to be made more workable and effective;

Financial Regulation

48. Welcomes the fact that the Financial Regulation becomes a regulation adopted under the ordinary legislative procedure (codecision) by Parliament and the Council, after consulting the Court of Auditors;

49. Points out that the Lisbon Treaty contains the main provisions to be used to identify those provisions of the current interinstitutional agreement which should be retained in the future agreement and those which should instead be incorporated into the MFF;

50. Notes, however, that the Financial Regulation should incorporate all the provisions needed to define the budgetary procedure, in accordance with the provisions of the Treaty ⁽¹⁾; takes the view that such provisions would cover the functioning of the Conciliation Committee, the mechanism triggering conciliation, and, naturally enough, the updating of the provisions of the Financial Regulation directly affected by the changes introduced by the Lisbon Treaty (i.e. the abolition of the distinction between CE and NCE, a new codecision procedure for transfers, etc.);

51. Regards it as vital that the institutions should reach a political agreement on these matters in due time so that, once the Lisbon Treaty has entered into force, the requisite changes to the Financial Regulation can quickly be made using the new procedure and, if needed, provide for provisional agreements to allow the smooth continuation of the budgetary procedure;

52. Calls on the Commission to put forward in due time a proposal which enables Parliament and the Council to reach agreement on the application of the identification criteria referred to in paragraph 49 to the substance of the current interinstitutional agreement;

53. Argues that these changes to the Financial Regulation must be kept strictly separate from the three-yearly review of that document scheduled for 2010;

Budgetary impact of the interinstitutional changes and the Union's new competences

54. Notes that the entry into force of the Lisbon Treaty will also have an impact on the Union budget through the institutional innovations it contains, in particular the elevation of the European Council to the status of institution, accompanied by the establishment of a fixed Presidency, and the creation of the post of High Representative and of the European External Action Service, whose task will be to support the High Representative in his or her work;

55. Reiterates, as of now, its intention of exercising its budgetary powers to the full in connection with these institutional innovations and emphasises the importance of reaching a political agreement with the Council in due time on funding arrangements for the European Council, and, in particular, its fixed Presidency, and for the future European External Action Service; emphasises that all aspects of the funding arrangements for that service must remain under the supervision of the budgetary authority;

56. Points out that in the framework of the CFSP and the common security and defence policy the Lisbon Treaty provides for the establishment of new procedures to grant rapid access to the Union budget and to create a start-up fund of Member State contributions; stresses, however, that all external actions of the Union should as a rule be financed from Community appropriations, and only exceptionally – in the event of an emergency – on the basis of contributions outside the Union budget;

⁽¹⁾ According to Article 322(1)(a) of the Treaty on the Functioning of the European Union, it must include 'the financial rules which determine in particular the procedure to be adopted for establishing and implementing the budget'.

Thursday 7 May 2009

57. Notes that the Lisbon Treaty will also have a financial impact, however limited, by virtue of the new specific competences conferred on the Union; states its willingness to analyse, at the appropriate juncture, the practical implications of the exercise of these new competences; takes the view that these competences will certainly not be implemented en bloc immediately after the entry into force of the Lisbon Treaty, but rather gradually as the relevant legislative proposals are drawn up; takes the view, however, that they must not be funded to the detriment of the Union's current activities;

Coordination with national budgets

58. Wishes to invite the national parliaments to take part, each year, in a joint public debate on national and Community budgetary policy guidelines, prior to consideration of the respective draft budgets, in order to establish from the outset a common framework for coordination of Member States' national policies, while also taking into account the Community contribution;

59. Points out that the decision on the apportionment of EU budget expenditure in the light of the Union's major objectives would be usefully informed by the annual publication, by each Member State, of the appropriations under national and, where applicable, regional budgets that contribute to achieving those objectives;

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

Situation in the Republic of Moldova

P6_TA(2009)0384

European Parliament resolution of 7 May 2009 on the situation in the Republic of Moldova

(2010/C 212 E/10)

The European Parliament,

- having regard to its previous resolutions on the Republic of Moldova, in particular that of 24 February 2005 on the parliamentary elections in Moldova ⁽¹⁾, as well as those on the European Neighbourhood Policy (ENP) and Black Sea Regional Cooperation,
- having regard to the Final Statement and Recommendations of the EU-Republic of Moldova Parliamentary Cooperation Committee meeting of 22-23 October 2008,
- having regard to the Commission Strategy Paper of 2004, including the Republic of Moldova country report,
- having regard to the Partnership and Cooperation Agreement signed on 28 November 1994 between the Republic of Moldova and the EU, which entered into force on 1 July 1998,
- having regard to the Commission Communication of 3 December 2008 on the Eastern Partnership (COM(2008)0823),

⁽¹⁾ OJ C 304 E, 1.12.2005, p. 398.

Thursday 7 May 2009

- having regard to the aid provided by the European Union to the Republic of Moldova in the framework of the European Neighbourhood and Partnership Instrument (ENPI), including for the project entitled 'Electoral Support to the Republic of Moldova', which provided financial assistance in support of free and fair elections in the Republic of Moldova,
 - having regard to the EU-Republic of Moldova ENP Action Plan adopted at the seventh EU-Moldova Cooperation Council meeting on 22 February 2005, as well as to the annual progress reports on the Republic of Moldova,
 - having regard to the EU-Republic of Moldova Visa Facilitation Agreement signed in 2007,
 - having regard to the statement of preliminary findings and conclusions of the International Election Observation Mission (IEOM) to the Republic of Moldova for the parliamentary elections of 5 April 2009 and to the post-election report drawn up by the OSCE's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) for the period from 6 to 17 April 2009,
 - having regard to the joint statement of 9 April 2009 by the French, Czech and Swedish Ministers of Foreign Affairs on the situation in the Republic of Moldova,
 - having regard to the EU Presidency statements of 7 and 8 April 2009 on the situation in the Republic of Moldova,
 - having regard to the Conclusions of the General Affairs and External Relations Council of 27-28 April 2009, as well as to the exchange of views on this issue with the EU Presidency which took place at the meeting of Parliament's Committee on Foreign Affairs held on 28 April 2009,
 - having regard to the statements issued on 7 and 11 April 2009 by Javier Solana, EU High Representative for the CFSP, on the situation in the Republic of Moldova,
 - having regard to the statements issued on 6, 7 and 11 April 2009 by Benita Ferrero-Waldner, Commissioner for External Relations, on the situation in the Republic of Moldova,
 - having regard to the statement issued on 12 April 2009 by the UN Country Team in the Republic of Moldova,
 - having regard to Resolution No 1280 of the Council of Europe of 24 April 2002,
 - having regard to Amnesty International's Moldova Memorandum of 17 April 2009 on the situation in the Republic of Moldova during and after the events of 7 April 2009,
 - having regard to the report of Parliament's ad hoc delegation to the Republic of Moldova, which visited the country from 26 to 29 April 2009,
 - having regard to Rule 103(4) of its Rules of Procedure,
- A. whereas the ENP and the Eastern Partnership due to be launched shortly recognise the Republic of Moldova's European aspirations and the importance of Moldova as a country with deep historical, cultural and economic links with the Member States of the European Union,
- B. whereas the EU-Republic of Moldova Action Plan aims at encouraging political and institutional reforms in the Republic of Moldova, including in the fields of democracy and human rights, the rule of law, independence of the judiciary and freedom of the media, as well as good-neighbourly relations,

Thursday 7 May 2009

- C. whereas a goal set for June 2009 is to launch the negotiations on the new Agreement between the Republic of Moldova and the EU at the EU-Moldova Cooperation Council,
- D. whereas the Republic of Moldova is a member of the Council of Europe and of the OSCE and has thus committed itself to genuine promotion of democracy and respect for human rights, including in the field of preventing and fighting torture, ill-treatment and other inhumane and degrading treatment,
- E. whereas parliamentary elections took place in the Republic of Moldova on 5 April 2009, and whereas they were monitored by an IEOM composed of representatives from the OSCE/ODIHR and from the European Parliament, the OSCE Parliamentary Assembly and the Parliamentary Assembly of the Council of Europe,
- F. whereas serious concern was expressed during the pre-electoral period about government control of the public media, intimidation and harassment of opposition leaders and the private media and misuse of administrative resources for the benefit of the government party,
- G. whereas between 500 000 and 1 million Moldovans live abroad, and whereas several appeals signed by a large number of NGOs and associations of the Moldovan diaspora, including one addressed in February 2009 to the President of the Republic of Moldova, the President of Parliament and the Prime Minister of the Republic of Moldova concerning measures depriving Moldovans living abroad of the right to vote, were sent to the Moldovan authorities prior to the elections of 5 April 2009 and were ignored; whereas the number of Moldovan voters living outside the Republic of Moldova is very limited (22 000),
- H. whereas the de facto authorities of the breakaway region of Transnistria prevented a large number of Moldovan citizens from participating in the elections,
- I. whereas the IEOM concluded in its preliminary findings that the elections met many international standards and commitments, but that further improvements were required in order to ensure an electoral process free from undue administrative interference and to increase public confidence,
- J. whereas the opposition parties and the group known as Coalition 2009 complained about massive irregularities during the election of 5 April 2009 in the preparation of lists of voters and supplementary lists and in counting and tabulation,
- K. whereas, after a recount, the final results of the elections were published by the Central Election Commission on 21 April 2009 and validated by the Constitutional Court on 22 April 2009,
- L. whereas the events that followed the elections were characterised by violence and the Moldovan Government's massive campaign of intimidation and violence, thus casting doubt on the commitment of the Moldovan authorities to democratic values and human rights and on the existence of public confidence in those authorities,
- M. whereas peaceful protests were fuelled by doubts regarding the fairness of the elections and distrust of public institutions, including those that administered the electoral process, and whereas regrettable acts of violence and vandalism were exploited by the authorities to intimidate civil society by responding in a violent and disproportionate manner and to further restrict the already fragile fundamental rights and freedoms of Moldovan citizens,
- N. whereas it is accepted that at least 310 people were arrested and detained, whereas a number of those arrested are still being held in prison, and whereas, when arrested, detainees suffered systematic ill-treatment at police stations to an extent that might be regarded as torture,

Thursday 7 May 2009

- O. whereas beatings and unwarranted arrests of civilians by unidentified police units seemed not to be directed towards pacifying the situation, but rather to lead to deliberate acts of repression,
- P. whereas serious human rights abuses committed by the Moldovan authorities, unjustified harassment of representatives of civil society and protesters and instances of disregard for the rule of law and relevant European conventions to which the Republic of Moldova is a signatory are still continuing in that country,
- Q. whereas the Moldovan Government accused Romania of involvement in the post-electoral demonstrations and expelled the Romanian ambassador; whereas the Moldovan Government also restored the visa obligation for citizens of that EU Member State,
- R. whereas it must be stressed that no serious indications or evidence have come to light on the basis of which any EU Member State could be accused of being responsible for the violent events of recent weeks,
- S. whereas a genuine and balanced partnership can only be developed on the basis of common values with regard, in particular, to democracy, the rule of law and respect for human rights and civil liberties,
- T. whereas the European Union is seeking to establish, through its programme for an Eastern Partnership, greater stability, better governance and economic development in the Republic of Moldova and in the other countries at its eastern borders,
1. Underlines the importance of a closer relationship between the EU and the Republic of Moldova and confirms the need to work together to contribute to increased stability, security and prosperity on the European continent and to prevent the emergence of new dividing lines;
 2. Reaffirms its commitment to continuing a meaningful and goal-oriented dialogue with the Republic of Moldova, but attaches great importance to the introduction of strong provisions regarding the rule of law and respect for human rights, while stressing that further consolidation of relations, including through the conclusion of a new, enhanced agreement, should be made contingent on a real and manifest commitment on the part of the Moldovan authorities to democracy and human rights;
 3. Stresses that full compliance with international democratic standards before, during and after the electoral process is of the greatest importance for the further development of relations between the Republic of Moldova and the European Union;
 4. Strongly condemns the massive campaign of harassment, grave violations of human rights and all other illegal actions carried out by the Moldovan Government in the aftermath of the parliamentary elections;
 5. Urges the Moldovan authorities to immediately cease all illegal arrests and to conduct government action in accordance with the country's international commitments and obligations with regard to democracy, the rule of law and human rights;
 6. Is particularly concerned about the illegal and arbitrary arrests and the widespread violations of the human rights of arrested persons, in particular the right to life, the right not to be subjected to physical abuse, torture or inhumane or degrading treatment or punishment, the right to freedom and safety, the right to a fair trial and the right to freedom of assembly, association and expression, and about the fact that these abuses are still continuing;

Thursday 7 May 2009

7. Stresses that a national dialogue must be established, with the participation of the government and the opposition parties, in a serious effort to fundamentally improve democratic procedures and the functioning of democratic institutions in the Republic of Moldova, and that it must immediately address the deficiencies noted in the findings of the IEOM;
8. Underlines, however, that internal tensions in the Republic of Moldova are very high and therefore firmly believes that there is an urgent need to set up an independent investigatory committee, involving the EU, the Council of Europe's Committee for the Prevention of Torture and independent experts, aimed at ensuring an impartial and transparent process of investigation;
9. Insists that all those found responsible for the brutal violence perpetrated against detainees be brought to justice; insists, further, that the findings of the investigatory committee should also lead to a genuine reform of the legal system and the police forces in the Republic of Moldova;
10. Calls for a special investigation to be conducted into the cases of those who died during the events following the elections as well as into all allegations of rape and ill-treatment during detention and politically-motivated arrests, such as those of Anatol Mătăsar and Gabriel Stati;
11. Condemns the campaign of harassment launched by the Moldovan authorities against journalists, civil society representatives and opposition parties, involving in particular arrests and expulsions of journalists, interruption of access to websites and TV stations, broadcasting of propaganda on public channels and denial to opposition representatives of access to the public media; considers that these actions are intended to isolate the Republic of Moldova from domestic and international media and public scrutiny; deplores and condemns the continuation of this censorship through the letters sent by the Minister of Internal Affairs and the Minister of Justice to NGOs, political parties and the mass media;
12. Strongly deplores the decision by the Moldovan authorities to expel the Romanian Ambassador and to introduce a visa obligation for citizens of that European Union Member State; insists that discrimination against EU citizens on the basis of their national origin is not acceptable and calls on the Moldovan authorities to restore the visa-free regime for Romanian citizens;
13. Urges the Council and the Commission, at the same time, to undertake a review of the EU's visa system for the Republic of Moldova in order to relax the conditions for granting visas to Moldovan citizens, especially the financial conditions, and to make better regulated travel arrangements possible; hopes, however, that Moldovan citizens will not take advantage of a better visa and travel system to start a mass exodus from their country, but will be encouraged to make an active contribution to the further development of their home country;
14. Notes that claims that an EU country was involved in the events seem unfounded and were not discussed or repeated during the meetings held by the ad hoc delegation in the Republic of Moldova;
15. Requests immediate and substantial proof in support of any allegation by the Moldovan Government concerning the supposedly criminal actions of the protesters and the involvement of foreign governments;
16. Takes note of the statements by the Moldovan authorities with regard to the opening of a criminal file on the 'attempted usurpation of state power on 7 April 2009' and calls for the investigation to be conducted in a transparent manner and to clarify all the allegations made by the Moldovan authorities with regard to the possible involvement of one or more third countries in these events;
17. Considers it unacceptable, while condemning all acts of violence and vandalism, to present all protests as criminal acts and an alleged 'anti-constitutional plot'; believes that peaceful protests were considerably fuelled by doubts regarding the fairness of the elections, distrust of public institutions and dissatisfaction with the social and economic situation in the Republic of Moldova;

Thursday 7 May 2009

18. Believes that constructive dialogue with the opposition parties, civil society and representatives of international organisations is the only way out of the current situation in the Republic of Moldova;
 19. Emphasises that any new election will require a consensus between the opposition and government on concrete improvements to the electoral process;
 20. Reiterates the importance of the independence of the judiciary, and calls for further steps to ensure the editorial independence of all media, including Radio Television Moldova, and the cessation of any intimidation against the ProTV Channel and of any threats relating to the extension of its licence, and for considerable improvements in the Moldovan electoral law as crucial elements of any future electoral process and democratic consolidation in the Republic of Moldova;
 21. Deplores the fact that the Moldovan Government made no efforts to facilitate voting by Moldovan citizens living abroad, in line with the suggestions of the Council of Europe's Venice Commission; calls on the Moldovan authorities to adopt in due course the necessary measures enabling this to take place;
 22. Stresses the considerable discrepancies between the OSCE/ODIHR preliminary report on the conduct of the elections and the claims of widespread irregularities by a considerable number of Moldovan NGOs; points out that such discrepancies must be taken into account in any future review of OSCE/ODIHR election monitoring activities and EU contributions to IEOMs;
 23. Believes that, in order to preserve its credibility for the people of the Republic of Moldova, the EU should become involved in the management of the current situation in a proactive, profound and comprehensive way; urges the Council to consider the possibility of sending a Rule of Law Mission to the Republic of Moldova, in order to assist the law enforcement authorities in their reform process, especially in the police and justice areas;
 24. Stresses that the Council, the Commission and the Member States must make full use of the ENP and, in particular, of the new programme for the Eastern Partnership in order to establish greater stability, better governance and balanced economic development in the Republic of Moldova and in the other countries at the Union's eastern borders;
 25. Calls on the Commission to ensure that EU funding available to the Republic of Moldova in the field of human rights and fundamental freedoms has greater outreach, in particular by making full use of the European Instrument for Democracy and Human Rights and the provisions of the ENPI; calls on the Commission to submit to it a detailed report on the use of all EU funds in the Republic of Moldova, with special focus on those allocated to good governance and democratic development;
 26. Calls on the Council and the Commission to strengthen the mission of the EU Special Representative in the Republic of Moldova, in terms of both its scope and its means;
 27. Reiterates its support for the territorial integrity of the Republic of Moldova and points out that a more robust EU role in finding a solution to the Transnistrian question is needed;
 28. Stresses once again that the European Union must do everything in its power to offer the people of the Republic of Moldova a truly European future; urges all political forces in the Republic of Moldova and Moldova's partners not to take advantage of the current situation of instability to divert Moldova from its European course;
 29. Instructs its President to forward this resolution to the Council, the Commission, the Parliamentary Assemblies of the Council of Europe and the OSCE and the Government and Parliament of the Republic of Moldova.
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Thursday 7 May 2009

Human rights in the world 2008 and the EU's policy on the matter

P6_TA(2009)0385

European Parliament resolution of 7 May 2009 on the Annual Report on Human Rights in the World 2008 and the European Union's policy on the matter (2008/2336(INI))

(2010/C 212 E/11)

The European Parliament,

- having regard to the tenth European Union Annual Report on Human Rights (2008) (Council document 14146/1/2008),
- having regard to Articles 3, 6, 11, 13 and 19 of the Treaty on European Union and Articles 177 and 300 of the EC Treaty,
- having regard to the Universal Declaration of Human Rights and to all relevant international human rights instruments ⁽¹⁾,
- having regard to the United Nations Charter,
- having regard to all United Nations human rights conventions and the optional protocols thereto,
- having regard to regional human rights instruments, including in particular the African Charter on Human and Peoples' Rights, the Optional Protocol on the Rights of Women in Africa, the American Convention on Human Rights and the Arab Charter on Human Rights,
- having regard to its resolution of 15 January 2009 on the situation in the Gaza Strip ⁽²⁾ and the conclusions of the General Affairs and External Relations Council of 27 January 2009 on the Middle East Peace Process,
- having regard to the entry into force on 1 July 2002 of the Rome Statute of the International Criminal Court (ICC) and to Parliament's resolutions related to the ICC ⁽³⁾,
- having regard to the Council of Europe Convention on Action against Trafficking in Human Beings and the 2005 European Union plan on best practices, standards and procedures for combating and preventing trafficking in human beings ⁽⁴⁾,
- having regard to Protocol No 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), concerning the abolition of the death penalty in all circumstances,
- having regard to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture),
- having regard to the United Nations Convention on the Rights of the Child,
- having regard to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women and the optional protocol thereto,

⁽¹⁾ For all relevant basic texts, please consult the table in Annex III to report A6-0128/2007 of the Committee on Foreign Affairs.

⁽²⁾ Texts adopted, P6_TA(2009)0025.

⁽³⁾ OJ C 379, 7.12.1998, p. 265; OJ C 262, 18.9.2001, p. 262; OJ C 293 E, 28.11.2002, p. 88; OJ C 271 E, 12.11.2003, p. 576; Texts adopted, 22 May 2008, P6_TA(2008)0238; Texts adopted, 21 October 2008, P6_TA(2008)0496.

⁽⁴⁾ OJ C 311, 9.12.2005, p. 1.

Thursday 7 May 2009

- having regard to the Charter of Fundamental Rights of the European Union ⁽¹⁾,
- having regard to the ACP-EC Partnership Agreement and its revision ⁽²⁾,
- having regard to 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 ⁽³⁾ (the European Instrument for Democracy and Human Rights or EIDHR),
- having regard to its previous resolutions on human rights in the world,
- having regard to its resolutions on the fifth and seventh sessions of the United Nations Human Rights Council (UNHRC), adopted on 7 June 2007 ⁽⁴⁾ and 21 February 2008 ⁽⁵⁾ respectively, and on the outcome of the negotiations on the UNHRC,
- having regard to its resolution of 14 February 2006 on the human rights and democracy clause in European Union agreements ⁽⁶⁾,
- having regard to its resolutions of 1 February 2007 ⁽⁷⁾ and 26 April 2007 ⁽⁸⁾ on the initiative for a universal moratorium on the death penalty and to United Nations General Assembly Resolution 62/149 of 18 December 2007 on a moratorium on the use of death penalty,
- having regard to its resolution of 20 September 2001 on female genital mutilation ⁽⁹⁾, which affirms that any form of such mutilation, of whatever degree, is an act of violence against women and constitutes a violation of their fundamental rights,
- having regard to its resolution of 6 September 2007 on the functioning of the human rights dialogues and consultations on human rights with third countries ⁽¹⁰⁾, including women's rights which are to be explicitly addressed in all human rights dialogues,
- having regard to its resolution of 4 September 2008 on the evaluation of EU sanctions as part of the EU's actions and policies in the area of human rights ⁽¹¹⁾,
- having regard to its resolution of 16 January 2008 on 'Towards an EU strategy on the rights of the child' ⁽¹²⁾,
- having regard to its resolution of 6 July 2006 on freedom of expression on the Internet ⁽¹³⁾,
- having regard to all resolutions adopted by it on urgent cases of breaches of human rights, democracy and the rule of law,
- having regard to the European Union NGO Human Rights Forum, held in Lisbon in December 2007,
- having regard to the United Nations Convention on the Rights of Persons with Disabilities, which was signed by the European Community and the majority of its Member States on 30 March 2007 and which lays down an obligation to incorporate the interests and concerns of persons with disabilities in human rights actions towards third countries,

⁽¹⁾ OJ C 303, 14.12.2007, p. 1.

⁽²⁾ OJ L 317, 15.12.2000, p. 3; OJ L 209, 11.8.2005, p. 27.

⁽³⁾ OJ L 386, 29.12.2006, p. 1.

⁽⁴⁾ OJ C 125 E, 22.5.2008, p. 220.

⁽⁵⁾ Texts adopted, P6_TA(2008)0065.

⁽⁶⁾ OJ C 290 E, 29.11.2006, p. 107.

⁽⁷⁾ OJ C 250 E, 25.10.2007, p. 91.

⁽⁸⁾ OJ C 74 E, 20.3.2008, p. 775.

⁽⁹⁾ OJ C 77 E, 28.3.2002, p. 126.

⁽¹⁰⁾ OJ C 187 E, 24.7.2008, p. 214.

⁽¹¹⁾ Texts adopted, P6_TA(2008)0405.

⁽¹²⁾ OJ C 41 E, 19.2.2009, p. 24.

⁽¹³⁾ OJ C 303 E, 13.12.2006, p. 879.

Thursday 7 May 2009

- having regard to the United Nations Declaration on Human Rights Defenders and the activities of the Special Representative of the United Nations Secretary-General on the Situation of Human Rights Defenders,
 - having regard to the International Convention for the Protection of All Persons from Enforced Disappearance, adopted in December 2006,
 - having regard to the European Union Guidelines on promoting compliance with international humanitarian law (IHL) ⁽¹⁾, on children and armed conflict and on human rights defenders, as well as on the death penalty, torture and other cruel, inhuman or degrading treatment, human rights dialogues with third countries, promotion and protection of the rights of the child, violence against women and the fight against all forms of discrimination against women,
 - having regard to its resolution of 8 May 2008 on EU election observation missions: objectives, practices and future challenges ⁽²⁾,
 - having regard to its resolution of 14 January 2009 on the development of the UN Human Rights Council, including the role of the EU ⁽³⁾,
 - having regard to Rules 45 and 112(2) of its Rules of Procedure,
 - having regard to the report of the Committee on Foreign Affairs (A6-0264/2009),
- A. whereas human rights and the protection of those rights rely on recognition of the dignity of the human person; whereas it should be recalled in this connection that the opening words of the Universal Declaration of Human Rights read: 'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world',
- B. whereas justice, freedom, democracy and the rule of law arise out of an authentic recognition of the dignity of the human person, and whereas such recognition is the foundation of all human rights,
- C. whereas the tenth European Union Annual Report on Human Rights (2008) produced by the Council and the Commission provides a general overview of the activities of the EU institutions regarding human rights inside and outside the European Union,
- D. whereas this resolution sets out to examine, evaluate and, in specific cases, offer constructive criticism of the human rights activities of the Commission, the Council and Parliament,
- E. whereas the European Union's internal human rights record has a direct impact on its credibility and ability to implement an effective external human rights policy,
- F. whereas efforts must be made to focus greater attention on respect for basic human rights, in particular political rights, in the negotiation and implementation of bilateral or regional trade agreements, even those concluded with important trading partners,
- G. whereas it is necessary to respect the human rights clauses in the agreements signed by the EU and its third-country partners,

⁽¹⁾ OJ C 327, 23.12.2005, p. 4.

⁽²⁾ Text adopted, P6_TA(2008)0194.

⁽³⁾ Texts adopted, P6_TA(2009)0021.

Thursday 7 May 2009

H. whereas policies promoting human rights remain under threat in various regions of the world, as the violation of human rights inevitably goes hand in hand with an effort by their violators to reduce the impact of any policy promoting them, particularly in countries where human rights violations are crucial in maintaining a non-democratic government in power,

1. Considers that the EU needs to move towards a coherent and consistent policy of upholding and promoting human rights around the world, and stresses the need to conduct such a policy more effectively;

2. Reiterates its conviction that, in order to effect an improvement in the promotion of human rights, the EU's common foreign and security policy (CFSP) needs to be strengthened, and that it is necessary to ensure that the promotion of human rights as a main objective of the CFSP, as outlined in Article 11 of the Treaty on European Union, is strictly implemented in the EU's dialogues and institutional relations with all the countries of the world;

3. Calls on the Council and the Commission to make greater efforts to improve the ability of the European Union to respond rapidly to breaches of human rights by third countries; stresses the key role played by the EU in the sphere of human rights in today's world and the corresponding increased expectations; calls for a common EU human rights line both in its external policy and within its own borders;

4. Calls for continued maximum vigilance as regards respect for the human rights clauses in the agreements signed by the EU and its third-country partners, and for such clauses to be included systematically in future agreements; points out that the human rights clause, by virtue of being an essential element, should apply to all the provisions of the agreement; reiterates its call for this clause to be systematically accompanied by a genuine enforcement mechanism;

The European Union Annual Report on Human Rights 2008

5. Underlines the relevance of the European Union Annual Report on Human Rights in analysing and evaluating the European Union's human rights policy, and recognises the positive role played by the EU institutions' activities in this field;

6. Reiterates its request that more and better information should be provided for the assessment of policies and that elements and guidelines should be proposed to improve the general approach, minimise any contradictions and adjust the policy priorities on a country-by-country basis, with a view to the adoption of a Country Strategy on human rights or, at least, a human rights chapter in the Country Strategy Papers; reiterates its call for a regular periodic assessment of the use and the results of European Union policies, instruments and initiatives on human rights in third countries; calls on the Council and the Commission to develop specific quantifiable indices and benchmarks in order to measure the effectiveness of those policies;

7. Welcomes the public presentation of the 2008 Report by the Council and the Commission at the meeting of Parliament's Subcommittee on Human Rights held on 4 November 2008, coinciding with the 60th anniversary of the Universal Declaration of Human Rights of 10 December 1948, and its presentation in plenary on the same day as the award of its annual Sakharov Prize for Freedom of Thought to Hu Jia from China;

8. Calls once again on the Council and the Commission to identify the 'countries of particular concern' where it is particularly difficult to promote human rights, as well as countries in which human rights are violated, and, to that end, to develop criteria by which to measure countries by reference to their human rights score, thereby enabling specific policy priorities to be established;

9. Calls on the Council and Commission to make greater efforts to disseminate their annual report on human rights and ensure it reaches as large a public as possible; also calls for public information campaigns aimed at raising the EU's profile in this field;

Thursday 7 May 2009

10. Calls on the Council and Commission to carry out regular social impact and awareness studies regarding the Union's action in the field of human rights;
11. Considers that the report shows that the EU, despite the inquiries undertaken in some Member States, has not carried out an evaluation of Member States' practices in relation to the anti-terrorism policies followed by the US Administration under the Bush presidency;
12. In accordance with the resolution unanimously adopted by the Peruvian Congress in April 2008, calls on the Council to envisage inclusion of the Movimiento Revolucionario Túpac Amaru (MRTA) on the European list of terrorist organisations;
13. Stresses that, in the eyes of large segments of public opinion worldwide, immigration policy represents a challenge for the credibility of the EU's external action in the field of human rights,

Council and Commission activities in the area of human rights in international forums

14. Considers that a quantitative and qualitative improvement of the Council's human rights secretariat would enable the European Union to further raise its profile in promoting and ensuring respect for human rights in its external policy; expects that a future appointment of a High Representative for Foreign Affairs and Security Policy, who would also be a Vice-President of the Commission, would considerably enhance the coherence and effectiveness of the EU if the Lisbon Treaty were to enter into force;
15. Considers it essential that, given the importance of human rights issues in conflict and post-conflict situations, all European Union special representatives should in future have a mandate which specifically mentions promoting and ensuring respect for human rights;
16. Reiterates its request to the Commission to encourage European Union Member States, and third countries with which there are ongoing negotiations for future accession or for strengthening relations, to sign up to, and ratify, all core United Nations and Council of Europe human rights conventions and the optional protocols thereto and to cooperate with international human rights procedures and mechanisms; calls specifically for a framework agreement to be concluded between the European Union and the UNHCR with a view to promoting the ratification and implementation of United Nations conventions by all Member States;
17. Calls on the Council and the Commission to continue their vigorous efforts to promote universal ratification of the Rome Statute and national implementing legislation, in conformity with Council Common Position 2003/444/CFSP of 16 June 2003 on the International Criminal Court⁽¹⁾ and the 2004 Action Plan to follow-up on the Common Position; requests that such efforts be extended to include ratification and implementation of the Agreement on the Privileges and Immunities of the ICC, which is an important operational tool for the ICC; welcomes the fact that the ratifications of the Rome Statute by Madagascar, the Cook Islands and Suriname in 2008 brought the total number of States Parties to 108 in July 2008; demands that the Czech Republic, as the only remaining EU Member State not to have ratified the Rome Statute, finally do so without further delay⁽²⁾; urges Romania to rescind its Bilateral Immunity Agreement with the United States;

⁽¹⁾ OJ L 150, 18.6.2003, p. 67.

⁽²⁾ As of 18 July 2008, 85 States had not yet ratified the Rome Statute: Algeria, Angola, Armenia, Azerbaijan, Bahamas, Bahrain, Bangladesh, Belarus, Bhutan, Brunei, Cameroon, Cape Verde, Chile, China, Côte d'Ivoire, Cuba, Czech Republic, Democratic People's Republic of Korea, Egypt, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Grenada, Guatemala, Guinea-Bissau, Haiti, India, Indonesia, Iran, Iraq, Israel, Jamaica, Kazakhstan, Kiribati, Kuwait, Kyrgyzstan, Laos, Lebanon, Libya, Malaysia, Maldives, Mauritania, Federated States of Micronesia, Moldova, Monaco, Morocco, Mozambique, Myanmar/Burma, Nepal, Nicaragua, Oman, Pakistan, Palau, Papua New Guinea, Philippines, Qatar, Russian Federation, Rwanda, Saint Lucia, São Tomé and Príncipe, Saudi Arabia, Seychelles, Singapore, Solomon Islands, Somalia, Sri Lanka, Sudan, Swaziland, Syria, Thailand, Togo, Tonga, Tunisia, Turkey, Turkmenistan, Tuvalu, Ukraine, United Arab Emirates, United States of America, Uzbekistan, Vanuatu, Vietnam, Yemen, Zimbabwe.

Thursday 7 May 2009

18. Asks all EU Presidencies to raise the importance of cooperation with the ICC in all EU summits and dialogues with third countries, including in the EU-Russia summit and the EU-China dialogues, and urges all EU Member States to step up cooperation with the Court and to conclude bilateral agreements on the enforcement of sentences, as well as on the protection of witnesses and victims; further acknowledges the Cooperation and Assistance Agreement between the EU and the ICC and, on that basis, calls on the European Union and its Member States to provide the Court with all necessary assistance, including field support, in its ongoing cases; within that framework, welcomes the assistance of Belgium and Portugal in the arrest and surrender to the ICC of Jean-Pierre Bemba in May 2008;

19. Calls for prompt ratification by the European Community and its Member States of the United Nations Convention on the Rights of Persons with Disabilities; insists that the Optional Protocol to the Convention should be regarded as an integral part thereof, and calls for simultaneous accession to the Convention and the Protocol ⁽¹⁾;

20. Emphasises the need to strengthen further the active involvement of the European Union and its Member States with respect to human rights and democracy issues as regards their participation in a variety of international forums in 2009, including in the work of the UNHRC, the United Nations General Assembly, the Ministerial Council of the Organization for Security and Co-operation in Europe (OSCE) and the Council of Europe;

21. Welcomes the Human Rights Defenders Conference financed by the EIDHR, which took place in the European Parliament in Brussels on 7-8 October 2008, as a major inter-institutional initiative by the European Parliament, the Commission and the United Nations, marking the 60th Anniversary of the Universal Declaration of Human Rights;

22. Welcomes the cooperation between the European Union and the Council of Europe taking place within the framework of a Memorandum of Understanding signed in May 2007; welcomes the fact that quadripartite meetings were held on 23 October 2007 and 10 March 2008 between the EU Presidency, the Commission, the Secretary General of the Council of Europe and the Chair of the Committee of Ministers of the Council of Europe; reaffirms the importance of further promoting cooperation in the field of human rights, the rule of law and pluralist democracy, which are the shared values of both those organisations and of all the EU Member States;

23. Welcomes the agreement signed on 18 June 2008 between the Commission and the Council of Europe concerning cooperation in the EU Agency for Fundamental Rights; points out that the agreement includes provisions on the organisation of regular meetings, exchange of information and coordination of activities;

24. Welcomes the fact that the Convention on Cluster Munitions was adopted by the Dublin Diplomatic Conference, which took place from 19 to 30 May 2008; is concerned that not all European Union Member States signed the treaty at the Signing Conference in Oslo on 3 December 2008, and asks them to do so as soon as possible ⁽²⁾; notes that the Convention imposes an immediate and unconditional ban on all cluster munitions which cause unacceptable harm to civilians;

25. Welcomes the cooperation of Serbia in the arrest and transfer of Radovan Karadžić to the International Criminal Tribunal for the former Yugoslavia (ICTY); notes with concern that Ratko Mladić and Goran Hadžić remain at large and have not been brought before the ICTY; in this regard, calls on the Serbian authorities to ensure full cooperation with the ICTY, which should lead to the arrest and transfer of all remaining indictees, in order to open the way to the ratification of a Stabilisation and Association Agreement;

⁽¹⁾ As of November 2008, Austria, Hungary, Slovenia and Spain had ratified both the Convention and the Optional Protocol.

⁽²⁾ Among the EU Member States, Cyprus, Estonia, Finland, Greece, Latvia, Lithuania, Poland, Romania and Slovakia have not yet signed the Convention.

Thursday 7 May 2009

26. Urges all Member States to collaborate fully in international criminal justice mechanisms, and especially in bringing fugitives to justice; notes with great concern the persistent failure of Sudan to arrest and transfer to the ICC Ahmad Muhammad Harun ('Ahmad Harun') and Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb'), in disregard of its obligations under UN Security Council Resolution 1593 (2005); strongly condemns the retaliation by Sudan following the issuing of an ICC warrant for the arrest of President al-Bashir, and expresses its deepest concern at the recent crackdown on human rights defenders, which led in June 2008 to the arrest of Mohammed el-Sari, who has been sentenced to imprisonment for 17 years for having collaborated with the ICC; welcomes the release of Hassan al-Turabi, leader of the main opposition group, the Popular Congress Party, after two months of custody, for his statement calling on President al-Bashir to assume political responsibility for the crimes committed in Darfur; finally, recalls its resolution of 22 May 2008 on Sudan and the International Criminal Court ⁽¹⁾ and calls once again on the EU Presidencies and the Member States to live up to and act on their own words as expressed in the EU declaration of March 2008 and the Council conclusions on Sudan of June 2008, stating that the EU 'stands ready to consider measures against individuals responsible for not cooperating with the ICC, should the obligation under the UNSC Resolution 1593 on cooperation with the ICC continue to be disregarded';

27. Welcomes the opening on 26 January 2009 of the first ever trial at the ICC, against Thomas Lubanga of the Democratic Republic of Congo (DRC), and notes that it represents the first trial in the history of international criminal law to see the active participation of victims in the proceedings; in that context, urges the ICC to intensify its outreach efforts with a view to engaging communities in countries in crisis situations in a process of constructive interaction with the ICC, designed to promote understanding and support for its mandate, to manage expectations and to enable those communities to follow and understand the international criminal justice process; welcomes the cooperation of the DRC in the transfer of Thomas Lubanga, Germain Katanga and Mathieu Ngudjolo to the ICC; however, deplores the fact that the ICC warrant for the arrest of Bosco Ntaganda has not yet been executed, and calls on the upcoming meetings of the General Affairs and External Relations Council to demand the immediate arrest and surrender of Bosco Ntaganda to the ICC; notes with concern that the already volatile situation in the DRC has recently been further destabilised by new attacks by the Lord's Resistance Army (LRA), which brutally massacred at least 620 civilians and abducted more than 160 children between 24 December 2008 and 13 January 2009 in northern DRC; therefore emphasises the need to arrest LRA commanders as a matter of urgency, as demanded in Parliament's resolution of 21 October 2008 on the indictment and bringing to trial of Joseph Kony at the International Criminal Court ⁽²⁾; notes with concern that the ICC warrants for the arrest of four members of the Lord's Resistance Army in Uganda have still not been executed;

28. Notes with satisfaction the first promising statements on the ICC by the new US administration, acknowledging that the ICC 'looks to become an important and credible instrument for trying to hold accountable the senior leadership responsible for atrocities committed in the Congo, Uganda, and Darfur' ⁽³⁾, and calls on the USA to reinstate its signature and further engage with the ICC, especially by cooperating in situations which are the subject of an ICC investigation or preliminary analysis;

29. Notes once again with satisfaction the adoption by the United Nations General Assembly of the Declaration on the rights of indigenous peoples, which creates a framework in which States can protect and promote the rights of indigenous people without exclusion or discrimination; urges the Commission, therefore, to follow up on the implementation of the declaration, in particular through the EIDHR, while in particular enjoining all the Member States to ratify as a matter of urgency International Labour Organization (ILO) Convention 169 on Indigenous and Tribal Peoples, which backs up the principles set out in the declaration in question with a legally binding instrument; however, welcomes the Commission's activities targeting indigenous peoples and welcomes the project entitled 'Promotion of Indigenous and Tribal Peoples' Rights through Legal Advice, Capacity-Building and Dialogue', initiated as a joint management project between the Commission and the ILO; notes that, almost twenty years after its entry into force, only three Member States have ratified the ILO Convention, namely Denmark, the

⁽¹⁾ Texts adopted, P6_TA(2008)0238.

⁽²⁾ Texts adopted, P6_TA(2008)0496.

⁽³⁾ Statement by Ambassador Susan E. Rice, US Permanent Representative, on Respect for International Humanitarian Law, in the Security Council, 29 January 2009.

Thursday 7 May 2009

Netherlands and Spain; consequently, encourages initiatives to increase awareness of this important legislative instrument and to enhance its effectiveness worldwide by ensuring that it is ratified by all the Member States;

30. Reiterates its call for the development of a European framework strategy on Roma, given the special social situation of Roma communities in the European Union, in the candidate countries and in the countries involved in the Stabilisation and Association process; notes with satisfaction the Commission's first 'EU-Roma Summit', which took place in September 2008 under the joint patronage of the President of the Commission and the French Presidency, aiming to promote a firm commitment to tackling concrete problems and to creating mechanisms through which to ensure a better understanding of the situation of Roma across Europe;

31. Welcomes the consensus reached in the Durban Review Conference on an outcome document on 21 April 2009 as a follow-up to the World Conference Against Racism, which inter alia fully protects the right to freedom of expression as defined under international law, affirms and strengthens the call for the protection of migrants' rights, and acknowledges multiple and aggravated forms of discrimination; condemns the speech of President Mahmoud Ahmadinejad, which contradicted the spirit and purpose of the conference, namely to defeat the scourge of racism; welcomes the substantive sessions of the UNHRC acting as the preparatory committee for the Durban Review Conference, which took place from 21 April to 2 May 2008 and from 6 to 17 October 2008;

32. Is disappointed at the lack of leadership on the part of the Council and the inability of Member States to agree on a common strategy at the Durban Review Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Geneva from 20 to 24 April 2009 (Durban II); deeply deplores the lack of unity and cooperation, in particular against the backdrop of the expected intensification of EU foreign policies under the new EU Treaty; calls on the Commission and, notably, the Council to explain to Parliament whether an EU strategy was planned and what efforts were made to find a common line, and to report on what happened and on the implications of the outcome of Durban II;

33. Welcomes the second European Forum on the Rights of the Child organised by the Commission in March 2008, which focused on the matter of child alert mechanisms for missing children and on the issues of child poverty and social exclusion, with special attention to Roma children;

34. Welcomes the European Year of Intercultural Dialogue 2008, which was initiated by the Commission and established by decisions of the European Parliament and the Council; reiterates that intercultural dialogue has an increasingly important role to play in fostering European identity and citizenship; urges the Member States and the Commission to bring forward strategies to foster intercultural dialogue, to promote, within their spheres of competence, the objectives of the Alliance of Civilisations, and to maintain their political support for that Alliance;

The United Nations Human Rights Council

35. Welcomes the work of the UNHRC and stresses its crucial role within the overall UN architecture and its potential to develop a valuable framework for the European Union's multilateral human rights efforts; notes that this new body has to keep working in order to gain more credibility;

36. Stresses that the role of civil society organisations is indispensable for the efficiency of the UNHRC;

37. Welcomes the start of the Universal Periodic Review and the first round of the review, which took place in April and May 2008 and ended with adoption of the outcome reports by the UNHRC's plenary in June 2008; notes that the implementation of the first two cycles of the new mechanism confirmed the Universal Periodic Review's potential, and trusts that the implementation of the Universal Periodic Review mechanism will achieve further concrete results and improvements; calls on the Council and the Commission closely to follow and monitor the undertakings of the Universal Periodic Review, and calls on the Council to consult Parliament on this matter;

Thursday 7 May 2009

38. Notes that, as the Annual Report points out, EU Member States are in a minority in the UNHRC; calls on the EU institutions and the Member States to take concerted action to remedy this, developing appropriate alliances with those countries and non-state actors that are continuing to defend the universal and indivisible nature of human rights;

39. In this regard, calls on the Council and the Commission to strengthen their engagement with democratic governments from other regional groups within the UNHRC, with a view to improving the chance of success of initiatives aimed at respect for the principles contained in the Universal Declaration of Human Rights; asks the Commission to provide an annual report on voting patterns at the UN in matters concerning human rights, analysing how these have been affected by the policies of the EU and of its Member States and those of other blocs;

40. Calls for enhanced cooperation between the Council of Europe and the European Union in the field of promoting minority rights and protecting regional and minority languages, using the legal tools of non-discrimination to advocate diversity and tolerance;

41. Reaffirms the vital importance of the special procedures and country mandates within the UNHRC; considers that the process for the renewal of mandates must be transparent; welcomes the new manual of the UN special procedures and insists that efforts should continue to appoint independent and experienced candidates who are properly representative, both geographically and in terms of gender; notes the recent developments in the thematic and country mandates; welcomes the newly established thematic mandates, dealing with contemporary forms of slavery and access to safe drinking water and sanitation; welcomes the fact that the mandate of the Special Rapporteur on the situation of human rights in Sudan has been extended until June 2009;

42. Welcomes the fact that the EU initiated the holding of a special UNHRC session on Burma in October 2007, which culminated in the adoption of a resolution in June 2008 condemning the ongoing systematic violations of human rights and the recruitment of child soldiers in Burma and urging the Burmese Government unconditionally to release all political prisoners immediately;

Performance as regards the European Union human rights guidelines

43. Considers that, despite the delay in final ratification of the Lisbon Treaty, the preparations for the creation of the new European External Action Service should be used proactively to harmonise the approaches of the missions of Member States and the Commission abroad in the area of human rights, by sharing structures and staff so as to create genuine 'European Union embassies';

44. Takes note of the Slovenian and French Presidencies' drive to finalise European Union human rights guidelines on the rights of the child; is looking forward to receiving within the next year drafts of the specific implementing measures that will concentrate on implementing the holistic and comprehensive approach which the core guidelines develop;

45. Considers that measures should be taken to ensure that human rights issues are followed in a more systematic way by the EU missions, for instance by appointing human rights focal points and including guidelines on human rights and their implementation in EU mission staff training programmes;

Situation of women, violence against women and femicide

46. Welcomes the new priority status given by the French Presidency in the second half of 2008 to women's issues in the context of the EU's action in the field of human rights; stresses, in particular, the need to tackle the tragic phenomena of violence against women (including the practice of female circumcision) and femicide (including the practice of gender-selective abortion);

Thursday 7 May 2009

47. Given the failure of the international community to bring about change for the better in Zimbabwe – a human rights catastrophe – calls on the Council and Member States to examine the reasons behind this, to determine more effective policies, and to inform Parliament what action they intend to take, given the extent of the relationship between the EU and its Member States and many African countries, in particular in southern Africa;

48. Welcomes the adoption of new guidelines on 8 December 2008, thereby establishing a comprehensive strategy for strengthening EU action to enhance women's security, especially in conflict-affected countries, as well as in other countries; deplores, however, the fact that Parliament was not more closely involved in the drafting of those new guidelines and calls in this regard for a mechanism to be established in future for consultation with Parliament both when the new guidelines are being drawn up and when they are being assessed and revised;

49. Draws attention, none the less, to the existing gaps in the development of the Union's policies and actions relating to the human rights of women; finds these gaps reflected in the Council's report, inasmuch as, when assessing various specific areas, it fails to go into detail;

The death penalty

50. Recalls the resolution on a moratorium on the use of the death penalty (Resolution 62/149) adopted by the United Nations General Assembly on 18 December 2007, calling for a global moratorium on the use of the death penalty; stresses that the resolution ends by calling on all United Nations Member States to establish a moratorium on executions with a view to abolishing the death penalty;

51. Welcomes the Joint Declaration against the death penalty, signed on 10 October 2008 by the Presidents of the European Parliament, of the Council and of the Commission, on behalf of the EU, and by the President of the Parliamentary Assembly, the Chairman of the Committee of Ministers and the Secretary General of the Council of Europe, on the 'European Day against the Death Penalty', which is celebrated on 10 October each year; reiterates that the prohibition of the death penalty is one of the key provisions of the Charter of Fundamental Rights of the European Union, Article 2 of which explicitly states: 'No one shall be condemned to the death penalty, or executed';

52. Welcomes the revised and updated version of the EU Guidelines on the Death Penalty; reiterates that the EU is opposed to the death penalty in all circumstances, and emphasises once again that the abolition of the death penalty contributes to the enhancement of human dignity and the progressive development of human rights;

53. Calls on the Presidency to encourage Italy, Latvia, Poland and Spain, which have signed but not yet ratified Protocol No 13 to the ECHR concerning the abolition of the death penalty in all circumstances, to do so; recognises in that regard that the Guidelines on the Death Penalty could be implemented more coherently if Member States were to sign up to and ratify such protocols and conventions;

54. Welcomes the fact that the death penalty is in retreat, having been abolished for all crimes in 2008 by Rwanda and Uzbekistan; welcomes the draft penal code in Iran, which prohibits stoning sentences, and urges the Iranian parliament to conclude the penal code so as to provide for the absolute prohibition of stoning; condemns the fact that the Iranian regime still sentences to death and executes defendants under the age of 18 (particularly those whose only 'crime' under sharia law is having committed acts of homosexuality); stresses that Iran is the only country to have executed juvenile offenders in 2008; is deeply concerned that at least 130 other juvenile offenders are on death row in Iran; once again condemns the Iranian regime's increasing use of the death penalty, which places Iran in second position, just after China, in the league table of countries having the highest number of executions; notes that there has not been any death sentence passed in Guatemala; however, expresses its disquiet at the possibility that the death penalty might once again start to be enforced; urges the Guatemalan Government, on the contrary, to genuinely commit itself to the universal moratorium on the death penalty; however, welcomes the decisions taken by President Colom in March 2008 which may lead to the abolition of the death penalty in Guatemala;

Thursday 7 May 2009

expresses its concern at the retention of the death penalty in domestic legislation in Peru; notes that since 2007 all death penalty cases in China have been reviewed by the Supreme Court; however, remains concerned that China still carries out the greatest number of executions worldwide; condemns the practice of the death penalty in Belarus, which is the only country in Europe that continues to use the death penalty and therefore runs counter to European values;

Torture and other cruel, inhumane or degrading treatment

55. Urges all EU Member States that have not hitherto signed and/or ratified the Optional Protocol to the Convention Against Torture (OPCAT) to do so as swiftly as possible;

56. Remains concerned about the true commitment to human rights of European Union Member States that refuse to sign the above-mentioned International Convention for the Protection of All Persons from Enforced Disappearance; welcomes the ratification of that convention by Argentina in May 2008, and asks all EU Member States that have not done so to sign and ratify it promptly ⁽¹⁾;

57. Welcomes the revised version of the EU Guidelines on Torture, adopted by the Council in April 2001 and updated in 2008, the aim of which is to provide the EU with an operational tool to be used in contacts with third countries at all levels as well as in multilateral human rights forums in order to support and strengthen ongoing efforts to prevent and eradicate torture and ill-treatment in all parts of the world; reiterates that the EU is firmly committed to upholding the absolute prohibition of torture and cruel, inhuman and degrading treatment;

58. Expects the Council and the Commission to enhance the cooperation with the Council of Europe for the purposes of creating a Europe-wide zone free from torture and other forms of ill-treatment, as a clear signal that European countries are firmly committed to eradicating those practices within their borders in the first place, thereby setting an example for other countries of the world where such practices unfortunately still exist;

59. Welcomes the assessment of the EU Guidelines on Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, which includes new recommendations and implementation measures designed to further strengthen action in this area; notes with satisfaction the incorporation of the recommendations contained in the study entitled 'The Implementation of the European Union Guidelines on torture and other cruel, inhuman or degrading treatment or punishment', presented to Parliament's Subcommittee on Human Rights on 28 June 2007 and to COHOM in December 2007; notes with satisfaction the conclusions drawn from the examination of the implementation of the guidelines; welcomes the implementation measures, which are designed to provide guidance in that regard for EU missions and Commission delegations; in this context, welcomes the specific criteria for action concerning individual cases, and regrets the lack of measures to prevent the transfer of persons to a country where they may be at risk of torture or other inhuman or degrading punishment; in this regard, once again urges the EU to comply with the norms and standards laid down by the international and regional instruments relating to torture and ill-treatment;

60. Welcomes Resolution 62/148 on torture and other cruel, inhuman and degrading treatment or punishment, co-sponsored by the EU and adopted by the United Nations General Assembly on 4 March 2008, recalling that freedom from torture and other cruel, inhuman and degrading treatment or punishment is a basic right that must be protected under all circumstances; notes that the Network of Human Rights Parliamentary Committees of the European Union held its second meeting in the European Parliament on 25 June 2008, with a special focus on the fight against torture, in the presence of the UN Special Rapporteur on Torture, Manfred Nowak;

⁽¹⁾ Signatories (as of November 2008): Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Italy, Cyprus, Lithuania, Luxembourg, Malta, the Netherlands, Austria, Portugal, Slovakia, Slovenia, Finland, Sweden (only five countries – Albania, Argentina, France, Honduras and Mexico – have ratified the Convention, which requires 20 ratifications for entry into force).

Thursday 7 May 2009

61. Urges the Council and the Commission to continue the practice of demarches in respect of all of the European Union's international partners as regards the ratification and implementation of international conventions banning the use of torture and ill-treatment, as well as the provision of rehabilitation assistance to torture survivors; calls on the Council and the Commission to regard the fight against torture and ill-treatment as a top priority of the EU's human rights policy, in particular through enhanced implementation of the European Union guidelines and all other EU instruments such as the EIDHR, and by ensuring that Member States refrain from accepting diplomatic assurances from third countries where there is a real risk of people being subjected to torture or ill-treatment;

62. Notes the importance of Council Regulation (EC) No 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment⁽¹⁾, which prohibits the export and import of goods which have no practical use other than for the purposes of capital punishment, torture and other cruel, inhuman or degrading treatment or punishment, and which entered into force on 30 July 2006; urges the Council and the Commission to carry out an assessment of the implementation of that Regulation by the Member States, and to explore the possibilities for widening the scope of the Regulation;

63. Deplores the fact that there are 1 350 000 displaced persons in the DRC, including 850 000 displaced in North Kivu; emphasises once again the need for urgent action in the form of a full investigation aimed at bringing to justice the perpetrators responsible for the killing of an estimated 150 people by the CNDP (National Congress for the Defence of the People) and Mai Mai combatants in Kiwanja in November 2008; calls on the governments of the DRC and Rwanda to pledge their full support for MONUC (the UN Mission in the DRC) in the region, in the fulfilment of its peacekeeping mandate, and to work towards protecting civilians in the region from the violence and severe atrocities seen to date; further requests the Council and the Commission to support an investigation into the serious violations of international humanitarian law which are occurring on a daily basis, including rape, extrajudicial killings and torture, as well as the need to implement a strong EU strategy which would help to facilitate change in the region;

64. Remains deeply concerned about the devastating humanitarian crisis in Zimbabwe, the cholera epidemic and the continued refusal of the Mugabe regime to respond effectively to the crisis; further calls on the Council and the Commission to roundly condemn the actions of the Mugabe regime and to reaffirm their commitment to the Zimbabwean people in the form of a long-term programme of humanitarian aid; further denounces the intimidation and detention of human rights defenders and members of civil society, such as Jestina Mukoko, by the Mugabe regime, and calls for the perpetrators of these acts to be brought to justice;

Children's rights

65. Stresses once again the crucial need to implement the EU Guidelines on Children and Armed Conflict; urges all States to adopt the 2007 Paris Commitments to protect children from unlawful recruitment or use by armed forces or armed groups;

66. Welcomes the updated version of those guidelines, adopted on 16 June 2008, and notes with satisfaction that the EU has instructed ambassadors to devise individual strategies regarding the 13 priority countries for the implementation of the six new thematic issues identified in the guidelines: recruitment, killing and maiming, attacks on schools and hospitals, blockage of humanitarian access, sexual and gender-based violence and violations and abuses;

⁽¹⁾ OJ L 200, 30.7.2005, p. 1.

Thursday 7 May 2009

67. Welcomes the adoption in June 2008 of the European Council conclusions on the rights of the child, in particular children affected by armed conflict; notes that the Council called on the Commission and the Member States to continue to ensure the coherence, complementarity and coordination of human rights, security and development policies and programmes with a view to addressing the short, medium and long-term impacts of armed conflict on children in an effective, sustainable and comprehensive manner;

68. Welcomes the adoption by the EU in June 2008 of the revised checklist, which aims to integrate the protection of children affected by armed conflict into the European Security and Defence Policy; notes that this includes substantive improvements, particularly as regards the elaboration of the definition of child protection, specific training in respect of children affected by armed conflict, monitoring and reporting, improving visibility and awareness, the possibility of having specific expertise on the ground, and enhancing expert communication between missions/operations and Brussels;

69. Welcomes the Presidency initiatives on children affected by armed conflict; notes the conference entitled 'Increasing the Impact on the Ground – NGO and EU Collaboration in the Thematic Area of Children Affected by Armed Conflict', organised by the Slovenian Presidency in April 2008;

70. Notes the resolution on children and armed conflict adopted on 22 February 2008 by the UN General Assembly and the Report of the Special Representative of the UN Secretary-General; strongly condemns the recruitment and use of children in armed conflicts in Chad and Iraq;

71. Welcomes the Annual Report and conclusions of the UN Security Council Working Group on Children and Armed Conflict; strongly condemns the grave violations of children's rights and the continued use of children in the armed conflicts in Sri Lanka, Burma, the Philippines, Somalia, Congo and Burundi;

72. Welcomes the fact that 16 EU Member States⁽¹⁾ have signed the Geneva Declaration on Armed Violence and Development, thereby bringing the total number of States Parties to 97; urges the remaining 11 EU Member States that have yet not signed the Geneva Declaration to do so as swiftly as possible;

73. Calls on those Member States that have not done so to sign and ratify without delay the optional protocols to the Convention on the Rights of the Child⁽²⁾;

74. Welcomes the fact that 2008 saw the launch by the Commission, within the framework of the thematic programme entitled 'Investing in People', of a call for proposals for projects by non-governmental organisations (NGOs) for children affected by armed conflict and trafficking in children; calls on the Commission to continue to devote special attention to the situation of children affected by armed conflict;

Human rights defenders

75. Welcomes the Human Rights Defenders Conference held on 7-8 October 2008; reiterates the EU's commitment to improving protection for human rights defenders in their struggle to realise the vision set forth in the Universal Declaration of Human Rights;

⁽¹⁾ Bulgaria, Germany, Ireland, Greece, Spain, France, Italy, Hungary, the Netherlands, Austria, Portugal, Romania, Slovenia, Sweden, Finland and the United Kingdom.

⁽²⁾ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (as of November 2008): not ratified by the Czech Republic, Germany, Ireland, Luxembourg, Hungary, Malta, Finland or the United Kingdom. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (as of November 2008): not ratified by Estonia, the Netherlands or Hungary.

Thursday 7 May 2009

76. Draws attention to the abuse and sexual exploitation of millions of children worldwide; asks the Council, the Commission and Member States to do everything possible to prevent and combat the sexual exploitation and sexual abuse of children, to protect the rights of victims of such exploitation and abuse, and to promote national and international cooperation in the fight against the sexual exploitation and sexual abuse of children;

77. Welcomes the Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities, adopted by the Committee of Ministers on 6 February 2008;

78. Welcomes the establishment in 2006 by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) of a focal point for human rights defenders for the purpose of monitoring the human rights situation in all OSCE countries; urges the EU institutions to strengthen their support for human rights defenders by creating a focal point in the European Parliament, the Council and the Commission with a view to improving the follow-up of individual cases and coordination with other international and European organisations;

79. Welcomes the 2008 revised version of the EU Guidelines on human rights defenders; highlights the inclusion of provisions aimed at improving the support given to, and the protection of, human rights defenders by EU missions, such as local strategies for the implementation of the guidelines, local working groups on human rights and the organisation of meetings at least once a year between human rights defenders and diplomats; welcomes at the same time the inclusion of the possibility of issuing emergency visas and facilitating temporary shelter in the EU Member States as measures to provide swift assistance and protection to human rights defenders in danger in third countries;

80. Once again calls on the Council and the Member States to consider in concrete terms the matter of emergency visas for human rights defenders by including a clear reference to the specific situation of human rights defenders in the new Community Code on Visas, thereby creating a specific and accelerated visa procedure which could draw on the experience of the Irish and Spanish governments in this matter; notes the discussion concerning the issuing of visas for the temporary relocation of human rights defenders who are at immediate risk or in need of protection, and calls on COHOM to take further steps; considers that the confidentiality of Union demarches in favour of human rights defenders is sometimes useful but asks that, despite that confidentiality, Union local staff systematically and confidentially provide all useful information concerning those demarches to the NGOs on the ground, to the human rights defenders and to their families;

81. Refers to the Council Conclusions on Belarus of 13 October 2008 and the statement issued by the Presidency on 30 September 2008 concerning the parliamentary elections held that month in Belarus; regrets that the elections fell short of the international standards and failed to meet the democratic criteria of the OSCE; welcomes the release of the last internationally recognised political prisoner, Alyaksandr Kazulin, before the elections; however, remains concerned that at least 10 activists continue to serve 'restricted freedom' sentences that permit them only to be at home or at work; remains greatly concerned about the human rights situation in Belarus;

82. Condemns the strengthening of restrictions imposed by the Chinese government on human rights defenders before the Olympic Games, which prohibited them from engaging in telephone and internet communications, tracked their movements and subjected them to varying degrees of house arrest and unprecedented surveillance and monitoring, as a result of which many activists chose to postpone or suspend their work until the Games were over;

Thursday 7 May 2009

83. Draws specific attention to the significant impact that the right of free expression on the internet can have on closed communities, and calls on the EU to support cyber-dissidents worldwide; accordingly, asks the Council and the Commission to deal with all restrictions on the provision of internet and information society services by European companies in third countries as part of the EU's external trade policy and to regard as barriers to trade all unnecessary limitations on the provision of those services;

84. Is greatly concerned that Iran has continued in 2008 to suppress independent human rights defenders and members of civil society, and that serious violations of human rights have persisted; condemns the arbitrary arrest, torture and imprisonment of human rights defenders for their work, on the charge of 'activities contrary to national security'; regrets the current government policy directed against teachers and academics, barring students from access to higher education, and condemns the persecution and imprisonment of student activists;

85. Expresses its concern at the human rights situation in Nicaragua and Venezuela and at the attacks against and harassment of a number of human rights organisations in those countries; calls on the Nicaraguan and Venezuelan governments and authorities to act to protect democratic rights and freedoms and the rule of law;

86. Reiterates its position with regard to the Cuban Sakharov Prize winners Oswaldo Payá Sardiñas and the group known as 'Damas de Blanco' ('Ladies in White'); regards it as intolerable that a country with which the EU has reassumed a political dialogue on all kind of matters, including human rights, should refuse to allow both Oswaldo Payá and the Damas de Blanco to participate in the ceremony marking the 20th anniversary of the Prize; strongly rejects the systematic violence and the recurrent acts of harassment suffered by the Sakharov Prize laureates; in this respect, calls on the Cuban government to release immediately all political prisoners and prisoners of conscience and to recognise the right of all Cubans freely to enter and leave the country;

Guidelines on human rights dialogues and recognised consultations with third countries

87. Notes the revised version of the guidelines, adopted under the French Presidency, on human rights dialogues with third countries; once again calls on the Council and the Commission to initiate a comprehensive evaluation of those guidelines, based on an in-depth evaluation of each dialogue and the results obtained and, to that end, to develop clear indicators for the impact of each dialogue and criteria for the initiation, cessation and resumption of dialogues; emphasises the need to continue the informal interinstitutional meetings before and after each dialogue with a view to increasing the exchange of information between institutions and, if necessary, improving coordination; points out in this regard that the adoption of human rights strategies on a country-by-country basis will help to improve the coherence of EU policy on human rights;

88. Emphasises once again in this context the proposals set out in Parliament's above-mentioned resolution of 6 September 2007 on the functioning of the human rights dialogues and consultations on human rights with third countries;

89. Regrets China's postponement of the eleventh China-EU summit on the grounds of the Dalai Lama's visit to Europe; emphasises the need for a radical intensification and re-thinking of the European Union-China human rights dialogue; expresses its disquiet at the serious human rights violations in China and stresses that, despite promises made by the regime before the Olympic Games in August 2008, the situation on the ground regarding human rights has not improved; points out, moreover, that restrictions on freedom of association, expression and religion have been further tightened; strongly condemns the crackdown

Thursday 7 May 2009

against Tibetans following the wave of protests that swept across Tibet beginning on 10 March 2008 and the repression by the Chinese government that has increased in Tibet since then, and calls for the restart of a sincere and results-oriented dialogue between both parties based on the 'Memorandum on Genuine Autonomy for the Tibetan People'; notes that, despite repeated assurances by the Chinese government of its intention to ratify the International Covenant on Civil and Political Rights, ratification is still pending; refers to Parliament's resolution of 17 January 2008 on the arrest of the Chinese dissident Hu Jia ⁽¹⁾, who has been awarded the 2008 Sakharov Prize for Freedom of Thought; calls on the Chinese government to release Hu Jia immediately and to lift the house arrest on his wife Zeng Jinyan and his daughter; condemns the wave of repression against signatories of the 'Charter 08', a document calling for democratic reforms in China and demanding the release of Liu Xiaobo, a dissident who has been detained since 9 December 2008; expresses concern that the legal system remains vulnerable to arbitrary and often politically-motivated interference, including the State Secrets system, preventing the transparency necessary for the development of good governance and a system in which the rule of law prevails; in this context, deplores the systematic punishment of lawyers who try to make the Chinese legal system function in accordance with China's own laws and the rights of its citizens; notes the persisting frailty of internet freedom in China, and in this respect asks European businesses providing an internet content hosting service to refrain from disclosing to any foreign official any information that personally identifies a particular user of the service in question save for legitimate foreign law-enforcement purposes in compliance with the Universal Declaration of Human Rights;

90. Remains concerned that the human rights dialogue with Iran has been interrupted since 2004 due to the absence of any positive progress in improving the human rights situation and a lack of cooperation from Iran; calls on the Iranian authorities to resume this dialogue with a view to supporting all civil society stakeholders who are committed to democracy, and to strengthen – through peaceful and non-violent means – existing processes that can foster democratic, institutional and constitutional reforms, ensure the sustainability of those reforms and consolidate the involvement of all Iranian human rights defenders and civil society representatives in policy-making processes, reinforcing the role played by them in the general political discourse; is deeply concerned that, in 2008, the human rights situation in Iran has worsened and the restrictions on freedom of expression and assembly have persisted; in this context, is deeply concerned by the suppression of the journalists, writers, scholars and women's rights and human rights activists; remains concerned about the repression of ethnic and religious minorities in Iran; condemns the increasing use of the death penalty in Iran, including in respect of juveniles;

91. Regrets the lack of results from the European Union-Russia consultations on human rights; regrets that the Russian authorities declined to participate in any of the round-table meetings held to prepare for the consultations which involved domestic and international NGOs; notes that during the consultations the European Union raised human rights concerns with a particular focus on freedom of expression and assembly, the functioning of civil society, minority rights, combating racism and xenophobia and the rights of children and women, as well as the international human rights obligations of both the EU and Russia; regrets that, despite this, the European Union has not succeeded in bringing about any change of policy in Russia, particularly with regard to impunity and the independence of the judiciary, the treatment of human rights defenders and political prisoners including Mikhail Khodorkovsky, the independence of the media and freedom of expression, the treatment of ethnic and religious minorities, respect for the rule of law and human rights protection in the armed forces, discrimination based on sexual orientation as well as other issues; refers to its resolution of 19 June 2008 on the EU-Russia Summit of 26-27 June 2008 in Khanty-Mansiysk ⁽²⁾; expresses once again its concerns at the deteriorating situation of human rights defenders and the difficulties faced by NGOs with regard to their registration and in carrying out their activities; reiterates its concerns about the Anti-Extremism Law, which could affect the free flow of information and could lead the Russian authorities to further restrict the right to free expression of independent journalists and political opponents; expresses further concern, in line with the Amnesty International Report of 2008, as to the ongoing failure of the Office of the Prosecutor to respect the right of Mikhail Khodorkovsky and his associate Platon Lebedev to a fair trial in accordance with international standards, and deeply regrets the treatment of former Yukos vice-president Vasily Aleksanian, whose refusal

⁽¹⁾ OJ C 41 E, 19.2.2009, p. 82.

⁽²⁾ Texts adopted, P6_TA(2008)0309.

Thursday 7 May 2009

to provide false testimony against Mikhail Khodorkovsky led the Russian authorities to allow his medical condition to deteriorate to a terminal state; joins the Parliamentary Assembly of the Council of Europe in calling on the Russian authorities to 'use all available legal means' to secure the release of Igor Sutiagin and Valentin Danilov; welcomes the release of Mikhail Trepashkin; deeply regrets that the ODIHR election-monitoring mission covering the Russian presidential election of March 2008 had to be cancelled due to the restrictions and limitations imposed by the Russian authorities on that mission;

92. Notes the existence of human rights subcommittees involving countries on the southern shore of the Mediterranean (Morocco, Tunisia, Lebanon, Jordan, Egypt, Israel and the Palestinian Authority) in the context of the European Neighbourhood Policy and calls on the Council and the Commission to set up human rights subcommittees with all neighbourhood countries; reiterates its call for parliamentarians to be associated with the preparations for meetings of such subcommittees and to be informed of their outcome; welcomes the consultation with civil society, both before and after, by the Commission delegation in the country concerned and by the Commission's relevant departments in Brussels; questions, however, the effectiveness and coherence of the methodology used, and, in particular, of the criteria for evaluating the discussions held in these subcommittees; believes that these subcommittees should allow the human rights issues included in the action plan to be specifically followed up but stresses that discussions on human rights should certainly not be confined to these subcommittees, and emphasises the importance of coordination with other subcommittees dealing with human rights-related issues, such as migration; highlights the need to include these issues in the political dialogue up to the highest level so as to increase the coherence of the EU's policy in this field; is convinced that the European Neighbourhood Policy as designed and structured (action plan, follow-up report and subcommittees) could give real leverage for the promotion of human rights were the European Union to demonstrate a genuine political will to ensure respect for the primacy of human rights in a coherent, systematic and wide-ranging manner; believes, therefore, that respect for human rights and democratic principles must be a precondition for strengthening relations between the Union and a third country; in the context of concluding a framework agreement with Libya, calls on the Council and the Commission to give due attention to dialogue and cooperation on human rights;

93. Strongly deplores the recent military escalation and the further deterioration of the humanitarian situation in Gaza, expressing at the same time its unconditional sympathy for the civilian population in southern Israel; urges all parties to fully implement UN Security Council resolution 1860 (2009) with a view to securing a permanent ceasefire; underlines the urgent need for effective accountability in cases of violations of international humanitarian law; welcomes in this regard the decision of the UNHRC to appoint an independent fact-finding mission to investigate war crimes and serious human rights violations by all sides during the recent conflict in Gaza; urges all parties to cooperate with the UN human rights investigators; takes note of the commitment of the External Relations Council of 27 January 2009 to follow those investigations closely and asks the Commission to decide, in close consultation with the Member States, on the further action to be taken once the findings are known;

94. Recognises the second round of the EU-Uzbekistan human rights dialogue, which took place on 5 June 2008; notes the seminar on media freedom, held in Tashkent on 2 and 3 October 2008; however, considers that the seminar failed to achieve its aim of providing an open discussion on the human rights violations and freedom of the media in Uzbekistan, as was originally intended; notes the continuing absence of an independent international inquiry into the Andijan massacre and the lack of any improvement in the human rights situation in Uzbekistan; welcomes the release of two human rights defenders, Dilmurod Mukhiddinov and Mamarajab Nazarov; condemns the holding of human rights defenders and independent journalists in prison on politically motivated charges and urges the Uzbek authorities to release all human rights defenders and other political prisoners; reiterates its deep concern at the imprisonment of Salijon Abdurakhmanov, an independent journalist, and Agzam Turgunov, a human rights activist; takes note of the Council's Conclusions of 13 October 2008 on Uzbekistan; urges the Uzbek authorities to accept the accreditation of the new Country Director of Human Rights Watch and to allow that organisation and other international organisations and NGOs to operate without hindrance; asks Uzbekistan to cooperate fully and effectively with the UN Special Rapporteurs on torture and on freedom of expression and to revoke restrictions on the registration and operation of NGOs in Uzbekistan; notes that the Council has

Thursday 7 May 2009

decided not to renew the travel restrictions applying to certain individuals referred to in Common Position 2007/734/CFSP⁽¹⁾, which had been suspended in accordance with the Council's conclusions of 15-16 October 2007 and 29 April 2008; welcomes the fact that the Council has however decided to renew, for a period of 12 months, the arms embargo imposed in that Common Position; invites the Council and the Commission to review the overall human rights situation in Uzbekistan; reiterates its call for the immediate release of political prisoners; notes the declaration by the EU Presidency of 17 December 2008 on individual cases;

95. Welcomes the fact that the European Union and Turkmenistan held the first round of the human rights dialogue in July 2008; welcomes the raising of concerns about the human rights situation in Turkmenistan, particularly regarding freedom of opinion and assembly, the independence of the judiciary and the functioning of civil society; refers to its resolution of 20 February 2008 on an EU Strategy for Central Asia⁽²⁾ and reiterates that Turkmenistan must make progress in key areas in order for the EU to conclude the Interim Agreement, inter alia by allowing the International Committee of the Red Cross free and unfettered access, by reforming the education system in accordance with international standards, by unconditionally releasing all political prisoners and prisoners of conscience, by abolishing all government impediments to travel, and by allowing all NGOs and human rights bodies to operate freely in the country; calls on the Council and the Commission to clearly articulate, prior to the signing of the Interim Agreement, specific human rights improvements and to that end, to adopt a roadmap with clear timelines for compliance;

96. Supports the willingness of the Council to establish human rights dialogues with each of the remaining Central Asian countries; calls for the dialogues to be results-oriented and fully in line with the European Union Guidelines on Human Rights Dialogues with Third Countries, guaranteeing the involvement of civil society and of the European Parliament; calls for the establishment of the dialogues to be matched by adequate resources within the Council and Commission secretariats;

97. Notes the importance of both Turkey's and the EU's commitment to Turkey's accession process for the ongoing human rights reforms in Turkey; regards as a positive step towards freedom of speech in Turkey the decision of the government to permit the broadcasting of Kurdish television; regrets, however, the fact that the use of the Kurdish language is still banned in parliament and in political campaigning; reiterates that further legislative reforms are needed in order to ensure respect for and protection of minorities and full freedom of expression, in law and in practice, in line with the ECHR and the case-law of the European Court of Human Rights; notes with concern that no progress has been made as regards ratification of human rights instruments, in particular the OPCAT, the UN Convention on the Rights of Persons with Disabilities and Additional Protocol Nos 4, 7 and 12 to the ECHR;

98. Urges the new Pakistani Government to take adequate steps towards the improvement of the human rights situation in Pakistan; refers to Amnesty International's request urging the Pakistani Government to reinstate all the judges illegally deposed by former President Pervez Musharraf in 2007; welcomes the fact that the EU deployed an independent election observation mission for the general parliamentary elections in February 2008; notes with satisfaction that the elections were competitive and resulted in increased public confidence in the democratic process; notes that the EU is committed to supporting the strengthening of democratic institutions, and calls on the Council and the Commission to support the movement for democracy started by the judiciary and the bar, particularly by extending invitations to some of their representatives, including Mr Choudhry; stresses the need for human rights to be one of the EU's main priorities within the framework of continuing dialogue with Pakistan;

⁽¹⁾ Council Common Position 2007/734/CFSP of 13 November 2007 concerning restrictive measures against Uzbekistan (OJ L 295, 14.11.2007, p. 34).

⁽²⁾ Texts adopted, P6_TA(2008)0059.

Thursday 7 May 2009

99. Welcomes the Council's proposals for launching human rights dialogues with a number of Latin American countries; underlines that those dialogues should go hand in hand with firm, concrete and tangible demands in respect of human rights matters, which will equally impose obligations on the EU institutions in their relations with the countries concerned; stresses the desirability of including the countries of Central America; notes the signing of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights by the Cuban government in February 2008; calls for those Covenants to be ratified without any reservations; asks the Cuban government to release all political prisoners and to honour the rights protected in the signed treaties; notes the Council's decision of 20 June 2008 to lift the informal sanctions with regard to Cuba; notes that the Council will decide in 2009 whether to pursue the political dialogue with Cuba, depending on whether or not there have been significant improvements as regards human rights;

100. Calls on Russia as an occupying power in Georgia to uphold human rights in Abkhazia and South Ossetia, including the right of citizens to return to their homes; calls on all parties to continue to implement their commitments pursuant to the agreements of 12 August and 8 September 2008; asks all governments concerned to continue to provide detailed maps and information concerning all areas affected by the conflict onto which cluster bombs were fired, so as to facilitate the clearance of cluster weapon munitions and make those areas safe for civilians; considers that both governments should also ensure that the public is made aware of the dangers of unexploded material through public information campaigns; calls on the responsible administrations to agree to the deployment of international human rights monitors to South Ossetia and Abkhazia;

101. Expresses its concern about the lack of progress in the human rights situation in Burma, especially in view of the upcoming elections scheduled for 2010; condemns the recent arrests and convictions after show trials of more than one hundred members of the Burmese opposition and the draconian sentences they received; urges the Burmese government to release all political prisoners immediately; considers that Parliament should send a heavyweight mission to Burma, seeing that the current human rights situation is still not improving despite all sanctions and that international pressure on the Burmese regime has to be reinforced;

General scrutiny of Council and Commission activities including the performances of the two Presidencies

102. Calls on the Council Presidency to focus on countries of particular concern as regards human rights;

103. Welcomes the events and discussions taking place within the framework of the European Year of Intercultural Dialogue 2008, and notes with satisfaction the initiatives taken under the two presidencies;

104. Welcomes the tenth European Union NGO Human Rights Forum organised by the French Presidency and the Commission, which took place on 10 December 2008 on the topic of the 60th anniversary of the Universal Declaration of Human Rights and which focused in particular on discrimination against women;

105. Calls for greater efforts and more determined action by the EU with a view to achieving a political settlement to the Darfur conflict and facilitating the implementation of a global peace agreement; stresses the need to end impunity and impose the UN Security Council's sanctions; welcomes the European Union's support for the arrest warrants issued by the ICC in relation to Darfur, which must be executed as soon as possible;

106. Welcomes UN Security Council Resolution 1834 of 24 September 2008 extending the mandate of the UN Mission in the Central African Republic and Chad until March 2009, together with the United Nations' intention to authorise the deployment of a UN military component to follow up EUFOR Chad/CAR in both Chad and the Central African Republic;

Thursday 7 May 2009

107. Welcomes the fact that the Council establishes and regularly updates lists of focus countries in respect of which additional concerted efforts are made with a view to implementation of the European Union Guidelines on children and armed conflicts, on the death penalty (so-called 'countries on the cusp') and on human rights defenders;

108. Reiterates its request that all human rights and democracy discussions with third countries, instruments, documents and reports, including the Annual Reports on human rights, explicitly address discrimination issues including the issues of ethnic, national and linguistic minorities, religious freedoms including intolerance against any religion and discriminatory practices towards minority religions, caste-based discrimination, the protection and promotion of the rights of indigenous peoples, the human rights of women, and the rights of children, disabled people including people with intellectual disabilities, and people of all sexual orientations, and gender identities, fully involving their organisations, both within the European Union and in third countries, where appropriate;

109. Notes the initiative of the Union for the Mediterranean launched by the French Presidency as a new challenge aimed at promoting democracy and respect for human rights in the Mediterranean zone; stresses that the development of new initiatives by the Union for the Mediterranean must not lead to less attention and priority being given to the promotion of the necessary reforms in respect of democracy and human rights in the region;

The Commission's external assistance programmes and the EIDHR

110. Welcomes the fact that Parliament's priorities have been taken into consideration in the 2007 and 2008 programming documents of the EIDHR;

111. Calls for the updating of the electronic compendiums, which are intended to cover all EIDHR projects organised geographically and thematically;

112. Notes with satisfaction the interest shown in presenting projects under the new objective of support to human rights defenders and the possibility of urgent action for their protection; notes that the Commission has selected 11 beneficiaries to implement these projects and expects that real activities will start at the beginning of 2009;

113. Once again calls on the Commission to adjust the level of staffing allocated for the implementation of the EIDHR, both at headquarters and in the delegations, so as to take account of the peculiarities and problems of this new instrument;

114. Calls on the Commission to ensure coherence between the Union's political priorities and the projects and programmes which it supports, particularly in connection with its bilateral programming with third countries;

Electoral assistance and election observation

115. Notes with satisfaction that the EU makes increasing use of electoral assistance and election observation to promote democracy in third countries, thereby enhancing respect for human rights, fundamental freedoms and the rule of law, and that the quality and independence of these missions are widely recognised;

116. Stresses that the comprehensive EU methodology, which covers the whole electoral cycle and includes both electoral assistance and election observation, has been very successful for the EU, transforming it into a leading international election observation organisation;

Thursday 7 May 2009

117. Welcomes the first Handbook for EU election observation, issued in April 2008; notes with satisfaction the specific section on gender issues; notes that the new Handbook provides a comprehensive overview of the EU election observation mission's methodology and a description of how the missions are planned, deployed and implemented as well as of how the international standards are used in assessment and reporting;

118. Calls for increased vigilance with regard to the criteria for selection of the countries in which electoral assistance/election observation is to take place, and for compliance with the methodology and rules set up at international level, particularly concerning the independent nature of the mission;

119. Reiterates its calls for the electoral process, including both the pre- and post-electoral stages, to be incorporated into the different levels of political dialogue with the third countries concerned, with a view to ensuring the coherence of EU policies and reaffirming the crucial role of human rights and democracy;

Mainstreaming of human rights

120. Calls on the Commission to continue to monitor closely the granting of 'Generalised System of Preferences plus' (GSP+) benefits to countries which have shown serious flaws in the implementation of the eight ILO conventions relating to core labour standards, on account of breaches of civil and political rights or the use of prison labour; asks the Commission to develop criteria determining when the GSP should be withdrawn on human rights grounds;

Economic, social and cultural (ESC) rights

121. Underlines that economic, social and cultural rights are just as important as civil and political rights; underlines the EU's commitment to supporting the achievements of the Millennium Development Goals, as set out in the conclusions of the European Councils held in December 2007 and June 2008;

122. Calls on the EU to mainstream protection of ESC rights into its external relations with third countries, regularly placing them on the agenda of human rights dialogues and consultations with third countries and pressing for implementation of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, especially with a view to the effective functioning of its individual complaint procedure;

123. Calls on the Council and the Commission to ensure the coherence of ESC rights in the EU's development, external trade and human rights policies, and, to that end, to set up an inter-service working group on ESC rights;

124. Stresses that human rights also include rights to food, to adequate housing, to education, to water, to land, to decent work, to social security and to form a trade union, and that it is especially important to ensure that those rights are enjoyed by extremely vulnerable groups such as people in least-developed, post-conflict or emerging countries, indigenous peoples, climate-change refugees, migrants, etc.;

125. Calls on the Commission to make a special effort with a view to ensuring the right to food in the present food and general economic crisis;

126. Underlines the need to promote corporate social responsibility and to oblige trans-national companies with headquarters in EU Member States to respect, in their third-country operations, the relevant ILO regulations;

Thursday 7 May 2009

127. Is pleased to note that the GSP+ regime, by linking human rights and international trade, encourages sustainable development as well as good governance, and calls for the effective monitoring of compliance with the essential element clause;

128. Once again calls on the Council and the Commission to take EU initiatives at international level with a view to fighting persecution and discrimination based on sexual orientation and gender identity, e.g. by promoting a resolution on this issue at United Nations level and granting support to NGOs and actors who promote equality and non-discrimination;

Effectiveness of the European Parliament's interventions in human rights cases

129. Expects that resolutions and other key documents relating to human rights issues will be translated into the language spoken in the targeted areas;

130. Welcomes the ground-breaking statement, supported by 66 nations including all EU Member States, presented in the UN General Assembly on 18 December 2008, confirming that international human rights protections include sexual orientation and gender identity and reaffirming the principle of non-discrimination, which requires that human rights apply equally to every human being regardless of sexual orientation or gender identity;

131. Calls on the Council to respond in a substantive manner to the wishes and concerns expressed in formal communications from Parliament, particularly with respect to urgency resolutions;

132. Reminds Parliament's delegations visiting third countries that they should systematically include in the agenda an interparliamentary debate on the human rights situation, as well as meetings with human rights defenders, in order to learn first-hand about the human rights situation in the country concerned and to provide them, where appropriate, with international visibility and protection;

133. Is convinced that only a strengthened human rights body in Parliament would be able to promote a coherent, effective, systematic and cross-cutting human rights policy within Parliament and vis-à-vis the Council and Commission, in particular in the light of the foreign policy provisions of the Lisbon Treaty;

134. Welcomes the setting-up of the Sakharov Network, as announced on the 20th anniversary of the Sakharov Prize; believes that it should quickly decide on its operating arrangements and put in place the resources necessary to achieve its objectives; reiterates its demand that all winners of the Sakharov Prize and, in particular, Aung San Suu Kyi, Oswaldo José Payá Sardiñas, the Cuban collective Damas de Blanco and Hu Jia be given access to the European institutions; deplores the absence of any significant response to the EU's calls made to the Chinese, Burmese and Cuban authorities to respect fundamental freedoms, especially freedom of expression and political association;

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135. Instructs its President to forward this resolution to the Council and the Commission, to the governments and parliaments of the Member States and of the candidate countries, to the United Nations, the Council of Europe and the Organization for Security and Co-operation in Europe, and to the governments of the countries and territories mentioned in this resolution.

Thursday 7 May 2009

Institutional balance of the European Union

P6_TA(2009)0387

European Parliament resolution of 7 May 2009 on the impact of the Treaty of Lisbon on the development of the institutional balance of the European Union (2008/2073(INI))

(2010/C 212 E/12)

The European Parliament,

- having regard to the decision of the Conference of Presidents of 6 March 2008,
 - having regard to the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed on 13 December 2007,
 - having regard to its resolution of 20 February 2008 on the Treaty of Lisbon ⁽¹⁾,
 - having regard to the conclusions of the European Council of 11 and 12 December 2008,
 - having regard to Rule 45 of its Rules of Procedure,
 - having regard to the report of the Committee on Constitutional Affairs and the opinion of the Committee on Development (A6-0142/2009),
- A. whereas the Treaty of Lisbon strengthens the institutional balance of the Union, inasmuch as it reinforces the key functions of each of the political institutions, thereby strengthening their respective roles within an institutional framework in which cooperation between the institutions is a key element of the success of the Union's integration process,
- B. whereas the Treaty of Lisbon transforms the former 'Community method', adapting and strengthening it, into a 'Union method' in which, in essence:
- the European Council defines the general political directions and priorities,
 - the Commission promotes the general interest of the Union and takes appropriate initiatives to that end,
 - the European Parliament and the Council jointly exercise legislative and budgetary functions on the basis of the Commission's proposals,
- C. whereas the Treaty of Lisbon extends this specific method of decision-making by the Union to new areas of its legislative and budgetary activities,

⁽¹⁾ Texts adopted, P6_TA(2008)0055.

Thursday 7 May 2009

- D. whereas the Treaty of Lisbon provides that the European Council may, by unanimity and with the consent of the European Parliament, extend qualified majority voting and the ordinary legislative procedure, thereby reinforcing the Union method,
- E. whereas, although the aim of the Treaty of Lisbon is to simplify and enhance the coherence of the Presidency of the European Council and of the Council, the coexistence of a separate Presidency of the European Council and of the Foreign Affairs Council (and of the Eurogroup), together with the continuation of a rotating system for the presidencies of the other configurations of the Council, are, at least initially, likely to complicate the Union's functioning,
- F. whereas the principle of gender equality implies that the equal representation of women and men in public life be also observed in the nomination procedure for the most important political posts in the Union,
- G. whereas the new procedure for the election of the President of the Commission necessitates consideration of the results of the elections and appropriate consultations between representatives of the European Council and of the European Parliament before the European Council proposes its candidate,
- H. whereas the organisation of interinstitutional cooperation in the decision-making process will be key to the success of the Union's action,
- I. whereas the Treaty of Lisbon recognises the growing importance of strategic multiannual and operational annual programming in ensuring a smooth relationship between the institutions and efficient implementation of the decision-making procedures, and stresses the role of the Commission as initiator of the main programming exercises,
- J. whereas the current seven-year financial programming means that, from time to time, the European Parliament and the Commission, during a full parliamentary term, will have no fundamental political financial decisions to take during their mandate, finding themselves locked into a framework adopted by their predecessors that will last until the end of their mandate, something which might, however, be resolved by making use of the possibility offered by the Treaty of Lisbon for five-year financial programming, which could match the mandate of Parliament and the Commission,
- K. whereas the Treaty of Lisbon introduces a new and comprehensive approach to the external action of the Union – albeit with specific mechanisms for decision-making in matters relating to the Common Foreign and Security Policy (CFSP) – as well as creating the 'double-hatted' post of Vice-President of the Commission (High Representative) supported by a special external service as the key element rendering this new and integrated approach operative,
- L. whereas the Treaty of Lisbon introduces a new system of external representation of the Union, which is essentially entrusted, at different levels, to the President of the European Council, the President of the Commission and the Vice-President of the Commission (High Representative) and which will require careful articulation and strong coordination between the different parties responsible for this representation, in order to avoid damaging conflicts of competences and wasteful duplication,
- M. whereas the European Council of 11 and 12 December 2008 agreed that, in the event of the entry into force of the Treaty of Lisbon by the end of the year, it would take the necessary legal measures to maintain the composition of the Commission in its present form of one member per Member State,

Thursday 7 May 2009

General assessment

1. Welcomes the institutional innovations contained in the Treaty of Lisbon, which create the conditions for a renewed and enhanced institutional balance within the Union, allowing its institutions to function more efficiently, openly and democratically and enabling the Union to deliver better results that more closely match the expectations of its citizens and to play its role fully as a global actor in the international sphere;
2. Stresses that the essential core of the functions of each institution is reinforced, allowing each of them to develop its role in a more effective manner, but warns that the new institutional framework requires each institution to play its role in permanent cooperation with the other institutions in order to achieve positive results for the whole of the Union;

Reinforcement of the specific 'Union method' of decision-making as the basis of the interinstitutional balance

3. Welcomes the fact that the essential elements of the 'Community method' – the right of initiative of the Commission and joint decision-making by the European Parliament and the Council – have been preserved and reinforced by the Treaty of Lisbon, inasmuch as:
 - the European Council becomes an institution whose specific role in providing the impetus and the orientation of the Union is strengthened, thereby defining its strategic objectives and priorities without interfering in the normal exercise of the legislative and budgetary powers of the Union;
 - the Commission's role as the 'engine' driving forward European activity is confirmed, thus ensuring that its monopoly of legislative initiative remains untouched (and is even reinforced), notably in the budgetary procedure;
 - the European Parliament's powers as a branch of the legislature are enhanced, since the ordinary legislative procedure (as the current codecision procedure will be known) becomes the general rule (save where the Treaties specify that a special legislative procedure is to apply) and is extended to almost all areas of European legislation, including justice and home affairs;
 - the Council's role as the other branch of the legislature is confirmed and preserved – albeit with a certain preponderance in a few important areas – due in particular to the clarification in the Treaty of Lisbon that the European Council will not exercise legislative functions;
 - the new budgetary procedure will likewise be based on a process of joint decision-making, on an equal footing, by the European Parliament and the Council, covering all types of expenditure, and the European Parliament and the Council will also decide jointly on the multiannual financial framework, in both cases on the initiative of the Commission;
 - the distinction between legislative and delegated acts and the recognition of the specific executive role of the Commission under the equal control of the two branches of the legislature will enhance the quality of European legislation; the European Parliament plays a new role in the conferral of delegated powers on the Commission and in the supervision of delegated acts;
 - as regards the treaty-making power of the Union, the role of the Commission (in close association with the Vice-President of the Commission (High Representative)) is recognised in respect of the capacity to conduct negotiations, and the consent of the European Parliament will be required for the conclusion by the Council of almost all international agreements;
4. Welcomes the fact that the Treaty of Lisbon stipulates that the European Council may by unanimity, and with the consent of the European Parliament, provided there is no opposition by a national parliament, extend qualified majority decision-making and the ordinary legislative procedure to areas in which they do not yet apply;

Thursday 7 May 2009

5. Stresses that, on the whole, these 'bridging' clauses reveal a real trend towards the widest possible application of the 'Union method'; and consequently calls on the European Council to make the fullest possible use of these opportunities afforded by the Treaty;

6. Maintains that full utilisation of all the institutional and procedural innovations introduced by the Treaty of Lisbon requires in-depth permanent cooperation between the institutions participating in the different procedures, taking full advantage of the new mechanisms provided for in the Treaty, particularly the interinstitutional agreements;

The European Parliament

7. Strongly welcomes the fact that the Treaty of Lisbon fully recognises the European Parliament as one of the two branches of the legislative and budgetary authorities of the Union, while its role in the adoption of many political decisions of importance for the life of the Union is also recognised, and its functions in relation to political control are reinforced and even extended, albeit to a lesser extent, to the area of CFSP;

8. Stresses that this recognition of the role of the European Parliament requires the full collaboration of the other institutions, notably as regards providing Parliament in good time with all the documents necessary for the exercise of its functions, on an equal footing with the Council, as well as its access to and participation in relevant working groups and meetings held in other institutions on equal terms with the other participants in the decision-making procedure; calls on the three institutions to envisage the conclusion of interinstitutional agreements structuring the best practices in these domains in order to optimise their reciprocal cooperation;

9. Maintains that the European Parliament must itself carry out the necessary internal reforms in order to adapt its structures, its proceedings and its working methods to the new competences and to the reinforced requirements of programming and interinstitutional cooperation deriving from the Treaty of Lisbon ⁽¹⁾; took note with interest of the conclusions of the Working Party on Parliamentary Reform and recalls that its competent committee has recently worked on the reform of its Rules of Procedure in order to adapt them to the Treaty of Lisbon ⁽²⁾;

10. Welcomes the fact that the Treaty of Lisbon extends to the European Parliament the right of initiative concerning revision of the Treaties, recognises that Parliament has the right to participate in the Convention and that its consent is required in the event that the European Council considers that there is no reason to convene the Convention; considers that this recognition militates in favour of recognising that the European Parliament has a right of full participation in the Intergovernmental Conference (IGC) on similar terms to those of the Commission; considers that, building on the experience of the two previous IGCs, an inter-institutional arrangement could in future define the guidelines for the organisation of IGCs, notably in relation to the participation of the European Parliament and issues concerning transparency;

11. Takes note of the transitional arrangements concerning the composition of the European Parliament; considers that the implementation of such arrangements will require a modification in primary law; calls on the Member States to adopt all the necessary national legal provisions in order to allow the pre-election in June 2009 of the 18 supplementary Members of the European Parliament, so that they can sit in Parliament as observers from the date that the Treaty of Lisbon enters into force; recalls, however, that the supplementary Members will only take up their full powers on an agreed date and simultaneously, once the procedures for the ratification of the change in primary law have all been completed; reminds the Council that Parliament stands to gain important rights of initiative and consent under the Treaty of Lisbon (Article 14(2) of the EU Treaty) as to the composition of Parliament, which it fully intends to assert;

⁽¹⁾ Parliament resolution of 7 May 2009 on Parliament's new role and responsibilities in implementing the Treaty of Lisbon (Leinen report), P6_TA(2009)0373.

⁽²⁾ Parliament decision of 6 May 2009 on the general revision of Parliament's Rules of Procedure P6_TA(2009)0359 and Report on the adaptation of the Rules of Procedure to the Treaty of Lisbon (A6-0277/2009) (Corbett reports).

Thursday 7 May 2009

The role of the European Council

12. Considers that formal recognition of the European Council as a separate autonomous institution, with its specific competences clearly defined in the Treaties, involves refocusing the role of the European Council on the fundamental task of providing the necessary political impetus and defining the general orientations and goals of the Union's activity;

13. Welcomes also the specification in the Treaty of Lisbon of the essential role of the European Council in relation to revision of the Treaties, as well as in relation to certain decisions of fundamental importance for the political life of the Union – concerning such matters as nominations for the most important political posts, the resolution of political impasses in various decision-making procedures, and the use of flexibility mechanisms – which are adopted by or with the participation of the European Council;

14. Considers also that, as the European Council is now incorporated into the EU institutional architecture, there is a need for a clearer and more specific definition of its obligations, including the possible judicial scrutiny of its actions, in particular in light of article 265 TFEU.

15. Stresses the particular leading role to be played by the European Council in the external action area, especially as regards the CFSP, in which its tasks of identifying the strategic interests, determining the objectives and defining the general guidelines of that policy are of crucial importance; emphasises in that context the need for the close involvement of the Council, of the President of the Commission and of the Vice-President of the Commission (High Representative) in the preparation of the work of the European Council in that area;

16. Maintains that the need to improve the interinstitutional cooperation between the European Parliament and the European Council militates in favour of optimising the conditions under which the President of the European Parliament participates in discussions in the European Council, which could possibly be dealt with in a political agreement on the relations between the two institutions; considers that it would be useful if the European Council were likewise to formalise those conditions in its internal rules of procedure;

The fixed Presidency of the European Council

17. Welcomes the creation of a fixed long-term Presidency of the European Council, which will help to ensure greater continuity, effectiveness and coherence of the work of that institution and thus of the action of the Union; underlines that the nomination of the President of the European Council should take place as soon as possible after the entry into force of the Treaty of Lisbon in order to maintain a link between the duration of the newly elected Parliament and the period of the mandate for the new Commission;

18. Stresses the essential role which the President of the European Council will have in the institutional life of the Union, not as President of the European Union – which he/she will not be – but as chair of the European Council in charge of driving its work forward, ensuring the preparation and the continuity of its work, promoting consensus amongst its members, reporting to the European Parliament and representing, at his/her level and without prejudice to the functions of the Vice-President of the Commission (High Representative), the Union externally in relation to the CFSP;

19. Recalls that the preparation of the meetings of the European Council and the continuity of its work are to be ensured by the President of the European Council in cooperation with the President of the Commission and on the basis of the work of the General Affairs Council, which calls for mutual contact and close cooperation between the President of the European Council and the Presidency of the General Affairs Council;

20. Considers, in this context, that a balanced and collaborative relationship between the President of the European Council and the President of the Commission, the rotating Presidency and, as far as the external representation of the Union in CFSP matters is concerned, the Vice-President of the Commission (High Representative) is essential;

Thursday 7 May 2009

21. Recalls that, although the Treaty of Lisbon provides for the European Council to be assisted by the General Secretariat of the Council, the specific expenditure of the European Council must be set out in a separate part of the budget and must include specific allocations for the President of the European Council, who will need to be assisted by his/her own office, which should be established on reasonable terms;

The Council

22. Welcomes the steps taken in the Treaty of Lisbon towards consideration of the role of the Council as a second branch of the legislative and budgetary authority of the Union sharing – although still with a certain preponderance in some areas – the bulk of decision-making with the European Parliament, within an institutional system that has gradually evolved in accordance with a bicameral parliamentary logic;

23. Stresses the essential role conferred by the Treaty of Lisbon on the General Affairs Council – and hence its President – with a view to ensuring the consistency and continuity of the work of the different Council configurations, as well as the preparation and continuity of the work of the European Council (in cooperation with the President of the European Council and the President of the Commission);

24. Stresses that the particular role of the Council in the preparation, definition and implementation of the CFSP; calls for reinforced coordination between the President of the General Affairs Council and the Vice-President of the Commission (High Representative) as chairperson of the Foreign Affairs Council, and between them and the President of the European Council;

25. Expresses its conviction that the separation provided for by the Treaty of Lisbon between the role of the General Affairs Council and that of the Foreign Affairs Council calls for a different composition of those two configurations of the Council, especially because the wider concept of the external relations of the Union as provided for in the Treaties as amended by the Treaty of Lisbon will make it increasingly difficult to have cumulative mandates in both Council configurations; is therefore of the opinion that it is desirable that the Ministers of Foreign Affairs should concentrate primarily on the activities of the Foreign Affairs Council;

26. In this context, considers that it may be necessary for the Prime Minister/Head of State of the Member State assuming the Presidency of the Council to personally chair and ensure the proper functioning of the General Affairs Council as the body responsible for coordinating the different configurations of the Council and arbitrating in respect of priorities and the resolution of conflicts that are currently too readily referred to the European Council;

27. Recognises the great difficulties in relation to coordination between the different configurations of the Council due to the new system of Presidencies, and stresses, with a view to avoiding those risks, the importance of the 'new' fixed 18-month 'troikas' (groups of three Presidencies), which will share the Presidencies of the different configurations of the Council (apart from the Foreign Affairs Council and the Eurogroup), and of COREPER in order to ensure the coherence, consistency and continuity of the work of the Council as a whole and to ensure the interinstitutional cooperation needed for the smooth running of the legislative and budgetary procedures in joint decision with the European Parliament;

28. Considers it crucial for the troikas to develop intense and permanent cooperation throughout their joint mandate; stresses the importance of the joint operational programme of each 18-month troika for the functioning of the Union, as expanded upon in paragraph 51 of this resolution; calls on the troikas to present their joint operational programme – containing, notably, their proposals on the timetabling of legislative deliberations – to Parliament in plenary session at the beginning of their joint mandate;

29. Considers that the Prime Minister/Head of State of the Member State assuming the Presidency of the Council will have a fundamental role to play in ensuring the cohesion of the whole group of Presidencies and the coherence of the work of the different configurations of the Council, as well in providing the necessary coordination with the European Council, especially in relation to the preparation and the continuity of its work;

Thursday 7 May 2009

30. Stresses also that the Prime Minister/Head of State assuming the rotating Presidency of the Council must be the privileged interlocutor of the European Parliament concerning the activities of the Presidency; considers that he/she should be invited to address Parliament in plenary session, presenting to it the respective programme of activities of the Presidency and an account of the developments and results recorded during its six-month term, as well as presenting for debate any other relevant political matter arising during the mandate of his/her Presidency;

31. Stresses that, as matters currently stand in terms of the Union's development, issues concerning security and defence are still an integral part of the CFSP, and considers that, as such, they should remain within the competence of the Foreign Affairs Council, which is chaired by the Vice-President of the Commission (High Representative), with the additional participation of the Ministers of Defence whenever necessary;

The Commission

32. Welcomes the reaffirmation of the essential role of the Commission as the 'engine' driving forward the activity of the Union, through:

- the recognition of its quasi-monopoly in terms of the legislative initiative, which is extended to all areas of activity of the Union apart from the CFSP, and particularly reinforced in financial matters;
- the strengthening of its role in facilitating agreement between the two branches of the legislative and budgetary authority;
- the reinforcement of its role as the 'executive' of the Union whenever implementation of the provisions of European Union law requires a common approach, with the Council assuming such a role only in CFSP matters and in duly justified cases specified in legislative acts;

33. Welcomes also the strengthening of the position of the President within the College of Commissioners, notably as regards the institutional accountability to him/her of the Commissioners and the internal organisation of the Commission, which creates the conditions needed to reinforce his/her leadership of the Commission and strengthen its cohesion; considers that this strengthening might even be reinforced in view of the agreement between the Heads of State or Government to maintain one member of the Commission per Member State;

Election of the President of the Commission

34. Stresses that the election of the President of the Commission by the European Parliament on a proposal by the European Council will give a pronounced political nature to his/her designation;

35. Stresses that such election will enhance the democratic legitimacy of the President of the Commission and strengthen his/her position both internally within the Commission (as regards his/her capacity in the internal relations with other Commissioners) and in interinstitutional relationships generally;

36. Considers that this enhanced legitimacy of the President of the Commission will also be of benefit to the Commission as a whole, strengthening its capacity to act as an independent promoter of the general European interest and as the driving force behind European action;

37. Recalls, in this context, that the fact that a candidate for the office of President of the Commission may be proposed by the European Council, acting by a qualified majority, and that the election of that candidate by the European Parliament requires the votes of a majority of its component members, constitutes a further incentive prompting all those involved in the process to develop the necessary dialogue with a view to ensuring the successful outcome of the process;

Thursday 7 May 2009

38. Recalls that the European Council is bound under the Treaty of Lisbon to take 'into account the elections to the European Parliament' and, before designating the candidate, to hold 'the appropriate consultations', which are not formal institutional contacts between the two institutions; recalls, further, that Declaration 11 annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon ⁽¹⁾ calls in this context for 'consultations in the framework deemed the most appropriate' between representatives of the European Parliament and of the European Council;

39. Suggests that the President of the European Council be mandated by the European Council (alone or with a delegation) to conduct those consultations, that he/she should consult with the President of the European Parliament with a view to organising the necessary meetings with each of the leaders of the political groups in the European Parliament, possibly accompanied by the leaders (or a delegation) of the European political parties and that, thereafter, the President of the European Council should report to the European Council;

Nominations process

40. Considers that the choice of the persons called upon to hold the offices of President of the European Council, President of the Commission and Vice-President of the Commission (High Representative) should take account of the relevant competencies of the candidates; recognises, in addition, as provided for in Declaration 6 annexed to the above-mentioned Final Act ⁽²⁾, that it must take account of the need to respect the geographical and demographic diversity of the Union and its Member States;

41. Considers furthermore that, in the nominations to the most important political posts in the Union, the Member States and the European political families should take into consideration not only the criteria of geographical and demographic balance but also criteria based on political and gender balance;

42. Considers, in that context, that the nominations process should occur following the elections to the European Parliament, in order to take account of the electoral results, which will play a primordial role in the choice of President of the Commission; points out that only after his/her election will it be possible to ensure the requisite balance;

43. Proposes, in this context, as a possible model the following procedure and timetable for the nominations, which could be agreed by the European Parliament and the European Council:

- weeks 1 and 2 after the European elections: installation of the political groups in the European Parliament;
- week 3 after the elections: consultations between the President of the European Council and the President of the European Parliament, followed by separate meetings between the President of the European Council and the Presidents of the political groups (possibly also with the Presidents of the European political parties or restricted delegations);
- week 4 after the elections: announcement by the European Council, taking into account the results of the consultations mentioned in the previous indent, of the candidate for President of the Commission;
- weeks 5 and 6 after the elections: contacts between the candidate for President of the Commission and the political groups; statements by that candidate and presentation of his/her political guidelines to the European Parliament; vote in the European Parliament on the candidate for President of the Commission;
- July/August/September: the elected President of the Commission agrees with the European Council on the nomination of the Vice-President of the Commission (High Representative) and proposes the list of Commissioners-designate (including the Vice-President of the Commission (High Representative));

⁽¹⁾ Declaration 11 on Article 17(6) and (7) of the Treaty on European Union.

⁽²⁾ Declaration 6 on Article 15(5) and (6), Article 17(6) and (7) and Article 18 of the Treaty on European Union.

Thursday 7 May 2009

- September: the Council adopts the list of Commissioners-designate (including the Vice-President of the Commission (High Representative));
- September/October: hearings of the Commissioners-designate and of the Vice-President of the Commission (High Representative)-designate by the European Parliament;
- October: presentation of the College of Commissioners and their programme to the European Parliament; vote on the entire college (including the Vice-President of the Commission (High Representative)); the European Council approves the new Commission; the new Commission takes up its duties;
- November: the European Council nominates the President of the European Council;

44. Stresses that the proposed scenario should in any case be applied from 2014 onwards;

45. Considers that the possible entry into force of the Treaty of Lisbon by the end of 2009 calls for a political agreement between the European Council and the European Parliament in order to ensure that the procedure for the choice of the President of the next Commission and for the nomination of the future Commission will, in any case, respect the substance of the new powers that the Treaty of Lisbon assigns to the European Parliament on this issue;

46. Considers that, should the European Council launch the procedure for the nomination of the President of the new Commission without delay after the European elections of June 2009 ⁽¹⁾, it should duly take into account the timeframe necessary to allow the political consultation procedure with the newly elected representatives of the political groups, as provided for in the Treaty of Lisbon, to be completed informally; considers that, under these conditions, the substance of its new prerogatives would be fully respected and the European Parliament could proceed to the approval of the nomination of the President of the Commission;

47. Stresses that, in any case, concerning the nomination of the new College, the procedure should only be launched after the results of the second referendum in Ireland are known; points out that the institutions would thereby be fully aware of the future legal context in which the new Commission would exercise its mandate and could have their respective powers in the procedure duly taken into consideration, as well as the composition, structure and competencies of the new Commission; considers that, in the event of a positive outcome of the referendum, the formal approval of the new College, including the President and Vice-President of the Commission (High Representative), by the European Parliament should take place only after the entry into force of the Treaty of Lisbon;

48. Recalls that, should the second referendum in Ireland not have a positive outcome, the Treaty of Nice will in any case be fully applicable and that the next Commission will have to be formed in accordance with the provisions under which the number of its members will be lower than the number of Member States; stresses that, in that event, the Council will have to take a decision on the actual number of members of that reduced Commission; stresses the political will of the European Parliament to ensure strict observance of those provisions;

Programming

49. Considers that programming, at both the strategic and the operational level, will be essential in order to ensure the efficiency and coherence of the action of the Union;

50. Welcomes, consequently, the fact that the Treaty of Lisbon specifically calls for programming as a means of enhancing the institutions' capacity to act, and proposes that several concurrent programming exercises be organised on the following lines:

⁽¹⁾ As stated in the Declaration on the appointment of the future Commission, European Council's conclusions of 11 and 12 December 2008.

Thursday 7 May 2009

- the European Parliament, the Council and the Commission should agree on a ‘contract’ or ‘programme’ for the parliamentary term, based on the broad strategic goals and priorities to be presented by the Commission at the beginning of its mandate, which should be the subject of a joint debate with the European Parliament and the Council, with the aim of establishing an understanding (possibly in the form of a specific interinstitutional agreement, even if this is not legally binding) between the three institutions on common goals and priorities for the five-year legislative term;
- on the basis of this contract or programme, the Commission should then further develop its ideas for the financial programming, and present, by the end of June of the year following the elections, its proposals for a five-year multiannual financial framework – accompanied by the list of the legislative proposals needed in order to put the respective programmes into action – which should then be discussed and adopted by the Council and the European Parliament, in accordance with the procedure laid down in the Treaties, by the end of that same year (or, at the latest, by the end of the first quarter of the following year);
- this would enable the Union to have a five-year multiannual financial framework ready to enter into force at the beginning of year N+2 (or N+3) ⁽¹⁾, thus providing each European Parliament and each Commission with the possibility of deciding on its ‘own’ programming;

51. Considers that moving to this system of five-year financial and political programming will require prolongation and adjustment of the current financial framework contained in the Interinstitutional Agreement on budgetary discipline and sound financial management ⁽²⁾ until the end of 2015/2016, with the next one entering into force by the beginning of 2016/2017 ⁽³⁾;

52. Proposes that, on the basis of the contract/programme for the parliamentary term, and taking into account the multiannual financial framework:

- the Commission should present its annual working and legislative programme to the European Parliament and the Council, with a view to a joint debate allowing the Commission to introduce the necessary adaptations;
- the General Affairs Council, in dialogue with the European Parliament, should adopt the joint operational programming of the activities of each group of three Presidencies for the entire 18-month term of their mandate, which will serve as a framework for the respective programme of activities of each Presidency for its six-month term;

External relations

53. Stresses the importance of the new dimension that the Treaty of Lisbon brings to the external action of the Union as a whole, including the CFSP, which, together with the legal personality of the Union and the institutional innovations relevant to this area (notably the creation of the ‘doubled-hatted’ Vice-President of the Commission (High Representative) and the European External Action Service (EEAS)), could be a decisive factor in the coherence and effectiveness of the action of the Union in this domain and significantly enhance its visibility as a global actor;

54. Recalls that all decisions in external action matters must specify the legal basis on which they are adopted, in order to facilitate identification of the procedure followed for their adoption and the procedure to be followed for their implementation;

⁽¹⁾ N means ‘European elections year’.

⁽²⁾ Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (OJ C 139, 14.6.2006, p. 1).

⁽³⁾ In accordance with Parliament resolution of 25 March 2009 on the Mid-Term Review of the 2007-2013 Financial Framework (Böge report), Texts adopted, P6_TA(2009)0174 and Parliament resolution of 7 May 2009 on the financial aspects of the Lisbon Treaty (Guy-Quint report), P6_TA(2009)0374.

Thursday 7 May 2009

Vice-President of the Commission (High Representative)

55. Regards the creation of the 'double-hatted' Vice-President of the Commission (High Representative) as a fundamental step to ensure the coherence, effectiveness and visibility of the whole external action of the Union;

56. Stresses that the Vice-President of the Commission (High Representative) must be nominated by the European Council by a qualified majority, with the consent of the President of the Commission, and must also receive the approval of the European Parliament as a Vice-President of the Commission, together with the entire College of Commissioners; calls on the President of the Commission to ensure that the Commission fully exercises its responsibilities in this context, bearing in mind that, as Vice-President of the Commission, the High Representative will play a fundamental part in ensuring the cohesion and good performance of the College, and that the President of the Commission has the political and institutional duty to ensure that he/she has the capacities needed to integrate the College; stresses also that the European Council must be aware of this aspect of the role of the Vice-President of the Commission (High Representative) and must from the outset of the procedure hold the necessary consultations with the President of the Commission, in order to ensure its successful conclusion; recalls that it will fully exercise its judgment on the political and institutional capacities of the nominated Vice-President of the Commission (High Representative) within the framework of its powers concerning the nomination of a new Commission;

57. Stresses that the EEAS will have a fundamental role to play in supporting the Vice-President of the Commission (High Representative) and will constitute an essential element of the success of the new integrated approach of the external action of the Union; stresses that the installation of the new service will require a formal proposal by the Vice-President of the Commission (High Representative), which will only be possible once he/she has taken up his/her duties, and which can only be adopted by the Council after the opinion of the European Parliament and the consent of the Commission; declares its intention to fully exercise its budgetary powers in relation to the setting-up of the EEAS;

58. Stresses that the tasks of the Vice-President of the Commission (High Representative) are extremely onerous and will require a great deal of coordination with the other institutions, especially with the President of the Commission, to whom he/she will be politically accountable in the areas of external relations that fall within the remit of the Commission, with the rotating Presidency of the Council and with the President of the European Council;

59. Emphasises that accomplishment of the objectives that led to the creation of the post of Vice-President of the Commission (High Representative) will depend very much on a relationship of political trust between the President of the Commission and the Vice-President of the Commission (High Representative), and on the capacity of the Vice-President of the Commission (High Representative) to cooperate fruitfully with the President of the European Council, with the rotating Presidency of the Council and with the other Commissioners charged, under his/her coordination, with the exercise of specific competences relating to the external actions of the Union;

60. Calls on the Commission and the Vice-President of the Commission (High Representative) to make full use of the possibility of presenting common initiatives in the field of foreign relations, in order to enhance the cohesion of the different areas of action of the Union in the external sphere and increase the possibility of those initiatives being adopted by the Council, particularly in relation to the CFSP; stresses in this connection the need for parliamentary supervision of foreign and security policy measures;

61. Maintains that it is essential that certain practical measures be taken in order to ease the tasks of the Vice-President of the Commission (High Representative):

— the Vice-President of the Commission (High Representative) should propose the nomination of special representatives, with a clear mandate defined in accordance with the Treaty of Lisbon (Article 33 of the EU Treaty), to assist him/her in specific areas of his/her competences in CFSP matters (those special representatives nominated by the Council should also be heard by the European Parliament and should keep the European Parliament regularly informed of their activities);

Thursday 7 May 2009

- he/she should coordinate his/her activities in fields other than the CFSP with the Commissioners responsible for portfolios in those areas, and should delegate to them his/her functions of international representation of the European Union in those areas whenever necessary;
- in the event of absence, the Vice-President of the Commission (High Representative) should decide, on a case-by-case basis, in light of the duties to be performed on each occasion, who is to represent him/her;

Representation

62. Considers that the Treaty of Lisbon establishes an effective, albeit complex, operational system for the external representation of the Union, and proposes that this be articulated in accordance with the following guidelines:

- the President of the European Council represents the Union at the level of Heads of State or Government in matters concerning the CFSP, but does not have the power to conduct political negotiations in the name of the Union, which is the task of the Vice-President of the Commission (High Representative); he/she may also be called upon to fulfil a specific role of representation of the European Council at certain international events;
- the President of the Commission represents the Union at the highest level in relation to all aspects of the external relations of the Union, except for matters concerning CFSP, or any specific sectoral policies falling within the scope of the external action of the Union (foreign trade etc.); the Vice-President of the Commission (High Representative) or the competent/mandated Commissioner may also assume this role under the authority of the Commission;
- the Vice-President of the Commission (High Representative) represents the Union at ministerial level or in international organisations concerning the Union's overall external action; he/she also carries out the functions of external representation as President of the Foreign Affairs Council;

63. Considers that it will no longer be desirable that the President of the General Affairs Council (notably the Prime Minister of the Member State holding the Presidency) or the president of a specific Council sectoral configuration be called upon to exercise functions of external representation of the Union;

64. Stresses the importance of coordination and cooperation between all the different parties responsible for these different tasks concerning external representation of the Union, so as to avoid conflicts of competence and ensure the coherence and visibility of the Union in the external sphere;

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65. Instructs its President to forward this resolution and the report of the Committee on Constitutional Affairs to the Council, the Commission and the national parliaments of the Member States.

Thursday 7 May 2009

Relations between the European Parliament and national parliaments under the Treaty of Lisbon

P6_TA(2009)0388

European Parliament resolution of 7 May 2009 on the development of the relations between the European Parliament and national parliaments under the Treaty of Lisbon (2008/2120(INI))

(2010/C 212 E/13)

The European Parliament,

- having regard to the Protocol on the role of national parliaments in the European Union annexed to the Treaty of Amsterdam,
- having regard to the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Treaty of Amsterdam,
- having regard to the Treaty of Lisbon, in particular, Article 12 of the Treaty on European Union,
- having regard to the Protocol on the role of national parliaments in the European Union annexed to the Treaty of Lisbon, in particular Article 9 thereof,
- having regard to the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Treaty of Lisbon,
- having regard to its resolution of 7 February 2002 on relations between the European Parliament and the national parliaments in European integration ⁽¹⁾,
- having regard to the Guidelines for relations between governments and Parliaments on Community issues (instructive minimum standards) of 27 January 2003 (the ‘Copenhagen Parliamentary Guidelines’ ⁽²⁾), adopted at the XXVIII Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC),
- having regard to the Guidelines for Interparliamentary Cooperation in the European Union of 21 June 2008 ⁽³⁾,
- having regard to the Conclusions of the XL COSAC meeting held in Paris on 4 November 2008, in particular point 1 thereof,
- having regard to the report of November 2008 by the Irish Parliament’s Subcommittee on Ireland’s Future in the European Union, in particular paragraphs 29-37 of the executive summary, in which a broad reinforcement of parliamentary scrutiny of the national governments as members of the Council is called for,
- having regard to Rule 45 of its Rules of Procedure,
- having regard to the report of the Committee on Constitutional Affairs and the opinions of the Committee on Foreign Affairs and the Committee on Development (A6-0133/2009),

⁽¹⁾ Adopted pursuant to report A5-0023/2002 of the Committee on Constitutional Affairs (the Napolitano report) (OJ C 284 E, 21.11.2002, p. 322).

⁽²⁾ OJ C 154, 2.7.2003, p. 1.

⁽³⁾ Revised version agreed upon by the Conference of Speakers of the European Union Parliaments at its meeting in Lisbon on 20 and 21 June 2008.

Thursday 7 May 2009

- A. whereas the latest resolution adopted by the European Parliament on the issue of relations with the national parliaments dates from 2002 and it is therefore time for a reassessment,
- B. whereas citizens are directly represented at Union level in the European Parliament and the Member States are represented in the Council by their respective governments, which themselves are democratically accountable to their national parliaments (see Article 10(2) of the EU Treaty in the Lisbon Treaty version); consequently the necessary parliamentarisation of the European Union must rely on two fundamental approaches involving the broadening of the European Parliament's powers vis-à-vis all the Union's decisions and the strengthening of the powers of the national parliaments vis-à-vis their respective governments,
- C. whereas the cooperation in the European Convention between the representatives of the national parliaments and the representatives of the European Parliament, and also between the latter and the representatives of the parliaments of the accession countries was excellent,
- D. whereas the practice of holding Joint Parliamentary Meetings on specific topics during the period of reflection has proved to be a good one, and therefore use could be made of this practice if a new convention were to be convened or on similar occasions,
- E. whereas relations between the European Parliament and the national parliaments have improved and diversified in recent years and an increasing number of activities are taking place at the level of parliaments as a whole as well as at the level of parliamentary committees,
- F. whereas the future development of relations should take into consideration the merits and demerits of the various existing practices,
- G. whereas the new competences accorded to national parliaments under the Treaty of Lisbon, notably with regard to the principle of subsidiarity, encourage them to get actively involved at an early stage in the process of policy formulation at EU level,
- H. whereas all forms of interparliamentary cooperation should accord with two underlying principles: increased efficiency and parliamentary democratisation,
- I. whereas the primary task and function of the European Parliament and the national parliaments is to take part in legislative decision-making and to scrutinise political choices at, respectively, the national and the European level; whereas this does not render close cooperation for the common good superfluous, especially as regards the transposition of the EU law into national law,
- J. whereas it is appropriate to develop political guidelines on the basis of which the representatives and bodies of the European Parliament can determine future action with regard to its relations with national parliaments and implementation of the provisions of the Treaty of Lisbon relating to national parliaments,

The contribution made by the Treaty of Lisbon to the development of relations

1. Welcomes the obligations and rights of the national parliaments under the Treaty of Lisbon – which is a 'Treaty of the parliaments' – which enhance their role in the political processes of the European Union; considers that these rights can be divided into three categories:

Information about:

- the evaluation of policies conducted in the area of freedom, security and justice;
- proceedings of the Standing Committee on Internal Security;

Thursday 7 May 2009

- proposals to amend the Treaties;
- applications to become a member of the Union;
- simplified Treaty revisions (six months in advance);
- proposals for Treaty-supplementing measures;

Active participation in:

- the proper functioning of the Union ('umbrella' provision);
- control of Europol and Eurojust together with the European Parliament;
- conventions dealing with Treaty changes;

Objections to:

- legislation not complying with the principle of subsidiarity, through the 'yellow card' and 'orange card' procedures;
- Treaty changes in the simplified procedure;
- measures of judicial cooperation in civil-law matters (family law);
- an infringement of the principle of subsidiarity, by bringing an action before the Court of Justice (if permitted by national law);

Current relations

2. Notes with satisfaction that its relations with the national parliaments and their members have developed fairly positively in recent years, but not yet to a sufficient extent, notably through the following forms of joint activities:

- joint parliamentary meetings on horizontal topics going beyond the remit of one committee;
- regular Joint Committee Meetings at least twice per semester;
- ad hoc interparliamentary meetings at committee level on the initiative of the European Parliament or of the parliament of the Member State holding the presidency of the Council;
- interparliamentary meetings at the level of committee chairs;
- cooperation at the level of parliament chairs within the Conference of Speakers of the European Union Parliaments;
- visits by members of national parliaments to the European Parliament in order to take part in meetings of corresponding specialised committees;

Thursday 7 May 2009

- meetings within the political groups or parties at European level bringing together politicians from all Member States with Members of the European Parliament;

Future relations

3. Is of the opinion that new forms of pre- and post-legislative dialogue between the European Parliament and national parliaments should be developed;
4. Urges national parliaments to strengthen their efforts to hold national governments to account for their management of the spending of EU funds; invites national parliaments to scrutinise the quality of national impact assessments and the manner in which national governments transpose EU law into domestic law and implement EU policies and funding programmes at the level of the state, regions and local authorities; requests national parliaments to monitor rigorously the reporting of the national action plans of the Lisbon agenda;
5. Deems it appropriate to offer national parliaments support in their scrutiny of draft legislation prior to its consideration by the Union legislature, as well as in the effective scrutiny of their governments when they are acting in the Council;
6. States that regular bilateral Joint Committee Meetings of corresponding specialised committees and ad hoc interparliamentary meetings at committee level, held at the invitation of the European Parliament, allow for dialogue to take place at an early stage on current or envisaged pieces of legislation or political initiatives and should therefore be maintained and developed systematically into a permanent network of corresponding committees; believes that such meetings can be preceded or followed by ad hoc bilateral committee meetings to deal with specific national concerns; believes that the conference of committee chairs could be given the role of establishing and coordinating a programme for the activities of the specialised committees with the national parliaments;
7. Observes that meetings of the chairs of specialised committees of the European Parliament and of the national parliaments, such as the meetings of the chairs of the Committee on Foreign Affairs, of the Committee on Constitutional Affairs and of the Committee on Civil Liberties, Justice and Home Affairs, are, because of the limited number of participants, also a tool for sharing information and exchanging views;
8. Is of the opinion that forms of cooperation other than those mentioned above could make an effective contribution to the creation of a European political space and should be developed further and diversified;
9. Would welcome in this context innovations at the level of national parliaments, such as giving Members of the European Parliament the right to be invited once a year to speak in plenary sittings of national parliaments, to participate in meetings of European affairs committees on a consultative basis, to take part in meetings of specialised committees whenever they discuss relevant pieces of European Union legislation, or to take part in meetings of the respective political groups on a consultative basis;
10. Recommends granting an adequate budget to organise meetings of specialised committees with corresponding committees of the national parliaments and of European Parliament rapporteurs with their counterparts in the national parliaments, and recommends examining the possibility of establishing the technical facilities for holding videoconferences between the rapporteurs in the specialised committees of the national parliaments and the European Parliament;
11. Believes that increased powers of the national parliaments with regard to compliance with the principle of subsidiarity, as provided for in the Treaty of Lisbon, will allow European legislation to be influenced and scrutinised at an early stage and will contribute to better law-making as well as to improved coherence of legislation at EU level;

Thursday 7 May 2009

12. States that national parliaments are for the first time being given a defined role in EU matters which is distinct from that of their national governments, contributes to stronger democratic control and brings the Union closer to the citizen;
13. Recalls that control over the national governments by the national parliaments must be exercised, first and foremost, in accordance with the relevant constitutional rules and laws;
14. Highlights the fact that the national parliaments are important players when it comes to the implementation of EU law and that a mechanism for the exchange of best practices in this field would be of great importance;
15. Observes in this context that the creation of an electronic platform for the exchange of information between parliaments, the IPEX website ⁽¹⁾, represents a great step forward inasmuch as it allows the monitoring of EU documents at the level of the national parliaments and at the level of the European Parliament, and where required, their transposition into national law by the national parliaments, to take place in real time; therefore considers appropriate financial support for this system, developed and managed by the European Parliament, to be essential;
16. Envisages more systematic monitoring of the pre-legislative dialogue between the national parliaments and the Commission (the so-called 'Barroso initiative') in order to be informed about the national parliaments' position at an early stage of the legislative process; calls on the national parliaments to make the opinions they issue in this context available to the European Parliament at the same time;
17. Welcomes the progress made in recent years in developing cooperation between the European Parliament and the national parliaments in the field of foreign affairs, security and defence;
18. Recognises that national parliaments have an important role to play in informing national debate about the Common Foreign and Security Policy (CFSP) and the European Security and Defence Policy (ESDP);
19. Notes again with concern that there is too little accountability to parliaments for the financial arrangements with regard to the CFSP and ESDP and that cooperation between the European Parliament and the national parliaments must therefore be improved in order to ensure democratic control over all aspects of these policies ⁽²⁾;
20. Calls, in the interests of coherence and efficiency and to avoid duplication of effort, for the Parliamentary Assembly of the Western European Union (WEU) to be dissolved as soon as the WEU has been absorbed fully and finally into the European Union with the entry into force of the Lisbon Treaty;

The role of COSAC

21. Is of the opinion that the political role of COSAC in the future will have to be defined by close cooperation between the European Parliament and the national parliaments, and that COSAC, in conformity with the Protocol on the role of national parliaments in the European Union annexed to the Treaty of Amsterdam, should remain primarily a forum for the exchange of information and debate on general political issues and best practices with regard to the scrutiny of national governments ⁽³⁾; considers that information and debate should be focused, secondly, on legislative activities pertaining to the area of freedom, security and justice and on respect of the principle of subsidiarity at European Union level;

⁽¹⁾ IPEX: Interparliamentary EU Information Exchange, officially launched in July 2006.

⁽²⁾ Interinstitutional Agreement between the European Parliament, the Council and the Commission of 17 May 2006 on budgetary discipline and sound financial management (OJ C 139, 14.6.2006, p. 1) and Article 28(3) of the Treaty on European Union.

⁽³⁾ See the guidelines for relations between governments and Parliaments on Community issues (instructive minimum standards) referred to above.

Thursday 7 May 2009

22. Is determined to play its role to the full, to discharge its responsibilities with regard to the functioning of COSAC and to continue to provide technical support to the secretariat of COSAC and the representatives of the national parliaments;

23. Recalls that the activities of the European Parliament and of the national parliaments within COSAC must be complementary and must not be fragmented or abused from outside;

24. Believes that its specialised committees should be more strongly involved in the preparation of, and representation at, COSAC meetings; considers that its delegation should be led by the chair of its Committee on Constitutional Affairs and should comprise the chairs and rapporteurs of the specialised committees dealing with the items which are on the agenda of the COSAC meeting in question; considers it essential for the Conference of Presidents and Members, after each meeting, to be informed about the progress and results of COSAC meetings;

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

Implementation of the citizens' initiative

P6_TA(2009)0389

European Parliament resolution of 7 May 2009 requesting the Commission to submit a proposal for a regulation of the European Parliament and of the Council on the implementation of the citizens' initiative (2008/2169(INI))

(2010/C 212 E/14)

The European Parliament,

- having regard to Article 192, second paragraph, of the EC Treaty,
- having regard to the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon on 13 December 2007,
- having regard to the Treaty establishing a Constitution for Europe ⁽¹⁾,
- having regard to its resolution of 20 February 2008 on the Treaty of Lisbon ⁽²⁾,
- having regard to its resolution of 19 January 2006 on the period of reflection: the structure, subjects and context for an assessment of the debate on the European Union ⁽³⁾,
- having regard to Rules 39 and 45 of its Rules of Procedure,
- having regard to the report of the Committee on Constitutional Affairs and the opinion of the Committee on Petitions (A6-0043/2009),

⁽¹⁾ OJ C 310, 16.12.2004, p. 1.

⁽²⁾ Texts adopted, P6_TA(2008)0055.

⁽³⁾ OJ C 287 E, 24.11.2006, p. 306.

Thursday 7 May 2009

- A. whereas the Treaty of Lisbon introduces the citizens' initiative, whereby citizens of the Union numbering not less than one million, who are nationals of a significant number of Member States, may take the initiative of inviting the Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties – Article 11(4) of the EU Treaty in the Treaty of Lisbon version ('TEU'),
- B. whereas one million citizens of the Union will thus obtain the same right to request the Commission to submit a legislative proposal as the Council has had since the establishment of the European Communities in 1957 (originally under Article 152 of the EEC Treaty, at present Article 208 of the EC Treaty, in future Article 241 of the Treaty on the Functioning of the European Union ('TFEU')), and the European Parliament has had since the entry into force of the Maastricht Treaty in 1993 (at present Article 192 of the EC Treaty, in future Article 225 TFEU),
- C. whereas citizens will thus play a direct role in the exercise of the European Union's sovereign power by being, for the first time, directly involved in the initiation of European legislative proposals,
- D. whereas Article 11(4) TEU aims to establish an individual right to participate in a citizens' initiative, as a special consequence of the right to participate in the democratic life of the Union under Article 10(3) TEU,
- E. whereas the right of initiative is often confused with the right to petition; whereas there is a need to ensure that citizens are fully aware of the distinction between both rights, particularly since a petition is directed to Parliament while a citizens' initiative is directed to the Commission,
- F. whereas the Union's institutions and the Member States are required to establish the conditions for the smooth, transparent and effective exercise of the right of participation of the citizens of the Union,
- G. whereas the procedures and conditions for a citizens' initiative, including the minimum number of Member States from which the citizens taking the initiative must come, shall be determined by Parliament and the Council in accordance with the proper legislative procedure by means of a regulation (Article 24(1) TFEU),
- H. whereas, when that regulation is adopted and implemented, the fundamental rights to equality, good administration and legal protection should be particularly safeguarded,

Minimum number of Member States

- I. whereas the 'minimum number of Member States from which such citizens must come' (Article 24(1) TFEU) must be a 'significant number of Member States' (Article 11(4) TEU),
- J. whereas the minimum number of Member States must not be determined arbitrarily but must be guided by the regulation's purpose and shall be interpreted with reference to other Treaty provisions, in order to avoid conflicting interpretations,
- K. whereas the purpose of the regulation is to ensure that the starting point of the European legislative process is prompted, not by national vested interests, but by the European common interest,
- L. whereas Article 76 TFEU indicates that a legislative proposal supported by a quarter of the Member States may be presumed to take sufficient account of the European common interest; whereas, therefore, such a minimum number can be considered to be unchallengeable,
- M. whereas the purpose of the regulation is fulfilled only if it is associated with a minimum number of statements of support from each of those Member States,

Thursday 7 May 2009

- N. whereas it can be concluded from Article 11(4) TEU, which specifies the figure of one million citizens of the Union, from a population of approximately 500 million citizens, that 1/500 of the population should be considered to be representative,

Participants' minimum age

- O. whereas Article 11(4) TEU applies to all citizens of the Union,
- P. whereas, however, any restriction of the right to democratic participation and any unequal treatment on the grounds of age must satisfy the principle of proportionality,
- Q. whereas, moreover, it is desirable to avoid conflicting interpretations, of the kind that would arise, for instance, if the minimum age for participation in European elections in a Member State were lower than the minimum age for participation in a citizens' initiative,

Procedure

- R. whereas a successful citizens' initiative requires the Commission to look into the matters it raises and decide whether and to what extent it should accordingly submit a proposal for a legal act,
- S. whereas it would be advisable for initiatives to refer to one or more appropriate legal bases for the submission of the proposed legal act by the Commission,
- T. whereas a citizens' initiative may proceed only if it is admissible, in so far as:
- it contains a request to the Commission to submit a proposal for a legal act of the Union,
 - the Union has legislative competence, and the Commission has the right to submit a proposal in the matters concerned, and
 - the requested legal act is not manifestly contrary to the general principles of law as applied in the Union;
- U. whereas a citizens' initiative is successful if it is admissible in the above sense and if it is representative, in the sense that it is supported by at least one million citizens who are nationals of a significant number of Member States,
- V. whereas it is the task of the Commission to verify whether the conditions for a successful citizens' initiative are fulfilled,
- W. whereas for the organisation of a citizens' initiative it is highly desirable to have legal certainty as to the admissibility of the initiative before collecting statements of support,
- X. whereas the task of verifying the authenticity of statements of support cannot be carried out by the Commission and should therefore be fulfilled by the Member States; whereas, however, the obligations of the Member States in that regard extend only to initiatives within the framework of Article 11(4) TEU and under no circumstances to initiatives that are inadmissible on the above-mentioned grounds whereas it is therefore necessary for the Member States, even before beginning to collect statements of support, to have legal certainty as regards the admissibility of the citizens' initiative,
- Y. whereas verification of the admissibility of a citizens' initiative by the Commission is, however, restricted exclusively to the above-mentioned legal grounds and may on no account include considerations of political expediency; whereas this will ensure that the Commission is not free to decide, on the basis of political considerations of its own, whether a citizens' initiative is or is not to be declared admissible,

Thursday 7 May 2009

- Z. whereas it would seem appropriate for the procedure for a citizens' initiative to be divided into the following five stages:
- registering the initiative,
 - collecting statements of support,
 - presenting the initiative,
 - a statement of its position by the Commission,
 - verifying that the requested legal act is consistent with the Treaties.

The principle of transparency

- AA. whereas the citizens' initiative is a means of exercising public sovereign power in the area of legislation and is subject, as such, to the transparency principle; whereas this means that the organisers of a citizens' initiative must publicly assume accountability for its funding, including the sources of that funding,

Political monitoring of the process

- AB. whereas it is the political task of the Parliament to monitor the process of a citizens' initiative,
- AC. whereas this responsibility concerns the implementation of the regulation on the citizen's initiative, as such, as well as the political position of the Commission with regard to the request submitted by the citizens' initiative,
- AD. whereas it is important to ensure compatibility between requests submitted to the Commission by a citizens' initiative and Parliament's democratically approved priorities and proposals,
1. Requests the Commission to submit without delay, after the Treaty of Lisbon enters into force, a proposal for a regulation on the citizens' initiative on the basis of Article 24 of the Treaty on the Functioning of the European Union;
 2. Calls on the Commission to give due regard in that task to the recommendations set out in the annex to this resolution;
 3. Calls for the regulation to be clear, simple and user-friendly, incorporating practical elements relating to the definition of a citizens' initiative in order that it should not be confused with the right of petition;
 4. Decides to look, immediately after that regulation has been adopted, into the establishment of an effective system to monitor the process of a citizens' initiative;

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5. Instructs its President to forward this resolution to the Council and the Commission.
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Thursday 7 May 2009

ANNEX

RECOMMENDATIONS AS TO THE CONTENT OF THE COMMISSION PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE IMPLEMENTATION OF THE CITIZENS' INITIATIVE***On determining the minimum number of Member States***

1. The minimum number of Member States from which the citizens taking part in the initiative must come is one quarter of the Member States.
2. This requirement is fulfilled only if at least 1/500 of the population of each of the Member States concerned supports the initiative.

On determining the minimum age of participants

3. Every citizen of the Union who has the right to vote in accordance with the legislation of his/her own Member State may participate in a citizens' initiative.

On determining the procedure

4. The procedure for a citizens' initiative comprises five stages:
 - registering the initiative,
 - collecting statements of support,
 - presenting the initiative,
 - a statement of its position by the Commission,
 - verifying that the requested legal act is consistent with the Treaties.
5. The first stage of a citizens' initiative begins when its organisers register the initiative with the Commission and ends with the Commission's formal decision on the success of that registration. Its main features are as follows:
 - (a) A citizens' initiative must be duly registered by its organisers with the Commission. To register, each organiser shall state his or her name, date of birth, nationality and home address, and the exact wording of the citizens' initiative in one of the official languages of the European Union.
 - (b) The Commission verifies the formal admissibility of the registered citizens' initiative. A citizens' initiative is formally admissible if it satisfies the following four requirements:
 - it contains a request to the Commission to submit a proposal for the adoption of a legal act of the Union,
 - the Union has the competence under the Treaties on which the Union is based to adopt a legal act on the matters concerned,
 - the Commission has the competence under the Treaties on which the Union is based to submit a proposal for a legal act on the matters concerned,
 - the requested legal act is not manifestly contrary to the general principles of law as applied in the Union.

In accordance with Article 41 of the Charter of Fundamental Rights of the European Union the Commission provides organisers with all due support to ensure that initiatives which are registered are admissible. The Commission also notifies the organisers of current or proposed legislative proposals on matters raised in the citizens' initiative and on successfully registered citizens' initiatives that wholly or partly concern the same matters.

Thursday 7 May 2009

- (c) Within two months of registration of the citizens' initiative the Commission must decide whether the initiative is admissible and registrable. Registration may be refused only on legal grounds and not, on any account, on grounds of political expediency.
 - (d) The decision is addressed both to the organisers individually and to the general public. The organisers receive notification thereof and it is published in the *Official Journal of the European Union*. The European Parliament, the Council and the Member States are notified of the decision immediately.
 - (e) The decision is subject to scrutiny by the Court of Justice of the European Union and the European Ombudsman in accordance with the relevant provisions of EU law. This applies *mutatis mutandis* if the Commission fails to take such a decision.
 - (f) The Commission provides on its website, accessible to the public, an index of all successfully registered citizens' initiatives.
 - (g) The organisers of a citizens' initiative may withdraw the initiative at any time. It is then considered not registered and is deleted from the above Commission index.
6. The second stage of the citizen's initiative covers the collecting of individual statements of support for the successfully registered initiative and official confirmation by the Member States of the result of the collection of individual statements of support. Its main features are as follows:
- (a) The Member States make provision for an effective procedure for the collection of lawful statements of support for a citizens' initiative and for official confirmation of the result of that collection.
 - (b) A statement of support is lawful if is declared within the period for collecting statements of support in accordance with the relevant legal provisions of the Member State in question and of EU law. The period for collecting statements of support is one year. It begins on the first day of the third month following the decision on registration of the citizens' initiative.
 - (c) All supporting persons must individually state their support, as a rule by means of a personal signature provided in writing or, if appropriate, electronically. The statement must as a minimum show the name, date of birth, home address and nationality of the supporting person. People who have more than one nationality shall indicate only one, which they choose freely.

The personal data is subject to data protection requirements, for which the citizens' initiative's organisers are held accountable.
 - (d) Support for a citizens' initiative may be stated only once. Every statement of support contains a separate solemn declaration by the supporting person that they have not previously stated their support for the same citizens' initiative.
 - (e) Any statement of support may be withdrawn before the period for the collection of statements of support expires. The supporting statement is then considered not to have been made. The organisers must inform every supporting person of this option. Every statement of support by the supporting person must contain a separate declaration that they have been informed of this option.
 - (f) Every supporting person receives a copy of their statement of support from the organisers together with a copy of their solemn declaration and their declaration that they have taken note of the withdrawal option.
 - (g) Within two months and after verifying the details of the statements of support, the Member States shall provide the organisers of citizens' initiatives with official confirmation of the number of lawful statements of support, listed by nationality of the supporting persons. They shall take appropriate steps to ensure that every statement of support is confirmed only once by one of the Member States and that multiple confirmations by different Member States or different agencies of the same Member State are effectively prevented.

The personal data is subject to data protection requirements, for which the relevant authorities of the Member States are held accountable.
7. The third stage of the citizens' initiative begins when the organisers present the citizens' initiative to the Commission and ends with the Commission's formal decision on whether presentation of the initiative has succeeded. Its main features are as follows:
- (a) A citizens' initiative must be lawfully presented by the organisers to the Commission. Confirmation by the Member States of the number of statements of support must be submitted at the time of presentation.

Thursday 7 May 2009

- (b) The Commission verifies the representativeness of the citizens' initiative as presented. A citizens' initiative is representative if:
- it is supported by at least one million citizens of the Union,
 - who include nationals of at least one quarter of the Member States,
 - the number of nationals of each Member State concerned represents at least 1/500 of that Member State's population.
- (c) Within two months of presentation of the citizens' initiative the Commission must decide whether presentation of that initiative has been successful. The decision must include a statement on whether or not the initiative is representative. Presentation of the initiative may be refused only on legal grounds and not, on any account, on grounds of political expediency.
- (d) The decision is addressed both to the organisers individually and to the general public. The organisers receive notification thereof and it is published in the *Official Journal of the European Union*. The European Parliament, the Council and the Member States are notified of the decision immediately.
- (e) The decision is subject to scrutiny by the Court of Justice of the European Union and the European Ombudsman in accordance with the relevant provisions of EU law. This applies *mutatis mutandis* if the Commission fails to take such a decision.
- (f) The Commission provides on its website, accessible to the public, an index of all successfully presented citizens' initiatives.
8. The fourth stage of the citizens' initiative covers the Commission's detailed consideration of the matters raised in the initiative and ends with the Commission's formal statement of its position on the request contained in the initiative for the submission by the Commission of a proposal for a legal act. Its main features are as follows:
- (a) A successfully presented citizens' initiative obliges the Commission to look into the content of the matters raised by the initiative.
- (b) To that end the Commission invites the initiative's organisers to a hearing and gives them an opportunity to explain in detail the matters raised in the initiative.
- (c) The Commission must take a decision on the request contained in the initiative within three months. If it does not intend to submit a proposal it shall explain to Parliament and to the organisers its reasons for so deciding.
- (d) The decision is addressed both to the organisers individually and to the general public. The organisers receive notification thereof and it is published in the *Official Journal of the European Union*. The European Parliament, the Council and the Member States are notified of the decision immediately.
- (e) If the Commission fails to take any decision on the request submitted by the citizens' initiative, this is subject to the scrutiny of the Court of Justice of the European Union and of the European Ombudsman in accordance with the relevant provisions of EU law.

The principle of transparency

9. The organisers of a successfully registered citizens' initiative shall be required, within an appropriate period of time after the conclusion of the procedure, to present to the Commission a report on the funding of the initiative, including the sources of funding (transparency report). The report shall be examined by the Commission and published together with an opinion.
10. As a general rule the Commission should begin to address the content of a citizens' initiative only after a transparency report has been presented in due form.
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Thursday 7 May 2009

Draft Commission regulation on REACH, as regards Annex XVII

P6_TA(2009)0390

European Parliament resolution of 7 May 2009 on draft Commission regulation amending Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), as regards Annex XVII

(2010/C 212 E/15)

The European Parliament,

- having regard to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and establishing a European Chemicals Agency ⁽¹⁾, and in particular Article 131 thereof,
 - having regard to Council Directive 83/477/EEC of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work (second individual Directive within the meaning of Article 8 of Directive 80/1107/EEC) ⁽²⁾,
 - having regard to Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT) ⁽³⁾,
 - having regard to draft Commission regulation amending Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), as regards Annex XVII ('the draft Commission regulation'),
 - having regard to the opinion delivered by the committee referred to in Article 133 of Regulation (EC) No 1907/2006,
 - having regard to Article 5a(3)(b) of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽⁴⁾,
 - having regard to Rule 108(5) of its Rules of Procedure,
- A. whereas Regulation (EC) No 1907/2006 repeals and replaces Council Directive 76/769/EEC of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations, with effect from 1 June 2009,
- B. whereas Annex XVII to Regulation (EC) No 1907/2006, as amended by the annex to the draft Commission regulation, is intended to replace Annex I to Directive 76/769/EEC establishing restrictions for certain dangerous substances and preparations,
- C. whereas Article 67 of Regulation (EC) No 1907/2006 provides that substances, mixtures or articles may not be manufactured, placed on the market or used unless they comply with the conditions of any restrictions laid down in their regard in Annex XVII,

⁽¹⁾ OJ L 396, 30.12.2006, p. 1.

⁽²⁾ OJ L 263, 24.9.1983, p. 25.

⁽³⁾ OJ L 243, 24.9.1996, p. 31.

⁽⁴⁾ OJ L 184, 17.7.1999, p. 23.

Thursday 7 May 2009

- D. whereas point 2, item 6 of the annex to the draft Commission regulation is aimed at extending the current ban regarding the placing on the market and use of asbestos fibres and of products containing those fibres to the manufacture of those fibres and articles containing asbestos fibres,
- E. whereas point 2, item 6 of the annex to the draft Commission regulation maintains exemptions from the ban on asbestos fibres:
- for articles containing asbestos fibres which were already installed or in service before 1 January 2005 under specific conditions ensuring a high level of protection of human health; and
 - for diaphragms containing chrysolite in existing electrolysis installations,
- F. whereas no new asbestos may be put onto the Community market, with the exception of diaphragms for electrolysis, and whereas there are specific Community provisions for the protection of workers from the risks related to exposure to asbestos at work when removing asbestos, and there are unfortunately no Community provisions on the decontamination of articles containing asbestos, leaving this to the competence of Member States,
- G. whereas asbestos remains responsible for a substantial number of diseases due to exposure to asbestos fibres,
- H. whereas Directive 96/59/EC has established obligations on Member States for the decontamination or disposal of equipment containing PCBs and/or the disposal of used PCBs in order to eliminate them completely; whereas the Community should take similar action on asbestos fibres,
- I. whereas Community legislation covers six asbestos minerals (crocidolite, amosite, anthophyllite, actinolite, tremolite and chrysotile), but does not yet cover asbestiform minerals such as richterite and winchite, even though they could be considered as being no less harmful than tremolite, amosite or crocidolite and could similarly be used in insulation materials,
- J. whereas, following receipt of the reports of Member States which are making use of the diaphragm exemption, the Commission will review the exemption and request the Agency to prepare a dossier in accordance with Article 69 of Regulation (EC) No 1907/2006 with a view to prohibiting the placing on the market and use of diaphragms containing chrysolite,
- K. whereas some stakeholders argue that the derogation must end now because substitute technologies (asbestos-free membranes) already exist and are being used by most European chemical manufacturers,
- L. whereas the most effective way of protecting human health would indeed be to prohibit the use of chrysotile asbestos fibres and products containing them, without any exemption,
- M. whereas there are now available for most remaining uses of chrysotile asbestos substitutes or alternatives which are not classified as carcinogens and are regarded as less dangerous,
- N. whereas, in the review concerning the derogation for chrysotile asbestos diaphragms conducted under Directive 76/769/EEC ⁽¹⁾, both health and economic impacts have been examined and taken into account in the differentiated approach taken by the Commission in the draft Commission regulation, supported by a large majority of Member States,

(1) http://ec.europa.eu/enterprise/chemicals/legislation/markrestr/index_en.htm

Thursday 7 May 2009

1. In the light of
 - the approach taken by the draft Commission regulation to phase out asbestos fibres in the medium term,
 - the review of the derogation of chrysotile asbestos diaphragms conducted under Commission Directive 1999/77/EC, and
 - the statement made by the Commission on the occasion of the adoption of the draft Commission regulation in the committee referred to in Article 133 of Regulation (EC) No 1907/2006 on 20 February 2008,refrains from opposing the adoption of the draft Commission regulation;
 2. Notes the review concerning the derogation for chrysotile asbestos diaphragms and stresses that high-voltage installations can be successfully operated with substitute materials, and that some such installations in the EU have been converted;
 3. Underlines that currently four Member States still use asbestos diaphragms in installations of the low-voltage type for which no substitute diaphragm materials are available despite a considerable programme of research that has been carried out by the companies concerned;
 4. Stresses that, according to the review concerning the derogation for chrysotile asbestos diaphragms, the potential for worker exposure exists only when diaphragms need replacing (lifetime up to 10 years) because the electrolysis cells are hermetically sealed during operation to contain the chlorine gas, and industry reports that worker exposure limits for chrysotile are fully respected;
 5. Calls on the Member States and the Commission to ensure strict implementation of Directive 83/477/EEC;
 6. Regrets that it has so far been impossible to establish a European list of articles exempted from the ban under point 2, item 6 of the annex to the draft Commission regulation amending Annex XVII to Regulation (EC) No 1907/2006;
 7. Calls on the Commission to establish such a list immediately after communication of the relevant national measures, and no later than 1 January 2012;
 8. Urges the Commission to make a legislative proposal by the end of 2009 on the controlled disposal of asbestos fibres and the decontamination or disposal of equipment containing asbestos fibres in order to eliminate them completely;
 9. Urges the Commission, furthermore, to establish a strategy for banning all forms of asbestos and all uses of asbestos fibres by 2015, including appropriate export requirements in accordance with Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste and taking into account the principle of proximity as laid down in Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste, since asbestos remains responsible for a substantial number of diseases related to exposure to asbestos fibres;
 10. Calls on the Commission to report regularly to Parliament on the implementation of the draft Commission regulation;
 11. Instructs its President to forward this resolution to the Council and Commission, and the governments and the parliaments of the Member States.
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Thursday 7 May 2009

Iran: the case of Roxana Saberi

P6_TA(2009)0391

European Parliament resolution of 7 May 2009 on Iran: the case of Roxana Saberi

(2010/C 212 E/16)

The European Parliament,

- having regard to its previous resolutions on Iran, in particular those concerning human rights,
 - having regard to UN General Assembly Resolution 63/191 of 18 December 2008 on the situation of human rights in the Islamic Republic of Iran,
 - having regard to the Report of the UN Secretary-General of 1 October 2008 on the situation of human rights in the Islamic Republic of Iran,
 - having regard to the EU Presidency Statement of 10 April 2009 on developments in the case of Roxana Saberi and the Declaration by the Presidency on behalf of the EU of 20 April 2009 concerning the sentence of Miss Roxana Saberi,
 - having regard to the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, to all of which Iran is a party,
 - having regard to Rule 115(5) of its Rules of Procedure,
- A. whereas on 18 April 2009 the Iranian Revolutionary Court pronounced an eight-year prison sentence against Roxana Saberi, an American-Iranian journalist, who worked for a number of organisations, including ABC radio, the BBC, the South African Broadcasting Corporation and NPR, for espionage,
- B. whereas Roxana Saberi had no access to a lawyer for five weeks and has not been given a fair and transparent trial,
- C. whereas Roxana Saberi's lawyer has filed an appeal against her conviction as his defendant pleads innocent to all charges against her,
- D. whereas Roxana Saberi went on a hunger strike, was admitted to the Evin prison hospital on 1 May 2009, reportedly in a very frail condition,
- E. whereas the journalist Maryam Malek, a member of the 'One Million Signatures' Campaign for Equality, was arrested on 25 April 2009, as were numerous members of the Campaign before her, and whereas her family is unable to pay the bail for her release, which has been set at 200 million rials (over EUR 10 000),
- F. whereas, on 1 May 2009, International Labour Day, security and police forces violently repressed peaceful demonstrations in various locations in Iran, which had been organised by ten independent labour organisations, and whereas over 100 people have reportedly been arrested,
- G. whereas on 1 May 2009 the Iranian authorities executed Delara Darabi in Rasht Central Prison despite a two-month stay of execution accorded by the Head of the Judiciary on 19 April 2009, and whereas she is not the first person to have been executed this year after being convicted of a crime she was alleged to have committed while still under the age of 18,

Thursday 7 May 2009

H. whereas the general human rights situation in Iran has continued to deteriorate since 2005 in all areas and respects, in particular as regards the exercise of civil rights and political freedoms, despite the fact that Iran has undertaken to promote and protect human rights and fundamental freedoms under the various international instruments in this field,

1. Condemns the unfounded sentence pronounced by the Iranian Revolutionary Court on 18 April 2009 against Roxana Saberi;
 2. Expresses its deep concern at the deteriorating health condition of Roxana Saberi;
 3. Urges the Appeals Court, at its hearing of 12 May 2009, to release Roxana Saberi immediately and unconditionally on the grounds that the trial was held in camera without due legal process, in accordance with international norms, and to drop all charges against her;
 4. Is shocked by the unfair trial and execution of Dilara Darabi and is appalled about the continued executions of juvenile offenders in disregard of international law and despite assurances by the Iranian authorities that Iran has halted this inhumane practice; calls on the Iranian authorities to honour their commitment to halt executions of juvenile offenders;
 5. Condemns the bail system practised by the Iranian authorities in an attempt to suppress all public statements by critical citizens or peaceful reform movements, and calls for the immediate release of Maryam Malek;
 6. Recalls that numerous labour rights activists, including Mansour Osanloo, Ebrahim Maddadi, Farzad Kamangar and Ghaleb Hosseini, remain incarcerated solely on the grounds of their commitment to fair labour practices, and reiterates its call for their immediate release;
 7. Urges the Iranian authorities to comply with all international human rights instruments ratified by Iran, especially the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights, both of which guarantee the right to a fair trial; in this context insists that the Iranian authorities urgently abolish the practice of stoning. Condemns strongly the recent execution by stoning of Vali Azad, and expresses great concern over the pending execution of Mohammad Ali Navid Khamami and Ashraf Kalhori;
 8. Calls on the Council Presidency and the Member States' diplomatic representatives in Iran to take urgent concerted action with regard to all these cases;
 9. Reiterates its request to the Council and the Commission to continue their examination of the human rights situation in Iran and to submit to it a comprehensive report on the matter in the first half of 2009;
 10. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States, the UN Human Rights Council, the Head of the Judiciary of Iran and the Government and Parliament of the Islamic Republic of Iran.
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Thursday 7 May 2009

Madagascar

P6_TA(2009)0392

European Parliament resolution of 7 May 2009 on the situation in Madagascar

(2010/C 212 E/17)

The European Parliament,

- having regard to the declarations issued by the Presidency on behalf of the European Union on 17 and 20 March 2009,
 - having regard to the military takeovers in recent months in Mauritania and Guinea-Conakry and the sanctions subsequently imposed by the international community,
 - having regard to the inaugural consultative meeting of the International Contact Group on Madagascar which took place in Addis Ababa on 30 April 2009,
 - having regard to Rule 115(5) of its Rules of Procedure,
- A. whereas, following two months of bitter struggle, an army-backed coup d'état was carried out in Madagascar by Mr Andry Rajoelina, an ex-mayor of the Malagasy capital (Antananarivo), on 17 March 2009,
- B. whereas a self-proclaimed High Authority of Transition, chaired by Mr Andry Rajoelina, suspended the National Assembly and the Senate and, under pressure from the rebels, the democratically-elected President, Mr Marc Ravalomanana, was forced to leave Madagascar,
- C. whereas Mr Rajoelina, who had been elected mayor of Antananarivo in December 2007, was forcibly removed by the former government in February 2009,
- D. whereas public anger was exacerbated by a plan by the former government to lease one million acres of land in the south of the country to a South Korean firm for intensive farming,
- E. whereas this unconstitutional change of government is yet another serious setback in the democratisation process under way on the African continent, reinforcing concern about the resurgence of the scourge of coups d'état in Africa, as expressed at the 12th Ordinary Session of the Assembly of the African Union held in Addis Ababa from 1 to 4 February 2009,
- F. whereas the Prime Minister, Mr Manandafy Rakotonirina, who had been appointed by the President-elect, and of another member of his government have been arbitrarily arrested,
- G. whereas the United Nations Security Council and the international organisations of which Madagascar is a member do not recognise this de facto regime and are calling for constitutional government to be restored,
- H. whereas Madagascar is suspended from the regional groupings - African Union (AU), Southern African Development Community (SADC) - to which it belongs and from the International Organisation of French-Speaking Countries and the Interparliamentary Union; whereas the European Union, the United States of America, Norway and France have condemned the violation of the rule of law and of the constitutional order represented by the coup d'état and have suspended assistance,

Thursday 7 May 2009

- I. whereas, within the framework of the Africa-EU Dialogue, the 12th Ministerial Meeting of the African and EU Troikas which took place in Luxembourg on 28 April 2009 called for the rapid holding of national elections and the restoration of the constitutional order,
- J. whereas peaceful demonstrations involving tens of thousands of people have continued in the capital since the day when Mr Andry Rajoelina was installed as de facto Head of State and have been violently repressed by the Malagasy military forces,
- K. whereas the restoration of the constitutional order should be based on the following objectives and principles: a clear timetable for the holding of free, fair and transparent elections; the involvement of all the country's political and social stakeholders, including President Marc Ravalomanana and other eminent persons; promotion of a consensus among the Malagasy parties; respect for the Constitution of Madagascar, and compliance with the relevant AU instruments and with Madagascar's international commitments,
- L. whereas the above-mentioned inaugural consultative meeting of the International Contact Group on Madagascar was attended by representatives of the UN, AU and EU and many regional organisations and countries with the aim of coordinating the efforts of the international community to promote a rapid restoration of the constitutional order in Madagascar,
- M. whereas the UN has launched an appeal for USD 35 700 000 million in humanitarian aid for the country, in anticipation of food shortages later this year as a result of the disruption caused by the political stand-off,
- N. whereas the fact that the majority of the population lives on less than one USD a day, and low incomes have curtailed the ability of most households to gain access to food, water and sanitation services, healthcare and education,
- O. whereas the country has been hit by three consecutive years of drought and poor harvests, soaring food prices and chronic food insecurity, as well as by cyclones,
 1. Strongly condemns the coup d'état and all attempts to seize power by undemocratic means;
 2. Calls for an immediate restoration of the legal and constitutional order in the country and urges the Malagasy parties to comply fully with the provisions of the Constitution of Madagascar in resolving the crisis;
 3. Deplores the suspension of the National Assembly and Senate and calls for their prompt reinstatement, and urges that the mandates and immunities of parliamentarians be respected until new democratic parliamentary elections have been held;
 4. Calls on the international community to step up its efforts to bring an end to the political violence in Madagascar;
 5. Believes that stability, prosperity and democratic freedoms can be ensured only by means of a consensual and inclusive dialogue process which addresses the root causes of the country's wide range of economic, social, political and environmental problems, which is accepted by all parties and which leads to the direct consultation of the Malagasy people;
 6. Calls on all political actors to put good governance and the fight against poverty at the top of their agenda, with the aim of improving wealth distribution and the standard of living of the population by introducing a sound sustainable development policy covering basic healthcare, education, job creation, etc.;

Thursday 7 May 2009

7. Supports the initiatives taken by regional organisations and the AU's decision to establish an operational arm of the International Contact Group on Madagascar in Antananarivo, under the chairmanship of the Special Envoy of the Chairman of the AU Commission, Mr Ablassé Ouedraogo;
8. Calls on the AU's Special Envoy for Madagascar, in cooperation with representatives of the international community in Antananarivo and in the light of the discussions which have already begun under the aegis of the AU and the UN, to make contact with all the Malagasy parties with a view to reaching agreement with them on ways and means of achieving a speedy restoration of the constitutional order;
9. Draws attention to the worsening humanitarian situation in the country, which has been exacerbated by the current political developments, and urges the international community, and the EU in particular, to provide increased humanitarian assistance to alleviate the suffering of the people of Madagascar;
10. Instructs its President to forward this resolution to the Council, the Commission, the Member States, the legitimate authorities of the Republic of Madagascar, the High Authority of Transition, the UN Secretary-General, the AU, the SADC, the European Commission's Humanitarian Aid Office (ECHO), the UN Central Emergency Response Fund and the UN Office for the Coordination of Humanitarian Affairs.

Case of Manuel Rosales in Venezuela

P6_TA(2009)0393

European Parliament resolution of 7 May 2009 on the case of Manuel Rosales in Venezuela

(2010/C 212 E/18)

The European Parliament,

- having regard to its previous resolutions on the situation in Venezuela and in particular its resolutions of 24 May 2007 on the Radio Caracas TV channel case in Venezuela ⁽¹⁾ and of 23 October 2008 on political disqualifications in Venezuela ⁽²⁾,
 - having regard to Rule 115(5) of its Rules of Procedure,
- A. having regard to the tense political situation in Venezuela, a country which in recent times has experienced an alarming slide towards authoritarianism, reflected in the harassment, threats, intimidation and political and criminal persecution directed at the opposition and its democratically elected mayors and governors, the student movement and journalists, and involving changes to the rules on democracy, a total lack of independence on the part of the different state powers and scant respect for the laws and Constitution of the Bolivarian Republic of Venezuela,
 - B. having regard to the case of the former Presidential candidate, ex-governor of the State of Zulia, and current democratically elected Mayor of the city of Maracaibo, Manuel Rosales, an opposition leader whom President Chávez has repeatedly and publicly threatened with imprisonment, and against whom he was eventually prompted to initiate legal proceedings based on a 2004 complaint concerning an alleged discrepancy in an income declaration during his time as governor of the State of Zulia, a case which has every appearance of being political persecution, with no regard for due process and proper judicial safeguards, and where the verdict has been determined in advance and is clearly politically motivated,

⁽¹⁾ OJ C 102 E, 24.4.2008, p. 484.

⁽²⁾ Texts Adopted, P6_TA(2008)0525.

Thursday 7 May 2009

- C. whereas, as a result of this political persecution, Manuel Rosales has requested political asylum in the neighbouring Republic of Peru, which has been granted by the Peruvian authorities in the light of the political and humanitarian aspects of the case, prompting the immediate withdrawal by Venezuela of its Ambassador to Peru,
- D. whereas these charges are clearly founded on political motives and the executive largely controls the judiciary and whereas the government of Venezuela is taking new measures which will contribute to reducing the autonomy of the judiciary and therefore a fair trial is hardly to be expected in Venezuela,
- E. whereas retired General Raúl Isaías Baduel, who until recently was President Chávez's Minister of Defence and who has now joined the opposition, was arrested at gunpoint by military intelligence agents on 2 April 2009 and accused of supposedly embezzling funds from the armed forces during his time as Minister of Defence,
- F. whereas opposition leader and Mayor of Caracas, Antonio Ledezma, who was democratically elected on 23 November 2008, has been unable to take up his duties as mayor because the City Council premises in the Palacio de Gobierno have been illegally occupied by Bolivarian groups, with the Venezuelan Ministry of the Interior so far having made no effort to remove them; whereas President Chávez has recently enacted a law directly affecting the powers of the Mayor, under which a hierarchical superior chosen by the President of the Republic has been appointed Head of the Government of Caracas, with authority over the Mayor of Caracas, who will be stripped of practically all his powers, including the administration of public finance, the drawing-up and implementation of development plans and supervision of the institutions of the decentralised administration of the Capital District,
- G. whereas, in addition to being stripped of practically all his powers, the Mayor of Caracas is being targeted by an aggressive campaign of harassment, threats, insults and intimidation, orchestrated directly by the Presidency of the Republic,
- H. whereas, during the month of March 2009, on the orders of the President of the Republic, many ports and airports were occupied by the military, for the most part in regions where the opposition is in power, as a result of a law restoring responsibility for the management of these facilities to the Venezuelan Government; whereas the aim of this measure is the financial restriction and economic strangulation of political opponents; whereas, under Article 164(10) of the Constitution of the Bolivarian Republic of Venezuela, the administration of ports, airports, roads and highways is the sole responsibility of state governments in cooperation with the central authorities and under no circumstances the sole responsibility of the latter,
- I. whereas, in an unprecedented political sentence handed down by Judge Marjori Calderón, the wife of a senior PSUV leader, police commissioners Ivan Simonovis, Lázaro Forero and Henry Vivas, together with eight metropolitan police officers, were condemned without a shred of reliable evidence to 30 years' imprisonment, the maximum sentence provided for under the Venezuelan criminal code, after being held in preventive custody for more than five years in police stations without natural light, following what was the longest trial in Venezuelan history and one which was plagued by irregularities and in which the most basic legal rights of the accused were flouted; whereas, furthermore, most of the 19 crimes committed on 11 April 2002, for three of which the accused have now been convicted without any evidence, have remained unpunished, despite extensive testimony, television footage and documentary evidence, demonstrating that clearly identifiable Bolivarian gunmen had been responsible,
- J. whereas on various occasions the President of the Republic has spoken offensively and insultingly about any number of foreign dignitaries and yet, when he has been the target of criticism in his own country, he has reacted by ordering the immediate expulsion of any foreign nationals who dared to criticise him, including the violent expulsion of a Member of this Parliament,
- K. whereas in February 2009 President Chávez forced through a second referendum to approve indefinite re-election of the President and all elected public officials, despite having lost the December 2007 referendum on constitutional reform which included the same proposal, thereby breaching the Venezuelan Constitution, under which the same reform proposal may not be submitted more than once during the same session of the Assembly,

Thursday 7 May 2009

- L. whereas the Venezuelan authorities deemed undesirable the presence of an official European Parliament delegation which was due to visit the country during the first week of March 2009, following several unwarranted postponements of the visit by the Venezuelan authorities,
1. Expresses its profound concern at the deterioration in the situation and in the quality of democracy in Venezuela, which is seriously threatened with collapse as a result of the concentration of power and the growing authoritarianism displayed by the President of the Republic;
 2. Expresses its solidarity with all those suffering political persecution in Venezuela, a plight currently symbolised by the person of Manuel Rosales; welcomes the decision taken by the Peruvian Government to grant Manuel Rosales political asylum; strongly condemns the use of threats and violence, the abuse of power, defamation and the exploitation of the legal system as a political weapon designed to intimidate and eliminate opponents;
 3. Points out that, under the Organisation of American States (OAS) Inter-American Democratic Charter, in order to gain access to the exercise of power in a democracy, in addition to clear legitimacy of origin, grounded in and obtained at the polls, there must also be legitimacy in the exercise of such power, which must be founded on respect for the established rules, the constitution, the laws, and the rule of law as a guarantee of a fully functioning democracy and that this must of necessity include respect for peaceful and democratic political opposition, especially where that opposition has been elected and enjoys a popular mandate;
 4. Calls on the country's authorities, in particular the President of the Republic, to pursue their political action through dialogue, respect for the rule of law and constitutional legality, and tolerance of political opponents, so as to ensure that the various political choices made and supported by the people of Venezuela enjoy proper influence and representation in political life;
 5. Urges the Venezuelan Government, furthermore, to comply with the international agreements signed and ratified by Venezuela, including the American Convention on Human Rights, with specific reference to the provisions on political rights set out in Articles 23(1) and Articles 2 and 25 of the International Covenant on Civil and Political Rights;
 6. Instructs its President to forward this resolution to the Council, the Commission, the Secretary-General of the Organisation of American States, the Euro-Latin American Parliamentary Assembly, the Mercosur Parliament and the Government and National Assembly of the Bolivarian Republic of Venezuela.
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Thursday 7 May 2009

RECOMMENDATIONS

EUROPEAN PARLIAMENT

Development of an EU criminal justice area

P6_TA(2009)0386

European Parliament recommendation of 7 May 2009 to the Council on development of an EU criminal justice area (2009/2012(INI))

(2010/C 212 E/19)

The European Parliament,

- having regard to the proposal for a recommendation to the Council by Panayiotis Demetriou on behalf of the PPE-DE Group on the development of an EU criminal justice area (B6-0335/2008),
- having regard to Articles 6, 29, 31(1)(c) and 34(2)(a) and (b) of the EU Treaty, to the Charter of Fundamental Rights of the European Union, notably Articles 47, 48, 49 and 50, and to the European Convention for the Protection of Human Rights and Fundamental Freedoms, notably Articles 5, 6, 7 and 13,
- having regard to the Commission Green Papers of 19 February 2003 on Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the European Union (COM(2003)0075) and of 26 April 2006 on the Presumption of Innocence (COM(2006)0174), to the Commission proposal for a Council framework decision on certain procedural rights in criminal proceedings throughout the European Union (COM(2004)0328) and Parliament's position of 12 April 2005 thereon ⁽¹⁾,
- having regard to its recommendation of 9 March 2004 to the Council on the rights of prisoners in the European Union ⁽²⁾,
- having regard to Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union ⁽³⁾ and to Parliament's position of 2 September 2008 thereon ⁽⁴⁾,
- having regard to the 2008 report of the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe entitled 'European judicial systems: Efficiency of justice',
- having regard to the Commission Communication of 4 February 2008 on the creation of a Forum for discussing EU justice policies and practice (COM(2008)0038),
- having regard to the Conclusions of the JHA Council of 27-28 November 2008 on the establishment of a Network for legislative cooperation between the Ministries of Justice of the Member States of the European Union,

⁽¹⁾ OJ C 33 E, 9.2.2006, p. 159.

⁽²⁾ OJ C 102 E, 28.4.2004, p. 154.

⁽³⁾ OJ L 327, 5.12.2008, p. 27.

⁽⁴⁾ Texts adopted, P6_TA(2008)0381.

Thursday 7 May 2009

- having regard to the Initiative of the French Republic with a view to adopting a Council Decision setting up a European judicial training network ⁽¹⁾, to Parliament's position of 24 September 2002 thereon ⁽²⁾, to the Commission Communication of 29 June 2006 on judicial training in the European Union (COM(2006)0356) and to the Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council on the training of judges, prosecutors and judicial staff in the European Union ⁽³⁾,
- having regard to its resolution of 9 July 2008 on the role of the national judge in the European judicial system ⁽⁴⁾ with a view to creating a genuine EU judicial culture,
- having regard to the Commission Communication of 23 October 2007 on the role of Eurojust and the European Judicial Network in the fight against organised crime and terrorism in the European Union (COM(2007)0644), to the consolidated version of Council Decision 2002/187/JHA on setting up Eurojust with a view to reinforcing the fight against serious crime (5347/2009), to Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network ⁽⁵⁾ as well as to Parliament's positions of 2 September 2008 thereon ⁽⁶⁾,
- having regard to Council Framework Decision 2008/978/JHA of 18 December 2008 on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters ⁽⁷⁾ and to Parliament's position of 21 October 2008 thereon ⁽⁸⁾,
- having regard to the study entitled 'Analysis of the future of mutual recognition in criminal matters in the European Union' ⁽⁹⁾ recently published by the Université Libre de Bruxelles,
- having regard to the proposal for a Council Framework Decision on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention (17506/2008),
- having regard to the evaluation reports on the application of Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States ⁽¹⁰⁾,
- having regard to the Commission Communication of 20 November 2008 entitled 'Proceeds of organised crime - ensuring that "crime does not pay"' (COM(2008)0766),
- having regard to the Commission Communication of 30 May 2008 entitled 'Towards a European e-Justice Strategy' (COM(2008)0329), to the Council Conclusions on a strategy on e-Justice, to Parliament's resolution of 18 December 2008 with recommendations to the Commission on e-Justice ⁽¹¹⁾, as well as to Parliament's position of 9 October 2008 on the proposal for a Council decision on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2008/XX/JHA ⁽¹²⁾ and the Council Conclusions on a report on the progress made during the French Presidency in the area of e-Justice adopted at the JHA Council of 27-28 November 2008,

⁽¹⁾ OJ C 18, 19.1.2001, p. 9.

⁽²⁾ OJ C 273 E, 14.11.2003, p. 99.

⁽³⁾ OJ C 299, 22.11.2008, p. 1.

⁽⁴⁾ Texts adopted, P6_TA(2008)0352.

⁽⁵⁾ OJ L 348, 24.12.2008, p. 130.

⁽⁶⁾ Texts adopted, P6_TA(2008)0384 and P6_TA(2008)0380.

⁽⁷⁾ OJ L 350, 30.12.2008, p. 72.

⁽⁸⁾ Texts adopted, P6_TA(2008)0486.

⁽⁹⁾ Gisèle Vernimmen-Van Tiggelen and Laura Surano, Institute for European Studies, Université Libre de Bruxelles ECLAN – European Criminal Law Academic Network.

⁽¹⁰⁾ COM(2006)0008 and Council documents 8409/2008, 10330/1/2008, 7024/1/2008, 7301/2/2008, 9617/2/2008, 9927/2/2008, 13416/2/2008, 15691/2/2008 and 17220/1/2008.

⁽¹¹⁾ Texts adopted, P6_TA(2008)0637.

⁽¹²⁾ Texts adopted, P6_TA(2008)0465.

Thursday 7 May 2009

- having regard to its previous recommendations ⁽¹⁾ to the Council,
 - having regard to the Treaty of Lisbon and notably to Chapter 4, Articles 82 to 86 (judicial cooperation in criminal matters) of the Treaty on the Functioning of the European Union,
 - having regard to the need to identify the best way of developing an EU criminal justice area,
 - having regard to the drafting of the future Stockholm programme,
 - having regard to the need to step up the dialogue on these matters with national parliaments, civil society and judicial authorities,
 - having regard to Rule 114(3) and Rule 94 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0262/2009),
- A. whereas the administration of justice falls within the national competences of the Member States,
- B. whereas, with a view to the Treaty of Lisbon, it should be stressed that, once in force, it would widen EU competences in the field of judicial cooperation in criminal matters and would introduce the co-decision law-making process in this area by abolishing the pillar system,
- C. whereas the Hague Programme, like the Tampere Programme, set the creation of a European Area for Justice as a priority and stressed that the strengthening of justice should pass through confidence-building and mutual trust, the implementation of mutual recognition programmes, the development of equivalent standards for procedural rights in criminal proceedings, the approximation of laws - in order to prevent criminals from benefiting from differences in judicial systems and in order to ensure that citizens are protected regardless of where they are in the EU - and with a view to furthering the development of Eurojust,
- D. whereas, according to the Commission Report of 2 July 2008 on Implementation of the Hague Programme for 2007 (COM(2008)0373), the level of achievement in judicial cooperation in criminal matters has been rather low, with policy blockage and delays which are reflected in the diminishing number of instruments adopted, while satisfactory developments have been registered in other fields, such as cooperation in civil matters, border management, legal and illegal migration, and asylum policies,
- E. whereas criminal proceedings have relevant and numerous implications in term of the fundamental freedoms of both victims of crime and suspects and defendants,
- F. whereas the protection of rights such as the right to a fair trial, the presumption of innocence, the rights of the defence, the rights of victims of crime, the *ne bis in idem* principle and minimum procedural safeguards in pre-trial detention are primarily essential in criminal proceedings,
- G. whereas day-to-day judicial cooperation in criminal matters is still based on mutual assistance instruments such as the 2000 Convention on Mutual Assistance in Criminal Matters and the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters,

⁽¹⁾ Recommendation of 14 October 2004 to the Council and to the European Council on the future of the area of freedom, security and justice as well as on the measures required to enhance the legitimacy and effectiveness thereof (OJ C 166 E, 7.7.2005, p. 58), and recommendation of 22 February 2005 to the Council on the quality of criminal justice and the harmonisation of criminal law in the Member States (OJ C 304 E, 1.12.2005, p. 109).

Thursday 7 May 2009

- H. whereas, within the boundaries of the aims and principles of European law, the mutual recognition principle implies that when a decision has been handed down by a competent judicial authority in one Member State, the decision becomes fully and directly effective throughout the territory of the Union, and the judicial authorities in the Member States in the territory of which the decision may be enforced assist in the enforcement of the decision as if it were a decision handed down by a competent authority in that Member State, unless the instrument under which it is implemented places limits on its execution,
- I. whereas the implementation of the mutual recognition principle, which has been the cornerstone of judicial cooperation since the Tampere European Council, is far from having been satisfactorily achieved, and needs to be accompanied by a uniform set of procedural guarantees and safeguards,
- J. whereas where it is implemented, as is the case with the European Arrest Warrant, the mutual recognition principle has proved to have a great added value for judicial cooperation in the European Union,
- K. whereas, to be fully effective, the mutual recognition principle largely depends on the creation of a common European judicial culture based on mutual trust, common principles, cooperation and a certain level of harmonisation - for instance, in the definition of certain crimes and in the sanctions - and by a genuine protection of fundamental rights, notably with regard to procedural rights, minimum standards for conditions and review of detention, prisoners' rights and accessible mechanisms of redress for individuals,
- L. whereas training of judges, prosecutors, defence lawyers and others involved in the administration of justice plays a key role in building mutual trust and developing a common European judicial culture, while at the same time enhancing the right balance between the interests of the public prosecution and those of the defence and to ensure continuity and effective defence in cross-border cases,
- M. whereas many steps forward have been taken in the area of judicial training, in particular thanks to the contribution offered by the European Judicial Training Network (EJTN) and its activities,
- N. whereas, despite the important results achieved so far, the role of the EJTN has been limited by constraints related to its organisational structure and by the lack of sufficient resources,
- O. whereas - given the above-mentioned situation - judicial authorities are not currently given the training tools they need to properly apply EU legislation, and only a very small part of the judiciary has access to EU-focused judicial training,
- P. whereas future action towards the development of the EU criminal justice area cannot but be based on an objective, impartial, transparent, accurate and continuous monitoring of the implementation of EU policies and legal instruments as well as of the quality and efficiency of justice in the Member States,
- Q. whereas no comprehensive, constant and clear monitoring of EU policies in the field of criminal justice, or of the quality and efficiency of justice, is currently in place within the EU,
- R. whereas such monitoring would be fundamental for the 'EU decision-makers' when conceiving the most appropriate legislative actions while at the same time enhancing mutual trust in each other's judicial systems,
- S. whereas that evaluation system should take stock of existing evaluation systems without duplicating effort or results, and should give an active role to Parliament,
- T. whereas the newly established 'Justice Forum' might make an important contribution to the ex-ante evaluation stage of EU legislative initiatives,

Thursday 7 May 2009

- U. whereas, in order to ensure coherence and consistency in EU action while at the same time safeguarding fundamental rights, a public consultation process through the appropriate procedures, including impact assessments, should take place before proposals and initiatives for the adoption of EU legislative instruments are tabled by the Commission or the Member States,
 - V. whereas a constant exchange of information, practices and experience among judicial authorities in the Member States makes a fundamental contribution to the development of an environment built on mutual trust, as the remarkable results achieved with the exchange programme for judicial authorities show,
 - W. whereas an adequate overall data protection regime is still lacking in the area of judicial cooperation in criminal matters and in its absence the rights of data subjects need to be carefully regulated in each individual legislative instrument,
 - X. whereas, in order to be effective, an EU criminal justice area must take advantage of new technologies whilst respecting fundamental rights, and use internet tools in the implementation of EU policies as well as in the dissemination and discussion of information and proposals,
 - Y. whereas the role of national judiciaries is becoming more and more relevant in fighting trans-national crime and, at the same time, in protecting fundamental rights and freedoms,
 - Z. whereas coordination bodies such as Eurojust have been shown to contribute a real added value and their action against trans-national crime has expanded remarkably despite the fact that their powers are still too limited and some Member States have proved reluctant to share information in this context,
 - AA. whereas coordination for defence lawyers is lacking and should therefore be supported and endorsed at EU level,
 - AB. whereas mafias and organised crime in general have become a transnational phenomenon having a social, cultural, economic and political impact on Member States and neighbouring countries, needing to be combated also at the social level, in cooperation with civil society and democratic institutions,
1. Addresses the following recommendations to the Council:
 - (a) in view of the fact that an EU criminal justice area must be based on respect for fundamental rights, restart working on safeguarding fundamental rights and notably adopt without delay:
 - an ambitious legal instrument on procedural safeguards in criminal proceedings, based on the principle of presumption of innocence, such as the right to a 'Letter of Rights', the right to legal advice, the right to free legal advice when necessary, both before and during the trial, the right to adduce evidence, the right to be informed in a language understandable by the suspect/defendant of the nature of and/or the reasons for the charges and/or of the grounds for suspicion, the right of access to all relevant documents in a language which the suspect/defendant understands, the right to an interpreter, the right to a hearing and the right of defence, protection of suspects/defendants who cannot understand or follow the proceedings, minimum standards for detention, conditions and protection of juvenile suspects/defendants as well as effective and accessible mechanisms of redress for individuals,
 - a comprehensive legal framework offering victims of crime the widest protection, including adequate compensation and witness protection, notably in organised crime cases,
 - a legal instrument on the admissibility of evidence in criminal proceedings,
 - measures to fix minimum standards for prison and detention conditions and a common set of prisoners' rights in the EU, including, among others, the right of communication and consular assistance,

Thursday 7 May 2009

- measures to act as prime mover and supporter of civil society and institutions in their efforts to combat mafias and take action with a view to the adoption of a legislative instrument on confiscation of the financial assets and property of international criminal organisations and on their re-use for social purposes;
- (b) given that the principle of mutual recognition is the cornerstone on which judicial cooperation in criminal matters is based, adopt without delay those EU legal instruments still needed to complete its implementation, as well as ensure the development of equivalent standards for procedural rights and the approximation of minimum rules concerning aspects of criminal procedure;
- (c) effectively implement, together with the Member States, the mutual recognition principle in the area of criminal justice, giving due attention to difficulties and achievements in the implementation and daily application of the European Arrest Warrant, and making sure that in the application of the principle by the Member States they respect fundamental rights and the general principles of law as established in Article 6 of the EU Treaty;
- (d) call on the Member States to apply the proportionality principle while implementing the framework decision on the European Arrest Warrant and draw attention to other legal instruments such as hearings by videoconference which might prove to be appropriate in specific cases with appropriate safeguards;
- (e) take stock, in cooperation with Parliament, of the current state of judicial cooperation in criminal matters within the European Union, considering both shortcomings and progress;
- (f) establish, together with the Commission and with Parliament, a committee of wise persons (jurists) with the task of preparing a study on similarities and differences between the criminal law systems of all Member States and submit proposals for the development of an EU criminal justice area that will balance effectiveness in criminal proceedings with safeguarding individual rights;
- (g) set, together with the Commission and with Parliament, in cooperation with the relevant Council of Europe Committees, such as the CEPEJ, and with the existing European networks operating on criminal matters, an objective, impartial, transparent, comprehensive, horizontal and continuous monitoring and evaluation system of the implementation of EU policies and legal instruments in this area, as well as of quality and efficiency, integrity and fairness of justice, taking also into account the level of implementation of ECJ and ECHR case-law by Member States, modelled on the peer evaluation system and capable of producing reliable reports at least once a year. In particular, the evaluation system should:
 - set up an evaluation network composed by both a political level and a technical level,
 - identify, on the basis of a review of existing evaluation systems: priorities, scope, criteria and methods, bearing in mind that the evaluation should not be theoretical but rather should assess the impact of EU policies on the ground and on the daily management of justice, as well as the quality, efficiency, integrity and fairness of justice, also taking into account the level of implementation of ECJ and ECHR case-law by Member States,
 - avoid duplication of and foster synergies with existing evaluation systems,
 - use a mixed approach composed of both statistical and legislative information and of an assessment of the application of EU instruments on the ground,
 - collect comparable data and take stock, insofar as possible, of already available data,
 - involve Parliament closely in both the political and technical levels of the evaluation system;
- (h) take stock, together with the Commission and with Parliament, of the current state of judicial training in the European Union, its weaknesses and needs, and take immediate action, avoiding all unnecessary duplication of effort, in order to promote the creation of a genuine EU judicial culture by creating a European Judicial School for judges, prosecutors, defence lawyers and others involved in the administration of justice, which should:

Thursday 7 May 2009

- be built, starting from the existing EJTN and in the perspective of developing toward an EU Institute linked with existing agencies, with a solid and appropriate structure, within which a pre-eminent role should be given to national judicial schools, judicial networks and other organisations, such as the Academy of European Law and defence rights organisations and with the association of the Commission,
 - manage and further develop the exchange programme for judicial authorities,
 - set common curricula for judicial training ensuring that the European component is present as relevant according to the different fields of law,
 - offer, on a voluntary basis, both initial and continuous training to European judges, prosecutors and defence lawyers,
 - strengthen linguistic skills of judicial authorities, lawyers and other involved actors,
 - offer such training also to candidate countries and other States with which the EU has concluded cooperation and partnership agreements;
- (i) urge Member States to fully implement without delay the Council Decision on the strengthening of Eurojust and amending Council Decision 2002/187/JHA (5613/2008) ⁽¹⁾ and to encourage national authorities to involve Eurojust in the early stages of the cooperation procedures, to overcome the reluctance to share information and to fully cooperate which has been shown at national level, and fully involve Parliament, together with the Commission and with Eurojust, closely in the forthcoming activities with a view to the correct implementation of the Decision implementing Eurojust;
- (j) draw up a plan for the implementation of the above-mentioned decision, in particular with regard to Eurojust's competences on the:
- resolution of conflicts of jurisdiction,
 - power to undertake investigations or prosecutions,
- (k) take action with a view to the publication, every year, of a comprehensive report on crime in the EU, consolidating reports related to specific areas such as OCTA (Organised Crime Threat Assessment), the Eurojust annual report etc;
- (l) call on the Member States to continue working on the initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden for a Council Framework decision on the prevention and settlement of conflicts of jurisdiction in criminal proceedings (5208/2009) respecting the rights of the suspect or defendant to be informed and involved at all stages of the choice of the criminal jurisdiction process, and consult Parliament again on the basis of the progress achieved during negotiations in the Council;
- (m) pay due attention to advantages offered by new technologies to ensure a high degree of public safety and to fully exploit the potential offered by the internet to disseminate information, to strengthen the role of the newly created 'Justice Forum', to encourage the development of new learning methods (e-learning), and to gather and share data, updating and reinforcing existing databases such as the customs' databases, which are essentials in fighting smuggling and human trafficking, while at the same time ensuring respect for fundamental rights and notably a high level of protection of the privacy of individuals with regard to the processing of personal data in the framework of police and judicial cooperation in criminal matters;
2. Instructs its President to forward this recommendation to the Council and, for information, to the Commission.

⁽¹⁾ Not yet published in the Official Journal.

OPINIONS

EUROPEAN PARLIAMENT

Special Olympics in the European Union

P6_TA(2009)0347

Declaration of the European Parliament on support for Special Olympics in the European Union

(2010/C 212 E/20)

The European Parliament,

having regard to Rule 116 of its Rules of Procedure,

- A. whereas Special Olympics Europe provides sporting and social opportunities for adults and children with intellectual disabilities,
 - B. whereas Special Olympics programmes are established in every Member State, involving half a million athletes,
 - C. whereas Special Olympics implement EU policy daily, by promoting sport and volunteerism across borders, by breaking down stereotypes about disability, through public health provision and by including marginalised people in social activities,
 - D. whereas Special Olympics Europe will host two major upcoming events: in 2010 the Special Olympics European Summer Games will take place in Warsaw, Poland, and in 2011 the Special Olympics World Summer Games will take place in Athens, Greece,
 - E. whereas the EU financially supported the 2003 Special Olympics World Summer Games in Ireland,
 1. Considers that the provision of Special Olympics services at local, national and international levels requires significant funding;
 2. Notes that Special Olympics Europe is seeking financial assistance from the Commission to help fund the European Summer Games in Warsaw in 2010 and the World Summer Games in Athens in 2011;
 3. Acknowledges the benefits for athletes, families and the wider community that will result from these events taking place in Europe;
 4. Calls on the Commission to support the Games in Warsaw in 2010 and Athens in 2011;
 5. Instructs its President to forward this declaration, together with the names of the signatories, to the Council, the Commission and the parliaments of the Member States.
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Tuesday 5 May 2009

II

(Information)

INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN PARLIAMENT

Defence of the immunity and privileges of Aldo Patriciello

P6_TA(2009)0337

European Parliament decision of 5 May 2009 on the request for defence of the immunity and privileges of Aldo Patriciello (2009/2021(IMM))

(2010/C 212 E/21)

The European Parliament,

- having regard to the request by Aldo Patriciello for defence of his immunity in connection with an investigation which is currently being carried out by the Public Prosecutor's Office attached to the Isernia District Court, announced in plenary sitting of 9 March 2009,
 - having regard to Articles 9 and 10 of the Protocol of 8 April 1965 on the Privileges and Immunities of the European Communities, and Article 6(2) of the Act of 20 September 1976 concerning the election of the members of the European Parliament by direct universal suffrage,
 - having regard to the judgments of 12 May 1964, 10 July 1986 and 21 October 2008 ⁽¹⁾ of the Court of Justice of the European Communities,
 - having regard to Rules 6(3) and 7 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A6-0286/2009),
1. Decides to defend the immunity and privileges of Aldo Patriciello;
 2. Instructs its President to forward this decision, and the report of its committee responsible, immediately to the appropriate authorities of the Italian Republic.

⁽¹⁾ Case 101/63 *Wagner v Fohrmann and Krier* [1964] ECR 195, Case 149/85 *Wybot v Faure and Others* [1986] ECR 2 391 and Joined Cases C-200/07 and C-201/07 *Marra v De Gregorio and Clemente*, not yet reported.

Tuesday 5 May 2009

Defence of the immunity and privileges of Umberto Bossi

P6_TA(2009)0338

European Parliament decision of 5 May 2009 on the request for defence of the immunity and privileges of Umberto Bossi (2009/2020(IMM))

(2010/C 212 E/22)

The European Parliament,

- having regard to the request by Umberto Bossi for defence of his immunity in connection with an investigation which is currently being carried out by the Public Prosecutor's Office attached to the Verbania District Court, of 19 February 2009, announced in plenary sitting of 9 March 2009,
 - having regard to Articles 9 and 10 of the Protocol of 8 April 1965 on the Privileges and Immunities of the European Communities, and Article 6(2) of the Act of 20 September 1976 concerning the election of the members of the European Parliament by direct universal suffrage,
 - having regard to the judgments of 12 May 1964, 10 July 1986 and 21 October 2008 ⁽¹⁾ of the Court of Justice of the European Communities,
 - having regard to Rules 6(3) and 7 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A6-0269/2009),
1. Decides to defend the immunity and privileges of Umberto Bossi;
 2. Instructs its President to forward this decision, and the report of its committee responsible, immediately to the appropriate authorities of the Italian Republic.

⁽¹⁾ Case 101/63 *Wagner v Fohrmann and Krier* [1964] ECR 195, Case 149/85 *Wybot v Faure and Others* [1986] ECR 2391 and Joined Cases C-200/07 and C-201/07 *Marra v De Gregorio and Clemente*, not yet reported.

Wednesday 6 May 2009

Responsibilities of committees

P6_TA(2009)0348

European Parliament decision of 6 May 2009 on the powers and responsibilities of the standing committees

(2010/C 212 E/23)

The European Parliament,

— having regard to the proposal by the Conference of Presidents,

— having regard to Rule 174 of its Rules of Procedure,

1. Decides to set up the following standing committees:

- I. Committee on Foreign Affairs,
- II. Committee on Development
- III. Committee on International Trade
- IV. Committee on Budgets
- V. Committee on Budgetary Control
- VI. Committee on Economic and Monetary Affairs
- VII. Committee on Employment and Social Affairs
- VIII. Committee on the Environment, Public Health and Food Safety
- IX. Committee on Industry, Research and Energy
- X. Committee on Internal Market and Consumer Protection
- XI. Committee on Transport and Tourism
- XII. Committee on Regional Development
- XIII. Committee on Agriculture and Rural Development
- XIV. Committee on Fisheries
- XV. Committee on Culture and Education
- XVI. Committee on Legal Affairs

Wednesday 6 May 2009

XVII. Committee on Civil Liberties, Justice and Home Affairs

XVIII. Committee on Constitutional Affairs

XIX. Committee on Women's Rights and Gender Equality

XX. Committee on Petitions;

2. Decides to replace Annex VI to its Rules of Procedure by the following:

'ANNEX VI

Powers and responsibilities of standing committees

I. Committee on Foreign Affairs

Committee responsible for:

1. the common foreign and security policy (CFSP) and the European security and defence policy (ESDP). In this context the committee is assisted by a subcommittee on security and defence;
2. relations with other EU institutions and bodies, the UNO and other international organisations and interparliamentary assemblies for matters falling under its responsibility;
3. the strengthening of political relations with third countries, particularly those in the immediate vicinity of the Union, by means of major cooperation and assistance programmes or international agreements such as association and partnership agreements;
4. the opening, monitoring and concluding of negotiations concerning the accession of European States to the Union;
5. issues concerning human rights, the protection of minorities and the promotion of democratic values in third countries. In this context the committee is assisted by a subcommittee on human rights. Without prejudice to the relevant rules, members from other committees and bodies with responsibilities in this field shall be invited to attend the meetings of the subcommittee.

The committee coordinates the work of joint parliamentary committees and parliamentary cooperation committees as well as that of the interparliamentary delegations and ad hoc delegations and election observation missions falling within its remit.

II. Committee on Development

Committee responsible for:

1. the promotion, implementation and monitoring of the development and cooperation policy of the Union, notably:
 - (a) political dialogue with developing countries, bilaterally and in the relevant international organisations and interparliamentary fora,
 - (b) aid to, and cooperation agreements with, developing countries,
 - (c) promotion of democratic values, good governance and human rights in developing countries;
2. matters relating to the ACP-EU Partnership Agreement and relations with the relevant bodies;

Wednesday 6 May 2009

3. Parliament's involvement in election observation missions, when appropriate in cooperation with other relevant committees and delegations.

The committee coordinates the work of the interparliamentary delegations and ad hoc delegations falling within its remit.

III. Committee on International Trade

Committee responsible for:

matters relating to the establishment and implementation of the Union's common commercial policy and its external economic relations, in particular:

1. financial, economic and trade relations with third countries and regional organisations;
2. measures of technical harmonisation or standardisation in fields covered by instruments of international law;
3. relations with the relevant international organisations and with organisations promoting regional economic and commercial integration outside the Union;
4. relations with the WTO, including its parliamentary dimension.

The committee liaises with the relevant interparliamentary and ad hoc delegations for the economic and trade aspects of relations with third countries.

IV. Committee on Budgets

Committee responsible for:

1. the multiannual financial framework of the Union's revenue and expenditure and the Union's system of own resources;
2. Parliament's budgetary prerogatives, namely the budget of the Union as well as the negotiation and implementation of interinstitutional agreements in this field;
3. Parliament's estimates according to the procedure defined in the Rules;
4. the budget of the decentralised bodies;
5. the financial activities of the European Investment Bank;
6. the budgetisation of the European Development Fund, without prejudice to the powers of the committee responsible for the ACP-EU Partnership Agreement;
7. financial implications and compatibility with the multiannual Financial Framework of all Community acts, without prejudice to the powers of the relevant committees;
8. keeping track of and assessing the implementation of the current budget notwithstanding Rule 72(1), transfers of appropriations, procedures relating to the establishment plans, administrative appropriations and opinions concerning buildings-related projects with significant financial implications;
9. the Financial Regulation, excluding matters relating to the implementation, management and control of the budget.

Wednesday 6 May 2009

V. Committee on Budgetary Control

Committee responsible for:

1. the control of the implementation of the budget of the Union and of the European Development Fund, and the decisions on discharge to be taken by Parliament, including the internal discharge procedure and all other measures accompanying or implementing such decisions;
2. the closure, presenting and auditing of the accounts and balance sheets of the Union, its institutions and any bodies financed by it, including the establishment of appropriations to be carried over and the settling of balances;
3. the control of the financial activities of the European Investment Bank;
4. monitoring the cost-effectiveness of the various forms of Community financing in the implementation of the Union's policies;
5. consideration of fraud and irregularities in the implementation of the budget of the Union, measures aiming at preventing and prosecuting such cases, and the protection of the Union's financial interests in general;
6. relations with the Court of Auditors, the appointment of its members and consideration of its reports;
7. the Financial Regulation as far as the implementation, management and control of the budget are concerned.

VI. Committee on Economic and Monetary Affairs

Committee responsible for:

1. the economic and monetary policies of the Union, the functioning of Economic and Monetary Union and the European monetary and financial system (including relations with the relevant institutions or organisations);
2. the free movement of capital and payments (cross-border payments, single payment area, balance of payments, capital movements and borrowing and lending policy, control of movements of capital originating in third countries, measures to encourage the export of the Union's capital);
3. the international monetary and financial system (including relations with financial and monetary institutions and organisations);
4. rules on competition and State or public aid;
5. tax provisions;
6. the regulation and supervision of financial services, institutions and markets including financial reporting, auditing, accounting rules, corporate governance and other company law matters specifically concerning financial services.

VII. Committee on Employment and Social Affairs

Committee responsible for:

1. employment policy and all aspects of social policy such as working conditions, social security and social protection;
2. health and safety measures at the workplace;

Wednesday 6 May 2009

3. the European Social Fund;
4. vocational training policy, including professional qualifications;
5. the free movement of workers and pensioners;
6. social dialogue;
7. all forms of discrimination at the workplace and in the labour market except those based on sex;
8. relations with:
 - the European Centre for the Development of Vocational Training (Cedefop),
 - the European Foundation for the Improvement of Living and Working Conditions,
 - the European Training Foundation,
 - the European Agency for Safety and Health at Work;as well as relations with other relevant EU bodies and international organisations.

VIII. *Committee on the Environment, Public Health and Food Safety*

Committee responsible for:

1. environmental policy and environmental protection measures, in particular concerning:
 - (a) air, soil and water pollution, waste management and recycling, dangerous substances and preparations, noise levels, climate change, protection of biodiversity,
 - (b) sustainable development,
 - (c) international and regional measures and agreements aimed at protecting the environment,
 - (d) restoration of environmental damage,
 - (e) civil protection,
 - (f) the European Environment Agency,
 - (g) the European Chemicals Agency;
2. public health, in particular:
 - (a) programmes and specific actions in the field of public health,
 - (b) pharmaceutical and cosmetic products,

Wednesday 6 May 2009

- (c) health aspects of bioterrorism,
 - (d) the European Agency for the Evaluation of Medicinal Products and the European Centre of Disease Prevention and Control;
3. food safety issues, in particular:
- (a) the labelling and safety of foodstuffs,
 - (b) veterinary legislation concerning protection against risks to human health; public health checks on foodstuffs and food production systems,
 - (c) the European Food Safety Authority and the European Food and Veterinary Office.

IX. Committee on Industry, Research and Energy

Committee responsible for:

1. the Union's industrial policy and the application of new technologies, including measures relating to SMEs;
2. the Union's research policy, including the dissemination and exploitation of research findings;
3. space policy;
4. the activities of the Joint Research Centre and the Central Office for Nuclear Measurements, as well as JET, ITER and other projects in the same area;
5. Community measures relating to energy policy in general, the security of energy supply and energy efficiency including the establishment and development of trans-European networks in the energy infrastructure sector;
6. the Euratom Treaty and Euratom Supply Agency; nuclear safety, decommissioning and waste disposal in the nuclear sector;
7. the information society and information technology, including the establishment and development of trans-European networks in the telecommunication infrastructure sector.

X. Committee on the Internal Market and Consumer Protection

Committee responsible for:

1. coordination at Community level of national legislation in the sphere of the internal market and of the customs union, in particular:
 - (a) the free movement of goods including the harmonisation of technical standards,
 - (b) the right of establishment,
 - (c) the freedom to provide services except in the financial and postal sectors;

Wednesday 6 May 2009

2. measures aiming at the identification and removal of potential obstacles to the functioning of the internal market;
3. the promotion and protection of the economic interests of consumers, except for public health and food safety issues, in the context of the establishment of the internal market.

XI. Committee on Transport and Tourism

Committee responsible for:

1. matters relating to the development of a common policy for rail, road, inland waterway, maritime and air transport, in particular:
 - (a) common rules applicable to transport within the European Union,
 - (b) the establishment and development of trans-European networks in the area of transport infrastructure,
 - (c) the provision of transport services and relations in the field of transport with third countries,
 - (d) transport safety,
 - (e) relations with international transport bodies and organisations;
2. postal services;
3. tourism.

XII. Committee on Regional Development

Committee responsible for:

regional and cohesion policy, in particular:

- (a) the European Regional Development Fund, the Cohesion Fund and the other instruments of the Union's regional policy,
- (b) assessing the impact of other Union policies on economic and social cohesion,
- (c) coordination of the Union's structural instruments,
- (d) outermost regions and islands as well as trans-frontier and interregional cooperation,
- (e) relations with the Committee of the Regions, interregional cooperation organisations and local and regional authorities.

XIII. Committee on Agriculture and Rural Development

Committee responsible for:

1. the operation and development of the common agricultural policy;

Wednesday 6 May 2009

2. rural development, including the activities of the relevant financial instruments;
3. legislation on:
 - (a) veterinary and plant-health matters, animal feedingstuffs provided such measures are not intended to protect against risks to human health,
 - (b) animal husbandry and welfare;
4. the improvement of the quality of agricultural products;
5. supplies of agricultural raw materials;
6. the Community Plant Variety Office;
7. forestry.

XIV. Committee on Fisheries

Committee responsible for:

1. the operation and development of the common fisheries policy and its management;
2. the conservation of fishery resources;
3. the common organisation of the market in fishery products;
4. structural policy in the fisheries and aquaculture sectors, including the financial instruments for fisheries guidance;
5. international fisheries agreements.

XV. Committee on Culture and Education

Committee responsible for:

1. the cultural aspects of the European Union, and in particular:
 - (a) improving the knowledge and dissemination of culture,
 - (b) the protection and promotion of cultural and linguistic diversity,
 - (c) the conservation and safeguarding of cultural heritage, cultural exchanges and artistic creation;
2. the Union's education policy, including the European higher education area, the promotion of the system of European schools and lifelong learning;
3. audiovisual policy and the cultural and educational aspects of the information society;
4. youth policy and the development of a sports and leisure policy;

Wednesday 6 May 2009

5. information and media policy;
6. cooperation with third countries in the areas of culture and education and relations with the relevant international organisations and institutions.

XVI. Committee on Legal Affairs

Committee responsible for:

1. the interpretation and application of European law, compliance of European Union acts with primary law, notably the choice of legal bases and respect for the principles of subsidiarity and proportionality;
2. the interpretation and application of international law, in so far as the European Union is affected;
3. the simplification of Community law, in particular legislative proposals for its official codification;
4. the legal protection of Parliament's rights and prerogatives, including its involvement in actions before the Court of Justice and the Court of First Instance;
5. Community acts which affect the Member States' legal order, namely in the fields of:
 - (a) civil and commercial law,
 - (b) company law,
 - (c) intellectual property law,
 - (d) procedural law;
6. measures concerning judicial and administrative cooperation in civil matters;
7. environmental liability and sanctions against environmental crime;
8. ethical questions related to new technologies, applying the procedure with associated committees with the relevant committees;
9. the Statute for Members and the Staff Regulations of the European Communities;
10. privileges and immunities as well as verification of Members' credentials;
11. the organisation and statute of the Court of Justice;
12. the Office for Harmonisation in the Internal Market.

XVII. Committee on Civil Liberties, Justice and Home Affairs

Committee responsible for:

1. the protection within the territory of the Union of citizens' rights, human rights and fundamental rights, including the protection of minorities, as laid down in the Treaties and in the Charter of Fundamental Rights of the European Union;

Wednesday 6 May 2009

2. the measures needed to combat all forms of discrimination other than those based on sex or those occurring at the workplace and in the labour market;
3. legislation in the areas of transparency and of the protection of natural persons with regard to the processing of personal data;
4. the establishment and development of an area of freedom, security and justice, in particular:
 - (a) measures concerning the entry and movement of persons, asylum and migration,
 - (b) measures concerning an integrated management of the common borders,
 - (c) measures relating to police and judicial cooperation in criminal matters;
5. the European Monitoring Centre for Drugs and Drug Addiction and the European Monitoring Centre on Racism and Xenophobia, Europol, Eurojust, Cepol and other bodies and agencies in the same area;
6. the determination of a clear risk of a serious breach by a Member State of the principles common to the Member States.

XVIII. Committee on Constitutional Affairs

Committee responsible for:

1. the institutional aspects of the European integration process, in particular in the framework of the preparation and proceedings of conventions and intergovernmental conferences;
2. the implementation of the EU Treaty and the assessment of its operation;
3. the institutional consequences of enlargement negotiations of the Union;
4. interinstitutional relations, including, in view of their approval by Parliament, examination of interinstitutional agreements pursuant to Rule 120(2) of the Rules of Procedure;
5. uniform electoral procedure;
6. political parties at European level, without prejudice to the competences of the Bureau;
7. the determination of the existence of a serious and persistent breach by a Member State of the principles common to the Member States;
8. the interpretation and application of the Rules of Procedure and proposals for amendments thereto.

XIX. Committee on Women's Rights and Gender Equality

Committee responsible for:

1. the definition, promotion and protection of women's rights in the Union and related Community measures;
2. the promotion of women's rights in third countries;

Wednesday 6 May 2009

3. equal opportunities policy, including equality between men and women with regard to labour market opportunities and treatment at work;
4. the removal of all forms of discrimination based on sex;
5. the implementation and further development of gender mainstreaming in all policy sectors;
6. the follow-up and implementation of international agreements and conventions involving the rights of women;
7. information policy on women.

XX. Committee on Petitions

Committee responsible for:

1. petitions;
2. relations with the European Ombudsman.;
3. Decides that this decision will enter into force on the first day of the first part-session of the seventh parliamentary term;
4. Instructs its President to forward this decision to the Council and the Commission, for information.

Interparliamentary delegations, delegations to joint interparliamentary committees and delegations to parliamentary cooperation committees and multilateral parliamentary assemblies

P6_TA(2009)0349

European Parliament decision of 6 May 2009 on the number of interparliamentary delegations, delegations to joint parliamentary committees, delegations to parliamentary cooperation committees and multilateral Parliamentary Assemblies

(2010/C 212 E/24)

The European Parliament,

- having regard to the proposal by the Conference of Presidents,
- having regard to Rules 188 and 190 of its Rules of Procedure,
- having regard to the association, cooperation and other agreements concluded by the Union with non-EU countries,
- anxious to strengthen parliamentary democracy by pursuing a continuous interparliamentary dialogue,

Wednesday 6 May 2009

1. Decides that the number of delegations and their regional groupings shall be as follows:

(a) Europe, Western Balkans and Turkey

Delegations to the:

- EU-Croatia Joint Parliamentary Committee
- EU-Former Yugoslav Republic of Macedonia Joint Parliamentary Committee
- EU-Turkey Joint Parliamentary Committee

Delegation for relations with Switzerland, Iceland and Norway and to the European Economic Area (EEA) Joint Parliamentary Committee

Delegation for relations with Albania, Bosnia and Herzegovina, Serbia, Montenegro and Kosovo

(b) Russia, the Eastern Partnership States, Central Asia and Mongolia

Delegation to the EU-Russia Parliamentary Cooperation Committee

Delegation to the EU-Ukraine Parliamentary Cooperation Committee

Delegation to the EU-Moldova Parliamentary Cooperation Committee

Delegation for relations with Belarus

Delegation to the EU-Armenia, EU-Azerbaijan and EU-Georgia Parliamentary Cooperation Committees

Delegation to the EU-Kazakhstan, EU-Kyrgyzstan and EU-Uzbekistan Parliamentary Cooperation Committees, and for relations with Tajikistan, Turkmenistan and Mongolia

(c) Maghreb, Mashreq, Israel and Palestine

Delegations for relations with:

- Israel
- the Palestinian Legislative Council
- the Maghreb countries and the Arab Maghreb Union
- the Mashreq countries

(d) The Arab Peninsula, Iraq and Iran

Delegations for relations with:

- the Arab Peninsula
- Iraq
- Iran

Wednesday 6 May 2009

(e) The Americas

Delegations for relations with:

- the United States
- Canada
- the countries of Central America
- the countries of the Andean Community
- Mercosur

Delegation to the EU-Mexico Joint Parliamentary Committee

Delegation to the EU-Chile Joint Parliamentary Committee

(f) Asia/Pacific

Delegations for relations with:

- Japan
- the People's Republic of China
- India
- Afghanistan
- the countries of South Asia
- the countries of Southeast Asia and the Association of Southeast Asian Nations (ASEAN)
- the Korean Peninsula
- Australia and New Zealand

(g) Africa

Delegations for relations with:

- South Africa
- the Pan-African Parliament

(h) Multilateral Assemblies

Delegation to the ACP-EU Joint Parliamentary Assembly

Delegation to the Euro-Mediterranean Parliamentary Assembly

Wednesday 6 May 2009

Delegation to the Euro-Latin American Parliamentary Assembly

Delegation to the Euronest Parliamentary Assembly

Delegation for relations with the NATO Parliamentary Assembly

(which will consist of members of the Subcommittee on Security and Defence);

2. (a) Decides that the membership of EPA Parliamentary Committees shall be drawn exclusively from the Committee on International Trade and the Committee on Development – ensuring the maintenance of the leading role of the Committee on International Trade as the committee responsible – and that they should actively coordinate their work with the ACP-EU Joint Parliamentary Assembly (JPA);

(b) Decides that the membership of the Euromed, Eurolat and Euronest Parliamentary Assemblies shall be drawn exclusively from the bilateral or sub-regional delegations covered by each Assembly;
 3. Recalls the decision of the Conference of Presidents to establish a Euronest Parliamentary Assembly associating the European Parliament with the Parliaments of Ukraine, Moldova, Belarus, Armenia, Azerbaijan and Georgia; decides, as regards Belarus, that the Conference of Presidents will submit proposals with regard to the representation of Belarus in the Euronest Parliamentary Assembly;
 4. Decides that the Conference of Delegation Chairmen should draw up a draft annual calendar, to be adopted by the Conference of Presidents after consulting the Committee on Foreign Affairs, the Committee on Development and the Committee on International Trade, on the understanding, however, that the Conference of Presidents may modify the calendar in order to respond to political events;
 5. Decides that the political groups and non-attached Members shall appoint permanent substitutes to serve on each type of delegation and that the number of those substitutes may not exceed the number of full members representing the groups or non-attached Members;
 6. Decides to intensify cooperation with and consultation of the committees concerned by delegation work by organising joint meetings between these bodies in its usual places of work;
 7. Will endeavour to ensure at the practical level that one or more committee rapporteurs/chairs may likewise take part in the proceedings of delegations, parliamentary cooperation committees, joint parliamentary committees and multilateral Parliamentary Assemblies; and decides that the President, at the joint request of the chairmen of the delegation and committee concerned, shall authorise missions of this type;
 8. Decides that this decision will enter into force at the first part-session of the seventh parliamentary term;
 9. Instructs its President to forward this decision to the Council and the Commission.
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Wednesday 6 May 2009

The petitions process (amendment of Title VIII of the Rules of Procedure)

P6_TA(2009)0353

European Parliament decision of 6 May 2009 on revision of the Rules of Procedure with regard to the petitions process (2006/2209(REG))

(2010/C 212 E/25)

The European Parliament,

- having regard to the letter from its President of 20 July 2006,
- having regard to Rules 201 and 202 of its Rules of Procedure,
- having regard to the report of the Committee on Constitutional Affairs and the opinion of the Committee on Petitions (A6-0027/2009),

1. Decides to amend its Rules of Procedure as shown below;
2. Points out that the amendments will enter into force on the first day of the next part-session, with the exception of the amendment concerning Rule 193a (new), which will enter into force on the first day after the entry into force of the relevant Treaty provision;
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 191 – paragraph 2 a (new)

2a. Where a petition is signed by several natural or legal persons, the signatories shall designate a representative and deputy representatives who shall be regarded as the petitioners for the purposes of this Title.

If no such representatives have been designated the first signatory or another appropriate person shall be regarded as the petitioner.

Amendment 2

Parliament's Rules of Procedure Rule 191 – paragraph 2 b (new)

2b. Each petitioner may at any time withdraw support for the petition.

After withdrawal of support by all the petitioners the petition shall become null and void.

Wednesday 6 May 2009

PRESENT TEXT

AMENDMENT

Amendment 3**Parliament's Rules of Procedure
Rule 191 – paragraph 3**

3. Petitions must be written in **one of the** official **languages** of the European Union.

Petitions written in any other language will be considered only *where* the petitioner has attached a translation **or summary drawn up** in an official language **of the European Union**. **The translation or summary shall form the basis of Parliament's work**. Parliament's correspondence with the petitioner shall employ the official language in which the translation **or summary** is drawn up.

3. Petitions must be written in **an** official **language** of the European Union.

Petitions written in any other language will be considered only *if* the petitioner has attached a translation in an official language. Parliament's correspondence with the petitioner shall employ the official language in which the translation is drawn up.

The Bureau may decide that petitions and correspondence with petitioners may be drafted in other languages used in a Member State.

Amendment 4**Parliament's Rules of Procedure
Rule 191 – paragraph 5**

5. Petitions entered in the register shall be forwarded by the President to the committee responsible, which shall first **ascertain whether the petitions registered fall within the sphere of activities of the European Union**.

If the committee responsible fails to reach a consensus on the admissibility of the petition, it shall be declared admissible at the request of at least one quarter of the members of the committee.

5. Petitions entered in the register shall be forwarded by the President to the committee responsible, which shall first **establish the admissibility or otherwise of the petition in accordance with Article 194 of the EC Treaty**.

Amendment 5**Parliament's Rules of Procedure
Rule 191 – paragraph 6**

6. Petitions declared inadmissible by the committee shall be filed; the petitioner shall be informed of the decision and the reasons *therefor*.

6. Petitions declared inadmissible by the committee shall be filed; the petitioner shall be informed of the decision and the reasons *for it*. **Where possible, alternative means of redress may be recommended.**

Amendment 6**Parliament's Rules of Procedure
Rule 191 – paragraph 7**

7. *In such cases the committee may suggest to the petitioner that he contact the competent authority of the Member State concerned or of the European Union.*

deleted

Wednesday 6 May 2009

PRESENT TEXT

AMENDMENT

Amendment 7**Parliament's Rules of Procedure
Rule 191 – paragraph 8**

8. *Unless the petitioner asks for it to be treated in confidence, it shall be entered in a public register.*

8. *Petitions, once registered, shall as a general rule become public documents, and the name of the petitioner and the contents of the petition may be published by Parliament for reasons of transparency.*

Amendment 8**Parliament's Rules of Procedure
Rule 191 – paragraph 8 a (new)**

8a. *Notwithstanding the provisions contained in paragraph 8, the petitioner may request that his or her name be withheld in order to protect his or her privacy, in which case Parliament must comply with the request.*

Where the petitioner's complaint cannot be investigated for reasons of anonymity, the petitioner shall be consulted as to the further steps to be taken.

Amendment 9**Parliament's Rules of Procedure
Rule 191 – paragraph 8 b (new)**

8b. *The petitioner may request that his or her petition be treated confidentially, in which case suitable precautions shall be taken by Parliament to ensure that the contents are not made public. The petitioner shall be told under which precise conditions this provision is to apply.*

Amendment 10**Parliament's Rules of Procedure
Rule 192 – paragraph -1 (new)**

-1. *Admissible petitions shall be considered by the committee responsible in the course of its normal activity, either through discussion at a regular meeting or by written procedure. Petitioners may be invited to participate in meetings of the committee if their petition is to be the subject of discussion, or they may request to be present. The right to speak shall be granted to petitioners at the discretion of the Chair.*

Wednesday 6 May 2009

PRESENT TEXT

AMENDMENT

Amendment 11
Parliament's Rules of Procedure
Rule 192 – paragraph 1

1. The committee *responsible* may decide to draw up a report *or otherwise express its opinion on petitions it has declared admissible*.

The committee may , *particularly in the case of petitions which seek changes in existing law*, request opinions from other committees pursuant to Rule 46.

1. The committee may, *with regard to an admissible petition*, decide to draw up *an own-initiative* report *in accordance with Rule 45(1) or to submit a short motion for a resolution to Parliament, provided that there is no objection by the Conference of Presidents. Such motions for resolutions shall be placed on the draft agenda of the part-session held no later than eight weeks after their adoption in committee. They shall be put to a single vote and shall also be without debate unless the Conference of Presidents exceptionally decides to apply Rule 131a.*

The committee may request opinions from other committees *that have specific responsibility for the issue under consideration in accordance with Rule 46 and Annex VI.*

Amendment 12
Parliament's Rules of Procedure
Rule 192 – paragraph 2

2. 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.

2. An electronic register shall be set up in which citizens may lend *or withdraw* their support to the petitioner, appending their own electronic signature to petitions which have been declared admissible and entered in the register.

Amendment 13
Parliament's Rules of Procedure
Rule 192 – paragraph 3

3. When *considering* petitions *or* establishing facts, the committee may organise *hearings of petitioners or general hearings or dispatch members to establish the facts of the situation in situ*.

3. When *investigating* petitions, establishing facts *or seeking solutions* the committee may organise *fact-finding visits to the Member State or region concerned by the petition*.

Reports on the visits shall be drafted by their participants. They shall be forwarded to the President after approval by the committee.

Amendment 14
Parliament's Rules of Procedure
Rule 192 – paragraph 4

4. *With a view to preparing its opinions*, the committee may request the Commission *to submit documents, to supply information and to grant it access to its facilities*.

4. The committee may request *assistance from* the Commission *particularly in the form of information on the application of, or compliance with, Community law and information or documents relevant to the petition. Representatives of the Commission shall be invited to attend meetings of the committee.*

Wednesday 6 May 2009

PRESENT TEXT

AMENDMENT

Amendment 15

**Parliament's Rules of Procedure
Rule 192 – paragraph 5**

5. The committee *shall, where necessary, submit motions for resolutions to Parliament on petitions which it has considered.*

5. The committee *may ask the President to forward its opinion or recommendation to the Commission, the Council or the Member State authority concerned for action or response.*

The committee may also request that its opinions be forwarded by the President to the Commission or the Council.

Amendment 16

**Parliament's Rules of Procedure
Rule 192 – paragraph 7**

7. The *President shall inform petitioners of the decisions taken and the reasons therefor.*

7. The *petitioner shall be informed of the decision taken by the committee and the reasons for that decision.*

When consideration of an admissible petition has been concluded, it shall be declared closed and the petitioner informed.

Amendment 17

**Parliament's Rules of Procedure
Rule 193 a (new)**

Rule 193 a

Citizens' initiative

When Parliament is informed that the Commission has been invited to submit a proposal for a legal act under Article 11(4) of the EU Treaty, the Committee on Petitions shall ascertain whether this is likely to affect its work and, if need be, shall inform those petitioners who have addressed a petition on related subjects.

Wednesday 6 May 2009

General revision of the Rules of Procedure

P6_TA(2009)0359

European Parliament decision of 6 May 2009 on the general revision of Parliament's Rules of Procedure (2007/2124(REG))

(2010/C 212 E/26)

The European Parliament,

- having regard to Rules 201 and 202 of its Rules of Procedure,
 - having regard to the report of the Committee on Constitutional Affairs (A6-0273/2009),
1. Decides to amend its Rules of Procedure as shown below;
 2. Decides to insert the Code of Conduct for negotiating codecision files, as approved by its Conference of Presidents on 18 September 2008, into its Rules of Procedure as Annex XVI;
 3. Decides that the amendments will enter into force on the first day of the seventh parliamentary term;
 4. 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 9 – paragraph 1 – subparagraph 1

1. Parliament **may** lay down rules governing the transparency of its Members' financial interests, which shall be attached to these Rules of Procedure as an annex.

1. Parliament **shall** lay down rules governing the transparency of its Members' financial interests, which shall be attached to these Rules of Procedure as an annex.

Amendment 2

Parliament's Rules of Procedure Rule 10 a (new)

Rule 10a

Observers

1. *Where a Treaty on the accession of a State to the European Union has been signed, the President, after obtaining the agreement of the Conference of Presidents, may invite the parliament of the acceding State to designate from among its own members a number of observers equal to the number of future seats in the European Parliament allocated to that State.*

Wednesday 6 May 2009

PRESENT TEXT

AMENDMENT

2. *Those observers shall take part in the proceedings of Parliament pending the entry into force of the Treaty of Accession, and shall have a right to speak in committees and political groups. They shall not have the right to vote or to stand for election to positions within Parliament. Their participation shall not have any legal effect on Parliament's proceedings.*

3. *Their treatment shall be assimilated to that of a Member of Parliament as regards the use of Parliament's facilities and the reimbursement of expenses incurred in their activities as observers.*

Amendment 51

Parliament's Rules of Procedure Rule 11

Oldest Member

1. At the sitting provided for under Rule 127(2), and at any other sitting held for the purpose of electing the President and the Bureau, the **oldest Member present** shall take the Chair until the President has been elected.

2. No business shall be transacted while **the oldest** Member is in the Chair unless it is concerned with the election of the President or the verification of credentials.

The oldest Member shall exercise the powers of the President referred to in the second subparagraph of Rule 3(2). Any other matter relating to the verification of credentials that is raised when the oldest Member is in the Chair shall be referred to the committee responsible for the verification of credentials.

Provisional Chair

1. At the sitting provided for under Rule 127(2), and at any other sitting held for the purpose of electing the President and the Bureau, the **outgoing President or, failing him or her, one of the outgoing Vice-Presidents in order of precedence or, in the absence of any of them, the Member having held office for the longest period** shall take the Chair until the President has been elected.

2. No business shall be transacted while **a** Member is **provisionally** in the Chair **by virtue of paragraph 1** unless it is concerned with the election of the President or the verification of credentials.

The Member who is provisionally in the Chair by virtue of paragraph 1 shall exercise the powers of the President referred to in the second subparagraph of Rule 3(2). Any other matter relating to the verification of credentials that is raised when he or she is in the Chair shall be referred to the committee responsible for the verification of credentials.

Amendment 52

Parliament's Rules of Procedure Rule 13

1. The President shall be elected first. Nominations shall be handed before each ballot to the **oldest** Member, who shall announce them to Parliament. If after three ballots no candidate has obtained an absolute majority of the votes cast, the fourth ballot shall be confined to the two Members who have obtained the highest number of votes in the third ballot. In the event of a tie the elder candidate shall be declared elected.

2. As soon as the President has been elected, the **oldest** Member shall vacate the Chair. Only the elected President may deliver an opening address.

1. The President shall be elected first. Nominations shall be handed before each ballot to the Member **provisionally in the Chair by virtue of Rule 11**, who shall announce them to Parliament. If after three ballots no candidate has obtained an absolute majority of the votes cast, the fourth ballot shall be confined to the two Members who have obtained the highest number of votes in the third ballot. In the event of a tie the elder candidate shall be declared elected.

2. As soon as the President has been elected, the Member **who is provisionally in the Chair by virtue of Rule 11** shall vacate the Chair. Only the elected President may deliver an opening address.

Wednesday 6 May 2009

PRESENT TEXT

AMENDMENT

Amendment 3**Parliament's Rules of Procedure
Rule 24 – paragraph 4 a (new)**

4a. The Conference of Presidents shall be responsible for organising structured consultation with European civil society on major topics. This may include the organisation of public debates, open to participation by interested citizens, on subjects of general European interest. The Bureau shall appoint a Vice-President responsible for the implementation of such consultations, who shall report back to the Conference of Presidents.

Amendment 4**Parliament's Rules of Procedure
Rule 28 – paragraph 2**

2. Any Member may ask questions related to the work of the Bureau, the Conference of Presidents and the Quaestors. Such questions shall be submitted to the President in writing and published *in the Bulletin of Parliament* within thirty days of tabling, together with the answers given.

2. Any Member may ask questions related to the work of the Bureau, the Conference of Presidents and the Quaestors. Such questions shall be submitted to the President in writing, **notified to Members** and published **on Parliament's website** within thirty days of tabling, together with the answers given.

Amendment 5**Parliament's Rules of Procedure
Rule 30 a (new)****Rule 30a****Intergroups**

1. Individual Members may form Intergroups or other unofficial groupings of Members, to hold informal exchanges of views on specific issues across different political groups, drawing on members of different parliamentary committees, and to promote contact between Members and civil society.

2. Such groupings may not engage in any activities which might result in confusion with the official activities of Parliament or of its bodies. Provided that the conditions laid down in rules governing their establishment adopted by the Bureau are respected, political groups may facilitate their activities by providing them with logistical support. Such groupings shall declare any external support in accordance with Annex I.

Amendment 6**Parliament's Rules of Procedure
Rule 36 – paragraph 1**

1. Without prejudice to Rule 40, the committee responsible shall verify the financial compatibility of any Commission proposal, or any other document of a legislative nature, with the **Financial Perspective**.

1. Without prejudice to Rule 40, the committee responsible shall verify the financial compatibility of any Commission proposal, or any other document of a legislative nature, with the **multiannual financial framework**.

Wednesday 6 May 2009

PRESENT TEXT

AMENDMENT

(Horizontal Amendment: the words 'Financial Perspective' shall be replaced throughout the entire text of the Rules of Procedure by the words 'multiannual financial framework'.)

Amendment 7

Parliament's Rules of Procedure

Rule 39 – paragraph 1

1. Parliament may request the Commission, pursuant to Article 192, second paragraph, of the EC Treaty, to submit to it any appropriate proposal for the adoption of a new act or the amendment of an existing act, by adopting a resolution on the basis of an own-initiative report from the committee responsible. The resolution shall be adopted by a majority of the component Members of Parliament. Parliament may, at the same time, fix a deadline for the submission of such a proposal.

1. Parliament may request the Commission, pursuant to Article 192, second paragraph, of the EC Treaty, to submit to it any appropriate proposal for the adoption of a new act or the amendment of an existing act, by adopting a resolution on the basis of an own-initiative report from the committee responsible. The resolution shall be adopted by a majority of the component Members of Parliament **in the final vote**. Parliament may, at the same time, fix a deadline for the submission of such a proposal.

Amendment 8

Parliament's Rules of Procedure

Rule 45 – paragraph 2

2. Motions for resolutions contained in own-initiative reports shall be examined by Parliament pursuant to the short presentation procedure set out in Rule 131a. Amendments to such motions for resolutions shall **not** be admissible for consideration in plenary **unless** tabled by the rapporteur to take account of new information, **but** alternative motions for resolutions **may be tabled** in accordance with Rule 151(4). This paragraph shall not apply where the subject of the report qualifies for a key debate in plenary, where the report is drawn up pursuant to the right of initiative referred to in Rule 38a or 39, or where the report can be considered a strategic report according to the criteria set out by the Conference of Presidents.

2. Motions for resolutions contained in own-initiative reports shall be examined by Parliament pursuant to the short presentation procedure set out in Rule 131a. Amendments to such motions for resolutions shall **only** be admissible for consideration in plenary **if** tabled by the rapporteur to take account of new information **or by at least one-tenth of the Members of Parliament. Political groups may table** alternative motions for resolutions in accordance with Rule 151(4). This paragraph shall not apply where the subject of the report qualifies for a key debate in plenary, where the report is drawn up pursuant to the right of initiative referred to in Rule 38a or 39, or where the report can be considered a strategic report according to the criteria set out by the Conference of Presidents.

Amendment 9

Parliament's Rules of Procedure

Rule 47 – indent 3

— the chairs, rapporteur and rapporteurs for opinions concerned shall **endeavour to** jointly identify areas of the text falling within their exclusive or joint competences and agree on the precise arrangements for their cooperation;

— the chairs, rapporteur and rapporteurs for opinions concerned shall jointly identify areas of the text falling within their exclusive or joint competences and agree on the precise arrangements for their cooperation. **In the event of disagreement about the delimitation of competences the matter shall be submitted, at the request of one of the committees involved, to the Conference of Presidents, which may decide on the question of the respective competences or decide that the procedure with joint committee meetings pursuant to Rule 47a is to apply; the second and third sentences of Rule 179(2) shall apply mutatis mutandis;**

Wednesday 6 May 2009

PRESENT TEXT

AMENDMENT

Amendment 10
Parliament's Rules of Procedure
Rule 47 – indent 4

— the committee responsible shall accept without a vote Amendments from an associated committee where they concern matters which *the chair of the committee responsible considers, on the basis of Annex VI, after consulting the chair of the associated committee, to fall under the exclusive competence of the associated committee and which do not contradict other elements of the report. The chair of the committee responsible shall take account of any agreement reached under the third indent;*

— the committee responsible shall accept without a vote Amendments from an associated committee where they concern matters which *fall within the exclusive competence of the associated committee. If Amendments on matters which fall within the joint competence of the committee responsible and an associated committee are rejected by the former, the latter may table those Amendments directly to Parliament;*

Amendment 11
Parliament's Rules of Procedure
Rule 47 a (new)

Rule 47a

Procedure with joint committee meetings

Where the conditions set out in Rule 46(1) and Rule 47 are satisfied, the Conference of Presidents may, if it is satisfied that the matter is of major importance, decide that a procedure with joint meetings of committees and a joint vote is to be applied. In that event, the respective rapporteurs shall draw up a single draft report, which shall be examined and voted on by the committees involved at joint meetings held under the joint chairmanship of the committee chairs concerned. The committees involved may set up inter-committee working groups to prepare the joint meetings and votes.

Amendment 12
Parliament's Rules of Procedure
Rule 51 – paragraph 2 – subparagraph 2

The *consultation procedure* is concluded if the draft legislative resolution is adopted. If Parliament does not adopt the legislative resolution, the proposal shall be referred back to the committee responsible.

The *first reading* is concluded if the draft legislative resolution is adopted. If Parliament does not adopt the legislative resolution, the proposal shall be referred back to the committee responsible.

Amendment 13
Parliament's Rules of Procedure
Rule 51 – paragraph 3

3. The text of the proposal as approved by Parliament and the accompanying resolution shall be forwarded to the Council and Commission by the President as Parliament's **opinion**.

3. The text of the proposal as approved by Parliament and the accompanying resolution shall be forwarded to the Council and Commission by the President as Parliament's **position**.

(Horizontal amendment: in all provisions relating to the codecision procedure, the words 'Parliament's opinion' shall be replaced throughout the entire text of the Rules of Procedure by 'Parliament's position'.)

Wednesday 6 May 2009

PRESENT TEXT

AMENDMENT

Amendment 14**Parliament's Rules of Procedure
Rule 52 – paragraph 1**

1. If a Commission proposal fails to secure a majority of the votes cast, the President shall, before Parliament votes on the draft legislative resolution, request the Commission to withdraw the proposal.

1. If a Commission proposal fails to secure a majority of the votes cast **or if a motion for its rejection, which may be tabled by the committee responsible or by at least forty Members, has been adopted**, the President shall, before Parliament votes on the draft legislative resolution, request the Commission to withdraw the proposal.

Amendment 15**Parliament's Rules of Procedure
Rule 52 – paragraph 2**

2. If the Commission does so, the President shall **hold** the **consultation** procedure **on the proposal to be superfluous** and shall inform the Council accordingly.

2. If the Commission does so, the President shall **declare** the procedure **closed** and shall inform the Council accordingly.

Amendment 16**Parliament's Rules of Procedure
Rule 52 – paragraph 3**

3. If the Commission does not withdraw its proposal, Parliament shall refer the matter back to the committee responsible without voting on the draft legislative resolution.

3. If the Commission does not withdraw its proposal, Parliament shall refer the matter back to the committee responsible without voting on the draft legislative resolution, **unless Parliament, on a proposal of the chair or rapporteur of the committee responsible or of a political group or at least forty Members, proceeds to vote on the draft legislative resolution.**

In **this case**, the committee responsible shall, orally or in writing, report back to Parliament within a period decided by Parliament which may not exceed two months.

In **the event of referral back**, the committee responsible shall, orally or in writing, report back to Parliament within a period decided by Parliament which may not exceed two months.

Amendment 59**Parliament's Rules of Procedure
Rule 65 a (new) (to be introduced under Chapter 6: Conclusion of the Legislative Procedure)****Rule 65a****Interinstitutional negotiations in legislative procedures**

1. **Negotiations with the other institutions aimed at reaching an agreement in the course of a legislative procedure shall be conducted having regard to the Code of Conduct for negotiating in the context of codecision procedures (Annex XVIe).**

2. **Before entering into such negotiations, the committee responsible should, in principle, take a decision by a majority of its members and adopt a mandate, orientations or priorities.**

Wednesday 6 May 2009

PRESENT TEXT

AMENDMENT

3. *If the negotiations lead to a compromise with the Council following the adoption of the report by the committee, the committee shall in any case be reconsulted before the vote in plenary.*

Amendment 18
Parliament's Rules of Procedure
Rule 66

1. Where, pursuant to Article 251(2) of the EC Treaty, the Council has informed Parliament that it has approved **its amendments, but not otherwise amended the Commission proposal, or neither institution has amended the Commission proposal**, the President shall announce in Parliament that the proposal has been **finally** adopted.

Where, pursuant to Article 251(2) of the EC Treaty, the Council has informed Parliament that it has approved **Parliament's position**, the President, **subject to finalisation in accordance with Rule 172a**, shall announce in Parliament that the proposal has been adopted **in the wording which corresponds to the position of Parliament**.

2. *Before making this announcement, the President shall verify that any technical adaptations made by the Council to the proposal do not affect the substance. In case of doubt, he shall consult the committee responsible. If any changes made are considered to be substantive, the President shall inform the Council that Parliament will proceed to a second reading as soon as the conditions laid down in Rule 57 are fulfilled.*

3. *After making the announcement referred to in paragraph 1, the President shall, with the President of the Council, sign the proposed act and arrange for its publication in the Official Journal of the European Union, in accordance with Rule 68.*

Amendment 19
Parliament's Rules of Procedure
Rule 68 – title

Signature of adopted acts

Requirements for the drafting of legislative acts

Amendment 20
Parliament's Rules of Procedure
Rule 68 – paragraph 1

1. *The text of acts adopted jointly by Parliament and the Council shall be signed by the President and by the Secretary-General, once it has been verified that all the procedures have been duly completed.*

deleted

Amendment 21
Parliament's Rules of Procedure
Rule 68 – paragraph 7

7. *The acts referred to above shall be published in the Official Journal of the European Union by the Secretaries-General of Parliament and the Council.*

deleted

Wednesday 6 May 2009

PRESENT TEXT

AMENDMENT

Amendment 22

Parliament's Rules of Procedure

Rule 68 a (new) (to be introduced in Chapter 6: Conclusion of the Legislative Procedure)

Rule 68a

Signature of adopted acts

After finalisation of the text adopted in accordance with Rule 172a and once it has been verified that all the procedures have been duly completed, acts adopted in accordance with the procedure laid down in Article 251 of the EC Treaty shall be signed by the President and the Secretary-General and shall be published in the Official Journal of the European Union by the Secretaries-General of the Parliament and of the Council.

Amendment 68

Parliament's Rules of Procedure

Rule 80 a – paragraph 3 – subparagraph 3

However, *amendments to the parts which have remained unchanged may be admitted by way of exception and on a case-by-case basis by the chair of the above committee if he or she considers that this is necessary for pressing reasons relating to the internal logic of the text or because the amendments are inextricably linked to other admissible amendments. Such reasons must be stated in a written justification to the amendments.*

However, *if in accordance with point 8 of the Interinstitutional Agreement the committee responsible intends also to submit amendments to the codified parts of the Commission proposal, it shall immediately notify its intention to the Council and to the Commission, and the latter should inform the committee, prior to the vote pursuant to Rule 50, of its position on the amendments and whether or not it intends to withdraw the recast proposal.*

Amendment 23

Parliament's Rules of Procedure

Rule 83 – paragraph 1

1. When it is intended to open negotiations on the conclusion, renewal or amendment of an international agreement, including agreements in specific areas such as monetary affairs or trade, the committee responsible **shall ensure that Parliament is fully informed by the Commission about its** recommendations for a negotiating mandate, if necessary on a confidential basis.

1. When it is intended to open negotiations on the conclusion, renewal or amendment of an international agreement, including agreements in specific areas such as monetary affairs or trade, the committee responsible **may decide to draw up a report or otherwise monitor the procedure and inform the Conference of Committee Chairs of that decision. Where appropriate, other committees may be asked for an opinion pursuant to Rule 46(1). Rules 179(2), 47 or 47a shall apply where appropriate.**

The chairs and rapporteurs of the committee responsible and, as the case may be, of the associated committees shall jointly take appropriate action to ensure that the Commission provides Parliament with full information about the recommendations for a negotiating mandate, if necessary on a confidential basis, as well as with the information referred to in paragraphs 3 and 4.

Wednesday 6 May 2009

PRESENT TEXT

AMENDMENT

Amendment 24**Parliament's Rules of Procedure
Rule 83 – paragraph 6 a (new)**

6a. *Before the vote on the assent is taken, the committee responsible, a political group or at least one-tenth of the Members may propose that Parliament seek an opinion from the Court of Justice on the compatibility of an international agreement with the Treaties. If Parliament approves such a proposal, the vote on the assent shall be adjourned until the Court has delivered its opinion.*

Amendment 25**Parliament's Rules of Procedure
Rule 97 – paragraph 3**

3. Parliament shall establish a register of Parliament documents. Legislative documents and other documents **as indicated in an Annex to these Rules** shall, in accordance with Regulation (EC) No 1049/2001, be made directly accessible through the register. References for other Parliament documents shall as far as possible be included in the register.

Categories of documents which are directly accessible shall be set out in a list adopted by **Parliament and annexed to these Rules**. This list shall not restrict the right of access to documents not falling under the categories listed.

Parliament documents which are not directly accessible through the register shall be made available on written application.

The Bureau may adopt rules, in conformity with Regulation (EC) No 1049/2001, laying down arrangements for access which shall be published in the *Official Journal of the European Union*.

3. Parliament shall establish a register of Parliament documents. Legislative documents and **certain other categories of documents** shall, in accordance with Regulation (EC) No 1049/2001, be made directly accessible through the register. References for other Parliament documents shall as far as possible be included in the register.

Categories of documents which are directly accessible shall be set out in a list adopted by **the Bureau and published on Parliament's website**. This list shall not restrict the right of access to documents not falling under the categories listed; **those documents** shall be made available on written application.

The Bureau may adopt rules, in conformity with Regulation (EC) No 1049/2001, laying down arrangements for access which shall be published in the *Official Journal of the European Union*.

(Annex XV is deleted)

Amendment 26**Parliament's Rules of Procedure
Rule 103 – paragraph 1**

1. Members of the Commission, Council and European Council may at any time ask the President for permission to make a statement. The President shall decide when the statement may be made and whether it is to be followed by a full debate or by thirty minutes of brief and concise questions from Members.

1. Members of the Commission, Council and European Council may at any time ask the President **of Parliament** for permission to make a statement. **The President of the European Council shall make a statement after every meeting thereof.** The President **of Parliament** shall decide when the statement may be made and whether it is to be followed by a full debate or by thirty minutes of brief and concise questions from Members.

Wednesday 6 May 2009

PRESENT TEXT

AMENDMENT

Amendment 60**Parliament's Rules of Procedure
Rule 116 – paragraph 1**

1. Up to five Members may submit a written declaration of not more than 200 words on a matter **falling** within the **sphere of activities** of the European Union. Written declarations shall be printed in the official languages and distributed. They shall be included with the names of the signatories in a register. This register shall be public and shall be maintained outside the entrance to the Chamber during part-sessions and between part-sessions in an appropriate location to be determined by the College of Quaestors.

1. Up to five Members may submit a written declaration of not more than 200 words on a matter within the **competences** of the European Union **and which does not cover issues that are the subject of an ongoing current legislative process. Authorisation shall be given by the President on a case-by-case basis.** Written declarations shall be printed in the official languages and distributed. They shall be included with the names of the signatories in a register. This register shall be public and shall be maintained outside the entrance to the Chamber during part-sessions and between part-sessions in an appropriate location to be determined by the College of Quaestors.

Amendment 27**Parliament's Rules of Procedure
Rule 116 – paragraph 3**

3. Where a declaration is signed by the majority of Parliament's component Members, the President shall notify Parliament accordingly and publish the names of the signatories in the minutes.

3. Where a declaration is signed by the majority of Parliament's component Members, the President shall notify Parliament accordingly and publish the names of the signatories in the minutes **and the declaration as a text adopted.**

Amendment 28**Parliament's Rules of Procedure
Rule 116 – paragraph 4**

4. **Such a declaration shall, at the end of the part-session, be forwarded to the institutions named therein** together with the names of the signatories. **It shall be included in the minutes of the sitting at which it is announced. Publication in the minutes shall close the procedure.**

4. **The procedure shall be closed by the transmission to the addressees, at the end of the part-session, of the declaration,** together with the names of the signatories.

Amendment 29**Parliament's Rules of Procedure
Rule 131 a**

At the request of the rapporteur or on a proposal of the Conference of Presidents, Parliament may also decide that an item not needing a full debate be dealt with by means of a short presentation in plenary by the rapporteur. In that event, the Commission shall have the opportunity to **intervene and any Member shall have the right to react by handing in an additional written statement pursuant to Rule 142(7).**

At the request of the rapporteur or on a proposal of the Conference of Presidents, Parliament may also decide that an item not needing a full debate be dealt with by means of a short presentation in plenary by the rapporteur. In that event, the Commission shall have the opportunity to **respond, followed by up to ten minutes of debate in which the President may give the floor, for up to one minute each, to Members who catch his eye.**

Wednesday 6 May 2009

PRESENT TEXT

AMENDMENT

Amendments 30 and 66
Parliament's Rules of Procedure
Rule 142

Allocation of speaking time

1. The Conference of Presidents may propose to Parliament that speaking time be allocated for a particular debate. Parliament shall decide on this proposal without debate.

2. Speaking time shall be allocated in accordance with the following criteria:

- (a) a first fraction of speaking time shall be divided equally among all the political groups;
- (b) a further fraction shall be divided among the political groups in proportion to the total number of their members;
- (c) the non-attached Members shall be allocated an overall speaking time based on the fractions allocated to each political group under subparagraphs (a) and (b).

3. Where a total speaking time is allocated for several items on the agenda, the political groups shall inform the President of the fraction of their speaking time to be used for each individual item. The President shall ensure that these speaking times are respected.

Allocation of speaking time *and list of speakers*

1. The Conference of Presidents may propose to Parliament that speaking time be allocated for a particular debate. Parliament shall decide on this proposal without debate.

1a. Members may not speak unless called upon to do so by the President. Members shall speak from their places and shall address the President. If speakers depart from the subject, the President shall call them to order.

1b. The President may draw up, for the first part of a particular debate, a list of speakers that includes one or more rounds of speakers from each political group wishing to speak, in the order of their size, and one non-attached Member.

2. Speaking time **for this part of a debate** shall be allocated in accordance with the following criteria:

- (a) a first fraction of speaking time shall be divided equally among all the political groups;
- (b) a further fraction shall be divided among the political groups in proportion to the total number of their members;
- (c) the non-attached Members shall be allocated an overall speaking time based on the fractions allocated to each political group under subparagraphs (a) and (b).

3. Where a total speaking time is allocated for several items on the agenda, the political groups shall inform the President of the fraction of their speaking time to be used for each individual item. The President shall ensure that these speaking times are respected.

3a. The remaining part of the time for a debate shall not be specifically allocated in advance. Instead, the President shall call on Members to speak, as a general rule for no more than one minute. The President shall ensure – as far as possible – that speakers holding different political views and from different Member States are heard in turn.

3b. On request priority may be given to the chair or rapporteur of the committee responsible and to the chairs of political groups who wish to speak on their behalf, or to speakers deputising for them.

Wednesday 6 May 2009

PRESENT TEXT

AMENDMENT

4. No Member may speak for more than one minute on any of the following: the minutes, procedural motions, amendments to the final draft agenda or to the agenda.

5. The Commission and Council shall be heard in the debate on a report as a rule immediately after its presentation by the rapporteur. The Commission, the Council and the rapporteur may be heard again, in particular to respond to the statements made by Members.

6. Without prejudice to Article 197 of the EC Treaty, the President shall seek to reach an understanding with the Commission and Council on appropriate allocation of speaking time for them.

7. Members who have not spoken in a debate may, at most once per part-session, hand in a written statement of not more than 200 words that shall be appended to the verbatim report of the debate.

3c. The President may give the floor to Members who indicate, by raising a blue card, their wish to put to another Member, during that Member's speech, a question of no longer than half a minute's duration, where the speaker agrees and where the President is satisfied that this will not lead to a disruption of the debate.

4. No Member may speak for more than one minute on any of the following: the minutes **of the sitting**, procedural motions, amendments to the final draft agenda or to the agenda.

4a. Without prejudice to his other disciplinary powers, the President may cause to be deleted from the verbatim reports of debates of sittings the speeches of Members who have not been called upon to speak or who continue to speak beyond the time allotted to them.

5. The Commission and Council shall be heard in the debate on a report as a rule immediately after its presentation by the rapporteur. The Commission, the Council and the rapporteur may be heard again, in particular to respond to the statements made by Members.

6. Without prejudice to Article 197 of the EC Treaty, the President shall seek to reach an understanding with the Commission and Council on appropriate allocation of speaking time for them.

7. Members who have not spoken in a debate may, at most once per part-session, hand in a written statement of not more than 200 words that shall be appended to the verbatim report of the debate.

(Rules 141 and 143 fall)

Amendment 32

Parliament's Rules of Procedure Rule 150 – paragraph 6 – subparagraph 2 a (new)

Where fewer than one hundred Members are present, Parliament may not decide otherwise if at least one tenth of the Members present object.

Amendment 33

Parliament's Rules of Procedure Rule 156

When **over** fifty amendments have been tabled to a report for consideration in Parliament, the President may, after consulting its chair, request the committee responsible to meet to consider **the** amendments. Any amendment not receiving favourable votes at this stage from at least one-tenth of the members of the committee shall not be put to the vote in Parliament.

When **more than** fifty amendments **and requests for a split or separate vote** have been tabled to a report for consideration in Parliament, the President may, after consulting its chair, request the committee responsible to meet to consider **those** amendments **or requests**. Any amendment **or request for a split or separate vote** not receiving favourable votes at this stage from at least one-tenth of the members of the committee shall not be put to the vote in Parliament.

Wednesday 6 May 2009

PRESENT TEXT

AMENDMENT

Amendment 34**Parliament's Rules of Procedure
Rule 157 – paragraph 1**

1. Where the text to be put to the vote contains two or more provisions or references to two or more points or lends itself to division into two or more parts **each with** a distinct **logical** meaning **and** normative value, a split vote may be requested by a political group or at least forty Members.

1. Where the text to be put to the vote contains two or more provisions or references to two or more points or lends itself to division into two or more parts **having** a distinct meaning **and/or** normative value, a split vote may be requested by a political group or at least forty Members.

Amendment 35**Parliament's Rules of Procedure
Rule 159 a (new)****Rule 159a****Final vote**

When voting on any legislative proposal, whether by way of a single and/or final vote, Parliament shall vote by roll call using the electronic voting system.

Amendment 36**Parliament's Rules of Procedure
Rule 160 – paragraph 1**

1. In addition to the cases provided for under Rules 99(4) **and** 100(5), the vote shall be taken by roll call if so requested in writing by a political group or at least forty Members the evening before the vote unless the President sets a different deadline.

1. In addition to the cases provided for under Rules 99(4), 100(5) **and 159a**, the vote shall be taken by roll call if so requested in writing by a political group or at least forty Members the evening before the vote unless the President sets a different deadline.

Amendment 37**Parliament's Rules of Procedure
Rule 160 – paragraph 2 – subparagraph 1**

2. The roll shall be called in alphabetical order, beginning with the name of a Member drawn by lot. The President shall be the last to be called to vote.

2. The **roll call vote shall be taken using the electronic voting system. Where the latter cannot be used for technical reasons, the** roll shall be called in alphabetical order, beginning with the name of a Member drawn by lot. The President shall be the last to be called to vote.

Amendment 38**Parliament's Rules of Procedure
Rule 162 – paragraph 4 – subparagraph 1**

4. Between two and **six** Members chosen by lot shall count the votes cast in a secret ballot.

4. Between two and **eight** Members chosen by lot shall count the votes cast in a secret ballot, **unless an electronic vote is taken.**

Amendment 39**Parliament's Rules of Procedure
Rule 172**

1. The minutes of each sitting, **containing** the decisions of Parliament and the names of speakers, shall be distributed at least half an hour before the beginning of the afternoon period of the next sitting.

1. The minutes of each sitting, **detailing the proceedings and** the decisions of Parliament and the names of speakers, shall be distributed at least half an hour before the beginning of the afternoon period of the next sitting.

Wednesday 6 May 2009

PRESENT TEXT

*In the context of legislative proceedings, any amendments adopted by Parliament are also deemed to be decisions within the meaning of this **paragraph**, even if the relevant Commission proposal or the Council's **common** position is ultimately rejected, pursuant to Rule 52(1) or Rule 61(3) respectively.*

The texts adopted by Parliament shall be distributed separately. Where legislative texts adopted by Parliament contain amendments, they shall be published in a consolidated version.

2. At the beginning of the afternoon period of each sitting the President shall place before Parliament, for its approval, the minutes of the previous sitting.

3. If any objections are raised to the minutes Parliament shall, if necessary, decide whether the changes requested should be considered. No Member may speak on the **minutes** for more than one minute.

4. The minutes shall be signed by the President and the Secretary-General and preserved in the records of Parliament. They shall be published **within one month** in the *Official Journal of the European Union*.

AMENDMENT

*In the context of legislative proceedings, any amendments adopted by Parliament are also deemed to be decisions within the meaning of this **Rule**, even if the relevant Commission proposal or the Council's position is ultimately rejected, pursuant to Rule 52(1) or Rule 61(3) respectively.*

2. At the beginning of the afternoon period of each sitting the President shall place before Parliament, for its approval, the minutes of the previous sitting.

3. If any objections are raised to the minutes Parliament shall, if necessary, decide whether the changes requested should be considered. No Member may speak on the **subject** for more than one minute.

4. The minutes shall be signed by the President and the Secretary-General and preserved in the records of Parliament. They shall be published in the *Official Journal of the European Union*.

Amendment 40

Parliament's Rules of Procedure
Rule 172 a (new)

Rule 172a

Texts adopted

1. *Texts adopted by Parliament shall be published immediately after the vote. They shall be placed before Parliament in conjunction with the minutes of the relevant sitting and be preserved in the records of Parliament.*

2. *Texts adopted by Parliament shall be subject to legal-linguistic finalisation under the responsibility of the President. Where such texts are adopted on the basis of an agreement reached between Parliament and the Council, such finalisation shall be carried out by the two institutions acting in close cooperation and by mutual agreement.*

3. *The procedure laid down in Rule 204a shall apply where, in order to ensure the coherence and the quality of the text in accordance with the will expressed by Parliament, adaptations are required which go beyond corrections of typographical errors or corrections necessary to ensure the concordance of all language versions as well as their linguistic correctness and terminological consistency.*

4. *The texts adopted by Parliament under the procedure laid down in Article 251 of the EC Treaty shall take the form of a consolidated text. Where Parliament's vote was not based on an agreement with the Council, the consolidated text shall identify any amendments adopted.*

5. *After finalisation, the texts adopted shall be signed by the President and the Secretary-General and shall be published in the Official Journal.*

Wednesday 6 May 2009

PRESENT TEXT

AMENDMENT

Amendment 41**Parliament's Rules of Procedure
Rule 175**Setting up of **temporary** committees

On a proposal from the Conference of Presidents, Parliament may at any time set up **temporary** committees, whose powers, composition and term of office shall be defined at the same time as the decision to set them up is taken; their term of office may not exceed twelve months, except where Parliament extends that term on its expiry.

*As the powers, composition and term of office of **temporary** committees are decided at the same time as these committees are set up, Parliament cannot subsequently decide to alter their powers either by increasing or reducing them.*

Setting up of **special** committees

On a proposal from the Conference of Presidents, Parliament may at any time set up **special** committees, whose powers, composition and term of office shall be defined at the same time as the decision to set them up is taken; their term of office may not exceed twelve months, except where Parliament extends that term on its expiry.

*As the powers, composition and term of office of **special** committees are decided at the same time as these committees are set up, Parliament cannot subsequently decide to alter their powers either by increasing or reducing them.*

Amendment 42**Parliament's Rules of Procedure
Rule 177 – paragraph 1 – interpretation (new)**

The proportionality among political groups must not depart from the nearest appropriate whole number. If a group decides not to take seats on a committee, the seats in question shall remain vacant and the committee shall be reduced in size by the corresponding number. Exchange of seats between political groups may not be allowed.

Amendment 43**Parliament's Rules of Procedure
Rule 179 – paragraph 2**

2. Should a standing committee declare itself not competent to consider a question, or should a conflict arise over the competence of two or more standing committees, the question of competence shall be referred to the Conference of Presidents within four working weeks of the announcement in Parliament of referral to committee. The Conference of **Committee Chairs** shall **be notified and may make** a recommendation **to** the Conference of **Presidents**. The Conference of Presidents **shall** take a decision within **six working weeks of the referral of the question of competence. Otherwise the question shall be included for a decision on the agenda for the subsequent part-session.**

2. Should a standing committee declare itself not competent to consider a question, or should a conflict arise over the competence of two or more standing committees, the question of competence shall be referred to the Conference of Presidents within four working weeks of the announcement in Parliament of referral to committee. The Conference of **Presidents** shall **take a decision within six weeks on the basis of** a recommendation **from** the Conference of **Committee Chairs, or, if no such recommendation is forthcoming, from its chair. If** the Conference of Presidents **fails** to take a decision within **that period**, the **recommendation** shall be **deemed to have been approved.**

Amendment 44**Parliament's Rules of Procedure
Rule 179 – paragraph 2 – interpretation (new)**

The committee chairs may enter into agreements with other committee chairs concerning the allocation of an item to a particular committee, subject, where necessary, to the authorisation of a procedure with associated committees under Rule 47.

Wednesday 6 May 2009

PRESENT TEXT

AMENDMENT

Amendment 45
Parliament's Rules of Procedure
Rule 182 a (new)

Rule 182a

Committee coordinators and shadow rapporteurs

1. *The political groups may designate one of their members as coordinator.*
2. *The committee coordinators shall where necessary be convened by the chair to prepare decisions to be taken by the committee, in particular decisions on procedure and the appointment of rapporteurs. The committee may delegate the power to take certain decisions to the coordinators, with the exception of decisions concerning the adoption of reports, opinions or amendments. The vice-chairs may be invited to participate in the meetings of committee coordinators in a consultative role. The coordinators shall endeavour to find consensus. When consensus cannot be found, they may act only by a majority that clearly represents a large majority of the committee, having regard to the respective strengths of the various groups.*
3. *The political groups may for each report designate a shadow rapporteur to follow the progress of the relevant report and find compromises within the committee on behalf of the group. Their names shall be communicated to the chair. The committee, on a proposal from the coordinators, may in particular decide to involve the shadow rapporteurs in seeking an agreement with the Council in codecision procedures.*

Amendment 46
Parliament's Rules of Procedure
Rule 184

The minutes of each meeting of a committee shall be distributed to all its members and submitted to the committee for its approval ***at its next meeting***.

The minutes of each meeting of a committee shall be distributed to all its members and submitted to the committee for its approval.

Amendment 47
Parliament's Rules of Procedure
Rule 186

Rules 11, 12, 13, 16, 17, 140, 141, 143(1), 146, 148, 150 to 153, 155, 157(1), 158, 159, 161, 162, 164 to 167, 170 and 171 shall apply mutatis mutandis to committee meetings.

Rules 11, 12, 13, 16, 17, **34 to 41**, 140, 141, 143(1), 146, 148, 150 to 153, 155, 157(1), 158, 159, 161, 162, 164 to 167, 170 and 171 shall apply mutatis mutandis to committee meetings.

Amendment 48
Parliament's Rules of Procedure
Rule 188 – paragraph 6 a (new)

- 6a. *The chair of a delegation shall be given an opportunity to be heard by a committee when a point is on the agenda which touches on the field of responsibility of the delegation. The same shall apply at meetings of a delegation to the chair or rapporteur of that committee.*

Wednesday 6 May 2009

PRESENT TEXT

AMENDMENT

Amendment 49**Parliament's Rules of Procedure
Rule 192 – paragraph 1 a (new)**

1a. Where the report deals with, in particular, the application or interpretation of the law of the European Union, or proposed changes to existing law, the committee responsible for the subject-matter shall be associated in accordance with Rule 46(1) and the first and second indents of Rule 47. The committee responsible shall accept without a vote suggestions for parts of the motion for a resolution received from the committee responsible for the subject-matter which deal with the application or interpretation of the law of the European Union or changes to existing law. If the committee responsible does not accept such suggestions, the associated committee may table them directly to Parliament.

Amendment 50**Parliament's Rules of Procedure
Rule 204 – point c a (new)**

(ca) guidelines and codes of conduct adopted by the relevant bodies of Parliament (Annexes XVIa, XVIIb and XVIe).

Tuesday 5 May 2009

III

(Preparatory acts)

EUROPEAN PARLIAMENT

Marketing standards for poultrymeat *

P6_TA(2009)0336

European Parliament legislative resolution of 5 May 2009 on the proposal for a Council regulation amending Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets as regards the marketing standards for poultrymeat (COM(2008)0336 – C6-0247/2008 – 2008/0108(CNS))

(2010/C 212 E/27)

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2008)0336),
 - having regard to Article 37 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0247/2008),
 - having regard to Rule 51 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 the Environment, Public Health and Food Safety (A6-0223/2009),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and the Commission.

Tuesday 5 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 1**Proposal for a regulation – amending act
Recital 5**

(5) *The exclusive reference to cold treatment in the definition of 'poultrymeat' is too restrictive in view of technological developments. That definition should therefore be adapted.* *deleted*

Amendment 2**Proposal for a regulation – amending act
Recital 6 a (new)**

(6a) *Compulsory indication of the origin or source of the meat enables consumers to make a properly informed choice.*

Amendment 3**Proposal for a regulation – amending act
Recital 6 b (new)**

(6b) *So as to provide optimal information to consumers, indicating the date of slaughter of the bird should be mandatory where the labelling of all poultrymeat products is concerned.*

Amendment 4**Proposal for a regulation – amending act
Annex – point 2**

Regulation (EC) No 1234/2007
Annex XIV – part B – part II – point 1

1. 'poultrymeat' means *the edible parts of farmed birds falling within CN code 0105.*

1. 'poultrymeat' means *poultrymeat suitable for human consumption, which has not undergone any treatment other than cold treatment.*

Amendment 5**Proposal for a regulation – amending act
Annex – point 2**

Regulation (EC) No 1234/2007
Annex XIV – part B – part II – point 2

2. 'fresh poultrymeat' means poultrymeat which has not been stiffened at any time by the cooling process prior to being kept at a temperature not below -2°C and not higher than $+4^{\circ}\text{C}$. However, *Member States may lay down different temperature requirements for a short period for the cutting and storage of fresh poultrymeat performed in retail shops or in premises adjacent to sales points, where the cutting and storage are performed solely for the purpose of supplying the consumer directly on the spot.*

2. 'fresh poultrymeat' means poultrymeat which has not been stiffened at any time by the cooling process prior to being kept at a temperature not below -2°C and not higher than $+4^{\circ}\text{C}$. However, *fresh poultrymeat intended for the production of meat preparations may undergo a process of stiffening at temperatures below 2°C for a brief period: indicating the date of slaughter shall be mandatory on all poultrymeat products.*

Tuesday 5 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 6**Proposal for a regulation – amending act****Annex – point 3 a (new)**

Regulation (EC) No 1234/2007

Annex XIV– part B – part III a (new)

3a. The following is added:***‘IIIa. Compulsory information on the label******The name of the food in the labelling of any poultrymeat product shall include an indication of:***

- (a) any added ingredient of a different animal origin to the rest of the meat; and***
- (b) any added water making up more than 5 % of the weight of the product’***

Amendment 7**Proposal for a regulation – amending act****Annex – point 3 b (new)**

Regulation (EC) No 1234/2007

Annex XIV– part B – part III b (new)

3b. The following is added:***‘IIIb. Indication of price******The price per kilogram of the food shall be based solely on the drained net weight.’.***

Tuesday 5 May 2009

Mobilisation of the European Globalisation Adjustment Fund

P6_TA(2009)0339

European Parliament resolution of 5 May 2009 on the proposal for a decision of the European Parliament and of the Council on the mobilisation of the European Globalisation Adjustment Fund, in accordance with point 28 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (COM(2009)0150 – C6-0115/2009 – 2009/2033(ACI))

(2010/C 212 E/28)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2009)0150 – C6-0115/2009),
 - 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 ⁽¹⁾, and in particular point 28 thereof,
 - having regard to Regulation (EC) No 1927/2006 of the European Parliament and of the Council of 20 December 2006 on establishing the European Globalisation Adjustment Fund ⁽²⁾ (EGF Regulation),
 - having regard to the report of the Committee on Budgets and the opinion of the Committee on Employment and Social Affairs (A6-0266/2009),
- A. whereas the European Union has set up appropriate legislative and budgetary instruments to provide additional support to workers who suffer from the consequences of major structural changes in world trade patterns and to assist their reintegration into the labour market,
- B. whereas the Union's financial assistance to workers made redundant should be dynamic and made available as quickly and efficiently as possible, in accordance with the Joint Declaration of the European Parliament, the Council and the Commission adopted during the conciliation meeting on 17 July 2008, and having due regard for the provisions of the Interinstitutional Agreement of 17 May 2006 in respect of the adoption of decisions to mobilise the Fund,
- C. whereas Spain has requested assistance in respect of cases concerning redundancies in the automobile sector in the autonomous communities of Castilla y Leon and Aragon ⁽³⁾ and has fulfilled the eligibility criteria set up by the EGF Regulation,
- D. whereas Article 8(1) of the EGF Regulation provides that up to 0,35 % of the annual amount may be used to finance monitoring, information, administrative and technical support, audit, control and evaluation activities necessary to implement the EGF Regulation,
- E. whereas on the basis of that Article the Commission proposed to deploy the Fund in order to set up the EGF website providing information on the European Globalisation Adjustment Fund in all EU languages, supported by publications, audio-visual activities and by network for the exchange of best practices between Member States ⁽⁴⁾, which is in line with the will of the European Parliament to raise citizens' awareness of EU actions,

Tuesday 5 May 2009

1. Requests the institutions involved in the decision and implementation process to make the necessary efforts to accelerate the mobilisation of the Fund;
2. Recalls that the European Union should use all its means to tackle the consequences of the global economic and financial crisis; notes, in this respect, that the Fund can play a crucial role in the reintegration of the workers made redundant into the labour market;
3. Welcomes the Commission initiative to provide the citizens of the European Union with a transparent, user-friendly and up-to-date website;
4. Stresses that the mobilisation of the EGF in payment appropriations should not jeopardise the funding of the European Social Fund;
5. Approves the decision annexed to this resolution;
6. Instructs its President to sign the decision with the President of the Council and arrange for its publication in the Official Journal of the European Union;
7. Instructs its President to forward this resolution, including its annex, to the Council and Commission.

⁽¹⁾ OJ C 139, 14.6.2006, p. 1.

⁽²⁾ OJ L 406, 30.12.2006, p. 1.

⁽³⁾ EGF/2008/004 ES/Castilla y Leon and Aragon.

⁽⁴⁾ SEC(2008)2986.

ANNEX

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the mobilisation of the European Globalisation Adjustment Fund, in accordance with point 28 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

- having regard to the Treaty establishing the European Community,
- having regard to the Inter-institutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management ⁽¹⁾, and in particular point 28 thereof,
- having regard to Regulation (EC) No 1927/2006 of the European Parliament and of the Council of 20 December 2006 establishing the European Globalisation Adjustment Fund ⁽²⁾, and in particular Article 12(3) thereof,
- having regard to the proposal from the Commission,

⁽¹⁾ OJ C 139, 14.6.2006, p. 1.

⁽²⁾ OJ L 406, 30.12.2006, p. 1.

Tuesday 5 May 2009

Whereas:

- (1) The European Globalisation Adjustment Fund (the 'Fund') was established to provide additional support to redundant workers who suffer from the consequences of major structural changes in world trade patterns and to assist them with their reintegration into the labour market.
- (2) The Interinstitutional Agreement of 17 May 2006 allows the mobilisation of the Fund within the annual ceiling of EUR 500 million.
- (3) Spain submitted an application to mobilise the Fund, in respect of redundancies in the motor vehicle sector, on 29 December 2008. This application complies with the requirements for determining the financial contributions as laid down in Article 10 of Regulation (EC) No 1927/2006. The Commission therefore proposes to deploy an amount of EUR 2 694 300.
- (4) Furthermore, the Commission proposes to deploy an amount of EUR 690 000 from the Fund for technical assistance in accordance with Article 8 of Regulation (EC) No 1927/2006.
- (5) The Fund should therefore be mobilised in order to provide a financial contribution for the application submitted by Spain as well as to address the need for technical assistance,

HAVE DECIDED AS FOLLOWS:

Article 1

For the general budget of the European Union for the financial year 2009, the European Globalisation Adjustment Fund shall be mobilised to provide the sum of EUR 3 384 300 in commitment and payment appropriations.

Article 2

This Decision shall be published in the *Official Journal of the European Union*.

Done at Strasbourg,

For the European Parliament
The President

For the Council
The President

Tuesday 5 May 2009

Petrol vapour recovery during refuelling of motor vehicles *I**

P6_TA(2009)0341

European Parliament legislative resolution of 5 May 2009 on the proposal for a directive of the European Parliament and of the Council on Stage II petrol vapour recovery during refuelling of passenger cars at service stations (COM(2008)0812 – C6-0470/2008 – 2008/0229(COD))

(2010/C 212 E/29)

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0812),
 - having regard to Article 251(2) and Article 175 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0470/2008),
 - 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 (A6-0208/2009),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

P6_TC1-COD(2008)0229

Position of the European Parliament adopted at first reading on 5 May 2009 with a view to the adoption of Directive 2009/.../EC of the European Parliament and of the Council on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Directive 2009/126/EC.)

Tuesday 5 May 2009

Trade in seal products *I**

P6_TA(2009)0342

European Parliament legislative resolution of 5 May 2009 on the proposal for a regulation of the European Parliament and of the Council concerning trade in seals products (COM(2008)0469 – C6-0295/2008 – 2008/0160(COD))

(2010/C 212 E/30)

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0469),
- having regard to Article 251(2) and Articles 95 and 133 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0295/2008),
- having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
- having regard to its declaration on banning seal products in the European Union ⁽¹⁾,
- having regard to the undertaking given by the Council representative by letter of 24 April 2009 to adopt the proposal as amended, in accordance with the first indent of the second subparagraph of Article 251(2) of the EC Treaty,
- having regard to Rules 51 and 35 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 the Environment, Public Health and Food Safety and the Committee on Agriculture and Rural Development (A6-0118/2009),

1. Approves the Commission proposal as amended;
2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
3. Instructs its President to forward its position to the Council and Commission.

⁽¹⁾ OJ C 306 E, 15.12.2006, p. 194.

P6_TC1-COD(2008)0160**Position of the European Parliament adopted at first reading on 5 May 2009 with a view to the adoption of Regulation (EC) No .../2009 of the European Parliament and of the Council on trade in seal products**

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Regulation (EC) No 1007/2009.)

Tuesday 5 May 2009

Protection of animals used for scientific purposes *I**

P6_TA(2009)0343

European Parliament legislative resolution of 5 May 2009 on the proposal for a directive of the European Parliament and of the Council on the protection of animals used for scientific purposes (COM(2008)0543 – C6-0391/2008 – 2008/0211(COD))

(2010/C 212 E/31)

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0543),
- having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0391/2008),
- having regard to Rule 51 of its Rules of Procedure,
- having regard to the report of the Committee on Agriculture and Rural Development and the opinions of the Committee on the Environment, Public Health and Food Safety and the Committee on Industry, Research and Energy (A6-0240/2009),

1. Approves the Commission proposal as amended;
2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
3. Instructs its President to forward its position to the Council and the Commission.

P6_TC1-COD(2008)0211

Position of the European Parliament adopted at first reading on 5 May 2009 with a view to the adoption of Directive 2009/.../EC of the European Parliament and of the Council on the protection of animals used for scientific purposes

(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⁾,
- *After consulting* the Committee of the Regions ||,
- Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

⁽¹⁾ Opinion of 13 May 2009 (not yet published in the Official Journal).

⁽²⁾ Position of the European Parliament of 5 May 2009.

Tuesday 5 May 2009

Whereas:

- (1) Animal welfare is a Community value that is enshrined in the Protocol on the protection and welfare of animals annexed to the Treaty.
- (2) On 23 March 1998 the Council adopted Decision 1999/575/EC concerning the conclusion by the Community of the European Convention for the protection of vertebrate animals used for experimental and other scientific purposes ⁽¹⁾. By becoming a Party to that Convention, the Community acknowledged the importance of the protection and welfare of animals used for scientific purposes at international level.
- (3) On 24 November 1986 the Council adopted Directive 86/609/EEC ⁽²⁾ in order to eliminate disparities between laws, regulations and administrative provisions of the Member States regarding the protection of animals used for experimental and other scientific purposes. Since the adoption of that Directive, further disparities between Member States have emerged. Certain Member States have adopted national implementing measures that ensure a high level of protection of animals used for scientific purposes while others only apply the minimum requirements laid down in Directive 86/609/EEC. Accordingly, this Directive should provide for more detailed rules in order to reduce such disparities and to ensure a proper functioning of the internal market.
- (4) The European Parliament, in its report of 5 December 2002 on Directive 86/609/EEC, called for the Commission to come forward with a proposal for a revision of that Directive with more stringent and transparent measures in the area of animal experimentation.
- (5) New scientific knowledge is available on factors influencing animal welfare as well as the capacity of animals to sense and express pain, suffering, distress and lasting harm. It is therefore necessary to improve the welfare of animals used in scientific procedures by raising the minimum standards for the protection of such animals in line with the latest scientific developments.
- (6) It is *desirable* to include specific invertebrate species within the scope of this Directive, *where* there is scientific evidence of the potential ability of such species to experience pain, suffering, distress and lasting harm.
- (7) This Directive should also cover embryonic and foetal forms of vertebrate animals, *in cases where* there is scientific evidence showing that such forms in the last third of their development have an increased risk of experiencing pain, suffering and distress, which may also affect negatively their subsequent development. Scientific evidence has also shown that procedures on embryonic and foetal forms *of species of mammals* at an earlier stage of development could result in pain, suffering, distress or lasting harm, should the developmental forms be allowed to live beyond the first two thirds of their development.
- (8) **█ The use of live animals continues to be necessary to protect human health, animal health and the environment, *within current scientific limitations. However this Directive represents an important step towards achieving the goal of the full replacement of procedures on live animals for scientific purposes as soon as it is scientifically possible to do so. To that end, this Directive seeks to facilitate and promote the advancement of alternative methods and to ensure a high level of protection for animals used in procedures. This Directive should be reviewed regularly in light of evolving scientific and animal protection measures.***
- (9) ***In light of scientific progress, the use of animal experiments remains an important means of ensuring a very high standard of research into public health.***

⁽¹⁾ OJ L 222, 24.8.1999, p. 29.

⁽²⁾ OJ L 358, 18.12.1986, p. 1. █

Tuesday 5 May 2009

- (10) The care and use of live animals for scientific purposes is governed by internationally established principles of replacement, reduction and refinement. To ensure that the way in which animals are bred, cared for and used in procedures in the Community is in line with that of the other international and national standards outside the Community, the replacement, reduction and refinement should be considered systematically when implementing this Directive. **The Commission should ensure a high level of transparency in relation to the use of animals and in terms of reporting to the public on the implementation of animal protection measures and progress made towards replacing animal methods.**
- (11) Animals have an intrinsic value in themselves which must be respected. There are also ethical concerns of the general public as regards the use of animals in procedures. Therefore, the animals should always be treated as sentient creatures and their use in scientific procedures should be restricted to areas which advance science and **fundamental knowledge, since this may ultimately benefit e.g.** human or animal health, or the environment. **The use of animals in scientific procedures should therefore only be considered where a non-animal alternative is not available.** Use of animals for scientific procedures in other areas under Community competence should be prohibited.
- (12) The principles of replacement, reduction and refinement should be implemented through a strict hierarchy of the requirement to use alternative methods. Where no alternative method is recognised by Community legislation, numbers of animals may be reduced by resorting to other methods which are reasonably and practically available, and by implementing testing strategies, such as use of in vitro and other methods that would reduce and refine the use of animals.
- (13) **In accordance with the objectives of the Communication of 23 January 2006 from the Commission to the European Parliament and the Council 'Community Action Plan on the Protection and Welfare of Animals 2006 – 2010', the Commission should endeavour to promote the welfare of animals used for scientific purposes internationally, in particular by seeking promotion of the replacement, reduction and refinement of animal procedures through the World Organisation for Animal Health (OIE), and by seeking to add animal welfare standards to the criteria assessed in order to establish compliance with Good Laboratory Practice (GLP).**
- (14) The choice of methods and the species to be used have a direct impact on both the numbers of animals used and their welfare. The choice of methods should therefore ensure the selection of the method that is able to provide most adequate results and likely to cause the minimum pain, suffering or distress. Such selected methods should use the minimum number of animals that would provide reliable results and choose the species with the lowest degree of neurophysiological sensitivity that are optimal for the extrapolation into target species.
- (15) The methods selected should avoid, as far as possible, death as an end-point due to severe suffering caused by the approaching death. Where possible, it should be substituted by more humane end-points using clinical signs that determine the impending death thereby allowing the animal to be killed by a humane method without any further suffering.
- (16) The use of inappropriate methods for killing an animal can cause significant pain, distress and suffering to the animal. The level of competence of the person carrying out this operation is equally important. Animals should therefore be killed only by **a trained and** authorised person using a humane method that is considered appropriate to the species.
- (17) It is necessary to ensure that the use of animals in procedures does not pose a threat to biodiversity. Therefore, the use of endangered species in procedures should be limited to a strict minimum to cover essential biomedical reasons as well as research aimed at the preservation of those species.

Tuesday 5 May 2009

- (18) With current scientific knowledge the use of non-human primates in scientific procedures is still necessary in biomedical research. Due to their genetic proximity to human beings and to their highly developed social skills, the use of non-human primates in scientific procedures raises specific ethical and practical problems in terms of meeting their behavioural, environmental and social needs in a laboratory environment. Furthermore, the use of non-human primates is of the highest concern to the public. Therefore the use of non-human primates should only be allowed in those essential biomedical areas for the benefit of human beings for which no other replacement alternative methods are yet available **■**, or for the preservation of the respective non-human primate species. Fundamental research in some areas of the biomedical sciences can provide important new information relevant, **at some future stage**, to many life-threatening and debilitating human conditions. **■**
- (19) The use of great apes, as the closest species to human beings with the most advanced social and behavioural skills, should only be allowed in research aimed at the preservation of those species and where action in relation to a life-threatening, debilitating condition endangering human beings is warranted, and no other species or alternative method could suffice for the aims of the procedure. The Member State claiming such a need should provide the necessary information for the Commission to take a decision.
- (20) **■** In order to gradually end the capturing of animals from the wild for breeding purposes, **a thorough scientific study should be conducted as soon as possible on the feasibility of limiting the animals used to those from self-sustaining colonies**. Establishments breeding and supplying non-human primates should therefore have a strategy in place to support and facilitate the progressive move towards that goal.
- (21) There is a need for certain species of vertebrate animals used in procedures to be bred specifically for use in procedures so that their genetic, biological and behavioural background is well-known to persons undertaking the procedures. Such knowledge both increases the scientific quality and reliability of the results and decreases the variability, ultimately resulting in fewer procedures and reduced animal use. Furthermore, for reasons of animal welfare and conservation, the use of animals taken from the wild in procedures should be limited only to cases where the purpose of the procedures cannot be achieved using animals bred specifically for use in procedures.
- (22) Since the background of stray and feral animals of domestic species is not known, and capture and placement into establishments increases distress for those animals, they should not be used in procedures.
- (23) To enhance transparency, facilitate the project authorisation and provide tools for monitoring compliance, a severity classification of procedures should be introduced on the basis of estimated levels of pain, suffering, distress and lasting harm that is inflicted on the animals. **■**
- (24) From the ethical standpoint, there should be an upper limit of pain, suffering and distress, above which animals should **not** be subjected in scientific procedures. To that effect, the performance of procedures that result in severe pain, suffering or distress and which is likely to be prolonged, should **not ordinarily be permitted**. When developing a common format for reporting purposes, instead of the predicted severity at the time of the ethical evaluation, the actual severity experienced by the animal should be taken into account.
- (25) The number of animals used in procedures could be reduced by performing procedures on animals more than once, where this does not detract from the scientific objective or result in poor animal welfare. However, the re-use of animals should be judged against minimising any adverse affects on their welfare, taking into account the lifetime experience of the individual animal. As a result of this potential conflict, the re-use of animals should be considered on a case-by-case basis and limited **to only** those procedures where **the cumulative** pain, distress and suffering **are ethically justified**.

Tuesday 5 May 2009

- (26) At the end of **an authorised** procedure, the most appropriate decision should be taken *with regard to* the future of the animal on the basis of animal welfare and potential risks to the environment. The animals whose welfare would be compromised should be killed using a humane method. In some cases, animals should be set free or animals such as dogs and cats should be allowed to be re-homed in families as there is a high *level of* public concern as to the fate of *such* animals. Should establishments allow re-homing, it is essential that there is a scheme in place to provide the appropriate socialisation **of** those animals in order to **promote** successful re-homing as well as to avoid unnecessary distress to the animals and to guarantee public safety.
- (27) Animal tissue and organs are used for the development of in vitro methods. To implement the principle of reduction, **it is desirable for** Member States **to** establish programmes for sharing the organs and tissue of animals that are killed using humane methods.
- (28) The welfare of the animals used in procedures is highly dependent on the quality and professional competence of *persons* supervising procedures, as well as of those performing procedures or supervising those taking care of the animals on a daily basis. In order to secure an adequate degree of competence of **||** persons dealing with animals and with procedures involving animals, *such* activities should only be performed **in establishments, and** by persons, authorised by the competent authorities. The main focus should be on obtaining and maintaining an adequate level of competence which should be demonstrated before authorising those persons or renewing their authorisation. **Authorisation by a competent authority and proof of the successful completion of relevant training courses should be mutually recognised by all Member States.**
- (29) Establishments should have adequate installations and equipment in place to meet the accommodation requirements of the animal species concerned and to allow the procedures to be performed efficiently and with the least distress **both** to the animals **directly concerned and their animal companions**. The establishments should operate only if they are authorised by the competent authorities.
- (30) To ensure the *ongoing* monitoring of animal welfare needs, appropriate veterinary care should be available at all times and a staff member should be made responsible for the care and welfare of animals in each establishment.
- (31) Animal welfare considerations should be given the highest priority in the context of animal keeping, breeding and use. Each establishment should therefore have **a** permanent ethical review body in place with the primary task of focusing on ethical debate at establishment level, fostering a climate of care and providing tools for practical application and timely implementation of the recent technical and scientific developments in relation to the principles of replacement, reduction and refinement to enhance the life-time experience of the animals. The decisions of the permanent ethical review body should be properly documented and open to scrutiny during inspections.
- (32) In order to enable the competent authorities to monitor compliance with this Directive, each establishment should, **where possible**, maintain accurate records on the numbers of animals, their origins and fate.
- (33) Non-human primates with highly developed social skills, **as well as dogs and cats**, should have a personal history file from birth covering *the duration of their lives* in order to be able to receive the care, accommodation and treatment that meet their individual needs and characteristics.
- (34) The accommodation and care of the animals should be based on the specific needs and characteristics of each species.
- (35) On 15 June 2006 the Fourth Multilateral Consultation of Parties to the European Convention for the protection of vertebrate animals used for experimental and other scientific purposes adopted a revised Appendix A which sets out guidelines for accommodation and care of experimental animals. Commission Recommendation 2007/526/EC of 18 June 2007 on guidelines for the accommodation and care of animals used for experimental and other scientific purposes ⁽¹⁾ incorporated those guidelines.

⁽¹⁾ OJ L 197, 30.7.2007, p. 1.

Tuesday 5 May 2009

- (36) There are differences in the requirements for the accommodation and care of animals between Member States, which contribute to the distortion of the internal market. Furthermore, some of those requirements no longer reflect the most recent knowledge on the impacts of accommodation and care conditions on both the animal welfare and the scientific results of procedures. It is therefore necessary to establish in this Directive the minimum requirements on accommodation and care **subject always to developments based on new scientific evidence.**
- (37) To monitor compliance with this Directive, Member States should carry out at least *one* inspection annually in each establishment. To ensure public confidence and promote transparency at least one inspection **||** must be unannounced. Programmes for joint inspections by Member States should be established to foster an environment of sharing good practice and expertise.
- (38) To assist the Member States in the enforcement of this Directive and on the basis of the findings in the reports on the operation of the national inspections, the Commission should, where appropriate, carry out controls of the national inspection systems. Member States should address any weaknesses identified in the findings of these controls.
- (39) Comprehensive ethical evaluation of projects using animals, which forms the core of the project authorisation, should ensure implementation of principles of replacement, reduction and refinement in those projects.
- (40) It is also essential to ensure both on moral and scientific grounds that each use of animals is carefully evaluated *in terms of* the scientific validity, usefulness and relevance of **||** that use. The likely harm to the animals should be balanced against the expected benefits of the project. Therefore, an **||** ethical evaluation, **independent of those in charge of the study**, should be carried out as part of the authorisation process of projects involving the use of live animals. Effective implementation of an ethical evaluation should also allow for an appropriate assessment of the use of any new scientific experimental techniques as they emerge.
- (41) In certain cases, due to the nature of the project, the type of species used and the likelihood of achieving the desired objectives of the project, it **might be** necessary to carry out a retrospective assessment. Since projects may vary significantly in terms of complexity, length, as well as the delay for obtaining the results, it is necessary that the decision as to whether retrospective assessment should be carried out takes those aspects fully into account.
- (42) To ensure that the public is informed, it is important that objective information on the projects using live animals is made publicly available. The format of *such* information should not violate proprietary rights or expose confidential information. Therefore, user establishments should provide **the competent authority with data, which may be qualitative or quantitative, concerning the use of live animals** and make **such data** publicly available.
- (43) To manage risks to human and animal health and the environment, Community legislation provides that substances and products can only be marketed after appropriate safety and efficacy data have been submitted. Some of those requirements can be fulfilled only by resorting to animal testing, hereinafter referred to as 'regulatory testing'. It is necessary to introduce specific measures in order to increase the use of alternative approaches and to eliminate unnecessary duplication of regulatory testing. For that purpose Member States should recognise the validity of test data produced using test methods provided for in Community legislation.
- (44) To reduce the unnecessary administrative workload and enhance the competitiveness of Community research and industry, it should be possible to authorise multiple regulatory testing procedures under one group authorisation, albeit without exempting those procedures from ethical evaluation.

Tuesday 5 May 2009

- (45) To ensure effective examination of authorisation applications and to enhance the competitiveness of Community research and industry, a time-limit should be set for the competent authorities to evaluate project proposals and take decisions on authorisation of those projects. In order not to compromise the quality of the ethical evaluation, additional time may be required for more complex project proposals due to the number of disciplines involved, the novel characteristics and more complex techniques of the proposed project. However, extension of deadlines for ethical evaluation should remain an exception.
- (46) The availability of alternative methods is highly dependent on the progress of the research *into* the development of alternatives. The Community Framework Programmes for Research and Technological Development have provided increasing funding for projects which aim to replace, reduce and refine the use of animals in procedures. Therefore, in order to increase competitiveness of research and industry in the Community, the Commission and the Member States should contribute to the development and validation of alternative approaches.
- (47) The European Centre for the Validation of Alternative Methods is established within the Joint Research Centre of the Commission and coordinates the validation of alternative approaches in the Community. However, there is an increasing need for new methods to be developed and proposed for validation. To provide the necessary mechanisms at Member State level, a reference laboratory for the validation of alternative methods should be designated by each Member State. Member States should designate reference laboratories which are accredited in accordance with Directive 2004/10/EC of the European Parliament and of the Council of 11 February 2004 on the harmonisation of laws, regulations and administrative provisions relating to the application of the principles of good laboratory practice and the verification of their applications for tests on chemical substances ⁽¹⁾ in order to ensure coherent and comparable quality of the results. ***In addition, the remit of the European Centre for the Validation of Alternative Methods should be extended to include the co-ordination and promotion of the development and use of alternatives to animal experiments.***
- (48) There is a need to ensure a coherent approach to ethical evaluation and ethical review strategies at national level. Member States should establish national animal welfare and ethics committees to give advice to the competent authorities and permanent ethical review bodies of establishments in order to promote the principles of replacement, reduction and refinement. Therefore, the network of national animal welfare and ethics committees should play a role in the exchange of best practice at Community level.
- (49) The technical and scientific advancements in biomedical research can be rapid as can the increase in knowledge of factors influencing animal welfare. It is therefore necessary to provide for a review of this Directive. Such a review, ***based on the results of peer-assessed scientific studies***, should examine possible replacement of the use of animals, and in particular non-human primates, as a matter of priority where it is possible, taking into account the advancement of science.
- (50) 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⁾.
- (51) In particular, power should be conferred on the Commission to establish the criteria for classification of procedures and to adapt Annexes II to IX to scientific and technical progress. 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.
- (52) Member States should lay down rules on penalties applicable to infringements of the provisions of this Directive and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.
- (53) Directive 86/609/EEC should therefore be repealed.

⁽¹⁾ OJ L 50, 20.2.2004, p. 44.

⁽²⁾ OJ L 184, 17.7.1999, p. 23. ||

Tuesday 5 May 2009

- (54) Benefits to animal welfare from applying project authorisation retrospectively, and the related administrative costs, can only be justified for long term *ongoing* projects. Therefore, it is necessary to include transitional measures for *ongoing* short and medium term projects to avoid the need for a retrospective authorisation with only limited benefits.
- (55) Since the objectives of *this Directive*, namely the harmonisation of legislation on use of animals for scientific purposes, cannot be sufficiently achieved by the Member States and can therefore, by reason of scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Directive establishes measures for the protection of animals used or intended to be used for scientific purposes.

To that end, it lays down rules on the following:

- (1) the replacement and reduction of the use of animals in procedures and the refinement of the breeding, accommodation, care and use of animals in procedures;
- (2) the origin, breeding, marking, care and accommodation of animals;
- (3) the functioning of breeding, supplying or user establishments;
- (4) the evaluation and authorisation of projects involving the use of animals in procedures.

Article 2

Scope

1. This Directive shall apply **to the accommodation and husbandry of** animals **used or intended to be used in procedures** **or where they are bred specifically so that their organs or tissues may be used for scientific purposes, and shall cover all uses of animals in procedures that are likely to cause them pain, suffering, distress or lasting harm.**

Where there is any pain, suffering, distress or lasting harm, **its elimination** by the successful use of anaesthesia, analgesia or other methods shall not exclude the use of an animal in procedures from the scope of this Directive.

2. This Directive shall apply to the following animals:

- (a) live non-human vertebrate animals, including independently feeding larval forms and embryonic or foetal forms **of species of mammals** as from the last third of their normal development;
- (b) live invertebrate animals **of those species of orders** listed in Annex I.

Tuesday 5 May 2009

3. This Directive shall apply to animals used in procedures, which are at an earlier stage of development than that referred to in point (a) of paragraph 2, if the animal is to be allowed to live beyond that stage of development and is likely to experience pain, suffering, distress or lasting harm after it has reached that stage of development.

4. **Other than the general checks on breeding facilities**, this Directive shall not apply to the following:

- (a) non-experimental, agricultural or clinical veterinary practices and trials;
- (b) practices undertaken for the purposes of recognised animal husbandry;
- (c) practices undertaken for the primary purpose of marking an animal;
- (d) practices that **do not cause pain, suffering, distress or lasting harm**.

5. This Directive shall apply without prejudice to Council Directive 76/768/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products ⁽¹⁾.

Article 3

Definitions

For the purposes of this Directive the following definitions shall apply:

- (1) 'procedure' means any use of an animal for experimental or other scientific purposes, with known or unknown outcome, which may **or may not** cause the animal pain, suffering distress or lasting harm **and includes** any course of action intended, or liable, to result in the birth of an animal in any such condition or in the creation of a new genetically modified animal line;
- (2) 'project' means a programme of work having a defined scientific objective and involving one or more procedures;
- (3) 'establishment' means any installation, building, group of buildings or other premises and may include a place that is not wholly enclosed or covered and mobile facilities;
- (4) 'breeding establishment' means any establishment where animals are bred with a view to their use in procedures or for the use of their tissue or organs for scientific purposes;
- (5) 'supplying establishment' means any establishment, other than a breeding establishment, from which animals are supplied with a view to their use in procedures or for the use of their tissue or organs for scientific purposes;
- (6) 'user establishment' means any establishment where animals are used in procedures;
- (7) '**competent authority**' means the authority or authorities designated by each Member State as being responsible for supervising the enforcement of this Directive;
- (8) '**ethical approach**' means the approach which precedes experimentation and consists of assessing the scientific and societal grounds for using animals, with reference to humankind's duty to respect animals as living, sentient beings;

⁽¹⁾ OJ L 262, 27.9.1976, p. 169.

Tuesday 5 May 2009

- (9) *'competent person' means any person who is considered by a Member State to be competent to perform the relevant function described in this Directive;*
- (10) *'husbandry' means all those activities required to breed and maintain phenotypically normal animals, whether for scientific or other purposes, but which do not themselves constitute experiments;*
- (11) *'practice' means any non-experimental activity or any scientific activity which does not constitute an experiment;*
- (12) *'properly anaesthetised' means deprived of sensation by means of anaesthesia, whether local or general, which is as effective as those used in good veterinary practice;*
- (13) *'protocol' means a series of procedures that constitute an experiment with a defined objective;*
- (14) *'regulated procedure' means any experimental or other scientific procedure, which is likely to have the effect of causing a protected animal pain, suffering, distress or lasting harm;*
- (15) *'re-use' means the use of an animal already used in a procedure, when a different animal on which no procedure has previously been carried out could also be used;*
- (16) *'confidential information' means information, the non-consensual release of which could prejudice the legitimate commercial or other interests of its owner or a third party.*

Article 4

Replacement, reduction and refinement

1. Where a method of testing, **experimentation or other scientific activity** not involving the use of living animals exists **which, from a scientific point of view, is a satisfactory method or testing strategy for obtaining the result sought** and **which** may be used in place of a procedure, Member States shall ensure that the alternative method is used, **provided it is not prohibited in the Member State concerned. Pursuant to this Directive, testing methods which involve the use of human embryonic and foetal cells shall not be regarded as alternatives, in other words the Member States may take their own ethical decisions concerning the use of these methods of testing.**
2. Member States shall ensure that the number of animals used in projects is reduced to the minimum without compromising the objectives of the project.
3. Member States shall ensure refinement of breeding, accommodation and care, and of methods used in procedures, eliminating or reducing to the minimum any possible pain, suffering, distress or lasting harm to the animals.
4. **Member States shall ensure that funding is provided for training and research on, and development and implementation of, scientifically satisfactory methods or testing strategies that do not entail the use of animals.**
5. **Member States shall ensure that the aim of paragraph 1 is pursued by the competent authority when considering the authorisation of projects.**
6. **Member States shall ensure that training is provided on the use of scientifically satisfactory methods or testing strategies that do not entail the use of animals, to appropriate persons and establishments, and promote such methods or testing strategies.**

Tuesday 5 May 2009

Article 5

Purposes of procedures

Procedures may be carried out for the following purposes only:

- (1) basic research for the advancement of knowledge in biological or behavioural sciences;
- (2) translational or applied research with *any* of the following aims:
 - (a) the avoidance, prevention, diagnosis or treatment of disease, ill-health or other abnormality or their effects in human beings, animals or plants;
 - (b) the assessment, detection, regulation or modification of physiological conditions in human beings, animals or plants;
 - (c) ***the improvement of the production conditions and welfare of animals reared for agricultural purposes;***
- (3) the development, manufacture or testing of the quality, effectiveness and safety of drugs, food- and feed-stuffs and other substances or products having *any* of the aims referred to in point (2);
- (4) the protection of the natural environment in the interests of the health or welfare of human beings or animals;
- (5) ***the protection of human health in the context of workers' or consumers' exposure to chemicals;***
- (6) research aimed at preservation, ***health and welfare*** of the species;
- (7) higher education or training;
- (8) forensic inquiries.

Article 6

Humane methods of killing

1. Member States shall ensure that animals are killed in an authorised establishment, by an authorised person and with a minimum of pain, suffering and distress and, in relation to the species included in Annex VI, using ***an*** appropriate humane method of killing as set out in that Annex ***or by such other methods as are scientifically demonstrated to be at least as humane. Where a more humane method of killing is possible and readily available, it may be used even if it is not included in Annex VI.***

However, *for the purposes* of a field study an animal may be killed *in a place other than* an authorised establishment.

2. Competent authorities may grant exemptions from paragraph 1 on the basis of scientific justification that the purpose of the procedure cannot be achieved by the use of a humane method of killing ***or that other methods providing better animal protection have been developed. Notwithstanding any exemption, animals shall be killed with a minimum of pain, suffering and distress.***

3. Paragraph 1 shall not apply where an animal has to be killed in emergency circumstances for animal welfare reasons.

Member States shall determine the emergency circumstances referred to in the first subparagraph.

Tuesday 5 May 2009

Article 7**National measures**

This Directive shall not prevent Member States from applying or adopting stricter national measures seeking to improve the well-being and protection of animals used for scientific purposes.

CHAPTER II

PROVISIONS ON THE USE OF CERTAIN ANIMALS IN PROCEDURES

Article 8

Endangered species other than non-human primates

1. Endangered species listed in Annex A to Council Regulation (EC) No 338/97 ⁽¹⁾ shall not be used in procedures, with the exception of those procedures meeting the following conditions:
 - (a) the procedure has one of the purposes referred to in points (2)(a), (3) or (6) of Article 5;
 - (b) there is a scientific justification that the purpose of the procedure cannot be achieved by the use of species other than those listed in that Annex;
 - (c) ***as far as possible, the animals used should be bred specifically for testing purposes.***
2. This article shall not apply to any species of non-human primates.

Article 9

Non-human primates

1. ***Given their particularly high level of neurophysiological sensitivity and cognitive development,*** non-human primates shall not be used in procedures, with the exception of those procedures meeting the following conditions:
 - (a) the procedure has one of the purposes referred to in points (1), (2)(a), (3) **or** (6) of Article 5;
 - (b) ***the applicant provides*** a scientific ***and ethical*** justification that the purpose of the procedure cannot be achieved by the use of other species than non-human primates.
2. Notwithstanding paragraph 1, great apes shall not be used in procedures, subject to the use of the safeguard clause in Article 53.
3. ***Every two years, and for the first time ... (*), the Commission shall, in consultation with Member States, conduct a review of the use of non-human primates in procedures and publish the results thereof. The review shall examine the impact of developments in technological, scientific and animal-welfare knowledge, and set targets for the implementation of validated replacement methods.***

Article 10

Animals taken from the wild

1. Animals taken from the wild shall not be used in procedures.

⁽¹⁾ OJ L 61, 3.3.1997, p. 1.

^(*) ***Two years after the entry into force of this Directive.***

Tuesday 5 May 2009

2. Competent authorities may grant exemptions from paragraph 1 on the basis of scientific justification that the purpose of the procedure cannot be achieved by the use of an animal which has been bred for use in procedures.

Article 11

Animals bred for use in procedures

1. The Commission shall carry out an animal welfare assessment and a feasibility evaluation of implementation of the requirements set out in subparagraphs 2 and 3, ... (*).

Member States shall ensure that animals belonging to the species listed in Annex II may only be used in procedures where those animals have been bred for use in procedures.

Where feasibility is established, as from the dates to be set in Annex III **in light of the evaluation referred to in subparagraph 1**, Member States shall ensure that non-human primates listed in that Annex may only be used in procedures where they are **sourced from self-sustaining colonies**.

2. Competent authorities may grant exemptions from *subparagraphs 2 and 3 of paragraph 1* on the basis of a **veterinary justification for reasons of animal welfare or on the basis of a** scientific justification.

Article 12

Stray and feral animals of domestic species

Stray and feral animals of domestic species shall not be used in procedures.

Article 13

Use of cadavers, tissue and organs of animals for training purposes

For higher education and training purposes, the cadavers, tissue and organs of animals may be used only if they come from animals slaughtered in accordance with the provisions of Council Regulation (EC) No .../2009 of ... [on the protection of animals at the time of killing] ⁽¹⁾.

CHAPTER III

PROCEDURES

Article 14

Procedures

1. Member States shall ensure that procedures are always carried out in ■ establishments **as defined in Article 3**.

The competent authority may grant an exemption from the first subparagraph on the basis of scientific justification.

2. Procedures may be carried out only within the framework of a project.

(*) **Five years after the entry into force of this Directive.**

(¹) **OJ ...**

Tuesday 5 May 2009

Article 15

Methods used in procedures

1. Member States shall ensure that a procedure is not carried out if another scientifically satisfactory method or testing strategy of obtaining the result sought, not entailing the use of an animal, is recognised by Community legislation. In the absence of such a method, a procedure may not be carried out if a scientifically satisfactory method or testing strategy for obtaining the result sought, including computer supported, in vitro and other methodologies, not entailing the use of an animal, is reasonably and practicably available.
2. In the event of a choice between procedures, those which use the fewest animals, involve animals with the lowest degree of neurophysiological sensitivity, cause the least pain, suffering, distress or lasting harm and which are most likely to provide satisfactory results shall be selected.
3. Death as the end-point in a procedure shall be avoided as far as possible and replaced by early and humane end-points. If death as the end-point is unavoidable, the procedure shall be designed so as to result in the deaths of as few animals as possible.

Article 16

Anaesthesia

1. Member States shall ensure that, **where appropriate**, all procedures are carried out under general or local anaesthesia **or using other methods that may alleviate pain or minimise suffering**.
 2. By way of derogation from paragraph 1, procedures may be carried out without anaesthesia under the following conditions:
 - (a) where anaesthesia is judged to be more traumatic to the animal than the procedure itself;
 - (b) where analgesics are used to prevent or control potentially severe pain;**
 - (c) where anaesthesia is incompatible with the purpose of the procedure unless the procedure involves serious injuries that may cause severe pain.
 3. If the procedure is carried out without anaesthesia, analgesics or other appropriate methods shall be used **whenever this would be beneficial to the animal** to ensure that unavoidable pain, suffering and distress are kept to a minimum.
 4. Member States shall ensure that animals are not given any drug to stop or restrict them from showing pain without an adequate level of anaesthesia or analgesia.
- In such cases, a scientific justification shall be provided, accompanied by the details of the anaesthetic or analgesic regime.
5. An animal, which may suffer pain once anaesthesia has worn off, shall be treated with pre-emptive and post-operative analgesics or other appropriate pain-relieving methods, provided that it is compatible with the purpose of the procedure. Where the treatment with analgesics is not possible, the animal shall be immediately killed by a humane method.

Tuesday 5 May 2009

Article 17

Classification of severity of procedures

1. Member States shall ensure that all procedures are classified as 'up to mild', 'moderate' **or** 'severe' **in conformity with Annex IX.**
2. Member States shall ensure that the procedures classified as 'severe' are **scientifically justified, and ethically monitored** if the pain, suffering or distress is likely to be **more than transient. Such procedures must be exceptional and shall be subject to particular harm/benefit analysis and scrutiny by the competent authority.**
3. Procedures performed under general anaesthesia, at the end of which and without a possibility to recover consciousness the animal is killed using humane method, shall be classified as 'non-recovery'.
4. The Commission shall, by ... (*), **complete** the criteria for classification of procedures **as referred to in Annex IX on the basis of international classifications and in line with best practices developed within the European Union. Such criteria shall include an upper limit of severity beyond which procedures on animals will be prohibited.**

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall by ... (**) be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 54(4).

Article 18

Re-use

1. Member States shall ensure that an animal **on which a procedure has already been carried out**, when a different animal on which no **preparatory or other** procedure has previously been carried out could **instead** be used, may be re-used in **subsequent unrelated** new **procedures** only when all of the following conditions are met:
 - (a) the previous procedure was classified as up to '**moderate**';
 - (b) it is demonstrated that its general state of health and well-being has been fully restored;
 - (c) the further procedure is classified as up to '**moderate**' or 'non-recovery'. **The re-use of animals shall be accompanied by veterinary examinations.**
2. By way of derogation from paragraph 1, the competent authority, on the basis of scientific justification, may allow re-use of an animal **where the previous procedure performed on the animal is classified as up to 'moderate'** and the further procedure is classified as up to '**moderate**' or as 'non-recovery'.

Article 19

End of the procedure

1. A procedure shall be deemed to end when no further observations are to be made for that procedure or, as regards new genetically modified animal lines, when lack of adverse effects to animals can be scientifically demonstrated.
2. At the end of a procedure, a decision shall be taken by a veterinarian or by another competent person on whether the animal shall be kept alive or killed by a humane method.

(*) 12 months after the entry into force of this Directive.

(**) 18 months after the entry into force of this Directive.

Tuesday 5 May 2009

3. **At the end of a procedure** an animal shall be killed by a humane method when it is likely to remain in lasting pain or distress.
4. Where an animal is to be kept alive, it shall receive the care and accommodation appropriate to its state of health and be placed under the supervision of a veterinarian or another competent person.

Article 20

Sharing organs and tissues

Member States shall **encourage the establishment of** programmes for the sharing of organs and tissues of animals killed by a humane method.

Article 21

Setting free of animals and re-homing

Member States may allow animals used or intended to be used in procedures to be **released into their original habitat, returned to a husbandry system appropriate to the species**, or re-homed provided that the following conditions are met:

- (a) the state of health of the animal allows it;
- (b) there is no danger to public health or the environment;
- (c) the maximum possible care has been taken to safeguard the well-being of the animal, **including an assessment of the animal's behaviour and its ability to adapt to highly variable environmental conditions**;
- (d) the animals concerned are not genetically modified experimental animals or non-human primates.**

CHAPTER IV

AUTHORISATION

Section 1

Authorisation of persons

Article 22

Authorisation of persons

1. Member States shall ensure that persons are authorised by the competent authority **or the delegated authority** before they carry out any of the following functions:
 - (a) the carrying out of procedures on animals, including their killing by a humane method;
 - (b) the supervision or design of procedures and projects;
 - (c) the supervision of those taking care of animals.
2. Member States shall ensure that, for the purposes of the authorisation, the persons referred to in paragraph 1 have the appropriate **veterinary or scientific** education and training and have **evidence of** the requisite competence.

Persons carrying out the functions referred to in point (b) of paragraph 1 shall have received instruction in a scientific discipline relevant to the work being undertaken and shall be capable of handling and taking care of the species concerned.

Tuesday 5 May 2009

3. All authorisations of persons shall be granted for a limited period **■**, not exceeding five years. Member States shall ensure that the renewal of an authorisation of persons is only granted on the basis of *evidence* of the requisite competence. **Member States shall ensure the mutual recognition of education and training qualifications and authorisation to conduct designated procedures.**

4. Member States shall publish, on the basis of the elements set out in *Annex VII*, minimum requirements with regard to education, training and requirements for obtaining, maintaining and demonstrating requisite competence.

Section 2

Requirements for establishments

Article 23

Authorisation of establishments

1. Member States shall ensure that all breeding, supplying and user establishments are authorised by and registered with the competent authority.

An authorisation shall be given to an establishment only if it has been inspected by the competent authority and found to comply with the requirements of this Directive.

2. The authorisation shall specify the type of establishment and the person responsible for the establishment and for compliance with the provisions of this Directive.

Article 24

Suspension and withdrawal of authorisation

1. Where an establishment no longer complies with requirements set out in this Directive, the competent authority shall **have the power to** suspend or withdraw its authorisation, **or take appropriate remedial action or require such action to be taken. There shall be appropriate procedures for the license-holders to appeal against any such decision.**

2. Member States shall ensure that, where the authorisation is suspended or withdrawn, the welfare of the animals housed in the establishment is not adversely affected.

Article 25

Requirements for installations and equipment

1. Member States shall ensure that all breeding, supplying and user establishments have installations and equipment suited to the species of animals housed and, where procedures are carried out, to the performance of the procedures.

2. The design, construction and method of functioning of the installations and equipment referred to in paragraph 1 shall ensure that the procedures are carried out as effectively as possible, **■** with the minimum number of animals and the minimum degree of pain, suffering, distress or lasting harm.

Article 26

Requirements for personnel in establishments

Each breeding, supplying and user establishment shall have sufficient trained staff, including as a minimum:

(1) persons responsible on site for the welfare and care of the animals bred, kept or used in the establishment, who shall ensure the following:

Tuesday 5 May 2009

- (a) the staff dealing with animals have access to the information specific to the species housed in the establishment;
 - (b) the projects are carried out in accordance with the project authorisation;
 - (c) any procedure in the course of which any unnecessary distress, pain or suffering is being inflicted on an animal is stopped;
 - (d) in the event of non-compliance with the project authorisation, the appropriate measures to rectify the non-compliance are taken, recorded and reported to the permanent ethical review body.
- (2) a designated veterinarian with expertise in laboratory animal medicine charged with advisory duties in relation to the well-being and treatment of the animals.

Without prejudice to the generality of point 1, each breeding, supplying and user establishment shall ensure that there is at least one trained person available at all times to look after the animals' welfare.

Article 27

Permanent ethical review body

1. Member States shall ensure that each breeding, supplying and user establishment sets up a permanent ethical review body.
2. The permanent ethical review body shall include ***as a minimum*** the designated veterinarian, the person(s) responsible for the welfare and care of the animals in the establishment and, in the case of a user establishment, a scientific member ***and a person with expertise in the application of the principles of replacement, reduction and refinement.***

Article 28

Tasks of permanent ethical review body

1. ***Having regard to the objectives of this Directive, and in particular Article 4,*** the permanent ethical review body shall fulfil the following tasks:
 - (a) provide ethical advice to the staff dealing with animals on matters related to the welfare of animals in relation to their acquisition, accommodation, care and use;
 - (b) advise the staff of the establishment on the application of the requirement of replacement, reduction and refinement and keep it informed on the latest technical and scientific developments on the application of those requirements;
 - (c) establish and review internal operational processes as regards monitoring, reporting and follow up in relation to the welfare of animals housed or used in the establishment;
 - (d) review annually all projects ***classified as 'severe' or those on non-human primates, and every three years all other projects*** which are of more than 12 months duration, focusing in particular on:
 - the numbers, species and life stages of animals used in the preceding year;
 - the justification for the numbers, species and life stages of animals needed for the subsequent year;

Tuesday 5 May 2009

- *the scientific progress of the project;*
 - the use of humane methods of killing and how new developments in relation to the use of animals in procedures have been taken into account;
- (e) based on the review referred to in point (d) or, in the case of deviations from the project authorisation, examine whether the project authorisation needs to be submitted for amendment or renewal;
- (f) advise on re-homing schemes, in particular in relation to the appropriate socialisation of the animals to be re-homed.
2. Member States shall ensure that the records of any advice given to the establishment by the permanent ethical review body and decisions taken regarding that advice are kept.

The records shall be **made available** to the competent authority upon request. **Member States shall pay particular attention to the collection, collation and publication of records relating to projects classified as 'severe' or those on non-human primates in order to provide information which can improve animal welfare and further the principles of replacement, reduction and refinement.**

Article 29

Breeding strategy for non-human primates

1. Member States shall ensure that *EU* breeding and supplying establishments of non-human primates have a strategy in place for increasing the proportion of animals that are the offspring of non-human primates that have been bred in captivity. **Where the use of non-human primates is authorised, the Commission and the Member States shall take all necessary measures to ensure appropriate transport conditions.**
2. *EU* establishments acquiring non-human primates shall supply proof to the competent authority, on request, that the establishment from which animals have been acquired have a breeding strategy in place.

Article 30

Re-homing scheme

Where Member States allow re-homing as referred to in *Article 21*, the breeding, supplying and user establishments from which animals are intended to be re-homed shall have a re-homing scheme in place that ensures socialisation of the animals that are re-homed.

Article 31

Records on animals

1. Member States shall, **where possible**, ensure that all breeding, supplying and user establishments keep records of the following:
- (a) the number and the species of **vertebrate** animals bred, acquired, supplied, released or re-homed;
 - (b) the origin of the animals, including whether they are bred for use in procedures;
 - (c) the dates on which the animals are acquired, supplied, released or re-homed;
 - (d) the name and address of the supplying establishment and the date of their arrival;

Tuesday 5 May 2009

- (e) the name and address of the *the establishment receiving the* animals;
 - (f) the number and species of animals which have died or have been killed using a humane method in the establishment.
2. The records referred to in paragraph 1 shall be kept for a minimum of three years and shall be submitted to the competent authority upon request.

Article 32

Information on dogs, cats and non-human primates

1. Member States shall ensure that all breeding, supplying and user establishments keep the following information on each dog, cat and non-human primate:
- (a) identity;
 - (b) place of birth;
 - (c) whether it is bred for use in procedures;
 - (d) in the case of a non-human primate, whether it is the offspring of non-human primates that have been bred in captivity.
2. Each **dog, cat and** non-human primate shall have an individual history file, which follows the animal throughout its life. **Member States shall ensure the adequate and consistent implementation of this Directive.**

The file shall be established at birth and shall cover **any relevant** reproductive, medical and social information on the individual animal.

3. The information referred to in paragraph 1 shall be kept for a minimum of three years after the death of the animal and shall be submitted to the competent authority upon request.

Article 33

Marking

1. Each dog, cat *and* non-human primate in any breeding, supplying or user establishment shall, except in the cases referred to in paragraph 2, be provided, before it is weaned, with an individual identification mark in the least painful manner possible.
2. Where a dog, cat or non-human primate is transferred from one establishment to another before it is weaned, and it is not practicable to mark it beforehand, a full documentary record, specifying in particular its mother, must be maintained by the receiving establishment until it is so marked.
3. Where an unmarked dog, cat or non-human primate is taken into an establishment for the first time it shall be marked as soon as possible.
4. The establishment shall provide, on request by the competent authority, reasons for the animal being unmarked.

Tuesday 5 May 2009

Article 34

Care and accommodation

1. Member States shall, as far as the care and accommodation of animals is concerned, ensure the following:
 - (a) all animals are provided with accommodation, an environment, **■** freedom of movement, food, water and care which are appropriate to their health and well-being **and which allow them to satisfy their ethological as well as physical needs**;
 - (b) any restrictions on the extent to which an animal can satisfy its physiological and ethological needs are limited to a minimum;
 - (c) the environmental conditions in which animals are bred, kept or used are checked daily;
 - (d) the well-being and state of health of animals are observed by a competent person **at least once a day** to prevent pain or avoidable suffering, distress or lasting harm;
 - (e) arrangements are made to ensure that any **avoidable** defect or suffering discovered is eliminated as quickly as possible.
2. For the purposes of points (a) and (b) of paragraph 1, Member States shall apply the care and accommodation standards set out in Annex IV as from the dates provided for in that Annex.
3. Member States may allow exemptions to paragraph 2 for **justified scientific reasons, veterinary reasons or** animal welfare reasons.
4. **In those procedures whose purpose is described in Article 5(2)(c), the animal species of agricultural interest listed in Annex V may be housed in normal breeding conditions as defined by the current agricultural practices of the Member States and the applicable rules.**

Section 3

Inspections

Article 35

National inspections

1. Member States shall ensure that all breeding, supplying and user establishments are subject to inspections on the compliance of those establishments with this Directive.
2. National inspections shall be carried out by the competent authority **on average once** a year, **with the competent authority adapting the frequency of inspection on the basis of a risk analysis for each establishment**.

At least one of the inspections shall be unannounced.

3. Member States shall ensure that the frequency and the extent of inspections are adequate to the number and species of animals housed, to the compliance record of the establishment with this Directive and, in the case of user establishments, to the number and types of projects carried out in those establishments. **Member States shall take the necessary measures to ensure that the inspections do not jeopardise the scientific quality of the projects and the welfare of the animals, and do not take place under conditions that fail to comply with the other regulations in force.**

Tuesday 5 May 2009

4. Records of all inspections, **including details of any failure to meet the requirements of this Directive**, shall be kept **by each Member State's competent authority** for at least five years.
5. Member States shall ensure that an appropriate infrastructure with sufficient numbers of trained inspectors is in place to carry out inspections.
6. Member States shall establish programmes for joint inspections by Member States.

Article 36

Controls of national inspections

1. The Commission **shall** undertake controls of the infrastructure and operation of national inspections **as well as of the correct application of severity classifications** in Member States. **To that end, the Commission shall set up a system to monitor each Member State's inspections and enforcement of this Directive on average once every three years, ensuring harmonised practices for the use and the care of animals used or intended to be used in scientific procedures.**
2. The Member State in the territory of which the control is being carried out shall give all necessary assistance to the experts of the Commission in carrying out their duties. The Commission shall inform the competent authority of the Member State concerned of the results of the control.
3. The competent authority of the Member State concerned shall take measures to take account of the results of the control.

Section 4

Requirements for projects

Article 37

Authorisation of projects

1. Member States shall ensure that projects **classified as 'moderate' or 'severe' or any projects involving non-human primates** are not carried out without a prior authorisation by the competent authority. **All other projects shall be notified in advance to the competent authority following ethical review by the institution's permanent ethical review body.**
2. Granting of authorisation shall be subject to favourable **independent** ethical **and scientific** evaluation by the competent authority.

Article 38

Application for the project authorisation

1. **When required**, the user establishment **or the person scientifically responsible for the project** shall submit an application for the project authorisation, which shall include the following:
 - (a) project proposal;
 - (b) non-technical project summary;
 - (c) information on the elements set out in *Annex VIII*;
 - (d) **a scientifically justified statement that the research project is indispensable and ethically defensible and that the purposes of the project cannot be achieved using other methods or procedures.**

Tuesday 5 May 2009

2. Member States may waive the requirement in paragraph 1(b) and permit the user establishment to submit a reduced project proposal covering only the ethical evaluation and elements listed in Article 43(2), provided that the project involves only procedures classified as 'up to mild' and does not use non-human primates.

Article 39

Ethical evaluation

1. The ethical evaluation shall verify that the project meets the following criteria:
 - (a) the project is scientifically justified, **indispensable and ethically defensible**;
 - (b) the purposes of the project justify the use of animals **and cannot be achieved through other methods or procedures**;
 - (c) the project is designed so as to enable procedures to be carried out **with maximum respect for animal welfare** and **in the most** environmentally sensitive manner.
2. The ethical evaluation shall consider in particular the following:
 - (a) an evaluation of the objectives of the project, the predicted scientific benefits or educational value;
 - (b) an assessment of compliance of the project with the requirement of replacement, reduction and refinement;
 - (c) an assessment of the classification of the severity of procedures;
 - (d) a harm-benefit analysis of the project, to assess whether the harm to the animals in terms of suffering, pain and distress, and to the environment, where appropriate, is **ethically defensible in light of** the expected advancement of science that **may** ultimately **benefit** human beings, animals or the environment;
 - (e) an assessment of any scientific justification referred to in Articles 6, 8, 9, 10, 11, 14, 16 and 18.
3. The competent authority carrying out the ethical evaluation shall consider **corresponding expertise** in particular in the following areas:
 - (a) the areas of scientific use for which animals will be used;
 - (b) experimental design, including statistics where appropriate;
 - (c) veterinary practice in laboratory animal science or wildlife veterinary practice where appropriate;
 - (d) animal husbandry and care, in relation to the species that are intended to be used;
 - (e) practical application of the requirement of replacement, reduction and refinement;
 - (f) applied ethics;
 - (g) environmental science, where appropriate.
4. Ethical evaluation shall be performed in a transparent manner || by integrating || independent **expertise whilst safeguarding intellectual property and confidential information as well as the safety of goods and persons**.

Tuesday 5 May 2009

Article 40

Retrospective assessment

1. The **competent authority carrying out the** ethical evaluation shall determine, on the basis of the harm-benefit analysis referred to in point (d) of Article 39(2), whether the project should, once it has been completed, be assessed retrospectively **■**.

If a retrospective assessment is deemed appropriate, the ethical evaluation shall determine, in relation to the project concerned, the deadline by which the retrospective assessment is to take place.

2. Retrospective assessment shall **establish** the following:

(a) whether the objectives of the project were achieved;

(b) harm inflicted on animals including the numbers and species of animals used and the severity of the procedures;

(c) **whether there are** elements that may contribute to the further implementation of the requirement of replacement, reduction and refinement.

3. All projects using non-human primates shall undergo a retrospective assessment.

4. **■** All projects involving only procedures classified as up to '**moderate**' shall be exempted from the requirement for a retrospective assessment.

Article 41

Records of ethical evaluation

1. The establishment shall keep records of ethical evaluation for at least three years from the expiry date of authorisation of the project and shall submit those records to the competent authority upon request.

2. However, records of ethical evaluation for projects which have to undergo retrospective assessment shall be kept until the retrospective assessment has been completed.

Article 42

Non-technical project summaries

1. Subject to safeguarding confidential information, **establishment and personnel details**, the non-technical project summary shall provide the following:

(a) information on the objectives of the project, including the likelihood of achieving them, the potential harm, and details of the number and types of animals to be used;

(b) a demonstration **that the principles** of replacement, reduction and refinement **have been observed where practicable**.

2. On the basis of the results of the ethical evaluation, the user establishment shall specify in the non-technical project summary whether a project is to undergo a retrospective assessment and by which deadline.

Tuesday 5 May 2009

3. The user establishment shall update the non-technical project summary with the results of retrospective assessment.
4. Member States shall make publicly available **anonymous versions of** the non-technical project summaries of authorised projects and any updates to them.
5. **Subject to the safeguarding of confidential and personal information, Member States shall make publicly available non-personal information regarding infringements of this Directive, national laws and authorisations.**

Article 43

Granting of project authorisation

1. The project authorisation shall be limited to the procedures which have been subject to an ethical evaluation and to the severity classifications assigned to those procedures.
2. The project authorisation shall identify the following:
 - (a) the persons in the establishment responsible for the overall implementation of the project;
 - (b) the user establishments in which the project will be undertaken;
 - (c) in the case of field studies, the user establishment which is responsible for the project;
 - (d) at least one person demonstrating species specific knowledge.
3. Project authorisations shall be granted for a period not exceeding **five** years.
4. Member States may allow the authorisation of multiple projects when those projects are required by law, **or when standardised procedures are applied, the ethical evaluation of which has already produced a positive result.**
5. User establishments shall keep records of all project authorisations for at least three years from the expiry date of the authorisation and shall submit those records to the authority upon request.

Article 44

Amendment, renewal and withdrawal of a project authorisation

1. The competent authority may amend or renew the project authorisation on the request of the user establishment **or the person in charge of the project.**
2. Any amendment or renewal of a project authorisation shall be subject to a further **■** ethical evaluation.
3. **Amendments to mild or moderate procedures that do not increase the severity of the procedure may be made by the permanent ethical review body but must be communicated to the competent authority within one week of such change.**
4. The competent authority may withdraw the project authorisation where the project is not carried out in accordance with the project authorisation **and may cause a deterioration in animal welfare standards.**
5. Where a project authorisation is withdrawn, the welfare of the animals used or intended to be used in the project shall not be adversely affected.

Tuesday 5 May 2009

6. Member States shall establish and publish detailed conditions for amendment and renewal of project authorisations.

Article 45

Authorisation decisions

Member States shall ensure that the decision to grant an authorisation is taken and communicated to the user establishment at the latest within 30 days from the submission of the application. Should the Member State fail to take a decision within that period, the authorisation shall be deemed to have been granted, where the project concerned involves only procedures classified as 'up to mild' and non-human primates are not used. In all other cases, no such presumption shall apply.

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CHAPTER V

AVOIDANCE OF DUPLICATION AND ALTERNATIVE APPROACHES

Article 46

Unnecessary duplication of procedures

1. Each Member State shall accept **from another Member State** data that are █ generated by procedures recognised by, **or which take place under**, Community legislation █.

█

2. *Subject to the safeguarding of confidential information, Member States shall ensure the sharing of data generated by procedures, including those which have taken place in the European Union prior to the coming into force of the Directive. A person seeking to rely on data owned by another shall where appropriate contribute towards the intrinsic cost of producing such data.*

3. *Before applying for a project authorisation, a person intending to carry out a procedure must take all reasonable steps to ascertain whether data relevant to the proposed project already exists and, if so, to access such data (including contributing towards the cost thereof), and Member States shall similarly verify whether such data exists before granting an authorisation.*

4. *Member States shall not authorise a procedure where a person has not taken reasonable steps to comply with paragraph 3.*

5. *Where relevant data is reasonably available, Member States shall only grant authorisation for a project where this is necessary for the protection of the public.*

Article 47

Alternative approaches

The Commission and Member States shall contribute **financially and otherwise** to the development and, **where appropriate, the scientific** validation of alternative approaches **intended to** provide **a comparable** level of information as that obtained in procedures using animals but that do not involve the use of animals or use fewer animals or that entail less painful procedures and shall take such other steps as they consider appropriate to encourage research in this field. **It is appropriate to establish large-scale veterinary biobanks to support the principles of replacement, reduction and refinement using surplus tissue taken as part of clinical procedures.**

Tuesday 5 May 2009

Article 48

European Centre for the Validation of Alternative Methods

The remit of the European Centre for the Validation of Alternative Methods shall be extended so that it includes the co-ordination and promotion of the development and use of alternatives to animal procedures including applied and basic biomedical research and veterinary research and regulatory testing by performing the following functions:

- (a) coordinate research undertaken to facilitate the development of alternatives to animal procedures by the National Centres for Alternative Methods described in Article 49;*
- (b) conduct research to facilitate the development of alternatives to animal procedures;*
- (c) commission research in fields likely to yield information that will facilitate the replacement, reduction or refinement of animal procedures;*
- (d) in consultation with relevant stakeholders, create and implement strategies to replace, reduce and refine animal procedures;*
- (e) make available information on alternatives to animal procedures through regular reporting to the public, to stakeholders and to Member State authorities;*
- (f) provide databases to facilitate the exchange of relevant information including information on available alternative methods and information contributed voluntarily by researchers which would otherwise remain unpublished, but which could prevent duplication of unsuccessful animal studies;*
- (g) coordinate pre-validation and validation studies undertaken by the National Centres for Alternative Methods in accordance with Article 49 of this Directive;*
- (h) conduct validation and pre-validation studies where appropriate;*
- (i) in consultation with relevant regulatory bodies and stakeholders, create and implement strategies to replace, reduce and refine animal tests used for regulatory purposes;*
- (j) facilitate the scientific endorsement and regulatory acceptance of alternatives to animal tests used for regulatory purposes;*
- (k) inform relevant regulatory authorities when pre-validation and validation studies begin, and when alternative test methods achieve scientific endorsement and regulatory acceptance, and make this information available to the public and stakeholders through dedicated websites.*

Article 49

National reference laboratories for alternative methods

1. Each Member State shall, by ... (*), *nominate a centre responsible for supporting the development, validation and promotion of alternatives to animal tests used for regulatory purposes, and facilities to develop and promote the use of alternatives to animal procedures undertaken for other purposes, such as basic and applied biomedical and veterinary research.*

(*) One year after the entry into force of this Directive.

Tuesday 5 May 2009

2. Member States may only designate as national reference laboratories those that are accredited in accordance with Directive 2004/10/EC.
3. The national reference laboratories shall fulfil the following requirements:
 - (a) they shall have suitably qualified staff with adequate training in alternative methods and validation process and techniques applied in their area of competence;
 - (b) they shall possess the equipment and products needed to carry out the tasks assigned to them;
 - (c) they shall have an appropriate administrative infrastructure;
 - (d) they shall ensure that their staff respect the rules on confidentiality.
4. The national reference laboratories shall perform the following functions:
 - (a) cooperate with the Commission in their area of competence **and perform tasks to advance strategies for replacing animal procedures;**
 - (b) participate in pre-validation and validation of alternative methods, **where appropriate**, under the coordination of the Commission;
 - (c) communicate information on the availability and application of alternative methods received from the Commission to the relevant authorities of the Member State;
 - (d) provide scientific and technical assistance to the relevant authorities **and to user establishments, within and between** the Member States, for the acceptance and implementation of alternative methods;
 - (e) provide training on the use of alternative methods to persons referred to in Article 22(1) **and, if required, to user establishments;**
 - (f) **communicate developments on alternative methods and inform the public of positive and negative outcomes.**
5. **The national centres shall work with all relevant stakeholders to further the aim of replacing all animal procedures.**
6. National reference laboratories shall declare any conflict of interest on any task being undertaken.
7. Each Member State shall communicate the name and address of their reference laboratory to the Commission. The Commission shall make publicly available the list of national reference laboratories.
8. After consulting the national reference laboratories, the Commission shall set the priorities for the validation studies and allocate the tasks between those laboratories for carrying out those studies.

Article 50

National animal welfare and ethics committee

1. Each Member State shall establish a national animal welfare and ethics committee that shall advise the competent authorities and permanent ethical review bodies in matters dealing with the acquisition, breeding, accommodation, care and use of animals in procedures and ensure sharing of best practices.
2. The national animal welfare and ethics committees shall exchange information on the operation of permanent ethical review bodies and ethical evaluation and share best practices within the Community.

Tuesday 5 May 2009

CHAPTER VI

FINAL PROVISIONS

Article 51

Adaptation of annexes to technical progress

The Commission may adapt Annexes II to IX to technical and scientific progress.

Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 54(4).

Article 52

Reporting

1. Member States shall by ... (*), and every five years thereafter, send the information on the implementation of this Directive and in particular Articles 11(1), 27, 29, 35, 39, 40, 42 and 46 thereof to the Commission.

2. Member States shall collect and make publicly available, on an annual basis, statistical information on the use of animals in procedures, including information on the actual severity of the procedures and on the origin and species of non-human primates used in procedures.

Member States shall **make** that statistical information **publicly available and submit it** to the Commission by ... (**) and **■** thereafter **at intervals not exceeding two years**.

3. The Commission shall by ... (***) establish a common format for submitting the information referred to in paragraph 2 in accordance with the regulatory procedure referred to in Article 54(2).

Article 53

Safeguard clause

1. Where a Member State has justifiable grounds for believing that action is essential for the preservation of the species or in relation to an unexpected outbreak of a life-threatening or debilitating clinical condition in human beings, it may authorise the use of great apes in procedures having one of the purposes referred to in Article 5(2)(a), (3) or (6); provided that the purpose of the procedure cannot be achieved by the use of other species than great apes or by the use of alternative methods. However, the reference to Article 5(2)(a) shall not be taken to include the reference to animals or plants.

2. The Member State shall immediately inform the Commission and the other Member States thereof, giving reasons for its decision and submitting evidence of the situation as described in paragraph 1 on which the provisional measure is based.

3. The Commission shall take a decision in accordance with the *regulatory* procedure referred to in Article 54(2) within 60 days of receipt of the information from the Member State. This decision shall either:

(a) authorise the provisional measure for a time period defined in the decision; or

(b) require the Member State to revoke the provisional measure.

(*) Six years after the transposition date.

(**) Three years after the transposition date.

(***) 18 months after the entry into force of this Directive.

Tuesday 5 May 2009

Article 54

Committee

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
3. 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.

Article 55

Commission report

1. By ... (*) and every five years thereafter, the Commission shall, based on the information received from the Member States under *Article 52(1)*, submit to the European Parliament and the Council a report on the implementation of this Directive.
2. By ... (*) and every three years thereafter the Commission shall, based on the statistical information submitted by Member States under *Article 52(2)*, submit to the European Parliament and the Council a summary report on that information.

Article 56

Review

The Commission shall review this Directive by ... (**) taking into account advancement in development of alternative methods not entailing the use of animals, and in particular of non-human primates, and propose any amendments, where appropriate.

*Article 57**Thematic review*

The Commission shall, in consultation with Member States and any relevant stakeholders, conduct a thematic review of the use of animals in procedures every two years commencing ... () . The review shall examine the impact of developments in technological, scientific and animal welfare knowledge, and set targets for the implementation of validated replacement methods.***

In the periodic reviews, the Commission shall give priority to the reduction and elimination of procedures causing the greatest permissible pain, suffering, distress or lasting harm and those which are not designed to alleviate life-threatening or debilitating clinical conditions in human beings, with a view to the elimination of all procedures. The Commission shall take into account evolving public opinion about the use of animals in procedures in the periodic reviews.

Article 58

Competent authorities

1. Each Member State shall designate one or more competent authorities responsible for the implementation of this Directive.

(*) Seven years after transposition date.

(**) Five years after the date of entry into force of this Directive.

(***) Two years after the entry into force of this Directive.

Tuesday 5 May 2009

Member States may designate bodies other than public authorities for the implementation of this Directive. Bodies thus designated shall be considered competent authorities for the purposes of this Directive.

2. Member States shall inform the Commission of the names and addresses of the competent authorities by ... (*) at the latest. Member States shall inform the Commission of any changes to the names and addresses of the competent authorities.

The Commission shall make publicly available the list of the competent authorities.

Article 59

Penalties

The 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. The Member States shall notify those provisions to the Commission by ... (**) at the latest and shall notify the Commission without delay of any subsequent amendment affecting them.

Article 60

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 61

Repeal

Directive 86/609/EEC is repealed with effect from ... (*****).

References to the repealed Directive shall be construed as references to this Directive.

Article 62

Transitional provisions

1. Member States shall not apply laws, regulations and administrative provisions adopted in accordance with Articles 37 to 45 to projects which were started before ... (*****) and the duration of which does not extend beyond || three years after ... (*****) .

2. Projects which were started before ... (*****) and the duration of which extends beyond ... (*****) shall obtain project authorisation by || three years after ... (*****) .

(*) Three months after the entry into force of this Directive.

(**) The date specified in first subparagraph of Article 60(1).

(***) 18 months after the entry into force of this Directive.

(****) 1 January of the year following the date of transposition as specified in the first subparagraph of Article 60(1).

(*****) The date referred to in the second subparagraph of Article 60(1).

Tuesday 5 May 2009

Article 63

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 64

Addressees

This Directive is addressed to the Member States.

Done at ||,

For the European Parliament
The President

For the Council
The President

ANNEX I

Invertebrate **Orders** referred to in Article 2(2)(b)

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- Cephalopods
- Decapod crustaceans *of the infraorders Brachyura and Astacidea*

Tuesday 5 May 2009

ANNEX II

List of animals referred to in *second subparagraph of Article 11(1)*

1. Frog (*Xenopus (laevis, tropicalis)*, *Rana (temporaria, pipiens)*)
2. Mouse (*Mus musculus*)
3. Rat (*Rattus norvegicus*)
4. Guinea Pig (*Cavia porcellus*)
5. Syrian (Golden) Hamster (*Mesocricetus auratus*)
6. Chinese Hamster (*Cricetulus griseus*)
7. Mongolian gerbil (*Meriones unguiculatus*)

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8. Dog (*Canis familiaris*)
9. Cat (*Felis catus*)
10. All species of non-human primate

11. Zebrafish (*danio danio*)

ANNEX III

List of non-human primates and dates referred to in the *third subparagraph of Article 11(1)*

Species	Dates
Marmoset (<i>Callithrix jacchus</i>)	[date of application referred to in the second subparagraph of the first paragraph Article on transposition]
Cynomolgus monkey (<i>Macaca fascicularis</i>)	[10 years after transposition of Directive]
Rhesus monkey (<i>Macaca mulatta</i>)	[10 years after transposition of Directive]
Other species of non-human primates	[10 years after transposition of Directive]

ANNEX IV

Care and accommodation standards referred to in Article 34

SECTION A: GENERAL SECTION

The care and accommodation conditions shall be tailored to the scientific objective

1. THE PHYSICAL FACILITIES

The accommodation conditions shall be tailored to the scientific objective.

1.1. Functions and general design

- a) All facilities shall be constructed so as to provide an environment which takes into account the physiological and ethological needs of the species kept in them. Facilities shall also be designed and managed to prevent access by unauthorised persons and the ingress or escape of animals.
- b) Establishments shall have an active maintenance programme to prevent and remedy any defect of buildings or equipment.

1.2. Holding rooms

- a) Establishments shall have a regular and efficient cleaning schedule of the rooms and the maintenance of satisfactory hygienic standards.
- b) Where the animals are allowed to run freely, walls and floors shall be surfaced with a material resistant to the heavy wear and tear caused by the animals and the cleaning process. The material shall not be detrimental to the health of the animals and shall be such that the animals cannot hurt themselves. Additional protection shall be given to any equipment or fixtures so that they are not damaged by the animals or injure the animals themselves.
- c) Species that are incompatible, for example predator and prey, or animals requiring different environmental conditions, shall not be housed in the same room nor, in the case of predator and prey, within sight, smell or sound.

1.3. General and special purpose procedure rooms

- a) All establishments shall have available laboratory facilities for the carrying out of simple diagnostic tests, post-mortem examinations, and/or the collection of samples that are to be subjected to more extensive laboratory investigations elsewhere.
- b) Facilities shall be provided to enable newly-acquired animals to be isolated until their health status can be determined and the potential health risk to established animals assessed and minimised.
- c) There shall be accommodation for separate housing of sick or injured animals.

1.4. Service rooms

- a) Storerooms shall be designed, used and maintained to safeguard the quality of food and bedding. These rooms shall be vermin and insect-proof. Other materials, which may be contaminated or present a hazard to animals or staff, shall be stored separately.
- b) The cleaning and washing areas shall be large enough to accommodate the installations necessary to decontaminate and clean used equipment. The cleaning process shall be arranged so as to separate the flow of clean and dirty equipment to prevent the contamination of newly-cleaned equipment.
- c) Establishments shall provide for the hygienic storage and disposal of carcasses and animal waste. Establishment shall have specific measures in place to handle, store and dispose of toxic, radioactive or infectious waste.

Tuesday 5 May 2009

2. THE ENVIRONMENT AND CONTROL THEREOF

2.1. Ventilation

- a) Ventilation shall be provided in the holding room and the animal enclosures to satisfy the requirements of the species housed.
- b) The air in the room shall be renewed at frequent intervals.
- c) The ventilation system shall be designed so as to avoid harmful draughts and noise disturbance.
- d) Smoking in rooms where there are animals shall be forbidden.

2.2. Temperature

- a) Temperature in the holding rooms shall be adapted to the species housed. Temperature in the holding rooms shall be measured and logged on a daily basis.
- b) Animals shall not be restricted to outdoor areas under climatic conditions which may cause them distress.

2.3. Humidity

Humidity levels in the holding rooms shall be adapted to the species housed.

2.4. Lighting

- a) Where natural light does not provide an appropriate light/dark cycle, controlled lighting shall be provided to satisfy the biological requirements of the animals and to provide a satisfactory working environment.
- b) Illumination shall satisfy the needs for the performance of husbandry procedures and inspection of the animals.
- c) Regular photoperiods and intensity of light adapted to the species shall be provided.
- d) When keeping albino animals, the lighting shall be adjusted to take into account their sensitivity to light.

2.5. Noise

- a) Noise levels within the hearing ranges of animals, including ultrasound, shall be minimised particularly during their resting phase.
- b) Establishments shall have alarm systems that sound outside the sensitive hearing range of the animals, where this does not conflict with their audibility to human beings.
- c) Holding rooms shall be provided with noise insulation and absorption materials.

2.6. Alarm systems

- a) Establishments relying on electrical or mechanical equipment for environmental control and protection, shall have a stand-by system to maintain essential services and emergency lighting systems as well as to ensure that alarm systems themselves do not fail to operate;
- b) Heating and ventilation systems shall be equipped with monitoring devices and alarms;
- c) Clear instructions on emergency procedures shall be prominently displayed.

Tuesday 5 May 2009

3. CARE

The care shall be tailored to the scientific objective.

3.1. Health

- a) Establishments shall have a strategy in place to ensure that a health status of the animals is maintained that safeguards animal welfare and meets scientific requirements. This strategy shall include a microbiological surveillance programme, plans for dealing with health breakdowns and shall define health parameters and procedures for the introduction of new animals.
- b) Inspections of the animals shall be made at least daily by the person responsible on site for the welfare and care of the animals. Inspections shall include the health monitoring of the animals and ensure that all sick or injured animals are identified and appropriate action taken.

3.2. Capture from the wild

- a) When animals need to be captured from the wild, it shall be done by humane methods and by persons competent to apply them. The impact of the capturing procedures on the remaining wildlife and habitats shall be minimised.
- b) Any animal found, at or after capture, to be injured or in poor health shall be examined by a competent person as soon as possible and action taken to minimise the suffering of the animals, having as first priority to restore the health of the animal.
- c) Transport containers and means of transport adapted to the species concerned shall be available at capture sites, in case animals need to be moved for examination or treatment.
- d) Special measures shall be taken for the acclimatisation, quarantine, housing, husbandry and care of wild caught animals.

3.3. Housing and enrichment

a) Housing

Animals, except those which are naturally solitary, shall be socially housed in stable groups of compatible individuals. In cases where single housing is allowed on the basis of exceptional scientific and/or welfare justification supported by a favourable ethical evaluation, the duration shall be limited to the minimum period necessary and visual, auditory, olfactory and/or tactile contact shall be maintained. The introduction or re-introduction of animals to established groups shall be carefully monitored to avoid problems of incompatibility and disrupted social relationships.

b) Enrichment

All animals shall be provided with space of sufficient complexity to allow expression of a wide range of normal behaviour. They shall be given a degree of control and choice over their environment to reduce stress-induced behaviour. Establishments shall have appropriate enrichment techniques in place, to extend the range of activities available to the animal and increase their coping activities including physical exercise, foraging, manipulative and cognitive activities, as appropriate to the species. Environmental enrichment in animal enclosures shall be adapted to the species and individual needs of the animals concerned. The enrichment strategies in establishments shall be regularly reviewed and updated.

c) Animal enclosures

Animal enclosures shall not be made out of materials detrimental to the health of the animals. Their design and construction shall be such that no injury to the animals is caused. Unless they are disposable, they shall be made from materials that will withstand cleaning and decontamination techniques. The design of animal enclosure floors shall be adapted to the species and age of the animals and be designed to facilitate the removal of excreta.

3.4. Feeding

- a) The form, content and presentation of the diet shall meet the nutritional and behavioural needs of the animal.

Tuesday 5 May 2009

- b) The animals' diet shall be palatable and non-contaminated. In the selection of raw materials, production, preparation and presentation of feed, establishments shall take measures to minimise chemical, physical and microbiological contamination.
- c) Packing, transport and storage shall be such as to avoid contamination, deterioration or destruction. All feed hoppers, troughs or other utensils used for feeding shall be regularly cleaned and, if necessary, sterilised.
- d) Each animal shall be able to access the food, with sufficient feeding space provided to limit competition.

3.5. Watering

- a) Uncontaminated drinking water shall always be available to all animals.
- b) When automatic watering systems are used, their functioning shall be regularly checked, serviced and flushed to avoid accidents. If solid-bottomed cages are used, care shall be taken to minimise the risk of flooding.
- c) Provision shall be made to adapt the water supply for aquaria and tanks to the needs and tolerance limits of the individual fish, amphibian and reptile species.

3.6. Flooring, substrate, litter, bedding and nesting material

- a) Bedding materials or sleeping structures adapted to the species shall always be provided, including nesting materials or structures for breeding animals.
- b) Within the animal enclosure, the flooring shall provide a solid, comfortable resting area for all animals. All sleeping areas shall be kept clean and dry.

3.7. Handling

Establishments shall set up training programmes for co-operation of animals during procedures. The training programmes shall be adapted to the species and their origin, the procedures and length of the project. Social contact with human beings shall be made a priority and adapted to the species and their origin, the procedures and length of the project.

SECTION B: SPECIES-SPECIFIC SECTION

1. Mice, rats, gerbils, hamsters and guinea pigs

In this and subsequent tables for mice, rats, gerbils, hamsters and guinea pigs, 'enclosure height' means the vertical distance between the enclosure floor and the top of the enclosure and this height applies over more than 50 % of the minimum enclosure floor area prior to the addition of enrichment devices.

When designing procedures, consideration shall be given to the potential growth of the animals to ensure adequate space is provided (as detailed in Tables 1.1. to 1.5) for the duration of the study.

Table 1.1. Mice

	Body weight (g)	Minimum enclosure size (cm ²)	Floor area per animal (cm ²)	Minimum enclosure height (cm)	Date referred to in Article 34(2)
In stock and during procedures	up to 20	330	60	12	[Jan 2012]
	over 20 to 25	330	70	12	
	over 25 to 30	330	80	12	
	over 30	330	100	12	

Tuesday 5 May 2009

	Body weight (g)	Minimum enclosure size (cm ²)	Floor area per animal (cm ²)	Minimum enclosure height (cm)	Date referred to in Article 34(2)
Breeding		330 For a monogamous pair (outbred/inbred) or a trio (inbred). For each additional female plus litter 180 cm ² shall be added.		12	
Stock at breeders (*) Enclosure size 950 cm ²	less than 20	950	40	12	
Enclosure size 1 500 cm ²	less than 20	1 500	30	12	

(*) Post-weaned mice may be kept at these higher stocking densities, for the short period after weaning until issue, provided that the animals are housed in larger enclosures with adequate enrichment. These housing conditions shall not cause any welfare deficit such as: increased levels of aggression, morbidity or mortality, stereotypes and other behavioural deficits, weight loss, or other physiological or behavioural stress responses.

Table 1.2. Rats

	Body weight (g)	Minimum enclosure size (cm ²)	Floor area per animal (cm ²)	Minimum enclosure height (cm)	Date referred to in Article 34(2)
In stock and during procedures (*)	up to 200	800	200	18	[Jan 2012]
	over 200 to 300	800	250	18	
	over 300 to 400	800	350	18	
	over 400 to 600	800	450	18	
	over 600	1 500	600	18	
Breeding		800 Mother and litter. For each additional adult animal permanently added to the enclosure add 400 cm ²		18	
Stock at breeders (**) Enclosure size 1 500 cm ²	up to 50	1 500	100	18	
	over 50 to 100	1 500	125	18	
	over 100 to 150	1 500	150	18	
	over 150 to 200	1 500	175	18	
Stock at breeders (**) Enclosure size 2 500 cm ²	up to 100	2 500	100	18	
	over 100 to 150	2 500	125	18	
	over 150 to 200	2 500	150	18	

(*) In lifetime studies, animals shall be provided with enclosures of a suitable size to enable the animals to be socially housed. Where space allowances per individual animal fall below those indicated above, priority shall be given to maintaining stable social structures.

(**) Post-weaned rats may be kept at these stocking densities, for the short period after weaning until issue, provided that the animals are housed in larger enclosures with adequate enrichment. These housing conditions shall not cause any welfare deficit such as: increased levels of aggression, morbidity or mortality, stereotypes and other behavioural deficits, weight loss, or other physiological or behavioural stress responses.

Tuesday 5 May 2009

Table 1.3. Gerbils

	Body weight (g)	Minimum enclosure size (cm ²)	Floor area per animal (cm ²)	Minimum enclosure height (cm)	Date referred to in Article 34(2)
In stock and during procedures	up to 40	1 200	150	18	[Jan 2012]
	over 40	1 200	250	18	
Breeding		1 200 Monogamous pair or trio with offspring		18	

Table 1.4. Hamsters

	Body weight (g)	Minimum enclosure size (cm ²)	Floor area per animal (cm ²)	Minimum enclosure height (cm)	Date referred to in Article 34(2)
In stock and during procedures	up to 60	800	150	14	[Jan 2012]
	over 60 to 100	800	200	14	
	over 100	800	250	14	
Breeding		800 Mother or monogamous pair with litter		14	
Stock at breeders (*)	less than 60	1 500	100	14	

(*) Post-weaned hamsters may be kept at these stocking densities, for the short period after weaning until issue, provided that the animals are housed in larger enclosures with adequate enrichment. These housing conditions shall not cause any welfare deficit such as: increased levels of aggression, morbidity or mortality, stereotypes and other behavioural deficits, weight loss, or other physiological or behavioural stress responses.

Table 1.5. Guinea pigs

	Body weight (g)	Minimum enclosure size (cm ²)	Floor area per animal (cm ²)	Minimum enclosure height (cm)	Date referred to in Article 34(2)
In stock and during procedures	up to 200	1 800	200	23	[Jan 2012]
	over 200 to 300	1 800	350	23	
	over 300 to 450	1 800	500	23	
	over 450 to 700	2 500	700	23	
	over 700	2 500	900	23	

Tuesday 5 May 2009

	Body weight (g)	Minimum enclosure size (cm ²)	Floor area per animal (cm ²)	Minimum enclosure height (cm)	Date referred to in Article 34(2)
Breeding		2 500 Pair with litter. For each additional breeding female add 1 000 cm ²		23	

2. Rabbits

A raised area shall be provided within the enclosure. This raised area must allow the animal to lie and sit and easily move underneath, and shall not cover more than 40 % of the floor space. When for exceptional scientific or veterinary reasons a shelf cannot be used, the enclosure shall be 33 % larger for a single rabbit and 60 % larger for two rabbits. Where a raised area is provided for rabbits of less than 10 weeks of age, the size of the raised area shall be at least of 55x25 cm and the height above the floor shall be such that the animals can make use of it.

Table 2.1. Rabbits over 10 weeks of age

Table 2.1 is to be used for both cages and pens. The additional floor area is as a minimum 3 000 cm² per rabbit for the third, the fourth, the fifth and the sixth rabbit, while 2 500 cm² as a minimum shall be added for each additional rabbit above a number of six.

Final body weight (kg)	Minimum floor area for one or two socially harmonious animals (cm ²)	Minimum height (cm)	Date referred to in Article 34(2)
less than 3	3 500	45	[Jan 2012]
from 3 to 5	4 200	45	
over 5	5 400	60	

Table 2.2. Doe plus litter

Doe weight (kg)	Minimum enclosure size (cm ²)	Addition for nestboxes (cm ²)	Minimum height (cm)	Date referred to in Article 34(2)
less than 3	3 500	1 000	45	[Jan 2012]
from 3 to 5	4 200	1 200	45	
over 5	5 400	1 400	60	

Table 2.3. Rabbits less than 10 weeks of age

Table 2.3 is to be used for both cages and pens.

Age	Minimum enclosure size (cm ²)	Minimum floor area per animal (cm ²)	Minimum height (cm)
Weaning to 7 weeks	4 000	800	40
From 7 to 10 weeks	4 000	1 200	40

Tuesday 5 May 2009

Table 2.4. Rabbits: Optima dimensions for raised areas for enclosures having the dimensions indicated in Table 2.1.

Age in Weeks	Final body weight (kg)	Optimum size (cm × cm)	Optimum height from the enclosure floor (cm)	Date referred to in Article 34(2)
over 10	less than 3	55 × 25	25	[Jan 2012]
	from 3 to 5	55 × 30	25	
	over 5	60 × 35	30	

3. Cats

Table 3.1. Cats

The minimum space in which a queen and litter may be held is the space for a single cat, which shall be gradually increased so that by four months of age litters have been re-housed to follow the space requirements for adults.

Areas for feeding and for litter trays shall not be less than 0,5 metres apart and shall not be interchanged.

	Floor (*) (m ²)	Shelves (m ²)	Height (m)	Date referred to in Article 34(2)
Minimum for one adult animal	1,5	0,5	2	[Jan 2017]
For each additional animal add	0,75	0,25	–	

(*) Note: Floor area excluding shelves.

4. Dogs

The internal enclosure shall represent at least 50 % of the minimum space to be made available to the dogs, as detailed in Table 4.1.

The space allowances detailed below are based on the requirements of beagles, but giant breeds such as St Bernards or Irish wolfhounds shall be provided with allowances significantly in excess of those detailed in Table 4.1. For breeds other than the laboratory beagle, space allowances shall be decided in consultation with veterinary staff.

Table 4.1. Dogs

Dogs that are pair or group housed may each be constrained to half the total space provided (2 m² for a dog under 20 kg, 4 m² for a dog over 20 kg) while they are undergoing procedures as defined in this Directive, if this separation is essential for scientific purposes.

A nursing bitch and litter shall have the same space allowance as a single bitch of equivalent weight. The whelping pen shall be designed so that the bitch can move to an additional compartment or raised area away from the puppies.

Weight (kg)	Minimum enclosure size (m ²)	Minimum floor area for one or two animals (m ²)	For each additional animal add a minimum of (m ²)	Minimum height (m)	Date referred to in Article 34(2)
up to 20	4	4	2	2	[Jan 2017]
over 20	8	8	4	2	

Tuesday 5 May 2009

Table 4.2. Dogs - post-weaned stock

Weight of dog (kg)	Minimum enclosure size (m ²)	Minimum floor area/animal (m ²)	Minimum height (m)	Date referred to in Article 34(2)
up to 5	4	0,5	2	[Jan 2017]
over 5 to 10	4	1,0	2	
over 10 to 15	4	1,5	2	
over 15 to 20	4	2	2	
over 20	8	4	2	

5. Ferrets

Table 5. Ferrets

	Minimum enclosure size (cm ²)	Minimum floor area per animal (cm ²)	Minimum height (cm)	Date referred to in Article 34(2)
Animals up to 600 g	4 500	1 500	50	[Jan 2012]
Animals over 600 g	4 500	3 000	50	
Adult males	6 000	6 000	50	
Jill and litter	5 400	5 400	50	

6. Non-human primates

Table 6.1. Marmosets and tamarins

	Minimum floor area of enclosures for 1 (*) or 2 animals plus offspring up to 5 months old (m ²)	Minimum volume per additional animal over 5 months (m ³)	Minimum enclosure height (m) (**)	Date referred to in Article 34(2)
Marmosets	0,5	0,2	1,5	[Jan 2017]
Tamarins	1,5	0,2	1,5	

(*) Animals shall only be kept singly *in exceptional circumstances*.

(**) The top of the enclosure shall be at least 1.8m from the floor.

Table 6.2. Squirrel monkeys

Minimum floor area for 1 (*) or 2 animals (m ²)	Minimum volume per additional animal over 6 months of age (m ³)	Minimum enclosure height (m)	Date referred to in Article 34(2)
2,0	0,5	1,8	[Jan 2017]

(*) Animals shall only be kept singly *in exceptional circumstances*.

Tuesday 5 May 2009

Table 6.3. Macaques and vervets (*)

	Minimum enclosure size (m ²)	Minimum enclosure volume (m ³)	Minimum volume per animal (m ³)	Minimum enclosure height (m)	Date referred to in Article 34(2)
Animals less than 3 yrs of age (**)	2,0	3,6	1,0	1,8	[Jan 2017]
Animals from 3 yrs of age (***)	2,0	3,6	1,8	1,8	
Animals held for breeding purposes (****)			3,5	2,0	

(*) Animals shall only be kept singly *in* exceptional circumstances.

(**) An enclosure of minimum dimensions may hold up to three animals.

(***) An enclosure of minimum dimensions may hold up to two animals.

(****) In breeding colonies no additional space/volume allowance is required for young animals up to 2 years of age housed with their mother.

Table 6.4. Baboons (*)

	Minimum enclosure size (m ²)	Minimum enclosure volume (m ³)	Minimum volume per animal (m ³)	Minimum enclosure height (m)	Date referred to in Article 34(2)
Animals (**) less than 4 yrs of age	4,0	7,2	3,0	1,8	[Jan 2017]
Animals (**) from 4 yrs of age	7,0	12,6	6,0	1,8	
Animals held for breeding purposes (***)			12,0	2,0	

(*) Animals shall only be kept singly *in* exceptional circumstances.

(**) An enclosure of minimum dimensions may hold up to 2 animals.

(***) In breeding colonies no additional space/volume allowance is required for young animals up to 2 years of age housed with their mother.

7. Farm animals

Table 7.1. Cattle

Body weight (kg)	Minimum enclosure size (m ²)	Minimum floor area/animal (m ² /animal)	Trough space for ad-libitum feeding of polled cattle (m/animal)	Trough space for restricted feeding of polled cattle (m/animal)	Date referred to in Article 34(2)
up to 100	2,50	2,30	0,10	0,30	[Jan 2017]
over 100 to 200	4,25	3,40	0,15	0,50	
over 200 to 400	6,00	4,80	0,18	0,60	
over 400 to 600	9,00	7,50	0,21	0,70	
over 600 to 800	11,00	8,75	0,24	0,80	
over 800	16,00	10,00	0,30	1,00	

Tuesday 5 May 2009

Table 7.2. Sheep and goats

Body weight (kg)	Minimum enclosure size (m ²)	Minimum floor area/animal (m ² / animal)	Minimum partition height (m)	Trough space for ad-libitum feeding (m/animal)	Trough space for restricted feeding (m/animal)	Date referred to in Article 34(2)
less than 20	1,0	0,7	1,0	0,10	0,25	[Jan 2017]
over 20 to 35	1,5	1,0	1,2	0,10	0,30	
over 35 to 60	2,0	1,5	1,2	0,12	0,40	
over 60	3,0	1,8	1,5	0,12	0,50	

Table 7.3. Pigs and minipigs

Liveweight (kg)	Minimum enclosure size (*) (m ²)	Minimum floor area per animal (m ² /animal)	Minimum lying space per animal (in, thermoneutral conditions) (m ² /animal)	Date referred to in Article 34(2)
Up to 5	2,0	0,20	0,10	[Jan 2017]
over 5 to 10	2,0	0,25	0,11	
over 10 to 20	2,0	0,35	0,18	
over 20 to 30	2,0	0,50	0,24	
over 30 to 50	2,0	0,70	0,33	
over 50 to 70	3,0	0,80	0,41	
over 70 to 100	3,0	1,00	0,53	
over 100 to 150	4,0	1,35	0,70	
over 150	5,0	2,50	0,95	
Adult (conventional) boars	7,5		1,30	

(*) Pigs may be confined in smaller enclosures for short periods of time, for example by partitioning the main enclosure using dividers, when justified on veterinary or experimental grounds, for example where individual food consumption is required.

Table 7.4. Equines

The shortest side shall be a minimum of 1,5 × the wither height of the animal. The height of indoor enclosures shall allow animals to rear to their full height.

Wither height (m)	Minimum floor area/animal (m ² /animal)			Minimum enclosure height (m)	Date referred to in Article 34(2)
	For each animal held singly or in groups of up to 3 animals	For each animal held in groups of 4 or more animals	Foaling box / mare with foal		
1,00 to 1,40	9,0	6,0	16	3,00	[Jan 2017]
over 1,40 to 1,60	12,0	9,0	20	3,00	
over 1,60	16,0	(2 × WH) ² (*)	20	3,00	

(*) To ensure adequate space is provided, space allowances for each individual animal shall be based on height to withers (WH)

Tuesday 5 May 2009

8. Birds

Table 8.1. Domestic fowl

Where these minimum enclosures sizes cannot be provided for scientific reasons, the duration of the confinement shall be justified by the experimenter in consultation with veterinary staff. In such circumstances, birds can be housed in smaller enclosures containing appropriate enrichment and with a minimum floor area of 0.75 m².

Body mass (g)	Minimum enclosure size (m ²)	Minimum area per bird (m ²)	Minimum height (cm)	Minimum length of feed trough per bird (cm)	Date referred to in Article 34(2)
Up to 200	1,00	0,025	30	3	[Jan 2012]
over 200 to 300	1,00	0,03	30	3	
over 300 to 600	1,00	0,05	40	7	
over 600 to 1 200	2,00	0,09	50	15	
over 1 200 to 1 800	2,00	0,11	75	15	
over 1 800 to 2 400	2,00	0,13	75	15	
over 2 400	2,00	0,21	75	15	

Table 8.2. Domestic turkey

All enclosure sides shall be at least 1,5 m long. Where these minimum enclosures sizes cannot be provided for scientific reasons, the duration of the confinement shall be justified by the experimenter in consultation with veterinary staff. In such circumstances, birds can be housed in smaller enclosures containing appropriate enrichment and with a minimum floor area of 0,75 m² and a minimum height of 50 cm for birds below 0,6 kg, 75 cm for birds below 4 kg, and 100 cm for birds over 4 kg. These can be used to house small groups of birds in accordance with the space allowances given in table 8.2.

Body mass (kg)	Minimum enclosure size (m ²)	Minimum area per bird (m ²)	Minimum height (cm)	Minimum length of feed trough per bird (cm)	Date referred to in Article 34(2)
Up to 0,3	2,00	0,13	50	3	[Jan 2012]
over 0,3 to 0,6	2,00	0,17	50	7	
over 0,6 to 1	2,00	0,30	100	15	
over 1 to 4	2,00	0,35	100	15	
over 4 to 8	2,00	0,40	100	15	
over 8 to 12	2,00	0,50	150	20	
over 12 to 16	2,00	0,55	150	20	
over 16 to 20	2,00	0,60	150	20	
over 20	3,00	1,00	150	20	

Tuesday 5 May 2009

Table 8.3. Quail

Body mass (g)	Minimum enclosure size (m ²)	Area per bird pair-housed (m ²)	Area per additional bird group-housed (m ²)	Minimum height (cm)	Minimum length of trough per bird (cm)	Date referred to in Article 34(2)
Up to 150	1,00	0,5	0,10	20	4	[Jan 2012]
Over 150	1,00	0,6	0,15	30	4	

Table 8.4. Ducks and geese

Where these minimum enclosures sizes cannot be provided for scientific reasons, the duration of the confinement shall be justified by the experimenter in consultation with veterinary staff. In such circumstances, birds can be housed in smaller enclosures containing appropriate enrichment and with a minimum floor area of 0,75 m². These can be used to house small groups of birds in accordance with the space allowances given in table 8.4.

Body mass (g)	Minimum enclosure size (m ²)	Area per bird (m ²) (*)	Minimum height (cm)	Minimum length of feed trough per bird (cm)	Date referred to in Article 34(2)
Ducks					[Jan 2012]
Up to 300	2,00	0,10	50	10	
Over 300 to 1 200 (**)	2,00	0,20	200	10	
Over 1 200 to 3 500	2,00	0,25	200	15	
Over 3 500	2,00	0,50	200	15	
Geese					
Up to 500	2,00	0,20	200	10	
Over 500 to 2 000	2,00	0,33	200	15	
Over 2 000	2,00	0,50	200	15	

(*) This shall include a pond of minimum area 0,5 m² per 2 m² enclosure with a minimum depth of 30 cm. The pond may contribute up to 50 % of the minimum enclosure size.

(**) Pre-fledged birds may be held in enclosures with a minimum height of 75 cm.

Table 8.5. Ducks and geese: Minimum pond sizes (*)

	Area (m ²)	Depth (cm)
Ducks	0,5	30
Geese	0,5	from 10 to 30

(*) Pond sizes are per 2 m² enclosure. The pond may contribute up to 50 % of the minimum enclosure size.

Tuesday 5 May 2009

Table 8.6. Pigeons

Enclosures shall be long and narrow (for example 2 m by 1 m) rather than square to allow birds to perform short flights.

Group size	Minimum enclosure size (m ²)	Minimum height (cm)	Minimum length of food trough per bird (cm)	Minimum length of perch per bird (cm)	Date referred to in Article 34(2)
Up to 6	2	200	5	30	[Jan 2012]
from 7 to 12	3	200	5	30	
For each additional bird above 12	0,15		5	30	

Table 8.7. Zebra finch

Enclosures shall be long and narrow (for example, 2 m by 1 m) to enable birds to perform short flights. For breeding studies, pairs may be housed in smaller enclosures containing appropriate enrichment with a minimum floor area of 0.5 m² and a minimum height of 40 cm. The duration of the confinement shall be justified by the experimenter in consultation with veterinary staff.

Group size	Minimum enclosure size (m ²)	Minimum height (cm)	Minimum number of feeders	Date referred to in Article 34(2)
Up to 6	1,0	100	2	[Jan 2012]
7 to 12	1,5	200	2	
13 to 20	2,0	200	3	
for each additional bird above 20	0,05		1 per 6 birds	

9. Amphibians

Table 9.1. Aquatic urodele

Body length (*) (cm)	Minimum water surface area (cm ²)	Minimum water surface area for each additional animal in group-holding (cm ²)	Minimum water depth (cm)	Optimal temperature	Relative humidity	Date referred to in Article 34(2)
Up to 10	262,5	50	13	15°C-22°C	100 %	[Jan 2012]
over 10 to 15	525	110	13			
over 15 to 20	875	200	15			
over 20 to 30	1 837,5	440	15			
over 30	3 150	800	20			

(*) Measured from snout to vent

Tuesday 5 May 2009

Table 9.2. Aquatic anurans (*)

Body length (**) (cm)	Minimum water surface area (cm ²)	Minimum water surface area for each additional animal in group- holding (cm ²)	Minimum water depth (cm)	Optimal temperature	Relative humidity	Date referred to in Article 34(2)
Less than 6	160	40	6	18°C-22°C	100 %	[Jan 2012]
from 6 to 9	300	75	8			
over 9 to 12	600	150	10			
over 12	920	230	12,5			

(*) These conditions apply to holding (i.e. husbandry) tanks but not to those tanks used for natural mating and super-ovulation for reasons of efficiency, as the latter procedures require smaller individual tanks. Space requirements determined for adults in the indicated size categories; juveniles and tadpoles shall either be excluded, or dimensions altered according to the scaling principle.

(**) Measured from snout to vent

Table 9.3. Semi-aquatic anurans

Body length (*) (cm)	Minimum enclosure size (**) (cm ²)	Minimum area for each additional animal in group holding (cm ²)	Minimum enclosure height (***) (cm)	Minimum water depth (cm)	Optimal temperature	Relative humidity	Date referred to in Article 34(2)
up to 5,0	1 500	200	20	10	10°C-15°C	50-80 %	[Jan 2012]
over 5,0 to 7,5	3 500	500	30	10			
over 7,5	4 000	700	30	15			

(*) Measured from snout to vent

(**) One third land division, two thirds water division sufficient for animals to submerge

(***) Measured from the surface of the land division up to the inner part of the top of the terrarium; furthermore, the height of the enclosures shall be adapted to the interior design

Table 9.4. Semi-terrestrial anurans

Body length (*) (cm)	Minimum enclosure size (**) (cm ²)	Minimum area for each additional animal in group- holding (cm ²)	Minimum enclosure height (***) (cm)	Minimum water depth (cm)	Optimal temperature	Relative humidity	Date referred to in Article 34(2)
Up to 5,0	1 500	200	20	10	23°C-27°C	50-80 %	[Jan 2012]
over 5,0 to 7,5	3 500	500	30	10			
over 7,5	4 000	700	30	15			

(*) Measured from snout to vent

(**) Two-thirds land division, one-third water division sufficient for animals to submerge

(***) Measured from the surface of the land division up to the inner part of the top of the terrarium; furthermore, the height of the enclosures shall be adapted to the interior design

Tuesday 5 May 2009

Table 9.5. Arboreal anurans

Body length (*) (cm)	Minimum enclosure size (**) (cm ²)	Minimum area for each additional animal in group- holding (cm ²)	Minimum enclosure height (***) (cm)	Optimal temperature	Relative humidity	Date referred to in Article 34(2)
up to 3,0	900	100	30	18°C-25°C	50-70 %	[Jan 2012]
over 3,0	1 500	200	30			

(*) Measured from snout to vent

(**) Two-thirds land division, one-third pool division sufficient for animals to submerge

(***) Measured from the surface of the land division up to the inner part of the top of the terrarium; furthermore, the height of the enclosures shall be adapted to the interior design.

10. Reptiles

Table 10.1. Aquatic chelonians

Body length (*) (cm)	Minimum water surface area (cm ²)	Minimum water surface area for each additional animal in group holding (cm ²)	Minimum water depth (cm)	Optimal temperature	Relative humidity	Date referred to in Article 34(2)
up to 5	600	100	10	20°C-25°C	80-70 %	[Jan 2012]
Over 5 to 10	1 600	300	15			
Over 10 to 15	3 500	600	20			
Over 15 to 20	6 000	1 200	30			
Over 20 to 30	10 000	2 000	35			
Over 30	20 000	5 000	40			

(*) Measured in a straight line from the front edge to the back edge of the shell

Table 10.2. Terrestrial snakes

Body length (*) (cm)	Minimum floor area (cm ²)	Minimum area for each additional animal in group- holding (cm ²)	Minimum enclosure height (**) (cm)	Optimal temperature	Relative humidity	Date referred to in Article 34(2)
up to 30	300	150	10	22°C-27°C	60-80 %	[Jan 2012]
Over 30 to 40	400	200	12			
Over 40 to 50	600	300	15			
Over 50 to 75	1 200	600	20			
Over 75	2 500	1 200	28			

(*) Measured from snout to tail

(**) Measured from the surface of the land division up to the inner part of the top of the terrarium; furthermore, the height of the enclosure shall be adapted to the interior design.

ANNEX V

List of animals referred to in Article 34(4)

- 1) Cattle (*Bos taurus* and *Bos indicus*);
- 2) Sheep and goats (*Ovis aries* and *Capra hircus*);
- 3) Swine (*Sus scrofa*);
- 4) Equine animals (*Equus caballus* and *Equus asinus*);
- 5) Domestic fowl (*Gallus gallus domesticus*);
- 6) Domestic turkey (*Meleagris gallopavo*);
- 7) Ducks and geese (*Anas platyrhynchos*, *Anser anser domesticus*, *Cairina moschata*);
- 8) Domestic quail (*Coturnix spp*);
- 9) Pigeons (*Columba livia*);
- 10) Rabbits (*Oryctolagus cuniculus*).

ANNEX VI

Humane methods of killing animals

Table 1 – Humane methods of killing fish, including gnathostomes and cyclostomes

Agent	Rapidity	Efficacy	Ease of use	Operator safety	Aesthetic value	Overall rating (1-5)	Remarks
Anaesthetic overdose	++	++	++	+ to ++	++	4 to 5 (*)	May be used with prior sedation of the animal.
Electrical stunning	++	+	+	+	++	4	Specialised equipment required. To be followed by immediate exsanguination, or immediate destruction of the brain, or death to be ensured by another method.
Maceration	++	++	++	++	+	4	Only for fish less than 2 cm in length
Concussion	++	+	+	++	-	3	To be followed by immediate exsanguination, or immediate destruction of the brain, or death to be ensured by another method.
Cervical dislocation	++	++	+	++	-	2 - if animal conscious 5 - if animal unconscious	Not used in fish > 500 g. To be followed by destruction of the brain.

(*) Some anaesthetics may cause skin irritation when used on fish.

Other methods may be used on unconscious fish, providing the animal does not regain consciousness before death.

Rapidity: ++ very rapid, + rapid, - slow. Efficacy: ++ very effective, + effective, - not effective. Ease of use: ++ easy to use, + requires expertise, - requires specialist training. Operator safety: ++ no danger, + little danger, - dangerous. Aesthetic value: ++ good aesthetically, + acceptable for most people, - unacceptable for many people. Rating: 1-5 with 5 as most satisfactory.

Tuesday 5 May 2009

Table 2 - Humane methods of killing amphibians

Agent	Rapidity	Efficacy	Ease of use	Operator safety	Aesthetic value	Overall rating (1-5)	Remarks
Anaesthetic overdose	++	++	++	++	++	5	May be used with prior sedation of the animal.
Concussion	++	++	+	++	-	3	To be followed by immediate exsanguination, or immediate destruction of the brain, or death to be ensured by another method.
NMB/anaesthetic mixtures (*)	+	++	-	+	+	3	To be injected intravenously, therefore requires expertise.
Microwave irradiation	++	++	-	+	++	3	Specialised equipment required. For small amphibians.
Electrical stunning	+	+	+	-	-	2	Specialised equipment required. To be followed by immediate exsanguination, or immediate destruction of the brain, or death to be ensured by another method.

(*) Neuromuscular blocking agent, NMB

Other methods may be used on unconscious amphibians, providing the animal does not regain consciousness before death.

Rapidity: ++ very rapid, + rapid, - slow. Efficacy: ++ very effective, + effective, - not effective. Ease of use: ++ easy to use, + requires expertise, - requires specialist training. Operator safety: ++ no danger, + little danger, - dangerous. Aesthetic value: ++ good aesthetically, + acceptable for most people, - unacceptable for many people. Rating: 1-5 with 5 as most satisfactory.

Table 3 - Humane methods of killing reptiles

Agent	Rapidity	Efficacy	Ease of use	Operator safety	Aesthetic value	Overall rating (1-5)	Remarks
Anaesthetic overdose	++	++	++	+	++	5	May be used with prior sedation of the animal.
Captive bolt	++	++	++	+	+	5	For large reptiles. To be followed by immediate exsanguination, or immediate destruction of the brain, or death to be ensured by another method.
Shooting	++	++	++	-	+	4	To be used by experienced marksman. May need a method to ensure death. To be used in field conditions.

Tuesday 5 May 2009

Agent	Rapidity	Efficacy	Ease of use	Operator safety	Aesthetic value	Overall rating (1-5)	Remarks
Concussion	+	+	+	++	-	3	To be followed by immediate exsanguination, or immediate destruction of the brain, or death to be ensured by another method.

Other methods may be used on unconscious reptiles, providing the animal does not regain consciousness before death.

Rapidity: ++ very rapid, + rapid, - slow. Efficacy: ++ very effective, + effective, - not effective. Ease of use: ++ easy to use, + requires expertise, - requires specialist training. Operator safety: ++ no danger, + little danger, - dangerous. Aesthetic value: ++ good aesthetically, + acceptable for most people, - unacceptable for many people. Rating: 1-5 with 5 as most satisfactory.

Table 4 - Humane methods of killing birds

Agent	Rapidity	Efficacy	Ease of Use	Operator safety	Aesthetic value	Overall rating (1-5)	Remarks
NMB/anaesthetic mixtures	++	++	+	+	++	4	To be injected intravenously, therefore requires expertise.
Inert gases (Ar, N ₂)	++	++	++	++	+	4	To be followed by immediate exsanguination, or immediate destruction of the brain, or death to be ensured by another method.
Maceration	++	++	++	++	-	4	For chicks up to 72 h old
Cervical dislocation	++	++	-	++	-	1/3 - if animal conscious 5 - if animal unconscious	For small and young birds (< 250 g). To be followed by immediate exsanguination, or immediate destruction of the brain, or death to be ensured by another method.
Microwave irradiation	++	++	-	++	+	3	Specialised equipment required.
Concussion	++	++	-	++	-	3	To be followed by immediate exsanguination, or immediate destruction of the brain, or death to be ensured by another method.
Electrical stunning	++	++	+	-	-	3	Specialised equipment required. To be followed by immediate exsanguination, or immediate destruction of the brain, or death to be ensured by another method.
Carbon monoxide	+	+	++	-	-	1	Danger to operator.

Other methods may be used on unconscious birds, providing the animal does not regain consciousness before death.

Rapidity: ++ very rapid, + rapid, - slow. Efficacy: ++ very effective, + effective, - not effective. Ease of use: ++ easy to use, + requires expertise, - requires specialist training. Operator safety: ++ no danger, + little danger, - dangerous. Aesthetic value: ++ good aesthetically, + acceptable for most people, - unacceptable for many people. Rating: 1-5 with 5 as most satisfactory.

Tuesday 5 May 2009

Table 5 - Humane methods of killing rodents

Agent	Rapidity	Efficacy	Ease of use	Operator safety	Aesthetic value	Overall rating (1-5)	Remarks
Anaesthetic overdose	++	++	++	+	++	5	May be used with prior sedation of the animal.
NMB/anaesthetic mixtures	++	++	-	+	++	4	To be injected intravenously, therefore requires expertise.
Inert gases (Ar)	++	+	++	+	+	4	To be followed by immediate exsanguination, or immediate destruction of the brain, or death to be ensured by another listed method.
Concussion	++	++	+	++	-	3	For rodents under 1 kg. To be followed by immediate exsanguination, or immediate destruction of the brain, or death to be ensured by another method.
Cervical dislocation	++	++	+	++	-	2/3 - if animal conscious 5 - if animal unconscious	For rodents under 150 g. To be followed by immediate exsanguination, or immediate destruction of the brain, or death to be ensured by another method.
Microwave irradiation	++	++	-	++	+	3	Specialised equipment required.
Decapitation	+	+	+	++	-	1/2 - if animal conscious 5 - if animal unconscious	
Carbon dioxide	+	++	++	+	++	5	To be used in gradual fill only.
Carbon monoxide	+	+	+	-	++	1	Danger to operator

Other methods may be used on unconscious rodents, providing the animal does not regain consciousness before death.

Rapidity: ++ very rapid, + rapid, - slow. Efficacy: ++ very effective, + effective, - not effective. Ease of use: ++ easy to use, + requires expertise, - requires specialist training. Operator safety: ++ no danger, + little danger, - dangerous. Aesthetic value: ++ good aesthetically, + acceptable for most people, - unacceptable for many people. Rating: 1-5 with 5 as most satisfactory.

Table 6 - Humane methods of killing rabbits

Agent	Rapidity	Efficacy	Ease of use	Operator safety	Aesthetic value	Overall rating (1-5)	Remarks
Anaesthetic overdose	++	++	++	+	++	5	May be used with prior sedation of the animal.
NMB/anaesthetic mixtures	++	++	-	+	++	4	To be injected intravenously, therefore requires expertise.

Tuesday 5 May 2009

Agent	Rapidity	Efficacy	Ease of use	Operator safety	Aesthetic value	Overall rating (1-5)	Remarks
Captive bolt	++	++	-	+	+	4	To be followed by immediate exsanguination, or immediate destruction of the brain, or death to be ensured by another method.
Cervical dislocation	++	++	-	++	-	3 - if animal conscious 5 - if animal unconscious	Acceptable for rabbits under 1 kg. To be followed by immediate exsanguination, or immediate destruction of the brain, or death to be ensured by another method.
Concussion	++	+	-	++	-	3	To be followed by immediate exsanguination, or immediate destruction of the brain, or death to be ensured by another method.
Electrical stunning	++	+	++	-	+	3	Specialised equipment required. To be followed by immediate exsanguination, or immediate destruction of the brain, or death to be ensured by another method.
Microwave irradiation	++	++	-	++	+	3	Specialised equipment required.
Decapitation	+	+	+	-	-	1 - if animal conscious 5 - if animal unconscious	For rabbits under 1 kg.
Carbon monoxide	+	+	++	-	++	1	Danger to operator.
Rapid freezing	+	+	++	++	+	1	To be used with foetuses under 4g

Other methods may be used on unconscious rodents, providing the animal does not regain consciousness before death.

Rapidity: ++ very rapid, + rapid, - slow. Efficacy: ++ very effective, + effective, - not effective. Ease of use: ++ easy to use, + requires expertise, - requires specialist training. Operator safety: ++ no danger, + little danger, - dangerous. Aesthetic value: ++ good aesthetically, + acceptable for most people, - unacceptable for many people. Rating: 1-5 with 5 as most satisfactory.

Table 7 - Humane methods of killing dogs, cats, ferrets and foxes

Agent	Rapidity	Efficacy	Ease of use	Operator safety	Aesthetic value	Overall rating (1-5)	Remarks
Anaesthetic overdose	++	++	-	+	++	5	May be used with prior sedation of the animal.
NMB/anaesthetic mixtures	++	++	-	+	+	4	To be injected intravenously, therefore requires expertise.

Tuesday 5 May 2009

Agent	Rapidity	Efficacy	Ease of use	Operator safety	Aesthetic value	Overall rating (1-5)	Remarks
Shooting with a free bullet with appropriate rifles, guns and ammunition	++	++	-	-	-	4	To be used by experienced marksman. May need a method to ensure death.
Captive bolt	++	++	-	++	+	3	To be followed by immediate exsanguination, or immediate destruction of the brain, or death to be ensured by another method.
Electrical stunning	++	++	-	-	-	3	Specialised equipment required. To be followed by immediate exsanguination, or immediate destruction of the brain, or death to be ensured by another method.
Concussion	++	++	+	++	-	2	To be used on neonates. To be followed by immediate exsanguination, or immediate destruction of the brain, or death to be ensured by another method.

Other methods may be used on unconscious dogs, cats, ferrets or foxes, providing the animal does not regain consciousness before death.

Rapidity: ++ very rapid, + rapid, - slow. Efficacy: ++ very effective, + effective, - not effective. Ease of use: ++ easy to use, + requires expertise, - requires specialist training. Operator safety: ++ no danger, + little danger, - dangerous. Aesthetic value: ++ good aesthetically, + acceptable for most people, - unacceptable for many people. Rating: 1-5 with 5 as most satisfactory.

Table 8 - Humane methods of killing large mammals

Agent	Rapidity	Efficacy	Ease of use	Operator safety	Aesthetic value	Overall rating (1-5)	Remarks
Anaesthetic overdose	++	++	-	+	++	5	May be used with prior sedation of the animal.
Captive bolt	++	++	+	+	+	5	To be followed by immediate exsanguination, or immediate destruction of the brain, or death to be ensured by another method.
Shooting with a free bullet with appropriate rifles, guns and ammunition.	++	++	+	-	+	4	To be used by experienced marksman. May need a method to ensure death. To be used in field conditions.
NMB/anaesthetic mixtures	++	++	-	+	++	4	To be injected intravenously, therefore requires expertise.
Inert gases (Ar)	++	++	+	+	+	4	To be followed by immediate exsanguination, or immediate destruction of the brain, or death to be ensured by another method. Acceptable for pigs.

Tuesday 5 May 2009

Agent	Rapidity	Efficacy	Ease of use	Operator safety	Aesthetic value	Overall rating (1-5)	Remarks
Electrical stunning	++	++	+	-	-	3	Specialised equipment required. To be followed by immediate exsanguination, or immediate destruction of the brain, or death to be ensured by another method.
Concussion	++	+	-	+	+	3 - if animal conscious 5 - if animal unconscious	To be followed by immediate exsanguination, or immediate destruction of the brain, or death to be ensured by another method.

Other methods may be used on other large unconscious mammals, providing the animal does not regain consciousness before death.

Rapidity: ++ very rapid, + rapid, - slow. Efficacy: ++ very effective, + effective, - not effective. Ease of use: ++ easy to use, + requires expertise, - requires specialist training. Operator safety: ++ no danger, + little danger, - dangerous. Aesthetic value: ++ good aesthetically, + acceptable for most people, - unacceptable for many people. Rating: 1-5 with 5 as most satisfactory.

Table 9 - Humane methods of killing non-human primates

Agent	Rapidity	Efficacy	Ease of use	Operator safety	Aesthetic value	Overall rating (1-5)	Remarks
Anaesthetic overdose	++	++	-	+	++	5	May be used with prior sedation of the animal.

Other methods may be used on unconscious non-human primates, providing the animal does not regain consciousness before death.

Rapidity: ++ very rapid, + rapid, - slow. Efficacy: ++ very effective, + effective, - not effective. Ease of use: ++ easy to use, + requires expertise, - requires specialist training. Operator safety: ++ no danger, + little danger, - dangerous. Aesthetic value: ++ good aesthetically, + acceptable for most people, - unacceptable for many people. Rating: 1-5 with 5 as most satisfactory.

Tuesday 5 May 2009

ANNEX VII

List of elements referred to in *Article 22(4)*

1. National legislation in force relevant to the acquisition, husbandry, care and use of animals in scientific procedures.
2. Ethics in relation to human animal relationship, intrinsic value of life and arguments for and against the use of animals in scientific procedures.
3. Basic biology in relation to anatomy, physiological features, breeding, genetics and genetic alteration.
4. Animal behaviour, husbandry and enrichment.
5. Animal health management and hygiene.
6. Recognition of species specific distress, pain and suffering of most common laboratory species.
7. Anaesthesia, pain relieving methods and euthanasia.
8. Use of humane end-points.
9. Requirement of replacement, reduction and refinement.

ANNEX VIII

List of elements referred to in *Article 38(1)(c)*

1. Relevance and justification of the following:
 - (a) use of animals including their origin, estimated numbers, species and life stages;
 - (b) procedures.
 2. Demonstration that existing methods to replace, reduce and refine the use of animals in procedures have been applied.
 3. Demonstration of competence of persons involved in the project.
 4. The planned use of anaesthesia, analgesia and other pain relieving methods.
 5. Reduction, avoidance and alleviation of any form of animal suffering from birth to death.
 6. Housing, husbandry and care conditions of the animals.
 7. Use of early and humane end-points.
 8. Experimental or observational strategy and statistical design to minimise animal numbers, suffering and environmental impact.
 9. Life time experience and re-use of animals.
 10. Avoidance of unnecessary duplication of procedures.
-

ANNEX IX

*General Definitions of Degrees of Severity referred to in Article 17(1)**In general:*

Unless the contrary is known or established, it should be assumed that procedures that cause pain in humans also cause pain in animals.

No pain or mild pain: Severity Grade 1

Interventions and manipulations in animals for experimental purposes as a result of which the animals experience no pain or short term mild pain, suffering, injury, or mild distress with no significant impairment of their general condition.

Examples:

- studies with differing feed compositions or with unphysiological diet, with minor clinical signs or symptoms.*
- withdrawal of blood samples or injection (s.c., i.m., i.p., i.v.) of a drug.*
- superficial tissue biopsy under anaesthesia*
- non-invasive scanning techniques, with or without sedation or anaesthesia of the animals*
- tolerability studies which give cause to expect short term, minor, local or systemic reactions*
- Electrocardiogram (ECG) recordings in conscious animals*
- observational studies such as open-field test, labyrinth tests, or staircase test*
- experiments under general anaesthesia without recovery*

Moderate: Severity Grade 2

Interventions and manipulations in animals for experimental purposes which subject the animals to short term moderate distress, or a moderately long to long-lasting episode of mild distress, pain, suffering, or injury, or significant impairment of general condition.

Examples:

- surgery under anaesthesia and appropriate analgesia*
- implantation of devices such as catheters, telemetry transmitters, minipumps under general anaesthesia*
- studies with unphysiological diet, with clinical signs or symptoms of untreated diabetes mellitus*
- frequent repeated blood sampling or administration of substances*
- induction of anxiety in animal models*
- acute toxicity tests, acute tolerability studies, range-finding studies, chronic toxicity/carcinogenicity tests with non-lethal endpoints*
- seizure models e.g. epilepsy studies*
- non-lethal animal models of cancer e.g. xenograft studies*

Tuesday 5 May 2009

Severe: Severity Grade 3

Interventions and manipulations in animals for experimental purposes which cause the animals severe to very severe distress, or subject them to a moderately long to long-lasting episode of moderate distress, severe pain, prolonged suffering or severe injury, or significant and persistent impairment of general condition.

Examples:

- *bacterial or viral lethal infections*
- *chronic models of rheumatoid arthritis*
- *genetically modified animals with lethal phenotypes (e.g. oncogenes), without early termination of the experiment*
- *organ transplantation (e.g. kidney, pancreas)*
- *chronic models of severe neurological diseases, e.g. Parkinsons disease*

Ship-source pollution and penalties for infringements *I**

P6_TA(2009)0344

European Parliament legislative resolution of 5 May 2009 on the proposal for a directive of the European Parliament and of the Council amending Directive 2005/35/EC on ship source pollution and on the introduction of penalties for infringements (COM(2008)0134 – C6-0142/2008 – 2008/0055(COD))

(2010/C 212 E/32)

(Codecision procedure: first reading)

The European Parliament,

- *having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0134),*
 - *having regard to Article 251(2) and Article 80(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0142/2008),*
 - *having regard to Rule 51 of its Rules of Procedure,*
 - *having regard to the report of the Committee on Transport and Tourism and the opinions of the Committee on the Environment, Public Health and Food Safety and the Committee on Legal Affairs (A6-0080/2009),*
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and to the Commission.

Tuesday 5 May 2009

P6_TC1-COD(2008)0055

Position of the European Parliament adopted at first reading on 5 May 2009 with a view to the adoption of Directive 2009/.../EC of the European Parliament and of the Council amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Directive 2009/123/EC.)

Energy labelling and standard product information (recast) *I**

P6_TA(2009)0345

European Parliament legislative resolution of 5 May 2009 on the proposal for a directive of the European Parliament and of the Council on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (recast) (COM(2008)0778 – C6-0412/2008 – 2008/0222(COD))

(2010/C 212 E/33)

(Codecision procedure – recast)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0778),
- having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0412/2008),
- having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts ⁽¹⁾,
- having regard to the letter of 11 March 2009 from the Committee on Legal Affairs to the Committee on Industry, Research and Energy in accordance with Rule 80a(3) of its Rules of Procedure,
- having regard to Rules 80a and 51 of its Rules of Procedure,
- having regard to the report of the Committee on Industry, Research and Energy (A6-0146/2009),

A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance,

1. Approves the Commission proposal as adapted to the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission as amended below;

⁽¹⁾ OJ C 77, 28.3.2002, p. 1.

Tuesday 5 May 2009

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)0222

Position of the European Parliament adopted at first reading on 5 May 2009 with a view to the adoption of Directive 2009/.../EC of the European Parliament and of the Council on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Union, 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) Council Directive 92/75/EEC of 22 September 1992 on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances ⁽⁴⁾ has been substantially amended ⁽⁵⁾. Since further *substantive changes* are to be made, that Directive should be recast in the interests of clarity.
- (2) The scope of Directive 92/75/EEC is restricted to household appliances. *The Commission Communication of 16 July 2008 on the Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan* has shown that the extension of the scope of Directive 92/75/EEC to energy-related products, **including construction products**, which have **a significant direct or indirect** impact on energy consumption during use, could reinforce potential synergies between existing legislative measures, and in particular with Directive 2005/32/EC of the European Parliament and of the Council of 6 July 2005 establishing a framework for the setting of ecodesign requirements for energy-using products ⁽⁶⁾. **This Directive should complement and in no way prejudice the application of Directive 2005/32/EC. By targeting through a holistic approach and bringing about**

⁽¹⁾ Opinion of 24 March 2009.

⁽²⁾ OJ C ...

⁽³⁾ Position of the European Parliament of 5 May 2009.

⁽⁴⁾ OJ L 297, 13.10.1992, p 16.

⁽⁵⁾ See Annex I part A.

⁽⁶⁾ OJ L 191, 22.7.2005, p. 29.

Tuesday 5 May 2009

additional energy savings and environmental gains, this Directive should be seen as part of an even broader legal framework, which includes Regulation (EC) No 1980/2000 of the European Parliament and of the Council of 17 July 2000 on a revised Community eco-label award scheme ⁽¹⁾ and Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings ⁽²⁾.

- (3) *The Presidency conclusions of the European Council of 8 and 9 March 2007 emphasised the need to increase energy efficiency in the Community so as to achieve the objective of saving 20 % of the Community's energy consumption by 2020 and called for a thorough and rapid implementation of the key areas identified in the Commission Communication of 19 October 2006 entitled Action Plan for Energy Efficiency: Realising the Potential. The action plan highlighted the enormous energy savings opportunities in the products sector.*
- (4) *In order to promote energy efficiency and energy savings, it is, furthermore, essential that the EU and Member States make legally binding the 2020 energy saving target of 20 %, and propose and implement consistent measures to secure its achievement.*
- (5) *Improving efficiency of energy-related products through informed consumer choice benefits the EU economy overall and also the manufacturing industry through reducing the carbon price in the emissions trading scheme.*
- (6) *The provision of accurate, relevant and comparable information on the specific energy consumption of energy-related products **should** influence the end-user's choice in favour of those products which consume or indirectly result in consuming less energy and other essential resources during use, thus prompting manufacturers to take steps to reduce the consumption of **the** energy and other essential resources of the products which they manufacture. It should also, indirectly, encourage the efficient use of these products **in order to contribute to the EU's 20 % energy efficiency target**. In the absence of this information, the operation of market forces alone will fail to promote the rational use of energy and other essential resources for these products.*
- (7) *Given that buildings account for 40 % of total energy consumption in the EU and that the revision of Directive 2002/91/EC aims at promoting cost-effective improvement of the overall energy performance of buildings, the inclusion in this context of certain energy-related construction products within the scope of this Directive should assist private households in choosing the most energy- and cost-efficient product when renovating their buildings.*
- (8) *In order to ensure predictability for manufacturers and clarity for end-users, the Commission should produce a priority list of energy-related products, including construction products, that fall within the scope of this Directive, and which consequently will be covered by the Member States and the Commission's implementation measures.*
- (9) *Information plays a key role in the operation of market forces and it is therefore necessary to introduce a uniform label for all products of the same type, to provide potential purchasers with supplementary standardised information on *the cost of those products* ¶ in terms of energy and the consumption of other essential resources and to take measures to ensure that potential end-users who do not see the product displayed, and thus have no opportunity to see the label, are also supplied with this information. In order to be efficient and successful, the label should be *simple, concise and easily recognisable* to end-users ¶. To this end the **existing layout of the label should be retained as the basis to inform end-users about the energy efficiency of products**. Energy consumption of and other information concerning the products should be measured in accordance with harmonised standards and methods.*
- (10) *As pointed out in the Commission Impact Assessment accompanying its proposal for this Directive, the original, successful A-G label has been followed as a model in different countries around the world, such as Argentina, Brazil, Chile, China, Iran, Israel and South Africa.*

⁽¹⁾ OJ L 237, 21.9.2000, p. 1.

⁽²⁾ OJ L 1, 4.1.2003, p. 65.

Tuesday 5 May 2009

- (11) Member States should **regularly** monitor compliance with this Directive, **and include relevant information in the biennial report that they are obliged to submit to the Commission under this Directive**, with special regard to the responsibilities of suppliers and dealers.
- (12) A completely voluntary scheme would lead to only some products being labelled, or supplied with standard product information, with the risk that this might result in confusion **or even misinformation** for some end-users. The present scheme should therefore ensure that for all the products concerned, the consumption of energy and other essential resources is indicated by **mandatory** labelling and standard product fiches.
- (13) Energy-related products have **a direct or indirect** impact on the consumption of a wide variety of forms of energy during use; electricity and gas being the most important. This Directive should therefore cover energy-related products having **a direct or indirect** impact on the consumption of any form of energy **during use, in accordance with the EU's targets for energy efficiency improvements, the promotion of renewable energy sources (RES) and the reduction of greenhouse gas (GHG) emissions.**
- (14) ■ Energy-related products which have a significant **direct or indirect** impact on consumption of energy or, where relevant, of essential resources during use ■ should be covered by an implementing measure, *where* provision of information through labelling *might* stimulate end-users to purchase more efficient products.
- (15) **Given that buildings account for 40 % of total energy consumption in the EU and that, in the context of its commitments in the Kyoto Protocol, the EU has set a target of improving its energy efficiency by 20 % by the year 2020, it is essential to prioritise development of implementing measures for construction products, such as windows.**
- (16) **The** number of Member States **having** public procurement policies in place which require contracting authorities to procure energy efficient products, **should continually be increased until the goal of covering the entire territory of the European Union is achieved.** The same should apply to the number of Member States **that** have ■ in place incentives for energy efficient products. **In order to avoid distortion of the market, and although the** criteria for products to be eligible for public procurement or incentives can substantially differ from one Member State to another, **they should comply with the strategic targets of the European Union regarding energy efficiency.** To refer to performance classes as levels for particular products as set out in implementing measures to the Directive, may reduce fragmentation of public procurement and incentives and facilitate the uptake of efficient products.
- (17) When laying down public procurement provisions in implementing measures under this Directive, proportionate thresholds in terms of value and volume of public procurement should be set, taking into account the administrative burden and enforceability of procurement rules *in* Member States.
- (18) Incentives which Member States may provide for the promotion of efficient products might constitute *State aid*. This Directive does not prejudice the outcome of any future *State aid* procedure that may be undertaken in accordance with Articles 87 and 88 of the Treaty ||. **However, State aid for environmental protection, and in particular for energy savings, that serves a common European interest is subject to exemptions pursuant to different Community instruments and under the conditions prescribed therein as provided for in the Community guidelines on State aid for environmental protection** ⁽¹⁾.
- (19) The promotion of energy efficient products through labelling, public procurement and incentives should not be to the detriment of the overall environmental performance *of such products.*

⁽¹⁾ OJ C 82, 1.4.2008, p. 1.

Tuesday 5 May 2009

- (20) **The provisions of this Directive concerning the content of advertisements should only be considered as an extraordinary measure. These provisions should therefore not restrict advertising in any other way under any other Community legislation.**
- (21) 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⁾.
- (22) *In particular, the Commission should be empowered to adopt implementing measures in respect of labelling and standard product information of the consumption of energy and other essential resources by energy-related products **during use. In order to create a system that is both predictable for the industry and comprehensible for consumers, the Commission should be responsible for setting a fixed duration period for energy label classification(s) and for updating the classification efficiency index thresholds on a recurring and regular basis.** Since those measures are of general scope and are designed to amend non-essential elements of this Directive by supplementing it with *new non-essential elements*, they shall be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC. **The Commission should, every two years, submit to the European Parliament a report, covering the EU and each Member State separately, containing detailed information on the adoption of the implementing measures, as well as standard product information.***
- (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 earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.
- (24) **When Member States implement the relevant provisions of this Directive, they should strive to refrain from measures that could impose unnecessarily bureaucratic and unwieldy obligations on small and medium-sized enterprises (SMEs), and, to the extent feasible, take into consideration the special needs and financial and administrative limits of SMEs.**
- (25) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directive set out in Annex I, Part B,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Scope

1. This Directive establishes a framework for the *harmonisation* of national measures on end-user information, particularly by means of labelling and of product information, on the consumption of energy and of other essential resources **during use**, and supplementary information concerning energy-related products, thereby allowing end-users to choose more efficient products.
2. This Directive shall apply to energy-related products, **including construction products**, which have a significant **direct or indirect** impact on the consumption of energy and, where relevant, || other essential resources during use.
3. This Directive shall not apply to:
 - (a) second-hand products;
 - (b) any means of transport for persons or goods;
 - (c) the rating plate or its equivalent affixed for safety purposes to products.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

Tuesday 5 May 2009

Article 2

Definitions

For the purpose of this Directive:

- ‘energy-related product’ (product), means any good having an impact on energy consumption during use, which is placed on the market and/or put into service in the Community, including parts intended to be incorporated into energy-related products covered by this Directive which are placed on the market and/or put into service as individual parts for end-users and of which the environmental performance can be assessed independently;
- **‘construction product’ means: an energy-related product used in the construction or renovation of buildings;**
- ‘fiche’ means a standard table of information relating to a product;
- ‘other essential resources’ means water, **raw materials** chemicals or any other substance consumed by a product in normal use;
- ‘supplementary information’ means other information concerning the performance and features of a product, which relate to, or are helpful in evaluating, its use of energy **per unit time** or other essential resources, **based on measurable data including that relating to its manufacture or any other significant environmental aspect thereof;**
- ‘significant environmental aspects’ means those aspects identified as significant for an energy-related product in an implementing measure adopted pursuant to Directive 2005/32/EC with respect to that product;
- **‘direct impact’ means the impact of products that actually consume energy;**
- **‘indirect impact’ means the impact of products that do not consume energy, but contribute to energy consumption whereby the evaluation of the performance of these products shall be based on objective and independent parameters that do not present a climatic variation;**
- ‘dealer’ means a retailer or other person who sells, hires, offers for hire-purchase or displays products to end-users;
- ‘supplier’ means the manufacturer, importer or its *authorised* representative in the Community or the person who places the product on the Community market;
- **‘end-user’ means the legal or natural person who uses a product for professional or personal purposes. This person is the ultimate consumer of a product, and in particular the person for whom the product has been designed, and may differ from the person who purchases the product. This definition covers private consumers and groups of consumers. When purchasing energy-related products, public authorities shall also be regarded as ‘end-users’ for the purposes of this Directive.**

Article 3

Responsibilities of Member States

1. Member States shall take all necessary measures to ensure that:
 - (a) all suppliers and dealers established in their territory fulfil the obligations *laid down in Articles 5 and 6 and Article 10 (3) and (4)* of this Directive;

Tuesday 5 May 2009

- (b) with respect to products covered by this Directive, the display of other labels, marks, symbols or inscriptions which do not comply with the requirements of this Directive and of the relevant implementing measures is prohibited, if such display is likely to mislead or confuse end-users with respect to the consumption of energy or, where relevant, other essential resources **during use**;
- (c) the introduction of the system of labels and fiches concerning energy consumption or conservation **shall be** accompanied by educational and promotional information campaigns aimed at **promoting energy efficiency and** more responsible use of energy by end-users;
- (d) appropriate measures are taken in order to encourage the **Commission and national** authorities responsible for implementing this Directive to co-operate ¶ and provide each other with information in order to assist the *application* of this Directive.

Administrative co-operation and exchange of information shall take the utmost advantage of electronic means of communication and may be supported by relevant Community programmes. Such co-operation shall guarantee the security and confidentiality of processing and the protection of sensitive information provided during that procedure, where necessary. The Commission shall take appropriate measures in order to encourage and contribute to ¶ cooperation between Member States ¶.

2. Where a Member State ascertains that a product does not comply with all the relevant requirements set out in this Directive and its implementing measures *relating to* the label and the fiche, the supplier shall *ensure that* the product *complies* with those requirements and any **effective and proportionate** conditions imposed by the Member States. **With regard to the products which have already been purchased, consumers shall have the rights already prescribed in Community and national legislation on consumer protection, including compensation or product exchange.**

Where there is sufficient evidence that a product may be non-compliant, the Member State concerned shall, **within a specific timeframe**, take the necessary preventive measures **to ensure compliance with the requirements of this Directive, taking into account any damage caused by the non-compliance.**

In the case of persistent non-compliance ¶, the Member State shall take a decision restricting or prohibiting the placing on the market and/or putting into service of the product in question or ensuring that it is withdrawn from the market. In cases of **restriction**, withdrawal of the product from the market or prohibition *on* placing the product on the market, the Commission and the other Member States shall be immediately informed.

3. Every two years, the Member States shall submit a report to the Commission detailing their enforcement activities and the level of compliance in their territory.

The Commission may specify the details of the common content of these reports, **through the setting of minimum requirements for a harmonised template.** Such 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 11(2)*.

Article 4

Information requirements

Member States shall ensure that:

- (1) information relating to the consumption of electric energy, other forms of energy and other essential resources **during use**, and supplementary information is, in accordance with implementing measures pursuant to this Directive, brought to the attention of end-users by means of a fiche and a label related to products offered for sale, hire, hire-purchase or displayed to end-users directly or indirectly by any means of distance selling including the internet;

Tuesday 5 May 2009

- (2) the information referred to in point 1 shall be provided in respect of built-in or installed products where required by the applicable implementing measure;
- (3) **any advertisement for a specific model of energy related products covered by an implementing measure under this Directive, where technical specifications are disclosed, shall provide end-users with the necessary information regarding energy consumption or energy savings or include a reference to the energy class of the product;**
- (4) **any technical promotional literature concerning energy-related products which describes the specific technical parameters of a product, namely, technical manuals and manufacturers' brochures, whether printed or online, shall provide end users with the necessary information regarding energy consumption or shall include a reference to the energy label of the product.**

Article 5

Responsibilities of suppliers

Member States shall ensure that:

- (1) suppliers placing on the market or putting into service products covered by an implementing measure supply a label and a fiche in accordance with this Directive and *any such* implementing measure;
- (2) suppliers *produce* technical documentation which is sufficient to enable the accuracy of the information contained in the label and the fiche to be assessed. *That* technical documentation shall include:
 - (a) a general description of the product,
 - (b) *where relevant*, the results of design calculations carried out, ||
 - (c) test reports, where available, including those carried out by relevant notified *organisations* as defined under other Community legislation,
 - (d) where values are used for similar models, the references allowing identification of those models.

To this end suppliers may use documentation already *produced* in accordance with requirements laid down in relevant Community legislation;

- (3) suppliers make the technical documentation available for inspection purposes for a period ending five years after the last product concerned has been manufactured.

Suppliers make available an electronic version of the technical documentation on request to the market surveillance authorities of the Member States and to the Commission;

- (4) in respect of labelling and product information, suppliers supply the necessary labels free of charge to dealers. Without prejudice to the suppliers' choice of system for delivery of labels, suppliers *shall* promptly deliver labels on request from dealers;
- (5) in addition to the labels, suppliers provide a product fiche ■;
- (6) suppliers include a product fiche in all product brochures. Where product brochures are not provided by the supplier, the supplier *shall supply* fiches with other literature provided with the product;

Tuesday 5 May 2009

- (7) suppliers are responsible for the accuracy of the labels and fiches that they supply;
- (8) suppliers are considered to have given consent to the publication of the information given on the label or in the fiche.

Article 6

Responsibilities of dealers

Member States shall ensure that:

- (1) dealers display labels properly, **in a visible and legible manner**, and make the fiche available in the product brochure or other literature that accompanies products when sold to end-users;
- (2) in respect of labelling and product information, whenever a product specified in an implementing measure is displayed, dealers attach **the latest version of the** appropriate label **upon expiration of the validity period of the old label**, in the clearly visible position specified in the applicable implementing measure, and in the relevant language version.

Article 7

Distance selling

Where products are offered for sale, hire or hire-purchase by mail order, by catalogue, *through the internet, telemarketing* or by any other means which imply that the potential end-user cannot be expected to see the product displayed, implementing measures shall make provision to ensure that potential end-users are provided with the information specified on **the latest version of the label for the product** and in the fiche before buying the product. **In cases of distance selling, implementing measures shall specify the way that the label and the fiche shall be displayed.**

Article 8

Free movement

1. Member States shall not prohibit, restrict or impede the placing on the market or putting into service, within their territories, of products which are covered by and **fully** comply with **this Directive and** the applicable implementing **measures**.
2. **Provided that Member States monitor the market regularly and** unless they have evidence to the contrary, **they** shall consider labels and fiches to comply with the provisions of this Directive and the implementing measures. Member States shall require suppliers to provide evidence within the meaning of Article 5 concerning the accuracy of the information supplied on their labels or fiches when they have reason to suspect *that such information* is incorrect.

Article 9

Public procurement and incentives

1. Contracting authorities which conclude public works, supply || or service contracts || referred to in Directive 2004/18/EC of the European Parliament and of the Council ⁽¹⁾, which are not excluded by virtue of Articles 12 to 18 of that Directive, shall not procure products which do not meet the minimum performance levels laid down in the applicable implementing measure, **and aiming at the highest class of efficiency, which do not meet the criteria set out in paragraph 2.**
2. The criteria for setting minimum performance levels for public procurement in implementing measures shall be the following:
 - (a) cost-effectiveness in relation to public finance,

⁽¹⁾ OJ L 134, 30.4.2004, p. 114.

Tuesday 5 May 2009

- (b) the relevance of the products for public procurement,
- (c) *the potential for energy savings,*
- (d) *the promotion of innovation, in accordance with the Lisbon Strategy,*
- (e) the likelihood of stimulating market transformation towards better performing products,
- (f) the need to ensure sufficient competition.

3. Paragraph 1 shall apply to contracts having a value exclusive of value-added tax (VAT) estimated to be equal to or greater than EUR 15 000. Implementing measures may set the threshold at a || value *higher* than EUR 15 000 exclusive of VAT, taking into account normal purchase prices and volumes.

4. Member States shall not provide incentives *in relation* to products which do not meet the minimum performance levels laid down in the applicable implementing measure.

5. When Member States publicly procure or provide incentives *in relation* to products, they shall express the performance levels in terms of classes as defined in the applicable implementing measure.

Incentives may, inter alia, include tax credits, both for end-users using highly energy-efficient products and for industries which promote and produce such products, and reduced VAT on materials and components, which improve energy efficiency. The incentives provided by Member States shall be effective and efficient.

Article 10

Review of the energy label classification(s)

1. *The Commission shall be responsible for reviewing the energy label classification(s) on a recurring regular basis, in accordance with the fixed duration of the classification(s) as determined through the implementing measures under Article 12.*

2. *The Commission shall base the review of the classification efficiency index thresholds on the most recently available figures, taking into account the speed of technological progress of the product in question, and shall, well in advance of the review, carry out appropriate consultation with stakeholders in accordance with Article 12(3).*

3. *Suppliers shall be obliged to supply to dealers the latest version of the label, at the latest upon expiration of the validity period of the old label.*

4. *Dealers shall be obliged to replace the old label with the energy label containing the reviewed classifications for the relevant product on the same day as the validity period of the old label expires in accordance with Article 6(2).*

Article 11

Committee procedure

1. The Commission shall be assisted by a committee.
2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Tuesday 5 May 2009

Article 12

Implementing measures

1. Details relating to the label and the fiche shall be laid down in implementing measures. Those implementing 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 11(2), relating to each type of product in accordance with this Article.

When a product meets the criteria listed under paragraph 2, it shall be covered by an implementing measure in accordance with paragraph 4.

Provisions in implementing measures regarding information provided on the label and in the fiche on the consumption of energy and other essential resources during use shall enable end-users to make better informed purchasing decisions and shall enable market surveillance authorities to verify whether products comply with the information provided.

When an implementing measure lays down provisions with respect to both energy efficiency and consumption of essential resources of a product, the design and content of the label shall *emphasise* the energy efficiency of the product.

The implementing measures currently in force, which were adopted before the entry into force of this Directive, shall be aligned with the provisions contained in this Directive, notably as regards the layout, design, classes or other features of the Energy Label not later than ... (*)

2. The criteria referred to in paragraph 1 are the following:

- (a) according to most recently available figures and *having regard to* the quantities placed on the Community market, the products have a significant potential for saving energy and, where relevant, other essential resources;
- (b) *|| a significant disparity in the relevant performance levels of such products compared to products with equivalent functionality available on the market;*
- (c) the Commission shall take into account relevant Community legislation and self-regulation, such as voluntary agreements, **where they** are expected to achieve the policy objectives more quickly or at lesser expense than mandatory requirements.

3. In preparing a draft implementing measure, the Commission shall:

- (a) take into account those environmental parameters set out in Annex I, Part 1, to Directive 2005/32/EC which are identified as significant in the relevant implementing measure adopted under Directive 2005/32/EC and which are relevant for the end-user during use;
- (b) assess the impact of the measure on *the* environment, end-users and manufacturers, including SMEs, in terms of competitiveness including on markets outside the Community, innovation, market access and costs and benefits;
- (c) carry out appropriate consultation with stakeholders, **including manufacturers and their suppliers;**
- (d) set implementing date(s), any staged or transitional measure or periods, taking into account in particular possible impacts on SMEs or on specific product groups manufactured primarily by SMEs.

(*) ***Six months after the entry into force of this Directive.***

Tuesday 5 May 2009

4. The implementing measures shall specify in particular:
- (a) the exact definition of the type of products to be included;
 - (b) the measurement standards and methods to be used in obtaining the information referred to in Article 1(1);
 - (c) the details of the technical documentation required under Article 5;
 - (d) the design and content of the label referred to in Article 4, which as far as possible shall have uniform design characteristics across product groups **and shall in all cases be clearly visible and legible, and at the same time retain as a basis the main elements of the current label (closed-scale A-G classification), which are simple and recognisable; the label shall also indicate a period of validity;**
 - (e) the location where the label shall be fixed to the product displayed and the information and manner in which the label and/or information are to be provided in the case of offers for sale || covered by Article 7. Where appropriate, the implementing measures may provide for the label to be attached to the product or printed on the packaging, or for the details of the labelling requirements for printing in catalogues, for distance selling and internet sales;
 - (f) the content and where appropriate the format and other details concerning the fiche or further information specified in Articles 4 and 5(3). The information on the label shall also be included on the fiche;
 - (g) for relevant products, the minimum performance levels and, where appropriate, a threshold higher than EUR 15 000 exclusive of VAT for the purposes of Article 9(1) and (3);
 - (h) for relevant products, the minimum performance levels for the purposes of Article 9(4);
 - (i) the specific content of the label for advertising, including, as appropriate, the energy class and other relevant performance level(s) of the given product in a legible and visible form;
 - (j) the **fixed** duration of **the** label classification(s), **which shall be a time period of at least three years, but not exceeding five years, taking into consideration the pace of innovation of the product, and the date of the next review of those classifications, based on their fixed duration;**
 - (k) the level of accuracy in the declarations on the label and fiches;
 - (l) the date for the evaluation and possible revision of the implementing measure, taking into account the speed of technological progress.

Article 13

Priority list for implementation

The Commission shall, no later than... (*), communicate to the European Parliament and Member States a list of priority products, including construction products, which are proposed for labelling, based on their energy saving potential.

(*). Six months after the entry into force of this Directive.

Tuesday 5 May 2009

Article 14

Feasibility for extension of scope

No later than 2010, the Commission shall carry out a feasibility study to examine whether, through adoption of implementing measures, the label shall also provide information to end-users regarding the product's impact on significant energy and other essential resources throughout its entire life cycle.

Article 15

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and its implementing measures and shall take the necessary measures to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. **Member States shall also take the necessary measures to strengthen the legal protection against unauthorised use of labelling.** The Member States shall notify these provisions to the Commission by the date specified in Article 16(1) at the latest and shall notify it without delay of any subsequent amendment affecting them.

Article 16

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than ... (*). 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. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 17

Repeal

Council Directive 92/75/EEC, as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council ⁽¹⁾ indicated in Annex I, Part A, is repealed with effect from ... (**), without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directive set out in Annex I, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

Article 18

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*.

(*) 12 months after entry into force of this Directive.

⁽¹⁾ OJ L 284, 31.10.2003, p. 1.

(**) One day after the date set out in the second subparagraph of Article 16(1) of this Directive.

Tuesday 5 May 2009

Articles ... ⁽¹⁾ shall apply from ... ^(*).

Article 19

Addressees

This Directive is addressed to the Member States.

Done at ||

For the European Parliament

The President

||

For the Council

The President

||

⁽¹⁾ *Articles deemed unchanged* || under recast in the final version.

^(*) *One day* after the date set out in the second subparagraph of *Article 16(1)* of this Directive.

ANNEX I

Part A

Repealed Directive with its successive amendment

(referred to in *Article 17*)

Council Directive 92/75/EEC
(OJ L 297, 13.10.1992, p. 16)

Regulation (EC) No 1882/2003
(OJ L 284, 31.10.2003, p. 1)

Only point (32) of Annex III

Part B

|| Time-limits for transposition into national law

(referred to in *Article 17*)

Directive	Deadline for transposition
92/75/EEC	1 January 1994

ANNEX II

CORRELATION TABLE

Directive 92/75/EEC	This Directive
Article 1(1), introductory wording, first sentence	Article 1(1)
Article 1(1), introductory wording, second sentence	Article 1(2)
Article 1(1), first to seventh indent	—
Article 1(2)	—
—	Article 1(3)(a) and (b)
Article 1(3)	Article 1(3)(c)
—	Article 2, <i>first and third indent</i>
Article 1(4), first and second indents	Article 2, <i>sixth and tenth indent</i>
—	Article 2, first indent
Article 1(4), third indent	—
Article 1(4), fourth indent	Article 2, <i>fourth indent</i>
Article 1(4), fifth indent	Article 2, <i>fifth indent</i>
Article 1(5)	—
Article 2(1)	Article 4(1)
Article 2(2)	—
Article 2(3)	Article 5(2)
Article 2(4)	Article 5(2)-(3)
Article 3(1)	Article 5(1)
Article 3(2)	Article 5(5)-(6)
Article 3(3)	Article 5(7)
Article 3(4)	Article 5(8)
Article (4)(a)	Articles 5(4) and 6(2)
Article (4)(b)	—
Article 5	Article 7
Article 6	—
Article 7(a)	Article 3(1)(a)
Article 7(b)	Article 3(1)(b)
Article 7(c)	Article 3(1)(c)
Article 8(1)	Article 8(1)
Article 8(2)	Article 8(2)
Article 9(a)	—
Article 9(b)	—
Article 10(1)	Article 11(1)
Article 10(2)	Article 11(2)
Article 10(3)	—
Article 11	—
Article 12(a)	Article 12(4)(a)
Article 12(b)	Article 12(4)(b)
Article 12(c)	Article 12(4)(c)

Tuesday 5 May 2009

Directive 92/75/EEC	This Directive
Article 12(d)	Article 12(4)(d)
Article 12(e)	Article 12(4)(e)
Article 12(f)	Article 12(4)(f)
Article 12(g)	—
Article 13	Article 17
Article 14	Article 16
Article 15	Article 19
—	Article 3(1)(d)
—	Article 3(2)
—	Article 3(3)
—	Article 4(2)
—	Article 6(1)
—	Article 9
—	Article 12(1)-(3)
—	Article 12(4)(g)-(l)
—	Article 15
—	Article 18
—	Annex I
—	Annex II

European Parliament's estimates for 2010

P6_TA(2009)0346

European Parliament resolution of 5 May 2009 on the estimates of revenue and expenditure of Parliament for the financial year 2010 (2009/2006(BUD))

(2010/C 212 E/34)

The European Parliament,

- having regard to Article 272(2) of the EC Treaty,
- having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾, and particularly Article 31 thereof,
- 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 its resolution of 10 March 2009 on the guidelines for the 2010 budget procedure – Sections I, II, IV, V, VI, VII, VIII and IX ⁽³⁾,
- having regard to the Secretary-General's report to the Bureau on drawing up Parliament's preliminary draft estimates for the financial year 2010,

⁽¹⁾ OJ L 248, 16.9.2002, p. 1.

⁽²⁾ OJ C 139, 14.6.2006, p. 1.

⁽³⁾ Texts adopted, P6_TA(2009)0096.

Tuesday 5 May 2009

- having regard to the preliminary draft estimates drawn up by the Bureau on 21 April 2009 pursuant to Rules 22(6) and 73(1) of Parliament's Rules of Procedure,
 - having regard to the draft estimates drawn up by the Committee on Budgets pursuant to Rule 73(2) of Parliament's Rules of Procedure,
 - having regard to Rule 73 of its Rules of Procedure,
 - having regard to the report of the Committee on Budgets (A6-0275/2009),
- A. whereas a pilot process in which enhanced cooperation between the Bureau and the Committee on Budgets, and early mutual cooperation on all items with significant budgetary implications, was initiated last year and has been maintained for the 2010 procedure,
- B. whereas the prerogatives of the plenary in adopting the estimates and the final budget will be fully maintained in accordance with the Treaty provisions and the Rules of Procedure,
- C. whereas two pre-conciliation meetings between delegations of the Bureau and the Committee on Budgets took place on 25 March 2009 and 16 April 2009 during which a number of key issues were discussed by the two delegations,

1. Recalls that the general direction of the 2010 budget and the challenges to which it should respond were outlined in its abovementioned resolution of 10 March 2009 on the budgetary guidelines; highlights particularly that optimal and equal access to language facilities for members and actions related to Parliament's enhanced legislative role will constitute fundamental elements of the 2010 budget;

General framework

2. Notes that the overall level of the 2010 budget, as suggested by the Bureau, would stay below the traditional voluntary share of 20 % of heading 5 (administrative expenditure) of the multiannual financial framework; notes that the rate of increase suggested is 3,98 % and that the resulting overall level would be marginally higher than in 2009 at 19,67 % of appropriations under this heading;

3. Decides that at this stage, the overall level of the budget is EUR 1 590 012 726, which represents a rate of increase of 3,92 %, in order to leave a larger margin of manoeuvre for the new parliament in the autumn as well as seeking to make all possible savings; decides to maintain the contingency reserve at the same level as in 2009 (EUR 10 million);

4. Is of the opinion, given the multiannual character of most expenditure items and main projects initiated within the institution, that better medium-term planning needs to be considered for its budget and be made more transparent; considers it very important that the full budget proposal, or at least the vast majority of it, be presented at the estimates stage in the spring and considers that the use of so-called 'amending letters' in the autumn must be limited to truly unforeseen events and/or technical updates;

5. Emphasises that timely cooperation between the Bureau and Committee on Budgets in jointly clarifying the budgetary consequences of decisions to be taken should be a fundamental part of how it deals with all major issues, while maintaining the formal prerogatives of each body;

6. Welcomes the prolongation of the pilot project on enhanced cooperation between the Bureau and the Committee on Budgets for a second year and recalls that the principles of trust and transparency are essential; warns against any tendency whereby such cooperation becomes a mere formality, rather than real dialogue, and whereby fundamental decisions are taken prematurely; insists that the spirit of mutual cooperation be kept and improved for the future while respecting the prerogatives of each body; reiterates that prior consultation on issues with significant financial impact is one crucial aspect of the pilot project;

Tuesday 5 May 2009

7. Considers that the level of financial resources needed for major issues, including the ratio between internal and external resources needed for major services and projects, is a key element that needs to be carefully considered from a budgetary point of view; urges its executive organs to bear this in mind and to act accordingly with a view to arriving at cost-effective solutions, avoiding duplication of effort, and based on prior analysis of the policy elements;

Specific issues

Posts and restructuring

8. Takes good note, within the context of considerable increases already granted for 2009, of the proposals for the restructuring of services and changes to the Establishment Plan as put forward by the Bureau; underlines its wish to consider the question of the related budgetary resources once a complete picture has been given of all the requests made, including those for groups, and stresses that it will be willing to carefully consider the package at that time, taking into account the need to improve Parliament's enhanced legislative role; therefore decides not to authorise the creation of 30 new posts at this stage; notes that the level of redeployment of posts suggested is very low and encourages further efforts on this issue;

9. In this context, takes note that at its meeting on 1 April 2009, the Bureau unanimously approved the re-structuring plan for DG INLO in relation to the maintenance and management of the Parliament's buildings and the creation of specialised central services to improve the quality of budgetary control and of public procurement procedures; stresses that the final decisions concerning the appropriate level of resources, for DG INLO as well as for other services, are part of the first reading of the budget in the autumn according to the normal procedures; stresses that the choice to be made, from a budgetary point of view, relates to the level of property expertise Parliament needs to have in-house so as to ensure that the maintenance tasks entrusted to external suppliers will be properly defined and their performance adequately controlled; in this context, notes that the single external report cited deals mainly with building security, but also maintenance and management issues and how they can be improved;

10. Considers it essential that the medium to long-term building strategy plan is presented in good time before the first reading in the autumn in order to be able to make the budgetary decisions; therefore, warmly welcomes the Secretary General's commitment to present a draft to the Bureau as soon as possible in the new term; agrees with the Bureau to reduce the building reserve at this stage of the budget procedure to EUR 18 500 000 until the introduction of the appropriate level of appropriations once the strategy in this area has been more clearly defined;

11. Attaches importance to the new security policy to be elaborated and the objectives to be pursued in this sector, naturally bearing in mind the specific character of a parliament and the need for openness alongside security; considers that, as a function of those strategic and operational needs, the corresponding budgetary resources can be considered during the 2010 procedure; welcomes the Bureau's statement concerning an optimum use of resources and, particularly, its indications concerning a cost-effective balance between internal staff and external agents; is worried, however, that the operational and financial implications in the medium to long-term for creating a new Directorate, with four entire divisions, are not clearly laid out;

12. Is looking forward to receiving, in parallel, the cost-savings plan already drawn up within DG Presidency, as requested in 2008, and continues to express worry concerning the cost developments for operational budget lines related to security and security-related equipment;

13. Initially welcomes the proposals for reorganising its services for human resource management and is pleased that the objectives of increased coherence, clarity of mission, and the creation of synergies should be guiding principles; warmly welcomes that this should be achieved within the existing resources, including internal redeployment, but, at the same time, would like to have some further assurances as regards the medium to long-term implications;

Tuesday 5 May 2009

Multilingualism

14. Reiterates its wish that equal access to language facilities for members is an essential element of the 2010 budget; is satisfied that an effort has been made from the Administration's side to accommodate this wish but considers that this obviously needs to be combined with the best possible use of resources;

15. Invites the Bureau and Committee on Budgets to urgently address the Inter-Institutional Working Group on multilingualism in order to prepare a proposal (technical level) in order to make sure that inter-institutional cooperation in this field, especially as concerns the use of any free capacity, is improved; is disappointed, for instance, that the system in place for better sharing of translation between institutions is hardly used at all; expects to see a proposal on where possibilities for improvement exist before the first reading; also takes a keen interest in new technical tools for its translation services and asks for information on their development and the related financial consequences during 2010, including the study of the Euramis translation tool; would welcome, in this study, an assessment of whether this tool could lead to improved interinstitutional cooperation in the field of translation, and also efficiency gains and cost savings that could reduce dependence on external translation services;

16. Asks the Secretary-General to provide a cost/benefit analysis regarding the translation in peak times, including the outsourcing to freelancers and an analysis of the possibility of applying alternative working methods;

17. Requests an update on how such resource sharing could be applied in all the fields in which the institutions have temporarily unused capacities, without diminishing the institution's independence and operational capacities (interpretation, renting out the premises, copy services, etc.);

Legislation

18. Welcomes the fact that the Bureau's proposal follows up on last year's main priority, namely legislative work, but is of the opinion that the posts suggested need to be further analysed and, as stated above, should be considered within an overall package; welcomes the fact that items linked to legislation, and co-decision in particular, were key beneficiaries of budgetary reinforcements made for 2009;

Information and Communication Technology (ICT)

19. Recalls that clarification has been asked in the IT sector and expects a clear plan for an overall ICT strategy for Parliament, which is crucial in order to make best use of the resources at its disposal; strongly believes that such a plan must be coherent and strike a careful balance between the necessary 'centralisation' and economies-of-scale already implicit with the creation of a new and separate DG for this area, as well as the needs to maintain necessary flexibility at the level of the other DGs; wishes the Bureau to guard against overlaps and double spending; calls on Bureau to ensure that the ICT security and needs of the political groups be an integral part of such a plan;

20. Also notes the proposal for a final phase of the three-year plan to reclaim expertise in this area, reducing the dependence on external consultants, and the proposal for an increase of posts; re-iterates its opinion that significant staff increases should lead to savings in consultant costs and looks forward to a three-year overview of those costs, side-by-side with the staff increases approved and/or suggested;

21. Takes good note of the IT Governance Plan adopted by the Bureau and stresses the importance it attaches to ensuring that priorities are identified in a clear and fair manner so as to utilise limited financial resources in the best possible way for the Parliament as a whole; in this respect, also requests a clarification as to how the 'provider-client' relationship functions in the area of ICT and to which degree the 'clients' can specify which projects they would like to see done, how the financing for carrying out those projects is arrived at and, ultimately, how it is ensured that these fit into the overall strategy;

Tuesday 5 May 2009

Multi-annual projects

22. Reiterates its opinion that a multitude of important initiatives and projects in the field of information and analysis for the benefit of members and staff, such as the new library analytical service, the policy units of committees, in conjunction with the vast array of other available information sources/systems, constitute major developments in its work as well as taking up increasing levels of appropriations; believes, therefore, that budgetary and functional stocktaking, in order to ensure coherence and good use of overall resources can only be beneficial and, in this respect, recalls its previous decision concerning a presentation on this issue; welcomes the efforts made by the administration to implement a Knowledge Management System;

23. Takes note of the fact that the Web-TV project is included at already foreseen levels in the Bureau's proposals; would welcome, nevertheless, some further information on 'the return' for this investment, notably in terms of viewing statistics and future perspectives; would also appreciate some indication as to whether Web-TV already has, or will, reduce the need for other types of information in print;

24. Takes note of the Bureau's proposal to enter specific appropriations for expert studies concerning a House of European History; expects a clear overview of the costs envisaged for the project as a whole, including administrative costs, at the latest at the stage of the preliminary draft estimates for the 2011 budget procedure;

25. Wishes to leave the Visitors Centre a real possibility to get on with its business and open as soon as possible, in any case no later than the beginning of 2010; therefore looks forward to a final decision on the management concept, in order to fulfil the stated objectives and, importantly, based on real cost-benefit considerations as concerns the existing options; stresses that, for example, a solution based on out-sourcing should have very limited effects, if any, on the internal establishment plan, and vice versa;

Final considerations

26. Underlines that a more detailed examination of individual budget items should take place before the first reading of the budget in the autumn; will thus examine and take the final budgetary decisions at that time;

27. Incorporating the above, adopts the estimates and recalls that the adoption of the draft budget will take place at first reading in October 2009, in accordance with the voting procedure laid down by the Treaty;

*

* *

28. Instructs its President to forward this resolution and the estimates to the Council and Commission.

Wednesday 6 May 2009

CFP: repeal of Directive 83/515/EEC and 11 obsolete Decisions *

P6_TA(2009)0350

European Parliament legislative resolution of 6 May 2009 on the proposal for a Council decision repealing Directive 83/515/EEC and 11 obsolete decisions in the field of the Common Fisheries Policy (COM(2009)0088 – C6-0094/2009 – 2009/0022(CNS))

(2010/C 212 E/35)

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2009)0088),
 - having regard to Article 37, Article 300(2) and the first subparagraph of Article 300(3) of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0094/2009),
 - having regard to Rule 51 and Rule 43(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Fisheries (A6-0203/2009),
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.

CFP: repeal of 14 obsolete Regulations *

P6_TA(2009)0351

European Parliament legislative resolution of 6 May 2009 on the proposal for a Council regulation repealing 14 obsolete Regulations in the field of the Common Fisheries Policy (COM(2009)0089 – C6-0095/2009 – 2009/0024(CNS))

(2010/C 212 E/36)

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2009)0089),
- having regard to Article 37 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0095/2009),
- having regard to Rule 51 and Rule 43(1) of its Rules of Procedure,
- having regard to the report of the Committee on Fisheries (A6-0202/2009),

Wednesday 6 May 2009

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.

Support for rural development by the European Agricultural Fund for Rural Development (EAFRD) *

P6_TA(2009)0352

European Parliament legislative resolution of 6 May 2009 on the proposal for a Council regulation amending Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (COM(2009)0038 – C6-0051/2009 – 2009/0011(CNS))

(2010/C 212 E/37)

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2009)0038),
- having regard to Articles 36 and 37 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0051/2009),
- having regard to Rule 51 of its Rules of Procedure,
- having regard to the report of the Committee on Agriculture and Rural Development and the opinions of the Committee on Regional Development and the Committee on Budgets (A6-0259/2009),

1. Approves the Commission proposal as amended;
2. Acknowledges that there are uncertainties concerning the availability of margins under heading 2; emphasises that the financing of the economic recovery plan should not put at risk future needs within that category of expenditure; expresses its preference for using the margins of the budget years that are coming to an end;
3. Recalls that the annual amount will be decided within the annual budgetary procedure, in accordance with the provisions of point 38 of the Interinstitutional Agreement of 17 May 2006 ⁽¹⁾;
4. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
5. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
6. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
7. Instructs its President to forward its position to the Council and the Commission.

⁽¹⁾ OJ C 139, 14.6.2006, p. 1.

Wednesday 6 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 1**Proposal for a regulation – amending act****Recital 1 a (new)**

(1a) Financing of the European economic recovery plan should be carried out in accordance with the provisions 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⁾.

⁽¹⁾ OJ C 139, 14.6.2006, p. 1.

Amendment 2**Proposal for a regulation – amending act****Recital 1 b (new)**

(1b) The current margins in heading 2 cannot be taken for granted and any agreement on the economic recovery plan should not put at risk future needs within any category of expenditure.

Amendment 3**Proposal for a regulation – amending act****Recital 2**

(2) Of the above amount, **EUR 1.5 billion** should be made available to all Member States via the European Agricultural Fund for Rural Development (EAFRD) with a view to developing broadband internet in rural areas and to strengthening the operations related to the priorities laid down in Article 16a(1)(a) to (f) of Council Regulation (EC) No 1698/2005 (hereinafter 'new challenges').

(2) Of the above amount, **EUR 1 020 million** should be made available to all Member States via the European Agricultural Fund for Rural Development (EAFRD) with a view to developing broadband internet in rural areas and to strengthening the operations related to the priorities laid down in Article 16a(1)(a) to (f) of Council Regulation (EC) No 1698/2005 (hereinafter 'new challenges'). ***Of this amount, EUR 850 million should be available in 2009, while EUR 170 million should be secured through a compensation mechanism in the context of the conciliation on the 2010 budget and should be available in 2010.***

Amendment 4**Proposal for a regulation – amending act****Recital 2 a (new)**

(2a) The budgetary authority increased the 2009 budget line for rural development by EUR 249 840 000. These additional funds should be made available for the measures financed under the EAFRD in the European Economic Recovery Plan.

Amendment 5**Proposal for a regulation – amending act****Recital 4**

(4) In order to ensure that the breakdown of the additional Community contribution in each Member State is used consistently with the objectives of the two policy packages

(4) In order to ensure that the breakdown of the additional Community contribution in each Member State is used consistently with the objectives of the two policy packages

Wednesday 6 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

(new challenges and broadband internet), Member States should specify in their national strategy plans the indicative amount, resulting from the compulsory modulation together with the unused funds generated under Article 136 of Regulation (EC) No ... and the increase of the global commitments as laid down by Council Decision 2006/493/EC as amended by Decision These amounts will be devoted to broadband internet infrastructure in rural areas **on the one hand and** to the 'new challenges' **on the other**.

(new challenges and broadband internet), Member States should specify in their national strategy plans the indicative amount, resulting from the compulsory modulation together with the unused funds generated under Article 136 of Regulation (EC) No ... and the increase of the global commitments as laid down by Council Decision 2006/493/EC as amended by Decision These amounts will be devoted to broadband internet infrastructure in rural areas, to the 'new challenges', **and to other measures aimed at improving take-up of the funds and creating new jobs**.

Amendment 6

Proposal for a regulation – amending act Recital 4 a (new)

(4a) In order to increase the take-up of their programmes, Member States may use the additional resources for a guarantee and loan fund.

Amendment 7

Proposal for a regulation – amending act Recital 6

(6) The Conclusions of the European Council of 12 December 2008 record the European Council's supports under the EERP, in particular, developing broadband internet, including in areas that are poorly served. Because rural areas often suffer from insufficient internet access, support for broadband infrastructures in rural areas should be strengthened under the support of EAFRD. Given the importance of this priority, Member States should provide in their programmes for operations related to this priority by the end of 2009. A list of types of operations related to broadband infrastructures should be established in order to allow Member States to identify the relevant operations in the context of the legal framework for rural development.

(6) The Conclusions of the European Council of 12 December 2008 record the European Council's supports under the EERP, in particular, developing broadband internet, including in areas that are poorly served. Because rural areas often suffer from insufficient internet access, support for broadband infrastructures **and related facilities** in rural areas should be strengthened under the support of EAFRD. Given the importance of this priority, Member States should provide in their programmes for operations related to this priority by the end of 2009. A list of types of operations related to broadband infrastructures **and facilities** should be established in order to allow Member States to identify the relevant operations in the context of the legal framework for rural development.

Amendment 8

Proposal for a regulation – amending act Recital 10

(10) Rural areas often lack broadband infrastructure both small and larger scale. The latter **may be** crucial for serving less accessible rural areas. In order to ensure the most effective use of available resources and to allow a substantive development of the broadband internet in rural areas, the pertinent operations should be considered eligible without limitation in the size of the related infrastructure. Therefore, the existing limitation in size for infrastructure in basic services for economy and rural population should not apply to the operations related to broadband infrastructures.

(10) Rural areas often lack broadband infrastructure both small and larger scale. The latter **is** crucial for serving less accessible rural areas **such as islands and mountain regions**. In order to ensure the most effective use of available resources **and existing infrastructure**, and to allow a substantive development of the broadband internet **and facilities** in rural areas, the pertinent operations should be considered eligible without limitation in the size of the related **active or passive** infrastructure **or part thereof**. Therefore, the existing limitation in size for infrastructure in basic services for economy and rural population should not apply to the operations related to broadband infrastructures.

Wednesday 6 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 9**Proposal for a regulation – amending act**
Recital 11 a (new)

(11a) Given the need for rapid reaction to the current economic crisis, it is appropriate to provide for payments which can be made in budget year 2009.

Amendment 10**Proposal for a regulation – amending act**
Recital 13 a (new)

(13a) Member States should make sure that specific information is available to regional and local authorities and potential beneficiaries on the new opportunities offered by the revised rural development programmes.

Amendment 11**Proposal for a regulation – amending act**
Recital 13 b (new)

(13b) Special measures for the provision of educational and training courses on the use of broadband infrastructures and facilities in rural communities should be established, with special attention to the vocational training of agricultural specialists, whose practical skills could then be utilised. In that respect, stimulation of the research sector should be considered a priority.

Amendment 12**Proposal for a regulation – amending act**
Article 1 – point 3
Regulation (EC) No 1698/2005
Article 16a – paragraph 1 – point g

(g) broadband internet infrastructure in rural areas.

(g) broadband internet infrastructure in rural areas **and facilities for public internet access in rural communities;**

Amendment 13**Proposal for a regulation – amending act**
Article 1 – point 3
Regulation (EC) No 1698/2005
Article 16a – paragraph 1 – point g a (new)

(ga) economic-crisis management in the agricultural sector, principally to provide support for infrastructures and to create a network of producers and organisations;

Amendment 14**Proposal for a regulation – amending act**
Article 1 – point 3
Regulation (EC) No 1698/2005
Article 16a – paragraph 1 – point g b (new)

(gb) measures to preserve or create jobs in rural areas;

Wednesday 6 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 15**Proposal for a regulation – amending act****Article 1 – point 3**

Regulation (EC) No 1698/2005

Article 16a – paragraph 1 – point g c (new)

*(gc) support measures for young farmers.***Amendment 16****Proposal for a regulation – amending act****Article 1 – point 3**

Regulation (EC) No 1698/2005

Article 16a – paragraph 3 – point b

(b) a table setting out, for the period from 1 January 2009 to 31 December 2013, the total Community contribution for types of operations referred to in points (a) to (f) of paragraph 1 and the Community contribution for types of operations referred to in point (g) of paragraph 1.

(b) a table setting out, for the period from 1 January 2009 to 31 December 2013, the total Community contribution for types of operations referred to in points (a) to (f) **and (ga) to (gc)** of paragraph 1 and the Community contribution for types of operations referred to in point (g) of paragraph 1.

Amendment 17**Proposal for a regulation – amending act****Article 1 – point 6 – subpoint a**

Regulation (EC) No 1698/2005

Article 69 – paragraph 2a

‘2a. The part of the amount referred to in paragraph 1 of this Article resulting from the increase of the global commitments as laid down by Council Decision 2006/493/EC as amended by Decision ... shall be available as from 1 January 2009. **It** shall be devoted to types of operations related to priorities laid down in Article 16a(1) **and it shall be spent as follows:**

(a) one third (EUR 0.5 billion) on types of operations related to priorities laid down in Article 16a(1)(a) to (f);

(b) two thirds (EUR 1 billion) on types of operations related to priority laid down in Article 16a(1)(g).’

‘2a. The part of the amount referred to in paragraph 1 of this Article resulting from the increase of the global commitments as laid down by Council Decision 2006/493/EC as amended by Decision ... **as well as the amount of EUR 249 840 000 added to budget line 05 04 05 01 in budget year 2009** shall be available as from 1 January 2009. **They** shall be devoted to types of operations related to priorities laid down in Article 16a(1).’

Amendment 18**Proposal for a regulation – amending act****Article 1 – point 6 – subpoint aa (new)**

Regulation (EC) No 1698/2005

Article 69 – paragraph 4 - subparagraph 1 a (new)

(aa) In paragraph 4, the following subparagraph is added:
‘For the amount referred to in paragraph 2a(b), the Commission shall take into account the differences in existing broadband coverage in the Member States, particularly in areas where access is difficult, and the different needs resulting therefrom.’

Wednesday 6 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 19**Proposal for a regulation – amending act****Article 1 – point 6 – subpoint b**

Regulation (EC) No 1698/2005

Article 69 – paragraph 5a – subparagraph 1 a (new)

The Commission's annual report on rural development shall contain a section dealing specifically with monitoring operations connected with the priorities listed in Article 16a(1)(g).

Amendment 20**Proposal for a regulation – amending act****Article 1 – point 6 – subpoint b**

Regulation (EC) No 1698/2005

Article 69 – paragraph 5 b

‘5b. If, at the closure of the programme, the actual amount of Community contribution spent on the operations referred to in Article 16a(1) is lower than the total of the amounts referred to in paragraph 5a of this Article, the difference shall be **reimbursed** by the Member State **to the general budget of the European Communities** up to the amount by which the total allocations available for operations other than those referred to in Article 16a(1) have been exceeded.

In addition, if, at the closure of the programme, the actual amount of Community contribution spent on the operations referred to in Article 16a(1)(a) to (f) is lower than the amount referred to in paragraph 5a of this Article for those types of operations, the difference shall be reimbursed by the Member State to the general budget of the European Communities up to the amount by which the allocations available for operations referred to in Article 16a(1)(g) have been exceeded. However, if the actual amount of Community contribution spent on the operations other than those referred to in Article 16a(1) is lower than the allocations available for those types of operations, the amount to be reimbursed shall be reduced of that difference.

In parallel, if at the closure of the programme, the actual amount of Community contribution spent on the operations referred to in Article 16a(1)(g) is lower than the amount referred to in paragraph 5a of this Article for those types of operations, the difference shall be reimbursed by the Member State to the general budget of the European Communities up to the amount by which the allocations available for operations referred to in Article 16a(1)(a) to (f) have been exceeded. However, if the actual amount of Community contribution spent on the operations other than those referred to in Article 16a(1) is lower than the allocations available for those types of operations, the amount to be reimbursed shall be reduced of that difference.’.

5b. If, at the closure of the programme, the actual amount of Community contribution spent on the operations referred to in Article 16a(1) is lower than the total of the amounts referred to in paragraph 5a of this Article, the difference shall be **incorporated** by the Member State **into its agricultural development** budget up to the amount by which the total allocations available for operations other than those referred to in Article 16a(1) have been exceeded.

Wednesday 6 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 21**Proposal for a regulation – amending act****Article 1 – point 6 – subpoint ba (new)**

Regulation (EC) No 1698/2005

Article 69 – paragraph 6 a (new)

*(ba) The following paragraph is added:**'6a. From the amount referred to in paragraph 2a, EUR 250 million shall be made available for payments in budget year 2009.'***Amendment 22****Proposal for a regulation – amending act****Article 2 – point 6 a (new)**

Regulation (EC) No 1698/2005

Article 69 a (new)

*(6a) The following Article is inserted:**'Article 69a**Guarantee and loan funds*

Notwithstanding the provisions of Article 69, Member States can use the amount referred to in Article 69(2a) for guarantee and loan funds. For the implementation of this Article, the provisions of Commission Regulation (EC) No 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)⁽²⁾, and in particular Articles 50, 51 and 52 thereof, shall apply.

⁽²⁾ OJ L 368, 23.12.2006, p. 15.'

Amendment 23**Proposal for a regulation – amending act****Article 1 – point 7**

Regulation (EC) No 1698/2005

Article 70 – paragraph 4 – subparagraph 2

'Notwithstanding the ceilings set out in paragraph 3, the EAFRD contribution may be increased to **90 %** for convergence and to 75% for non-convergence regions for the operations of the types referred to in Article 16a(1) of this Regulation, up to the amount resulting from the application of the compulsory modulation under Article 9(4) and Article 10(3) of Regulation (EC) No ..., the amount referred to in Article 69(2a) of this Regulation and, as from 2011, the amounts generated under Article 136 of Regulation (EC) No';

'Notwithstanding the ceilings set out in paragraph 3, the EAFRD contribution may be increased to **100 %** for convergence and to 75 % for non-convergence regions for the operations of the types referred to in Article 16a(1) of this Regulation, up to the amount resulting from the application of the compulsory modulation under Article 9(4) and Article 10(3) of Regulation (EC) No ..., the amount referred to in Article 69(2a) of this Regulation and, as from 2011, the amounts generated under Article 136 of Regulation (EC) No';

Wednesday 6 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 24**Proposal for a regulation – amending act****Article 1 – point 8 a (new)**

Regulation (EC) No 1698/2005

Article 76 – paragraph 2 a (new)

*(8a) In Article 76, the following paragraph is added:**'2a. Member States shall provide specific information with regard to the new priorities outlined in Article 16a. Such information shall be provided for the benefit of regional and local authorities and potential beneficiaries of the measures.'***Amendment 25****Proposal for a regulation – amending act****Annex**

Regulation (EC) No 1698/2005

Annex III – Title

List with types of operations related to the priority under Article 16a(1)(g)

Indicative list with types of operations related to the priority under Article 16a(1)(g)**Amendment 26****Proposal for a regulation – amending act****Annex**

Regulation (EC) No 1698/2005

Annex III – column 1 – line 1

Creation of new broadband infrastructure including backhaul facilities (e.g. fixed, terrestrial wireless, satellite-based or combination of technologies)

Creation of new broadband infrastructure including backhaul facilities **and ground equipment** (e.g. fixed, terrestrial wireless, satellite-based or combination of technologies) **and other necessary forms of support (e.g. installation and maintenance)****Amendment 27****Proposal for a regulation – amending act****Annex**

Regulation (EC) No 1698/2005

Annex III – line 3 a (new)

Providing public access to broadband facilities**Article 56: basic services for the economy and rural population**

Wednesday 6 May 2009

Draft amending budget No 4/2009

P6_TA(2009)0355

European Parliament resolution of 6 May 2009 on Draft amending budget No 4/2009 of the European Union for the financial year 2009, Section III – Commission (9126/2009 – C6-0156/2009 – 2009/2039(BUD))

(2010/C 212 E/38)

The European Parliament,

- having regard to Article 272 of the EC Treaty and Article 177 of the Euratom Treaty,
 - having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾, and particularly Articles 37 and 38,
 - having regard to the general budget of the European Union for the financial year 2009, as finally adopted on 18 December 2008 ⁽²⁾,
 - having regard to the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management ⁽³⁾,
 - having regard to Preliminary draft amending budget No 4/2009 of the European Union for the financial year 2009, which the Commission presented on 8 April 2009 (SEC(2009)0496),
 - having regard to Draft amending budget No 4/2009, which the Council established on 27 April 2009 (9126/2009 – C6-0156/2009),
 - having regard to Rule 69 of and Annex IV to its Rules of Procedure,
 - having regard to the report of the Committee on Budgets (A6-0281/2009),
- A. whereas Draft amending budget No 4 to the general budget 2009 covers the revision of the ceilings of the multiannual financial framework for Headings 1a and 2,
- B. whereas the purpose of Draft amending budget No 4/2009 is to formally enter these budgetary adjustments into the 2009 budget,
1. Takes note of Preliminary draft amending budget No 4/2009;
 2. Approves Draft amending budget No 4/2009 unamended;
 3. Instructs its President to forward this resolution to the Council and the Commission.

⁽¹⁾ OJ L 248, 16.9.2002, p. 1.

⁽²⁾ OJ L 69, 13.3.2009.

⁽³⁾ OJ C 139, 14.6.2006, p. 1.

Wednesday 6 May 2009

Draft amending budget No 5/2009

P6_TA(2009)0356

European Parliament resolution of 6 May 2009 on Draft amending budget No 5/2009 of the European Union for the financial year 2009, Section III – Commission (9127/2009 – C6-0157/2009 – 2009/2040(BUD))

(2010/C 212 E/39)

The European Parliament,

- having regard to Article 272 of the EC Treaty and Article 177 of the Euratom Treaty,
 - having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾, and particularly Articles 37 and 38,
 - having regard to the general budget of the European Union for the financial year 2009, as finally adopted on 18 December 2008 ⁽²⁾,
 - having regard to the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management ⁽³⁾,
 - having regard to Preliminary draft amending budget No 5/2009 of the European Union for the financial year 2009, which the Commission presented on 15 April 2009 (COM(2009)0177),
 - having regard to Draft amending budget No 5/2009, which the Council established on 27 April 2009 (9127/2009 – C6-0157/2009),
 - having regard to Rule 69 of and Annex IV to its Rules of Procedure,
 - having regard to the report of the Committee on Budgets (A6-0282/2009),
- A. whereas Draft amending budget No 5 to the general budget 2009 covers the budgeting of the surplus resulting from the implementation of the budget for the year 2008,
- B. whereas the purpose of Draft amending budget No 5/2009 is to formally enter these budgetary adjustments into the 2009 budget,
1. Takes note of Preliminary draft amending budget No 5/2009;
 2. Approves Draft amending budget No 5/2009 unamended;
 3. Instructs its President to forward this resolution to the Council and the Commission.

⁽¹⁾ OJ L 248, 16.9.2002, p. 1.

⁽²⁾ OJ L 69, 13.3.2009.

⁽³⁾ OJ C 139, 14.6.2006, p. 1.

Wednesday 6 May 2009

**Electronic communications networks, personal data and the protection of privacy
***II**

P6_TA(2009)0360

European Parliament legislative resolution of 6 May 2009 on the common position adopted by the Council with a view to the adoption of 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) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (16497/1/2008 – C6-0068/2009 – 2007/0248(COD))

(2010/C 212 E/40)

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (16497/1/2008 – C6-0068/2009),
 - having regard to its position at first reading ⁽¹⁾ on the Commission proposal to Parliament and the Council (COM(2007)0698),
 - having regard to the amended Commission proposal (COM(2008)0723),
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 62 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on the Internal Market and Consumer Protection (A6-0257/2009),
1. Approves the common position as amended;
 2. Takes note of the Commission statements annexed to this resolution;
 3. Instructs its President to forward its position to the Council and the Commission.

⁽¹⁾ Texts adopted, 24.9.2008, P6_TA(2008)0452.

Wednesday 6 May 2009

P6_TC2-COD(2007)0248

Position of the European Parliament adopted at second reading on 6 May 2009 with a view to the adoption of Directive 2009/.../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 and services, 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 cooperation between national authorities responsible for the enforcement of consumer protection laws

(As an agreement was reached between Parliament and Council, Parliament's position at second reading corresponds to the final legislative act, Directive 2009/136/EC.)

ANNEX**Commission declaration on universal service****Recital (3a) - Universal Service**

The Commission takes note of the text of recital (3a) agreed by the European Parliament and the Council.

The Commission wishes in this context to reaffirm that, as stated in its Communication COM (2008)0572 of 25 September 2008 on the scope of universal service in electronic communications networks and services, it will in the course of 2009 promote an extensive debate at EU level that will examine a wide range of alternative approaches and allow all interested parties to express their views.

The Commission will summarise the debate in a Communication addressed to the European Parliament and Council and will bring forward by 1 May 2010 such proposals in regard to the Universal Service Directive as may be necessary.

Commission declaration on data breach notification**Article 2(h) and 4(3) - ePrivacy Directive**

The reform of the Regulatory Framework for Electronic Communications introduces a new concept to EU data protection and privacy rules: a mandatory notification of personal data breaches by providers of electronic communications services and networks. It is an important step towards enhanced security and privacy protection, although at this stage it remains limited to the electronic communications sector.

The Commission takes note of the will of the European Parliament that an obligation to notify personal data breaches should not be limited to the electronic communications sector but also apply to entities such as providers of information society services. Such an approach would be fully aligned with the overall public policy goal of enhancing the protection of EU citizens' personal data, and their ability to take action in the event of such data being compromised.

In this context, the Commission wishes to reaffirm its view, as stated in the course of the negotiations on the reform of the Regulatory Framework, that the obligation for providers of publicly available electronic communications services to notify personal data breaches makes it appropriate to extend the debate to generally applicable breach notification requirements.

The Commission will, therefore, without delay initiate the appropriate preparatory work, including consultation with stakeholders, with a view to presenting proposals in this area, as appropriate, by the end of 2011. In addition, the Commission will consult with the European Data Protection Supervisor on the potential for the application, with immediate effect, in other sectors of the principles embodied in the data breach notification rules in Directive 2002/58/EC, regardless of the sector or type of data concerned.

Wednesday 6 May 2009

Electronic communications networks and services ***II

P6_TA(2009)0361

European Parliament legislative resolution of 6 May 2009 on the Council common position for adopting a directive 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 (16496/1/2008 – C6-0066/2009 – 2007/0247(COD))

(2010/C 212 E/41)

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (16496/1/2008 – C6-0066/2009),
 - having regard to its position at first reading ⁽¹⁾ on the Commission proposal to Parliament and the Council (COM(2007)0697),
 - having regard to the amended Commission proposal (COM(2008)0724),
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 62 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on Industry, Research and Energy (A6-0272/2009),
1. Approves the common position as amended;
 2. Instructs its President to forward its position to the Council and the Commission.

⁽¹⁾ Texts adopted, 24.9.2008, P6_TA(2008)0449.

Wednesday 6 May 2009

P6_TC2-COD(2007)0247

Position of the European Parliament adopted at second reading on 6 May 2009 with a view to the adoption of Directive 2009/.../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

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 EU regulatory framework for electronic communications networks and services (Directive 2002/21/EC (Framework Directive) ⁽⁴⁾, Directive 2002/19/EC (Access Directive) ⁽⁵⁾, Directive 2002/20/EC (Authorisation Directive) ⁽⁶⁾, 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) ⁽⁷⁾, 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) ⁽⁸⁾ (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.
- (2) In that regard, the Commission presented its initial findings in its Communication 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.

⁽¹⁾ OJ C 224, 30.8.2008, p. 50.

⁽²⁾ OJ C 257, 9.10.2008, p. 51.

⁽³⁾ Opinion of the European Parliament of 24 September 2008 (not yet published in the Official Journal), Council Common Position of 16 February 2009 (OJ C 103 E, 5.5.2009, p.1) and Position of the European Parliament of 6 May 2009.

⁽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.

Wednesday 6 May 2009

- (3) 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. This is complemented by Regulation (EC) No .../2009 of the European Parliament and of the Council of ... establishing the **Body of European Regulators for Electronic Communications (BEREC) and the Office** (*). 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.
- (4) **Recognising that the internet is essential for education and for the practical exercise of freedom of expression and access to information, any restriction imposed on the exercise of these fundamental rights should be in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms. Concerning these issues, the Commission should undertake a wide public consultation.**
- (5) The aim is progressively to reduce ex ante sector specific rules as competition in the markets develops and, ultimately, for electronic communications to be governed by competition law only. Considering that the markets for electronic communications have shown strong competitive dynamics in recent years, it is essential that ex ante regulatory obligations should only be imposed where there is no effective and sustainable competition.
- (6) **In carrying out its reviews of the functioning of the Framework Directive and the Specific Directives, the Commission should assess whether, in the light of developments in the market and with regard to both competition and consumer protection, there is a 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 those provisions should be amended or repealed.**
- (7) In order to ensure a proportionate and adaptable 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 and/or geographic areas where there is effective infrastructure competition.
- (8) **In order to achieve** the goals of the Lisbon Agenda **it is necessary to give appropriate incentives for investment** in new high-speed networks that will 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 these new networks, while safeguarding competition and boosting consumer choice through regulatory predictability and consistency.
- (9) **In its Communication of 20 March 2006 entitled 'Bridging the Broadband Gap', the Commission acknowledged that there is a territorial divide in the European Union regarding access to high-speed broadband services. Easier access to radio spectrum will facilitate the development of high-speed broadband services in remote regions. 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. 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, cohesion policy or the aims of wider industrial policy.**
- (10) **Public investment in networks should be made in accordance with the principle of non-discrimination. To this end, public support should be given by means of open, transparent and competitive procedures.**

(*) OJ L ...

Wednesday 6 May 2009

- (11) 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 certain aspects of 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⁽¹⁾ and consumer equipment used for digital television, in order to facilitate access for disabled users.
- (12) 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.
- (13) The independence of the national regulatory authorities should be strengthened in order to ensure a more effective application of the regulatory framework and to 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 responsible for ex ante market regulation or for resolution of disputes between undertakings 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 at the outset 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 responsible for ex ante market regulation should have their own budget allowing them, in particular, to recruit a sufficient number of qualified staff. In order to ensure transparency, this budget should be published annually.
- (14) In order to ensure legal certainty for market players, appeal bodies should carry out their functions effectively; in particular, appeals proceedings should not be unduly lengthy. ***Interim measures suspending the effect of the decision of a national regulatory authority should be granted only in urgent cases in order to prevent serious and irreparable damage to the party applying for those measures and if the balance of interests so requires.***
- (15) 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. Appeal bodies should also be entitled to request available information published by **BEREC**. Given the importance of appeals for the overall operation 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.
- (16) 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. The data should also include data which enables 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.
- (17) The national consultation provided for under Article 6 of the Framework Directive should be conducted prior to the Community consultation provided for under **Articles 7 and 7a** 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.

⁽¹⁾ OJ L 91, 7.4.1999, p. 10.

Wednesday 6 May 2009

- (18) 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 **BEREC**.
- (19) 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 those in which the operators are subject to such regulation. 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, could undermine the internal market in electronic communications. Therefore the Commission may participate in ensuring a higher level of consistency in the application of remedies by adopting opinions on draft measures proposed by national regulatory authorities. In order to benefit from the expertise of national regulatory authorities on the market analysis, the Commission should consult **BEREC** prior to adoption of its decisions and/or opinion.
- (20) 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 in order to allow market players to know the duration of the market review and in order to increase legal certainty.
- (21) Having regard to the short time limits in the Community consultation mechanism, powers should be conferred on the Commission to adopt recommendations and/or guidelines 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. Powers should also be conferred on the Commission in order to allow for the introduction of a notification exemption so as to streamline procedures in certain cases.
- (22) 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.
- (23) ***A competitive market will provide users with a wide choice of content, applications and services. National regulatory authorities should promote users' ability to access and distribute information and to run applications and services.***
- (24) Radio frequencies should be considered a scarce public resource that has an important public and market value. It is in the public interest that the spectrum is managed as efficiently and effectively as possible from an economic, social and environmental perspective, taking account ***of the important role of radio spectrum for electronic communications, of the objectives of cultural diversity and media pluralism, and of social and territorial cohesion.*** Obstacles to its efficient use ***should therefore be*** gradually withdrawn.
- (25) ***Radio spectrum policy activities in the European Community should be without prejudice to measures taken at Community or national level, in accordance with Community law, to pursue general interest objectives, in particular with regard to content regulation and audio-visual and media policies, and the right of Member States to organise and use their radio spectrum for the purposes of public order, public security and defence.***

Wednesday 6 May 2009

- (26) *Taking into account the different situation in Member States, the switchover from analogue to digital terrestrial television would, as a result of the superior transmission efficiency of digital technology, increase the availability of valuable spectrum in the European Community (known as the 'digital dividend').*
- (27) Before a specific harmonisation measure under 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⁾ is proposed, the Commission should carry out an impact assessments on the costs and benefits of the proposed measure, such as the realisation of economies of scale and the interoperability of services for the benefit of consumers, the impact on efficiency of spectrum use, or the demand for harmonised use in the different parts of the European Union.
- (28) Although spectrum management remains within the competence of the Member States, **strategic planning**, coordination and, where appropriate, harmonisation at Community level can help ensure that spectrum users derive the full benefits of the internal market and that EU interests can be effectively defended globally. **For these purposes, where appropriate, legislative multiannual radio spectrum policy programmes should be established to set out the policy orientations and objectives for the strategic planning and harmonisation of the use of radio spectrum in the Community. These policy orientations and objectives may refer to the availability and efficient use of radio spectrum necessary for the establishment and functioning of the internal market and may also refer, in appropriate cases, to the harmonisation of procedures for the granting of general authorisations or individual rights of use for radio frequencies where necessary to overcome barriers to the internal market. These policy orientations and objectives should be in accordance with the provisions of this Directive and the Specific Directives.**
- (29) *The Commission has indicated its intention to amend, before the entry into force of this Directive, Commission Decision 2002/622/EC of 26 July 2002 establishing a Radio Spectrum Policy Group ⁽²⁾ so that it provides a mechanism for the European Parliament and the Council to request opinions or reports, either orally or in writing, from the Radio Spectrum Policy Group (RSPG) on spectrum policy relating to electronic communications, and so that RSPG advises the Commission on the proposed content of the radio spectrum policy programmes.*
- (30) The spectrum management provisions of this Directive 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 of and harmonisation of the use of spectrum across the Community and **between the Member States and other members of the ITU.**
- (31) Radio frequencies should be managed so as to ensure that harmful interference is avoided. This basic concept of harmful interference should therefore be properly defined to ensure that regulatory intervention is limited to the extent necessary to prevent such interference.
- (32) 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.

⁽¹⁾ OJ L 108, 24.4.2002, p. 1.

⁽²⁾ OJ L 198, 27.7.2002, p. 49.

Wednesday 6 May 2009

- (33) 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.
- (34) Flexibility in spectrum management and access to spectrum should be increased through technology and service-neutral authorisations to allow spectrum users to choose the best technologies and services to apply in frequency bands **declared** available **for** electronic communications services **in the relevant national frequency allocation plans in accordance with Community law** (the 'principles of technology and service neutrality'). The administrative determination of technologies and services should apply when general interest objectives are at stake and should be clearly justified and subject to regular periodic review.
- (35) 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 the proper functioning of services through an adequate level of technical quality of service, while not necessarily precluding the possibility of using more than one service in the same frequency band, to ensure proper sharing of spectrum, in particular where its use is only subject to general authorisations, to safeguard efficient use of spectrum, or to fulfil a general interest objective in conformity with Community law.
- (36) Spectrum users should also be able to freely choose the services they wish to offer over the spectrum subject to transitional measures to cope with previously acquired rights. **On the other hand, measures** should be allowed which require the provision of a specific service to meet clearly defined general interest objectives such as safety of life, the need to promote social, regional and territorial cohesion, or the avoidance of the inefficient use of spectrum to be permitted where necessary and proportionate. Those objectives should include the promotion of cultural and linguistic diversity and media pluralism as defined by Member States in conformity with Community law. Except where necessary to protect safety of life or, **exceptionally**, to fulfil other general interest objectives **as defined by Member States in accordance with Community law**, exceptions should not result in certain services having exclusive use, but should rather grant them priority so that, insofar as possible, other services or technologies may coexist in the same band
- (37) 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 and media pluralism.
- (38) 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.
- (39) In the interests of flexibility and efficiency, national regulatory authorities may allow spectrum users freely to transfer or lease their usage rights to third parties. This 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.
- (40) 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 burdensome 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 a general interest objective, the situation of the holders of such rights should not in an unjustified manner be to the detriment of their new competitors beyond what is necessary to achieve that general interest objective or another related general interest objective.**

Wednesday 6 May 2009

- (41) In order to promote the functioning of the internal market and to support the development of cross-border services, the Commission should be given the power to adopt technical implementing measures in the field of numbering.
- (42) 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.
- (43) It is necessary to strengthen the powers of the Member States as regards holders of rights of way to ensure the entry or roll-out of a 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. Improving facility sharing can significantly improve competition and lower the overall financial and environmental cost of deploying electronic communications infrastructure for undertakings, particularly of new access networks. National regulatory authorities should be empowered to require that the holders of the rights to install facilities on, over or under public or private property share such facilities or property (including physical co-location) in order to encourage efficient investment in infrastructure and the promotion of innovation, after an appropriate period of public consultation, during which all interested parties should be given the opportunity to state their views. Such sharing or coordination arrangements may include rules for apportioning the costs of the facility or property sharing and should ensure that there is an appropriate reward of risk for the undertakings concerned. National regulatory authorities should in particular be able to impose the sharing of network elements and associated facilities, such as ducts, conduits, masts, manholes, cabinets, antennae, towers and other supporting constructions, buildings or entries into buildings, and a better coordination of civil works. The competent authorities, particularly local authorities, should also establish appropriate coordination procedures, in cooperation with national regulatory authorities, with respect to public works and other appropriate public facilities or property which 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.
- (44) 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 mistake, 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 the enhanced level of security of electronic communications by, among other things, providing expertise and advice, and promoting the exchange of best practices. Both ENISA and the national regulatory authorities should have the necessary means to perform their duties, including powers to obtain sufficient information in order 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.
- (45) Member States should allow for an appropriate period of public consultation before the adoption of specific measures to ensure that undertakings providing public communications networks or publicly available electronic communications services take the necessary technical and organisational measures to appropriately manage risk to security of networks and services or to ensure the integrity of their networks.**

⁽¹⁾ Regulation (EC) No 460/2004 of the European Parliament and of the Council (OJ L 77, 13.3.2004, p. 1).

Wednesday 6 May 2009

- (46) 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 technical implementing measures adopted pursuant to the Framework Directive. In order to perform their duties, they should have the power to investigate cases of non-compliance and to impose penalties.
- (47) *For the purposes of ensuring that there is no distortion or restriction of competition in the electronic communications markets, national regulatory authorities should be able to impose remedies aimed at preventing leverage of significant market power from one market to another, closely related, market. It should be clear that the undertaking which has significant market power on the first market may be designated as having significant market power on the second market only if the links between the two markets are such as to allow the market power held in the first market to be leveraged into the second market and if the second market is susceptible to ex ante regulation in accordance with the criteria defined in the Recommendation on relevant product and service markets ⁽¹⁾.*
- (48) 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 by 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 on time. Alternatively, the national regulatory authority concerned should be able to request the assistance of **BEREC** to complete the market analysis. For instance, this assistance could take the form of a specific task force composed of representatives of other national regulatory authorities.
- (49) Due to the high level of technological innovation and highly dynamic markets in the electronic communications sector, there is a need to adapt regulation rapidly in a coordinated and harmonised way at Community level, as experience has shown that divergence among the national regulatory authorities in the implementation of the EU regulatory framework may create a barrier to the development of the internal market.
- (50) One important task assigned to **BEREC** is to adopt opinions in relation to cross-border disputes where appropriate. National regulatory authorities should therefore take account of any opinions of **BEREC** in such cases.
- (51) Experience in the implementation of the EU 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 EU 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 Directive and Specific Directives should therefore ensure the application of consistent and coherent principles to enforcement and penalties for the whole EU regulatory framework.
- (52) The existing EU regulatory framework includes 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.

⁽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).*

Wednesday 6 May 2009

- (53) Both efficient investment and competition should be encouraged in tandem, in order to increase economic growth, innovation and consumer choice.
- (54) *Competition can best be fostered through an economically efficient level of investment in new and existing infrastructure complemented by regulation wherever necessary to achieve effective competition in retail services. An efficient level of infrastructure-based competition is the extent of infrastructure duplication at which investors can reasonably be expected to make a fair return based on reasonable expectations about the evolution of market shares.*
- (55) *When imposing obligations for access to new and enhanced infrastructures national regulatory authorities should ensure that access conditions reflect the circumstances underlying the investment decision, taking into account inter alia the roll-out costs, the expected rate of take up of the new products and services and the expected retail price levels. Moreover, in order to provide planning certainty to investors, national regulatory authorities should be able to set, if applicable, terms and conditions for access which are consistent over appropriate review periods. Such terms and conditions may include pricing arrangements which depend on volumes or length of contract in accordance with Community law and provided they have no discriminatory effect. Any access conditions imposed should respect the need to preserve effective competition in services to consumers and businesses.*
- (56) *When assessing the proportionality of the obligations and conditions to be imposed, national regulatory authorities should take into account the different competitive conditions existing in the different areas within their Member States.*
- (57) *When imposing remedies to control prices, national regulatory authorities should seek to allow a fair return for the investor on a particular new investment project. In particular there may be risks associated with investment projects specific to new access networks which support products for which demand is uncertain at the time the investment is made.*
- (58) *Any Commission decision under Article 19(1) of the Framework Directive should be limited to regulatory principles, approaches and methodologies. For the avoidance of doubt, it should not prescribe detail which will normally need to reflect national circumstances, and it should not prohibit alternative approaches which can reasonably be expected to have equivalent effect. Such a decision should be proportionate and should not have an effect on decisions taken by national regulatory authorities that do not create a barrier to the internal market.*
- (59) 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 on Relevant Product and Service Markets has been fulfilled.
- (60) It may not be economically viable for new entrants to duplicate the incumbent's local access network in part or in its entirety within a reasonable period of time. In this context, mandating unbundled access to the local loop or sub-loop of operators enjoying significant market power may facilitate market entry and increase competition in retail broadband access markets. In circumstances where unbundled access to local loop or sub-loop is not technically or economically feasible, relevant obligations for the provision of non-physical or virtual network access offering equivalent functionality may apply.

Wednesday 6 May 2009

- (61) 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 operator's own vertically integrated downstream divisions. Functional separation has the capacity to improve competition in several relevant markets by significantly reducing the incentive for discrimination and by making it easier to verify and enforce compliance with non-discrimination obligations. In exceptional cases, functional separation may be justified as a remedy where there has been persistent failure to achieve effective non-discrimination in several of the markets concerned, and where there is little or no prospect of infrastructure competition within a reasonable timeframe after recourse to one or more remedies previously considered to be appropriate. However, it is very important to ensure that its imposition preserves the incentives of the concerned undertaking to invest in its network and that it does not entail any potential negative effects on consumer welfare. Its imposition requires a coordinated analysis of different relevant markets related to the access network, in accordance with the market analysis procedure set out in Article 16 of the Framework Directive. When undertaking the market analysis and designing the details of this remedy, national regulatory authorities should pay particular attention to the products to be managed by the separate business entities, taking into account the extent of network roll-out and the degree of technological progress, which may affect the substitutability of fixed and wireless services. In order to avoid distortions of competition in the internal market, proposals for functional separation should be approved in advance by the Commission.
- (62) The implementation of functional separation should not prevent appropriate coordination mechanisms between the different separate business entities in order to ensure that the economic and management supervision rights of the parent company are protected.
- (63) Continued integration of the internal market for electronic communications networks and services requires better coordination in the application of the ex ante regulation provided for under the EU regulatory framework for electronic communications.
- (64) 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.
- (65) 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, it is however necessary to ensure that such obligations are imposed in conformity with the EU regulatory framework and, in particular, its notification procedures.
- (66) The Commission should be empowered 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.
- (67) Facilitating access to radio frequency 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 the use of 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, to ensure technical quality of service, to safeguard efficient use of the spectrum or to meet a specific general interest objective. Decisions on the need for individual rights should be made in a transparent and proportionate manner.

Wednesday 6 May 2009

- (68) The introduction of the requirements of service and technology neutrality in granting rights of use, together with the increased possibility to transfer rights between undertakings, should increase the freedom and means to deliver electronic communications 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 the granting of rights of use when it appears to be essential to meet a specific general interest objective set out by Member States in conformity with Community law. Procedures associated with the pursuit of general interest objectives should in all circumstances be transparent, objective, proportionate and non-discriminatory.
- (69) 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, competent national authorities 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, competent national authorities 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.
- (70) ***Minor amendments to rights and obligations are those amendments which are mainly administrative, do not change the substantial nature of the general authorisations and the individual rights of use and thus cannot cause any comparative advantage to the other undertakings.***
- (71) Competent national authorities should have the power to ensure effective use of spectrum and, where spectrum resources are left unused, to take action to prevent anti-competitive hoarding, which can hinder new market entry.
- (72) 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 or administrative penalties in the event of breaches of those terms and conditions.
- (73) 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.
- (74) 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.

⁽¹⁾ OJ L 336, 30.12.2000, p. 4.

Wednesday 6 May 2009

- (75) 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 ⁽¹⁾.
- (76) In particular, the Commission should be empowered to adopt Recommendations and/or implementing measures in relation to the 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 the relevant product and service markets; the identification of trans-national markets; the implementation of standards and the harmonised application of the provisions of the regulatory framework. Power should also be conferred on the Commission to adopt implementing measures to update Annexes I and II to the Access Directive to market and technological developments. Since those measures are of general scope and are designed to amend non-essential elements of these Directives, inter alia 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,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2002/21/EC (Framework Directive)

Directive 2002/21/EC is hereby 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**. 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 (a) shall be replaced by the following:

'(a) "electronic communications network" means transmission systems and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed;'

- (b) point (b) shall be replaced by the following:

'(b) "transnational markets" means markets identified in accordance with Article 15(4) covering the Community or a substantial part thereof located in more than one Member State.';

- (c) point (d) shall be replaced by the following:

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

Wednesday 6 May 2009

'(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;'

(d) the following point shall be inserted:

'(da) "network termination point" (NTP) means the physical point at which a subscriber is provided with access to a public communications network; in the case of networks involving switching or routing, the NTP is identified by means of a specific network address, which may be linked to a subscriber number or name;'

(e) point (e) shall be replaced by the following:

'(e) "associated facilities" means those **associated services**, physical infrastructures and other facilities or elements 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 inter alia buildings or entries to buildings, **building wiring**, antennae, towers and other supporting constructions, ducts, conduits, masts, manholes, and cabinets;'

(f) the following point shall be inserted:

'(ea) "associated services" means those services 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 inter alia number translation or systems offering equivalent functionality, conditional access systems and electronic programme guides, as well as other services such as identity, location and presence service;'

(g) 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.;

(h) the following points shall be added:

'(q) "spectrum allocation" means the designation of a given frequency band for use by one or more types of radiocommunications services, where appropriate, under specified conditions;

(r) "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;

(s) "call" means a connection established by means of a publicly available electronic communications service allowing two-way voice communication;'

3) Article 3 shall be amended as follows:

(a) paragraph (3) shall be replaced by the following:

Wednesday 6 May 2009

'3. Member States shall ensure that national regulatory authorities exercise their powers impartially, transparently and in a timely manner. Member States shall ensure that national regulatory authorities have adequate financial and human resources to carry out the task assigned to them.');

(b) the following paragraphs shall be inserted:

'3a. Without prejudice to the provisions of paragraphs 4 and 5, national regulatory authorities responsible for ex ante market regulation or for the resolution of disputes between undertakings in accordance with Article 20 or 21 of this Directive shall act independently and shall not seek or take instructions from any other body in relation to the exercise of these tasks assigned to them under national law implementing Community law. This shall not prevent supervision in accordance with national constitutional law. Only appeal bodies set up in accordance with Article 4 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 where applicable, members of the collegiate body fulfilling that function within a national regulatory authority referred to in the first subparagraph or their replacements may be dismissed only if they no longer fulfil the conditions required for the performance of their duties which are laid down in advance in national law. The decision to dismiss the head of the national regulatory authority concerned, or where applicable members of the collegiate body fulfilling that function shall be made public at the time of dismissal. The dismissed head of the national regulatory authority, or where applicable, members of the collegiate body fulfilling that function shall receive a statement of reasons and shall have the right to request its publication, where this would not otherwise take place, in which case it shall be published.

Member States shall ensure that national regulatory authorities referred to in the first subparagraph have separate annual budgets. The budgets shall be made public. **Member States shall also ensure that national regulatory authorities have adequate financial and human resources to enable them actively to participate in and contribute to the Body of European Regulators for Electronic Communications (BEREC) (*)**.

3b. Member States shall ensure that the goals of **BEREC of** promoting greater regulatory coordination and coherence are actively supported by the respective national regulatory authorities.

3c. Member States shall ensure that national regulatory authorities take utmost account of opinions and common positions adopted by the **BEREC** when adopting their own decisions for their national markets.

(*) Regulation (EC) No .../2009 of the European Parliament and of the Council of ... establishing the **Body of European Regulators for Electronic Communications (BEREC) and the Office**];

4) Article 4 shall be amended as follows:

(a) paragraph 1 shall be 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 who 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 and that there is an effective appeal mechanism.

Pending the outcome of the appeal, the decision of the national regulatory authority shall stand, unless interim measures are granted in accordance with national law.');

(b) the following paragraph shall be added:

Wednesday 6 May 2009

'3. Member States shall collect information on *the general subject matter of appeals*, the number of requests for appeal, the duration of the appeal proceedings and the number of decisions to grant interim measures. Member States shall provide such information to the Commission and **BEREC** after a reasoned request from either.;

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. In particular, *national regulatory authorities shall have the power to require* those undertakings ■ to submit information concerning future network or service developments that could have an impact on the wholesale services that they make available to competitors. Undertakings with significant market power on wholesale markets may also be required to submit accounting data on the retail markets that are associated with those wholesale markets.

Undertakings shall provide such information promptly upon request and in conformity with 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 treat the information in accordance with paragraph 3.;

6) Articles 6 and 7 shall be replaced by the following:

'Article 6

Consultation and transparency mechanism

Except in cases falling within Articles 7(9), 20, or 21, 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.

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 insofar as 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 each other and with the Commission and **BEREC** 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 **BEREC** to identify the types of instruments and remedies best suited to address particular types of situations in the marketplace.

Wednesday 6 May 2009

3. Except where otherwise provided in recommendations or guidelines 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, **or** 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, **BEREC**, 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, **BEREC** and other national regulatory authorities thereof. National regulatory authorities, **BEREC** 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. The Commission shall inform other national regulatory authorities of its reservations in such a case.

5. Within the two-month period referred to in paragraph 4, the Commission may:

- (a) take a decision **■** requiring the national regulatory authority concerned to withdraw the draft measure, and/or

■

- (b) take a decision to lift its reservations in relation to a draft measure referred to in paragraph 4.

The Commission shall take utmost account of the opinion of **BEREC** 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. Where the Commission has adopted 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 within six months of the date of the Commission's decision. When 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 shall re-notify the amended draft measure to the Commission in accordance with the provisions of paragraph 3.

Wednesday 6 May 2009

7. The national regulatory authority concerned shall take the utmost account of comments of other national regulatory authorities, **BEREC** and the Commission and may, except in cases covered by **paragraphs 4 and 5(a)**, adopt the resulting draft measure and, where it does so, shall communicate it to the Commission.

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8. The national regulatory authority shall communicate to the Commission and **BEREC** all **adopted** final measures which fall under Article 7(3)(a) and (b).

9. In exceptional circumstances, where a national regulatory authority considers that there is an urgent need to act, in order to safeguard competition and protect the interests of users, by way of derogation from the procedure set out in paragraphs 3 and 4, 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 authority, and **BEREC**. 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.;

7) the following **Articles** shall be inserted:

Article 7a

Procedure for the consistent application of remedies

1. *Where an intended measure covered by Article 7(3) aims at imposing, amending or withdrawing an obligation on an operator in application of Article 16 in conjunction with Article 5 and Articles 9 to 13 of Directive 2002/19/EC (Access Directive), and Article 17 of Directive 2002/22/EC (Universal Service Directive), the Commission may, within the period of one month provided for by Article 7(3), notify the national regulatory authority concerned and BEREC of its reasons for considering that the draft measure would create a barrier to the single market or its serious doubts as to its compatibility with Community law. In such a case, the draft measure shall not be adopted for a further three 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, BEREC or any other national regulatory authority.

2. *Within the three month period referred to in paragraph 1, the Commission, BEREC 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.*

3. *Within six weeks from the beginning of the three month period referred to in paragraph 1, BEREC shall, acting by a majority of its component members, issue an opinion on the Commission's notification referred to in that paragraph, indicating whether it considers that the draft measure should be amended or withdrawn and, where appropriate, provide specific proposals to that end. This opinion shall be reasoned and made public.*

4. *If in its opinion, BEREC shares the serious doubts of the Commission, it shall cooperate closely with the national regulatory authority concerned with the objective of identifying the most appropriate and effective measure. Before the end of the three month period referred in paragraph 1, the national regulatory authority may:*

Wednesday 6 May 2009

(a) *amend or withdraw its draft measure taking utmost account of the Commission's notification referred to in paragraph 1 and of BEREC's opinion and advice;*

(b) *maintain its draft measure.*

5. *Where BEREC does not share the serious doubts of the Commission or does not issue an opinion, or where the national regulatory authority amends or maintains its draft measure pursuant to paragraph 4, the Commission may, within one month following the end of the three month period referred to in paragraph 1 and taking utmost account of the opinion of BEREC if any:*

(a) *issue a recommendation requiring the national regulatory authority concerned to amend or withdraw the draft measure, including specific proposals to that end and providing reasons justifying its recommendation, in particular where BEREC does not share the serious doubts of the Commission;*

(b) *take a decision to lift its reservations indicated in accordance with paragraph 1.*

6. *Within one month of the Commission issuing the recommendation in accordance with paragraph 5(a) or lifting its reservations in accordance with paragraph 5(b), the national regulatory authority concerned shall communicate to the Commission and BEREC the adopted final measure.*

This period may be extended to allow the national regulatory authority to undertake a public consultation in accordance with Article 6.

7. *Where the national regulatory authority decides not to amend or withdraw the draft measure on the basis of the recommendation issued under paragraph 5(a) it shall provide a reasoned justification.*

8. *The national regulatory authority may withdraw the proposed draft measure at any stage of the procedure.*

Article 7b

Implementing provisions

1. After public consultation and consultation with national regulatory authorities and taking utmost account of the opinion of **BEREC**, the Commission may adopt recommendations and/or guidelines in relation to Article 7 that define the form, content and level of detail 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.

2. The measures referred to in paragraph 1 shall be adopted in accordance with the advisory procedure referred to in Article 22(2).;

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, 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.;

Wednesday 6 May 2009

(b) in paragraph 2, **points (a) and (b)** 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;

(b) ensuring that there is no distortion or restriction of competition in the electronic communications sector, including in the transmission of content;

(c) in paragraph 2, point (c) shall be deleted;

(d) in paragraph 3, point (c) shall be deleted

(e) in paragraph 3, point (d) shall be replaced by the following:

(d) cooperating with each other, with the Commission and **BEREC** so as to ensure the development of consistent regulatory practice and the consistent application of this Directive and the Specific Directives.;

(f) in paragraph 4, 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.;

(g) in paragraph 4, points (g) and (h) shall be added:

(g) promoting the ability of end-users to access and distribute information or run applications and services of their choice;

(h) applying the principle that no restriction may be imposed on the fundamental rights and freedoms of end-users, without a prior ruling by 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, save when public security is threatened in which case the ruling may be subsequent

(h) 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 **by ensuring a consistent regulatory approach over appropriate review periods;**

(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, where appropriate, infrastructure-based competition;

Wednesday 6 May 2009

- (d) promoting efficient investment and innovation in new and enhanced infrastructures, including by **ensuring that any access obligation takes appropriate account of the risk incurred by the investing undertakings and by permitting various cooperative arrangements between investors and parties seeking access to diversify the risk of investment, whilst ensuring that competition in the market and the principle of non-discrimination are preserved;**
 - (e) taking due account of the variety of conditions relating to competition and consumers that exist in the various 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 Article shall be inserted:

'Article 8a

Strategic planning and coordination of radio spectrum policy ▯

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 **Community**. To this end, they shall take into consideration, inter alia, the economic, safety, health, public interest, freedom of expression, cultural, scientific, social and technical aspects of EU policies as well as the various interests of radio spectrum user communities with the aim of optimising the use of radio spectrum and avoiding harmful interference.

2. **By cooperating with each other and with the Commission**, Member States shall promote the coordination of radio spectrum policy approaches in the European **community** 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 electronic communications.

3. **The Commission, taking utmost account of the opinion of the Radio Spectrum Policy Group (RSPG), established by Commission Decision 2002/622/EC (*), may submit legislative proposals to the European Parliament and the Council for establishing multiannual radio spectrum policy programmes. Such programmes shall set out the policy orientations and objectives for the strategic planning and harmonisation of the use of radio spectrum in accordance with the provisions of this Directive and the Specific Directives.**

4. **Where necessary to ensure** the effective coordination of the ▯ interests **of the European Community** in international organisations competent in radio spectrum matters ▯, the Commission, taking utmost account of the opinion of the ▯ RSPG ▯, may propose common policy objectives to the European Parliament and the Council.

▯

(*) OJ L 198, 27.7.2002, p. 49.;

- 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 communication services in their territory in accordance with **Articles 8 and 8a**. They shall ensure that spectrum allocation used for electronic communications services and issuing general authorisations or individual rights of use of such radio frequencies by competent national authorities are based on objective, transparent, non-discriminatory and proportionate criteria.

Wednesday 6 May 2009

In **applying this Article, Member States** shall respect relevant international agreements, **including the ITU Radio Regulations**, 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 Article 8a and** with the Decision No 676/2002/EC (Radio Spectrum Decision).

3. Unless otherwise provided in the second subparagraph, Member States shall ensure that all types of technology used for electronic communications services may be used in the radio frequency bands, **declared** available for electronic communications services in **■** their National Frequency Allocation Plan **in accordance with Community law**.

Member States may, however, provide for proportionate and non-discriminatory restrictions to the types of radio network or wireless access technology used for electronic communications services where this is necessary to:

- (a) avoid harmful interference;
- (b) protect public health against electromagnetic fields;
- (c) ensure technical quality of service;
- (d) ensure maximisation of radio frequency sharing;
- (e) safeguard efficient use of spectrum, or
- (f) ensure the fulfilment of 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, **declared** available for electronic communications services in **■** their National Frequency Allocation Plan **in accordance with Community law**. Member States may, however, provide for proportionate and non-discriminatory restrictions to the types of electronic communications services to be provided, **including, where necessary, to fulfil a requirement under the ITU Radio Regulations**.

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 by Member States in conformity with Community law, such as, and not limited to:

- (a) safety of life,
- (b) the promotion of social, regional or territorial cohesion,
- (c) the avoidance of inefficient use of radio frequencies, or
- (d) the promotion of cultural and linguistic diversity and media pluralism, for example by the provision of radio and television broadcasting services.

Wednesday 6 May 2009

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. Member States may **exceptionally** also extend such a measure in order to fulfil other general interest objectives **as defined by Member States in accordance with Community law**.

5. Member States shall regularly review the necessity of the restrictions referred to in paragraphs 3 and 4, and shall make the results of these reviews public.

6. Paragraphs 3 and 4 shall apply to spectrum allocated to be used for electronic communications services, general authorisations issued and individual rights of use of radio frequencies granted after ... (*).

Spectrum allocations, general authorisations and individual rights of use which existed by... (*) shall be subject to Article 9a.

7. Without prejudice to the provisions of the Specific Directives and taking into account the relevant national circumstances, Member States may lay down rules in order to prevent spectrum hoarding, in particular by setting out strict deadlines for the effective exploitation of the rights of use by the holder of the rights and by applying penalties, including financial penalties or the withdrawal of the rights of use in case of non-compliance with the deadlines. These rules shall be established and applied in a proportionate, non-discriminatory and transparent manner.

(*) The date of transposition of *this* Directive;

11) The following Articles shall be inserted:

'Article 9a

Review of restrictions on existing rights

1. For a period of five years starting from ... (*), Member States **may allow** 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, **to** submit an application to the competent national authority for a reassessment of the restrictions on 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 shall 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 five-year period, whichever is the earlier date.

2. 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 general authorisations or individual rights of use and spectrum allocations used for electronic communications services which existed on ... (*).

3. In applying this Article, Member States shall take appropriate measures to promote fair competition.

4. Measures adopted in applying this Article do not constitute the granting of new rights of use and therefore are not subject to the relevant provisions of Article 5(2) of Directive 2002/20/EC (Authorisation Directive).

Wednesday 6 May 2009

Article 9b

Transfer or lease of individual rights to use radio frequencies

1. Member States **shall ensure that** undertakings **may** transfer or lease **to other undertakings in accordance with conditions attached to the rights of use of radio frequencies and with national procedures** individual rights to use radio frequencies **■ in the bands for which this is provided in the implementing measures adopted pursuant to paragraph 3.**

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.

Conditions attached to individual rights to use radio frequencies shall continue to apply after the transfer or lease, unless otherwise specified by the competent national authority.

Member States may also determine that the provisions of paragraph 1 shall not apply where the undertaking's individual right to use radio frequencies was initially obtained free of charge.

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 in accordance with national procedures to the competent national authority responsible for granting individual rights of use and is made public. Where radio frequency use has been harmonised through the application of the Decision No 676/2002/EC (Radio Spectrum Decision) or other Community measures, any such transfer shall comply with such harmonised use.

3. ***The Commission may adopt appropriate implementing measures to identify the bands for which usage rights may be transferred or leased between undertakings. These measures shall not cover frequencies which are used for broadcasting.***

These technical implementing 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).

(*) The date of transposition of *this Directive*;

12) Article 10 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 control the granting of rights of use of all national numbering resources and the management of the national numbering plans. Member States shall ensure that adequate numbers and numbering ranges are provided for all publicly available electronic communications services. National regulatory authorities shall establish objective, transparent and non-discriminatory procedures for granting rights of use for national numbering resources.

2. National regulatory authorities shall ensure that national numbering plans and procedures are applied in a manner that gives equal treatment to all providers of publicly available electronic communications services. In particular, Member States shall ensure that an undertaking to which the right of use for a range of numbers has been granted does not discriminate against other providers of electronic communications services as regards the number sequences used to give access to their services.’;

Wednesday 6 May 2009

(b) paragraph 4 shall be replaced by the following:

‘4. Member States shall support the harmonisation of specific numbers or numbering ranges within the Community where it promotes both the functioning of the internal market and the development of pan-European services. The Commission may take appropriate technical implementing measures on this matter.

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).’;

13) Article 11 shall be amended as follows:

(a) paragraph 1, second subparagraph, first indent shall be replaced by the following:

‘— acts on the basis of simple, efficient, transparent and publicly available procedures, applied without discrimination and without delay, and in any event makes its decision within six months of the application, except in cases of expropriation, and’;

(b) paragraph 2 shall be replaced by the following:

‘2. Member States shall ensure that where public or local authorities retain ownership or control of undertakings operating public electronic communications networks and/or publicly available electronic communications services, there is an effective structural separation of the function responsible for granting the rights referred to in paragraph 1 from the activities associated with ownership or control.’;

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 buildings, entries to buildings, **building wiring**, masts, antennae, towers and other supporting constructions, ducts, conduits, manholes, cabinets ■.

2. Member States may require holders of the rights referred to in paragraph 1 to share facilities or property (including physical co-location) or 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 **and** only after an appropriate period of public consultation, during which all interested parties shall be 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 authorities, after an appropriate period of public consultation during which all interested parties are given the opportunity to state their views, also have the power to impose obligations in relation to the sharing of wiring inside buildings or up to the first concentration or distribution point where this is located outside the building, on the holders of the rights referred to in paragraph 1 and/or on the owner of such wiring, where this is justified on the grounds that duplication of such infrastructure would be economically inefficient or physically impracticable. Such sharing or coordination arrangements may include rules for apportioning the costs of facility or property sharing adjusted for risk where appropriate.

Wednesday 6 May 2009

4. Member States **shall** ensure that **competent national authorities may require** undertakings to provide the necessary information, if requested by the competent authorities, in order for these authorities, in conjunction with national regulatory authorities, to be able to establish a detailed inventory of the nature, availability and geographical location of the facilities referred to in paragraph 1 and make it available to interested parties.

5. Measures taken by a national regulatory authority in accordance with **this Article** shall be objective, transparent, non-discriminatory, and proportionate. **Where relevant, these measures shall be carried out in coordination with local authorities;**

15) the following chapter 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 appropriately manage the risks posed to security of networks and services. Having regard to the state of the art, 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 interconnected networks.

2. Member States shall ensure that undertakings providing public communications networks take all appropriate steps to guarantee the integrity of their networks, and thus ensure the continuity of supply of services provided over those networks.

3. Member States shall ensure that undertakings providing public communications networks or publicly available electronic communications services notify the competent national regulatory authority of a breach of security or loss of integrity that has had a significant impact on the operation of networks or services.

Where appropriate, the national regulatory authority concerned shall inform the national regulatory authorities in other Member States and the European Network and Information Security Agency (ENISA) ¶ The national regulatory authority concerned may inform the public or require the undertakings to do so, where it determines that disclosure of the breach is in the public interest.

Once a year, the national regulatory authority concerned shall submit a summary report to the Commission and ENISA on the notifications received and the 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 notification requirements. These technical implementing measures shall be based on European and international standards to the greatest extent possible, and shall not prevent Member States from adopting additional requirements in order to pursue the objectives set out in paragraphs 1 and 2.

These implementing 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).

Wednesday 6 May 2009

Article 13b

Implementation and enforcement

1. Member States shall ensure that *in order to implement Article 13a*, competent national regulatory authorities have the power to issue binding instructions, **including those regarding time limits for implementation**, to undertakings providing public communications networks or publicly available electronic communications services ¶.

2. Member States shall ensure that competent national regulatory authorities have the power to require undertakings providing public communications networks or publicly available electronic communications services to:

(a) provide information needed to assess the security and/or integrity of their services and networks, including documented security policies; and

(b) submit to a security audit carried out by a qualified independent body or a competent national authority and make the results thereof available to the national regulatory authority. The cost of the audit shall be paid by the undertaking.

3. Member States shall ensure that national regulatory authorities have all the powers necessary to investigate cases of non-compliance **and the effects thereof on the security and integrity of the networks**.

4. These provisions shall be without prejudice to Article 3 of this Directive.;

16) in Article 14, paragraph 3 shall be replaced by the following:

‘3. Where an undertaking has significant market power on a specific market (**the first market**), it may also be **designated as having** significant market power on a closely related market (**the second market**), where the links between the two markets are such as to allow the market power held in **the first market** to be leveraged into the **second market**, thereby strengthening the market power of the undertaking. Consequently, remedies aimed at preventing such leverage may be applied in the **second market** pursuant to Articles 9, 10, 11 and 13 of Directive 2002/19/EC (Access Directive), and where such remedies prove to be insufficient, remedies pursuant to Article 17 of Directive 2002/22/EC (Universal Service Directive) may be imposed.’;

17) Article 15 shall be amended as follows:

(a) the heading shall be replaced by the following:

‘Procedure for the identification and definition of markets’;

(b) in paragraph 1, the first subparagraph shall be replaced by the following:

‘1. After public consultation **including** with national regulatory authorities and taking the utmost account of the opinion of **BEREC**, the Commission shall, in accordance with the *advisory* procedure referred to in Article 22(2), adopt a Recommendation on Relevant Product and Service Markets (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.’;

Wednesday 6 May 2009

(c) 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.'

(d) paragraph 4 shall be replaced by the following:

'4. After consultation **including** with national regulatory authorities the Commission may, taking the utmost account of the opinion of **BEREC**, adopt a Decision identifying transnational markets, acting 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 into account the markets identified 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 of this Article, 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 4, 5 and 6 shall be replaced by the following:

'4. Where a national regulatory authority determines that a relevant market is not effectively competitive, it shall identify undertakings which individually or jointly have a significant market power on that market in accordance with Article 14 and the national regulatory authority shall on such undertakings impose appropriate specific regulatory obligations referred to in paragraph 2 of this Article or maintain or amend such obligations where they already exist.

5. In the case of transnational markets identified in the Decision referred to in Article 15(4), the national regulatory authorities concerned shall jointly conduct the market analysis taking the utmost account of the Guidelines and, in a concerted fashion, shall decide on any imposition, maintenance, amendment or withdrawal of regulatory obligations referred to in paragraph 2 of this Article.

6. Measures taken in accordance with the provisions of paragraphs 3 and 4 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 and notify the corresponding draft measure in accordance with Article 7:

(a) within three years from the adoption of a previous measure relating to that market. However, exceptionally, that period may be extended **for up to** three **additional** years, where the national regulatory authority has notified a reasoned proposed extension to the Commission and the Commission has not objected within one month of the notified extension;

Wednesday 6 May 2009

- (b) within two years from the adoption of a revised Recommendation on relevant markets, for markets not previously notified to the Commission, or;
 - (c) within two years from their accession, for Member States which have newly joined the Union.;
- (c) the following paragraph shall be added:

‘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), **BEREC** shall, upon request, provide assistance to the national regulatory authority concerned in completing the analysis of the specific market and the specific obligations to be imposed. With this assistance, the national regulatory authority concerned shall within six months notify the draft measure to the Commission in accordance with Article 7.’;

19) Article 17 shall be amended as follows:

- (a) in the **first** sentence of paragraph 1, the **word ‘standards’** shall be replaced by **‘non-compulsory standards’**;
- (b) the third subparagraph of paragraph 2 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) and the International Electrotechnical Commission (IEC).;

- (c) paragraphs 4 and 5 shall be replaced by the following:

‘4. Where the Commission intends to make the implementation of certain standards and/or specifications compulsory, it shall publish a notice in the *Official Journal of the European Union* and invite public comment by all parties concerned. The Commission shall take appropriate implementing measures and make implementation of the relevant standards compulsory by making reference to them as compulsory standards in the list of standards and/or specifications published in the *Official Journal of the European Union*.

5. Where the Commission considers that standards and/or specifications referred to in paragraph 1 no longer contribute to the provision of harmonised electronic communications services, or that they no longer meet consumers’ needs or are hampering technological development, it shall, acting in accordance with the *advisory* procedure referred to in **Article 22(2)**, remove them from the list of standards and/or specifications referred to in paragraph 1.’;

- (d) 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 the words ‘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’;
- (e) the following paragraph shall be inserted:

‘6a. The implementing measures designed to amend non-essential elements of this Directive by supplementing it, referred to in paragraphs 4 and 6, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).’;

Wednesday 6 May 2009

20) Article 18 shall be amended as follows:

(a) in paragraph 1, the following point (c) shall be 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 Articles 6 and 8 of Directive 2002/20/EC (Authorisation Directive), where the Commission finds that divergences in the implementation by the national regulatory authorities of the regulatory tasks specified in this Directive and the Specific Directives may create a barrier to the internal market, the Commission may, taking the utmost account of the opinion of **BEREC**, **■** issue a recommendation **or 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. Where the Commission issues a recommendation pursuant to paragraph 1, it shall act in accordance with the *advisory* procedure referred to in Article 22(2).

Member States shall ensure that national regulatory authorities take the utmost account of those recommendations in carrying out their tasks. Where a national regulatory authority chooses not to follow a recommendation, it shall inform the Commission, giving the reasons for its position.

3. The decisions adopted pursuant to paragraph 1 may only include the identification of a harmonised or coordinated approach for the purposes of addressing the following matters:

(a) the inconsistent implementation of general regulatory approaches by national regulatory authorities on the regulation of electronic communication markets in the application of Articles 15 and 16, where it creates a barrier to the internal market. Such decisions shall not refer to specific notifications issued by the national regulatory authorities pursuant to Article 7a;

In such a case, the Commission shall propose a draft decision only:

— **after at least two years following the adoption of a Commission Recommendation dealing with the same matter, and;**

— **taking utmost account of an opinion from BEREC on the case for adoption of such a decision, which shall be provided by BEREC within three months of the Commission’est;**

(b) numbering, including number ranges, portability of numbers and identifiers, number and address translation systems, and access to 112 emergency services.

Wednesday 6 May 2009

4. 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).

5. **BEREC** may on its own initiative advise the Commission on whether a measure should be adopted pursuant to paragraph 1.;

22) Article 20(1) shall be replaced by the following:

'1. In the event of a dispute arising in connection with existing obligations under this Directive or the Specific Directives between undertakings providing electronic communications networks or services in a Member State, or between such undertakings and other undertakings in the Member State benefiting from obligations of access and/or interconnection arising under this Directive or the Specific Directives, 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 time frame 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, and 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 **and shall have the right to consult BEREC** in order to bring about a **consistent** resolution of the dispute, in accordance with the objectives set out in Article 8.

Any obligations imposed by the national regulatory authorities on undertakings 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 **BEREC** to adopt an opinion 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 **BEREC**, any national regulatory authority with competence in any aspect of the dispute shall await **BEREC's** opinion before taking action to resolve the dispute. This shall not preclude national regulatory authorities from taking 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 opinion adopted by **BEREC**.

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 resolving of the dispute in a timely manner in accordance with the provisions of Article 8.

Wednesday 6 May 2009

They shall inform the parties without delay. If after four months the dispute is not resolved, where the dispute has not been brought before the courts by the party seeking redress and if either party requests it, the national regulatory authorities shall coordinate their efforts in order to resolve the dispute, in accordance with the provisions set out in Article 8 and taking the utmost account of any opinion adopted by **BEREC**.

4. The procedure referred to in paragraph 2 shall not preclude either party from bringing an action before the courts.;

24) the following Article shall be inserted:

‘Article 21a

Penalties

Member States shall lay down rules on penalties applicable to infringements of 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 ... (*) and shall notify it without delay of any subsequent amendment affecting them;

(*) The date of transposition of *this* Directive.;

25) Article 22 shall be amended as follows:

■

(a) 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.;

(b) paragraph 4 shall be deleted.;

26) Article 27 shall be deleted;

27) Annex I shall be deleted;

28) Annex II 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 the second subparagraph of Article 14(2).

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. In accordance with the **applicable Community law and with 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

Wednesday 6 May 2009

- 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 an indicative list and is not exhaustive, nor are the criteria cumulative. Rather, the list is intended to illustrate only the type of evidence that could be used to support assertions concerning the existence of joint dominance. ■

Article 2

Amendments to Directive 2002/19/EC (Access Directive)

Directive 2002/19/EC is hereby 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 when they are used for 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 information systems or databases for pre-ordering, provisioning, ordering, maintaining and repair requests, and billing; access to number translation or systems offering equivalent functionality; 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, 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.’

3) Article 5 shall be amended as follows:

(a) ¶ paragraph 1 shall be amended as follows:

Wednesday 6 May 2009

(i) the first subparagraph shall be replaced by the following:

‘1. 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 the interoperability of services, exercising their responsibility in a way that promotes efficiency, sustainable competition, efficient investment and innovation, and gives the maximum benefit to end-users.’;

(ii) **point (ab) shall be inserted:**

‘(ab) in justified cases and to the extent that is necessary, the obligations on undertakings that control access to end-users to make their services interoperable.’;

(b) paragraph 2 shall be replaced by the following:

‘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).’;

(c) paragraph 3 shall be deleted;

(d) paragraph 4 shall be replaced by the following:

‘3. With regard to access and interconnection referred to in paragraph 1, Member States shall ensure that the national regulatory authority is empowered to intervene at its own initiative where justified in order to secure the policy objectives of Article 8 of Directive 2002/21/EC (Framework Directive), in accordance with the provisions of this Directive and the procedures referred to in Articles 6 and 7, 20 and 21 of Directive 2002/21/EC (Framework Directive).’;

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).’;

5) Article 7 shall be deleted;

6) Article 8 shall be amended as follows:

(a) in paragraph 1, the words ‘Articles 9 to 13’ shall be replaced by the words ‘Articles 9 to 13a’;

(b) paragraph 3 shall be amended as follows:

(i) the first subparagraph shall be amended as follows:

— in the first indent, the words ‘Articles 5(1), 5(2) and 6’ shall be replaced by the words ‘Articles 5(1) and 6’;

Wednesday 6 May 2009

- 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 second subparagraph shall be replaced by the following:

'In exceptional circumstances, when a national regulatory authority intends to impose on operators with significant market power obligations for access or interconnection other than those set out in Articles 9 to 13 in this Directive, it shall submit this request to the Commission. The Commission shall take utmost account of the opinion of the **Body** of European Regulators **for Electronic Communications (BEREC)** (*). The Commission, acting in accordance with Article 14(2), shall take a decision authorising or preventing the national regulatory authority from taking such measures.

(*) Regulation (EC) No .../2009 of the European Parliament and of the Council of... establishing the **Body** of European Regulators **for Electronic Communications (BEREC) and the Office**];

- 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, terms and conditions for supply and use, including **any conditions limiting access to and/or use of services and applications where such conditions are allowed by Member States in conformity with Community law**, and prices.;

- (b) paragraph 4 shall be replaced by the following:

'4. Notwithstanding paragraph 3, where an operator has obligations under Article 12 concerning wholesale network infrastructure access, **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). In implementing the provisions of this paragraph, the Commission may be assisted by **BEREC**.;

- 8) Article 12 shall be amended as follows:

- (a) in paragraph 1, point (a) shall be replaced by the following:

'(a) to give third parties access to specified network elements and/or facilities, including access to network elements which are not active and/or unbundled access to the local loop, to inter alia allow carrier selection and/or pre-selection and/or subscriber line resale offer.;

Wednesday 6 May 2009

(b) in paragraph 1, point (f) shall be replaced by the following:

‘(f) to provide co-location or other forms of associated **facilities** sharing **■**’;

(c) in paragraph 1, the following point shall be added:

‘(j) to provide access to associated services such as identity, location and presence service.’;

(d) in paragraph 2, the introductory phrase and point (a) shall be replaced by the following:

‘2. When national regulatory authorities are considering the obligations referred in paragraph 1, and in particular when assessing how such obligations would be imposed 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/or access involved, including the viability of other upstream access products such as access to ducts;’;

(e) in paragraph 2, **points (c) and (d)** shall be replaced by the following:

‘**(c) the initial investment by the facility owner, taking account of any public investment made and the risks involved in making the investment;**

(d) the need to safeguard competition in the long term, **with particular attention to** economically efficient infrastructure-based competition;’;

(f) the following paragraph 3 shall be added:

‘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(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 may sustain prices at an excessively high level, or may apply a price squeeze, to the detriment of end-users. To encourage investments by the operator, including in next generation networks, 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, taking into account **any risks specific to a particular new investment network project.**’;

■

Wednesday 6 May 2009

10) the following Articles shall be inserted:

'Article 13a

Functional separation

1. Where the national regulatory authority concludes that the appropriate obligations imposed under Articles 9 to 13 have failed to achieve effective competition and that there are important and persisting competition problems and/or market failures identified in relation to the wholesale provision of certain access **product markets**, it may, as an exceptional measure, in accordance with the provisions of the second subparagraph of Article 8(3), impose an obligation on vertically integrated undertakings to place activities related to the wholesale provision of relevant access products in an independently operating business entity.

That business entity shall supply access products and services to all undertakings, including to other business entities within the parent company, on the same timescales, terms and conditions, including those relating 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 justifying the conclusions of the national regulatory authority as referred to in paragraph 1;
- (b) a reasoned assessment that there is no or little prospect of effective and sustainable infrastructure-based competition within a reasonable timeframe;
- (c) an analysis of the expected impact on the regulatory authority, on the undertaking, **in particular on the workforce of the separated undertaking and on the electronic communications sector as a whole, and** on incentives to invest in a sector as a whole, particularly with regard to the need to ensure social and territorial cohesion, and on other stakeholders including, in particular, the expected impact on competition and any potential entailing 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/markets failures identified.**

3. The draft measure shall include the following elements:

- (a) the precise nature and level of separation, specifying in particular the legal status of the separate business entity;
- (b) an identification of the assets of the separate business entity, and the products or services to be supplied by that 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 the publication of an annual report.

Wednesday 6 May 2009

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 to 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 Article 8(3).

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 and in a timely manner, in order to allow the national regulatory authority to assess the effect of the intended transaction, when they intend to transfer their local access network assets or a substantial part thereof 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.

Undertakings shall also inform the national regulatory authority of any change of that intent as well as the final outcome of the process of separation.

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 to 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 Article 8(3).;

11) Article 14 shall be amended as follows:

(a) 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.;

(b) paragraph 4 shall be deleted.

12) Annex II shall be amended as follows:

(a) the title shall be replaced by the following:

Wednesday 6 May 2009

‘Minimum list of items to be included in a reference offer for wholesale network infrastructure access, including **shared or fully** unbundled access to the local loop at a fixed location to be published by notified operators **with significant market power (SMP)**;

(b) definition (a) shall be replaced by the following:

‘(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;’

(c) definition (c) shall be replaced by the following:

‘(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) definition (d) shall be replaced by the following:

‘(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 a part of the frequency or an equivalent;’

(e) in part A, points 1, 2 and 3 shall be replaced by the following:

‘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 (full and shared);

(b) unbundled access to local sub-loops (full and shared), including, when relevant, access to **network elements which are not active for the purpose of roll-out of backhaul networks**;

(c) *where* relevant, duct access enabling the roll out of access networks.

2. Information concerning the locations of physical access sites including cabinets and distribution frames, availability of local loops, sub-loops and backhaul in specific parts of the access network and when relevant, information concerning the locations of ducts and the availability within ducts;

3. Technical conditions related to access and use of local loops and sub-loops, including the technical characteristics of the twisted pair and/or optical fibre and/or equivalent, cable distributors, and associated facilities and, when relevant, technical conditions related to access to ducts;’

(f) in part B, point 1 shall be replaced by the following:

‘1. Information on the **SMP** operator’s existing relevant sites or equipment locations and planned update thereof (*).

(*) **Availability of this information may be restricted to interested parties only, in order to avoid public security concerns.**’

Wednesday 6 May 2009

Article 3

Amendments to Directive 2002/20/EC (Authorisation Directive)

Directive 2002/20/EC is hereby 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) ***In Article 3(2) the following subparagraph shall be added:***

‘Undertakings providing cross-border electronic communications services to undertakings located in several Member States shall not be required to submit more than one 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 use of radio frequencies under general authorisations. ***Where necessary***, Member States may grant individual rights of use in order to:

- avoid harmful interference,
- ensure technical quality of service,
- safeguard efficient use of spectrum, or
- fulfil other objectives of general interest as defined by Member States in conformity with Community law.

2. Where it is necessary to grant individual rights of use for radio frequencies and numbers, Member States shall grant such rights, upon request, to any undertaking for the provision of networks or services under the general authorisation referred to in Article 3, subject to the provisions of Articles 6, 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, the rights of use for radio frequencies and numbers 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). An exception to the requirement of open procedures may apply in cases where the granting of individual rights of use of radio frequencies to the providers of radio or television broadcast content services is necessary to achieve a general interest objective as defined by Member States in conformity with Community law.

Wednesday 6 May 2009

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 provision 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 right to use radio frequencies **are** granted for **10 years or more** and that may not 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 licence**, in particular upon a justified request of the holder of the right. 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**, or **shall be** made transferable or leaseable between undertakings in accordance with Article 9b of Directive 2002/21/EC (Framework Directive).

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 to be used by 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 radio frequencies, 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 ensure competition is not distorted by any transfer or accumulation of **rights of use of** radio frequencies **For** such purposes, Member States may take appropriate measures such as mandating the sale or the lease of rights to use 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, the words ‘Articles 16, 17, 18 and 19 of Directive 2002/22/EC (Universal Service Directive)’ shall be replaced by the words ‘Article 17 of Directive 2002/22/EC (Universal Service Directive)’;

Wednesday 6 May 2009

- (c) in paragraph 3, the word 'Annex' shall be replaced by the words 'Annex I';
- 5) 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, the words 'Article 9' shall be replaced by the words 'Article 9b';
- 6) 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:

Wednesday 6 May 2009

(a) *dissuasive* financial penalties where appropriate, **which may include periodic penalties having retroactive effect; and**

(b) **orders to cease or delay 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).**

The measures and the reasons on which they are based shall be communicated to the undertaking concerned without delay and shall stipulate a reasonable period for the undertaking to comply with the measure.;

(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 the obligations imposed under Article 11(1)(a) or (b) of this Directive and 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. Irrespective of the provisions of paragraphs 2, 3 and 5, where the relevant authority has evidence of a breach of the conditions of the general authorisation rights of use 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 the 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, but which may, in circumstances where enforcement procedures have not been completed, be extended for a further period of up to three months.;

7) Article 11, paragraph 1 shall be amended as follows:

(a) point (a) shall be replaced by the following:

‘(a) systematic or case-by-case verification of compliance with conditions 1 and 2 of Part A, conditions 2 and 6 of Part B and conditions 2 and 7 of Part C of the Annex I and of compliance with obligations as referred to in Article 6(2).;

(b) in point (b), the word ‘Annex’ shall be replaced by ‘Annex I’;

(c) the following points shall be added:

Wednesday 6 May 2009

'(g) safeguarding the efficient use and ensuring the effective management of radio frequencies;

(h) evaluating future network or service developments that could have an impact on wholesale services made available to competitors.';

(d) the second subparagraph shall be replaced by the following:

'The information referred to in points (a), (b), (d), (e), (f), (g) and (h) of the first subparagraph may not be required prior to, or as a condition for, market access.';

8) 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. Except where proposed amendments are minor and have been agreed with the holder of the rights or general authorisation, 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 Annex I and relevant national provisions regarding compensation for withdrawal of rights.';

9) 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.';

10) 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 general authorisations and individual rights of use already in existence on 31 December 2009 into conformity with Articles 5, 6, 7, and Annex I of this Directive within two years from the date of entry into force of this Directive at the latest.

2. Where application of paragraph 1 results in a reduction of the rights or an extension of the general authorisations and individual rights of use already in existence, Member States may extend the validity of those authorisations and rights until 30 September 2012 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.';

11) the Annex shall be amended as set out in the Annex to this Directive;

Wednesday 6 May 2009

Article 4

Repeal

Regulation (EC) No 2887/2000 is hereby repealed.

Article 5

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 Commission the text of such provisions.

They shall apply those measures from ... (**).

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference 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 6

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 7

Addressees

This Directive is addressed to the Member States.

Done at ||,

For the European Parliament
The President

For the Council
The President

(*) 18 months after the date of adoption of the amending act.
(**) one day after the date referred to in the first subparagraph.

Wednesday 6 May 2009

ANNEX

The Annex to Directive 2002/20/EC (Authorisation Directive) is amended as follows:

1. The first paragraph is 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).';

2. Part A is amended as follows:

(a) Point 4 is replaced by the following:

'4. Accessibility by end users of numbers from the national numbering plan, numbers from the European Telephone Numbering Space, the Universal International Freephone Numbers, and, where technically and economically feasible, from numbering plans of other Member States, and conditions in conformity with Directive 2002/22/EC (Universal Service Directive).';

(b) Point 7 is 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 (Directive on privacy and electronic communications) (*)

(*) OJ L 201, 31.7.2002, p. 37.;

(c) Point 8 is 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 point 11, the words 'Directive 97/66/EC' are replaced by the words 'Directive 2002/58/EC';

(e) The following point is 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) Point 12 is replaced by the following:

'12. Terms of use during major disasters or national emergencies to ensure communications between emergency services and authorities.;

(g) Point 16 is replaced by the following:

'16. Security of public networks against unauthorised access according to Directive 2002/58/EC (Directive on Privacy and electronic communications).';

Wednesday 6 May 2009

(h) The following point is added:

- '19. Transparency obligations on **public communications network providers** providing electronic communications services available to the public to ensure end-to-end connectivity, in conformity with the objectives and principles set out in Article 8 of Directive 2002/21/EC (Framework Directive), disclosure regarding **any conditions limiting access to and/or use of services and applications where such conditions are allowed by Member States in conformity with Community law**, and, where necessary and proportionate, access by national regulatory authorities to such information needed to verify the accuracy of such disclosure.;

3. Part B is amended as follows:

(a) Point 1 is 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 and quality requirements.;

(b) Point 2 is replaced with the following:

- '2. Effective and efficient use of frequencies in conformity with Directive 2002/21/EC (Framework Directive).;

(c) The following point is added:

- '9. Obligations specific to an experimental use of radio frequencies.;

4. In part C, point 1 is replaced by the following:

- '1. Designation 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 in the specific number range for the purposes of ensuring consumer protection in accordance with Article 8(4)(b) of Directive 2002/21/EC (Framework Directive).'
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Wednesday 6 May 2009

Body of European Regulators for Electronic Communications (BEREC) and the Office *II**

P6_TA(2009)0362

European Parliament legislative resolution of 6 May 2009 on the Council common position for adopting a regulation of the European Parliament and of the Council establishing the Group of European Regulators in Telecoms (GERT) (16498/1/2008 – C6-0067/2009 – 2007/0249(COD))

(2010/C 212 E/42)

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (16498/1/2008 – C6-0067/2009),
 - having regard to its position at first reading ⁽¹⁾ on the Commission proposal to Parliament and the Council (COM(2007)0699),
 - having regard to the amended Commission proposal (COM(2008)0720),
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 62 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on Industry, Research and Energy (A6-0271/2009),
1. Approves the common position as amended;
 2. Instructs its President to forward its position to the Council and the Commission.

⁽¹⁾ Texts adopted, 24.9.2008, P6_TA(2008)0450.

P6_TC2-COD(2007)0249**Position of the European Parliament adopted at second reading on 6 May 2009 with a view to the adoption of Regulation (EC) No .../2009 of the European Parliament and of the Council establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office**

(As an agreement was reached between Parliament and Council, Parliament's position at second reading corresponds to the final legislative act, Regulation (EC) No 1211/2009.)

Wednesday 6 May 2009

Frequency bands for mobile communications ***I

P6_TA(2009)0363

European Parliament legislative resolution of 6 May 2009 on the proposal for a directive of the European Parliament and of the Council amending Council Directive 87/372/EEC on the frequency bands to be reserved for the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community (COM(2008)0762 – C6-0452/2008 – 2008/0214(COD))

(2010/C 212 E/43)

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0762),
 - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0452/2008),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, Research and Energy (A6-0276/2009),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and the Commission.

P6_TC1-COD(2008)0214

Position of the European Parliament adopted at first reading on 6 May 2009 with a view to the adoption of Directive 2009/.../EC of the European Parliament and of the Council amending Council Directive 87/372/EEC on the frequency bands to be reserved for the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Directive 2009/114/EC.)

Wednesday 6 May 2009

**Equal treatment between men and women engaged in a self-employed capacity
***I**

P6_TA(2009)0364

European Parliament legislative resolution of 6 May 2009 on the proposal for a directive of the European Parliament and of the Council on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Directive 86/613/EEC (COM(2008)0636 – C6-0341/2008 – 2008/0192(COD))

(2010/C 212 E/44)

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0636),
 - having regard to Article 251(2) and Article 141(3) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0341/2008),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Women's Rights and Gender Equality and the opinions of the Committee on Employment and Social Affairs and the Committee on Legal Affairs (A6-0258/2009),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and the Commission.

Wednesday 6 May 2009

P6_TC1-COD(2008)0192

Position of the European Parliament adopted at first reading on 6 May 2009 with a view to the adoption of Directive 2009/.../EC of the European Parliament and of the Council on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC

(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 141(3) 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 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood ⁽⁴⁾ ensures application in Member States of the principle of equal treatment as between men and women engaged in an activity in a self-employed capacity, or contributing to the pursuit of such activity. As far as self-employed workers and assisting spouses are concerned, Directive 86/613/EEC has not been very effective and its scope should be reconsidered, *given that* discrimination based on sex and harassment also occur in areas outside salaried work. In the interest of clarity, Directive 86/613/EEC should be replaced by this Directive.
- (2) In its *Communication of 1 March 2006 entitled 'Roadmap for equality between women and men 2006-2010'* ⁽⁵⁾, the Commission announced that in order to improve governance of gender equality, it would review the existing *Community* gender equality legislation not included in the 2005 recast exercise with a view to updating, modernising and recasting where necessary. Directive 86/613/EEC was not included in *that* recasting exercise.
- (3) In its conclusions of 5 and 6 December 2007 on 'Balanced roles of women and men for jobs, growth and social cohesion' ⁽⁶⁾, the Council called on the Commission to consider the need to revise, if necessary, **||** Directive 86/613/EEC in order to *safeguard* the rights related to motherhood and fatherhood of self-employed workers and their *assisting* spouses.
- (4) The European Parliament has consistently called on the Commission to review **||** Directive 86/613/EEC, in particular **so as to strengthen maternity protection for self-employed women and improve the situation of assisting spouses in agriculture, craft occupations, commerce, small and medium-sized enterprises (SMEs) and the liberal professions.**

⁽¹⁾ Opinion of 24 March 2009 (not yet published in the OJ).

⁽²⁾ OJ C, p..

⁽³⁾ Position of the European Parliament of 6 May 2009.

⁽⁴⁾ OJ L 359, 19.12.1986, p. 56.

⁽⁵⁾ COM(2006)0092.

⁽⁶⁾ **||** Document SOC 385.

Wednesday 6 May 2009

- (5) **The European Parliament proposed, in its resolution of 21 February 1997 on the situation of the assisting spouses of the self-employed ⁽¹⁾, the mandatory registration of assisting spouses so that they cease to be invisible workers, and an obligation on Member States to make it possible for assisting spouses to be members of sickness and invalidity insurance schemes and pension schemes for self-employed workers.**
- (6) In its Communication entitled 'Renewed Social Agenda: Opportunities, access and solidarity in 21st century Europe' ⁽²⁾, the Commission has affirmed the need to take action on the gender gap in entrepreneurship and to improve the reconciliation of private and professional life.
- (7) There are already a number of existing legal instruments *implementing* the principle of equal treatment *between men and women in the field of self-employed activities*, in particular Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security ⁽³⁾ and Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) ⁽⁴⁾. This Directive should not therefore apply to the areas already covered by other directives.
- (8) This Directive should apply to self-employed workers and assisting spouses, as both participate in the activities of the business.
- (9) **Assisting spouses should be given a clearly defined professional status and their rights should be established.**
- (10) This Directive should not apply to matters covered by other Directives implementing the principle of equal treatment between men and women, notably Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services ⁽⁵⁾. In particular, Article 5 of Directive 2004/113/EC on insurance and related financial services remains applicable.
- (11) In order to prevent discrimination based on sex, this Directive should apply to both direct and indirect discrimination. Harassment and sexual harassment should be considered discrimination and therefore prohibited.
- (12) Member States may, under Article 141(4) of the Treaty, maintain or adopt measures providing for specific advantages, in order to make it easier for the under-represented sex to engage in self-employed activities or to prevent or compensate for disadvantages in their professional careers. In principle, **affirmative action** measures aimed at achieving equality in practice should not be seen as in breach of the legal principle of equal treatment between women and men.
- (13) In the area of *self-employed activities*, the application of the principle of equal treatment means that there must be no discrimination in relation to the establishment, **management**, equipment or extension of a business or any other form of self-employed activity.
- (14) It is necessary to ensure that there is no discrimination based on marital or family status as regards the conditions for setting up a company between spouses or **between** life partners when recognised by national law. **For the purposes of this Directive, the terms 'marital status' and 'family business' should be interpreted in the light of the recognition accorded to life partnerships in the relevant judgments of the Court of Justice of the European Communities.**

⁽¹⁾ OJ C 85, 17.3.1997, p. 186.

⁽²⁾ COM(2008)0412.

⁽³⁾ OJ L 6, 10.1.1979, p. 24.

⁽⁴⁾ OJ L 204, 26.7.2006, p. 23.

⁽⁵⁾ OJ L 373, 21.12.2004, p. 37.

Wednesday 6 May 2009

- (15) In view of their contribution to the family business, assisting spouses should be entitled to benefit from at least an equal level of protection as self-employed workers, under the same conditions applicable to self-employed workers. Member States should be required to take the necessary measures to make that choice possible. In any case, the level of protection of assisting spouses **should** be *proportionate* to the **degree to which they participate** in the activities of the **self-employed worker within the** family business.
- (16) The economic and physical vulnerability of pregnant self-employed workers and assisting spouses makes it necessary for them to be granted the right to maternity leave, part of which should be considered mandatory. Member States remain competent to establish the level of contributions and all the arrangements concerning benefits and payments, provided that the *minimum requirements* of this Directive are complied with. *Taking account of* the specific situation of self-employed workers and assisting spouses, it should be *for those workers and their spouses ultimately to decide* whether or not to benefit from maternity leave.
- (17) In order to take the specificities of self-employed activities into account, female self-employed workers and assisting spouses should be able to choose, as far as possible, between a financial allowance and a temporary replacement during maternity leave.
- (18) Enhancing the efficiency and effectiveness of welfare systems, notably *through* improved incentives, better administration and evaluation and the prioritisation of spending programmes, has become crucial to ensure the long-term financial sustainability of European social models.
- (19) Persons who have been subject to discrimination based on sex should have adequate means of legal protection. *In order to* provide more effective protection, associations, organisations and other legal entities should be empowered to engage in proceedings, as Member States so determine, either on behalf or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts.
- (20) Protection **of self-employed workers and assisting spouses** against discrimination based on sex should be strengthened by the existence of a body in each Member State with competence to analyse the problems involved, to study possible solutions and to provide practical assistance to victims.
- (21) Since the objectives of the action to be taken, namely to ensure a common high level of protection from discrimination in all Member States, cannot be sufficiently achieved by the Member States and can *therefore, by reason of the scale and effects of the proposed 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 the same Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter and scope

1. This Directive lays down a framework for putting into effect in Member States the principle of equal treatment between men and women engaged in an activity in a self-employed capacity, or contributing to the pursuit of such an activity, as regards those aspects not covered by Directives 2006/54/EC and 79/7/EEC.
2. This Directive covers self-employed workers and assisting spouses.
3. The implementation of the principle of equal treatment between men and women in the access to and supply of goods and services remains covered by Directive 2004/113/EC.

Wednesday 6 May 2009

Article 2

Definitions

|| For the purposes of this Directive, the following definitions shall apply:

- (a) 'self-employed workers' *means* all persons pursuing, *under the conditions laid down by national law*, a gainful activity for their own account,|| including ***in the areas*** of ***agriculture***, the liberal professions, ***craft occupations, commerce and SMEs***;
- (b) 'assisting spouses' *means* the spouses or life partners of self-employed workers, when recognised by national law, not being employees or business partners, where they habitually, under the conditions laid down by national law, participate in the activities of the self-employed worker and perform the same tasks or ancillary tasks;
- (c) 'direct discrimination' *means a situation* where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation;
- (d) 'indirect discrimination' *means a situation* where an apparently neutral provision, criterion or practice puts persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary;
- (e) 'harassment' *means a situation* where unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of that person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment;
- (f) 'sexual harassment' *means a situation* where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.

Article 3

Family businesses

Member States shall ensure that there is no discrimination based on marital or family status as regards the conditions for setting up a company between spouses or between life partners when recognised by national law. All companies which are jointly established by spouses or life partners when recognised by national law shall be recognised as a 'family business'. The recognition of life partnerships shall be based on the relevant judgments of the Court of Justice of the European Communities.

Article 4

Principle of equal treatment

1. The principle of equal treatment means that there shall be no discrimination whatsoever on grounds of sex, either directly or indirectly, by reference in particular to marital or family status, in particular in relation to the establishment, ***management***, equipment or extension of a business or the launching or extension of any other form of self-employed activity.
2. Harassment and sexual harassment shall be deemed to be discrimination on grounds of sex and therefore prohibited. A person's rejection of, or submission to, such conduct may not be used as a basis for a decision affecting that person.
3. An instruction to discriminate against persons on grounds of sex shall be deemed to be discrimination.

Wednesday 6 May 2009

Article 5

Positive action

With a view to ensuring full equality in practice between men and women, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to sex **aimed at, for instance, promoting entrepreneurship among women.**

Article 6

Establishment of a company

Without prejudice to the specific conditions for access to certain activities which apply equally to both sexes, Member States shall take the measures necessary to ensure that the conditions for the establishment of a company between spouses or **between** life partners, when recognised by national law, are not more restrictive than the conditions for the establishment of a company with other persons.

Article 7

Social protection for assisting spouses and life partners

Member States shall take the necessary measures to ensure that assisting spouses **and life partners** can benefit from at least an equal level of protection as self-employed workers under the same conditions applicable to self-employed workers. **If this extension of benefits is not mandatory under the legislation of a particular Member State, it shall be granted upon a request made by an assisting spouse or life partner.**

Those measures shall ensure that assisting spouses become members in their own right of the social insurance schemes in place for self-employed workers and covering sickness, invalidity and old age, provided that they contribute to those schemes on the same basis as self-employed workers and even if their contributions have to be calculated on a flat-rate basis.

The insurance contributions of assisting spouses shall be tax-deductible as operating expenditure, on terms similar to those applying to the remuneration actually paid to the spouse, subject to the dual condition that the services have been correctly provided and that the remuneration is that which is normal for such services.

Article 8

Maternity leave

1. Member States shall take the necessary measures to ensure that female self-employed workers and assisting spouses **are** entitled to a period of maternity leave **adapted to their specific needs. The maternity leave should be of a duration of their choice provided that the total length does not exceed that specified in Council Directive 92/85/EEC** ⁽¹⁾.

2. In order to ensure that **the persons** referred to in paragraph 1 can exercise their rights as recognised in this Article, Member States shall take the measures to ensure that they receive an adequate allowance during their maternity leave.

3. The allowance referred to in paragraph 2 shall be deemed adequate if it guarantees income at least equivalent to that which the person concerned would receive in the event of a break in her activities on grounds connected with her state of health or, if not applicable, any equivalent allowance established by national law, subject to any ceiling laid down under national legislation **in so far as that ceiling does not lead to any discrimination.**

⁽¹⁾ OJ L 348, 28.11.1992, p. 1.

Wednesday 6 May 2009

4. Member States shall take the necessary measures to ensure that female self-employed workers and assisting spouses have access **||** to services supplying temporary replacements or to any existing national social services, **in addition** to the allowance referred to in paragraph 2.

Article 9

Recognition of the work of assisting spouses

Member States shall undertake to examine under what conditions recognition of the work of assisting spouses may be encouraged and, in the light of such examination, consider any appropriate steps for encouraging such recognition.

Article 10

Defence of rights

1. Member States shall ensure that **effective** judicial or administrative proceedings, including, where Member States consider it appropriate, conciliation procedures, are available for the enforcement of the obligations under this Directive to all persons who consider they have sustained loss or damage as a result of a failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.

2. Member States shall ensure that associations, organisations and other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with may engage, on behalf or in support of the complainant, with his or her approval, in any judicial or administrative proceedings provided for the enforcement of obligations under this Directive.

3. Paragraphs 1 and 2 shall be without prejudice to national rules on time limits for bringing actions relating to the principle of equal treatment.

Article 11

Compensation or reparation

Member States shall introduce such measures into their national legal systems as are necessary to ensure real, effective compensation or reparation, as Member States so determine, for the loss or damage sustained by a person as a result of discrimination within the meaning of this Directive, such compensation or reparation being dissuasive and proportionate to the loss or damage suffered. Such compensation or reparation shall not *a priori* be limited by a *fixed* upper limit **||**.

Article 12

Equality bodies

1. Member States shall designate and make the necessary arrangements for a body or bodies *responsible* for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex. Such bodies may form part of agencies entrusted at national level with the defence of human rights or the safeguard of individuals' rights, or the implementation of the principle of equal treatment.

2. Member States shall ensure that the tasks of the **body** referred to in paragraph 1 include:

(a) providing independent assistance to victims of discrimination in pursuing their complaints of discrimination, without prejudice to the rights of victims and of associations, organisations and other legal entities referred to in Article 8(2);

(b) conducting independent surveys on discrimination;

Wednesday 6 May 2009

- (c) publishing independent reports and making recommendations on any issue relating to such discrimination;
- (d) *exchanging, at the appropriate level, the information available with the equivalent European bodies, such as the European Institute for Gender Equality.*

Article 13

Gender mainstreaming

Member States shall actively take into account the objective of equality between men and women when formulating and implementing laws, regulations, administrative provisions, policies and activities in the areas referred to in this Directive.

Article 14

Dissemination of information

Member States shall ensure that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought by all appropriate means, **including the Internet**, to the attention of the persons concerned throughout their territory.

Article 15

Level of protection

The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive.

Article 16

Reports

1. Member States shall communicate all available information concerning the application of this Directive to the Commission by... (*).

The Commission shall draw up a summary report for submission to the European Parliament and to the Council no later than... (**). Where appropriate, that report shall be accompanied by proposals for amending this Directive.

2. The Commission's report shall take *into account* the views of the stakeholders ||.

Article 17

Review

No later than... (+), the Commission shall review the operation of this Directive and, where appropriate, propose any amendments it deems necessary.**

(*) **Four** years after entry into force of this Directive.

(**) **Five** years after entry into force of this Directive.

(**+) **Six** years after entry into force of this Directive.

Wednesday 6 May 2009

Article 18

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by... (*) at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. **Where justified by** particular **difficulties**, Member States may, if necessary, have an additional period of... (**) to comply with **this Directive**.

3. 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 19**Minimum requirements*

Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.

Article 20

Repeal

|| Directive 86/613/EEC shall be repealed with effect from... (*).

Article 21

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 22

Addressees

This Directive is addressed to the Member States.

Done at ||,

For the European Parliament
The President

For the Council
The President

(*) Two years after entry into force of this Directive.

(**) Three years after entry into force of this Directive.

Wednesday 6 May 2009

European Globalisation Adjustment Fund ***I

P6_TA(2009)0365

European Parliament legislative resolution of 6 May 2009 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1927/2006 on establishing the European Globalisation Adjustment Fund (COM(2008)0867 – C6-0518/2008 – 2008/0267(COD))

(2010/C 212 E/45)

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0867),
 - having regard to Article 251(2) and Article 159, third paragraph of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0518/2008),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Employment and Social Affairs and the opinions of the Committee on Economic and Monetary Affairs and the Committee on Regional Development (A6-0242/2009),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and the Commission.

P6_TC1-COD(2008)0267

Position of the European Parliament adopted at first reading on 6 May 2009 with a view to the adoption of Regulation (EC) No .../2009 of the European Parliament and of the Council amending Regulation (EC) No 1927/2006 on establishing the European Globalisation Adjustment Fund

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Regulation (EC) No 546/2009.)

Wednesday 6 May 2009

Economic Recovery Programme: energy projects *I**

P6_TA(2009)0366

European Parliament legislative resolution of 6 May 2009 on the proposal for a regulation of the European Parliament and of the Council establishing a programme to aid economic recovery by granting Community financial assistance to projects in the field of energy (COM(2009)0035 – C6-0049/2009 – 2009/0010(COD))

(2010/C 212 E/46)

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2009)0035),
 - having regard to Article 251(2) and Articles 156 and 175(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0049/2009),
 - 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 and the Committee on Regional Development (A6-0261/2009),
1. Approves the Commission proposal as amended;
 2. Takes note of the Commission declaration annexed to this resolution;
 3. Considers that the reference amount indicated in the legislative proposal is compatible with the multiannual financial framework as the latter has been revised;
 4. Recalls that any redeployment that would lead to any negative impact on other EU policies by diminishing the funds allocated to them must be avoided;
 5. Recalls that the annual amount will be decided within the annual budgetary procedure, in accordance with the provisions of Point 37 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⁾;
 6. Notes that since the financing of the programme has now been agreed, the legislative process can be completed;
 7. 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;
 8. Instructs its President to forward its position to the Council and the Commission.

⁽¹⁾ OJ C 139, 14.6.2006, p. 1.

Wednesday 6 May 2009

P6_TC1-COD(2009)0010

Position of the European Parliament adopted at first reading on 6 May 2009 with a view to the adoption of a Regulation (EC) No .../2009 of the European Parliament and of the Council establishing a programme to aid economic recovery by granting Community financial assistance to projects in the field of energy

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Regulation (EC) No 663/2009.)

ANNEX

COMMISSION DECLARATION

The Commission underlines that energy efficiency and renewable energy sources are key priorities of EU energy policy, both for environmental and for security of supply reasons. In this respect, the Regulation will contribute to these priorities by giving substantial support to offshore wind projects.

The Commission recalls in this context the various other new initiatives supporting energy efficiency and renewable energy sources, suggested by the Commission notably in its European Recovery Plan, which was endorsed by the European Council of December 2008. These include:

A modification to the ERDF Regulation to allow investments up to €8 billion in energy efficiency and renewable energies in housing in all the Member States. A public-private partnership on a "European energy-efficient buildings" initiative to promote green technologies and the development of energy-efficient systems and materials in new and renovated buildings. The estimated envelope for this action is €1 billion: €500 million from existing EC FP7 budget over the years 2010 to 2013 and €500 million from industry.

The EC-EIB initiative "EU Sustainable Energy Financing Initiative". It aims at enabling investments for energy efficiency and renewable energy projects in urban settings. The Commission finances a technical assistance facility from the Intelligent Energy Europe programme (annual allocation of 15 M€ for 2009). This facility, managed by the EIB, will facilitate access to EIB loans with substantial leverage effects.

The creation by EU institutional investors - led by the EIB - of a market oriented equity fund, called Marguerite: the 2020 European Fund for Energy, Climate Change and Infrastructure. This Fund would invest in the areas of energy and climate change (TEN-E, sustainable energy production, renewable energy, new technologies, energy efficiency investments, security of supply, as well as environmental infrastructure). The Commission supports this initiative.

Furthermore, the Commission will present before the end of November 2009 the revision of the energy efficiency action plan as demanded by Council (Conclusions of the European Council of March 2009) and Parliament (EP Resolution P6_TA(2009)0064).

There is agreement among experts that energy efficiency is the cheapest available option to reduce greenhouse gas emissions. The Commission will provide by November 2009 a detailed analysis of the obstacles for increased energy efficiency investments. It will in particular examine whether there is a need for increased financial incentives in the form of low-interest loans and/or grants, how the European budget could be used to this end, and, if appropriate, the Commission will include, inter alia, additional funds for financing of energy efficiency in the new EU Energy Security and Infrastructure Instrument, to be presented in 2010.

When reviewing the energy efficiency action plan, the Commission will pay particular attention to the neighbourhood dimension of energy efficiency. It will analyze how it can give financial and regulatory incentives to neighbourhood countries to step up their investments in energy efficiency.

Should the Commission, when reporting in 2010 on the implementation of the Regulation under its Article 28, find that it will not be possible to commit by the end of 2010 a part of the funds foreseen for the projects listed in the annex to the Regulation, the Commission will propose, if appropriate, an amendment to the Regulation allowing for the financing of projects in the area of energy efficiency and renewable energy sources, in addition to the above initiatives, including eligibility criteria, similar to those applying to projects in the Annex to this Regulation.

Wednesday 6 May 2009

Credit requirements directives *I**

P6_TA(2009)0367

European Parliament legislative resolution of 6 May 2009 on the proposal for a directive of the European Parliament and of the Council amending Directives 2006/48/EC and 2006/49/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (COM(2008)0602 – (C6-0339/2008 – 2008/0191(COD)))

(2010/C 212 E/47)

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and to the Council (COM(2008)0602),
 - having regard to the draft Commission directive amending certain annexes to Directive 2006/48/EC of the European Parliament and of the Council as regards technical provisions concerning risk management and Parliament's resolution of 16 December 2008 thereon ⁽¹⁾,
 - having regard to Article 251(2) and Article 47(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0339/2008),
 - having regard to the undertaking given by the Council representative by letter of 29 April 2009 to adopt the proposal as amended, in accordance with the first indent in the second subparagraph of Article 251(2) of the EC Treaty,
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A6-0139/2009),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and the Commission.

⁽¹⁾ Texts adopted, P6_TA(2008)0607.

P6_TC1-COD(2008)0191

Position of the European Parliament adopted at first reading on 6 May 2009 with a view to the adoption of Directive 2009/.../EC of the European Parliament and of the Council amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Directive 2009/111/EC.)

Wednesday 6 May 2009

Community programme for financial services, financial reporting and auditing *I**

P6_TA(2009)0368

European Parliament legislative resolution of 6 May 2009 on the proposal for a decision of the European Parliament and of the Council establishing a Community programme to support specific activities in the field of financial services, financial reporting and auditing (COM(2009)0014 – C6-0031/2009 – 2009/0001(COD))

(2010/C 212 E/48)

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2009)0014),
 - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0031/2009),
 - having regard to the undertaking given by the Council representative by letter of 6 May 2009 to adopt the proposal as amended, in accordance with the first indent in the second subparagraph of Article 251(2) of the EC Treaty,
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of the Committee on Legal Affairs and the Committee on Budgets (A6-0246/2009),
1. Approves the Commission proposal as amended;
 2. Considers that the reference amount indicated in the legislative proposal must be compatible with the ceiling of heading 1a of the multiannual financial framework for 2007 to 2013 and points out that the annual amount will be decided within the annual budgetary procedure in accordance with Point 37 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);
 3. Considers that Point 47 of the IIA applies in the event that the European bodies co-financed by the programme to support specific activities in the field of financial services, financial reporting and auditing become agencies;
 4. 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;
 5. Approves of its statement annexed to this resolution;
 6. Instructs its President to forward its position to the Council and the Commission.

⁽¹⁾ OJ C 139, 14.6.2006, p. 1.

Wednesday 6 May 2009

P6_TC1-COD(2009)0001**Position of the European Parliament adopted at first reading on 6 May 2009 with a view to the adoption of Decision No .../2009/EC of the European Parliament and of the Council establishing a Community programme to support specific activities in the field of financial services, financial reporting and auditing**

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Decision No 716/2009/EC.)

ANNEX

Statement by the European Parliament

The worsening of the financial crisis has emphasised the need urgently to strengthen supervisory convergence and cooperation at the EU level. The development of common information technology tools and a common supervisory culture by the three EU Committees of Supervisors, CESR, CEBS and CEOIPS are two instruments by which to achieve that aim.

As a result, and pending the entry into force of the Community Programme for the period 2010-2013, the European Parliament and the Council invite the Commission to proceed with the proposal to provide interim financing to the three EU Committees of Supervisors in 2009 by way of a Commission decision along the following lines:

- Interim Commission financing for 2009 will be identified within the framework of the implementation and development of the internal market for the year 2009 under budget line 12.0201. That interim funding will therefore come out of the Commission's existing budget, from amounts already allocated by the budgetary authorities to the Internal Market and Services Directorate General for 2009. The funding decision itself will thus take the form of a Commission decision.
- The Commission will provide the three EU Committees of Supervisors with limited action grants to finance (i) sectoral and cross-sectoral training projects developed by each of the three EU Committees of Supervisors and (ii) in the case of CESR, a specific IT project under the Transaction Reporting Exchange Mechanism (TREM), provided for under the Directive on markets in financial instruments (MiFID) ⁽¹⁾, namely the extension of TREM to cover over-the-counter derivatives. Those are strategic projects that have been identified as priorities by the three EU Committees of Supervisors.
- The total amount of the Commission interim funding for 2009 will not exceed EUR 500 000 and should cover part of the cost of the identified projects and trainings put forward by the EU Committees of Supervisors for 2009.

The Commission decision on interim funding for 2009 is justified because of the exceptional circumstances of the ongoing financial crisis and because the contemplated Community Programme will enter into force only from 2010 onwards. That decision is therefore not intended to constitute a precedent.

⁽¹⁾ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ L 145, 30.4.2004, p. 1).

Wednesday 6 May 2009

The protection of animals at the time of killing *

P6_TA(2009)0369

European Parliament legislative resolution of 6 May 2009 on the proposal for a Council regulation on the protection of animals at the time of killing (COM(2008)0553 – C6-0451/2008 – 2008/0180(CNS))

(2010/C 212 E/49)

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2008)0553),
 - having regard to Article 37 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0451/2008),
 - having regard to Rule 51 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 the Environment, Public Health and Food Safety (A6-0185/2009),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and the Commission.

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 1
Proposal for a regulation
Title

Proposal for a Council regulation on the protection of animals at the time of killing

Proposal for a Council regulation on the protection of animals at the time of **slaughter and** killing

Wednesday 6 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 2
Proposal for a regulation
Recital 6

(6) The European Food Safety Authority (EFSA) has adopted two opinions on the welfare aspects of the main systems of stunning and killing of certain species of animals, namely on the Welfare aspects of the main systems of stunning and killing the main commercial species of animals, in 2004 and on the welfare aspects of the main systems of stunning and killing applied to commercially farmed deer, goats, rabbits, ostriches, ducks, geese and quail, in 2006. Community legislation in this area should be updated to take into account those scientific opinions. Recommendations to phase out the use of carbon dioxide for pigs and poultry, **as well as to phase out the use of waterbath stunners for poultry** were not included in the proposal because the impact assessment revealed that they were not economically viable at present in the EU. Furthermore other recommendations should not be part of this Regulation because they refer to technical parameters that should be part of implementing measures or codes of good practices. Recommendations on farm fish were not included in the proposal because there was a need for further scientific opinion and economic evaluation in this field.

(6) The European Food Safety Authority (EFSA) has adopted two opinions on the welfare aspects of the main systems of stunning and killing of certain species of animals, namely on the Welfare aspects of the main systems of stunning and killing the main commercial species of animals, in 2004 and on the welfare aspects of the main systems of stunning and killing applied to commercially farmed deer, goats, rabbits, ostriches, ducks, geese and quail, in 2006. **In 2001 the Scientific Committee on Animal Health and Animal Welfare (SCAHAW) adopted a report on The Welfare of Animals Kept for Fur Production which included an analysis of the killing methods used in fur farms.** Community legislation in this area should be updated to take into account those scientific opinions. Recommendations to phase out the use of carbon dioxide for pigs and poultry were not included in the proposal because the impact assessment revealed that they were not economically viable at present in the EU. Furthermore other recommendations should not be part of this Regulation because they refer to technical parameters that should be part of implementing measures or codes of good practices. Recommendations on farm fish were not included in the proposal because there was a need for further scientific opinion and economic evaluation in this field.

Amendment 3
Proposal for a regulation
Recital 15

(15) The Protocol on protection and welfare of animals also underlines the need to respect the legislative or administrative provisions and customs of the Member States relating, in particular, to religious rites, cultural traditions and regional heritage when formulating and implementing the Community's policies on inter alia agriculture and the internal market. It is therefore appropriate to exclude from the scope of this Regulation cultural events, where compliance with animal welfare requirements would adversely affect the very nature of the event concerned.

(15) The Protocol on protection and welfare of animals also underlines the need to respect the legislative or administrative provisions and customs of the Member States relating, in particular, to religious rites, cultural traditions **or traditions of religious origin** and regional heritage when formulating and implementing the Community's policies on inter alia agriculture and the internal market. It is therefore appropriate to exclude from the scope of this Regulation cultural, **religious and traditional** events, where compliance with animal welfare requirements would adversely affect the very nature of the event concerned.

Amendment 4
Proposal for a regulation
Recital 16

(16) In addition, cultural traditions refer to an inherited, established, or customary pattern of thought, action or behaviour which includes in fact the concept of something transmitted by or acquired from a predecessor. They contribute to foster long-standing social links between generations. Provided that those activities do not affect the market of animal products **and are not motivated by production purposes**, it is appropriate to exclude **killings** of animals taking place during those events from the scope of this Regulation.

(16) In addition, cultural traditions **or traditions of religious origin** refer to an inherited, established, or customary pattern of thought, action or behaviour which includes in fact the concept of something transmitted by or acquired from a predecessor. They contribute to foster long-standing social links between generations. Provided that those activities do not affect the market of animal products, it is appropriate to exclude **the slaughter** of animals taking place during those events from the scope of this Regulation.

Wednesday 6 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 5
Proposal for a regulation
Recital 22 a (new)

(22a) The above-mentioned new challenges will inevitably have significant financial implications for Union operators. In order to comply with the rules laid down in this Regulation, adequate EU funding should be made available to offer the financial support required to enable the Union sector to show leadership on animal welfare in the international context.

Amendment 6
Proposal for a regulation
Recital 24

(24) Depending on how they are used during the slaughtering or killing process, some stunning methods can lead to death while avoiding pain and minimising distress or suffering for the animals. **Consequently, it is not necessary to make a distinction between reversible and non-reversible methods of stunning.**

(24) Depending on how they are used during the slaughtering or killing process, some stunning methods can lead to death while avoiding pain and minimising distress or suffering for the animals.

Amendment 7
Proposal for a regulation
Recital 32

(32) Regulation (EC) No 854/2004 provides for a list of establishments from which imports into the Community of specified products of animal origin are permitted. The general requirements and the additional requirements applicable to slaughterhouses laid down in this Regulation should be taken into account for the purposes of that list.

(32) Regulation (EC) No 854/2004 provides for a list of establishments from which imports into the Community of specified products of animal origin are permitted. The general requirements and the additional requirements applicable to slaughterhouses laid down in this Regulation should be taken into account for the purposes of that list. **The Commission should ensure that importation of meat and meat products from third countries destined for the internal market comply with the general rules laid down in this regulation.**

Amendment 8
Proposal for a regulation
Recital 33

(33) Slaughterhouses and the equipment used therein are designed for particular categories of animals and capacities. Where those capacities are exceeded or the equipment is used for purposes for which it was not designed, it has a negative impact on the welfare of animals. Information on these aspects should therefore be communicated to the competent authorities and should be part of the approval procedure for slaughterhouses.

(33) Slaughterhouses and the equipment used therein are designed for particular categories of animals and capacities. Where those capacities are exceeded or the equipment is used for purposes for which it was not designed, it has a negative impact on the welfare of animals. Information on these aspects should therefore be communicated to the competent authorities and should be part of the approval procedure for slaughterhouses. **Small, regularly inspected slaughterhouses with a slaughter capacity of up to 50 livestock units per week or 150 000 units of poultry per annum which mainly sell food directly to the final consumer do not require an onerous permit procedure in order to comply with the principles of this Regulation,**

Wednesday 6 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 9**Proposal for a regulation
Recital 34 a (new)**

(34a) It is necessary to avoid the suffering of animals due to fear and stress before slaughter. It is therefore appropriate to design the construction of slaughterhouses, plan slaughterhouse procedures and train staff in such a way as to prevent animals from suffering stress, fear and pain between unloading and slaughter.

Amendment 10**Proposal for a regulation
Recital 35**

(35) Science and technical progress are regularly made with regard to the construction, layout and equipment of slaughterhouses. It is therefore important that the Community authorises the Commission for amending the requirements applicable to the construction, layout and equipment of slaughterhouses while keeping a uniform and high level of protection for animals.

(35) Science and technical progress are regularly made with regard to the construction, layout and equipment of slaughterhouses. It is therefore important that the Community authorises the Commission for amending the requirements applicable to the construction, layout and equipment of slaughterhouses while keeping a uniform and high level of protection for animals. *Efforts to develop better stunning procedures should be constantly ongoing. Research should also be stepped up in the field of alternatives to slaughtering surplus chicks.*

Amendment 11**Proposal for a regulation
Recital 37**

(37) **Killing** without stunning requires an accurate cut of the throat to minimise suffering. In addition, animals that are not mechanically restrained after the cut are likely to slow down the bleeding process, thereby prolonging unnecessarily the suffering of the animals. Animals slaughtered without stunning should therefore be individually restrained.

(37) **Slaughter** without stunning requires an accurate cut of the throat to minimise suffering. In addition, animals that are not mechanically restrained after the cut are likely to slow down the bleeding process, thereby prolonging unnecessarily the suffering of the animals. Animals slaughtered without stunning should therefore be individually restrained *and receive effective stunning immediately after the cut.*

Amendment 12**Proposal for a regulation
Recital 38**

(38) Science and technical progress are regularly made with regard to the handling and restraining of animals at slaughterhouses. It is therefore important that the Community authorises the Commission for amending the requirements applicable to the handling and restraining of animals before **slaughter** while keeping a uniform and high level of protection for animals.

(38) Science and technical progress are regularly made with regard to the handling and restraining of animals at slaughterhouses *and fur factory farms*. It is therefore important that the Community authorises the Commission for amending the requirements applicable to the handling and restraining of animals before **killing** while keeping a uniform and high level of protection for animals.

Wednesday 6 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 13**Proposal for a regulation****Article 1 – paragraph 2 – point a – sub-point i**

i) *during technical or scientific experiments carried out under the supervision of the competent authority;*

i) *in the context of the activities regulated by Council Directive 86/609/EEC of 24 November 1986 on the approximation of laws, regulations and administrative provisions of the Member States regarding the protection of animals used for experimental and other scientific purposes ⁽¹⁾;*

⁽¹⁾ OJ L 358, 18.12.1986, p. 1.

Amendment 14**Proposal for a regulation****Article 1 – paragraph 2 – point a – sub-point ii**

ii) *during hunting activities;*

ii) *during hunting or recreational fishing activities;*

Amendment 15**Proposal for a regulation****Article 1 – paragraph 2 – point a – sub-point iv a (new)**

iva) for major religious festivities involving traditional sacrifices for direct consumption, for example at Easter or Christmas and only for a period of ten days preceding the relevant dates.

Amendment 16**Proposal for a regulation****Article 1 – paragraph 2 – point b a (new)**

ba) semi-domesticated deer, shot in the field and processed through a game farm facility

Amendment 17**Proposal for a regulation****Article 2 – point b**

(b) ‘related operations’ means operations such as handling, lairaging, restraining, stunning and bleeding of animals taking place in the context and at the location where they are to be **killed**;

(b) ‘related operations’ means operations such as handling, **unloading**, lairaging, restraining, stunning and bleeding of animals taking place in the context and at the location where they are to be **slaughtered**;

Amendment 18**Proposal for a regulation****Article 2 – point b a (new)**

ba) ‘competent authority’ means the central authority of a Member State competent to ensure compliance with the requirements of this Regulation, or any other authority to which that central authority has delegated that competence;

Wednesday 6 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 19**Proposal for a regulation
Article 2 – point d a (new)**

da) ‘unconsciousness’ means a state of unawareness in which there is temporary or permanent disruption to brain function and after which the animal is unable to respond to normal stimuli, including pain;

Amendment 20**Proposal for a regulation
Article 2 – point f**

f) ‘stunning’ means any intentionally induced process which causes loss of consciousness and sensibility **without pain**, including any process resulting in instantaneous death;

f) ‘stunning’ means any intentionally induced process which causes loss of consciousness and sensibility, including any process resulting in instantaneous death;

Amendment 21**Proposal for a regulation
Article 2 – point g**

g) ‘religious rite’ means a series of acts related to the slaughter of animals and prescribed by a religion **such as Islam or Judaism**;

g) ‘religious rite’ means a series of acts related to the slaughter of animals and prescribed by a religion **or occasioned by specific religious festivities**;

Amendment 22**Proposal for a regulation
Article 2 – point k**

k) ‘slaughterhouse’ means **any** establishment used for slaughtering **terrestrial** animals;

k) ‘slaughterhouse’ means **an** establishment used for slaughtering **and dressing** animals, **the meat of which is intended for human consumption**;

Amendment 23**Proposal for a regulation
Article 2 – point m**

m) ‘fur animals’ means animals of the mammal species primarily reared for the production of fur such as minks, polecats, foxes, raccoons, coypu and chinchillas;

m) ‘fur animals’ means animals of the mammal species primarily reared for the production of fur such as minks, polecats, foxes, raccoons, **raccoon dogs**, coypu, **rabbits** and chinchillas;

Amendment 24**Proposal for a regulation
Article 3 – paragraph 2 – point a**

a) are provided with physical comfort and protection, in particular by being kept **clean**, under thermal comfort and prevented from falling or slipping;

a) are provided with physical comfort and protection, in particular by being kept under thermal comfort and prevented from falling or slipping;

Wednesday 6 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 25
Proposal for a regulation
Article 3 – paragraph 2 – point d

d) do not show signs of pain, **fear**, aggression or other abnormal behaviour;

d) do not show signs of pain, aggression or other abnormal behaviour;

Amendment 26
Proposal for a regulation
Article 3 – paragraph 2 – point f

f) are prevented from adverse interaction.

deleted

Amendment 119
Proposal for a regulation
Article 3 – paragraph 3 a (new)

3a. Killing of surplus one-day chicks, by whatever means, shall no longer be permitted once appropriate alternatives to the killing of these animals are available.

Amendment 27
Proposal for a regulation
Article 4 – paragraph 2 – subparagraph 1

2. *By way of derogation from paragraph 1, where such methods are prescribed by* religious rites, animals may be **killed** without prior stunning, provided that the **killing** takes place in a slaughterhouse.

2. *In accordance with* religious rites, animals may be **slaughtered** without prior stunning, provided that the **slaughtering** takes place in a slaughterhouse.

Amendment 28
Proposal for a regulation
Article 4 – paragraph 2 – subparagraph 2

However, Member States may decide not to apply that derogation.

deleted

Amendment 29
Proposal for a regulation
Article 5 – paragraph 1

1. Stunning shall be carried out in accordance with the methods set out in Annex I.

1. Stunning shall be carried out in accordance with the methods set out in Annex I. ***In order to take account of scientific and technical progress, the Commission may approve new stunning methods on the basis of an assessment by the European Food Safety Authority and in accordance with the procedure referred to in Article 22(2).***

Wednesday 6 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 30**Proposal for a regulation
Article 5 – paragraph 2 – subparagraph 1**

2. The personnel responsible for stunning shall carry out regular checks to ensure that the animals do not present any signs of consciousness or sensibility in the period between the end of the stunning process and **the confirmation of** death.

2. The personnel responsible for stunning shall carry out regular checks to ensure that the animals do not present any signs of consciousness or sensibility in the period between the end of the stunning process and death.

Amendment 31**Proposal for a regulation
Article 5 – paragraph 2 a (new)**

2a. Bleeding shall start as soon as possible after stunning.

Amendment 32**Proposal for a regulation
Article 5 – paragraph 3 – subparagraph 2**

However, any such amendments must ensure a level of animal welfare at least equivalent to that of the existing methods as demonstrated by scientific evidence **published in appropriate, internationally recognised, peer reviewed journals.**

However, any such amendments must ensure a level of animal welfare at least equivalent to that of the existing methods as demonstrated by **appropriate** scientific evidence.

Amendment 33**Proposal for a regulation
Article 5 – paragraph 4**

4. Community **Codes of good practices** concerning the methods set out in Annex I may be adopted in accordance with the procedure referred to in Article 22(2).

4. Community **guidelines for the drawing up of procedures and implementation of rules** concerning the methods set out in Annex I may be adopted in accordance with the procedure referred to in Article 22(2).

Amendment 34**Proposal for a regulation
Article 6 – paragraph 2 – subparagraph 1**

2. Operators shall draw up and implement such standard operating procedures to ensure that **killing** and related operations are carried out in accordance with Article 3(1).

2. Operators shall draw up and implement such standard operating procedures to ensure that **slaughter** and related operations are carried out in accordance with Article 3(1). **To that effect, the procedures laid down in Article 5 of Regulation (EC) No 852/2004 may be applied to slaughterhouses.**

Amendment 35**Proposal for a regulation
Article 6 – paragraph 3**

3. The standard operating procedures shall be made available to the competent authority upon request.

3. The standard operating procedures shall be made available to the competent authority upon request. **The official veterinarian shall be notified in writing whenever standard operating procedures have changed.**

Wednesday 6 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 36

Proposal for a regulation
Article 6 – paragraph 3 a (new)

3a. The competent authority may amend standard operating procedures when they are clearly not in line with the general, rules and requirements laid down in this regulation.

Amendment 120

Proposal for a regulation
Article 6 - paragraph 3 b (new)

3b. Paragraphs 1 to 3 shall not apply to the killing of animals at slaughterhouses where not more than 50 livestock units per week are slaughtered.

Amendment 37

Proposal for a regulation
Article 7 – paragraph 2 – point a

- a) *the handling and care* of animals *before they are restrained*; a) *driving* of animals *for the purposes of restraint, stunning or slaughter*;

Amendment 38

Proposal for a regulation
Article 7 – paragraph 2 – point f

- f) the bleeding of live animals. f) the bleeding of live animals *and/or the slaughter methods referred to in Article 4(2)*.

Amendment 39

Proposal for a regulation
Article 7 – paragraph 2 – point f a (new)

(fa) the killing of fur animals

Amendment 40

Proposal for a regulation
Article 7 – paragraph 3

3. The killing of fur animals shall be supervised by a person holding a certificate of competence as referred to in Article 18 which corresponds to all the operations carried out under his supervision. *deleted*

Amendment 41

Proposal for a regulation
Article 8 – point a

- a) the *categories* or weights of animals for which the equipment is intended to be used; a) the *species* or weights of animals for which the equipment is intended to be used;

Amendment 42

Proposal for a regulation
Article 8 – point c a (new)

(ca) maintenance and calibration methods for that equipment.

Wednesday 6 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 43**Proposal for a regulation
Article 9 – paragraph 2**

2. During slaughter operations, appropriate back-up stunning **equipment** shall be immediately available on-the-spot and used in the case of failure of the stunning equipment initially used.

2. During slaughter operations, **an** appropriate back-up stunning **method** shall be immediately available on-the-spot and used in the case of failure of the stunning equipment initially used. **Where this back-up stunning method concerns heavy installations, mobile equipment will be appropriate.**

Amendment 44**Proposal for a regulation
Article 9 – paragraph 2 a (new)**

2a. No animal shall be restrained if the slaughterer responsible for stunning or slaughtering that animal is not ready to do so.

Amendment 45**Proposal for a regulation
Article 10**

The requirements laid down in Chapters II and III of this Regulation shall be relevant for the purposes of Article 12(2)(a) of Regulation (EC) No 854/2004.

In the course of an inspection of slaughterhouses or establishments which have been, or are to be, approved in third countries for the purpose of being able to export to the European Union in accordance with EU legislation, the Commission experts shall ensure that the live animals referred to in Article 5 have been slaughtered under conditions which, as far as animal welfare is concerned, are at least equivalent to those provided for in this Regulation.

The health certificate accompanying meat imported from a third country shall be supplemented by an attestation certifying that the above requirement has been met.

Amendment 46**Proposal for a regulation
Article 10 a (new)****Article 10a****Arrangements for imports from third countries**

The Commission shall ensure that meat and meat products from third countries that are intended for consumption in the internal market comply with the provisions of this Regulation.

Amendment 121**Proposal for a regulation
Article 11 – paragraph 2 – introductory part**

2. For the purposes of this Regulation the competent authority, referred to in Article 4 of Regulation (EC) No 853/2004, shall approve for each slaughterhouse:

2. For the purposes of this Regulation the competent authority, referred to in Article 4 of Regulation (EC) No 853/2004, shall approve for each slaughterhouse **with a slaughter capacity of more than 50 livestock units per week or more than 150 000 units of poultry per annum:**

Wednesday 6 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 48**Proposal for a regulation
Article 11 – paragraph 2 – point a**

a) *the maximum throughput for each slaughter line;* *deleted*

Amendment 49**Proposal for a regulation
Article 11 – paragraph 2 – point c**

c) the maximum capacity for each lairage area intended for equidae and animals of the bovine, ovine, caprine and porcine species and poultry and lagomorphs. c) the maximum capacity for each lairage area intended for equidae and animals of the bovine, ovine, caprine and porcine species and poultry, **ratites** and lagomorphs.

Amendment 50**Proposal for a regulation
Article 12 – paragraph 2**

2. Operators shall ensure that animals **that are killed** without stunning are mechanically restrained. 2. Operators shall ensure that, **when applicable and in the case of religious slaughter where** animals **are slaughtered** without stunning, **they** are mechanically restrained.

Amendment 51**Proposal for a regulation
Article 12 – paragraph 3 – point e**

e) *the use of electric currents that do not stun or kill the animals under controlled circumstances, in particular, any electric current application that does not span the brain.* *deleted*

Amendment 52**Proposal for a regulation
Article 12 – paragraph 3 – point 2**

However, points (a) and (b) shall not apply to the shackles used for poultry. However, points (a) and (b) shall not apply to the shackles used for poultry **and lagomorphs**.

Amendment 53**Proposal for a regulation
Article 13 – paragraph 1**

1. Operators shall put in place and implement appropriate monitoring procedures to verify and confirm that animals for slaughter are effectively stunned in the period between the end of the stunning process and the confirmation of death. 1. Operators shall put in place and implement appropriate monitoring procedures to verify and confirm that animals for slaughter are effectively stunned in the period between the end of the stunning process and the confirmation of death. **Animals must be dead before any other potentially painful carcass-dressing procedure is performed or treatment applied.**

Wednesday 6 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 54**Proposal for a regulation
Article 13 - paragraph 4 a (new)**

4a. Operators of fur farms shall notify the competent authority in advance when animals are to be killed, to enable the Official Veterinarian to check that the requirements set out in this Regulation, and the standard operating procedures, are being observed.

Amendment 55**Proposal for a regulation
Article 13 – paragraph 5**

5. Community *codes of good practices* concerning monitoring procedures in slaughterhouses may be adopted in accordance with the procedure referred to in Article 22(2).

5. Community *guidelines for the drawing up of procedures and implementation of rules* concerning monitoring procedures in slaughterhouses may be adopted in accordance with the procedure referred to in Article 22(2).

Amendment 56**Proposal for a regulation
Article 13 – paragraph 5 a (new)**

5a. The Official Veterinarian shall regularly verify the above-mentioned monitoring procedures and adherence to the standard operating procedures.

Amendment 57**Proposal for a regulation
Article 14 – paragraph -1 (new)**

-1. Operators shall be responsible for ensuring compliance with the rules laid down in this Regulation.

Amendment 58**Proposal for a regulation
Article 14 – paragraph 1**

1. Operators shall designate an animal welfare officer for each slaughterhouse, to be responsible for **ensuring** compliance with the rules laid down in this Regulation in that slaughterhouse. He or she shall report directly to the operator on matters relating to the welfare of the animals.

1. Operators shall designate an animal welfare officer for each slaughterhouse, to be responsible for **supervising** compliance with the rules laid down in this Regulation in that slaughterhouse. He or she shall report directly to the operator on matters relating to the welfare of the animals.

Amendment 103**Proposal for a regulation
Article 14 – paragraph 5**

5. *Paragraphs 1 and 4 shall not apply to* slaughterhouses slaughtering less than 1 000 livestock units of mammals or 150 000 units of poultry per year.

5. Slaughterhouses slaughtering fewer than 1 000 livestock units of mammals or 150 000 units of poultry per year **may be operated by an animal welfare officer, and the procedure for obtaining a certificate of competence will be simplified in accordance with specifications defined by the competent authority.**

Wednesday 6 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 60**Proposal for a regulation
Article 15 – paragraph 1**

1. *The competent authority and the operators involved in a depopulation operation shall establish an action plan to ensure compliance with the rules laid down in this Regulation, before the commencement of the operation.* **deleted**

In particular, the killing methods planned and the corresponding standard operating procedures for ensuring compliance with the rules laid down in this Regulation, shall be included in the contingency plans required under Community legislation on animal health, on the basis of the hypothesis established in the contingency plan concerning the size and the location of suspected outbreaks.

Amendment 61**Proposal for a regulation
Article 15 – paragraph 3**

3. For the purposes of this Article and in **exceptional circumstances**, the competent authority may grant derogations from one or more of the provisions of this Regulation where it considers that compliance is likely to affect human health or significantly slow down the process of eradication of a disease.

3. For the purposes of this Article and in **cases of force majeure**, the competent authority may grant derogations from one or more of the provisions of this Regulation where it considers that compliance is likely to affect human health or significantly slow down the process of eradication of a disease **or further undermine animal welfare**.

Amendment 62**Proposal for a regulation
Article 15 – paragraph 4**

4. *Within one year from the date of the end of depopulation operation, the competent authority referred to in paragraph 1 shall transmit to the Commission and make publicly available, in particular through the internet, an evaluation report on the results thereof.* **deleted**

That report shall include, in particular:

- a) the reasons for the depopulation;*
- b) the number and the species of animals killed;*
- c) the stunning and killing methods used;*
- d) a description of the difficulties encountered and, where appropriate, solutions found to alleviate or minimise the suffering of the animals concerned;*
- e) any derogation granted in accordance with paragraph 3.*

Wednesday 6 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 63
Proposal for a regulation
Article 16

In the case of emergency **kill**ing, the person in charge of the animals concerned shall take all the necessary measures to **kill** the animal as soon as possible.

In the case of emergency **slaughter**, the person in charge of the animals concerned shall take all the necessary measures to **slaughter** the animal as soon as possible, **without prejudice to the conditions laid down in Section I, Chapter VI of Annex III to Regulation (EC) No 853/2004 concerning emergency slaughter outside the slaughterhouse.**

Amendment 64
Proposal for a regulation
Article 17

Article 17

deleted

Reference centres

1. Each Member State shall appoint a national reference centre (hereinafter referred to as the 'reference centre') to perform the following tasks:

- a) provide scientific and technical expertise relating to the approval of slaughterhouses;
- b) carry out assessments of new stunning methods;
- c) actively encourage the development by operators and other interested parties of codes of good practice for the implementation of this Regulation and publish and disseminate such codes, and monitor their application;
- d) develop guidelines for the competent authority for the purposes of this Regulation;
- e) accredit bodies and entities for the issuance of certificates of competence, as provided for in Article 18;
- f) correspond and cooperate with the Commission and other reference centres, in order to share technical and scientific information and best practices as regards the implementation of this Regulation.

2. Within one year from the date of the entry into force of this Regulation, Member States shall submit details of their reference centre to the Commission and the other Member States, and shall make such information publicly available on the internet.

3. Reference centres may be established as a network, made up of separate entities, provided that all the tasks listed in paragraph 1 are allocated for all the relevant activities taking place in the Member States concerned.

Member States may appoint for an entity located outside their own territory to carry out one or more of those tasks.

Wednesday 6 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 65**Proposal for a regulation
Article 18 – paragraph 1 – point b**

- | | |
|--|--|
| <p>b) <i>delivering certificates of competence attesting the passing of an independent final examination; the subjects of this examination shall be relevant for the categories of animals concerned and correspond to the operations listed in Article 7(2), and the subjects set out in Annex IV</i></p> | <p>b) <i>ensuring that anyone responsible for developing or maintaining the standard operating procedures set out in Article 6 of this Regulation has received appropriate training;</i></p> |
|--|--|

Amendment 66**Proposal for a regulation
Article 18 – paragraph 1 – point c**

- | | |
|---|-----------------------|
| <p>c) <i>approving training programmes of the courses referred to in point (a) and the content and modalities of the examination referred in point (b);</i></p> | <p><i>deleted</i></p> |
|---|-----------------------|

Amendment 67**Proposal for a regulation
Article 18 – paragraph 2**

- | | |
|--|---|
| <p>2. <i>The competent authority may delegate the organisation of the courses, the final examination and the issuance of the certificate of competence to a separate body or entity which:</i></p> <p>a) <i>has the expertise, staff and equipment necessary to do so;</i></p> <p>b) <i>is independent and free from any conflict of interest as regards the issuance of the certificates of competence;</i></p> <p>c) <i>is accredited by the reference centre.</i></p> | <p>2. <i>The training programmes must be developed and, where applicable, run, by the business itself or by an organisation authorised by the competent authority.</i></p> <p><i>That business or organisation shall issue the certificates of competence in this field.</i></p> <p><i>The competent authority may, where it considers necessary, develop and run training programmes and issue certificates of competence.</i></p> |
|--|---|

The details of such bodies and entities shall be made publicly available, in particular via the internet.

Amendment 68**Proposal for a regulation
Article 18 – paragraph 3 – subparagraph 1**

- | | |
|--|--|
| <p>3. <i>Certificates of competence shall indicate for which categories of animals and for which of the operations listed in Article 7(2) or (3) the certificate is valid.</i></p> | <p>3. <i>Member States shall appoint the responsible competent authority to approve the content of the training programmes referred to in paragraph 2.</i></p> |
|--|--|

Amendments 69 and 70**Proposal for a regulation
Article 18 – paragraph 3 – subparagraph 2**

Certificates of **competences** shall **not** be valid for a period **exceeding five years**.

Certificates of **competence** shall be valid for **an unlimited period**. **Holders of certificates of competence shall be required to undergo regular training.**

Wednesday 6 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 71**Proposal for a regulation
Article 24 – paragraph 2**

2. Until 31 December 2014, Member States may provide for certificates of competence, as referred to in Article 18, to be issued without examination to persons demonstrating relevant **uninterrupted** professional experience of at least **[ten] years**.

2. Until 31 December 2014, Member States may provide for certificates of competence, as referred to in Article 18, to be issued without examination to persons demonstrating **appropriate training and** relevant professional experience of at least **12 months before the entry into force of this Regulation**.

Amendment 72**Proposal for a regulation
Article 24 – paragraph 2 a (new)**

2a. The Commission shall by 1 January 2013 submit a legislative proposal to the European Parliament and the Council on the establishment of conditions and rules on the use of mobile slaughterhouses within the Union, ensuring that all precautions are taken in those mobile units to avoid compromising animal welfare.

Amendment 73**Proposal for a regulation
Annex I – Chapter I – Table I – Line No 2 – Category of animals**

Ruminants **up to 10 kg**, poultry and lagomorphs.

Ruminants, poultry and lagomorphs.

Amendment 74**Proposal for a regulation
Annex I – Chapter I – Table I – Line No 2 – Key parameters - subparagraph 2**

Appropriate velocity and diameter of bolt according to animal size and species.

Appropriate velocity and diameter of bolt (**contact plate method**) according to animal size and species.

Amendment 75**Proposal for a regulation
Annex I – Chapter I – Table 2 – Line No 2 – Name**

Head-to-Back electrical **killing**

Head-to-heart or head-to-back electrical **stunning or slaughtering**

Amendment 76**Proposal for a regulation
Annex I – Chapter I – Table 2 – Line No 2 – Category of animals**

All species **except lambs or piglets of less than 5 kg live weight and cattle**.

All species.

Amendment 77**Proposal for a regulation
Annex I – Chapter I – Table 3 – Line No 2 – Category of animals**

Pigs **and** poultry.

Pigs, poultry **and fur animals**.

Wednesday 6 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 78**Proposal for a regulation****Annex I – Chapter II – point 7 – paragraph 1 a (new)**

Carbon dioxide at concentrations over 30 % shall not be used to stun or slaughter poultry in a slaughterhouse. Such concentrations may only be used to kill surplus chicks or for the purposes of disease control.

Amendment 79**Proposal for a regulation****Annex II – point 2.3**

2.3. There shall be a waiting pen, **with a level floor and solid sides**, between the holding pens and the race leading to the point of stunning, to ensure a steady supply of animals for stunning and **killing** and to avoid animal handlers having to rush animals from the holding pens. The waiting pen shall be so designed that animals cannot be trapped or trampled.

2.3. There shall be a waiting pen between the holding pens and the race leading to the point of stunning, to ensure a steady supply of animals for stunning and **slaughter** and to avoid animal handlers having to rush animals from the holding pens. The waiting pen shall be so designed that animals cannot be trapped or trampled.

Amendment 80**Proposal for a regulation****Annex II – point 3.2**

3.2. **Restraining boxes used in conjunction with a captive bolt shall be fitted with a device that restricts both the lateral and vertical movement of the head of the animal.** *deleted*

Amendment 81**Proposal for a regulation****Annex II – point 3.3**

3.3. **Systems restraining bovine animals by inversion or any unnatural position shall not be used.** *deleted*

Amendment 82**Proposal for a regulation****Annex II – point 4.1 a (new)**

4.1a. Electrical stunning equipment shall:

- a) **incorporate an audible or visible device indicating the length of time of its application to an animal;**
- b) **be connected to a device indicating the voltage and the current under load, positioned so as to be clearly visible to the operator.**

Amendment 83**Proposal for a regulation****Annex II – point 4.2**

4.2. **Electrical apparatus shall deliver a constant current.** *deleted*

Wednesday 6 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 84**Proposal for a regulation
Annex II – point 7.2**

7.2. *Facilities for poultry shall be designed and built so that animals are only conveyed into the gas mixtures in transport crates without being unloaded.*

7.2. *Live poultry should be conveyed into the gas mixtures either in their transport crates or on conveyor belts.*

Amendment 85**Proposal for a regulation
Annex III – point 1.2**

1.2. *Animals must be unloaded as quickly as possible after arrival and subsequently slaughtered without undue delay.*

deleted

In the case of poultry or lagomorphs, the total time of transport added to the time spent between unloading and slaughter shall not exceed 12 hours.

In the case of mammals, except lagomorphs, the total time of transport added to the time spent between unloading and slaughter shall not exceed:

- a) 19 hours for unweaned animals;*
- b) 24 hours for equidae and pigs;*
- c) 29 hours for ruminants.*

After the expiry of those time limits, the animals must be lairaged, fed, and subsequently given moderate amounts of food at appropriate intervals. In such cases, the animals shall be provided an appropriate amount of bedding or equivalent material which guarantees a level of comfort appropriate to the species and the number of animals concerned. This material must ensure adequate absorption of urine and faeces.

Amendment 86**Proposal for a regulation
Annex III – point 1.5**

For the purpose of slaughter, unweaned animals, lactating dairy animals, females having given birth during the journey or animals delivered in containers shall be given priority over other types of animal. If this is not possible, arrangements shall be made so as to relieve them from their suffering, in particular by:

deleted

- a) milking dairy animals at intervals of not more than 12 hours;*
- b) providing appropriate conditions for suckling and the welfare of the newborn animal in the case of a female having given birth;*
- c) providing water in the case of animals delivered in containers.*

Wednesday 6 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 87**Proposal for a regulation
Annex III – point 1.7 – sub-point c**

- c) lift or drag the animals by the head, ears, horns, legs, tail or fleece, or handle them in such a way as to cause them avoidable pain or suffering;
- c) lift or drag the animals by the head, ears, horns, legs (**with the exception of the feet of poultry and lagomorphs**), tail or fleece, or handle them in such a way as to cause them avoidable pain or suffering;

Amendment 88**Proposal for a regulation
Annex III – point 1.8 a (new)**

- 1.8a. Electrical stunning equipment must not be used as a means of restraint or immobilisation or to make animals move.**

Amendment 89**Proposal for a regulation
Annex III – point 1.8 b (new)**

- 1.8b. Animals which are unable to walk must not be dragged to the place of slaughter, but must be slaughtered where they lie.**

Amendment 90**Proposal for a regulation
Annex III – point 2.1**

- 2.1. Each animal shall have enough space to stand up, lie down and turn around.
- 2.1. **Except in the case of large bovine animals kept in individual pens for a period which does not exceed a reasonable limit,** each animal shall have enough space to stand up, lie down and turn around.

Amendment 91**Proposal for a regulation
Annex III – point 2 a (new)****2a. Captive bolt stunning**

- 2a.1. The captive bolt must be positioned so as to ensure that the projectile enters the cerebral cortex. In particular, the shooting of cattle in the poll position shall be prohibited. Sheep and goats may be shot in the poll position if the presence of horns prevents use of the crown position. In such cases the shot must be placed immediately behind the base of the horns and aimed towards the mouth, and bleeding must commence within 15 seconds of shooting.**
- 2a.2. When using a captive bolt instrument, the operator must check to ensure that the bolt retracts to its full extent after each shot. If it does not so retract, the instrument must not be used again until it has been repaired.**

Wednesday 6 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 92**Proposal for a regulation
Annex III – point 2 b (new)****2b. Restraint of animals**

An animal shall not be placed in a stunning box nor shall its head be placed in a device to restrict its movement unless the person who is to stun the animal is ready to do so as soon as the animal is placed in the stunning box or its head is fastened.

Amendment 93**Proposal for a regulation
Annex III – point 3.1**

3.1. Where one person is responsible for the stunning, shackling, hoisting and bleeding of animals, that person must carry out all those operations consecutively on one animal before carrying out any of them on another animal.

3.1. Where one person is responsible for the stunning, shackling, hoisting and bleeding of animals, that person must carry out all those operations consecutively on one animal before carrying out any of them on another animal. ***This requirement shall not apply when group stunning is used.***

Amendment 94**Proposal for a regulation
Annex III – point 3.1 a (new)**

3.1a. *Bleeding must be started without delay after stunning and be carried out in such a way as to bring about rapid, profuse and complete bleeding.*

Amendment 95**Proposal for a regulation
Annex III – point 3.2 a (new)**

3.2a. *After incision of the blood vessels, no further dressing procedures or any electrical stimulation may be performed on the animals before the bleeding has ended and, in any event, not before the expiry of—*

a) in the case of a turkey or goose, a period of not less than 120 seconds;

b) in the case of any other bird, a period of not less than 90 seconds;

c) in the case of stunned bovine animals, a period of not less than 30 seconds;

d) in the case of bovine animals that have not been stunned, a period of not less than 120 seconds;

e) in the case of sheep, goats, pigs and deer, a period of not less than 20 seconds.

Wednesday 6 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 112**Proposal for a regulation
Annex III – point 3.2 b (new)****3.2b. When a pregnant animal is slaughtered:**

- (a) if the uterus is intact, the foetus must be left inside until it is dead;*
- (b) in doubt, or if a conscious foetus is discovered in the womb of an animal after slaughter, it must be promptly removed, stunned with a penetrative captive bolt and killed by exsanguination.*

Slaughterhouses must have suitable equipment to hand to perform the procedure promptly if required.

Amendment 96**Proposal for a regulation
Annex III – point 3.3**

3.3. Birds shall not be slaughtered by means of automatic neck cutters unless it can be ascertained whether or not the neck cutters have effectively severed the blood vessels. When neck cutters have not been effective the bird shall be **killed** immediately.

3.3. Birds shall not be slaughtered by means of automatic neck cutters unless it can be ascertained whether or not the neck cutters have effectively severed the blood vessels. When neck cutters have not been effective the bird shall be **slaughtered** immediately.

Amendment 97**Proposal for a regulation
Annex IV – point (f a) (new)***(fa) the killing of fur animals.*

Practical aspects of handling and restraining animals.

Practical aspects of stunning techniques.

Back-up stunning and/or slaughter methods.

Maintenance of stunning and/or slaughter equipment.

Monitoring the effectiveness of stunning.

Thursday 7 May 2009

European Refugee Fund for the period 2008-2013 (amendment of Decision No 573/2007/EC) *I**

P6_TA(2009)0375

European Parliament legislative resolution of 7 May 2009 on the proposal for a decision of the European Parliament and of the Council amending Decision No 573/2007/EC establishing the European Refugee Fund for the period 2008 to 2013 by removing funding for certain Community actions and altering the limit for funding such actions (COM(2009)0067 – C6-0070/2009 – 2009/0026(COD))

(2010/C 212 E/50)

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2009)0067),
 - having regard to Article 251(2) and Article 63, first paragraph, point 2(b) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0070/2009),
 - 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 and the opinion of the Committee on Budgets (A6-0280/2009),
1. Approves the Commission proposal;
 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.

Thursday 7 May 2009

Minimum standards for the reception of asylum seekers (recast) ***I

P6_TA(2009)0376

European Parliament legislative resolution of 7 May 2009 on the proposal for a directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers (recast) (COM(2008)0815 – C6-0477/2008 – 2008/0244(COD))

(2010/C 212 E/51)

(Codecision procedure – recast)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0815),
 - having regard to Article 251(2) and Article 63(1)(b) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0477/2008),
 - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts ⁽¹⁾,
 - having regard to the letter of 4 April 2009 from the Committee on Legal Affairs to the Committee on Civil Liberties, Justice and Home Affairs in accordance with Rule 80a(3) of its Rules of Procedure,
 - having regard to Rules 80a and 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0285/2009),
- A. whereas, according to the Consultative Working Party of the Legal Services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance,
1. Approves the Commission proposal as adapted to the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission and as amended below;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and the Commission.

⁽¹⁾ OJ C 77, 28.3.2002, p. 1.

Thursday 7 May 2009

P6_TC1-COD(2008)0244**Position of the European Parliament adopted at first reading on 7 May 2009 with a view to the adoption of Directive 2009/.../EC of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers (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 point (1) (b) of the first subparagraph of Article 63 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) A number of substantive changes are to be made to Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers ⁽⁴⁾. In the interests of clarity, that Directive should be recast.
- (2) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Community.
- (3) At its special meeting in Tampere on 15 and 16 October 1999, the European Council agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967, thus maintaining the principle of non-refoulement.
- (4) The Tampere Conclusions provide that a Common European Asylum System should include, in the short term, common minimum conditions of reception of asylum seekers.
- (5) The establishment of minimum standards for the reception of asylum seekers is a further step towards a European asylum policy.
- (6) The first phase in the creation of a Common European Asylum System that should lead, in the longer term, to a common procedure and a uniform status, valid throughout the Union, for those granted asylum, has now been *concluded*. The European Council of 4 November 2004 adopted The Hague Programme which sets the objectives to be implemented in the area of freedom, security and justice in the period 2005-2010. In this respect, the Hague Programme invited the Commission to conclude the evaluation of the first phase legal instruments and to submit the second-phase instruments and measures to the Council and the European Parliament with a view to their adoption before 2010.

⁽¹⁾ OJ C [...], [...], p. [...].

⁽²⁾ OJ C [...], [...], p. [...].

⁽³⁾ *Position of the European Parliament of 7 May 2009.*

⁽⁴⁾ OJ L 31, 6.2.2003, p. 18.

Thursday 7 May 2009

- (7) In the light of the results of the evaluations undertaken, it is appropriate, at this stage, to confirm the principles underlying Directive 2003/9/EC with a view to ensuring improved reception conditions for asylum seekers.
- (8) In order to ensure equal treatment of asylum seekers throughout the Union, this Directive should apply during all stages and types of procedures concerning applications for international protection and in all locations and facilities hosting asylum seekers.
- (9) Member States should seek to ensure full compliance with the principles of the best interests of the child and the importance of family unity, in the application of this Directive, in line with the 1989 United Nations Convention on the Rights of the Child and the European Convention for the Protection of Human Rights and Fundamental Freedoms respectively.
- (10) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party.
- (11) Minimum standards for the reception of asylum seekers that will **normally** suffice to ensure them a dignified standard of living and comparable living conditions in all Member States ■ should be laid down.
- (12) The harmonisation of conditions for the reception of asylum seekers should help to limit the secondary movements of asylum seekers influenced by the variety of conditions for their reception.
- (13) *With a view to ensuring equal treatment among all applicants for international protection as well as in order to ensure consistency with current EU asylum acquis, in particular with 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 (1), it is appropriate to extend the scope of this Directive in order to include applicants for subsidiary protection.*
- (14) In order to promote asylum-seekers' self-sufficiency and to limit wide discrepancies between Member States, it is essential to provide clear rules on the access of asylum seekers to the labour market.
- (15) The immediate identification and monitoring of persons with special needs should be a primary concern of national authorities in order to ensure that their reception *conditions are* specifically designed to meet their special needs.
- (16) Detention of asylum seekers should be applied in line with the underlying principle that a person should not be held in detention for the sole reason that he/she is seeking international protection, notably in accordance with **the international legal obligations of the Member States, and particularly** Article 31 of the Geneva Convention relating to the Status of Refugees of 28 July 1951. In particular, Member States should not impose penalties on asylum seekers on account of illegal entry or presence and any restrictions *on* movement should be necessary. In this respect, detention of asylum seekers should only be possible under very clearly defined exceptional circumstances laid down in this Directive and subject to the *principles of necessity and proportionality* with regard both to the manner and to the purpose of such detention. Where ■ *asylum seekers are held in detention they* should have a right to a judicial remedy before national court.
- (17) Applicants who are in detention should be treated with full respect *for* human dignity and their reception *conditions* should be specifically designed to meet their needs in that situation. In particular, Member States should ensure *compliance with* Article 37 of the 1989 UN Convention on the Rights of the Child ■.

(1) OJ L 304, 30.9.2004, p. 12.

Thursday 7 May 2009

- (18) In order to ensure compliance with minimum procedural *safeguards* consisting in the opportunity to contact organisations or groups of persons that provide legal assistance, information should be provided on such organisations and groups of persons.
- (19) The possibility of abuse of the reception system should be restricted by specifying the circumstances in which reception conditions for asylum seekers may be reduced or such reception withdrawn while at the same time ensuring a dignified standard of living for all asylum seekers.
- (20) The efficiency of national reception systems and cooperation among Member States in the field of reception of asylum seekers should be secured.
- (21) Appropriate coordination should be encouraged between the competent authorities as regards the reception of asylum seekers, and harmonious relationships between local communities and accommodation centres should therefore be promoted.
- (22) It is in the very nature of minimum standards that Member States have the power to introduce or maintain more favourable provisions for third-country nationals and stateless persons who ask for international protection from a Member State.
- (23) In this spirit, Member States are also invited to apply the provisions of this Directive in connection with procedures for deciding on applications for forms of protection other than *those applicable under Directive 2004/83/EC*.
- (24) *In order to cover any improvements in minimum standards for the reception of asylum seekers, there should be a proportionate increase in the funds made available by the European Union in order to cover the costs of such improvements, especially in the case of Member States which are facing specific and disproportionate pressures on their national asylum systems, owing in particular to their geographical or demographic situation.***
- (25) The implementation of this Directive should be evaluated at regular intervals.
- (26) Since the *objective* of this Directive, namely to establish minimum standards on the reception of asylum seekers in Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the proposed 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*.
- (27) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union (*the Charter*). In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1, 4, 6, 7, 18, 24 and 47 of the || Charter and *should* be implemented accordingly.
- (28) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.
- (29) This Directive should be without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of *this* Directive set out in Annex II, Part B,

Thursday 7 May 2009

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

PURPOSE, DEFINITIONS AND SCOPE

Article 1

Purpose

The purpose of this Directive is to lay down minimum standards for the reception of asylum seekers in Member States.

Article 2

Definitions

For the purposes of this Directive:

- (a) 'application for international protection' means an application for international protection as defined in **Article 2(g) of Directive 2004/83/EC**;
- (b) 'applicant' or 'asylum seeker' means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;
- (c) 'family members' means, in so far as the family already existed in the country of origin, the following members of the applicant's family who are present in the same Member State in relation to the application for international protection:
 - (i) the spouse of the asylum seeker or his or her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to *foreigners*;
 - (ii) the minor children of couples referred to in point (i) *above* or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under the national law;
 - (iii) the married minor children of couples referred to in point (i) *above* or of the applicant, regardless of whether they were born in or out of wedlock or adopted as defined under the national law **and provided they are not accompanied by their spouses**, where it is in their best interests to reside with the applicant;
 - (iv) the father, mother or guardian of the applicant, when the *applicant* is a minor and unmarried, or when *the applicant* is a minor and married **but not accompanied by his/her spouse** and it is in his/her best interests to reside with his/her father, mother or guardian;
 - (v) the minor unmarried siblings of the applicant, when the *applicant* is a minor and unmarried, or when the applicant or his/her siblings are minors and married **but not accompanied by their spouses** and it is in the best interests of one or more of them that they reside together;
 - (vi) **dependent adults with special needs**;
- (d) 'procedures' and 'appeals', means the procedures and appeals established by Member States in their national law;

Thursday 7 May 2009

- (e) 'minor' means a third-country national or stateless person below the age of 18 years;
- (f) 'unaccompanied minor' means a minor who arrives in the territory of the Member States unaccompanied by an adult responsible for him/her whether by law or by custom, and for as long as he/she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he/she has entered the territory of the Member States;
- (g) 'reception conditions' means the full set of measures that Member States *apply* to asylum seekers in accordance with this Directive;
- (h) 'material reception conditions' means the reception conditions that include housing, food and clothing provided in kind, or as financial allowances or in vouchers, or a combination of the three, and a daily *expense* allowance;
- (i) 'detention' means confinement of an asylum seeker by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement;
- (j) 'accommodation centre' means any place used for collective housing of asylum seekers.

Article 3

Scope

1. This Directive shall apply to all third country nationals and stateless persons who make an application for international protection in the territory, including at the border or in the transit zones, of a Member State, as long as they are allowed to remain on the territory as asylum seekers, as well as to family members, if they are covered by such application for international protection according to the *applicable* national law.
2. This Directive shall not apply to requests for diplomatic or territorial asylum submitted to representations of Member States.
3. This Directive shall not apply when the provisions of Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof⁽¹⁾ are applied.
4. Member States may decide to apply this Directive in connection with procedures for deciding on applications for kinds of protection other than *those applicable under* Directive 2004/83/EC.

Article 4

More favourable provisions

Member States may introduce or retain more favourable provisions in the field of reception conditions for asylum seekers and close relatives of *asylum seekers* who are present in the same Member State when they are dependent on the *asylum seeker* or for humanitarian reasons insofar as *those* provisions are compatible with this Directive.

⁽¹⁾ OJ L 212, 7.8.2001, p. 12.

Thursday 7 May 2009

CHAPTER II

GENERAL PROVISIONS ON RECEPTION CONDITIONS

Article 5

Information

1. Member States shall inform asylum seekers, within a reasonable time not exceeding fifteen days after they have lodged their application for international protection with the competent authority, of at least any established benefits and of the obligations with which they must comply relating to reception conditions.

Member States shall ensure that applicants are provided with information on organisations or groups of persons that provide specific legal assistance and organisations that might be able to help or inform them concerning the available reception conditions, including health care.

2. Member States shall ensure that the information referred to in paragraph 1 is in writing and in a language that the applicants **understand or may** reasonably **be presumed** to understand. Where appropriate, this information may also be supplied orally.

Article 6

Documentation

1. Member States shall ensure that, within three days after an application is lodged with the competent authority, the applicant is provided with a document issued in his or her own name certifying his or her status as an asylum seeker or testifying that he or she is allowed to stay in the territory of the Member State while his or her application is pending or being examined.

No additional documents shall be required in order to secure access to the rights and benefits conferred on asylum seekers under this Directive.

If the holder of the document referred to in the first subparagraph is not free to move within all or a part of the territory of the Member State, the document shall also certify this fact.

2. Member States may exclude application of this Article when *an* asylum seeker is in detention and during the examination of an application for international protection made at the border or within the context of a procedure to decide on the right of the applicant legally to enter the territory of a Member State. In specific cases, during the examination of an application for international protection, Member States may provide applicants with other evidence equivalent to the document referred to in paragraph 1.

3. The document referred to in paragraph 1 need not certify the identity of the asylum seeker.

4. Member States shall adopt the necessary measures to provide asylum seekers with the document referred to in paragraph 1, which must be valid for as long as they are authorised to remain in the territory *or at the border* of the Member State concerned ¶.

5. Member States may provide asylum seekers with a travel document when serious humanitarian reasons arise that require their presence in another State.

Article 7

Residence and freedom of movement

1. Asylum seekers may move freely within the territory of the host Member State or within an area assigned to them by that Member State. The assigned area shall not affect the unalienable sphere of private life and shall allow sufficient scope for *ensuring* access to all benefits under this Directive.

Thursday 7 May 2009

2. Member States may decide on the residence of the asylum seeker for reasons of public interest, public policy or, when necessary, for the swift processing and effective monitoring of his or her application.
3. Member States may make provision of the material reception conditions subject to actual residence by the applicants in a specific place, to be determined by the Member States. Such a decision, which may be of a general nature, shall be taken individually and established by national legislation.
- 4. When it proves necessary, for example for legal reasons or reasons of public policy, Member States may confine an applicant to a specific place in accordance with their national law.**
5. Member States shall provide for the possibility of granting applicants temporary permission to leave the place of residence referred to in paragraphs 2 and 3 and/or the assigned area referred to in paragraph 1. Decisions shall be taken individually, objectively and impartially and reasons shall be given if they are negative.

The applicant shall not require permission to keep appointments with authorities and courts if his or her appearance is necessary.

6. Member States shall require applicants to inform the competent authorities of their current address and notify any change of address to such authorities as soon as possible.

Article 8

Detention

1. Member States shall not hold a person in detention for the sole reason that he/she is an applicant for international protection in accordance with Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status⁽¹⁾.
2. When it proves necessary and on the basis of an individual assessment of each case, Member States may confine an applicant to a particular place in accordance with national legislation, if other less coercive measures cannot be applied effectively. An applicant may only be confined to a particular place:
 - (a) in order to determine, ascertain or verify his identity or nationality;
 - (b) in order to determine the elements on which his application for international protection is based, which in other circumstances could be lost;
 - (c) in the context of a procedure, to decide on his right to enter the territory;
 - (d) when protection of national security or public policy so requires.

This paragraph is without prejudice to Article 11.

3. Member States shall ensure that rules dealing with alternatives to detention, such as regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at a designated place, are laid down in national legislation.

⁽¹⁾ OJ L 326, 13.12.2005, p. 13.

Thursday 7 May 2009

Article 9

Guarantees for detained asylum seekers

1. Detention shall be ordered for the shortest period possible. In particular, *the period of* detention pursuant to Article 8 (2) (a), (b) or (c) shall not exceed the time reasonably needed to *complete* the administrative procedures required in order to obtain information on the asylum seeker's nationality **or identity** or on the elements on which his application is based, or to *complete* the relevant procedure with a view to deciding on his/her right to enter the territory.

Such procedures should be completed with all due dispatch. Delays in the **¶** procedure that cannot be attributed to the asylum seeker shall not justify a continuation of detention.

2. Detention shall be ordered by judicial authorities. In urgent cases it may be ordered by administrative authorities, in which case the detention order shall be confirmed by judicial authorities within 72 hours from the beginning of the detention. Where the judicial authority finds detention to be unlawful, or if there is no decision within *that 72 hour period*, the asylum seeker concerned shall be released immediately.

3. Detention shall be ordered in writing. The detention order shall state the reasons in fact and in law on which it is based and shall specify the maximum period of detention.

4. Detained asylum seekers shall immediately be informed of the reasons for detention, the maximum duration of the detention and the procedures laid down in national law for challenging the detention order, in a language **which** they **understand or may** reasonably **be presumed** to understand.

5. **¶** Continued detention shall be reviewed by a judicial authority at reasonable intervals of time either *at the request of* the asylum seeker concerned or ex officio.

Detention shall never be unduly prolonged.

6. Member States shall ensure **that the necessary** legal assistance and/or representation **is granted on request** free of charge **in accordance with Article 15(3) to (6) of Directive 2005/85/EC.**

Procedures for access to legal assistance and/or representation in such cases shall be laid down in national law.

Article 10

Detention conditions **¶**

1. Member States shall not detain asylum seekers in prison accommodation. Detention shall only *take place* in specialised detention facilities.

Asylum seekers in detention shall be *held* separately from other third country nationals who have not lodged an application for international protection unless it is necessary to ensure family unity and the applicant consents thereto.

2. Member States shall ensure that asylum seekers in detention have the opportunity to establish contact, including *visiting* rights, with legal representatives, family members, **social workers and religious visitors.** *The United Nations High Commissioner for Refugees (UNHCR)* and other relevant and competent national, international and non-governmental organisations and bodies shall also have the opportunity to communicate with and to visit applicants in detention areas.

3. **Member States shall ensure that asylum seekers held in detention have access to appropriate medical treatment and psychological counselling where appropriate.**

Thursday 7 May 2009

4. Member States shall ensure that asylum seekers in detention are immediately provided with *up-to-date* information on the rules which apply in the facility and set out their rights and obligations in a language **which** they **understand or may** reasonably **be presumed** to understand.

Article 11

Detention of vulnerable groups and persons with special needs

1. Minors shall not be detained unless it is in their best *interests*, as prescribed in Article 23(2) and only after taking into consideration the findings of the individual examination of their situation in accordance with paragraph 5 of *this* Article ¶.

Unaccompanied minors shall never be detained.

2. Where minors are detained they shall have the possibility to *engaging* in leisure-activities, including play and recreational activities appropriate to their age, **and open-air activities**.

3. Detained families shall be provided with separate accommodation *ensuring* adequate privacy.

4. Where female asylum seekers are detained, Member States shall ensure that they are accommodated separately from male asylum seekers, unless *they* are family members and all concerned individuals consent thereto.

5. Persons with special needs shall not be detained unless an individual examination of their situation by a qualified **and independent** professional certifies that their health, including their mental health, and well-being, will not significantly deteriorate as a result of the detention.

Where persons with special needs are detained, Member States shall ensure regular monitoring and adequate support.

Article 12

Families

Member States shall take appropriate measures to maintain as far as possible *the* family unity of *asylum seekers* present in their territory, if *they* are provided with housing by the Member State concerned. Such measures shall be implemented with the asylum seeker's agreement.

Article 13

Medical screening

Member States may require medical screening for applicants on public health grounds.

Article 14

Schooling and education of minors

1. Member States shall grant to minor children of asylum seekers and to asylum seekers who are minors access to the education system under similar conditions as nationals of the host Member State for so long as an expulsion measure against them or their parents is not actually enforced. Such education may be provided in accommodation centres.

Member States shall not withdraw secondary education for the sole reason that the minor has reached the age of majority.

Thursday 7 May 2009

2. Access to the education system ***shall be ensured as soon as possible once the application for international protection has been lodged by or on behalf of the minor and, in any event,*** shall not be postponed for more than three months from the date *on which* the application for international protection was lodged ¶.

Preparatory classes, including language classes, aimed at facilitating the access of minors to the national education system, and/or specific education designed to assist their integration into that system, shall be provided where necessary.

3. Where access to the education system as set out in paragraph 1 is not possible due to the specific situation of the minor, the Member State shall offer other *educational* arrangements in accordance with national law and *practice*.

Article 15

Employment

1. Member States shall ensure that applicants have access to the labour market no later than six months following the date when the application for international protection was lodged.

2. Member States shall decide the conditions for granting access to the labour market for the applicant, in accordance with their national legislation, without unduly restricting asylum seekers' access to the labour market.

3. Access to the labour market shall not be withdrawn during appeals procedures, where an appeal against a negative decision in *an ordinary* procedure has suspensive effect, until such time as a negative decision on the appeal is *issued*.

Article 16

Vocational training

Member States may allow asylum seekers access to vocational training irrespective of whether they have access to the labour market.

Access to vocational training relating to an employment contract shall depend on the extent to which the applicant has access to the labour market in accordance with Article 15.

Article 17

General rules on material reception conditions and health care

1. Member States shall ensure that material reception conditions are available to applicants when they make their application for international protection.

2. Member States shall ensure that material reception conditions provide an adequate standard of living for applicants ¶, which *ensures* their subsistence and protects their physical and mental health.

Member States shall ensure that *such a* standard of living is *provided* in the specific situation of persons who have special needs, in accordance with *Article 22*, as well as in relation to the situation of persons who are in detention.

3. Member States may make the provision of all or some of the material reception conditions and health care subject to the condition that applicants do not have sufficient means to have a standard of living adequate for their health and to *ensure* their subsistence.

Thursday 7 May 2009

4. Member States may require applicants to cover or contribute to the cost of the material reception conditions and of the health care provided for in this Directive, pursuant to the provision of paragraph 3, if the applicants have sufficient resources, for example if they have been working for a reasonable period of time.

If it transpires that an applicant had sufficient means to cover material reception conditions and health care at the time when *those* basic needs were being met, Member States may ask the asylum seeker for a refund.

5. *Material reception conditions may be provided in kind or in the form of financial allowances or vouchers or in a combination of the three elements.*

Where Member States provide material reception conditions in the form of financial allowances or vouchers, the amount thereof shall be determined in accordance with the principles laid down in this Article.

Article 18

Modalities for material reception conditions

1. Where housing is provided in kind, it should take one or a combination of the following forms:

- (a) premises used for the purpose of housing applicants during the examination of an application for international protection lodged at the border;
- (b) accommodation centres which guarantee an adequate standard of living;
- (c) private houses, flats, hotels or other premises adapted for housing applicants.

2. Member States shall ensure that applicants provided with the housing referred to in paragraph 1(a), (b) and (c) are assured:

- (a) protection of their family life;
- (b) the possibility of communicating with relatives, legal advisers and representatives of || UNHCR || and non-governmental organisations || recognised by Member States.

Member States shall take into consideration gender and age specific concerns and the situation of persons with special needs in relation to applicants within the premises and accommodation centres referred to in paragraph 1(a) and (b).

Member States shall take appropriate measures to prevent assault and gender-based violence, including sexual assault, within the premises and accommodation centres referred to in paragraph 1(a) and (b).

3. Member States shall ensure, that minor children of applicants or applicants who are minors are *housed* with their parents or with the adult family member responsible for them whether by law or by custom provided *that* it is in the best interests of the minors concerned.

4. Member States shall ensure that transfers of applicants from one housing facility to another take place only when necessary. Member States shall provide for the possibility for applicants to inform their legal advisers of the transfer and of their new address.

Thursday 7 May 2009

5. Persons working in accommodation centres shall be adequately trained and shall be bound by the confidentiality principle as defined in the national law in relation to any information *which* they obtain in the course of their work.

6. Member States may involve applicants in managing the material resources and non-material aspects of life in the centre through an advisory board or council representing residents.

7. Legal advisors or counsellors of asylum seekers and representatives of UNHCR or non-governmental organisations designated by UNHCR and recognised by the Member State concerned shall be granted access to accommodation centres and other housing facilities in order to assist ¶asylum seekers. *Restrictions* on such access may be imposed only on grounds relating to the security of the centres and facilities and of the asylum seekers.

8. In duly justified cases, Member States may exceptionally *lay down rules* for material reception conditions *which are* different from those provided for in this Article, for a reasonable period which shall be as short as possible, when:

- (a) an initial assessment of the specific needs of the applicant is required,
- (b) housing *capacity* normally available is temporarily exhausted,
- (c) the asylum seeker is in detention or confined to border posts.

Such different conditions shall cover in any case basic needs.

Article 19

Health care

1. Member States shall ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illness or mental disorders.

2. Member States shall provide *the* necessary medical or other assistance to applicants who have special needs, including appropriate mental health care when *required* ¶.

Article 20

Victims of torture

Member States shall ensure that victims of torture are quickly directed to a care centre appropriate to their situation.

CHAPTER III

REDUCTION OR WITHDRAWAL OF MATERIAL RECEPTION CONDITIONS

Article 21

Reduction or withdrawal of material reception conditions

1. Member States may reduce material reception conditions ¶ where an asylum seeker:

- (a) abandons the place of residence determined by the competent authority without informing it or, if requested, without permission, or

Thursday 7 May 2009

- (b) does not comply with reporting duties or with requests to provide information or to appear for personal interviews concerning the asylum procedure during a reasonable period laid down in national law, or
- (c) has already lodged an application in the same Member State.

When the applicant is traced or voluntarily reports to the competent authority, a duly motivated decision, based on the reasons for the disappearance, shall be taken on the *reintroduction* of the grant of some or all of the material reception conditions reduced.

2. Member States may reduce or withdraw material reception conditions where an applicant has concealed financial resources, and has therefore unduly benefited from material reception conditions.
3. Member States may determine *the* sanctions applicable to serious *breaches* of the rules of the accommodation centres as well as to seriously violent behaviour.
4. Decisions for *the* reduction or withdrawal of material reception conditions or sanctions referred to in paragraphs 1, 2 and 3 shall be taken individually, objectively and impartially and reasons shall be given. Decisions shall be based on the particular situation of the person concerned, especially with regard to persons covered by *Article 22*, taking into account the principle of proportionality. Member States shall under all circumstances ensure subsistence, access to emergency health care and essential treatment of illness or mental disorder.
5. Member States shall ensure that material reception conditions are not withdrawn or reduced before a negative decision is taken.

CHAPTER IV

PROVISIONS FOR PERSONS WITH SPECIAL NEEDS

Article 22

General principle

1. Member States shall take into account the specific situation of persons with special needs in the national legislation implementing this Directive. Vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, **victims of female genital mutilation**, persons with mental health problems and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, shall always be considered as persons with special needs.
2. Member States shall establish procedures in national legislation with a view to identifying, as soon as an application for international protection is lodged, whether the applicant has special needs and indicating the nature of such needs. Member States shall ensure **adequate** support for persons with special needs throughout the asylum procedure and shall provide for appropriate monitoring of their situation.

Article 23

Minors

1. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive *applicable to* minors. Member States shall ensure a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

Thursday 7 May 2009

2. In assessing the best interests of the child, Member States shall in particular take due account of the following factors:
 - (a) family reunification possibilities;
 - (b) the minor's well-being and social development, taking into particular consideration the minor's ethnic, religious, cultural and linguistic background;
 - (c) safety and security considerations, in particular where there is a risk of the child being a victim of trafficking;
 - (d) the views of the minor in accordance with his/her age and maturity.
3. Member States shall ensure that minors have access to leisure activities, including play and recreational activities appropriate to their age, within the premises and accommodation centres referred to in Article 18 (1)(a) and (b).
4. Member States shall ensure access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman or degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental health care \parallel and qualified counselling *are* provided when needed.

Article 24

Unaccompanied minors

1. Member States shall \blacksquare take measures to ensure the necessary representation of unaccompanied minors by legal guardians \blacksquare . ***A guardian shall be appointed to advise and protect the child and to ensure that all decisions are taken in the child's best interests. A guardian should have the necessary expertise in the field of childcare so as to ensure that the interests of the child are protected and that the child's legal, social, health, psychological, material and educational needs are appropriately met. Agencies or individuals whose interests could potentially conflict with those of the child shall not be eligible to become guardians.*** Regular assessments shall be made by the appropriate authorities.
2. Unaccompanied minors who make an application for international protection shall, from the moment *when* they are admitted to the territory to the moment *when* they are obliged to leave the *territory of the* Member State in which the application for international protection was made or is being examined, be placed:
 - (a) with adult relatives;
 - (b) with a foster family;
 - (c) in accommodation centres with special *facilities* for minors;
 - (d) in other accommodation suitable for minors.

Member States may place unaccompanied minors aged 16 or over in accommodation centres for adult asylum seekers.

As far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum.

Thursday 7 May 2009

3. Member States shall establish procedures in national legislation for tracing the family members of *an* unaccompanied minor. They shall start to trace the members of the unaccompanied minor's family as soon as possible after an application for international protection is lodged, *while* protecting his/her best *interests*. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and *exchange* of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardizing their safety.

4. *Persons* working with unaccompanied minors shall have *received* and *shall* continue to receive appropriate training concerning their needs, and shall be bound by the confidentiality principle as defined in national law, in relation to any information *which* they obtain in the course of their work.

Article 25

Victims of torture and violence

1. Member States shall ensure that persons who have been subjected to torture, rape or other serious acts of violence receive the necessary treatment *for the damage* caused by *such* acts, in particular access to rehabilitation services that should *include* obtaining medical and psychological treatment.

2. Those working with victims of torture, ***rape or other serious acts of violence*** shall have *received* and *shall* continue to receive appropriate training concerning their needs, and shall be bound by the confidentiality rules provided for in the relevant national law, in relation to any information *which* they obtain in the course of their work.

CHAPTER V

APPEALS

Article 26

Appeals

1. Member States shall ensure that decisions relating to the *grant*, withdrawal *of* or reduction *in* benefits under this Directive or decisions taken under Article 7 which individually affect asylum seekers may be the subject of an appeal within the procedures laid down in national law. At least in the last instance the *right* to an appeal or a review, in fact and in law, *to or by* a judicial body, shall be granted.

2. Member States shall ensure ***that the necessary*** legal assistance and/or representation ***is granted on request*** free of charge ***in accordance with Article 15(3) to (6) of Directive 2005/85/EC***.

Procedures for access to legal assistance and/or representation in such cases shall be laid down in national law.

CHAPTER VI

ACTIONS TO IMPROVE THE EFFICIENCY OF THE RECEPTION SYSTEM

Article 27

Competent authorities

Each Member State shall notify the Commission of the identity of the authorities responsible for fulfilling the obligations arising under this Directive. Member States shall inform the Commission of any changes in the identity of such authorities.

Thursday 7 May 2009

Article 28

Guidance, monitoring and control system

1. Member States shall, with due respect to their constitutional structure, put in place relevant mechanisms in order to ensure that appropriate guidance, monitoring and control of the level of reception conditions are established.
2. Member States shall submit relevant information to the Commission in the form set out in Annex I on a yearly basis, starting from [...].

Article 29

Staff and resources

1. Member States shall take appropriate measures to ensure that authorities and other organisations implementing this Directive have received the necessary basic training with respect to the needs of both male and female applicants.
2. Member States shall allocate the necessary resources in connection with the national provisions enacted to implement this Directive.

CHAPTER VII

FINAL PROVISIONS

Article 30

Reports

By [...] at the latest, the Commission shall report to the European Parliament and the Council on the application of this Directive and shall propose any amendments that are necessary.

Member States shall send the Commission all the information that is appropriate for drawing up the report, including the statistical data provided for by Article 28(2) by [...].

After presenting the report, the Commission shall report to the European Parliament and the Council on the application of this Directive at least every five years.

Article 31

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles [...] [The articles which have been changed as to the substance by comparison with the earlier Directive] and Annex I by [...] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such a reference is to be made. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Thursday 7 May 2009

Article 32

Repeal

Directive 2003/9/EC is repealed with effect from [day after the date set out in the first subparagraph of Article 31(1) of this Directive], without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of the Directive set out in Annex II, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex III.

Article 33

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 [...] [The articles which are unchanged by comparison with the earlier Directive] and Annex I shall apply from [day after the date set out in the first subparagraph of Article 31(1)].

Article 34

Addressees

This Directive is addressed to the Member States.

Done at [...]

For the European Parliament
The President

For the Council
The President

ANNEX I

Reporting form on the information to be submitted by Member States on an annual basis, as required under Article 28(2) of Directive [...]/EC

1. Indicate the total number of persons in your Member State currently covered by reception conditions as stipulated in Article 3(1) of Directive [...]/EC, broken down by sex and age. For each such person, indicate whether he or she is an || asylum seeker or a family member as defined in Article 2(c) of Directive [...]/EC.

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2. On the basis of Article 22 of Directive [...]/EC please provide statistical data on the number of asylum seekers with special needs identified divided into the following groups of persons with special needs:

- unaccompanied minors
- disabled people
- elderly people
- pregnant women
- single parents with minor children

Thursday 7 May 2009

- persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence
- victims of trafficking
- persons with mental health problems
- other (please explain)

3. Provide detailed information concerning the documents provided for in Article 6 of Directive [.../.../EC], including in particular the type, name and format of these documents.

4. With reference to Article 15 of Directive [.../.../EC], indicate the total number of || asylum seekers in your Member State who have access to the labour market, as well as the total number who are currently employed, broken down by economic sector. To the extent that any particular conditions are attached to labour market access for asylum seekers, describe in detail such restrictions.

5. With reference to Article 17(5) of Directive [.../.../EC], describe in detail the nature of material reception conditions, including their monetary value, and how they are provided (i.e. which material reception conditions are provided in kind, in money, in vouchers or in a combination of these elements) and indicate the level of the daily expenses allowance provided to asylum seekers.

I

ANNEX II

Part A

Repealed Directive

(referred to in Article 32)

Council Directive 2003/9/EC

(O) L 31, 6.2.2003, p. 18)

Part B

Time-limit for transposition into national law

(referred to in Article 31)

Directive	Time-limit for transposition
2003/9/EC	6 February 2005

Thursday 7 May 2009

ANNEX III

Correlation table

Directive 2003/9/EC	This Directive
Article 1	Article 1
Article 2, introductory words	Article 2, introductory words
Article 2(a)	—
Article 2(b)	Article 2(a)
Article 2(c)	Article 2(b)
Article 2(d) introductory wording and points (i) and (ii)	Article 2(c) introductory wording and points (i) and (ii)
—	Article 2(c) points (iii), (iv), (v) and (vi)
Article 2(e) and (f)	—
Article 2(g)	Article 2(d)
—	Article 2(e)
Article 2(h)	Article 2(f)
Article 2(i)	Article 2(g)
Article 2(j)	Article 2(h)
Article 2(k)	Article 2(i)
Article 2(l)	Article 2(j)
Article 3	Article 3
Article 4	Article 4
Article 5	Article 5
Article 6(1) first subparagraph	Article 6(1) first subparagraph
Article 6(1) second subparagraph	Article 6(1) third subparagraph
Article 6(2) to (5)	Article 6(2) to (5)
Article 7(1) and (2)	Article 7(1) and (2)
Article 7(3)	—
Article 7(4)	Article 7(3)
—	Article 7(4)
Article 7(5) and (6)	Article 7(5) and (6)
—	Article 8
—	Article 9
—	Article 10
—	Article 11
Article 8	Article 12
Article 9	Article 13

Thursday 7 May 2009

Directive 2003/9/EC	This Directive
Article 10(1) <i>first subparagraph</i>	Article 14(1) <i>first subparagraph</i>
Article 10(1) <i>second subparagraph</i>	—
Article 10(1) <i>third subparagraph</i>	Article 14(1) <i>second subparagraph</i>
Article 10(2)	Article 14(2) <i>first subparagraph</i>
—	Article 14(2) <i>second subparagraph</i>
Article 10(3)	Article 14(3)
Article 11(1)	—
—	Article 15(1)
Article 11(2) <i>and (3)</i>	Article 15(2) <i>and (3)</i>
Article 11(4)	—
Article 12	Article 16
Article 13 ■	Article 17 ■
Article 14(1)	Article 18(1)
Article 14(2) <i>introductory wording and first subparagraph</i>	Article 18(2) <i>introductory wording and first subparagraph</i>
—	Article 18(2) <i>second subparagraph</i>
Article 14(2) <i>second subparagraph</i>	Article 18(2) <i>third subparagraph</i>
Article 14(3) to (7)	Article 18(3) to (7)
Article 14(8) <i>introductory wording</i>	Article 18(8) <i>introductory wording</i>
Article 14(8) <i>first subparagraph first indent</i>	Article 18(8) <i>first subparagraph point (a)</i>
Article 14(8) <i>first subparagraph second indent</i>	—
Article 14(8) <i>first subparagraph third and fourth indents</i>	Article 18(8) <i>first subparagraph points (b) and (c)</i>
Article 14(8) <i>second subparagraph</i>	Article 18(8) <i>second subparagraph</i>
Article 15	Article 19
—	Article 20
Article 16(1) <i>introductory wording</i>	Article 21(1) <i>introductory wording</i>
Article 16(1)(a)	—
Article 16(1)(a) <i>first, second and third indents</i>	Article 21(1) <i>points a, b and c</i>
Article 16(1)(b)	—
—	Article 21(2)
Article 16(2)	—
Article 16(3) to (5)	Article 21(3) to (5)
Article 17(1)	Article 22(1) <i>first subparagraph</i>
—	Article 22(1) <i>second subparagraph</i>
Article 17(2)	—
—	Article 22(2)

Thursday 7 May 2009

Directive 2003/9/EC	This Directive
Article 18(1)	Article 23(1)
—	Article 23(2) and (3)
Article 18(2)	Article 23(4)
Article 19	Article 24
Article 20	Article 25(1)
—	Article 25(2)
Article 21(1)	Article 26(1)
—	Article 26(2) first subparagraph
Article 21(2)	Article 26(2) second subparagraph
Article 22	—
—	Article 27
Article 23	Article 28(1)
—	Article 28(2)
Article 24	Article 29
Article 25	Article 30
Article 26	Article 31
—	Article 32
Article 27	Article 33 first subparagraph
—	Article 33 second subparagraph
Article 28	Article 34
—	Annex I
—	Annex II
—	Annex III

Thursday 7 May 2009

Applications for international protection lodged in one of the Member States by third-country nationals or stateless persons (recast) *I**

P6_TA(2009)0377

European Parliament legislative resolution of 7 May 2009 on the proposal for a regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) (COM(2008)0820 – C6-0474/2008 – 2008/0243(COD))

(2010/C 212 E/52)

(Codecision procedure – recast)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0820),
 - having regard to Article 251(2) and Article 63(1)(a) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0474/2008),
 - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts ⁽¹⁾,
 - having regard to the letter of 3 April 2009 from the Committee on Legal Affairs to the Committee on Civil Liberties, Justice and Home Affairs in accordance with Rule 80a(3) of its Rules of Procedure,
 - having regard to Rules 80a and 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0284/2009),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance,
1. Approves the Commission proposal as adapted to the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission and as amended below;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and the Commission.

⁽¹⁾ OJ C 77, 28.3.2002, p. 1.

Thursday 7 May 2009

P6_TC1-COD(2008)0243

Position of the European Parliament adopted at first reading on 7 May 2009 with a view to the adoption of Regulation (EC) No .../2009 of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63, first paragraph, point (1)(a) 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) A number of substantive changes are to be made to Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national ⁽⁴⁾. In the interests of clarity, that Regulation should be recast.
- (2) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Community.
- (3) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of *non-refoulement*. In this respect, and without affecting the responsibility criteria laid down in this Regulation, Member States, *which all respect the principle of non-refoulement*, are considered as safe countries for third-country nationals.
- (4) The Tampere conclusions also stated that this system should include, in the short term, a clear and workable method for determining the Member State responsible for the examination of an asylum application.
- (5) Such a method should be based on objective, fair criteria both for the Member States and for the persons concerned. It should, in particular, make it possible to determine rapidly the Member State responsible, so as to *ensure* effective access to the procedures for determining international protection status and not to compromise the objective of the rapid processing of applications for international protection.

⁽¹⁾ OJ C ...

⁽²⁾ OJ C ...

⁽³⁾ *Position of the European Parliament of 7 May 2009.*

⁽⁴⁾ OJ L 50, 25.2.2003, p. 1.

Thursday 7 May 2009

- (6) **As regards the introduction in successive phases of a Common European Asylum System that should lead, in the longer term, to a common procedure and a uniform status valid throughout the Union for those granted asylum, it is appropriate at this stage, while making the necessary improvements in the light of experience, to confirm the principles underlying the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, signed in Dublin on 15 June 1990 (the Dublin Convention), whose implementation has stimulated the process of harmonising asylum policies.**
- (7) The first phase in the creation of a Common European Asylum System || has now been *completed*. The European Council of 4 November 2004 adopted The Hague Programme, which sets the objectives to be implemented in the area of freedom, security and justice in the period 2005-2010. In this respect, the Hague Programme invited the || Commission to conclude the evaluation of the first phase legal instruments and to submit the second-phase instruments and measures to the Council and the European Parliament with a view to their adoption before 2010.
- (8) **The services of the Member States responsible for asylum should receive practical aid to meet their day-to-day operational requirements. Here the European Asylum Support Office, established by Regulation (EC) No .../... of ... ⁽¹⁾, has a vital role to play.**
- (9) In the light of the results of the evaluations undertaken, it is appropriate, at this stage, to confirm the principles underlying Regulation (EC) No 343/2003, while making the necessary improvements in the light of experience to enhance the effectiveness of the system and the protection granted to applicants for international protection under this procedure.
- (10) *With a view to ensuring equal treatment for all applicants and beneficiaries of international protection, as well as in order to ensure consistency with current EU asylum acquis, in particular with 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⁾, it is appropriate to extend the scope of this Regulation in order to include applicants for subsidiary protection and persons enjoying subsidiary protection.*
- (11) In order to ensure equal treatment of all asylum seekers, Directive || .../.../EC || of the European Parliament and of the Council of ... [laying down minimum standards for the reception of asylum seekers] ⁽³⁾ should apply to the procedure regarding the determination of the Member State responsible as *prescribed* under this Regulation.
- (12) In accordance with the 1989 United Nations Convention on the Rights of the Child and the Charter of Fundamental Rights of the European Union, the best interests of the child should be a primary consideration of Member States in the application of this Regulation. In addition, specific procedural *safeguards* for unaccompanied minors should be laid down on account of their particular vulnerability.
- (13) In accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union, respect for family unity should be a primary consideration of Member States when applying this Regulation.
- (14) The processing together of the applications for international protection of the members of one family by a single Member State makes it possible to ensure that the applications are examined thoroughly and the decisions taken in respect of them are consistent and that the members of one family are not separated.

⁽¹⁾ OJ L ...

⁽²⁾ OJ L 304, 30.9.2004, p. 12.

⁽³⁾ OJ L ...

Thursday 7 May 2009

- (15) In order to ensure full respect for the principle of family unity and of the best interests of the child, the existence of a relationship of dependency between an applicant and his/her extended family on account of pregnancy or maternity, their state of health or great age, should become binding responsibility *criteria*. When the applicant is an unaccompanied minor, the presence of a relative on the territory of another Member State who can take care of him/her should also become a binding responsibility criterion.
- (16) Any Member State should be able to derogate from the responsibility criteria, in particular for humanitarian and compassionate reasons, and examine an application for international protection lodged with it or with another Member State, even if such examination is not its responsibility under the binding criteria laid down in *this* Regulation, provided that the Member State *concerned* and the applicant agree thereto.
- (17) A personal interview should be organised in order to facilitate the determination of the Member State responsible for examining an application for international protection and ■ to orally inform applicants about the application of this Regulation.
- (18) In accordance in particular with Article 47 of the Charter of Fundamental Rights of the European Union, legal safeguards and the right to an effective remedy in respect of decisions regarding transfers to the Member State responsible should be established to *ensure* effective protection of the rights of the individuals concerned.
- (19) In accordance with the case-law of the European Court of Human Rights, *an* effective remedy should cover both the examination of the application of this Regulation and of the legal and factual situation in the Member State to which the applicant is transferred in order to ensure that international law is respected.
- (20) ***For the purposes of this Regulation ‘detention’ should not carry a penal or punitive connotation, but should mean an exclusively administrative and temporary measure equivalent to a holding operation.***
- (21) Detention of asylum seekers should be applied in line with the underlying principle that a person should not be held in detention for the sole reason that he/she is seeking international protection. In particular, detention of asylum seekers must be applied in line with Article 31 of the Geneva Convention ***in administrative holding centres distinct from prison facilities*** and under the clearly defined exceptional circumstances and *safeguards* prescribed in Directive ■ .../.../EC ■ [laying down minimum standards for the reception of asylum seekers]. Moreover, the use of detention for the purpose of transfer to the Member State responsible should be limited and subject to the principle of proportionality with regard to the means taken and objective pursued.
- (22) In accordance with Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 ⁽¹⁾, transfers to the Member State responsible may be carried out on a voluntary basis, by supervised departure or under escort. Member States should promote voluntary transfers and should ensure that supervised or escorted transfers are undertaken in a *humane* manner, in full *compliance with* fundamental rights and human dignity.
- (23) The progressive creation of an area without internal frontiers in which free movement of persons is guaranteed in accordance with the Treaty ■ and the establishment of Community policies regarding the conditions of entry and stay of third country nationals, including common efforts towards the management of external borders, *make* it necessary to strike a balance between responsibility criteria in a spirit of solidarity.

(1) OJ L 222, 5.9.2003, p. 3.

Thursday 7 May 2009

- (24) The application of this Regulation may, in certain circumstances, create additional burdens on Member States faced with a particularly urgent situation which places an exceptionally heavy pressure on their reception capacities, asylum system or infrastructure. In such circumstances, it is necessary to lay down an efficient procedure to allow the temporary suspension of transfers towards the Member State concerned and to provide financial assistance, in accordance with existing EU financial instruments. The temporary suspension of Dublin transfers can thus contribute to *achieving* a higher degree of solidarity towards those Member States facing particular pressures on their asylum systems, due in particular to their geographical or demographic situation.
- (25) *The procedure for the suspension of transfers should also be applied when the Commission considers that the level of protection for applicants for international protection in a given Member State is not in conformity with Community legislation on asylum, in particular in terms of reception conditions, **qualification for international protection** and access to the asylum procedure, with a view to ensuring that all applicants for international protection benefit from an adequate level of protection in all Member States.*
- (26) *The procedure for the suspension of transfers is an exceptional measure to address issues of particular pressure or ongoing protection concerns.*
- (27) *The Commission should periodically review progress toward improving the long-term development and harmonisation of the Common European Asylum System, and the degree to which solidarity measures and the availability of a suspension procedure are facilitating that progress, and report on that progress.*

In view of the fact that the Dublin system was not intended to be a mechanism for equitably sharing responsibilities with regard to the examination of applications for international protection, and that a number of Member States are particularly exposed to migratory flows, in particular by virtue of their geographical location, it is essential to reflect on and propose legally binding instruments to ensure greater solidarity between Member States and higher standards of protection. Such instruments should especially facilitate the secondment of officials from other Member States to assist those Member States which are faced with specific pressures and where applicants cannot benefit from adequate standards of protection and, where the reception capacities of one Member State are insufficient, facilitate the resettlement of beneficiaries of international protection in other Member States, providing that those concerned consent and that their fundamental rights are respected.

- (28) 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⁾ applies to the processing of personal data by the Member States in application of this Regulation.
- (29) The exchange of applicant's personal data, including sensitive data concerning health, to be transferred before a transfer is carried out will ensure that the competent asylum authorities are in a position to provide applicants with adequate assistance and to ensure continuity in the protection and rights afforded to them. Special provision should be made to ensure the protection of data relating to applicants involved in this situation, in conformity with Directive 95/46/EC.
- (30) The application of this Regulation can be facilitated, and its effectiveness increased, by bilateral arrangements between Member States for improving communication between competent departments, reducing time limits for procedures or simplifying the processing of requests to take charge or take back, or establishing procedures for the performance of transfers.

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

Thursday 7 May 2009

- (31) Continuity between the system for determining the Member State responsible established by the Regulation (EC) No 343/2003 and the system established by this Regulation should be ensured. Similarly, consistency should be ensured between this Regulation and Regulation (EC) No .../... of the European Parliament and of the Council of ... [concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EC) No .../... establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person] ⁽¹⁾.
- (32) The operation of the Eurodac system, as established by Regulation (EC) No .../... [concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EC) No .../... establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person] and in particular the implementation of Articles 6 and 10 thereof should facilitate the application of this Regulation.
- (33) The operation of the Visa Information System, as established by Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas ⁽²⁾, and in particular the implementation of Articles 21 and 22 thereof, should facilitate the application of this Regulation.
- (34) With respect to the treatment of persons falling within the scope of this Regulation, Member States are bound by obligations under instruments of international law to which they are party.
- (35) 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 ⁽³⁾.
- (36) In particular, the Commission should be empowered to adopt the conditions and procedures for implementing the provisions regarding unaccompanied minors and the reunification of dependent relatives and to adopt the criteria necessary for carrying out transfers. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (37) The measures necessary for the implementation of Regulation (EC) No 343/2003 have been adopted by Regulation (EC) No 1560/2003. Certain provisions of Regulation (EC) No 1560/2003 should be incorporated into this Regulation, for reasons of clarity or because they can serve a general objective. In particular, it is important both for the Member States and for the asylum seekers concerned that there should be a general mechanism for finding a solution in cases where Member States differ over the application of a provision of this Regulation. It is therefore justified to incorporate the mechanism provided for in Regulation (EC) No 1560/2003 for the settling of disputes on the humanitarian clause into this Regulation and to extend its scope to the whole of this Regulation.
- (38) The effective monitoring of the application of this Regulation requires that it be evaluated at regular intervals.
- (39) This Regulation respects the fundamental rights and observes the principles which are acknowledged in particular in the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to ensure full observance of the right to asylum guaranteed by Article 18 and to promote the application of Articles 1, 4, 7, 24 and 47 of the Charter and should be applied accordingly.

⁽¹⁾ OJ L ...

⁽²⁾ OJ L 218, 13.8.2008, p. 60.

⁽³⁾ OJ L 184, 17.7.1999, p. 23.

Thursday 7 May 2009

- (40) Since the objective of *this Regulation*, namely the establishment of criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, cannot be sufficiently achieved by the Member States and, given its scale and effects, can therefore be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT-MATTER AND DEFINITIONS

Article 1

Subject-matter

This Regulation lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

Article 2

Definitions

For the purposes of this Regulation:

- (a) 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty ^{||} and who is not a person enjoying the Community right of free movement, as defined in Article 2(5) of Regulation (EC) No 562/2006 of the European Parliament and of the Council ⁽¹⁾;
- (b) 'application for international protection' means an application for international protection as defined in Article 2(g) of Directive 2004/83/EC;
- (c) 'applicant' or 'asylum seeker' means a third country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;
- (d) 'examination of an application for international protection' means any examination of, or decision or ruling concerning, an application for international protection by the competent authorities in accordance with Council Directive 2005/85/EC ⁽²⁾, except for procedures for determining the Member State responsible in accordance with this Regulation, and Directive 2004/83/EC;
- (e) 'withdrawal of an application for international protection' means the actions by which the applicant terminates the procedures initiated by the submission of his/her application for international protection, in accordance with Directive 2005/85/EC, either *expressly* or *impliedly*;
- (f) 'person granted international protection' means a third-country national or a stateless person recognised as *being* in need of international protection as defined in Article 2(a) of Directive 2004/83/EC;
- (g) 'minor' means a third-country national or a stateless person below the age of 18 years;

⁽¹⁾ OJ L 105, 13.4.2006, p.1.

⁽²⁾ OJ L 326, 13.12.2005, p. 13.

Thursday 7 May 2009

- (h) 'unaccompanied minor' means a minor who arrives in the territory of the Member States unaccompanied by an adult responsible for *him/her* whether by law or by custom, and for as long as *he/she* is not effectively taken into the care of such a person; it includes minors who are left unaccompanied after they have entered the territory of Member States;
- (i) 'family members' means, insofar as the family already existed in the country of origin, the following members of the applicant's family who are present in the territory of the Member States:
- the spouse of the asylum seeker or his or her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to *foreigners*;
 - the minor children of couples referred to in *the first indent* or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under the national law;
 - the married minor children of couples referred to in *the first indent* or of the applicant, regardless of whether they were born in or out of wedlock or adopted as defined under the national law **and provided they are not accompanied by their spouses**, where it is in their best interests to reside with the applicant;
 - the father, mother or guardian of the applicant when the *applicant* is a minor and unmarried, or when *he/she* is a minor and married **and not accompanied by his/her spouse** but it is in his/her best interests to reside with his/her father, mother or guardian;
 - the minor unmarried siblings of the applicant, when the *applicant* is a minor and unmarried, or when the applicant or his/her siblings are minors and married **and not accompanied by his/her spouse** but it is in the best interests of one or more of them that they reside together;
- (j) 'residence document' means any authorisation issued by the authorities of a Member State authorising a third-country national or a stateless person to stay in its territory, including the documents substantiating the authorisation to remain in the territory under temporary protection arrangements or until the circumstances preventing a removal order from being carried out no longer apply, with the exception of visas and residence authorisations issued during the period required to determine the responsible Member State as established in this Regulation or during examination of an application for international protection or an application for a residence permit;
- (k) 'visa' means the authorisation or decision of a Member State required for transit or entry for an intended stay in that Member State or in several Member States. The nature of the visa shall be determined in accordance with the following definitions:
- (i) 'long-stay visa' means the authorisation or decision of a Member State required for entry for an intended stay in that Member State of more than three months;
 - (ii) 'short-stay visa' means the authorisation or decision of a Member State required for entry for an intended stay in that Member State or in several Member States for a period whose total duration does not exceed three months;
 - (iii) 'transit visa' means the authorisation or decision of a Member State for entry for transit through the territory of that Member State or several Member States, except for transit at an airport;
 - (iv) 'airport transit visa' means the authorisation or decision allowing a third-country national specifically subject to *such a* requirement to pass through the transit zone of an airport, without gaining access to the national territory of the Member State concerned, during a stopover or a transfer between two legs of an international flight;

Thursday 7 May 2009

- (l) 'risk of absconding' means the existence of reasons in an individual case, which are based on objective criteria defined by law, to believe that an applicant or a third-country national or a stateless person who is subject to a transfer decision may abscond.

CHAPTER II

GENERAL PRINCIPLES AND SAFEGUARDS

Article 3

Access to the procedure for examining an application for international protection

1. Member States shall examine any application for international protection by a third-country national or a stateless person who applies on the territory of any one of them, including at the border or in a transit zone. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter III of this Regulation indicate is responsible.
2. Where no Member State responsible for examining the application for international protection can be designated on the basis of the criteria listed in this Regulation, the first Member State with which the application for international protection is lodged shall be responsible for examining it.
3. Any Member State shall retain the right to send an asylum seeker to a safe third country, subject to the rules and safeguards laid down in Directive 2005/85/EC.

Article 4

Right to information

1. As soon as an application for international protection is lodged, the competent authorities of Member States shall inform the asylum seeker of the application of this Regulation, and in particular of:
 - (a) the objectives of this Regulation and the consequences of making another application in a different Member State;
 - (b) the criteria for allocating responsibility and their hierarchy;
 - (c) the general procedure and time-limits to be followed by the Member States;
 - (d) the possible outcomes of the procedure and their consequences;
 - (e) the possibility to challenge a transfer decision;
 - (f) the fact that the competent authorities *may* exchange data on him/her for the sole purpose of implementing the obligations arising under this Regulation;
 - (g) **■** the right of access to data relating to him/her, and the right to request that inaccurate data relating to him/her be corrected or that unlawfully processed data relating to him/her be deleted, **as well as** the procedures for exercising those rights, **including** the contact details **of the authorities referred to in Article 34 and** of the National Data Protection Authorities which shall hear claims concerning the protection of personal data.
2. The information referred to in paragraph 1 shall be provided in writing in a language that the applicant **understands or may** reasonably **be presumed** to understand. Member States shall use the common leaflet drawn up pursuant to paragraph 3 for that purpose.

Thursday 7 May 2009

For the proper understanding of the applicant, the information shall also be supplied orally, at the interview *arranged* pursuant to Article 5.

Member States shall provide the information in a manner appropriate to the age of the applicant.

3. A common leaflet containing at least the information referred to in paragraph 1 shall be drawn up in accordance with the *regulatory* procedure referred to in *Article 41(2)*.

Article 5

Personal interview

1. The Member State carrying out the process of determining the Member State responsible under this Regulation shall **call the** applicants **for** a personal interview with a qualified person under national law to conduct such an interview.

2. The personal interview shall **have** the purpose of facilitating the process of determining the Member State responsible, in particular **■** allowing the applicant to submit *the* relevant information necessary for the correct identification of the responsible Member State, **as well as** the purpose of informing the applicant orally about the application of this Regulation.

3. The personal interview shall take place in a timely manner following the lodging of an application for international protection and, in any event, before any decision is taken to transfer the applicant to the responsible Member State pursuant to Article 25(1).

4. The personal interview shall take place in a language that the applicant **understands or may** reasonably **be presumed to** understand and in which he/she is able to communicate. Where necessary, Member States shall select an interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the personal interview.

5. The personal interview shall take place under conditions which ensure appropriate confidentiality.

6. The Member State conducting the personal interview shall make a short written report containing the main information supplied by the applicant at the interview and shall make a copy of that report available to the applicant. The report shall be attached to any transfer decision pursuant to Article 25(1).

Article 6

Guarantees for minors

1. The best interests of the child shall be a primary consideration for Member States with respect to all procedures provided for in this Regulation.

2. Member States shall ensure that a representative **within the meaning of Article 2(i) of Directive 2005/85/EC** represents and/or assists the unaccompanied minor with respect to all procedures provided for in this Regulation. This representative may also be the representative referred to in *Article 24 of Directive .../.../EC* **||** [laying down minimum standards for the reception of asylum seekers].

3. In assessing the best interests of the child, Member States shall closely cooperate with each other and shall, in particular, take due account of the following factors:

(a) family reunification possibilities;

(b) the minor's well-being and social development, taking into particular consideration the minor's ethnic, religious, cultural and linguistic background;

Thursday 7 May 2009

(c) safety and security considerations, in particular where there is a risk of the child being a victim of trafficking;

(d) the views of the minor, in accordance with his/her age and maturity.

4. Member States shall establish procedures **■** for tracing the family members or other relatives present in the Member States of unaccompanied minors, **where necessary with the assistance of international or other relevant organisations**. They shall start to trace the members of the unaccompanied minor's family or other relatives as soon as possible after the lodging of the application for international protection *while* protecting his/her best interests.

5. The competent authorities referred to in *Article 34* who deal with requests concerning unaccompanied minors shall receive appropriate training concerning the specific needs of minors.

6. Within the framework of the application of this Regulation and under the conditions laid down in Article 17 of Directive 2005/85/EC, Member States may use medical examinations to determine the age of unaccompanied minors.

In cases where medical examinations are used, Member States shall ensure that they are conducted in a reasonable and thorough manner, as required by scientific and ethical standards.

CHAPTER III

CRITERIA FOR DETERMINING THE MEMBER STATE RESPONSIBLE

Article 7

Hierarchy of criteria

1. The criteria for determining the Member State responsible shall be applied in the order in which they are set out in this Chapter.

2. The Member State responsible in accordance with the criteria set out in this Chapter shall be determined on the basis of the situation *existing* when the asylum seeker first lodged his/her application for international protection with a Member State.

■

Article 8

Unaccompanied minors

1. Where the applicant is an unaccompanied minor, the Member State responsible for examining the application for international protection shall be that where a member of his or her family is legally present, provided that this is in the best interests of the minor.

2. Where the applicant is an unaccompanied minor who has ***no family members within the meaning of Article 2(i) legally present in another Member State but who has another*** relative legally present in another Member State who can take care of him or her, that Member State shall be responsible for examining the application, provided that this is in the best interests of the minor.

3. Where members of the applicant's family or his/her other relatives are legally present in more than one Member State, the Member State responsible for examining the application shall be decided on the basis of what is in the best interests of the minor.

Thursday 7 May 2009

4. In the absence of a family member or of another relative, the Member State responsible for examining the application shall be that where the minor has lodged his or her application for international protection, provided that this is in the best interest of the minor.

5. The conditions and procedures for implementing paragraphs 2 and 3 shall be adopted by the Commission. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 41(3).

Article 9

Family members who are persons granted international protection

Where the asylum seeker has a family member, regardless of whether the family was previously formed in the country of origin, who has been allowed to reside as a person granted international protection in a Member State, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.

Article 10

Family members who are applicants for international protection

If the asylum seeker has a family member in a Member State whose application for international protection in that Member State has not yet been the subject of a first decision regarding the substance, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.

Article 11

Dependent relatives

1. Where the asylum seeker is dependent on the assistance of a relative on account of pregnancy or a new-born child, serious illness, severe *disability* or old age, or where a relative is dependent on the assistance of the asylum seeker for the same reasons, the Member State responsible for examining the application shall be the one considered the most appropriate for keeping them together or reunifying them, provided that family ties existed in the country of origin and that the persons concerned expressed their desire in writing. In determining the most appropriate Member State, the best interests of the persons concerned shall be taken into account, such as the ability of the dependent person to travel.

2. The conditions and procedures for implementing paragraph 1 shall be adopted by the Commission. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 41(3).

Article 12

Family procedure

Where several members of a family submit applications for international protection in the same Member State simultaneously, or on dates close enough for the procedures for determining the Member State responsible to be conducted together, and where the application of the criteria set out in this Regulation would lead to them being separated, the Member State responsible shall be determined on the basis of the following provisions:

- (a) responsibility for examining the applications for international protection of all the members of the family shall lie with the Member State which the criteria indicate is responsible for taking charge of the largest number of family members;
- (b) failing this, responsibility shall lie with the Member State which the criteria indicate is responsible for examining the application of the oldest of them.

Thursday 7 May 2009

Article 13

Issuing of residence documents or visas

1. Where the asylum seeker is in possession of a valid residence document, the Member State which issued the document shall be responsible for examining the application for international protection.
2. Where the asylum seeker is in possession of a valid visa, the Member State which issued the visa shall be responsible for examining the application for international protection, unless the visa was issued *on behalf of* or on the written authorisation of another Member State. In such a case, *that other* Member State shall be responsible for examining the application for international protection. Where a Member State first consults the central authority of another Member State, in particular for security reasons, the latter's reply to the consultation shall not constitute written authorisation within the meaning of this provision.
3. Where the asylum-seeker is in possession of more than one valid residence document or visa issued by different Member States, the responsibility for examining the application for international protection shall be assumed by the Member States in the following order:
 - (a) the Member State which issued the residence document conferring the right to the longest period of *residence* or, where the periods of validity are identical, the Member State which issued the residence document having the latest expiry date;
 - (b) the Member State which issued the visa having the latest expiry date where the various visas are of the same type;
 - (c) where visas are of different kinds, the Member State which issued the visa having the longest period of validity, or, where the periods of validity are identical, the Member State which issued the visa having the latest expiry date.
4. Where the asylum seeker is in possession only of one or more residence documents which have expired less than two years previously or one or more visas which have expired less than six months previously and which enabled him/her actually to enter the territory of a Member State, paragraphs 1, 2 and 3 shall apply for such time as the applicant has not left the *territory* of the Member States.

Where the asylum seeker is in possession of one or more residence documents which have expired more than two years previously or one or more visas which have expired more than six months previously and enabled him/her actually to enter the territory of a Member State and where he/she has not left the *territory* of the Member States, the Member State in which the application for international protection is lodged shall be responsible.

5. The fact that the residence document or visa was issued on the basis of a false or assumed identity or on submission of forged, counterfeit or invalid documents shall not prevent responsibility being allocated to the Member State which issued it. However, the Member State issuing the residence document or visa shall not be responsible if it is *able to* establish that fraud was committed after the document or visa had been issued.

Article 14

Entry and/or stay

1. Where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) of this Regulation, including the data referred to in Chapter III of Regulation (EC) No .../... [concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of || Regulation || (EC) No || .../... *establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person*], that an asylum seeker has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for international protection. *Such* responsibility shall cease 12 months after the date on which the irregular border crossing took place.

Thursday 7 May 2009

2. When a Member State cannot or can no longer be held responsible in accordance with paragraph 1, and where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 22(3), that the asylum seeker - who has entered the *territory* of the Member States irregularly or whose circumstances of entry cannot be established - has been living for a continuous period of at least five months in a Member State before lodging the application for international protection, that Member State shall be responsible for examining the application for international protection.

If the applicant has been living for periods of time of at least five months in several Member States, the Member State where *he/she* has *lived* most recently shall be responsible for examining the application for international protection.

Article 15

Visa waived entry

1. If a third-country national or a stateless person enters into the territory of a Member State in which the need for him or her to have a visa is waived, that Member State shall be responsible for examining his or her application for international protection.

2. The principle set out in paragraph 1 *shall* not apply if the third-country national or the stateless person lodges his or her application for international protection in another Member State, in which the need for him or her to have a visa for entry into the territory is also waived. In *that case*, *that other* Member State shall be responsible for examining the application for international protection.

Article 16

Application in an international transit area of an airport

Where the application for international protection is made in *the* international transit area of an airport of a Member State by a third-country national or a stateless person, that Member State shall be responsible for examining the application.

CHAPTER IV

DISCRETIONARY CLAUSES

Article 17

Discretionary clauses

1. By way of derogation from Article 3 || (1) || each Member State may, in particular for humanitarian and compassionate reasons, decide to examine an application for international protection lodged with it by a third-country national or a stateless person, even if such examination is not its responsibility under the criteria laid down in this Regulation, provided that the applicant agrees thereto.

In such an event, that Member State shall become the Member State responsible within the meaning of this Regulation and shall assume the obligations associated with that responsibility. Where applicable, it shall inform the Member State previously responsible, the Member State conducting a procedure for determining the Member State responsible or the Member State which has been requested to take charge of or take back the applicant by using the 'DubliNet' electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003.

The Member State becoming responsible in accordance with this paragraph shall also forthwith indicate in *Eurodac* that it *has* assumed responsibility pursuant to Article 6(3) of Regulation (EC) No || .../... || [concerning the establishment of '*Eurodac*' for the comparison of fingerprints for the effective application of || Regulation (EC) No .../... *establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person*].

Thursday 7 May 2009

2. The Member State in which an application for international protection is made and which is carrying out the process of determining the Member State responsible, or the Member State responsible, may, at any time, request another Member State to take charge of an applicant in order to bring together family members, as well as other relatives, on humanitarian grounds based in particular on family or cultural considerations, even where *that other* Member State is not responsible under the criteria laid down in Articles 8 to 12 ¶. The persons concerned must express their consent in writing.

The request to take charge shall contain all the material in the possession of the requesting Member State to allow the requested Member State to assess the situation.

The requested Member State shall carry out any necessary checks to substantiate the humanitarian reasons cited, and shall give a decision on the request within two months of the date on which the request was received. A decision refusing the request shall state the reasons on which it is based.

Where the requested Member State accepts the request, responsibility for examining the application shall be transferred to it.

CHAPTER V

OBLIGATIONS OF THE MEMBER STATE RESPONSIBLE

Article 18

Obligations of the Member State responsible

1. The Member State responsible for examining an application for international protection under this Regulation shall be obliged to:

- (a) take charge, under the conditions laid down in Articles 21, 22 and 28, of an asylum seeker who has lodged an application in a different Member State;
- (b) take back, under the conditions laid down in Articles 23, 24 and 28, an applicant whose application is under examination and who made an application in another Member State or who is in the territory of another Member State without a residence document;
- (c) take back, under the conditions laid down in Articles 23, 24 and 28, an applicant who has withdrawn the application under examination and made an application in another Member State;
- (d) take back, under the conditions laid down in Articles 23, 24 and 28, a third-country national or a stateless person whose application has been rejected and who made an application in another Member State or who is in the territory of another Member State without a residence document.

2. The Member State responsible shall in all circumstances referred to in paragraph 1(a) to (d) examine or complete the examination of the application for international protection made by the applicant, within the meaning of Article 2(d). When the Member State responsible *had* discontinued the examination of an application following its withdrawal by the applicant, it shall revoke that decision and complete the examination of the application, within the meaning of Article 2(d).

Article 19

Cessation of responsibilities

1. Where a Member State issues a residence document to the applicant, the obligations specified in Article 18(1), shall be transferred to that Member State.

Thursday 7 May 2009

2. The obligations specified in Article 18(1), shall cease where the Member State responsible for examining the application can establish, when requested to take charge or take back an applicant or another person as referred to in Article 18(1)(d), that the person concerned has left the territory of the Member States for at least three months, unless the person concerned is in possession of a valid residence document issued by the Member State responsible.

An application lodged after such an absence shall be regarded as a new application giving rise to a new procedure for the determination of the Member State responsible.

3. The obligations specified in Article 18(1)(c) and (d), shall cease where the Member State responsible for examining the application can establish, when requested to take back an applicant or another person as referred to in Article 18(1)(d), that the person concerned has left the territory of the Member States in compliance with a return decision or removal order *which* it issued following the withdrawal or rejection of the application.

An application lodged after an effective removal shall be regarded as a new application giving rise to a new procedure for the determination of the Member State responsible.

CHAPTER VI

PROCEDURES FOR TAKING CHARGE AND TAKING BACK

Section I

Start of the procedure

Article 20

Start of the procedure

1. The process of determining the Member State responsible under this Regulation shall start as soon as an application for international protection is first lodged with a Member State.

2. An application for international protection shall be deemed to have been lodged once a form submitted by the applicant or a report prepared by the authorities has reached the competent authorities of the Member State concerned. Where an application is not made in writing, the time elapsing between the statement of intention and the preparation of a report should be as short as possible.

3. For the purposes of this Regulation, the situation of a minor who is accompanying the asylum seeker and meets the definition of a family member set out in Article 2 || (i) shall be indissociable from that of his/her parent or guardian and shall be a matter for the Member State responsible for examining the application for international protection of that parent or guardian, even if the minor is not individually an asylum seeker, provided that this is in his/her best interests. The same treatment shall be applied to children born after the asylum seeker arrives in the territory of the Member States, without the need to initiate a new procedure for taking charge of them.

4. Where an application for international protection is lodged with the competent authorities of a Member State by an applicant who is in the territory of another Member State, the determination of the Member State responsible shall be made by the Member State in whose territory the applicant is present. The latter Member State shall be informed without delay by the Member State which received the application and shall then, for the purposes of this Regulation, be regarded as the Member State with which the application for international protection was lodged.

The applicant shall be informed in writing of this transfer and of the date on which it took place.

Thursday 7 May 2009

5. An asylum seeker who is present in another Member State *where he/she* lodges an application for international protection after withdrawing his/her first application made in a different Member State during the process of determining the Member State responsible shall be taken back, under the conditions laid down in Articles 23, 24 and 28, by the Member State with which that application for international protection was *first* lodged, with a view to completing the process of determining the Member State responsible for examining the application for international protection.

This obligation shall cease where the Member State requested to complete the process of determining the responsible Member State *is able to* establish that the asylum seeker has in the meantime left the *territory* of the Member States for a period of at least three months or has obtained a residence document from another Member State.

An application lodged after such an absence shall be regarded as a new application giving rise to a new procedure for the determination of the responsible Member State.

Section II

Procedures for take-charge requests

Article 21

Submitting a take charge request

1. Where a Member State with which an application for international protection has been lodged considers that another Member State is responsible for examining the application, it may, as quickly as possible and in any *event* within three months of the date on which the application was lodged within the meaning of Article 20(2), request the other Member State to take charge of the applicant.

Where the request to take charge of an applicant is not made within *that* period of three months, responsibility for examining the application for international protection shall lie with the Member State in which the application was lodged.

2. The requesting Member State may ask for an urgent reply in cases where the application for international protection was lodged after leave to enter or remain was refused, after an arrest for an unlawful stay or after the service or execution of a removal order and/or where the asylum seeker is *being* held in detention.

The request shall state the reasons warranting an urgent reply and the period within which a reply is expected. *That* period shall be at least one week.

3. In both cases, the request that charge be taken by another Member State shall be made using a standard form and including proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) and/or relevant elements from the asylum seeker's statement, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation.

The rules on the preparation of and the procedures for transmitting requests shall be adopted in accordance with the *regulatory* procedure referred to in Article 41(2).

Article 22

Replying to a take-charge request

1. The requested Member State shall make the necessary checks, and shall give a decision on the request to take charge of an applicant within two months of the date on which the request was received.

Thursday 7 May 2009

2. In the procedure for determining the Member State responsible for examining the application for international protection established in this Regulation, elements of proof and circumstantial evidence shall be used.
3. In accordance with the *regulatory* procedure referred to in *Article 41(2)* two lists shall be established and periodically reviewed, indicating the elements of proof and circumstantial evidence in accordance with the following criteria:
 - (a) Proof:
 - (i) This refers to formal proof which determines responsibility pursuant to this Regulation, as long as it is not refuted by proof to the contrary.
 - (ii) The Member States shall provide the Committee provided for in *Article 41* with models of the different types of administrative documents, in accordance with the typology established in the list of formal proofs.
 - (b) Circumstantial evidence:
 - (i) This refers to indicative elements which while being refutable may be sufficient, in certain cases, according to the *evidential* value attributed to them.
 - (ii) Their *evidential* value, in relation to the responsibility for examining the application for international protection, shall be assessed on a case-by-case basis.
4. The requirement of proof should not exceed what is necessary for the proper application of this Regulation.
5. If there is no formal proof, the requested Member State shall acknowledge its responsibility if the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility.
6. Where the requesting Member State has pleaded urgency in accordance with the provisions of *Article 21(2)*, the requested Member State shall make every effort to *comply with* the time limit requested. In exceptional cases, where it can be demonstrated that the examination of a request for taking charge of an applicant is particularly complex, the requested Member State may give its reply after the time limit requested, but in any *event* within one month. In such situations the requested Member State *shall* communicate its decision to postpone a reply to the requesting Member State within the time limit originally requested.
7. Failure to act within the two-month period mentioned in paragraph 1 and the one-month period mentioned in paragraph 6 shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the obligation to provide for proper *reception* arrangements ¶.

Section III

Procedures for take-back requests

Article 23

Submitting a take-back request

1. Where a Member State with which a subsequent application for international protection has been lodged or on whose territory an applicant or another person as referred to in *Article 18(1)(d)* is staying without a residence document, considers that another Member State is responsible in accordance with *Article 20(5)* and *Article 18(1)(b)*, (c) and (d), it may request that other Member State to take back that person.

Thursday 7 May 2009

2. In the event of a subsequent application for international protection, the request to take back the person concerned shall be made as quickly as possible and in any event within **one month** of receiving the Eurodac hit, pursuant to Article 6(6) of Regulation (EC) No .../... [concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EC) No .../... establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person].

If the request to take back the applicant who lodged a subsequent application for international protection is based on evidence other than data obtained from the Eurodac system, it shall be sent to the requested Member State within three months of the date on which the application for international protection was lodged within the meaning of Article 20(2).

3. Where there is no subsequent application for international protection, and if the requesting Member State decides to search the Eurodac system in accordance with Article 13 of Regulation (EC) No .../... [concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EC) No .../... establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person], the request to take back the person concerned shall be made as quickly as possible and in any event within **one month** of receiving the Eurodac hit, pursuant to Article 13(4) of that Regulation.

If the request to take back the person concerned is based on evidence other than data obtained from the Eurodac system, it shall be sent to the requested Member State within three months of the date on which the requesting Member State becomes aware that another Member State may be responsible for the person concerned.

4. Where the request to take back of an applicant or another person as referred to in Article 18(1)(d) is not made within the periods laid down in paragraphs 2 and 3 of this Article, responsibility for examining the application for international protection shall lie with the Member State in which the application was subsequently lodged or on whose territory the person is staying without a residence document.

5. The request for the applicant or for another person as referred to in Article 18(1)(d) to be taken back shall be made using a standard form and including proof or circumstantial evidence and/or relevant elements from the person's statements, enabling the authorities of the requested Member State to check whether it is responsible.

The rules of proof and evidence and their interpretation, and on the preparation of and the procedures for transmitting requests, shall be adopted in accordance with the regulatory procedure referred to in Article 41(2).

Article 24

Replying to a take back request

1. The requested Member State shall make the necessary checks and shall *issue* a decision on the request to take back the person concerned as quickly as possible and in any event no later than one month from the date on which the request was received. When the request is based on data obtained from the Eurodac system, *that* time limit shall be reduced to two weeks.

2. Failure to act within the one month period or the two weeks period mentioned in paragraph 1 shall be tantamount to accepting the request, and entail the obligation to take back the person concerned, including the obligation to provide for proper reception arrangements.

Thursday 7 May 2009

Section IV

Procedural safeguards

Article 25

Notification of a transfer decision

1. Where the requested Member State agrees to take charge or to take back an applicant or another person as referred to in Article 18(1)(d), the requesting Member State shall notify the person concerned of the decision to transfer him/her to the responsible Member State and, where applicable, *that it will not be* examining his/her application for international protection. Such notification shall be made in writing, in a language which the **applicant understands or may reasonably be presumed** to understand and within no more than 15 working days from the date of receipt of the reply from the requested Member State.

2. The decision referred to in paragraph 1 shall set out the grounds on which it is based, including a description of the main steps in the procedure leading to the decision. It shall contain information on available legal remedies and the time-limits applicable for *exercising* such remedies, as well as information on persons or entities that may provide specific legal assistance and/or representation to the person. It shall contain details of the time limit for carrying out the transfer and shall, if necessary, contain information on the place where, and the date on which, the person concerned should appear, if he/she is travelling to the responsible Member State by his/her own means. The time-limits for carrying out the transfer shall be set in order to allow the person a reasonable period of time to *exercise* a remedy in accordance with Article 26.

Article 26

Remedies

1. The applicant or another person as referred to in Article 18(1)(d) shall have the right to an effective judicial remedy, in the form of an appeal or a review, in fact and in law, of the transfer decision referred to in Article 25 before a court or tribunal.

2. Member States shall provide for a reasonable period of time within which the person concerned may exercise his/her right to an effective judicial remedy pursuant to paragraph 1.

That period of time shall not be less than 10 working days as from the date of notification referred to in Article 25(1).

3. In the event of an appeal or review concerning the transfer decision referred to in Article 25, the authority referred to in paragraph 1 of this Article shall, acting ***either at the request of the person concerned or, in the absence of such a request,*** ex-officio, decide, as soon as possible, and in any event no later than ***five*** working days from the lodging of an appeal or of *an application for review*, whether or not the person concerned may remain on the territory of the Member State concerned pending the outcome of his/her appeal or review.

4. No transfer shall take place before the decision referred to in paragraph 3 is taken. A decision not to allow the person concerned to remain on the territory of the Member State concerned pending the outcome of his/her appeal or review shall state the reasons on which it is based.

5. Member States shall ensure that the person concerned has access to legal assistance and/or representation and, where necessary, to linguistic assistance.

6. Member States shall ensure that ***the necessary*** legal assistance and/or representation ***is granted on request*** free of charge ***in accordance with Article 15(3) to (6) of Directive 2005/85/EC.***

Procedures for access to legal assistance and/or representation shall be laid down in national law.

Thursday 7 May 2009

Section V

Detention for the purpose of transfer

Article 27

Detention

1. Member States shall not hold a person in detention for the sole reason that he/she is an applicant for international protection in accordance with Directive 2005/85/EC.

2. Without prejudice to Article 8(2) of Directive \parallel .../.../EC \parallel [laying down minimum standards for the reception of asylum seekers], when it proves necessary, on the basis of an individual assessment of each case, \blacksquare Member States may detain an asylum-seeker or another person as referred to in Article 18(1)(d) of this Regulation, who is subject to a decision of transfer to the responsible Member State, **in a non-detention facility only if other less coercive measures have not been effective and**, only if there is a risk of his/her absconding.

3. When assessing the application of other less coercive measures for the purpose of paragraph 2, Member States shall take into consideration alternatives to detention such as regular reporting to the authorities, the deposit of a financial guarantee, an obligation to stay at a designated place or other measures to prevent the risk of absconding.

4. Detention pursuant to paragraph 2 may only be applied from the moment a decision of transfer to the responsible Member State has been notified to the person concerned in accordance with Article 25 until that person is transferred to the responsible Member State.

5. Detention pursuant to paragraph 2 shall be ordered for the shortest period possible. It shall be no longer than the time reasonably necessary to fulfil the required administrative procedures for carrying out a transfer.

6. Detention pursuant to paragraph 2 shall be ordered by judicial authorities. In urgent cases it may be ordered by administrative authorities, in which case the detention order shall be confirmed by judicial authorities within 72 hours from the beginning of the detention. Where the judicial authority finds detention to be unlawful, the person concerned shall be released immediately.

7. Detention pursuant to paragraph 2 shall be ordered in writing with reasons in fact and in law, in particular specifying the reasons on the basis of which it is considered that there is a \blacksquare risk of the person concerned absconding, as well as the time period of its duration.

Detained persons shall immediately be informed of the reasons for detention, the intended duration of the detention and the procedures laid down in national law for challenging the detention order, in a language which they **understand or may** reasonably **be presumed** to understand.

8. In every case of a *detention* pursuant to paragraph 2, the \blacksquare detention shall be reviewed by a judicial authority at reasonable intervals of time either on request by the person concerned or ex-officio. Detention shall never be unduly prolonged.

9. Member States shall ensure access to legal assistance and/or representation in cases of detention pursuant to paragraph 2 that shall be free of charge where the person concerned cannot afford the costs involved.

Procedures for access to legal assistance and/or representation in such cases shall be laid down in national law.

Thursday 7 May 2009

10. Minors shall not be detained unless it is in their best interests as prescribed in **Article 6(3)** of this Regulation and in accordance with an individual examination of their situation in accordance with Article 11(5) of Directive $\parallel \dots/\dots/EC \parallel$ [laying down minimum standards for the reception of asylum seekers].

11. Unaccompanied minors shall never be detained.

12. Member States shall ensure that asylum-seekers detained in accordance with this Article enjoy the same level of reception conditions for detained applicants as those laid down in particular in Articles 10 and 11 of Directive $\parallel \dots/\dots/EC \parallel$ [laying down minimum standards for the reception of asylum seekers].

Section VI

Transfers

Article 28

Arrangements and time-limits

1. The transfer of the applicant or of another person as referred to in Article 18(1)(d) from the requesting Member State to the responsible Member State shall be carried out in accordance with the national law of the requesting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request by another Member State to take charge or to take back the person concerned or of the final decision on an appeal or review where a suspensive effect is granted in accordance with Article 26(3).

If necessary, the asylum seeker shall be supplied by the requesting Member State with a laissez passer of the design adopted in accordance with the *regulatory* procedure referred to in Article 41(2).

The Member State responsible shall inform the requesting Member State, as appropriate, of the safe arrival of the person concerned or of the fact that he/she did not appear within the set time limit.

2. Where the transfer does not take place within the six months' time limit, the Member State responsible shall be relieved of its obligations to take charge or to take back the person concerned and responsibility shall then be transferred to the requesting Member State. *That* time limit may be extended up to a maximum of one year if the transfer could not be carried out due to *the* imprisonment of the person concerned or up to a maximum of 18 months if the person concerned absconds.

3. If a person has been transferred erroneously or a decision to transfer is overturned on appeal after the transfer has been carried out, the Member State which carried out the transfer shall promptly accept that person back.

4. The Commission may adopt supplementary rules on carrying out transfers. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 41(3).

Article 29

Costs of transfers

1. The costs necessary to transfer an applicant or another person as referred to in Article 18(1)(d) to the responsible Member State shall be met by the transferring Member State.

2. Where the person concerned has to be sent back to a Member State as a result of an erroneous transfer or of a transfer decision that has been overturned on appeal after the transfer has been carried out, the Member State which initially carried out the transfer shall be responsible for the costs of transferring the person concerned back to its territory.

Thursday 7 May 2009

3. Persons to be transferred pursuant to this Regulation shall not be required to meet the costs of such transfers.

4. Supplementary rules relating to the obligation of the *transferring* Member State to meet the costs of transfers may be adopted in accordance with the *regulatory* procedure referred to in *Article 41(2)*.

Article 30

Exchange of relevant information before transfers *are* carried out

1. In all cases of transfers, the transferring Member State shall inform the receiving Member State if the person concerned is fit for the transfer. Only persons who are fit for the transfer shall be transferred.

2. The Member State carrying out the transfer shall communicate to the responsible Member State such personal data concerning the applicant to be transferred as is appropriate, relevant and non-excessive for the sole purposes of ensuring that the competent asylum authorities in the responsible Member State are in a position to provide the applicant with adequate assistance, including the provision of necessary medical care, and to ensure continuity in the protection and rights afforded by this Regulation and by Directive || .../.../EC || [laying down minimum standards for the reception of asylum seekers]. That information shall be communicated at an early stage and at the latest seven working days before a transfer is carried out, except when the Member State becomes aware of it at a later stage.

3. Member States shall in particular exchange the following information:

(a) contact details of family members or of other relatives in the receiving Member State, where applicable;

(b) in the case of minors, information in relation to their level of education;

(c) information about the age of an applicant;

(d) any other information that the sending Member State deems essential in order to safeguard the rights and special needs of *an* applicant.

4. For the sole purpose of the provision of care or treatment, in particular *with respect to* disabled persons, elderly people, pregnant women, minors and persons *who* have been subject to torture, rape or other serious forms of psychological, physical and sexual violence, the transferring Member State shall transmit information about any special needs of the applicant to be transferred, which in specific cases may include information about the physical and mental health of the applicant to be transferred. The responsible Member State shall ensure that those special needs are adequately *met*, including in particular any essential medical care that may be required.

5. Any information mentioned in paragraph 4 shall only be transmitted by the transferring Member State to the responsible Member State after the *express* consent of the applicant and/or of his/*her* representative has been obtained or when necessary to protect the vital interests of the individual or of another person where he/*she* is physically or legally incapable of giving his/*her* consent. Once the transfer has been completed, *the* information shall be deleted immediately by the transferring Member State.

6. The processing of personal health data shall only be carried out by a health professional subject under national law or rules established by national competent bodies to the obligation of *medical confidentiality* or by another person subject to an equivalent obligation of *confidentiality*. *Such* health professionals and persons receiving and processing *the* information shall receive appropriate medical training as well as training regarding the appropriate processing of sensitive personal data relating to health.

Thursday 7 May 2009

7. The exchange of information under this Article shall only take place between the authorities notified to the Commission in accordance with *Article 34 of this Regulation* using the 'DubliNet' electronic communication network ¶. The authorities notified according to *Article 34* of this Regulation shall also specify the health professionals authorized to process the information mentioned in paragraph 4 of *this Article*. The information exchanged shall be used *only* for the purposes set out in *paragraphs 2 and 4* of this Article.

8. With a view to facilitating the exchange of information between Member States, a standard form for transferring the data required pursuant to this Article shall be adopted in accordance with the *regulatory procedure* laid down in *Article 41(2)*.

9. The rules laid down in *Article 33(8) to (12)* shall apply to the exchange of information pursuant to this Article.

Article 31

Method of carrying out transfers

1. *The Member State carrying out a transfer shall promote voluntary transfers by providing adequate information to the applicant.*

2. *If transfers to the Member State responsible are carried out by supervised departure or under escort, Member States shall ensure that they are carried out in a humane manner and with full respect for fundamental rights and human dignity.*

Section VII

Temporary suspension of transfers

Article 32

Temporary suspension of transfers

1. When a Member State is faced with a particularly urgent situation which places an exceptionally heavy burden on its reception capacities, asylum system or infrastructure, and when the transfer of applicants for international protection in accordance with this Regulation to that Member State could add to that burden, that Member State may request that such transfers be suspended.

The request shall be addressed to the Commission. It shall indicate the grounds on which it is based and shall in particular include:

- (a) a detailed description of the particularly urgent situation which places an exceptionally heavy burden on the requesting Member State's reception capacities, asylum system or infrastructure, including relevant statistics and supporting evidence;
- (b) a substantiated forecast of the likely evolution of *the* situation in the short-term;
- (c) a substantiated explanation of the further burden that the transfer of applicants for international protection in accordance with this Regulation could add to the requesting Member State's reception capacities, asylum system or infrastructure, including relevant statistics and other supporting evidence.

2. When the Commission considers that the circumstances prevailing in a Member State may lead to a level of protection for applicants for international protection which is not in conformity with Community legislation, in particular with Directive ¶ .../.../EC ¶ [laying down minimum standards for the reception of asylum seekers], Directive 2005/85/EC **and Directive 2004/83/EC**, it may decide in *accordance* with the procedure laid down in paragraph 4 that all transfers of applicants in accordance with this Regulation to the Member State concerned be suspended.

Thursday 7 May 2009

3. When a Member State is concerned that the circumstances prevailing in another Member State may lead to a level of protection for applicants for international protection which is not in conformity with Community legislation, in particular with Directive *...*/EC *...* [laying down minimum standards for the reception of asylum seekers], Directive 2005/85/EC **and Directive 2004/83/EC**, it may request that all transfers of applicants in accordance with this Regulation to the Member State concerned be suspended.

That request shall be addressed to the Commission. It shall indicate the grounds on which it is based and shall in particular include detailed information on the situation in the Member State *concerned*, indicating a possible lack of conformity with Community legislation, in particular Directive *...*/EC *...* [laying down minimum standards for the reception of asylum seekers], Directive 2005/85/EC **and Directive 2004/83/EC**.

4. Following the receipt of a request pursuant to paragraphs 1 or 3, or *on its own initiative* pursuant to paragraph 2, the Commission may decide that all transfers of applicants in accordance with this Regulation to the Member State concerned be suspended. Such decision shall be taken as soon as possible and at the latest one month following the receipt of a request. The decision to suspend transfers shall state the reasons on which it is based and shall in particular include:

- (a) an examination of all the relevant circumstances prevailing in the Member State *to* which transfers could be suspended;
- (b) an examination of the potential impact of the suspension of transfers on the other Member States;
- (c) the proposed date on which the suspension of transfers *would* take effect;
- (d) any particular conditions attached to such suspension;
- (e) ***indicia of measures, benchmarks and timetables to be established in order to assess progress toward resolution of the circumstances identified pursuant to point (a).***

5. The Commission shall notify the Council and the Member States of the decision to suspend all transfers of applicants in accordance with this Regulation to the Member State concerned. Any Member State may refer the decision of the Commission to the Council within one month from the receipt of the notification. The Council, acting by qualified majority, may take a different decision in one month from the date of the referral by a Member State.

6. Following the decision of the Commission to suspend transfers to a Member State, the other Member States in which the applicants whose transfers have been suspended are present shall be responsible for examining the applications for international protection of those persons.

The decision to suspend transfers to a Member State shall take due account of the need to ensure the protection of minors and of family unity.

7. A decision to suspend transfers to a Member State pursuant to paragraph 1 shall justify the granting of assistance for the emergency measures laid down in Article 5 of Decision No 573/2007/EC of the European Parliament and of the Council ⁽¹⁾, following a request for assistance from that Member State.

8. A Member State as referred to in paragraphs 1 to 3 shall take effective and timely steps to remedy the situation that led to the temporary suspension of transfers.

9. Transfers may be suspended for a period which *may not* exceed six months. Where the grounds for the measures still persist after six months, the Commission may decide, *on* a request from the Member State referred to *in* paragraph 1 or *on its own initiative*, to extend their application for a further six months period. **The provisions of paragraph 5 shall also be applicable.**

⁽¹⁾ OJ L 144, 6.6.2007, p. 1.

Thursday 7 May 2009

10. Nothing in this Article shall be interpreted as allowing Member States to derogate from their general obligation to take all appropriate measures, whether general or particular, to ensure fulfilment of their obligations arising out of Community legislation on asylum, in particular this Regulation, Directive || .../.../EC || [laying down minimum standards for the reception of asylum seekers], and Directive 2005/85/EC.

11. On a proposal by the Commission to the European Parliament and the Council, and acting in accordance with the procedure referred to in Article 251 of the Treaty, instruments shall be enacted, binding on all Member States, in order to provide effective support to those Member States which are faced with specific and disproportionate pressures on their national systems due, in particular, to their geographical or demographic situation. Those instruments shall enter into force no later than 31 December 2011 and in any event make provision for the following:

(a) the secondment of officials from other Member States, under the aegis of the European Asylum Support Office, to assist those Member States which are faced with specific pressures and where the applicants cannot benefit from adequate standards of protection;

(b) a scheme to reallocate beneficiaries of international protection from Member States which are faced with specific and disproportionate pressures to others, in consultation with the Office of the United Nations High Commissioner for Refugees, while ensuring that the reallocation follows non-discretionary, transparent and unequivocal rules.

12. This Article shall cease to apply as soon as the instruments referred to in paragraph 11 have entered into force, and in any event on 31 December 2011 at the latest.

13. As part of the monitoring and evaluation referred to in Article 42, the Commission shall review the application of this Article and report to the European Parliament and the Council no later than 30 June 2011. In its report, the Commission shall assess whether there is a justified need to extend the application of this Article beyond 31 December 2011. If the Commission considers it appropriate, it shall submit a proposal for such an extension to the European Parliament and the Council in accordance with the procedure laid down in Article 251 of the Treaty.

CHAPTER VII

ADMINISTRATIVE COOPERATION

Article 33

Information sharing

1. Each Member State shall communicate to any Member State that so requests such personal data concerning the asylum seeker as is appropriate, relevant and non-excessive for:

(a) the determination of the Member State responsible for examining the application for international protection;

(b) examining the application for international protection;

(c) implementing any obligation arising under this Regulation.

2. The information referred to in paragraph 1 may only cover:

(a) the personal details of the applicant, and, where appropriate, the members of his/her family (full name and where appropriate, former name; nicknames or pseudonyms; nationality, present and former; date and place of birth);

Thursday 7 May 2009

- (b) identity and travel papers (references, validity, date of issue, issuing authority, place of issue, etc.);
- (c) other information necessary for establishing the identity of the applicant, including fingerprints processed in accordance with Regulation (EC) No .../... ||[concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of || Regulation (EC) No .../... establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person];
- (d) places of residence and routes travelled;
- (e) residence documents or visas issued by a Member State;
- (f) the place where the application was lodged;
- (g) the date *on which* any previous application for international protection was lodged, the date *on which* the application was lodged, the stage reached in the proceedings and the decision taken, if any.

3. Furthermore, provided it is necessary for the examination of the application for international protection, the Member State responsible may request another Member State to let it know on what grounds the asylum seeker bases his/her application and, where applicable, the grounds for any decisions taken concerning the applicant. The Member State may refuse to respond to the request submitted to it, if the communication of such information *would be* likely to harm the essential interests of the Member State or the protection of the liberties and fundamental rights of the person concerned or of others. In any event, communication of the information requested shall be subject to the written approval of the applicant for international protection obtained by the requested Member State. In *such a* case, the applicant must know for what information he/she is giving his/her approval.

4. Any request for information shall || be sent *only* in the context of an individual application for international protection. It shall set out the grounds on which it is based and, where its purpose is to check whether there is a criterion that is likely to entail the responsibility of the requested Member State, shall state on what evidence, including relevant information from reliable sources on the ways and means *by which* asylum seekers enter the *territory* of the Member States, or on what specific and verifiable part of the applicant's statements it is based. It is understood that such relevant information from reliable sources is not in itself sufficient to determine the responsibility and the competence of a Member State under this Regulation, but it may contribute to the evaluation of other indications relating to the individual asylum seeker.

5. The requested Member State shall reply within four weeks. Any delays in the reply shall be duly justified. If the research carried out by the requested Member State which did not respect the maximum time-limit yields information which shows that it is responsible, that Member State may not invoke the expiry of the time-limit provided for in Articles 21 and 23 as a reason for refusing to comply with a request to take charge or take back.

6. The exchange of information shall be effected at the request of a Member State and may only take place between authorities whose designation by each Member State has been communicated to the Commission in accordance with *Article 34(1)*.

7. The information exchanged may be used *only* for the purposes set out in paragraph 1. In each Member State such information may, depending on its type and the powers of the *receiving* authority, be communicated *only* to the authorities and courts and tribunals entrusted with:

- (a) the determination of the Member State responsible for examining the application for international protection;

Thursday 7 May 2009

- (b) examining the application for international protection;
- (c) implementing any obligation arising under this Regulation.

8. The Member State which forwards the information shall ensure that it is accurate and up-to-date. If it transpires that that Member State has forwarded information which is inaccurate or which should not have been forwarded, the *receiving* Member States shall be informed thereof immediately. They shall be obliged to correct such information or to have it erased.

9. The asylum seeker shall have the right to be informed, on request, of any data that *are* processed concerning him/her.

If he/she finds that *the data have* been processed in breach of this Regulation or of Directive 95/46/EC, in particular because it is incomplete or inaccurate, he/she is entitled to have it corrected or erased.

The authority correcting or erasing the data shall inform, as appropriate, the Member State transmitting or receiving the information.

The asylum seeker shall have the right to bring an action or a complaint before the competent authorities or courts of the Member State which refused the right of access to or the right of correction or deletion of data relating to him/her.

10. In each Member State concerned, a record shall be kept, in the individual file for the person concerned and/or in a register, of the transmission and receipt of information exchanged.

11. The data exchanged shall be kept for a period not exceeding that which is necessary for the purposes for which *they are* exchanged.

12. Where the data *are* not processed automatically or *are* not contained, or intended to be entered, in a file, each Member State shall take appropriate measures to ensure compliance with this Article through effective checks.

Article 34

Competent authorities and resources

1. Each Member State shall notify the Commission without delay of the specific authorities responsible for fulfilling the obligations arising under this Regulation, and any amendments *hereto*. They shall ensure that those authorities have the necessary resources for carrying out their tasks and in particular for replying within the prescribed time limits to requests for information, requests to take charge of and requests to take back asylum seekers.

2. The Commission shall publish a consolidated list of the authorities referred to in paragraph 1 in the *Official Journal of the European Union*. Where there are amendments thereto, the Commission shall publish once a year an updated consolidated list.

3. The authorities referred to in paragraph 1 shall receive the necessary training with respect to the application of this Regulation.

4. Rules relating to the establishment of secure electronic transmission channels between the authorities mentioned in paragraph 1 for transmitting requests, replies and all written correspondence and ensuring that senders automatically receive an electronic proof of delivery shall be established in accordance with the *regulatory* procedure referred to in Article 41(2).

Thursday 7 May 2009

Article 35

Administrative arrangements

1. Member States may, on a bilateral basis, establish administrative arrangements between *each other* concerning the practical details of the implementation of this Regulation in order to facilitate its application and increase its effectiveness. Such arrangements may relate to:

- (a) exchanges of liaison officers;
- (b) simplification of the procedures and shortening of the time limits relating to *the* transmission and the examination of requests to take charge of or take back asylum seekers.

2. The arrangements referred to in paragraph 1 shall be communicated to the Commission. The Commission shall approve the arrangements referred to in paragraph 1(b), after it has verified that they do not infringe this Regulation.

CHAPTER VIII

Conciliation

Article 36

Conciliation

1. Where the Member States cannot resolve a dispute on any matter related to the application of this Regulation, they may have recourse to the conciliation procedure provided for in paragraph 2.

2. The conciliation procedure shall be initiated by a request from one of the Member States in dispute to the Chairman of the Committee set up by *Article 41*. By agreeing to use the conciliation procedure, the Member States concerned ***commit themselves to taking*** the utmost account of the solution proposed.

The Chairman of the Committee shall appoint three members of the Committee representing three Member States not connected with the matter. They shall receive the arguments of the parties either in writing or orally and, after deliberation, shall propose a solution within one month, where necessary after a vote.

The *Chair* of the Committee, or his/*her* deputy, shall chair the discussion. He/*she* may put forward his point of view but he/*she* may not vote.

Whether it is adopted or rejected by the parties, the solution proposed shall be final and irrevocable.

CHAPTER IX

TRANSITIONAL PROVISIONS AND FINAL PROVISIONS

Article 37

Penalties

Member States shall take the necessary measures to ensure that any misuse of data processed in accordance with this Regulation is punishable by penalties, including administrative and/or criminal penalties in accordance with national law, that are effective, proportionate and dissuasive.

Thursday 7 May 2009

Article 38

Transitional measures

Where an application has been lodged after the date mentioned in the second paragraph of *Article 45*, the events that are likely to entail the responsibility of a Member State under this Regulation shall be taken into consideration, even if they precede that date, with the exception of the events mentioned in *Article 14(2)*.

Article 39

Calculation of time limits

Any period of time prescribed in this Regulation shall be calculated as follows:

- (a) where a period expressed in days, weeks or months is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be counted as falling within the period in question;
- (b) a period expressed in weeks or months shall end with the expiry of whichever day in the last week or month is the same day of the week or falls on the same date as the day during which the event or action from which the period is to be calculated occurred or took place. If, in a period expressed in months, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last day of that month;
- (c) time limits shall include Saturdays, Sundays and official holidays in any of the Member States concerned.

Article 40

Territorial scope

As far as the French Republic is concerned, this Regulation shall apply only to its European territory.

Article 41

Committee

1. The Commission shall be assisted by a committee.
2. Where reference is made to this paragraph, *Articles 5 and 7 of Decision 1999/468/EC* shall apply, *having regard to the provisions of Article 8 thereof*.

The period laid down in *Article 5(6) of Decision 1999/468/EC* shall be 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 42

Monitoring and evaluation

At the latest three years after the date mentioned in the first paragraph of *Article 45*, **and without prejudice to *Article 32(13)***, the Commission shall report to the European Parliament and the Council on the application of this Regulation and, where appropriate, shall propose *any* necessary amendments. Member States shall forward to the Commission all information appropriate for the preparation of that report, at the latest six months before that time limit expires.

Thursday 7 May 2009

After having submitted that report, the Commission shall report to the European Parliament and the Council on the application of this Regulation at the same time as it submits reports on the implementation of the *Eurodac* system provided for by Article 28 of Regulation (EC) No *...* [concerning the establishment of '*Eurodac*' for the comparison of fingerprints for the effective application of *...* Regulation (EC) No *...* establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person].

Article 43

Statistics

In accordance with Article 4(4) of Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection ⁽¹⁾, Member States shall communicate to the Commission (Eurostat), statistics concerning the application this Regulation and of Regulation (EC) No 1560/2003.

Article 44

Repeal

Regulation (EC) 343/2003 is hereby repealed.

Articles 11(1), 13, 14 and 17 of *...* Regulation (EC) No 1560/2003 are hereby repealed.

References to the repealed Regulation or Articles shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

Article 45

Entry into force and applicability

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply to applications for international protection lodged as from the first day of the sixth month following its entry into force and, from that date, it shall apply to any request to take charge of or take back asylum seekers, irrespective of the date on which the application was made. The Member State responsible for the examination of an application for international protection submitted before that date shall be determined in accordance with the criteria set out in Regulation (EC) No 343/2003.

This Regulation shall be binding in its entirety and directly applicable in the Member States in conformity with the Treaty *...*

Done at *...*

For the European Parliament
The President

For the Council
The President

⁽¹⁾ OJ L 199, 31.7.2007, p. 23.

Thursday 7 May 2009

ANNEX I

Repealed regulation

(referred to in Article 44)

Council Regulation (EC) No 343/2003	(OJ L 50, 25.2.2003)
Commission Regulation (EC) No 1560/2003, only Articles 11(1), 13, 14 and 17	(OJ L 222, 5.9.2003)

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ANNEX II

Correlation Table

Regulation (EC) 343/2003	This Regulation
Article 1	Article 1
Article 2(a)	Article 2(a)
Article 2(b)	deleted
Article 2(c)	Article 2(b)
Article 2(d)	Article 2(c)
Article 2(e)	Article 2(d)
Article 2(f)	Article 2(e)
Article 2(g)	Article 2(f)
—	Article 2(g)
Article 2(h) to (k)	Article 2(h) to (k)
—	Article 2(l)
Article 3(1)	Article 3(1)
Article 3(2)	Article 17(1)
Article 3(3)	Article 3(3)
Article 3(4)	Article 4(1), introductory wording
—	Article 4(1)(a) to (g)
—	Article 4(2) and (3)
Article 4 (1) to (5)	Article 20 (1) to (5)
—	Article 20 (5), third subparagraph
—	Article 5
—	Article 6

Thursday 7 May 2009

Regulation (EC) 343/2003	This Regulation
Article 5(1)	Article 7(1)
Article 5(2)	Article 7(2)
—	Article 7(3)
Article 6, first paragraph	Article 8(1)
—	Article 8(3)
Article 6, second paragraph	Article 8(4)
Article 7	Article 9
Article 8	Article 10
Article 9	Article 13
Article 10	Article 14
Article 11	Article 15
Article 12	Article 16
Article 13	Article 3(2)
Article 14	Article 12
Article 15(1)	Article 17(2), first subparagraph
Article 15(2)	Article 11(1)
Article 15(3)	Article 8(2)
Article 15(4)	Article 17(2), fourth subparagraph
Article 15(5)	Articles 8(5) and Article 11(2);
Article 16(1)(a)	Article 18(1)(a)
Article 16(1)(b)	Article 18(2)
Article 16(1)(c)	Article 18(1)(b)
Article 16(1)(d)	Article 18(1)(c)
Article 16(1)(e)	Article 18(1)(d)
Article 16(2)	Article 19(1)
Article 16(3)	Article 19(2), first subparagraph
—	Article 19(2), second subparagraph
Article 16(4)	Article 19(3)
	Article 19(3), second subparagraph
Article 17	Article 21
Article 18	Article 22
Article 19(1)	Article 25(1)
Article 19(2)	Article 25(2) and Article 26(1)
—	Article 26(2) to (6)
Article 19(3)	Article 28(1)

Thursday 7 May 2009

Regulation (EC) 343/2003	This Regulation
Article 19(4)	Article 28(2)
—	Article 28(3)
Article 19(5)	Article 28(4)
Article 20(1), introductory wording	Article 23(1)
—	Article 23(2)
—	Article 23(3)
—	Article 23(4)
Article 20(1)(a)	Article 23(5), first subparagraph
Article 20(1)(b)	Article 24(1)
Article 20(1)(c)	Article 24(2)
Article 20(1)(d)	Article 28(1), first subparagraph
Article 20(1)(e)	Article 25(1), (2), Article 26(1), Article 28(1), second and third subparagraphs;
Article 20(2)	Article 28(2)
Article 20(3)	Article 23(5), second subparagraph
Article 20(4)	Article 28(4)
—	Article 27
—	Article 29
—	Article 30
—	Article 32
Article 21(1) to (9)	Article 33(1) to (9) first to third subparagraphs Article 33(9) fourth subparagraph
Article 21(10) to (12)	Article 33(10) to (12)
Article 22(1)	Article 34(1)
—	Article 34(2)
—	Article 34(3)
Article 22(2)	Article 34(4)
Article 23	Article 35
Article 24(1)	deleted
Article 24(2)	Article 38
Article 24(3)	deleted
Article 25(1)	Article 39
Article 25(2)	deleted
Article 26	Article 40
Article 27(1), (2)	Article 41(1), (2)
Article 27(3)	deleted

Thursday 7 May 2009

Regulation (EC) 343/2003	This Regulation
Article 28	Article 42
Article 29	Article 45
—	Article 36
—	Article 37
—	Article 43
—	Article 44

Regulation (EC) 1560/2003	This Regulation
Article 11(1)	Article 11(1)
Article 13(1)	Article 17(2), first subparagraph
Article 13(2)	Article 17(2), second subparagraph
Article 13(3)	Article 17(2), third subparagraph
Article 13(4)	Article 17(2), first subparagraph
Article 14	Article 36
Article 17(1)	Articles 9, 10, 17(2), first subparagraph
Article 17(2)	Article 33(3)

Establishment of 'Eurodac' for the comparison of fingerprints (recast) ***I

P6_TA(2009)0378

European Parliament legislative resolution of 7 May 2009 on the proposal for a regulation of the European Parliament and of the Council concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EC) No (.../...) [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person] (recast) (COM(2008)0825 – C6-0475/2008 – 2008/0242(COD))

(2010/C 212 E/53)

(Codecision procedure – recast)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0825),

— having regard to Article 251(2) and Article 63(1)(a) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0475/2008),

Thursday 7 May 2009

- having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts ⁽¹⁾,
 - having regard to the letter of 3 April 2009 from the Committee on Legal Affairs to the Committee on Civil Liberties, Justice and Home Affairs in accordance with Rule 80a(3) of its Rules of Procedure,
 - having regard to Rules 80a and 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0283/2009),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance;
1. Approves the Commission proposal as adapted to the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission and as amended below;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and the Commission.

⁽¹⁾ OJ C 77, 28.3.2002, p. 1.

P6_TC1-COD(2008)0242

Position of the European Parliament adopted at first reading on 7 May 2009 with a view to the adoption of Regulation (EC) No .../2009 of the European Parliament and of the Council concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EC) No [.../...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person] (recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63, *first paragraph*, point (1)(a) thereof,

Having regard to the proposal from the Commission **||**,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽¹⁾,

⁽¹⁾ *Position of the European Parliament of 7 May 2009.*

Thursday 7 May 2009

Whereas

- (1) A number of substantive changes are to be made to Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention ⁽¹⁾ and Council Regulation (EC) No 407/2002 of 28 February 2002 laying down certain rules to implement Regulation (EC) No 2725/2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention ⁽²⁾. In the interest of clarity, those Regulations should be recast.
- (2) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who legitimately seek **international** protection in the Community.
- (3) The first phase in the creation of a Common European Asylum System that should lead, in the longer term, to a common procedure and a uniform status valid throughout the Union for those granted asylum, has now been *completed*. The European Council of 4 November 2004 adopted the Hague Programme, which sets the objectives to be implemented in the area of freedom, security and justice in the period 2005-2010. In this respect, *the* Hague Programme invited the Commission to conclude the evaluation of the first phase legal instruments and to submit the second-phase instruments and measures to the Council and the European Parliament with a view to their adoption before 2010.
- (4) For the purposes of applying Regulation (EC) No [...] of the European Parliament and of the Council of ... establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person ⁽³⁾, it is necessary to establish the identity of applicants for international protection and of persons apprehended in connection with the **irregular** crossing of the external borders of the Community. It is also desirable, in order to **effectively** apply Regulation (EC) No [...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person], and in particular points (b) and (d) of Article 18(1) thereof, to allow each Member State to check whether a third-country national or stateless person found illegally present on its territory has applied for international protection in another Member State.
- (5) Fingerprints constitute an important element in establishing the exact identity of such persons. It is necessary to set up a system for the comparison of their fingerprint data.
- (6) To this end, it is necessary to set up a system known as *Eurodac*, consisting of a Central System, which will operate a computerised central database of fingerprint data, as well as of the electronic means of transmission between the Member States and the Central System.
- (7) *With a view to* ensuring equal treatment for all applicants *for* and beneficiaries of international protection, as well as in order to ensure consistency with *the* current EU asylum *acquis*, in particular with 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 ⁽⁴⁾ and Regulation (EC) No [...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person], it is appropriate to *extend* the scope of this Regulation *in order to* include applicants for subsidiary protection and persons enjoying subsidiary protection.

⁽¹⁾ OJ L 316, 15.12.2000, p. 1.

⁽²⁾ OJ L 62, 5.3.2002, p. 1.

⁽³⁾ OJ L ...

⁽⁴⁾ OJ L 304, 30.9.2004, p. 12.

Thursday 7 May 2009

- (8) It is also necessary to require the Member States promptly to take and transmit fingerprint data of every applicant for international protection and of every *third-country* national or stateless person who is apprehended in connection with the irregular crossing of an external border of a Member State, if they are at least 14 years of age.
- (9) It is necessary to lay down precise rules on the transmission of such fingerprint data to the Central System, the recording of such fingerprint data and other relevant data in the Central System, their storage, their comparison with other fingerprint data, the transmission of the results of such comparison and the **marking** and erasure of the recorded data. Such rules may be different for, and should be specifically adapted to, the situation of different categories of **third-country nationals** or stateless persons.
- (10) *Third-country* nationals or stateless persons who have requested international protection in one Member State may have the option of requesting international protection in another Member State for many years to come. Therefore, the maximum period during which fingerprint data should be kept by the Central System should be of considerable length. Given that most *third-country* nationals or stateless persons who have stayed in the Community for several years will have obtained a settled status or even citizenship of a Member State after that period, a period of ten years should be considered a reasonable period for the *storage* of fingerprint data.
- (11) The *storage* period should be shorter in certain special situations where there is no need to keep fingerprint data for that length of time. Fingerprint data should be erased immediately once *third-country* nationals or stateless persons obtain citizenship of a Member State **or a long-term residence permit in a Member State in accordance with Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents** ⁽¹⁾.
- (12) It is appropriate to store data relating to those data subjects whose fingerprints were initially recorded in *Eurodac* on lodging their applications for international protection and who have been granted international protection in a Member State in order to allow data recorded on lodging an application for international protection to be *compared* with them.
- (13) For a transitional period the Commission should remain responsible for the management of the Central System and for the Communication Infrastructure. In the long term, and following an impact assessment *including* a substantive analysis of alternatives from a financial, operational and organisational perspective, a Management Authority with responsibility for these tasks should be established.
- (14) It is necessary to lay down clearly the respective responsibilities of the Commission and the Management Authority, in respect of the Central System and the Communication Infrastructure, and of the Member States, as regards data use, data security, access to, and correction of, recorded data.
- (15) While the non-contractual liability of the Community in connection with the operation of the *Eurodac* system will be governed by the relevant provisions of the Treaty, it is necessary to lay down specific rules for the non-contractual liability of the Member States in connection with the operation of the system.
- (16) *Since* the objective of *this Regulation*, namely the creation of a system for the comparison of fingerprint data to assist the implementation of the Community's asylum policy, cannot be sufficiently achieved by the Member States and, *given its scale and effects*, can therefore be better achieved at Community level, *the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty*. In accordance with the principle of proportionality, as set out in *that Article*, this Regulation does not go beyond what is necessary *in order* to achieve that objective.

⁽¹⁾ OJ L 16, 23.1.2004, p. 44.

Thursday 7 May 2009

- (17) 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⁾ applies to the processing of personal data by the Member States carried out in application of this Regulation.
- (18) The principles set out in Directive 95/46/EC regarding the protection of the rights and freedoms of individuals, notably their right to privacy, with regard to the processing of personal data should be supplemented or clarified, in particular as far as certain sectors are concerned.
- (19) 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⁾ **applies to the processing of personal data by the Community institutions and bodies carried out pursuant to this Regulation.** However, certain **points** should be clarified in respect of the responsibility for the processing of data and of **the** supervision of data protection.
- (20) It is appropriate that national supervisory authorities monitor the lawfulness of the processing of personal data by the Member States, *while* the European Data Protection Supervisor, appointed pursuant to Decision 2004/55/EC of the European Parliament and of the Council ⁽³⁾, should monitor the activities of the Community institutions and bodies in relation to the processing of personal data in view of the limited tasks of the Community institutions and bodies with regard to the data themselves.
- (21) It is appropriate to monitor and evaluate the performance of *Eurodac* at regular intervals.
- (22) Member States should provide for a system of **effective, proportionate and dissuasive** penalties to sanction the use of data **entered** in the Central System contrary to the purpose of *Eurodac*.
- (23) It is necessary that Member States *be* informed of the status of particular asylum procedures, with a view to facilitating the adequate application of Regulation (EC) No [...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person].
- (24) This Regulation respects and *should* be applied in accordance with the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to ensure full respect for the protection of personal data and the right to asylum and to promote the application of Articles 8 and 18 of the Charter.
- (25) It is appropriate to restrict the territorial scope of this Regulation so as to align it on the territorial scope of Regulation (EC) No [...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person],

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

⁽²⁾ OJ L 8, 12.1.2001, p. 1.

⁽³⁾ OJ L 12, 17.1.2004, p. 47.

Thursday 7 May 2009

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose of *Eurodac*

1. A system known as *Eurodac* is hereby established, the purpose of which shall be to assist in determining which Member State is to be responsible pursuant to Regulation (EC) No [...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person] for examining an application for international protection lodged in a Member State by a *third-country* national or stateless person, and otherwise to facilitate the application of the *above* Regulation under the conditions set out in this Regulation.

2. Without prejudice to the use of data intended for *Eurodac* by the Member State of origin in databases set up under *that Member State's* national law, fingerprint data and other personal data may be processed in *Eurodac* only for the purposes set out in Article 33(1) of || Regulation (EC) No [...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person].

Article 2

Definitions

1. For the purposes of this Regulation:

- (a) 'the Dublin Regulation' means Regulation (EC) No [...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person];
- (b) an 'applicant for international protection' means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;
- (c) 'Member State of origin' means:
 - (i) in relation to a person covered by Article 6, the Member State which transmits the personal data to the Central System and receives the results of the comparison;
 - (ii) in relation to a person covered by Article 10, the Member State which transmits the personal data to the Central System;
 - (iii) in relation to a person covered by Article 13, the Member State which transmits such data to the Central System and receives the results of the comparison;
- (d) 'person granted international protection' means a *third-country* national or a stateless person recognised as in need of international protection as defined in Article 2(a) of || Directive 2004/83/EC;
- (e) 'hit' means the existence of a match or matches established by the Central System by comparison between fingerprint data recorded in the database and those transmitted by a Member State with regard to a person, without prejudice to the requirement that Member States shall immediately check the results of the comparison pursuant to Article 17(4).

Thursday 7 May 2009

2. The terms defined in Article 2 of Directive 95/46/EC shall have the same meaning in this Regulation.
3. Unless stated otherwise, the terms defined in Article 2 of the Dublin Regulation shall have the same meaning in this Regulation.

Article 3

System architecture and basic principles

1. *Eurodac* shall consist of:
 - (a) a computerised central fingerprint database (Central System) composed of
 - a Central Unit,
 - a Business Continuity System;
 - (b) a communication infrastructure between the *Central System* and Member States that provides an encrypted virtual network dedicated to *Eurodac* data (Communication Infrastructure).
2. Each Member State shall have a single designated national data system (National Access Point) which communicates with the Central System.
3. Data on persons covered by Articles 6, 10 and 13 which are processed in the Central System shall be processed on behalf of the Member State of origin under the conditions set out in this Regulation and separated by appropriate technical means.
4. The rules governing *Eurodac* shall also apply to operations effected by the Member States as from the transmission of data to the Central System until use is made of the results of the comparison.
5. The procedure for taking fingerprints shall be determined and applied in accordance with the national practice of the Member State concerned and in accordance with the safeguards laid down in the Charter of Fundamental Rights of the European Union, in the Convention for the Protection of Human Rights and Fundamental Freedoms and in the United Nations Convention on the Rights of the Child.

Article 4

Operational management by the Management Authority

1. After a transitional period, a Management Authority, funded from the general budget of the European Union, shall be responsible for the operational management of *Eurodac*. The Management Authority shall ensure, in cooperation with the Member States, that at all times the best available **techniques**, subject to a cost-benefit analysis, **are** used for the Central System.
2. The Management Authority shall also be responsible for the following tasks relating to the Communication Infrastructure:
 - (a) supervision;
 - (b) security;
 - (c) the coordination of relations between the Member States and the provider.

Thursday 7 May 2009

3. The Commission shall be responsible for all other tasks relating to the Communication Infrastructure, in particular:
- (a) tasks relating to implementation of the budget;
 - (b) acquisition and renewal;
 - (c) contractual matters.
4. During a transitional period before the Management Authority takes up its responsibilities, the Commission shall be responsible for the operational management of *Eurodac*.
5. Operational management of *Eurodac* shall consist of all the tasks necessary to keep *Eurodac* functioning 24 hours a day, 7 days a week in accordance with this Regulation, in particular the maintenance work and technical developments necessary to ensure that the system functions at a satisfactory level of operational quality, in particular as regards the time required for *interrogating* the Central System.
6. Without prejudice to Article 17 of the Staff Regulations of Officials of the European Communities, the Management Authority shall apply appropriate rules of professional secrecy or other equivalent duties of confidentiality to all its staff required to work with *Eurodac* data. This obligation shall also apply after such staff leave office or employment or after the termination of their activities.
7. The Management Authority referred to in this Regulation shall be the Management Authority competent for *Eurodac*, SIS II and VIS.
- 8. *The setting-up of the Management Authority and the interoperability of the several databases for which it has competence shall be without prejudice to the separate and discrete operation of those databases.***

Article 5

Statistics

The Management Authority shall draw up statistics on the work of the Central System every month, indicating in particular:

- (a) the number of data sets transmitted on applicants for international protection and the persons referred to in Articles 10 and 13;
- (b) the number of hits for applicants for international protection who have lodged an application for international protection in another Member State;
- (c) the number of hits for persons referred to in Article 10 who have subsequently lodged an application for international protection;
- (d) the number of hits for persons referred to in Article 13 who had previously lodged an application for international protection in another Member State;
- (e) the number of fingerprint data which the Central System had to repeatedly request from the Member States of origin because the fingerprint data originally transmitted did not lend themselves to comparison using the computerised fingerprint recognition system;
- (f) the number of data sets marked in accordance with Article 14(1);

Thursday 7 May 2009

(g) the number of hits for persons referred to in Article 14(1).

At the end of each year, statistical data shall be established in the form of a compilation of the monthly statistics for that year, including an indication of the number of persons for whom hits have been recorded under (b), (c), (d) **and (g)**.

The statistics shall contain a breakdown of data for each Member State.

CHAPTER II

APPLICANTS FOR INTERNATIONAL PROTECTION

Article 6

Collection, transmission and comparison of *fingerprint data*

1. Each Member State shall, **no later than 48 hours** after the lodging of an application as defined by Article 20(2) of the Dublin Regulation, take the fingerprints of all fingers of every applicant for international protection of at least 14 years of age and shall, no later than **24 hours** after the **taking of the fingerprints**, transmit **the fingerprint data** together with the data referred to in points (b) to (g) of Article 7 **of this Regulation** to the Central System.

By way of exception, in cases where the fingerprints are seriously, but only temporarily, damaged and cannot provide suitable fingerprint data or in cases where there is a need to enforce a quarantine period because of severe contagious disease, the period of 48 hours for taking the fingerprints of applicants for international protection, as referred to in this paragraph, may be extended up to a maximum of three weeks. Member States may also extend the period of 48 hours in well-founded and proven cases of force majeure for as long as those circumstances persist. The period of 24 hours for transmitting the required data shall apply accordingly.

2. By way of derogation from paragraph 1, when an applicant for international protection arrives in the **Member State responsible for examining an application for international protection** following a transfer pursuant to **Article 23 of the Dublin Regulation**, the responsible Member State shall **indicate** only **the fact of the successful transfer with regard to the relevant data recorded in the Central System pursuant to Article 7 of this Regulation**, in conformity with the requirements for electronic communication with the Central System established by the Management Authority. This information shall be stored in accordance with Article 8 for the purpose of transmission under **paragraph 6 of this Article**.

3. **The Member State which assumes responsibility in accordance with Article 17 of the Dublin Regulation shall indicate that fact with regard to the relevant data recorded in the Central System pursuant to Article 7 of this Regulation, in conformity with the requirements for electronic communication with the Central System established by the Management Authority. This information shall be stored in accordance with Article 8 for the purpose of transmission under paragraph 6 of this Article.**

4. Fingerprint data within the meaning of point (a) of Article 7, transmitted by any Member State, shall be compared automatically with the fingerprint data transmitted by other Member States and already stored in the Central System.

5. The Central System shall ensure, on the request of a Member State, that the comparison referred to in *paragraph 4* covers the fingerprint data previously transmitted by that Member State, in addition to the data from other Member States.

6. The Central System shall automatically transmit the hit or the negative result of the comparison to the Member State of origin. Where there is a hit, it shall transmit for all data sets corresponding to the hit, the data referred to in points (a) to (g) of Article 7 **along with**, where appropriate, the mark referred to in Article 14(1).

Thursday 7 May 2009

Article 7

Recording of data

Only the following data shall be recorded in the Central System:

- (a) fingerprint data;
- (b) Member State of origin, place and date of the application for international protection;
- (c) sex;
- (d) reference number used by the Member State of origin;
- (e) date on which the fingerprints were taken;
- (f) date on which the data were transmitted to the Central System;
- (g) operator user ID.

Article 8

Data storage

Each set of data as referred to in Article 7 shall be stored in the *Central System* for ten years from the date on which the fingerprints were taken.

On expiry of *that* period, the Central System shall automatically erase the data from the *Central System*.

Article 9

Advance data erasure

1. Data relating to a person who has acquired citizenship of any Member State **or has been issued a long-term residence permit by a Member State in accordance with Directive 2003/109/EC** before the expiry of the period referred to in Article 8 of this Regulation shall be erased from the Central System in accordance with Article 20(3) as soon as the Member State of origin becomes aware that the person has acquired such citizenship **or has been issued such a permit**.

2. The Central System shall inform all Member States of origin about the **erasure** of data **for the reason specified in paragraph 1** by another Member State of origin having produced a hit with data **which they** transmitted relating to persons referred to in Article 6 or ¶ 10.

CHAPTER III

THIRD-COUNTRY NATIONALS OR STATELESS PERSONS APPREHENDED IN CONNECTION WITH THE IRREGULAR CROSSING OF AN EXTERNAL BORDER

Article 10

Collection and transmission of fingerprint data

1. Each Member State shall, in accordance with the safeguards laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms and in the United Nations Convention on the Rights of the Child, ¶ take the fingerprints of all fingers of every third-country national or stateless person of at least 14 years of age who is apprehended by the competent control authorities in connection with the irregular crossing by land, sea or air of the border of that Member State having come from a third country and who is not turned back, **no later than 48 hours from the date of apprehension**.

Thursday 7 May 2009

2. The Member State concerned shall no later than **24 hours after the taking of the fingerprints of the third-country national or stateless person, as referred to in paragraph 1**, transmit || the following data in relation to **that person to the Central System**:

- (a) fingerprint data;
- (b) Member State of origin, place and date of apprehension;
- (c) sex;
- (d) reference number used by the Member State of origin;
- (e) date on which the fingerprints were taken;
- (f) date on which the data were transmitted to the Central System;
- (g) operator user ID.

By way of exception, in cases where the fingerprints are seriously, but only temporarily, damaged and cannot provide suitable fingerprint data or in cases where there is a need to enforce a quarantine period because of severe contagious disease, the period of 48 hours for taking the fingerprints of the third-country national or stateless person, as referred to in paragraph 1, may be extended up to a maximum of three weeks. Member States may also extend the period of 48 hours in well-founded and proven cases of force majeure for as long as those circumstances persist. The period of 24 hours for transmitting the required data shall apply accordingly.

Article 11

Recording of data

1. The data referred to in Article 10(2) shall be recorded in the Central System.

Without prejudice to Article 5, data transmitted to the Central System pursuant to Article 10(2) shall be recorded for the sole purpose of comparison with data on applicants for international protection transmitted subsequently to the Central System.

The Central System shall not compare data transmitted to it pursuant to Article 10(2) with any data previously recorded in the Central System, or with data subsequently transmitted to the Central System pursuant to Article 10(2).

2. As regards the comparison of data on applicants for international protection subsequently transmitted to the Central System with the data referred to in paragraph 1, the procedures provided for in Article 6(4) and (6) shall apply.

Article 12

Storage of data

1. Each set of data relating to a *third-country national or stateless person* as referred to in Article 10(1) shall be stored in the Central System for one year from the date on which the fingerprints of the *third-country national or stateless person* were taken. On expiry of *that* period, the Central System shall automatically erase the data from the Central System.

Thursday 7 May 2009

2. The data relating to a *third-country* national or stateless person as referred to in Article 10(1) shall be erased from the Central System in accordance with **Article 20(3) as soon as** the Member State of origin becomes aware of one of the following circumstances before the **■** period mentioned in paragraph 1 of this Article has expired:

- (a) the *third-country* national or stateless person has been issued with a residence permit;
- (b) the *third-country* national or stateless person has left the territory of the Member States;
- (c) the *third-country* national or stateless person has acquired the citizenship of any Member State.

3. The Central System shall inform all Member States of origin about the **erasure** of data for the reason specified in paragraph 2(a) **or** (b) by another Member State of origin having produced a hit with data **which they** transmitted relating to persons referred to in Article 10.

4. The Central System shall inform all Member States of origin about the **erasure** of data for the reason specified in paragraph 2(c) by another Member State of origin having produced a hit with data **which they** transmitted relating to persons referred to in Article 6 or **||** 10.

CHAPTER IV

THIRD-COUNTRY NATIONALS OR STATELESS PERSONS FOUND ILLEGALLY PRESENT IN A MEMBER STATE

Article 13

Comparison of fingerprint data

1. With a view to checking whether a *third-country* national or a stateless person found illegally present within its territory has previously lodged an application for international protection in another Member State, each Member State may transmit to the Central System any fingerprint data relating to fingerprints which it may have taken of any such *third-country* national or stateless person of at least 14 years of age together with the reference number used by that Member State.

As a general rule there are grounds for checking whether the *third-country* national or stateless person has previously lodged an application for asylum international protection in another Member State where:

- (a) the *third-country* national or stateless person declares that he/she has lodged an application for international protection but without indicating the Member State in which he/she *lodged* the application;
- (b) the *third-country* national or stateless person does not request international protection but objects to being returned to his/her country of origin by claiming that he/she would be in danger; or
- (c) the *third-country* national or stateless person otherwise seeks to prevent his/her removal by refusing to cooperate in establishing his/her identity, in particular by showing no, or false, identity papers.

2. Where Member States take part in the procedure referred to in paragraph 1, they shall transmit to the Central System the fingerprint data relating to all or at least the index fingers and, if those are missing, the prints of all other fingers, of *third-country* nationals or stateless persons as referred to in paragraph 1.

3. The fingerprint data of a *third-country* national or a stateless person as referred to in paragraph 1 shall be transmitted to the Central System solely for the purpose of comparison with the fingerprint data of applicants for international protection transmitted by other Member States and already recorded in the Central System.

Thursday 7 May 2009

The fingerprint data of such a *third-country* national or a stateless person shall not be recorded in the Central System, nor shall they be compared with the data transmitted to the Central System pursuant to Article 10(2).

4. As regards the comparison of fingerprint data transmitted under this Article with the fingerprint data of applicants for international protection transmitted by other Member States which have already been stored in the Central System, the procedures provided for in *Article 6(4) and (6)* shall apply.

CHAPTER V

PERSONS GRANTED INTERNATIONAL PROTECTION

Article 14

Marking of data

1. The Member State of origin which granted international protection to an applicant for international protection whose data were previously recorded pursuant to **Article 7** in the Central System shall mark the relevant data in conformity with the requirements for electronic communication with the Central System established by the Management Authority. *That* mark shall be stored in the Central System in accordance with Article 8 for the purpose of transmission under *Article 6(6)*.

2. The Member State of origin shall unmark data concerning a third-country national or stateless person whose data were previously marked in accordance with paragraph 1 if *his/her* status is revoked or ended or renewal of *his/her* status is refused under Article 14 or 19 of || Directive 2004/83/EC, **or if he/she ceases to be a refugee or to be eligible for subsidiary protection under Articles 11 and 16 respectively of that Directive.**

CHAPTER VI

DATA USE, DATA PROTECTION AND LIABILITY

Article 15

Responsibility for data use

1. The Member State of origin shall be responsible for ensuring that:

- (a) fingerprints are taken lawfully;
- (b) fingerprint data and the other data referred to in Article 7, Article 10(2) and Article 13(2) are lawfully transmitted to the Central System;
- (c) data are accurate and up-to-date when they are transmitted to the Central System;
- (d) without prejudice to the responsibilities of the Commission, data in the Central System are lawfully recorded, stored, corrected and erased;
- (e) the results of fingerprint data comparisons transmitted by the Central System are lawfully used.

2. In accordance with Article 19, the Member State of origin shall ensure the security of the data referred to in paragraph 1 before and during *their* transmission to the Central System, as well as the security of the data *which* it receives from the Central System.

3. The Member State of origin shall be responsible for the final identification of the data pursuant to Article 17(4).

4. The Commission shall ensure that the Central System is operated in accordance with the provisions of this Regulation. In particular, the Commission shall:

Thursday 7 May 2009

- (a) adopt measures ensuring that persons working with the Central System use the data recorded therein only in accordance with the purpose of *Eurodac* as laid down in Article 1(1);
- (b) take the necessary measures to ensure the security of the Central System in accordance with Article 19;
- (c) ensure that only persons authorised to work with the Central System have access thereto, without prejudice to the competences of the European Data Protection Supervisor.

The Commission shall inform the European Parliament and the Council of the measures *which* it takes pursuant to the first subparagraph.

Article 16

Transmission

1. Fingerprints shall be digitally processed and transmitted in the data format referred to in Annex I. As far as is necessary for the efficient operation of the Central System, the Management Authority shall establish the technical requirements for *the* transmission of the data format by Member States to the Central System and vice versa. The Management Authority shall ensure that the fingerprint data transmitted by the Member States can be compared by the computerised fingerprint recognition system.
2. Member States **shall** transmit the data referred to in Article 7, Article 10(2) and Article 13(2) electronically. The data referred to in Article 7 and Article 10(2) shall be automatically recorded in the Central System. As far as is necessary for the efficient operation of the Central System, the Management Authority shall establish the technical requirements to ensure that data can be properly electronically transmitted from the Member States to the Central System and vice versa.
3. The reference number referred to in Article 7(d), Article 10(2)(d) **and Article 13(1)** shall make it possible to relate data unambiguously to one particular person and to the Member State which **transmitted** the data. In addition, it shall make it possible to *determine* whether such data relate to a person referred to in Article 6, ¶ 10 or ¶ 13.
4. The reference number shall begin with the identification letter or letters by which, in accordance with the norm referred to in Annex I, the Member State transmitting the data is identified. The identification letter or letters shall be followed by the identification of the category of person. '1' refers to data relating to persons referred to in Article 6, '2' to persons referred to in Article 10 and '3' to persons referred to in Article 13.
5. The Management Authority shall establish the technical procedures necessary for Member States to ensure receipt of unambiguous data by the Central System.
6. The Central System shall confirm receipt of the transmitted data as soon as possible. To this end the Management Authority shall establish the necessary technical requirements to ensure that Member States receive the receipt *confirmation* if requested.

Article 17

Carrying out comparisons and transmitting results

1. Member States shall ensure the transmission of fingerprint data in an appropriate quality for the purpose of comparison by means of the computerised fingerprint recognition system. As far as is necessary to ensure that the results of the comparison by the Central System reach a very high level of accuracy, the Management Authority shall define the appropriate quality of transmitted fingerprint data. The Central System shall, as soon as possible, check the quality of the fingerprint data transmitted. If fingerprint data do not lend themselves to comparison using the computerised fingerprint recognition system, the Central System shall request the Member State to transmit fingerprint data of the appropriate quality.

Thursday 7 May 2009

2. The Central System shall carry out comparisons in the order of arrival of requests. Each request shall be dealt with within 24 hours. A Member State may for reasons connected with national law require particularly urgent comparisons to be carried out within one hour. Where such time limits cannot be respected owing to circumstances which are outside the Management Authority's responsibility, the Central System shall process the request as a matter of priority as soon as those circumstances no longer prevail. In such cases, as far as is necessary for the efficient operation of the Central System, the Management Authority shall establish criteria to ensure the priority handling of requests.

3. As far as is necessary for the efficient operation of the Central System, the Management Authority shall establish the operational procedures for the processing of the data received and for transmitting the results of the comparison.

4. The results of the comparison shall immediately be checked in the Member State of origin. Final identification shall be made by the Member State of origin in cooperation with the Member States concerned, pursuant to Article 33 of the Dublin Regulation.

Information received from the Central System relating to other data found to be unreliable shall be erased as soon as the unreliability of the data is established.

5. Where final identification in accordance with paragraph 4 reveals that the result of the comparison received from the Central System is inaccurate, Member States shall communicate this fact to the Commission, to the Management Authority **and to the European Data Protection Supervisor**.

■

Article 18

Communication between Member States and the Central System

Data transmitted from the Member States to the Central System and vice versa shall use the Communication Infrastructure to be provided by the Management Authority. As far as is necessary for the efficient operation of the Central System, the Management Authority shall establish the technical procedures necessary for the use of the Communication Infrastructure.

Article 19

Data security

1. The Member State **of origin** shall ensure the security of the data before and during transmission to the Central System. Each Member State shall ensure the security of the data which it receives from the Central System.

2. Each Member State shall, in relation to its national system, adopt the necessary measures, including a security plan, in order to:

- (a) physically protect data, including by making contingency plans for the protection of critical infrastructure;
- (b) deny unauthorised persons access to national installations in which the Member State carries out operations in accordance with the purpose of *Eurodac* (checks at entrance to the installation);
- (c) prevent the unauthorised reading, copying, modification or removal of data media (data media control);
- (d) prevent the unauthorised input of data and the unauthorised inspection, modification or deletion of stored personal data (storage control);

Thursday 7 May 2009

- (e) prevent the unauthorised processing of data in *Eurodac* and any unauthorised modification or deletion of data processed in *Eurodac* (control of data entry);
- (f) ensure that persons authorised to access *Eurodac* have access only to the data covered by their access authorisation, by means of individual and unique user identities and confidential access modes only (data access control);
- (g) ensure that all authorities with a right of access to *Eurodac* create profiles describing the functions and responsibilities of persons who are authorised to access, enter, update, delete and search the data and make those profiles available to the *national supervisory authorities* referred to in Article 24 without delay at their request (personnel profiles);
- (h) ensure that it is possible to verify and establish to which bodies personal data may be transmitted using data communication equipment (communication control);
- (i) ensure that it is possible to verify and establish what data have been processed in *Eurodac*, when, by whom and for what purpose (control of data recording);
- (j) prevent the unauthorised reading, copying, modification or deletion of personal data during the transmission of personal data to or from *Eurodac* or during the transport of data media, in particular by means of appropriate encryption techniques (transport control);
- (k) monitor the effectiveness of the security measures referred to in this paragraph and take the necessary organisational measures related to internal monitoring to ensure compliance with this Regulation (self-auditing).

3. All the authorities that participate in the Eurodac system shall prevent access to or the transfer of data recorded in Eurodac to the authorities of any unauthorised third country, especially to the State of origin of the persons covered by this Regulation.

4. The Management Authority shall take the necessary measures in order to achieve the objectives set out in paragraph 2 as regards the operation of *Eurodac*, including the adoption of a security plan.

5. The Management Authority shall lay down a common set of requirements to be fulfilled by persons in order to be granted authorisation to access Eurodac.

Article 20

Access to, and correction or erasure of, data recorded in *Eurodac*

1. The Member State of origin shall have access to the data which it has transmitted and which are recorded in the Central System in accordance with the provisions of this Regulation.

No Member State may conduct searches in the data transmitted by another Member State, nor may it receive such data apart from data resulting from the comparison referred to in Article 6(6).

2. The authorities of Member States which, pursuant to paragraph 1, have access to data recorded in the Central System shall be those designated by each Member State for the purpose of Article 1(1). That designation shall specify the precise unit responsible for carrying out tasks related to the application of this Regulation. Each Member State shall without delay communicate to the Commission and the Management Authority a list of those authorities and any amendments thereto, **in the case of amendments at the latest 30 days after the list was amended**. The Management Authority shall publish the consolidated list in the *Official Journal of the European Union*. Where there are amendments thereto, the Management Authority shall publish once a year an updated consolidated list.

Thursday 7 May 2009

3. Only the Member State of origin shall have the right to amend the data which it has transmitted to the Central System by correcting or supplementing such data, or to erase them, without prejudice to erasure carried out *pursuant to* Article 8 or Article 12(1).

4. If a Member State or the Management Authority has evidence to suggest that data recorded in the Central System are factually inaccurate, it shall advise the Member State of origin as soon as possible.

If a Member State has evidence to suggest that data were recorded in the Central System *in breach of* this Regulation, it shall advise the Commission and the Member State of origin as soon as possible. The *Member State of origin* shall check the data concerned and, if necessary, *correct* or erase them without delay.

5. The Management Authority shall not transfer or make available to the authorities of any third country data recorded in the Central System, unless it is specifically authorised to do so within the framework of a Community agreement on the criteria and mechanisms for determining the State responsible for examining an application for international protection.

Article 21

Keeping of records

1. The Management Authority shall keep records of all data processing operations within the Central System. These records shall show the purpose of access, the date and time, the data transmitted, the data used for interrogation and the name of both the unit entering or retrieving the data and the persons responsible.

2. Such records may be used only for the data-protection monitoring of the admissibility of data processing as well as to ensure data security pursuant to Article 19. The records **shall** be protected by appropriate measures against unauthorised access and erased after a period of one year after the **storage** period referred to in Article 8 and in Article 12(1) has expired, if they are not required for monitoring procedures which have already begun.

3. Each Member State shall take the necessary measures in order to achieve the objectives set out in *paragraphs* 1 and 2 in relation to its national system. In addition, each Member State shall keep records of the staff duly authorised to enter or retrieve the data.

Article 22

Liability

1. Any person who, or Member State which, has suffered damage as a result of an unlawful processing operation or any act incompatible with the provisions *of* this Regulation shall be entitled to receive compensation from the Member State responsible for the damage suffered. That *Member State* shall be exempted from its liability, in whole or in part, if it proves that it is not responsible for the event giving rise to the damage.

2. If *the* failure of a Member State to comply with its obligations under this Regulation causes damage to the Central System, that Member State shall be liable for such damage, unless and insofar as the Management Authority or another Member State failed to take reasonable steps to prevent the damage from occurring or to minimise its impact.

Thursday 7 May 2009

3. Claims for compensation against a Member State for the damage referred to in paragraphs 1 and 2 shall be governed by the provisions of national law of the defendant Member State.

Article 23

Rights of the data subject

1. A person covered by this Regulation shall be informed by the Member State of origin in writing, and where appropriate, orally, in a language which he/she **understands or may reasonably be presumed** to understand, of the following:

- (a) the identity of the controller and of his representative, if any;
- (b) the purpose for which data **relating to him/her** will be processed within *Eurodac*, including a description of the aims of the Dublin Regulation, in accordance with Article 4 of that Regulation;
- (c) the recipients of the data;
- (d) in relation to a person covered by Article 6 or || 10, the obligation to have his/her fingerprints taken;
- (e) the right of access to data relating to **him/her**, and the right to request that inaccurate data relating to **him/her** be corrected or that unlawfully processed data relating to **him/her** be **erased, as well as** the procedures for exercising those rights, **including** the contact details **of the controller and** of the *national supervisory authorities* referred to in **Article 24**, which shall hear claims concerning the protection of personal data.

In relation to a person covered by Article 6 or || 10, the information referred to in the first subparagraph shall be provided when his/her fingerprints are taken.

In relation to a person covered by Article 13, the information referred to in the first subparagraph shall be provided no later than the time when the data relating to *that* person are transmitted to the Central System. This obligation shall not apply where the provision of such information proves impossible or would involve a disproportionate effort.

Where the **person covered by this Regulation** is a minor, Member States shall provide the information in an age-appropriate manner.

2. In each Member State, any data subject may, in accordance with the laws, regulations and procedures of that *Member State*, exercise the rights provided for in Article 12 of Directive 95/46/EC.

Without prejudice to the obligation to provide other information in accordance with point (a) of Article 12 of Directive 95/46/EC, the data subject shall have the right to obtain communication of the data relating to him/her recorded in the Central System and of the Member State which transmitted them to the Central System. Such access to data may be granted only by a Member State.

3. In each Member State, any person may request that data which are factually inaccurate be corrected or that data recorded unlawfully be erased. The correction and erasure shall be carried out without excessive delay by the Member State which transmitted the data, in accordance with its laws, regulations and procedures.

Thursday 7 May 2009

4. If the rights of correction and erasure are exercised in a Member State other than that, or those, which transmitted the data, the authorities of that Member State shall contact the authorities of *the transmitting Member State or States*, so that the *transmitting Member State or States* may check the accuracy of the data and the lawfulness of their transmission and recording in the Central System.

5. If it emerges that data recorded in the Central System are factually inaccurate or have been recorded unlawfully, the Member State which transmitted them shall correct or erase the data in accordance with Article 20(3). That Member State shall confirm in writing to the data subject without excessive delay that it has taken action to correct or erase data relating to him/her.

6. If the Member State which transmitted the data does not agree that data recorded in the Central System are factually inaccurate or have been recorded unlawfully, it shall explain in writing to the data subject without excessive delay why it is not prepared to correct or erase the data.

That Member State shall also provide the data subject with information explaining the steps which he/she can take if he/she does not accept the explanation provided. This shall include information on how to bring an action or, if appropriate, a complaint before the competent authorities or courts of that Member State and any financial or other assistance that is available in accordance with the laws, regulations and procedures of that Member State.

7. Any request under paragraphs 2 and 3 shall contain all the necessary particulars to identify the data subject, including fingerprints. Such data shall be used exclusively to permit the exercise of the rights referred to in paragraphs 2 and 3 and shall be destroyed immediately afterwards.

8. The competent authorities of the Member States shall cooperate actively to enforce promptly the rights laid down in paragraphs 3, 4 and 5.

9. Whenever a person requests data relating to *him/her* in accordance with **paragraph 2**, the competent authority shall keep a record in the form **of** a written document that such a request was made, and shall make *that* document available to the *national supervisory authorities* referred to in **Article 24** without delay, at their request.

10. In each Member State, the national supervisory authority shall assist the data subject in accordance with Article 28(4) of Directive 95/46/EC in exercising his/her rights.

11. The national supervisory authority of the Member State which transmitted the data and the national supervisory authority of the Member State in which the data subject is present shall assist and, where requested, advise him/her in exercising his/her right to correct or erase data. Both national supervisory authorities shall cooperate to this end. Requests for such assistance may be made to the national supervisory authority of the Member State in which the data subject is present, which shall transmit the requests to the authority of the Member State which transmitted the data.

12. In each Member State, any person may, in accordance with the laws, regulations and procedures of that *Member State*, bring an action or, if appropriate, a complaint before the competent authorities or courts of the *Member State* if he/she is refused the right of access provided for in paragraph 2.

13. Any person may, in accordance with the laws, regulations and procedures of the Member State which transmitted the data, bring an action or, if appropriate, a complaint before the competent authorities or courts of that *Member State* concerning the data relating to him/her recorded in the Central System, in order to exercise his/her rights under paragraph 3. The obligation of the national supervisory authorities to assist and, where requested, advise the data subject in accordance with paragraph 11 shall subsist throughout the proceedings.

Thursday 7 May 2009

Article 24

Supervision by the National Supervisory Authority

1. Each Member State shall provide that the national supervisory authority or authorities designated pursuant to Article 28(1) of Directive 95/46/EC shall monitor independently, in accordance with its national law, the lawfulness of the processing, in accordance with this Regulation, of personal data by the Member State in question, including their transmission to the Central System.
2. Each Member State shall ensure that its national supervisory authority or authorities has access to advice from persons with sufficient knowledge of fingerprint data.

Article 25

Supervision by the European Data Protection Supervisor

1. The European Data Protection Supervisor shall check that the personal data processing activities of the Management Authority are carried out in accordance with this Regulation. The duties and powers referred to in Articles 46 and 47 of Regulation (EC) No 45/2001 shall apply accordingly. **The European Data Protection Supervisor may request any information from the Management Authority considered necessary to carry out the functions entrusted to it under that Regulation.**
2. The European Data Protection Supervisor shall ensure that an audit of the Management Authority's personal data processing activities is carried out in accordance with international auditing standards at least every four years. A report of such audit shall be sent to the European Parliament, the Council, the Commission, the Management Authority ¶ and the national supervisory authorities. The Management Authority shall be given an opportunity to make comments before the report is adopted.

Article 26

Cooperation between National Supervisory Authorities and the European Data Protection Supervisor

1. The national supervisory authorities and the European Data Protection Supervisor, each acting within the scope of its respective competences, shall cooperate actively in the framework of their responsibilities and shall ensure coordinated supervision of Eurodac.
2. They shall, each acting within the scope of its respective competences, exchange relevant information, assist each other in carrying out audits and inspections, examine difficulties of interpretation or application of this Regulation, study problems with the exercise of independent supervision or in the exercise of the rights of data subjects, draw up harmonised proposals for joint solutions to any problems and promote awareness of data protection rights, as necessary.
3. The national supervisory authorities and the European Data Protection Supervisor shall meet for that purpose at least twice a year. The costs and servicing of these meetings shall be for the account of the European Data Protection Supervisor. Rules of procedure shall be adopted at the first meeting. Further working methods shall be developed jointly as necessary. A joint report of activities shall be sent to the European Parliament, the Council, the Commission and the Management Authority every two years.

CHAPTER VII

FINAL PROVISIONS

Article 27

Costs

1. The costs incurred in connection with the establishment and operation of the Central System and the Communication Infrastructure shall be borne by the general budget of the European Union.

Thursday 7 May 2009

2. The costs incurred by national units and the costs for their connection to the Central System shall be borne by each Member State.

Article 28

Annual report: monitoring and evaluation

1. The Management Authority shall submit to the European Parliament and the Council an annual report on the activities of the Central System. The annual report shall include information on the management and performance of *Eurodac* in relation to pre-defined quantitative indicators for the objectives referred to in paragraph 2.
2. The Management Authority shall ensure that procedures are in place to monitor the functioning of the Central System in relation to objectives relating to output, cost-effectiveness and quality of service.
3. For the purposes of technical maintenance, reporting and statistics, the Management Authority shall have access to the necessary information relating to the processing operations performed in the Central System.
4. Every two years, the Management Authority shall submit to the European Parliament, the Council and the Commission a report on the technical functioning of the Central System, including its security.
5. Three years after the start of application of this Regulation as provided for in Article 33(2) and every four years thereafter, the Commission shall produce an overall evaluation of *Eurodac*, examining the results achieved in relation to objectives and assessing the continuing validity of the underlying rationale, the application of this Regulation in respect of the Central System, the security of the Central System, and any implications for future operations. The Commission shall transmit the evaluation to the European Parliament and the Council.
6. Member States shall provide the Management Authority and the Commission with the information necessary to draft the reports referred to in paragraphs 4 and 5.
7. The Management Authority shall provide the Commission with the information necessary to produce the overall evaluations referred to in paragraph 5.

Article 29

Penalties

Member States shall take the necessary measures to ensure that any use of data entered in the Central System contrary to the purpose of *Eurodac* as laid down in Article 1(1) is punishable by penalties, including administrative and/or criminal penalties in accordance with national law, that are effective, proportionate and dissuasive.

Article 30

Territorial scope

The provisions of this Regulation shall not be applicable to any territory to which the Dublin Regulation does not apply.

Thursday 7 May 2009

Article 31

Transitional provision

Data blocked in the Central System in accordance with Article 12 of Regulation (EC) No 2725/2000 shall be unblocked and marked in accordance with Article 14(1) of this Regulation on the date provided for in Article 33(2).

Article 32

Repeal

Regulations (EC) No 2725/2000 and (EC) No 407/2002 are hereby repealed with effect from the date provided for in Article 33(2) of this Regulation.

References to the repealed Regulations shall be construed as references to this Regulation and be read in accordance with the correlation table in Annex III.

Article 33

Entry into force and applicability

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

2. This Regulation shall apply from the date which the Commission shall publish in the *Official Journal of the European Union*, when the following conditions are met:

- (a) each Member State has notified the Commission that it has made the necessary technical arrangements to transmit data to the Central System in accordance with this Regulation; and
- (b) the Commission has made the necessary technical arrangements for the Central System to begin operations in accordance with this Regulation.

3. Member States shall notify the Commission as soon as the arrangements referred to in paragraph 2(a) have been made, **which shall** in any event **be** no later than 12 months from the date of the entry into force of this Regulation.

4. During the transitional period referred to in Article 4(4), references in this Regulation to the Management Authority shall be construed as references to the Commission.

|| This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at ||

For the European Parliament
The President

For the Council
The President

Thursday 7 May 2009

ANNEX I

Data format for the exchange of fingerprint data

The following format is prescribed for the exchange of fingerprint data:

ANSI/NIST-ITL 1a-1997, Ver.3, June 2001 (INT-1) and any future further developments of this standard.

Norm for Member State identification letters

The following ISO norm will apply: ISO 3166 - 2 letters code.

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ANNEX II

Repealed Regulations

(referred to in Article 32)

Council Regulation (EC) No 2725/2000	(OJ L 316, 15.12.2000, p. 1.)
Council Regulation (EC) No 407/2002	(OJ L 62, 5.3.2002, p. 1.)

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ANNEX III

Correlation table

Regulation (EC) No 2725/2000	This Regulation
Article 1(1)	Article 1(1)
Article 1(2), first subparagraph	Article 3(1)
Article 1(2), second subparagraph	Article 3(4)
Article 1(3)	Article 1(2)
Article 2	Article 2
Article 3(1)	Article 3(1)
Article 3(2)	Article 3(3)
Article 3(3)	Article 5
Article 3(4)	—
Article 4(1)	Article 6(1)
Article 4(2)	—
Article 4(3)	Article 6(4)
Article 4(4)	Article 6(5)

Thursday 7 May 2009

Regulation (EC) No 2725/2000	This Regulation
Article 4(5)	Article 6(6)
Article 4(6)	Article 17(4)
Article 4(7)	—
Article 5	Article 7
Article 6	Article 8
Article 7	Article 9
Article 8	Article 10
Article 9	Article 11
Article 10	Article 12
Article 11(1)-(4)	Article 13(1)-(4)
Article 11(5)	—
Article 12	Article 14
Article 13	Article 15
Article 14	Article 19
Article 15	Article 20
Article 16	Article 21
Article 17	Article 22
Article 18	Article 23
Article 19	Article 24
Article 20	Article 25
Article 21	Article 27
Article 22	—
Article 23	—
Article 24	Article 28
Article 25	Article 29
Article 26	Article 30
Article 27	Article 33
—	Annex II

Regulation (EC) No 407/2002	This Regulation
Article 1	—
Article 2	Article 16
Article 3	Article 17
Article 4	Article 18
Article 5(1)	Article 3(3)
Annex I	Annex I
Annex II	—

Thursday 7 May 2009

Establishment of a European Asylum Support Office ***I

P6_TA(2009)0379

European Parliament legislative resolution of 7 May 2009 on the proposal for a regulation of the European Parliament and of the Council establishing a European Asylum Support Office (COM(2009)0066 – C6-0071/2009 – 2009/0027(COD))

(2010/C 212 E/54)

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2009)0066),
 - having regard to Article 251(2), Article 63(1) and (2) and Article 66 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0071/2009),
 - 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 and the opinion of the Committee on Budgets (A6-0279/2009),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Stresses that the provisions of Point 47 of the Interinstitutional Agreement of 17 May 2006 on budgetary discipline and sound financial management ⁽¹⁾ (IIA) will apply for the setting-up of the European Asylum Support Office; 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 the agency in line with the relevant provisions of the IIA;
 4. Instructs its President to forward its position to the Council and the Commission.

⁽¹⁾ OJ C 139, 14.6.2006, p. 1.

Thursday 7 May 2009

P6_TC1-COD(2009)0027**Position of the European Parliament adopted at first reading on 7 May 2009 with a view to the adoption of Regulation (EC) No .../2009 of the European Parliament and of the Council establishing a European Asylum Support Office**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular points (1) and (2) of Article 63 and Article 66 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) Under the Hague Programme, Community policy on the Common European Asylum System is designed to establish a common asylum area by means of an effective harmonised procedure in accordance with the Union's values and humanitarian tradition.
- (2) Much progress has been made in recent years towards the establishment of the Common European Asylum System thanks to the implementation of common minimum standards. However, there are great disparities between one Member State and another in the granting of protection and the forms that protection takes.
- (3) In its Policy Plan on Asylum adopted in June 2008, || the Commission announced its intention of developing the Common European Asylum System by proposing a revision of existing legal instruments in the interests of a greater harmonisation of standards and by strengthening support for practical cooperation between Member States, notably by presenting a legislative proposal to establish a European Asylum Support Office in order to step up coordination of operational cooperation between Member States so that the common rules are implemented effectively.
- (4) In adopting the European Pact on Immigration and Asylum in September 2008 ||, the European Council solemnly reiterated that any persecuted foreigner is entitled to obtain aid and protection on the territory of the European Union in application of the Geneva Convention of 28 July 1951 relating to the Status of Refugees, as amended by the New York Protocol of 31 January 1967, and other relevant treaties. The European Council also expressly agreed to 'establish in 2009 a European support office with the task of facilitating the exchange of information, analyses and experience among Member States, and developing practical cooperation between the administrations in charge of examining asylum applications'.

⁽¹⁾ OJ C ...

⁽²⁾ OJ C ...

⁽³⁾ Position of the European Parliament of 7 May 2009.

Thursday 7 May 2009

- (5) Practical cooperation on asylum aims to increase the convergence **and quality** of Member States' decision-making procedures on asylum matters within the European legislative framework. A substantial number of practical cooperation measures have already been undertaken in recent years, notably the adoption of a common approach to *country-of-origin information* and the establishment of a common European Asylum Curriculum.
- (6) For Member States which are faced with specific and disproportionate pressures on their national asylum systems, due in particular to their geographical or demographic situation, the *European Asylum Support Office* should support the implementation of **binding** solidarity mechanisms to promote a better reallocation of beneficiaries of international protection from such Member States to others, **following non-discretionary, transparent and unequivocal rules**, while ensuring that asylum systems are not abused.
- (7) In order to strengthen and develop these *mechanisms*, a specific structure to support and coordinate them is needed in the form of a European Asylum Support Office (the Office).
- (8) In order to best fulfil its terms of reference, the Office should be independent in technical matters and enjoy legal, administrative and financial autonomy. To that end, the Office should be a Community body having legal personality and exercising the implementing powers conferred on it by this Regulation.
- (9) The Office should act in close cooperation with the Office of the *United Nations* High Commissioner for Refugees (UNHCR) **and non-governmental organisations** in order to benefit from **their** expertise and support. To this end, the role of UNHCR **and non-governmental organisations** should be fully recognised and **they** should be fully involved in the work of the Office. The Office should also work in close cooperation with the competent authorities of the Member States with responsibility for asylum, with national immigration and asylum services and other services, drawing on the capacity and expertise of *such* services, and with the Commission. The Member States should cooperate with the Office to ensure that it is *able* to fulfil its remit.
- (10) The Office should be a European centre of expertise on asylum responsible for facilitating, coordinating and strengthening practical cooperation among Member States on the many aspects of asylum. The Office's terms of reference should be focused on three major tasks, namely supporting practical cooperation on asylum, supporting Member States under particular pressure and contributing to the implementation of the Common European Asylum System.
- (11) The Office should not have any direct or indirect powers in the taking of decisions by Member State authorities on individual applications for international protection.
- (12) In order to provide speedy and effective operational support to Member States subject to strong pressure on their asylum systems, the Office should coordinate the deployment in the territory of requesting Member States of asylum support teams made up of asylum experts. *Such* teams should in particular provide expertise about interpreting services, information on the countries of origin and knowledge of the handling and management of asylum cases. The arrangements for the asylum support teams should be governed by this Regulation in order to ensure their effective deployment.
- (13) The Office should carry out its tasks in conditions which enable it to serve as a reference point by virtue of its independence, the scientific and technical quality of the assistance it provides and the information it disseminates, the transparency of its procedures and operating methods, and its diligence in performing the tasks assigned to it.

Thursday 7 May 2009

- (14) The Commission and the Member States should be represented on a Management Board in order to control effectively the working of the Office. The Management Board should, where possible, consist of the operational heads of the national administrations responsible for asylum policy or their representatives. It should be given the necessary powers to set the budget, verify its execution, adopt the appropriate financial rules, establish transparent working procedures for decision making by the Office and appoint the Executive Director. Given its expertise in the field of asylum, || UNHCR should be a non-voting member of the *Management Board* so that it is fully involved in the work of the Office. **Given the nature of the tasks of the Office and the role of the Executive Director, the European Parliament should be involved in the selection of the candidates proposed for that post.**
- (15) To ensure that it is managed efficiently and expeditiously, the Office should be assisted by an Executive Committee composed of representatives of the Member States with the task of advising the Office's Executive Director and giving opinions to the Management Board.
- (16) To ensure the Office's full autonomy and independence, it should have its own budget, most of which will be constituted by a contribution from the Community. **The financing of the Office should be subject to an agreement by the budgetary authority as set out in 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⁾. The Community budgetary procedure should be applicable to the Community contribution and to any grant chargeable to the general budget of the European Union. The auditing of accounts should be undertaken by the || Court of Auditors.
- (17) To fulfil its purpose, and to the extent required for the performance of its tasks, the Office should cooperate with other community bodies, in particular with the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), established by Council Regulation (EC) No 2007/2004 ⁽²⁾, and the European Union Agency for Fundamental Rights (FRA), established by Council Regulation (EC) No 168/2007 ⁽³⁾. It should also cooperate with the competent authorities of third countries, international organisations competent in matters covered by this Regulation and third countries within the framework of working arrangements concluded in accordance with the relevant provisions of the Treaty **with a view to ensuring compliance with international and Community legal standards on asylum.**
- (18) To fulfil its purpose, the Office should be open to participation by countries which have concluded agreements with the || Community by virtue of which they have adopted and apply Community legislation in the field covered by this Regulation (for example, || Norway, Iceland and Switzerland). It may also, in agreement with the Commission, conclude working arrangements **for the purpose of ensuring compliance with international and Community legal standards on asylum** with countries other than those which have concluded agreements with the || Community by virtue of which they have adopted and apply Community legislation. Under no circumstances, however, should it formulate any independent external policy.
- (19) **Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities** ⁽⁴⁾ (*Financial Regulation*), and in particular Article 185 thereof, should apply to the Office.
- (20) 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) ⁽⁵⁾ should apply without restriction to the Office, which should accede to the Interinstitutional 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) ⁽⁶⁾.

⁽¹⁾ OJ C 139, 14.6.2006, p. 1.

⁽²⁾ OJ L 349, 25.11.2004, p. 1.

⁽³⁾ OJ L 53, 22.2.2007, p. 1.

⁽⁴⁾ OJ L 248, 16.9.2002, p. 1.

⁽⁵⁾ OJ L 136, 31.5.1999, p. 1.

⁽⁶⁾ OJ L 136, 31.5.1999, p. 15.

Thursday 7 May 2009

- (21) 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⁾ should apply to the Office.
- (22) 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⁾ should apply to the processing of personal data by the Office.
- (23) The necessary provisions regarding accommodation for the Office in the || *State of its headquarters* and the specific rules applicable to all Office staff and members of their families should be laid down in a headquarters agreement. Furthermore, the headquarters State should provide the best possible conditions to ensure the proper functioning of the Office, including schools for children and transport, in order to attract high-quality human resources from as wide a geographical area as possible.
- (24) Since the objectives of this Regulation, namely || to facilitate and strengthen practical cooperation between Member States on asylum and to help improve the implementation of the Common European Asylum System, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (25) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Regulation and || is not bound by it or subject to its application.
- (26) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and should be implemented in accordance with Article 18 *thereof* on the right to asylum,

HAVE ADOPTED THIS REGULATION:

CHAPTER 1

|| ESTABLISHMENT AND PURPOSE OF THE EUROPEAN ASYLUM SUPPORT OFFICE

Article 1

Establishment of the European Asylum Support Office

A European Asylum Support Office ('the Office') is hereby established in order to help to improve the implementation of the Common European Asylum System and to strengthen practical cooperation among Member States on asylum.

Article 2

Purpose of the European Asylum Support Office

1. The Office shall facilitate, coordinate and strengthen practical cooperation among Member States on the many aspects of asylum and help to improve the implementation of the Common European Asylum System, including its external dimensions.
2. The Office shall provide operational support to Member States subject to strong pressure on their asylum systems, including the coordination of asylum support teams made up of asylum experts.

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

⁽²⁾ OJ L 8, 12.1.2001, p. 1.

Thursday 7 May 2009

3. The Office shall provide scientific and technical assistance for Community policy-making and legislation in all areas having a direct or indirect impact on asylum so that it is in a position to lend its full support to practical cooperation on asylum and best carry out its tasks. It shall be an independent source of information on all issues in *those* areas.

4. The Office shall carry out its tasks in conditions which enable it to serve as a reference point by virtue of its independence, the scientific and technical quality of the assistance it provides and the information it disseminates, the transparency of its operating procedures and methods, its diligence in performing the tasks assigned to it, and the information technology support needed to fulfil its remit.

5. The Office shall carry out its tasks without prejudice to those assigned to the European Union Agency for Fundamental Rights (FRA), and shall work closely with it and with || UNHCR.

6. The Office shall not have any direct or indirect powers in relation to the taking of decisions by Member State authorities on individual applications for international protection.

CHAPTER 2

TASKS OF THE EUROPEAN ASYLUM SUPPORT OFFICE

Section 1

Supporting practical cooperation on asylum

Article 3

Pooling information and best practice

The Office shall organise, promote and coordinate all activities enabling the *exchange* of information and the identifying and pooling of *best practice* in asylum matters between the Member States.

Article 4

Country-of-origin information

The Office shall organise, promote and coordinate activities relating to information on countries of origin, in particular:

- (a) the gathering of **relevant, reliable, accurate and-up-to date** information on the countries of origin of asylum seekers and persons applying for international protection **in a transparent and impartial manner**, making use of all relevant sources of information, including governmental and non-governmental organisations (NGOs), **international organisations and EU institutions**;
- (b) the management and development of a portal for gathering information on countries of origin and its maintenance, **as well as the ensuring of its accessibility and transparency**;
- (c) the development of a common format and a common methodology for entering, verifying and using information on the country of origin;
- (d) the **impartial** analysis of country-of-origin information and the drafting of reports on countries of origin **in accordance with point (a), moving towards common assessment criteria**.

Thursday 7 May 2009

Article 5

Supporting intra-Community transfers of persons accorded international protection

For Member States which are faced with specific and disproportionate pressures on their national asylum systems, due in particular to their geographical or demographic situation, the Office shall coordinate exchanges of information and all other activities related to the implementation of instruments and mechanisms for the intra-Community *transfers* of persons accorded international protection in the European Union.

Article 6

Support for training

1. The Office shall establish and develop, **in close cooperation with UNHCR and relevant NGOs**, training for members of all national administrations and courts, and national services **or other entities formally used in the asylum procedure** in the Member States.

2. The Office shall manage and develop a European asylum curriculum **which shall, as a minimum, provide for training on international refugee and human rights law and standards and the Community asylum acquis**.

3. The training offered by the Office may be general, specific or thematic.

4. Specific **or thematic** training activities shall include:

(a) issues related to the handling of asylum applications from minors and vulnerable persons with specific needs;

(b) identification of the signs and symptoms of torture;

(c) interview techniques;

(d) the use of expert medical and legal reports in asylum procedures;

(e) issues relating to the production and use of information on countries of origin;

(f) specific legal and case-law issues.

5. The training offered shall be designed to provide the persons targeted with high-quality training, and shall identify key principles and best *practice* with a view to greater convergence of practice, administrative methods and national court decisions.

6. The Office shall provide experts who are part of the Asylum Intervention Pool referred to in **Article 15** with specialist training relevant to their tasks and powers and shall conduct regular exercises with those experts in accordance with the specialist training and exercise schedule referred to in its annual work programme.

7. The Office may organise training activities in cooperation with Member States **and NGOs** in their territory.

Thursday 7 May 2009

Article 7

Support for the external dimensions of asylum policy

As regards external matters the Office shall, in agreement with the Commission, coordinate the exchange of information and all other action taken on issues arising from the implementation of instruments and mechanisms relating to the external dimension of the Common European Asylum System.

The Office shall coordinate exchanges of information and all other action taken on the resettlement of refugees within the European Union, **taking into consideration the principles of solidarity and of burden sharing.**

Pursuant to its terms of reference, and in accordance with *Article 49*, the Office may **promote** capacity-building in third countries within the framework of regional protection programmes.

Section 2

Support for Member States under particular pressure

Article 8

Particular pressure

The Office shall coordinate and support common action to assist Member States under particular pressure, in particular pressure arising from their geographical or demographic situations or situations characterised by sudden arrivals of large numbers of third-country nationals who may be in need of international protection.

Article 9

Gathering and analysing information

1. To be able to assess the needs of Member States under particular pressure, the Office shall gather, on the basis notably of information provided by Member States, UNHCR **and other relevant organisations**, all relevant information for the identification, preparation and formulation of emergency measures to cope with such pressure, in particular under Regulation (EC) No .../2009 of the European Parliament and of the Council of ... establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person ⁽¹⁾.

2. The Office shall identify and analyse systematically, on the basis of information provided by Member States, the structures and staff available, especially for translation and interpretation **and assistance with the initial gathering of information to support the Member States in their determination of status**, and the asylum capacity in the Member States with a view to fostering quick and reliable mutual information to the various national authorities responsible for asylum.

Article 10

Support for the Member States

The Office shall coordinate action to support Member States subject to pressure, including:

- (a) setting up an early warning system to notify the Member States **and the Commission** of any influx of applicants for international protection;

⁽¹⁾ OJ L ...

Thursday 7 May 2009

- (b) **on a proposal from the Commission, implementing a binding solidarity mechanism to reallocate beneficiaries of international protection from Member States with specific and disproportionate pressures on their national asylum systems, in consultation with UNHCR, following non-discretionary, transparent and unequivocal rules;**
- (c) coordinating action to help Member States under pressure to carry out an initial analysis of asylum applications under examination by the competent national authorities;
- (d) coordinating action designed to ensure that appropriate reception facilities can be speedily established by the Member State under pressure, in particular emergency accommodation, transport and medical assistance;
- (e) coordinating the asylum support teams, the operating arrangements for which are set out in Chapter 3.

Section 3

Contribution to the implementation of the Common European Asylum System

Article 11

Gathering and exchanging information

1. The Office shall organise, coordinate and promote the exchange of information between national asylum authorities and between the Commission and national asylum authorities concerning the implementation of all relevant instruments of the Community asylum acquis. To this end, it may create factual, legal and *case-law* databases on national, European and international asylum instruments.
2. In particular, the Office shall gather the following information on:
 - (a) || the processing of applications for international protection by national administrations and authorities;
 - (b) || national legislation and legislative developments in the field of asylum, including case law.

Article 12

Reports and other Office documents

1. The Office shall draw up an annual report on the situation of asylum in the European Union. As part of this report, the Office shall evaluate the results of activities carried out under this Regulation and make a comprehensive comparative analysis of them with the aim of promoting a better understanding of good practice by the Member States and improving the quality, consistency and effectiveness of the Common European Asylum System. **The report shall be presented to the European Parliament and the Commission.**
2. The Office may draft, at the request of the Commission and after consulting the Executive Committee referred to in Article 32, acting in close consultation with its working parties and the Commission, technical documents on the implementation of Community asylum instruments, including guidelines and operating manuals. **UNHCR should be a leading participant in the development of EU guidelines to ensure consistency with international standards. For topics where UNHCR guidelines already exist, these should serve as the starting point for practical cooperation to narrow the gaps in practice.**
3. **At the request of the European Parliament, the Office may draft reports on specific aspects of the implementation of the Community asylum acquis relating to international protection.**

Thursday 7 May 2009

CHAPTER 3

ASYLUM SUPPORT TEAMS

Article 13

Coordination

1. A Member State or Member States subject to particular pressure **may request the Office for the deployment of an** asylum support **team**. The requesting Member State **or Member States shall specify in particular a description of the situation, any objectives and estimated deployment requirements in accordance with Article 18(1)**.

2. **In response to such a request, the Office may coordinate the necessary technical and operational assistance to a Member State or Member States and the deployment, for a limited time, of the asylum support team in the territory of the requesting Member State or Member States on the basis of an operating plan as referred to in Article 18.**

Article 14

Technical assistance

The asylum support teams shall provide **expertise as agreed in the operating plan referred to in Article 18**, in particular expertise about interpreting services, information on the countries of origin and knowledge of the handling and management of asylum cases within the framework of the activities to support Member States referred to in Article 10.

Article 15

Asylum Intervention Pool

1. On a proposal by the Executive Director of the Office, the Management Board shall decide by a majority of three quarters of its members on the profiles and the overall number of the experts to be made available for the asylum support teams (Asylum Intervention Pool). The same procedure shall apply with regard to any subsequent changes in the profiles and the overall number of experts of the Asylum Intervention Pool.

2. Member States shall contribute to the Asylum Intervention Pool via a national expert pool on the basis of defined profiles and propose experts corresponding to the required profiles.

Article 16

Deployment

1. Member States shall, at the request of the Office, immediately communicate the number, names and profiles of experts from their national pool who can be made available within five days to join an asylum support team. Member States shall make experts available for deployment at the Office's request unless they are faced with an exceptional situation substantially affecting the discharge of national duties. The home Member State shall retain its autonomy in the selection of staff and the duration of their deployment.

2. **Where Member States are unable to provide the expertise deemed to be essential for its operation, the Office may take the necessary measures to source such expertise from relevant experts and organisations, drawing on the expertise of the Consultative Forum.**

3. When determining the composition of an asylum support team, the Executive Director of the Office shall take into account the particular circumstances confronting the requesting Member State. The asylum support team shall be constituted in accordance with the operating plan referred to in Article 18.

Thursday 7 May 2009

Article 17

Procedure for deciding on deployment

1. A request for deployment of asylum support teams in accordance with Article 16(1) shall include a description of the situation, any objectives and estimated deployment requirements. If required, the Executive Director may send Office experts to assess the situation in the requesting Member State.
2. The Executive Director shall immediately notify the Executive Committee of any deployment of asylum support teams.
3. The Executive Director shall take a decision on the request for deployment of asylum support teams as soon as possible and no later than five working days from the date of receipt of the request. The Executive Director shall notify the requesting Member State simultaneously and the Executive Committee in writing of the decision, *stating* the main reasons for it.
4. If the Executive Director decides to deploy one or more asylum support teams, an operating plan shall immediately be drawn up by the Office and the requesting Member State in accordance with Article 18.
5. As soon as this plan has been agreed, the Executive Director shall inform the Member States providing the experts to be deployed of the number and profiles required. This information shall be provided, in writing, to the national contact points referred to in Article 19 and shall specify the scheduled date of deployment. A copy of the operating plan shall also be sent to them.
6. If the Executive Director is absent or indisposed, the decisions on the deployment of the teams shall be taken by the head of unit assuming his/her functions.

Article 18

Operating plan

1. The Executive Director and the requesting Member State shall agree on an operating plan setting out in detail the conditions for deployment of the asylum support teams. The operating plan shall include:
 - (a) a description of the situation, with the *modus operandi* and objectives of the deployment, including the operational objective;
 - (b) the forecast duration of the teams' deployment;
 - (c) the geographical area of responsibility in the requesting Member State where the teams will be deployed;
 - (d) a description of the tasks and special instructions for members of the teams, including databases *which* they are authorised to consult and the equipment *which* they may carry in the host Member State;
 - (e) the composition of the teams.
2. Any amendments to or adaptations of the operating plan shall require the agreement of both the Executive Director and the requesting Member State. A copy of the amended or adapted operating plan shall be sent immediately by the Office to the participating Member States.

Thursday 7 May 2009

Article 19**National contact point**

Each Member State shall designate a national contact point for communication with the Office on all matters pertaining to the asylum support teams. The national contact point shall be reachable at all times.

Article 20**Community contact point**

1. The Executive Director shall designate one or more Office experts to act as a Community contact point for coordination. The Executive Director shall notify the host Member State of such designations.
2. The Community contact point shall act on behalf of the Office in all aspects of the deployment of asylum support teams. In particular, it shall:
 - (a) act as an interface between the Office and the host Member State;
 - (b) act as an interface between the Office and members of the asylum support teams, providing assistance, on behalf of the Office, on all issues relating to the conditions of the teams' deployment;
 - (c) monitor the correct implementation of the operating plan;
 - (d) report to the Office on all aspects of the asylum support teams' deployment.
3. The Executive Director of the Office may authorise the contact point to assist in resolving any disputes concerning the implementation of the operating plan and the deployment of asylum support teams.
4. In discharging his/her duties, the Community contact point shall take instructions only from the Office.

Article 21**Civil liability**

1. *Where members of an asylum support team are operating in a host Member State, that Member State shall be liable in accordance with its national law for any damage caused by them during their operations.*
2. *Where such damage is caused by gross negligence or wilful misconduct, the host Member State may approach the home Member State in order to have any sums it has paid to the victims or persons entitled on their behalf reimbursed by the home Member State.*
3. *Without prejudice to the exercise of its rights vis-à-vis third parties, each Member State shall waive all its claims against the host Member State or any other Member State for any damage it has sustained, except in cases of gross negligence or wilful misconduct.*
4. *Any dispute between Member States relating to the application of paragraphs 2 and 3 of this Article which cannot be resolved by negotiations shall be referred by them to the Court of Justice of the European Communities in accordance with Article 239 of the Treaty.*
5. *Without prejudice to the exercise of its rights vis-à-vis third parties, the Office shall meet the costs relating to damage caused to the Office's equipment during deployment, except in cases of gross negligence or wilful misconduct.*

Thursday 7 May 2009

Article 22

Criminal liability

During the deployment of an asylum support team, members of the team shall be treated in the same way as officials of the host Member State with regard to any criminal offences that might be committed against or by them.

Article 23

Costs

The Office shall fully cover the following costs incurred by Member States in making their experts available for deployment to asylum support teams:

- (a) travel costs from the home Member State to the host Member State and from the host Member State to the home Member State;
- (b) cost of vaccinations;
- (c) cost of special insurance cover required;
- (d) cost of health care;
- (e) daily subsistence allowances, including accommodation costs;
- (f) cost of the Office's technical equipment.

CHAPTER 4

ORGANISATION OF THE OFFICE

Article 24

Bodies of the Office

The administrative and management structure of the Office shall comprise:

- (a) a Management Board;
- (b) an Executive Director and his/her staff;
- (c) an Executive Committee;
- (d) a Consultative Forum.

Article 25

Composition of the Management Board

1. Each Member State shall appoint one member to the *Management Board* and the Commission two members.
2. Each member of the Management Board may be represented or accompanied by an alternate. *When* accompanying a member, the alternate || shall attend without having the right to vote.

Thursday 7 May 2009

3. Management Board members shall be appointed on the basis of their experience and high degree of expertise in the field of asylum.
4. || UNHCR shall be a non-voting member of the Management Board.
5. The term of office of members of the Management Board shall be three years. This term shall be renewable. On the expiry of their term of office or in the event of their resignation, members shall remain in office until their appointments are renewed or until they are replaced.

Article 26

Chair of the Management Board

1. The Management Board shall elect a *Chair* and a *Deputy Chair* from among its members. The *Deputy Chair* shall automatically replace the *Chair* if he/she is prevented from attending to his/her duties.
2. The term of office of the *Chair* and that of the *Deputy Chair* shall last for three years and may be renewed only once. If, however, their membership of the Management Board ends at any time during their term of office as *Chair* or *Deputy Chair*, their term of office shall automatically *also* expire on that date ||.

Article 27

Meetings of the Management Board

1. The meetings of the Management Board shall be convened by its *Chair*. The Executive Director of the Office shall take part in the meetings.
2. The Management Board shall hold at least two ordinary meetings a year. In addition, it shall meet on the initiative of its *Chair* or at the request of one third of its members. The *Chair* shall convene additional meetings of the Management Board at the request of at least one third of its members.
3. The Management Board may invite any person whose opinion may be of interest to attend its meetings as an observer.
4. The members of the Management Board may, subject to the provisions of its rules of procedure, be assisted by advisers or experts.
5. The secretariat for the Management Board shall be provided by the Office.

Article 28

Voting

1. The Management Board shall take its decisions by a majority of two thirds of all members with voting rights. Each member entitled to vote shall have one vote. In the absence of a member, his/her alternate shall be entitled to exercise his/her right to vote.
2. The Executive Director of the Office shall not *be entitled to vote*.
3. The *Chair* shall take part in the voting.
4. Member States that do not fully participate in the *Community asylum acquis* || shall not vote when the Management Board is called on to take decisions falling within the management powers of the Office, as laid down in *Article 29*, on the basis of instruments to which they do not adhere.

Thursday 7 May 2009

5. The Management Board's rules of procedure shall establish more detailed voting arrangements, in particular the circumstances in which a member may act on behalf of another member, plus any quorum requirements, where *necessary*.

Article 29

Functions of the Management Board

The Management Board shall ensure that the Office performs the tasks assigned to it. It shall be the Office's planning and monitoring body. In particular, it shall:

- (a) adopt its rules of procedure;
- (b) appoint the Executive Director as laid down in *Article 30*; exercise disciplinary authority over the Executive Director and, where necessary, suspend or dismiss him;
- (c) adopt the annual general report on the Office's activities and forward it by 15 June of the following year || to the European Parliament, the Council, the Commission and the || Court of Auditors; the general report shall be made public;
- (d) before 30 September each year, on the basis of a draft put forward by the || Executive Director and after receiving the opinion of the Commission, adopt, by a majority of three quarters of its members with the right to vote, the Office's work programme for the coming year and forward it to the European Parliament, the Council and the Commission; this work programme shall be adopted in accordance with the annual Community budgetary procedure and the Community legislative work programme in the area of asylum;
- (e) exercise its responsibilities in respect of the Office's budget as laid down in Chapter 5;
- (f) adopt the detailed rules for applying Regulation (EC) No 1049/2001 in accordance with *Article 43* of this Regulation;
- (g) establish the rules governing the use of languages by the Office in accordance with *Article 42*;
- (h) establish the Office's organisational structure and adopt its staff policy in accordance with *Article 39*;
- (i) adopt, having requested the opinion of the Commission, the multiannual staff policy plan;
- (j) take all decisions for the purpose of fulfilling the Office's terms of reference as laid down in this Regulation;
- (k) take all decisions on the establishment and, where necessary, the development of the information systems provided for in this Regulation, including the information portal referred to in *Article 4(b)*;
- (l) take all decisions on the establishment and, where necessary, modification of the Office's internal structures;
- (m) exercise disciplinary authority over the Executive Director;
- (n) adopt its rules of procedure on the basis of a draft submitted by the Executive Director and after receiving the opinion of the Commission.

Thursday 7 May 2009

Article 30

Appointment of the Executive Director

1. The Office's Executive Director shall be appointed for a period of five years by the Management Board **in accordance with the cooperation procedure provided for in this Article. The Executive Director shall be appointed on the basis of his or her personal merit, experience in the field of asylum and administrative and management skills. The cooperation procedure shall be as follows:**

(a) on the basis of a list drawn up by the Commission after a call for candidates and a transparent selection procedure, applicants shall be asked before an appointment is made to address the Council and the competent committee or committees of the European Parliament and to answer questions;

(b) the European Parliament and the Council shall then give their opinions and state their orders of preference;

(c) the Management Board shall appoint the Executive Director taking those opinions into account.

In the course of the last nine months of this five-year period the Commission shall carry out an evaluation focusing on:

- the performance of the Executive Director; and
- the Office's tasks and requirements in coming years.

2. The Management Board, acting on a proposal from the Commission and taking into account the evaluation report, may extend the term of office of the Director once for not more than three years, but only **||** where *such an extension* is justified by the purpose and requirements of the Office.

3. The Management Board shall inform the European Parliament of its intention to extend the Executive Director's term of office. In the month prior to such extension of his/her term, the Executive Director **shall** be invited to make a statement before the competent committee or committees of the European Parliament and answer questions put by its or their members.

Article 31

Functions of the Executive Director

1. The Office shall be managed by its Executive Director, who shall be independent in the performance of his/her duties. The Executive Director shall be accountable to the Management Board for his/her activities.

2. Without prejudice to the powers of the Commission or the Management Board, the Executive Director shall neither seek nor take instructions from any government or from any other body.

3. The European Parliament and the Council may invite the Executive Director to report on the performance of his/her tasks.

4. The Executive Director shall be the legal representative of the Office.

5. The Executive Director may be assisted by one or more heads of unit. If the Executive Director is absent or indisposed, a head of unit shall take his/her place.

Thursday 7 May 2009

6. The Executive Director shall be responsible for:
 - (a) the day-to-day administration of the Office;
 - (b) establishing the Office's work programmes, having received the opinion of the Commission;
 - (c) implementing the work programmes and decisions adopted by the Management Board;
 - (d) drafting reports on || countries of origin as provided for in point (d) of Article 4;
 - (e) preparing the Office's draft financial regulation for adoption by the Management Board under Article 38, and its implementing rules;
 - (f) the preparation of the Office's draft statement of estimates of revenue and expenditure and of *implementation* of its budget;
 - (g) exercising the powers laid down in Article 39 in respect of Office staff;
 - (h) all staff matters; taking all decisions on the management of the information systems provided for in this Regulation, including the information portal referred to in Article 4(b);
 - (i) taking all decisions on the management of the Office's internal structures.

Article 32

Executive Committee

1. In the interests of speed and efficiency, the Office shall set up an Executive Committee with eight members appointed from among the members of the Management Board.
2. The Commission shall be an *ex officio* member of the Executive Committee. The Management Board of the Office shall lay down the rules applicable to the appointment of other members of the Executive Committee.
3. The Executive Committee shall meet regularly at the invitation of the Executive Director, or at the request of at least one third of its members at least four times a year. Its operating procedures shall be laid down in the Office's rules of procedure and be made public.
4. The term of office of members of the Executive Committee shall be the same as that of members of the Management Board.
5. The Executive Committee shall convene when necessary for meetings on specific topics.
6. The Executive Committee shall be responsible for advising the Office's Executive Director and issuing opinions to the Management Board, either at the *Management Board's* request or on its own initiative, on the Office's work programme and all its activities and on any occasion where the Office *has to* take quick decisions, especially concerning the sending of asylum support teams to Member States under particular pressure in accordance with the provisions of Chapter 3.
7. The Office shall provide the technical and *logistical* support necessary for the Executive Committee and provide the secretariat for its meetings.

Thursday 7 May 2009

8. At the request of the Executive Committee, UNHCR representatives may attend meetings of the Executive Committee without the right to vote.
9. The Executive Committee may invite any person whose opinion may be of interest to attend its meetings as an observer.

Article 33

Working parties

1. As part of its terms of reference as laid down in this Regulation, the Office may set up working parties composed of experts from competent Member State authorities operating in the field of asylum, including judges. Experts may be replaced by alternates appointed at the same time.
2. The Commission shall take part in the working parties as of right. UNHCR representatives may attend all or part of the meetings of the Office's working parties, depending on the nature of the issues under discussion.
3. The working parties may invite any person whose opinion may be of interest to attend meetings, including representatives of NGOs working in the field of asylum.

||

CHAPTER 5

FINANCIAL PROVISIONS

Article 34

Budget

1. Estimates of all the revenue and expenditure of the Office shall be *drawn up* for each financial year, corresponding to the calendar year, and shall be shown in the Office's budget.
2. *The revenue and expenditure shown in the Office's budget shall be in balance.*
3. Without prejudice to other resources, the Office's revenue shall comprise:
 - (a) a contribution from the Community entered in the general budget of the European Union;
 - (b) any voluntary contribution from the Member States;
 - (c) charges for publications, training and any service provided by the Office.
4. The expenditure of the Office shall include staff remuneration, administrative and infrastructure expenses, operating costs, and expenditure relating to contracts or agreements concluded by the Office.

Article 35

Setting of the budget

1. Each year the Executive Director shall draw up a draft statement of estimates of the Office's revenue and expenditure for the following year together, including the establishment plan, and forward it to the Management Board.

Thursday 7 May 2009

2. The Management Board shall, on the basis of this draft, produce an estimate of the Office's revenue and expenditure for the following financial year.
3. The draft statement of estimates of the Office's revenue and expenditure shall be forwarded to the Commission by 10 February ¶. The final version of this estimate, which shall include a draft establishment plan, shall be forwarded by the Management Board to the Commission by 31 March ¶.
4. The statement of estimates shall be forwarded by the Commission to the European Parliament and the Council (the 'budgetary authority') together with the preliminary draft general budget of the European Union.
5. On the basis of the statement of estimates, the Commission shall enter in the preliminary draft general budget of the European Union the estimates *which* it considers necessary for the establishment plan and the amount of the grant to be charged to the general budget, which it shall place before the budgetary authority in accordance with Article 272 of the Treaty.
6. The budgetary authority shall authorise the appropriations for the Office's grant.
7. The budgetary authority shall adopt the Office's establishment plan.
8. The Office's budget shall be adopted by the Management Board. It shall become final following final adoption of the general budget of the European Union. Where necessary, it shall be adjusted accordingly.
9. The Management Board shall, as soon as possible, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of the budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission accordingly.
10. Where a branch of the budgetary authority has notified its intention to deliver an opinion, it shall forward its opinion to the Management Board within a period of six weeks from the date of the project's notification.

Article 36

Implementation of the budget

1. The Executive Director shall implement the Office's budget.
2. Each year the Executive Director shall forward to the budgetary authority all information relevant to the findings of the evaluation procedures.

Article 37

Presentation of accounts and discharge

1. By 1 March ¶ following each financial year, the Office's accounting officer shall communicate the provisional accounts to the Commission's Accounting Officer together with a report on the budgetary and financial management for that financial year. The Commission's Accounting Officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of the *Financial Regulation* ¶.

Thursday 7 May 2009

2. By 31 March following each financial year, the Commission's accounting officer shall forward the Office's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for that financial year shall also be forwarded to the European Parliament and the Council.
3. On receipt of the Court of Auditors' observations on the Office's provisional accounts pursuant to Article 129 of *the Financial Regulation*, the Executive Director shall draw up the Office's final accounts under his/her own responsibility and submit them to the Management Board for an opinion.
4. The Management Board shall deliver an opinion on the Office's final accounts.
5. The Executive Director shall, by 1 July following each financial year, forward the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.
6. The final accounts shall be published.
7. The Executive Director shall send the Court of Auditors a reply to its observations by 30 September. He/she shall also send that reply to the Management Board.
8. The Executive Director shall submit to the European Parliament, at its request, any information required for the smooth application of the discharge procedure for the financial year in question, as laid down in Article 146(3) of *the Financial Regulation*.
9. On a recommendation from the Council acting by a qualified majority, the European Parliament shall, before 15 May of year N + 2, give a discharge to the Executive Director in respect of the implementation of the budget for year N.

Article 38

Financial regulation

The financial regulation applicable to the Office shall be adopted by the Management Board after consultation with the Commission. It may not depart from Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 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⁾, unless such departure is specifically required for the Office's operation and the Commission has given its prior consent.

CHAPTER 6

STAFF PROVISIONS

Article 39

Staff

1. The Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and the rules adopted jointly by the EU institutions for the purpose of applying those Staff Regulations and Conditions of Employment shall apply to the staff of the Office, including the Executive Director.
2. The Management Board shall, in agreement with the Commission, adopt the necessary implementing measures referred to in Article 110 of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities.

⁽¹⁾ OJ L 357, 31.12.2002, p. 72.

Thursday 7 May 2009

3. The powers conferred on the appointing authority by the Staff Regulations and on the authority entitled to conclude contracts by the Conditions of Employment of Other Servants shall be exercised by the Office in respect of its own staff.

4. The Management Board may adopt provisions to allow national experts from Member States to be employed on secondment to the Office.

Article 40

Privileges and immunities

The Protocol on the Privileges and Immunities of the European Communities shall apply to the Office.

CHAPTER 7

GENERAL PROVISIONS

Article 41

Legal status

1. The Office shall be a body of the Community **established in accordance with Article 185 of the Financial Regulation**. It shall have legal personality.

2. In each of the Member States the Office shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may, in particular, acquire and dispose of movable and immovable property and be a party to legal proceedings.

3. The Office shall be represented by its Executive Director.

4. The headquarters of the Office shall be located in [...]. ¶

Article 42

Language arrangements

1. The provisions laid down in Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community ⁽¹⁾ shall apply to the Office ¶.

2. Without prejudice to decisions taken on the basis of Article 290 of the Treaty, the annual general report on the Office's activities and the annual work programme referred to in points (c) and (d) of Article 29 shall be produced in all the official languages of the Community.

3. The translation services required for the functioning of the Office shall be provided by the Translation Centre for the bodies of the European Union.

4. The Management Board shall establish the practical arrangements for the implementation of the language arrangements.

⁽¹⁾ OJ 17, 6.10.1958, p. 385.

Thursday 7 May 2009

Article 43

Access to documents

1. **The Office shall develop good administrative practices in order to ensure the highest possible level of transparency concerning its activities.** Regulation (EC) No 1049/2001 || shall apply to documents held by the Office.
2. The Management Board shall adopt the arrangements for implementing Regulation (EC) No 1049/2001 within six months of entry into force of this Regulation.
3. Decisions taken by the Office under Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the Ombudsman or of an action before the Court of Justice of the European Communities, under the conditions laid down in Articles 195 and 230 of the Treaty respectively.
4. The processing of data of a personal nature by the Office shall be subject to the provisions of Regulation (EC) No 45/2001 ||.

Article 44

Security rules on the protection of classified information and non-classified sensitive information

1. The Office shall apply the security principles contained in Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal *Rules of Procedure* ⁽¹⁾. This shall cover, inter alia, provisions for the exchange, processing and storage of classified information.
2. The Office shall also apply the security principles relating to the processing of non-classified sensitive information as adopted and implemented by the || Commission.

*Article 45***Combating fraud**

1. **In order to combat fraud, corruption and other unlawful activities, the provisions of Regulation (EC) No 1073/1999 shall apply without restriction.**
2. **The Office shall accede to the Interinstitutional Agreement of 25 May 1999 and shall issue, without delay, the appropriate provisions applicable to all the employees of the Office.**
3. **Decisions concerning funding and the implementing agreements and instruments resulting from them shall expressly stipulate that the Court of Auditors and OLAF may carry out, if necessary, on-the-spot checks among recipients of the Office's funding and the agents responsible for allocating it.**

Article 46

Provisions on liability

1. The Office's contractual liability shall be governed by the law applicable to the contract in question.
2. The Court of Justice of the European Communities shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Office.
3. In the case of non-contractual liability, the Office shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its staff in the performance of their duties.

⁽¹⁾ OJ L 317, 3.12.2001, p. 1.

Thursday 7 May 2009

4. The Court of Justice of the European Communities shall have jurisdiction in disputes over compensation for damages referred to in paragraph 3.

5. The personal liability of its staff towards the Office shall be governed by the provisions laid down in the Staff Regulations or Conditions of Employment applicable to them.

Article 47

Evaluation and review

1. No later than three years after *the Office becomes operational as referred to in Article 54*, the Office shall commission an independent external evaluation of its achievements on the basis of terms of reference issued by the Management Board in agreement with the Commission. *That evaluation shall cover the Office's impact on practical cooperation on asylum and on the Common European Asylum System. It shall, in particular, address the possible need to modify or extend the tasks of the Office, including the financial implications of any such modification or extension. The evaluation shall also look at whether the management structure is appropriate for carrying out the Office's tasks. The evaluation shall take into account the views of stakeholders, at both Community and national levels.*

2. The Management Board, in agreement with the Commission, shall decide the timing of future evaluations, taking into account the findings of the evaluation report referred to in paragraph 1.

Article 48

Administrative controls

The activities of the Office shall be subject to the supervision of the Ombudsman in accordance with Article 195 of the Treaty.

Article 49

Cooperation with third and associate countries

1. The Office shall be open to the participation of countries which have concluded agreements with the ¶ Community by virtue of which they have adopted and applied Community legislation in the field covered by this Regulation. Arrangements shall be made under the relevant provisions of those agreements, specifying in particular the nature, extent and manner in which those countries are to participate in the Office's work. Such arrangements shall include provisions relating to participation in initiatives undertaken by the Office, financial contributions and staff. As regards staff matters, those agreements shall, in any event, *comply with the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities.*

2. In matters connected with its activities and to the extent required for the fulfilment of its tasks the Office shall, in agreement with the Commission ***and within the limits of its mandate***, facilitate operational cooperation between Member States and third countries *within* the framework of the European Union's external relations policy, and may also cooperate with the authorities of third countries competent in technical aspects of the areas covered by this Regulation, within the framework of working arrangements concluded with those authorities, in accordance with the relevant provisions of the Treaty.

Article 50

Cooperation with ¶ UNHCR

The Office shall cooperate with UNHCR in the areas governed by this Regulation within the framework of working arrangements concluded with it.

Thursday 7 May 2009

The Office may make grants to ¶ UNHCR. Such grants shall be made in order to finance activities that will enable the Office to avail itself of ¶ UNHCR's expertise in asylum matters on a stable and sustainable footing. They shall form part of the special cooperation relations established between the Office and ¶ UNHCR in accordance with this Article and with Articles 2(5), 9(1), 25(4), 32(8), 33(2) and 51(4). In accordance with Article 75 of Regulation (EC, Euratom) No 2343/2002, the relevant provisions of the Financial Regulation ¶ and its implementing rules shall apply.

Article 51

Consultative Forum

1. *The Office shall cooperate closely with civil society organisations and relevant competent bodies operating in the field of asylum policy at local, regional, national, European or international level and shall set up a Consultative Forum for that purpose.*
2. *Local authorities, which have an important role and expertise in the field of asylum policy, shall be included in the Consultative Forum.*
3. *The Consultative Forum shall constitute a mechanism for the exchange of information and pooling of knowledge. It shall ensure that there is close cooperation between the Office and the relevant stakeholders.*
4. *The Consultative Forum shall be open to all competent stakeholders in accordance with paragraph 1. The Office shall address the members of the Consultative Forum in accordance with specific needs related to areas identified as priority for the Offices work.*

UNHCR shall be an ex officio member of the Consultative Forum.

5. *The Office shall call on the Consultative Forum in particular to:*
 - (a) *make suggestions to the Management Board on the annual work programme to be adopted under point (d) of Article 29;*
 - (b) *provide feedback to the Management Board and suggest measures as a follow-up to the annual report referred to in point (c) of Article 29 and the annual report on the situation of asylum in the European Union referred to in Article 12(1); and*
 - (c) *communicate the conclusions and recommendations of conferences, seminars and meetings relevant to the work of the Office to the Executive Director and the Management Board.*
6. *The coordination of the Consultative Forum shall be under the authority of the Executive Director.*
7. *The Consultative Forum shall meet at least twice a year.*

Article 52

Cooperation with Frontex, FRA and other Community bodies and with international organisations

The Office shall cooperate with Community bodies having activities relating to its field of activity, and in particular with the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) and the ¶ FRA ¶ and with international organisations competent in matters covered by this Regulation, within the framework of working arrangements concluded with those bodies, in accordance with the ¶ Treaty and the provisions on the competence of those bodies.

Thursday 7 May 2009

Cooperation shall create synergies between the bodies concerned and prevent any duplication of effort in the work carried out pursuant to their terms of reference.

Article 53

Headquarters agreement and operating conditions

The necessary arrangements concerning the accommodation to be provided for *the* Office in the host *Member State* and the facilities to be made available by that State together with the specific rules applicable in the Office's host *Member State* to the Executive Director, members of the Management Board, Office staff and members of their families shall be laid down in a headquarters agreement between the Office and the host *Member State* concluded once the Management Board's approval is obtained. The headquarters *Member State* should provide the best possible conditions to ensure the proper functioning of the Office, including multilingual, European-oriented schooling and appropriate transport connections.

Article 54

Start of the Office's activities

The Office shall become operational within one year of the entry into force of this Regulation.

The Commission shall be responsible for the establishment and initial operation of the Office until it has the operational capacity to implement its own budget.

To this end:

- until such time as the Executive Director of the Office takes up his/her duties following his/her appointment by the Management Board in accordance with *Article 30*, a Commission official may act as interim Director and exercise the functions assigned to the Office's Executive Director;
- Commission officials may carry out the tasks assigned to the Office under the responsibility of its interim Director or Executive Director.

The interim Director may authorise all payments covered by appropriations entered in the Office's budget after approval by the Management Board and may conclude contracts, including staff contracts, following the adoption of the Office's establishment plan.

Article 55

Entry into force

This Regulation shall enter into force on the [...] day following || its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ||,

For the European Parliament
The President

For the Council
The President

Thursday 7 May 2009

Bilateral agreements between Member States and third countries concerning sectoral matters and covering applicable law in contractual and non-contractual obligations *I**

P6_TA(2009)0380

European Parliament legislative resolution of 7 May 2009 on the proposal for a regulation of the European Parliament and of the Council establishing a procedure for the negotiation and conclusion of bilateral agreements between Member States and third countries concerning sectoral matters and covering applicable law in contractual and non-contractual obligations (COM(2008)0893 – C6-0001/2009 – 2008/0259(COD))

(2010/C 212 E/55)

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0893),
 - having regard to Article 251(2) and Articles 61(c), 65 and 67(5) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0001/2009),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Civil Liberties, Justice and Home Affairs (A6-0270/2009),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and the Commission.

P6_TC1-COD(2008)0259

Position of the European Parliament adopted at first reading on 7 May 2009 with a view to the adoption of Regulation (EC) No .../2009 of the European Parliament and of the Council establishing a procedure for the negotiation and conclusion of agreements between Member States and third countries on particular matters concerning the law applicable to contractual and non-contractual obligations

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Regulation (EC) No 662/2009.)

Thursday 7 May 2009

MEDIA Mundus: audiovisual cooperation programme with professionals from third countries *I**

P6_TA(2009)0381

European Parliament legislative resolution of 7 May 2009 on the proposal for a decision of the European Parliament and of the Council establishing an audiovisual cooperation programme with professionals from third countries MEDIA Mundus (COM(2008)0892 – C6-0011/2009 – 2008/0258(COD))

(2010/C 212 E/56)

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0892),
 - having regard to Article 251(2) and Articles 150(4) and 157(3) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0011/2009),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Culture and Education (A6-0260/2009),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and the Commission.

P6_TC1-COD(2008)0258

Position of the European Parliament adopted at first reading on 7 May 2009 with a view to the adoption of decision 2009/.../EC of the European Parliament and of the Council establishing an audiovisual cooperation programme with professionals from third countries (MEDIA Mundus)

(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Decision No 1041/2009/EC.)

Thursday 7 May 2009

Common rules for the allocation of slots at Community airports *I**

P6_TA(2009)0382

European Parliament legislative resolution of 7 May 2009 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports (COM(2009)0121 – C6-0097/2009 – 2009/0042(COD))

(2010/C 212 E/57)

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2009)0121),
 - having regard to Article 251(2) and Article 80(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0097/2009),
 - having regard to Rules 51 and 43(2) and (3) of its Rules of Procedure,
 - having regard to the report of the Committee on Transport and Tourism (A6-0274/2009),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and to the Commission.

P6_TC1-COD(2009)0042**Position of the European Parliament adopted at first reading on 7 May 2009 with a view to the adoption of Regulation (EC) No .../2009 of the European Parliament and of the Council amending Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports***(As an agreement was reached between Parliament and Council, Parliament's position at first reading corresponds to the final legislative act, Regulation (EC) No 545/2009.)*

Thursday 7 May 2009

Bilateral agreements between Member States and third countries on judgments and decisions in matrimonial matters, parental responsibility and maintenance obligations *

P6_TA(2009)0383

European Parliament legislative resolution of 7 May 2009 on the proposal for a Council regulation establishing a procedure for the negotiation and conclusion of bilateral agreements between Member States and third countries concerning sectoral matters and covering jurisdiction, recognition and enforcement of judgments and decisions in matrimonial matters, parental responsibility and maintenance obligations, and applicable law in matters relating to maintenance obligations (COM(2008)0894 – C6-0035/2009 – 2008/0266(CNS))

(2010/C 212 E/58)

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2008)0894),
 - having regard to Articles 61(c), 65, 67(2) and 67(5) of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0035/2009),
 - 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 and the opinion of the Committee on Legal Affairs (A6-0265/2009),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and the Commission.

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 54

**Proposal for a regulation
Title**

Proposal for a Council Regulation *of [...]* establishing a procedure for the negotiation and conclusion of **bilateral** agreements **between Member States and third countries** concerning **sectoral matters and covering** jurisdiction, recognition and enforcement of judgments and decisions in matrimonial matters, parental responsibility and maintenance obligations, and applicable law in matters relating to maintenance obligations

Proposal for a Council Regulation *of [...]* establishing a procedure for the negotiation and conclusion of agreements concerning jurisdiction, recognition and enforcement of judgments and decisions in matrimonial matters, **matters of** parental responsibility and **matters relating to** maintenance obligations, and applicable law in matters relating to maintenance obligations

Thursday 7 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 55
Proposal for a regulation
Recital 1

(1) Title IV of the Treaty establishing the European Community (hereinafter 'the EC Treaty') provides the legal basis for the adoption of Community legislation in the field of judicial cooperation in civil matters.

(1) Title IV **of Part Three** of the Treaty establishing the European Community (hereinafter 'the EC Treaty') provides the legal basis for the adoption of Community legislation in the field of judicial cooperation in civil matters.

Amendment 56
Proposal for a regulation
Recital 2

(2) Judicial cooperation in civil matters between Member States and third countries has traditionally been governed by agreements between Member States and third countries.

(2) Judicial cooperation in civil matters between Member States and third countries has traditionally been governed by agreements between Member States and third countries. **Such agreements, of which there are a large number, often reflect special ties between a Member State and a particular third country and are intended to provide an adequate legal framework to meet the specific needs of the parties concerned.**

Amendment 57
Proposal for a regulation
Recital 3

(3) Article 307 of the EC Treaty requires **the elimination of** any incompatibilities between the Community acquis and international agreements concluded by Member States **and** third countries. This may involve the need for re-negotiation of these agreements.

(3) Article 307 of the EC Treaty requires **the Member States to take all appropriate steps to eliminate** any incompatibilities between the Community acquis and international agreements concluded by Member States **with** third countries. This may involve the need for **the** re-negotiation of **such** agreements.

Amendment 58
Proposal for a regulation
Recital 4

(4) There may also be a need for the conclusion of new agreements with third countries **governing** areas of civil justice that come within the purview of Title IV of the EC Treaty.

(4) **In order to provide an adequate legal framework to meet the specific needs of a given Member State in its relations with a third country,** there may also be a **manifest** need for the conclusion of new agreements with third countries **relating to** areas of civil justice that come within the purview of Title IV **of Part Three** of the EC Treaty.

Thursday 7 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 59**Proposal for a regulation
Recital 5**

(5) The *ECJ* confirmed in its Opinion 1/03 of 7 February 2006 relating to the conclusion of the new Lugano Convention, that the Community has acquired exclusive *external* competence to *negotiate and* conclude international *agreements* with third countries *on a number of important subject matters referred to in Title IV of the EC Treaty. In particular, the Court confirmed that the Community has acquired exclusive competence to conclude international agreements with third countries*, on matters affecting the rules *set out inter alia* in Regulation (EC) No 44/2001 (*Brussels I*), *in particular* on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

(5) The *Court of Justice of the European Communities* confirmed in its Opinion 1/03 of 7 February 2006 relating to the conclusion of the new Lugano Convention that the Community has acquired exclusive competence to conclude *an* international *agreement such as the Lugano Convention* with third countries on matters affecting the rules in *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⁾ (*Brussels I*).

⁽¹⁾ *OJ L 12, 16.1.2001, p. 1.*

Amendment 60**Proposal for a regulation
Recital 6**

(6) *Thus*, pursuant to Article 300 of the EC Treaty, *it is for the Community to conclude such* agreements between the Community and a third country, *as far as Community competence is concerned*.

(6) *It is for the Community to conclude*, pursuant to Article 300 of the EC Treaty, agreements between the Community and a third country *on matters falling within the exclusive competence of the Community*.

Amendment 61**Proposal for a regulation
Recital 7**

(7) Article 10 of the EC Treaty requires Member States to facilitate achievement of the Community's tasks and to abstain from any measure which could jeopardize the attainment of the objectives of the Treaty. This duty of *genuine* cooperation is of general application and does not depend on whether the Community competence is exclusive or not.

(7) Article 10 of the EC Treaty requires Member States to facilitate *the* achievement of the Community's tasks and to abstain from any measure which could jeopardise the attainment of the objectives of the Treaty. This duty of *loyal* cooperation is of general application and does not depend on whether the Community competence is exclusive or not.

Amendment 62**Proposal for a regulation
Recital 8**

(8) *An assessment is needed of whether there currently exists sufficient Community interest in replacing all existing or proposed bilateral agreements between Member States and third countries with Community agreements. Consequently, it is necessary to establish a procedure with a twofold purpose. The first is to allow the Community to assess whether there is such sufficient Community interest in the conclusion of a particular bilateral agreement. The second is to authorise Member States to conclude the agreement at issue if there is no current Community interest in the conclusion of such an agreement.*

deleted

Thursday 7 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 43
Proposal for a regulation
Recital 9

(9) A coherent and transparent procedure should be established to authorise Member **States** to amend existing **agreements with third countries** or to negotiate and conclude new **agreements in exceptional circumstances**, in particular where the Community itself has not indicated its intention to exercise its external competences to conclude **the** agreement. This procedure is without prejudice to the exclusive competence of the Community and the provisions of Articles 300 and 307 of the EC Treaty. **Because it derogates from the rule that the Community is exclusively competent to conclude international agreements on these matters, the proposed procedure** must be regarded as an exceptional measure and must be limited in scope and in time.

(9) **With regard to agreements with third countries on particular matters of civil justice falling within the exclusive competence of the Community**, a coherent and transparent procedure should be established to authorise **a Member State** to amend **an** existing agreement or to negotiate and conclude **a new agreement**, in particular where the Community itself has not indicated its intention to exercise its external competences to conclude **an** agreement **by way of an already existing negotiating mandate or a proposed negotiating mandate**. This procedure is without prejudice to the exclusive competence of the Community and the provisions of Articles 300 and 307 of the EC Treaty. **It** must be regarded as an exceptional measure and must be limited in scope and in time.

Amendment 44
Proposal for a regulation
Recital 9 a (new)

(9a) **This Regulation should not apply if the Community has already concluded an agreement with the third country or third countries concerned on the same subject matter. Two agreements should be considered to concern the same subject matter only if and to the extent that they regulate in substance the same specific legal matter. Provisions simply stating a general intention to cooperate on such issues should not be considered as concerning the same subject matter.**

Amendment 65
Proposal for a regulation
Recital 9 b (new)

(9b) **Certain regional agreements referred to in existing Community legal acts should be covered by this Regulation.**

Amendment 46
Proposal for a regulation
Recital 9 c (new)

(9c) **The Commission should define priorities with a view to developing the Community's external relations in the area of judicial cooperation in civil and commercial matters, in accordance with guidelines that the Council may adopt in the future.**

Thursday 7 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 66
Proposal for a regulation
Recital 10

(10) *The present Regulation should be limited to agreements concerning sectoral matters related to the fields of jurisdiction, recognition and enforcement of judgments and decisions in matrimonial matters, parental responsibility and maintenance obligations and to the applicable law in matters relating to maintenance obligations.*

deleted

Amendment 67
Proposal for a regulation
Recital 11

(11) In order to ensure that an agreement **proposed** by a Member State does not render Community law ineffective and undermine the proper functioning of the system established by its rules, **authorisation** should be required **both in order to start** or continue negotiations **and** to conclude an agreement. **This will enable** the Commission to assess the expected impact of the **(possible)** outcome of negotiations **on Community law**. **In relevant cases, the Commission can propose negotiating guidelines or request the inclusion of particular clauses in the proposed agreements.**

(11) In order to ensure that an agreement **envisaged** by a Member State does not render Community law ineffective and **does not** undermine the proper functioning of the system established by its rules, **as well as to ensure that it does not undermine the Community's external relations policy as decided by the Community, the Member State concerned** should be required to **notify the Commission of its intentions with a view to obtaining an authorisation to open** or continue **formal** negotiations **on an agreement as well as** to conclude an agreement. **Such a notification should be made by letter or by electronic means. It should contain all relevant information and documentation enabling** the Commission to assess the expected impact **on Community law** of the outcome of **the** negotiations.

Amendment 47
Proposal for a regulation
Recital 11 a (new)

(11a) *An assessment should be made of whether there is a Community interest in concluding a bilateral agreement between the Community and the third country concerned or, where appropriate, if there is a Community interest in replacing an existing bilateral agreement between a Member State and a third country by a Community agreement.*

To that end, all Member States should be informed of any notification received by the Commission concerning an agreement proposed by a given Member State, in order to allow them to demonstrate their interest in joining the initiative of the notifying Member State. If, from this exchange of information, a Community interest were to emerge, the Commission should consider proposing a negotiating mandate with a view to the conclusion of an agreement between the Community and the third country concerned.

Thursday 7 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 69**Proposal for a regulation
Recital 11 b (new)**

(11b) If the Commission requests additional information from a Member State in connection with its assessment as to whether that Member State should be authorised to open negotiations with a third country or third countries, such a request should not affect the length of the period within which the Commission must give a reasoned decision on the application of that Member State to open such negotiations.

Amendment 70**Proposal for a regulation
Recital 11 c (new)**

(11c) When authorising the opening of formal negotiations, the Commission should, where appropriate, be able to propose negotiating guidelines or request the inclusion of particular clauses in the proposed agreement. The Commission should be kept fully informed throughout the different stages of the negotiations as far as matters falling within the scope of this Regulation are concerned and may be allowed to participate as an observer in relation to those matters.

Amendment 48**Proposal for a regulation
Recital 11 d (new)**

(11d) When notifying the Commission of their intention to enter into negotiations with a third country, Member States need to inform the Commission of elements which are of relevance for the assessment which it needs to make. An authorisation by the Commission and any possible negotiating guidelines or, as the case may be, a refusal by the Commission should concern only matters falling within the scope of this Regulation.

Amendment 49**Proposal for a regulation
Recital 11 e (new)**

(11e) The European Parliament, the Council and the Member States should be informed of any notification to the Commission concerning proposed or negotiated agreements and of any reasoned decision by the Commission under this Regulation. Such information should however fully comply with any applicable confidentiality requirements.

Thursday 7 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 73**Proposal for a regulation
Recital 11 f (new)**

(11f) *The European Parliament, the Council and the Commission should ensure that any information identified as confidential is treated in accordance with 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⁾.

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

Amendment 74**Proposal for a regulation
Recital 11 g (new)**

(11g) *In situations where the Commission, on the basis of its assessments, intends not to authorise the opening of formal negotiations or the conclusion of a negotiated agreement, the Commission should, before giving its reasoned decision, issue an opinion to the Member State concerned. In the case of the conclusion of a negotiated agreement, the opinion should be addressed to the European Parliament and to the Council.*

Amendment 75**Proposal for a regulation
Recital 12**

(12) In order to ensure that the agreement does not constitute an obstacle to the implementation of the Community's external policy on judicial cooperation in civil and commercial matters, the agreement should provide for its denunciation, *when a Community agreement with the same third country on the same subject matters is concluded.*

(12) In order to ensure that the *negotiated* agreement does not constitute an obstacle to the implementation of the Community's external policy on judicial cooperation in civil and commercial matters, the agreement should provide for *either its denunciation in part or in full in the event of a subsequent agreement between the Community or the Community and its Member States and the same third country on the same subject matter or for the direct replacement of the relevant provisions by the provisions of such a subsequent agreement.*

Amendment 76**Proposal for a regulation
Recital 13**

(13) *It is necessary to provide* for transitional measures to cover situations where, at the time of the entry into force of this Regulation, *Member States are* in the process of *negotiations* with a third country or *have* concluded the negotiations but *have* not yet expressed *their* consent to be bound by the agreement.

(13) *Provision should be made* for transitional measures to cover situations where, at the time of the entry into force of this Regulation, *a Member State is* in the process of *negotiating* with a third country or *has* concluded the negotiations but not yet expressed *its* consent to be bound by the agreement.

Thursday 7 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 77**Proposal for a regulation
Recital 13 a (new)**

(13a) In order to ensure that sufficient experience has been gathered on the application of this Regulation, the Commission should submit its report no earlier than 8 years after its adoption. In its report, exercising its prerogatives, the Commission should confirm the temporary nature of this Regulation or examine whether this Regulation should be replaced by another covering the same subject matters or including also other matters falling within the exclusive competence of the Community and governed by other Community instruments.

Amendment 78**Proposal for a regulation
Recital 13 b (new)**

(13b) If the report to be submitted by the Commission confirms the temporary nature of this Regulation, a Member State should still, after the submission of the report, be able to notify the Commission of ongoing or already announced negotiations with a view to obtaining an authorisation to open formal negotiations.

Amendment 79**Proposal for a regulation
Recital 14**

(14) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission. *deleted*

Amendment 80**Proposal for a regulation
Recital 15**

(15) In accordance with the principle of proportionality, as set out in Article 5 of the Treaty, this Regulation does not go beyond what is necessary in order to achieve its objective.

(15) In accordance with the principle of proportionality, as set out in Article 5 of the EC Treaty, this Regulation does not go beyond what is necessary in order to achieve its objective.

Amendment 81**Proposal for a regulation
Recital 16**

(16) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the Position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, are taking part in the adoption and application of this Regulation, in so far as they took part in the adoption and application of the Regulations covered by this Regulation or have accepted the former Regulations after their adoption.

(16) In accordance with Article 3 of the Protocol on the Position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom and Ireland have given notice of their wish to take part in the adoption and application of this Regulation.

Thursday 7 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 82**Proposal for a regulation****Article 1 – paragraph 1**

1. This Regulation establishes a procedure to authorise a Member State to amend an existing **bilateral** agreement **between that Member State and a third country**, or to negotiate and conclude a new **bilateral** agreement subject to the conditions laid down in the following provisions.

1. This Regulation establishes a procedure to authorise a Member State to amend an existing agreement, or to negotiate and conclude a new agreement subject to the conditions laid down in the following provisions.

This procedure is without prejudice to the respective competences of the Community and its Member States.

Amendment 83**Proposal for a regulation****Article 1 – paragraph 2**

2. This Regulation shall apply to **bilateral** agreements **between Member States and third countries** concerning **sectoral matters and covering jurisdiction, recognition and enforcement of judgements and decisions in matrimonial matters, parental responsibility and maintenance obligations and applicable law in matters relating to maintenance obligations**.

2. This Regulation shall apply to agreements concerning matters **falling, wholly or partly, within the scope of Regulation (EC) No 2201/2003⁽¹⁾ and Regulation (EC) No 4/2009⁽²⁾**, to the extent that those matters fall within the exclusive competence of the Community.

⁽¹⁾ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (OJ L 338, 23.12.2003, p. 1).

⁽²⁾ Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJ L 7, 10.1.2009, p. 1).

Amendment 84**Proposal for a regulation****Article 1 – paragraph 2 a (new)**

2a. This Regulation shall not apply if the Community has already concluded an agreement with the third country or third countries concerned on the same subject matter.

Amendment 85**Proposal for a regulation****Article 2 – paragraph 1**

1. For the purposes of this Regulation, the term 'agreement' shall **be understood as meaning** bilateral agreement between a Member State and a third country.

1. For the purposes of this Regulation, the term 'agreement' shall **mean**:

(a) a bilateral agreement between a Member State and a third country;

(b) **the regional agreements referred to in Article 59(2)(a) of Regulation (EC) No 2201/2003, without prejudice to Articles 59(2)(c) and 59(3) of that Regulation, and in Article 69(3) of Regulation (EC) No 4/2009.**

Thursday 7 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 86**Proposal for a regulation
Article 2 – paragraph 2**

2. For the purposes of this Regulation, 'Member State' shall mean **any Member State other than** Denmark.

2. For the purposes of this Regulation, 'Member State' shall mean **Member States with the exception of** Denmark.

Amendment 87**Proposal for a regulation
Article 3 – paragraph 1**

1. Where a Member State intends to enter into negotiations **with a third country** to amend an existing agreement or to conclude a new agreement falling within the scope of this Regulation, it shall notify the Commission of its intention **in writing**.

1. Where a Member State intends to enter into negotiations **in order** to amend an existing agreement or to conclude a new agreement falling within the scope of this Regulation, it shall notify the Commission **in writing** of its intention **at the earliest possible moment before the envisaged opening of formal negotiations**.

Amendment 88**Proposal for a regulation
Article 3 – paragraph 2**

2. The notification shall include a copy of the existing agreement, the draft agreement or the draft proposal **by the third country concerned, if available**, and any other relevant documentation. The Member State shall describe the **objectives** of the negotiations and shall specify the issues which are to be addressed, or the provisions of the existing agreement, which are to be amended, **and shall** provide any other **relevant** information.

2. The notification shall include, **as appropriate**, a copy of the existing agreement, the draft agreement or the draft proposal, and any other relevant documentation. The Member State shall describe the **subject matter** of the negotiations and shall specify the issues which are to be addressed **in the envisaged agreement**, or the provisions of the existing agreement which are to be amended. **The Member State may** provide any other **additional** information.

Amendment 89**Proposal for a regulation
Article 3 – paragraph 3**

3. **The notification shall be made at least three months before formal negotiations are scheduled to commence with the third country concerned.**

deleted

Amendment 90**Proposal for a regulation
Article 4 – paragraph 1**

1. Upon notification, the Commission shall **make an assessment as to** whether the Member State **can pursue** negotiations **with the third country concerned. If the Community has already concluded any agreement with the third country concerned on the same subject matters, the application of the Member State will be automatically rejected by the Commission.**

1. Upon **receipt of the** notification, the Commission shall **assess** whether the Member State **may open formal** negotiations.

Thursday 7 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 91**Proposal for a regulation****Article 4 – paragraph 2 — introductory part**

2. *If the Community has not yet concluded an agreement with the third country concerned*, the Commission shall in making *its* assessment first check whether any relevant Community agreement with the third country concerned is *expected in the near future*. If this is not the case, the Commission *may grant authorisation, provided that* the following *two* conditions are met:

2. The Commission shall, in making *this* assessment, first check whether any relevant *negotiating mandate with a view to a* Community agreement with the third country *or third countries* concerned is *specifically envisaged within the following 24 months*. If this is not the case, the Commission *shall assess whether all of* the following conditions are met:

Amendment 92**Proposal for a regulation****Article 4 – paragraph 2 — point a**

(a) the Member State concerned has *demonstrated that there is* a specific interest in concluding the *bilateral sectoral* agreement *with the third country, related in particular to the existence of* economic, geographic, cultural *or* historical ties between the Member State and *that* third country; *and*

(a) the Member State concerned has *provided information to the effect that it has* a specific interest in concluding the agreement *due to* economic, geographic, cultural, historical, *social or political* ties between the Member State and *the* third country *concerned*;

Amendment 93**Proposal for a regulation****Article 4 – paragraph 2 — point b**

(b) *the Commission determines that the proposed* agreement is *of limited impact on the uniform and consistent application of the Community rules in place and on* the proper functioning of the system established by *those* rules.

(b) *on the basis of the information transmitted by the Member State, the proposed* agreement *appears not to render Community law ineffective and appears not to undermine* the proper functioning of the system established by *its* rules; *and*

Amendment 94**Proposal for a regulation****Article 4 – paragraph 2 — point b a (new)**

(ba) *the proposed agreement would not undermine the object and purpose of the Community's external relations policy as decided by the Community.*

Amendment 95**Proposal for a regulation****Article 4 – paragraph 2 a (new)**

2a. *If the information transmitted by the Member State is not sufficient for the purposes of making the assessment, the Commission may request additional information.*

Thursday 7 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 96**Proposal for a regulation****Article 5 – paragraph 1 – subparagraph 1**

1. If the **Commission concludes that there are no obstacles to the agreement in the light of** the conditions referred to in **Article 4, it may** authorise **a** Member State to open negotiations on the agreement **with the third country concerned**. If necessary, the Commission may propose negotiating guidelines and **can** request the inclusion of particular clauses in the **proposed** agreement.

1. If the **proposed** agreement **meets** the conditions referred to in **Article 4(2), the Commission shall** authorise **the** Member State to open **formal** negotiations on the agreement. If necessary, the Commission may propose negotiating guidelines and **may** request the inclusion of particular clauses in the **envisaged** agreement.

Amendment 97**Proposal for a regulation****Article 5 – paragraph 1 – subparagraph 2**

2. The agreement shall **provide for the** clause **on its** denunciation in the event **that** the Community concludes **an agreement with** the same third country on the same subject matter.

2. The agreement shall **contain a** clause **providing for either:**

(a) **full or partial** denunciation **of the agreement** in the event **of a subsequent agreement between the Community or the Community and its Member States and** the same third country **or third countries** on the same subject matter, **or**

(b) **direct replacement of the relevant provisions of the agreement by provisions of a subsequent agreement between the Community or the Community and its Member States and the third country or the third countries on the same subject matter.**

The agreement shall include the following **clause**: '(the name of Member State) **will** denounce **the** agreement when the European Community **concludes** an agreement with (the name of the third country) on the same **subject** matters of civil justice as governed by **the present** agreement'.

The clause referred to in point (a) should be worded along the following **lines**: '(the name of the Member State) **shall** denounce **this** agreement **in part or in full if and** when the European Community **or the European Community and its Member States conclude** an agreement with (the name of the third country **or third countries**) on the same matters of civil justice as **those** governed by **this** agreement'.

The clause referred to in point (b) should be worded along the following lines: 'The agreement/provisions (specify) shall cease to be applicable on the day on which an agreement between the European Community or the European Community and its Member States and (the name of the third country or third countries) has entered into force in respect of the matters governed by the agreement/provisions'.

The Commission shall give a reasoned decision on the application of the Member State within 90 days of receipt of the notification referred to in Article 3.

Thursday 7 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 98**Proposal for a regulation
Article 5 – paragraph 3**

3. *The Commission shall take a decision on the authorisation referred to in paragraphs 1 and 2 in accordance with the procedure referred to in Article 8(2).*

deleted

The Commission shall give its decision on the application of the Member State within six months of receipt of the notification referred to in Article 3.

Amendment 50**Proposal for a regulation
Article 5 a (new)****Article 5a*****Refusal to authorise the opening of formal negotiations***

1. *If, on the basis of its assessment under Article 4, the Commission intends not to authorise the opening of formal negotiations on the proposed agreement, it shall issue an opinion to the Member State concerned within 90 days of receipt of the notification referred to in Article 3.*

2. *Within 30 days of the issuing of the Commission's opinion, the Member State concerned may ask the Commission to enter into discussions with it with a view to finding a solution.*

3. *If the Member State concerned does not ask the Commission to enter into discussions with it within the time limit laid down in paragraph 2, the Commission shall give a reasoned decision on the Member State's application within 130 days of receipt of the notification referred to in Article 3.*

4. *In the event of discussions taking place within the meaning of paragraph 2, the Commission shall give a reasoned decision on the application of the Member State within 30 days of the conclusion of the discussions.*

Amendment 100**Proposal for a regulation
Article 6**

The Commission may participate as an observer in the negotiations between the Member State and the third country. If the Commission does not participate as an observer, it shall be kept informed of the progress and results throughout the different stages of negotiations.

The Commission may participate as an observer in the negotiations between the Member State and the third country ***as far as matters falling within the scope of this Regulation are concerned***. If the Commission does not participate as an observer, it shall be kept informed of the progress and results throughout the different stages of ***the*** negotiations.

Thursday 7 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 101**Proposal for a regulation
Article 7 – paragraph 1**

1. Before **initialling the** agreement, the Member State concerned shall notify **the Commission of** the outcome of negotiations and **shall** transmit the text of the agreement **to the Commission.**

1. Before **signing the negotiated** agreement, the Member State concerned shall notify the outcome of **the negotiations to the Commission** and transmit the text of the agreement.

Amendment 102**Proposal for a regulation
Article 7 – paragraph 2**

2. Upon notification the Commission shall **make an assessment as to** whether the negotiated agreement **complies with its initial assessment. In making this further assessment the Commission must examine whether the proposed agreement includes the requirements made by the Commission, in particular as regards the inclusion of clauses referred to in Article 5(1) and whether the conclusion of the proposed agreement would render the Community law ineffective and would undermine the proper functioning of the system established by its rules.**

2. Upon **receipt of this** notification the Commission shall **assess** whether the negotiated agreement:

(a) **meets the conditions referred to in Article 4(2)(b);**

(b) **meets the condition referred to in Article 4(2)(ba), insofar as there are new and exceptional circumstances in relation to that condition; and**

(c) **fulfils the requirement under Article 5(2).**

Amendment 103**Proposal for a regulation
Article 7 – paragraph 3**

3. **If the Commission takes the view that the negotiations have resulted in an agreement which does not fulfil the requirements referred to in paragraph 2, the Member State shall not be authorised to conclude the agreement.**

deleted

Amendment 104**Proposal for a regulation
Article 7 – paragraph 4**

4. **If the Commission takes the view that** the negotiations have resulted in an agreement which fulfils the requirements referred to in paragraph 2, the Member State **may** be authorised to conclude the agreement.

4. If the negotiations have resulted in an agreement which fulfils the requirements referred to in paragraph 2, the Member State **shall** be authorised **by the Commission** to conclude the agreement.

Thursday 7 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 105**Proposal for a regulation****Article 7 – paragraph 5 – subparagraph 1**

5. *The Commission shall take a decision on the authorisation referred to in paragraphs 3 and 4 in accordance with the procedure referred to in Article 8(3).* *deleted*

Amendment 106**Proposal for a regulation****Article 7 – paragraph 5 – subparagraph 2**

The Commission shall give its decision on the application of the Member State within **six month** of receipt of the notification referred to in paragraph 1.

5. The Commission shall give **a reasoned** decision on the application of the Member State within **90 days** of receipt of the notification referred to in paragraph 1.

Amendment 51**Proposal for a regulation****Article 7 a (new)****Article 7a****Refusal to authorise the conclusion of the agreement**

1. *If, on the basis of its assessment under Article 7(2), the Commission intends not to authorise the conclusion of the negotiated agreement, it shall issue an opinion to the European Parliament and to the Council within 90 days of receipt of the notification referred to in Article 7(1).*

2. *Within 30 days of the issuing of the Commission's opinion, the Member State concerned may ask the Commission to enter into discussions with it with a view to finding a solution.*

3. *If the Member State concerned does not ask the Commission to enter into discussions with it within the time limit laid down in paragraph 2, the Commission shall give a reasoned decision on the Member State's application within 130 days of receipt of the notification referred to in Article 7(1).*

4. *In the event of discussions taking place within the meaning of paragraph 2, the Commission shall give a reasoned decision on the application of the Member State within 30 days of the conclusion of the discussions.*

5. *The Commission shall notify its decision to the European Parliament and to the Council within 30 days of taking it.*

Thursday 7 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 108
Proposal for a regulation
Article 8

Article 8*deleted***Committee procedure**

1. *The Commission shall be assisted by a committee.*
2. *Where reference is made to this paragraph, the advisory procedure laid down in Article 3 of Decision 1999/468/EC shall apply, in compliance with Article 7 thereof.*
3. *Where reference is made to this paragraph, the management procedure laid down in Article 4 of Decision 1999/468/EC shall apply, in compliance with Article 7 thereof.*
4. *The period provided for in Article 4(3) of Decision 1999/468/EC shall be three months.*

Amendment 52
Proposal for a regulation
Article 8 a (new)

Article 8a**Information to the European Parliament, the Council and the Member States**

The Commission shall make available to the European Parliament, the Council and the Member States the notifications received under Articles 3 and 7 and, if necessary, the accompanying documents, as well as all its reasoned decisions under Articles 5, 5a, 7 and 7a, subject to the requirements of confidentiality.

Amendment 53
Proposal for a regulation
Article 8 b (new)

Article 8b**Confidentiality**

1. *When transmitting information to the Commission under Articles 3, 4(2a) and 7, the Member State concerned may indicate whether any of the information transmitted is to be considered confidential and whether it may be shared with other Member States.*
2. *The Commission and Member States shall ensure that any information identified as confidential is treated in accordance with Article 4(1)(a) of Regulation (EC) No 1049/2001.*

Thursday 7 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 111**Proposal for a regulation
Article 9 – paragraph 1**

1. Where a Member State has already started negotiating an agreement **with a third country** at the time of entry into force of this Regulation, **Article 3(1) and 3(2) and Articles 4 to 7** shall apply.

Where the stage of the negotiations so permits, the Commission may propose negotiating guidelines or the inclusion of particular clauses, as referred to in Article 5(1).

1. Where a Member State has already started negotiating an agreement at the time of entry into force of this Regulation, **Articles 3 to 7a** shall apply.

Where the stage of the negotiations so permits, the Commission may propose negotiating guidelines or **request** the inclusion of particular clauses, as referred to in Article 5(1) **and (2)**.

Amendment 112**Proposal for a regulation
Article 9 – paragraph 2**

2. Where a Member State has already completed negotiations at the time of entry into force of this Regulation, without having concluded the agreement, Article 3(1) **and 3(2)** and Article 7(2) to (5) shall apply.

When deciding whether or not to authorise conclusion of the agreement, the Commission shall also assess whether or not there are any obstacles to the agreement in the light of the conditions referred to in Article 4.

2. Where a Member State has already completed negotiations at the time of entry into force of this Regulation, without having concluded the agreement, Article 3, Article 7(2) to (5) **and Article 7a** shall apply.

Amendment 113**Proposal for a regulation
Article 10**

No **later** than **the 1st January 2014** the Commission shall **present** to the European Parliament, the Council and the European Economic and Social Committee a report on application of this Regulation, **which may** be accompanied by an appropriate legislative proposal.

1. No **earlier** than **8 years after the date of adoption of this Regulation**, the Commission shall **submit** to the European Parliament, the Council and the European Economic and Social Committee a report on **the** application of this Regulation.

2. **This report shall either**

(a) **confirm that it is appropriate for this Regulation to expire on the date determined in accordance with Article 10a(1), or**

(b) **recommend that this Regulation be replaced as of that date by a new Regulation.**

3. **If the report recommends a replacement of this Regulation as set out in paragraph 2(b), it shall** be accompanied by an appropriate legislative proposal.

Thursday 7 May 2009

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 114**Proposal for a regulation
Article 10 a (new)****Article 10a****Expiry**

1. *This Regulation shall expire 3 years after the submission by the Commission of the report referred to in Article 10.*

The period of 3 years shall start running on the first day of the month following the last submission of the report to either 52+523 the European Parliament or the Council.

2. *Notwithstanding the expiry of this Regulation on the date determined in accordance with paragraph 1, all negotiations ongoing on that date which have been entered into by a Member State under this Regulation with a view to amending an existing agreement or to negotiating and concluding a new agreement shall be allowed to continue and to be completed on the conditions laid down in this Regulation.*

Amendment 115**Proposal for a regulation
Article 11**

This Regulation shall enter into force on the twentieth day following **that of** its publication in the *Official Journal of the European Union*.

It shall apply until 31 December 2014.

This Regulation shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

<u>Notice No</u>	Contents (continued)	Page
2010/C 212 E/17	Madagascar European Parliament resolution of 7 May 2009 on the situation in Madagascar	111
2010/C 212 E/18	Case of Manuel Rosales in Venezuela European Parliament resolution of 7 May 2009 on the case of Manuel Rosales in Venezuela	113

RECOMMENDATIONS

European Parliament

2010/C 212 E/19	Development of an EU criminal justice area European Parliament recommendation of 7 May 2009 to the Council on development of an EU criminal justice area (2009/2012(INI))	116
-----------------	--	-----

OPINIONS

European Parliament

Tuesday 5 May 2009

2010/C 212 E/20	Special Olympics in the European Union Declaration of the European Parliament on support for Special Olympics in the European Union	123
-----------------	--	-----

II *Information*

INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

European Parliament

Tuesday 5 May 2009

2010/C 212 E/21	Defence of the immunity and privileges of Aldo Patriciello European Parliament decision of 5 May 2009 on the request for defence of the immunity and privileges of Aldo Patriciello (2009/2021(IMM))	124
2010/C 212 E/22	Defence of the immunity and privileges of Umberto Bossi European Parliament decision of 5 May 2009 on the request for defence of the immunity and privileges of Umberto Bossi (2009/2020(IMM))	125

Wednesday 6 May 2009

2010/C 212 E/23	Responsibilities of committees European Parliament decision of 6 May 2009 on the powers and responsibilities of the standing committees ..	126
-----------------	---	-----



<u>Notice No</u>	Contents (continued)	Page
2010/C 212 E/24	Interparliamentary delegations, delegations to joint interparliamentary committees and delegations to parliamentary cooperation committees and multilateral parliamentary assemblies European Parliament decision of 6 May 2009 on the number of interparliamentary delegations, delegations to joint parliamentary committees, delegations to parliamentary cooperation committees and multilateral Parliamentary Assemblies	136
2010/C 212 E/25	The petitions process (amendment of Title VIII of the Rules of Procedure) European Parliament decision of 6 May 2009 on revision of the Rules of Procedure with regard to the petitions process (2006/2209(REG))	140
2010/C 212 E/26	General revision of the Rules of Procedure European Parliament decision of 6 May 2009 on the general revision of Parliament's Rules of Procedure (2007/2124(REG))	145

III Preparatory acts

European Parliament

Tuesday 5 May 2009

2010/C 212 E/27	Marketing standards for poultrymeat * European Parliament legislative resolution of 5 May 2009 on the proposal for a Council regulation amending Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets as regards the marketing standards for poultrymeat (COM(2008)0336 – C6-0247/2008 – 2008/0108(CNS))	162
2010/C 212 E/28	Mobilisation of the European Globalisation Adjustment Fund European Parliament resolution of 5 May 2009 on the proposal for a decision of the European Parliament and of the Council on the mobilisation of the European Globalisation Adjustment Fund, in accordance with point 28 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (COM(2009)0150 – C6-0115/2009 – 2009/2033(ACI))	165
	ANNEX	166
2010/C 212 E/29	Petrol vapour recovery during refuelling of motor vehicles ***I European Parliament legislative resolution of 5 May 2009 on the proposal for a directive of the European Parliament and of the Council on Stage II petrol vapour recovery during refuelling of passenger cars at service stations (COM(2008)0812 – C6-0470/2008 – 2008/0229(COD))	168
	P6_TC1-COD(2008)0229 Position of the European Parliament adopted at first reading on 5 May 2009 with a view to the adoption of Directive 2009/.../EC of the European Parliament and of the Council on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations	168



2010/C 212 E/30

Trade in seal products ***I

European Parliament legislative resolution of 5 May 2009 on the proposal for a regulation of the European Parliament and of the Council concerning trade in seals products (COM(2008)0469 – C6-0295/2008 – 2008/0160(COD)) 169

P6_TC1-COD(2008)0160

Position of the European Parliament adopted at first reading on 5 May 2009 with a view to the adoption of Regulation (EC) No .../2009 of the European Parliament and of the Council on trade in seal products 169

2010/C 212 E/31

Protection of animals used for scientific purposes ***I

European Parliament legislative resolution of 5 May 2009 on the proposal for a directive of the European Parliament and of the Council on the protection of animals used for scientific purposes (COM(2008)0543 – C6-0391/2008 – 2008/0211(COD)) 170

P6_TC1-COD(2008)0211

Position of the European Parliament adopted at first reading on 5 May 2009 with a view to the adoption of Directive 2009/.../EC of the European Parliament and of the Council on the protection of animals used for scientific purposes 170

ANNEX I 201

ANNEX II 202

ANNEX III 202

ANNEX IV 203

ANNEX V 219

ANNEX VI 219

ANNEX VII 226

ANNEX VIII 226

ANNEX IX 227

2010/C 212 E/32

Ship-source pollution and penalties for infringements ***I

European Parliament legislative resolution of 5 May 2009 on the proposal for a directive of the European Parliament and of the Council amending Directive 2005/35/EC on ship source pollution and on the introduction of penalties for infringements (COM(2008)0134 – C6-0142/2008 – 2008/0055(COD)) 228

P6_TC1-COD(2008)0055

Position of the European Parliament adopted at first reading on 5 May 2009 with a view to the adoption of Directive 2009/.../EC of the European Parliament and of the Council amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements 229



2010/C 212 E/33	Energy labelling and standard product information (recast) ***I European Parliament legislative resolution of 5 May 2009 on the proposal for a directive of the European Parliament and of the Council on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (recast) (COM(2008)0778 – C6-0412/2008 – 2008/0222(COD))	229
	P6_TC1-cod(2008)0222 Position of the European Parliament adopted at first reading on 5 May 2009 with a view to the adoption of Directive 2009/.../EC of the European Parliament and of the Council on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (recast)	230
	ANNEX I	242
	ANNEX II	243
2010/C 212 E/34	European Parliament's estimates for 2010 European Parliament resolution of 5 May 2009 on the estimates of revenue and expenditure of Parliament for the financial year 2010 (2009/2006(BUD))	244
Wednesday 6 May 2009		
2010/C 212 E/35	CFP: repeal of Directive 83/515/EEC and 11 obsolete Decisions * European Parliament legislative resolution of 6 May 2009 on the proposal for a Council decision repealing Directive 83/515/EEC and 11 obsolete decisions in the field of the Common Fisheries Policy (COM(2009)0088 – C6-0094/2009 – 2009/0022(CNS))	249
2010/C 212 E/36	CFP: repeal of 14 obsolete Regulations * European Parliament legislative resolution of 6 May 2009 on the proposal for a Council regulation repealing 14 obsolete Regulations in the field of the Common Fisheries Policy (COM(2009)0089 – C6-0095/2009 – 2009/0024(CNS))	249
2010/C 212 E/37	Support for rural development by the European Agricultural Fund for Rural Development (EAFRD) * European Parliament legislative resolution of 6 May 2009 on the proposal for a Council regulation amending Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (COM(2009)0038 – C6-0051/2009 – 2009/0011(CNS))	250
2010/C 212 E/38	Draft amending budget No 4/2009 European Parliament resolution of 6 May 2009 on Draft amending budget No 4/2009 of the European Union for the financial year 2009, Section III – Commission (9126/2009 – C6-0156/2009 – 2009/2039(BUD))	258
2010/C 212 E/39	Draft amending budget No 5/2009 European Parliament resolution of 6 May 2009 on Draft amending budget No 5/2009 of the European Union for the financial year 2009, Section III – Commission (9127/2009 – C6-0157/2009 – 2009/2040(BUD))	259



2010/C 212 E/40

Electronic communications networks, personal data and the protection of privacy ***II

European Parliament legislative resolution of 6 May 2009 on the common position adopted by the Council with a view to the adoption of 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) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (16497/1/2008 – C6-0068/2009 – 2007/0248(COD)) 260

P6_TC2-COD(2007)0248

Position of the European Parliament adopted at second reading on 6 May 2009 with a view to the adoption of Directive 2009/.../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 and services, 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 cooperation between national authorities responsible for the enforcement of consumer protection laws 261

ANNEX 261

2010/C 212 E/41

Electronic communications networks and services ***II

European Parliament legislative resolution of 6 May 2009 on the Council common position for adopting a directive 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 (16496/1/2008 – C6-0066/2009 – 2007/0247(COD)) 262

P6_TC2-COD(2007)0247

Position of the European Parliament adopted at second reading on 6 May 2009 with a view to the adoption of Directive 2009/.../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 263

ANNEX 307

2010/C 212 E/42

Body of European Regulators for Electronic Communications (BEREC) and the Office ***II

European Parliament legislative resolution of 6 May 2009 on the Council common position for adopting a regulation of the European Parliament and of the Council establishing the Group of European Regulators in Telecoms (GERT) (16498/1/2008 – C6-0067/2009 – 2007/0249(COD)) 309

P6_TC2-COD(2007)0249

Position of the European Parliament adopted at second reading on 6 May 2009 with a view to the adoption of Regulation (EC) No .../2009 of the European Parliament and of the Council establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office 309

2010/C 212 E/43

Frequency bands for mobile communications ***I

European Parliament legislative resolution of 6 May 2009 on the proposal for a directive of the European Parliament and of the Council amending Council Directive 87/372/EEC on the frequency bands to be reserved for the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community (COM(2008)0762 – C6-0452/2008 – 2008/0214(COD)) 310



	P6_TC1-COD(2008)0214	
	Position of the European Parliament adopted at first reading on 6 May 2009 with a view to the adoption of Directive 2009/.../EC of the European Parliament and of the Council amending Council Directive 87/372/EEC on the frequency bands to be reserved for the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community	310
2010/C 212 E/44	Equal treatment between men and women engaged in a self-employed capacity ***I	
	European Parliament legislative resolution of 6 May 2009 on the proposal for a directive of the European Parliament and of the Council on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Directive 86/613/EEC (COM(2008)0636 – C6-0341/2008 – 2008/0192(COD))	311
	P6_TC1-COD(2008)0192	
	Position of the European Parliament adopted at first reading on 6 May 2009 with a view to the adoption of Directive 2009/.../EC of the European Parliament and of the Council on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC	312
2010/C 212 E/45	European Globalisation Adjustment Fund ***I	
	European Parliament legislative resolution of 6 May 2009 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1927/2006 on establishing the European Globalisation Adjustment Fund (COM(2008)0867 – C6-0518/2008 – 2008/0267(COD))	320
	P6_TC1-COD(2008)0267	
	Position of the European Parliament adopted at first reading on 6 May 2009 with a view to the adoption of Regulation (EC) No .../2009 of the European Parliament and of the Council amending Regulation (EC) No 1927/2006 on establishing the European Globalisation Adjustment Fund	320
2010/C 212 E/46	Economic Recovery Programme: energy projects ***I	
	European Parliament legislative resolution of 6 May 2009 on the proposal for a regulation of the European Parliament and of the Council establishing a programme to aid economic recovery by granting Community financial assistance to projects in the field of energy (COM(2009)0035 – C6-0049/2009 – 2009/0010(COD))	321
	P6_TC1-COD(2009)0010	
	Position of the European Parliament adopted at first reading on 6 May 2009 with a view to the adoption of a Regulation (EC) No .../2009 of the European Parliament and of the Council establishing a programme to aid economic recovery by granting Community financial assistance to projects in the field of energy	322
	ANNEX	322
2010/C 212 E/47	Credit requirements directives ***I	
	European Parliament legislative resolution of 6 May 2009 on the proposal for a directive of the European Parliament and of the Council amending Directives 2006/48/EC and 2006/49/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (COM(2008)0602 – (C6-0339/2008 – 2008/0191(COD))	323
	P6_TC1-COD(2008)0191	
	Position of the European Parliament adopted at first reading on 6 May 2009 with a view to the adoption of Directive 2009/.../EC of the European Parliament and of the Council amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management	323



2010/C 212 E/48	<p>Community programme for financial services, financial reporting and auditing ***I</p> <p>European Parliament legislative resolution of 6 May 2009 on the proposal for a decision of the European Parliament and of the Council establishing a Community programme to support specific activities in the field of financial services, financial reporting and auditing (COM(2009)0014 – C6-0031/2009 – 2009/0001(COD))</p>	324
	<p>P6_TC1-COD(2009)0001</p> <p>Position of the European Parliament adopted at first reading on 6 May 2009 with a view to the adoption of Decision No .../2009/EC of the European Parliament and of the Council establishing a Community programme to support specific activities in the field of financial services, financial reporting and auditing</p>	325
	ANNEX	325
2010/C 212 E/49	<p>The protection of animals at the time of killing *</p> <p>European Parliament legislative resolution of 6 May 2009 on the proposal for a Council regulation on the protection of animals at the time of killing (COM(2008)0553 – C6-0451/2008 – 2008/0180(CNS))</p>	326
	Thursday 7 May 2009	
2010/C 212 E/50	<p>European Refugee Fund for the period 2008-2013 (amendment of Decision No 573/2007/EC) ***I</p> <p>European Parliament legislative resolution of 7 May 2009 on the proposal for a decision of the European Parliament and of the Council amending Decision No 573/2007/EC establishing the European Refugee Fund for the period 2008 to 2013 by removing funding for certain Community actions and altering the limit for funding such actions (COM(2009)0067 – C6-0070/2009 – 2009/0026(COD))</p>	347
2010/C 212 E/51	<p>Minimum standards for the reception of asylum seekers (recast) ***I</p> <p>European Parliament legislative resolution of 7 May 2009 on the proposal for a directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers (recast) (COM(2008)0815 – C6-0477/2008 – 2008/0244(COD))</p>	348
	<p>P6_TC1-COD(2008)0244</p> <p>Position of the European Parliament adopted at first reading on 7 May 2009 with a view to the adoption of Directive 2009/.../EC of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers (recast)</p>	349
	ANNEX I	365
	ANNEX II	366
	ANNEX III	367
2010/C 212 E/52	<p>Applications for international protection lodged in one of the Member States by third-country nationals or stateless persons (recast) ***I</p> <p>European Parliament legislative resolution of 7 May 2009 on the proposal for a regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) (COM(2008)0820 – C6-0474/2008 – 2008/0243(COD))</p>	370



P6_TC1-COD(2008)0243

Position of the European Parliament adopted at first reading on 7 May 2009 with a view to the adoption of Regulation (EC) No .../2009 of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (*recast*) 371

ANNEX I 401

ANNEX II 401

2010/C 212 E/53

Establishment of 'Eurodac' for the comparison of fingerprints (*recast*) ***I

European Parliament legislative resolution of 7 May 2009 on the proposal for a regulation of the European Parliament and of the Council concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EC) No (.../...) [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person] (*recast*) (COM(2008)0825 – C6-0475/2008 – 2008/0242(COD)) 404

P6_TC1-COD(2008)0242

Position of the European Parliament adopted at first reading on 7 May 2009 with a view to the adoption of Regulation (EC) No .../2009 of the European Parliament and of the Council concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EC) No [.../...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person] (*recast*) 405

ANNEX I 426

ANNEX II 426

ANNEX III 426

2010/C 212 E/54

Establishment of a European Asylum Support Office ***I

European Parliament legislative resolution of 7 May 2009 on the proposal for a regulation of the European Parliament and of the Council establishing a European Asylum Support Office (COM(2009)0066 – C6-0071/2009 – 2009/0027(COD)) 428

P6_TC1-COD(2009)0027

Position of the European Parliament adopted at first reading on 7 May 2009 with a view to the adoption of Regulation (EC) No .../2009 of the European Parliament and of the Council establishing a European Asylum Support Office 429

2010/C 212 E/55

Bilateral agreements between Member States and third countries concerning sectoral matters and covering applicable law in contractual and non-contractual obligations ***I

European Parliament legislative resolution of 7 May 2009 on the proposal for a regulation of the European Parliament and of the Council establishing a procedure for the negotiation and conclusion of bilateral agreements between Member States and third countries concerning sectoral matters and covering applicable law in contractual and non-contractual obligations (COM(2008)0893 – C6-0001/2009 – 2008/0259(COD)) 453



P6_TC1-COD(2008)0259

Position of the European Parliament adopted at first reading on 7 May 2009 with a view to the adoption of Regulation (EC) No .../2009 of the European Parliament and of the Council establishing a procedure for the negotiation and conclusion of agreements between Member States and third countries on particular matters concerning the law applicable to contractual and non-contractual obligations 453

2010/C 212 E/56

MEDIA Mundus: audiovisual cooperation programme with professionals from third countries ***I

European Parliament legislative resolution of 7 May 2009 on the proposal for a decision of the European Parliament and of the Council establishing an audiovisual cooperation programme with professionals from third countries MEDIA Mundus (COM(2008)0892 – C6-0011/2009 – 2008/0258(COD)) 454

P6_TC1-COD(2008)0258

Position of the European Parliament adopted at first reading on 7 May 2009 with a view to the adoption of decision 2009/.../EC of the European Parliament and of the Council establishing an audiovisual cooperation programme with professionals from third countries (MEDIA Mundus) 454

2010/C 212 E/57

Common rules for the allocation of slots at Community airports ***I

European Parliament legislative resolution of 7 May 2009 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports (COM(2009)0121 – C6-0097/2009 – 2009/0042(COD)) 455

P6_TC1-COD(2009)0042

Position of the European Parliament adopted at first reading on 7 May 2009 with a view to the adoption of Regulation (EC) No .../2009 of the European Parliament and of the Council amending Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports 455

2010/C 212 E/58

Bilateral agreements between Member States and third countries on judgments and decisions in matrimonial matters, parental responsibility and maintenance obligations *

European Parliament legislative resolution of 7 May 2009 on the proposal for a Council regulation establishing a procedure for the negotiation and conclusion of bilateral agreements between Member States and third countries concerning sectoral matters and covering jurisdiction, recognition and enforcement of judgments and decisions in matrimonial matters, parental responsibility and maintenance obligations, and applicable law in matters relating to maintenance obligations (COM(2008)0894 – C6-0035/2009 – 2008/0266(CNS)) 456



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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