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## Legislation

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## I

(Acts whose publication is obligatory)

**DECISION No 803/2004/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 21 April 2004****adopting a programme of Community action (2004 to 2008) to prevent and combat violence against children, young people and women and to protect victims and groups at risk (the Daphne II programme)**

THE EUROPEAN PARLIAMENT AND THE  
COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European  
Community, and in particular Article 152 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and  
Social Committee <sup>(1)</sup>,

Having regard to the opinion of the Committee of the  
Regions <sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article  
251 of the Treaty <sup>(3)</sup>,

Whereas:

(1) Physical, sexual and psychological violence against children, young people and women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life, constitute a breach of their right to life, safety, freedom, dignity and physical and emotional integrity and a serious threat to the physical and mental health of the victims of such violence. The effects of such violence are so widespread throughout the Community as to constitute a genuine health scourge and an obstacle to the enjoyment of safe, free and just citizenship.

<sup>(1)</sup> OJ C 208, 3.9.2003, p. 52.

<sup>(2)</sup> OJ C 256, 24.10.2003, p. 85.

<sup>(3)</sup> Opinion of the European Parliament of 3 September 2003 (not yet published in the Official Journal), Council Common Position of 1 December 2003 (OJ C 54 E, 2.3.2004, p. 1), Position of the European Parliament of 9 March 2004 (not yet published in the Official Journal) and Decision of the Council of 30 March 2004.

(2) It is important and necessary to recognise the serious immediate and long-term implications of violence for health, psychological and social development, and for the equal opportunities of those concerned, for individuals, families and communities, and the high social and economic costs to society as a whole.

(3) According to the World Health Organisation's definition, health is a state of complete physical, mental and social well being and not merely the absence of disease or infirmity. A World Health Assembly resolution adopted at the 49th World Health Assembly in Geneva in 1996 declares that violence is a leading worldwide public health problem. The World report on violence and health presented by the World Health Organisation in Brussels on 3 October 2002 recommends promoting primary prevention responses, strengthening responses for victims of violence and increasing collaboration and exchange of information on violence prevention.

(4) These principles are recognised in numerous conventions, declarations and protocols of the main international organisations and institutions such as the United Nations, the International Labour Organisation, the World Conference on Women and the World Congress against Commercial Sexual Exploitation of Children. This important work performed by international organisations should be complemented by that of the Community. Indeed, Article 3(1)(p) of the Treaty requires Community action to include a contribution to the attainment of a high level of health protection.

(5) The Charter of Fundamental Rights of the European Union <sup>(4)</sup> 1 reaffirms, inter alia, the rights to dignity, equality and solidarity. It includes a number of specific provisions to protect and promote physical and mental integrity, equal treatment for men and women, the

<sup>(4)</sup> OJ C 364, 18.12.2000, p. 1.

rights of the child and non-discrimination, as well as to prohibit inhuman or degrading treatment, slavery and forced labour, and child labour.

- (6) The Commission has been called upon to draw up and implement action programmes to combat such violence by the European Parliament, inter alia, in its Resolutions of 19 May 2000 on the communication from the Commission to the Council and the European Parliament. 'For further actions in the fight against trafficking in women' <sup>(1)</sup>, and of 20 September 2001 on female genital mutilation <sup>(2)</sup>.
- (7) The action programme set up by Decision No 293/2000/EC of the European Parliament and of the Council of 24 January 2000 adopting a programme of Community action (the Daphne programme) (2000 to 2003) on preventive measures to fight violence against children, young people and women <sup>(3)</sup>, has helped increase awareness within the European Union and increase and consolidate cooperation between organisations in the Member States active in combating violence.
- (8) The Daphne programme has received an overwhelming response and clearly meets a deeply felt need within the voluntary sector. The funded projects have already started to have multiplying effects on activities by non governmental organisations and institutions in Europe. This programme has already substantially contributed to the development of EU policy on combating violence, trafficking, sexual abuse and pornography, with implications well beyond the boundaries of the European Union, as mentioned in the mid-term report of the Daphne programme.
- (9) In its Resolution of 4 September 2002 on the mid-term review of the Daphne programme <sup>(4)</sup>, the European Parliament stresses that the Daphne programme meets a basic need for effective strategies to combat violence and that it must continue beyond 2003, and calls on the Commission to submit a proposal for a new action programme which incorporates all experience acquired since 1997 and which is allocated appropriate funding.
- (10) It is desirable to ensure continuity for the projects supported by the Daphne programme to carry on building on the experiences gained and to provide opportunities to promote the European added value stemming from these experiences and, to this end, it is necessary to establish a second phase of the programme, hereinafter referred to as the 'Daphne II programme'.
- (11) The Community can bring added value to the actions predominantly to be undertaken by Member States concerning the prevention of violence, including abuse and sexual exploitation perpetrated against children, young people and women and the protection of victims and groups at risk through the dissemination and exchange of information and experience, the promotion of an innovative approach, the joint establishment of priorities, the development of networking as appropriate, the selection of Community-wide projects and the motivation and mobilisation of all parties concerned. These actions should also encompass children and women brought to the Member States through human trafficking. The Community can also identify and stimulate good practice.
- (12) The Daphne II programme can bring added value by identifying and stimulating good practice, by encouraging innovation and by exchanging relevant experience of actions undertaken in the Member States, including an exchange of information relating to the various laws, sanctions and the results achieved. In order to achieve the objectives of this programme and use the resources available in the most efficient way, the areas in which work is to be done must be carefully chosen by selecting projects which offer a greater Community added value and show the way towards trying out and disseminating innovative ideas to prevent and combat violence, in the context of a multidisciplinary approach.
- (13) Since the objectives of the proposed action, namely to prevent and combat all forms of violence against children, young people and women cannot be sufficiently achieved by the Member States and can therefore, due to the need for a coordinated and multidisciplinary approach favouring the setting up of transnational frameworks for training, information, study and exchange of good practice, and the selection of Community-wide projects, 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 Decision does not go beyond what is necessary in order to achieve those objectives.
- (14) The Daphne II programme should be of a five-year duration in order to allow sufficient time for actions to be implemented to achieve the objectives set and for lessons and experience to be collated and integrated in good practice across the European Union.

<sup>(1)</sup> OJ C 59, 23.2.2001, p. 307.

<sup>(2)</sup> OJ C 77 E, 28.3.2002, p. 126

<sup>(3)</sup> OJ L 34, 9.2.2000, p. 1.

<sup>(4)</sup> OJ C 272 E, 13.11.2003, p. 390

- (15) The measures necessary for the implementation of this Decision 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 <sup>(1)</sup>.
- (16) This Decision lays down, for the entire duration of the programme, a financial framework constituting the prime reference, within the meaning of point 33 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure <sup>(2)</sup>, for the budgetary authority during the annual budgetary procedure,

preventive measures and by providing support for victims and groups at risk, including in particular the prevention of future exposure to violence. It further aims to assist and encourage non governmental organisations and other organisations active in this field.

2. The actions to be implemented under the Daphne II programme, as set out in the Annex, are intended:

- (a) to promote transnational actions:
- (i) to set up multidisciplinary networks, particularly in support of victims of violence and groups at risk;
  - (ii) to ensure the expansion of the knowledge base, the exchange of information and the identification and dissemination of good practice, including through training, study visits and staff exchange;
  - (iii) to raise awareness of violence among targeted audiences such as specific professions, competent authorities and identified sectors of the general public with a view both to improving understanding of, and promoting the adoption of zero tolerance towards violence and to encouraging support for victims and the reporting of incidences of violence to the competent authorities;
  - (iv) to study phenomena related to violence and possible methods of preventing it and explore and address the root causes of violence at all levels of society;
- b) to implement complementary actions, on the initiative of the Commission, such as studies, the formulation of indicators, data gathering, statistics broken down by gender and by age, seminars, and meetings of experts or other activities to reinforce the programme's knowledge base and to disseminate the information obtained under this programme.

HAVE DECIDED AS FOLLOWS:

#### *Article 1*

##### **Subject matter and scope**

The second phase of the Daphne programme to prevent and combat all forms of violence against children, young people and women and to protect victims and groups at risk (the Daphne II programme) is hereby established for the period 1 January 2004 to 31 December 2008. It may be extended.

For the purposes of the Daphne II programme, 'children' shall include adolescents up to the age of 18 years, in accordance with international instruments relating to the rights of the child.

However, projects with actions particularly designed for beneficiary groups such as, for example, 'teenagers' (13 to 19 years old) or people 12 to 25 years old, shall be considered as targeting the category of so-called 'young people'.

#### *Article 2*

##### **Programme objectives**

1. The Daphne II programme shall contribute to the general objective of providing citizens with a high level of protection from violence, including protection of physical and mental health.

The aim of this programme shall be to prevent and combat all forms of violence, occurring in the public or the private domain, against children, young people and women by taking

#### *Article 3*

##### **Access to the programme**

1. The Daphne II programme shall be open to participation by public or private organisations and institutions (local authorities at the competent level, university departments and research centres) working to prevent and combat violence against children, young people and women or to protect against such violence or to provide support for victims or to implement targeted actions to promote rejection of such violence or to encourage attitude and behaviour change towards vulnerable groups and victims of violence.

<sup>(1)</sup> OJ L 184, 17.7.1999, p. 23.

<sup>(2)</sup> OJ C 172, 18.6.1999, p. 1. Agreement as amended by Decision 2003/429/EC of the European Parliament and of the Council (OJ L 147, 14.6.2003, p. 25).

2. This programme shall also be open to the participation of:

- (a) Accession States which signed the Treaty of Accession on 16 April 2003;
- (b) the EFTA/EEA countries, in accordance with the conditions laid down in the EEA Agreement;
- (c) Romania and Bulgaria, for which the conditions for participation are to be laid down in accordance with the respective European Agreements, the additional protocols thereto and the decisions of the respective Association Councils;
- (d) Turkey, for which the conditions for participation are to be laid down in accordance with the Framework Agreement between the European Community and the Republic of Turkey on the general principles for the participation of the Republic of Turkey in Community programmes <sup>(1)</sup>.

3. To be eligible for funding under this programme, projects shall involve at least two Member States, have a maximum duration of two years and be geared to the objectives set out in Article 2.

#### Article 4

##### Actions under the programme

The Daphne II programme shall comprise the following types of actions:

- (a) identification and exchanges of good practice and work experience with a view in particular to implementing preventive measures and assistance to victims;
- (b) mapping surveys, studies and research;
- (c) field work with the involvement of the beneficiaries, particularly children and young people, in all phases of project design, implementation and evaluation;
- (d) creation of sustainable multidisciplinary networks;
- (e) training and design of educational packages;
- (f) development and implementation of treatment programmes and support for victims and people at risk on the one hand, and perpetrators on the other hand, whilst ensuring the safety of victims;

- (g) development and implementation of awareness-raising actions targeting specific audiences, design of materials to supplement those already available, or adaptation and use of existing materials in other geographical areas or for other target groups;
- (h) dissemination of the results obtained under the two Daphne programmes including their adaptation, transfer and use by other beneficiaries or in other geographical areas;
- (i) identification and enhancement of actions contributing to positive treatment of people at risk of violence, namely to an approach which encourages respect for them and promotes their well-being and self-fulfilment.

#### Article 5

##### Funding

1. The financial framework for the implementation of the Daphne II programme for the period from 1 January 2004 to 31 December 2008 is hereby set at EUR 50 million, of which EUR 29 million is for the period until 31 December 2006.

For the period following 31 December 2006, the amount shall be deemed to be confirmed if it is consistent for this phase with the financial perspectives in force for the period commencing in 2007.

2. The annual appropriations shall be authorised by the budgetary authority within the limits of the financial perspective.

3. Funding decisions shall be followed by grant agreements between the Commission and the beneficiaries of the grant.

4. The proportion of financial support from the Community budget shall not exceed 80 % of the total cost of the project.

However, the complementary actions referred to in Article 2(2)(b) may be financed up to 100 %, subject to a ceiling of 15 % of this programme's total annual financial allocation.

#### Article 6

##### Implementation of the programme

1. The Commission shall be responsible for the management and implementation of the Daphne II programme and shall ensure that any result or product funded by this programme is available free of charge and in electronic form.

<sup>(1)</sup> OJ L 61, 2.3.2002, p. 29.

2. The Commission shall ensure a balanced approach, in respect of the three target groups, namely children, young people and women with regard to the implementation of this programme.

3. The measures necessary for the implementation of this Decision relating to the annual plan of work shall be adopted in accordance with the management procedure referred to in Article 7(2).

4. The measures necessary for the implementation of this Decision relating to all other matters shall be adopted in accordance with the advisory procedure referred to in Article 7(3).

#### Article 7

#### Committee

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

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

3. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
4. The Committee shall adopt its rules of procedure.

#### Article 8

#### Monitoring and evaluation

1. The Commission shall take all the measures necessary to ensure the monitoring and continuous evaluation of the Daphne II programme taking account of the general and specific objectives set out in Article 2 and of the specific objectives set out in the Annex.

2. At the latest by 1 June 2006, the Commission shall submit an evaluation report to the European Parliament and to the Council, assessing the relevance, utility, sustainability, effectiveness and efficiency of the Daphne II programme so far. This report shall include an ex ante evaluation in order to support possible future action. Moreover, in parallel to the presentation of the Preliminary Draft Budget for 2007, the Commission shall forward to the budgetary authority the result of the qualitative and quantitative evaluation of performance against the annual implementation plan.

In the context of the budgetary procedure for 2007, the Commission shall, at the latest by 1 June 2006, report on the consistency of the amount for 2007/2008 with the new financial perspectives. If applicable, the Commission shall take the necessary steps within the budgetary procedures for 2007/2008 to ensure the consistency of the annual appropriations with the new financial perspectives.

3. On completion of the Daphne II programme, the Commission shall submit a final report to the European Parliament and to the Council. Inter alia, this report shall contain information on the work carried out in the context of the actions set out in Point II(c) of the Annex, as a basis for evaluating the need for further political action.

4. The Commission shall also send the reports referred to under paragraphs 2 and 3 to the European Economic and Social Committee and to the Committee of the Regions.

#### Article 9

#### Entry into force

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at Strasbourg, 21 April 2004.

*For the European Parliament*  
*The President*  
P. COX

*For the Council*  
*The President*  
D. ROCHE

## ANNEX

**SPECIFIC OBJECTIVES AND ACTIONS**

## I. TRANSNATIONAL ACTIONS

**1. Identification and exchange of good practice and WORK experience**

*Objective:* to support and encourage the exchange, adaptation and use of good practice for application in other contexts or geographical areas

To stimulate and promote the exchange of good practice at Community level on protection of and support for children, young people and women — victims or groups at risk — with special emphasis on the following areas:

- (a) prevention (general or targeting specific groups);
- (b) protection and support to victims (psychological, medical, social, educational and legal assistance, the provision of accommodation, removing and protecting victims, training and reintegration into social and working life);
- (c) procedures to protect the best interests of children, particularly those who are victims of prostitution, young people and women who are the victims of violence;
- (d) measurement of the real impact of the different types of violence on victims and society within Europe, in order to establish an appropriate response.

**2. Mapping surveys, studies and research**

*Objective:* to study phenomena related to violence

To support research activities, gender- and age-based studies and mapping surveys in the field of violence in order, inter alia:

- (a) to explore and assess the various causes, circumstances and mechanisms of the emergence and growth of violence, including coercion to carry out actions such as begging or theft;
- (b) to analyse and compare existing prevention and protection models;
- (c) to develop prevention and protection practice;
- (d) to assess the impact of violence, also in terms of health, both on victims and on society as a whole, including the economic costs;
- (e) to study the scope for developing filters which prevent the forwarding of paedophile material via the Internet.
- (f) to undertake studies on children who are the victims of prostitution in order to help prevent this phenomenon by means of better knowledge about the risk factors.

**3. Field work with the involvement of the beneficiaries**

*Objective:* actively to implement proven methods in the prevention of and protection from violence

To support the implementation of methods, training modules and assistance (psychological, medical, social, educational, legal, and to reintegration) directly involving the beneficiaries.



#### 4. Creation of sustainable multidisciplinary networks

*Objective:* to support and encourage both non-governmental organisations (NGOs) and other organisations, including local authorities (at the competent level), active in the fight against violence to work together.

To support the establishment and strengthening of multidisciplinary networks and to encourage and support cooperation between NGOs and the various organisations and public bodies, in order to improve the level of knowledge and understanding of one another's roles and to provide comprehensive multi-disciplinary support to victims of violence and to those at risk.

The networks will in particular carry out activities to address the problems of violence, geared to:

- (a) producing a common framework for the analysis of violence, including the definition of different types of violence, the causes of violence and all its consequences, and for the implementation of appropriate multi-sector responses;
- (b) assessing the types and effectiveness of measures and practices for the prevention and detection of violence, and for the provision of support for victims of violence, in particular to ensure that they are never again exposed to violence;
- (c) promoting activities to tackle this problem at both international and national level.

#### 5. Training and design of educational packages

*Objective:* to develop educational packages on the prevention of violence and on positive treatment

To design and test educational packages and actions on the prevention of violence against children, young people and women and on positive treatment, as well as on conflict management, for use in schools and adult educational institutions, associations, undertakings, public institutions and NGOs.

#### 6. Development and implementation of treatment programmes

*Objective:* to develop and implement treatment programmes for victims and people at risk, such as children and young people who witness domestic violence, on the one hand, and perpetrators on the other hand, with the aim of preventing violence.

To detect the possible causes, circumstances and mechanisms of the emergence and growth of violence including the nature and motivation of perpetrators of violence and exploiters of commercial violence such as sexual or non-sexual exploitation.

To develop, test and implement treatment programmes based on the above findings.

#### 7. Awareness-raising actions targeting specific audiences

*Objective:* to raise awareness and the level of understanding of violence and the prevention of violence against children, young people and women with the aim of promoting zero tolerance of violence, the provision of support to victims and groups at risk, and the reporting of incidences of violence

The following types of actions, amongst others, are eligible for support:

- (a) development and implementation of information and awareness-raising actions aimed at children, young people and women, in particular on the potential risks of violence and ways of avoiding them; other publics to be targeted could also include specific professions such as teachers, educators, medical doctors, youth or social workers, lawyers, police authorities and the media;
- (b) development of Community-wide information sources to assist and inform NGOs and public bodies about publicly available information relevant to the field of violence, the means of preventing it and the rehabilitation of victims, compiled by governmental, non-governmental, academic and other sources; this should enable information to be integrated into all the relevant information systems;

- (c) encouragement of the introduction of measures and specific services to increase reporting to the authorities of violence and different forms of trade in children, young people and women for sexual and non-sexual exploitation;
- (d) promotion of publicity campaigns, using mass means of communication, focusing on the condemnation of violence and the provision of support for victims in the form of psychological, moral and practical assistance.

The design of materials to supplement those already available, or to adapt them for use in other geographical areas or for other target groups will be encouraged.

## II. COMPLEMENTARY ACTIONS

In order to ensure that all areas of the programme are fully covered, even in the absence of proposals — or of suitable proposals — for a given area, the Commission will carry out more proactive activities to fill any gaps.

Consequently, the programme will finance complementary actions, on the Commission's initiative, in the following areas, *inter alia*:

- (a) to enable the development of indicators on violence, so that the quantified impact of policies and projects can be measured. This must be based on existing experience of all forms of violence against children, young people and women;
- (b) to set up a procedure for regular and sustainable data collection, preferably with the assistance of Eurostat, in order to be able to quantify violence in the Union more accurately;
- (c) to identify policy issues, wherever possible, in the light of the work achieved by funded projects, with the aim of suggesting common policies on violence at Community level and reinforcing judicial practice;
- (d) to analyse and evaluate the funded projects in order to prepare for a European Year against violence;
- (e) to disseminate on a Europe-wide scale good practices stemming from funded projects; this can be achieved by various means:
  - (i) producing and distributing written material, CD-ROMs, video films, setting up Internet sites and promoting campaigns and publicity spots;
  - (ii) seconding of or organising exchanges of experienced staff from one organisation to another in order to assist with the implementation of new solutions or practices that have proven to be effective elsewhere;
  - (iii) enabling a single NGO to use results obtained under the two Daphne programmes, to adapt them or to transfer them to another Union area or another category of beneficiary;
  - (iv) establishing a help-desk to assist NGOs, especially those participating for the first time, to elaborate their projects, to liaise with other partners and to use and benefit from the Daphne acquis;
  - (v) cooperating as closely as possible with mass media.
- f) to organise seminars for all stakeholders involved in funded projects in order to improve management and networking capability and to support information exchange;
- g) to conduct studies and organise meetings of experts and seminars directly connected with the carrying out of the action of which they form an integral part.

In addition, the Commission may have recourse, in carrying out the programme, to technical assistance organisations, the financing of which will be provided for within the overall financial framework and, under the same conditions, to experts.

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**DECISION No 804/2004/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of 21 April 2004**

**establishing a Community action programme to promote activities in the field of the protection of the Community's financial interests (Hercule programme)**

THE EUROPEAN PARLIAMENT AND THE  
COUNCIL OF THE EUROPEAN UNION,

the Community) and in line B5-910 (General measures to combat fraud) of the general budget of the European Union.

Having regard to the Treaty establishing the European Community, and in particular Article 280(4) thereof,

(5) Article 112 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities <sup>(3)</sup> lays down strict conditions for financial assistance for measures specified in a basic instrument which have already begun.

Having regard to the proposal from the Commission,

Having regard to the opinion of the Court of Auditors <sup>(1)</sup>,

(6) It is therefore necessary to adopt that basic instrument so that, by adopting this Decision establishing a structured, specific and multidisciplinary Community action programme for a substantial period, all existing support measures are rationalised and supplemented.

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(2)</sup>,

Whereas:

- (1) The Community and the Member States have set themselves the objective of countering fraud and any other illegal activities affecting the Community's financial interests. All available means must be deployed to attain that objective, whilst maintaining the current distribution and balance of responsibilities between the national and Community levels.
- (2) Activities with the purpose of providing better information, carrying out studies and providing training or technical and scientific assistance in the fight against fraud help significantly to protect the Community's financial interests.
- (3) Activities in this field should therefore be promoted and bodies engaged in this field should be supported by awarding operating grants. Experience has shown the value of providing support at Community level as compared with national promotional activities.
- (4) Support for bodies and activities was provided until 2003 by credits entered in lines A03600 and A03010 (Conferences, congresses and meetings in connection with the activities of the associations of European lawyers for the protection of the financial interests of

- (7) The programme should be opened up to all Member States and neighbouring countries in view of the importance of providing effective and equivalent protection for the Community's financial interests beyond the Member States alone.
- (8) The European Parliament, the Council and the Commission, when adopting Regulation (EC, Euratom) No 1605/2002, undertook to achieve the objective of ensuring that this basic act comes into force as from the financial year 2004.
- (9) The support measures should also take account of the particular characteristics of bodies involved in protecting the Community's financial interests.
- (10) This Decision lays down for the entire duration of the programme a financial framework constituting the prime reference, within the meaning of point 33 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure <sup>(4)</sup>, for the budgetary authority during the annual budgetary procedure.

<sup>(1)</sup> OJ C 318, 30.12.2003, p. 5.

<sup>(2)</sup> Opinion of the European Parliament of 9 March 2004 (not yet published in the Official Journal) and Council Decision of 5 April 2004.

<sup>(3)</sup> OJ L 248, 16.9.2002, p. 1. Corrigendum in OJ L 25, 30.1.2003, p. 43.

<sup>(4)</sup> OJ C 172, 18.6.1999, p. 1. Agreement as amended by Decision 2003/429/EC of the European Parliament and of the Council (OJ L 147, 14.6.2003, p. 25).

- (11) The Commission should present to the European Parliament and the Council an interim report by the European Anti-Fraud Office (OLAF) on the implementation of this programme and a final report on the attainment of the said programme's objectives.
- (12) This Decision complies with the principles of subsidiarity and proportionality.
- (13) This Decision is without prejudice to the grants awarded in the field of protection of the Community's financial interests on the basis of programmes concerning the law-enforcement aspect,

HAVE DECIDED AS FOLLOWS:

#### *Article 1*

##### **Objective of the programme**

1. This Decision establishes a Community action programme to promote activities in the field of the protection of the financial interests of the Community. The programme shall be known as the 'Hercule programme'.

2. The purpose of the programme shall be to help protect the Community's financial interests by promoting activities and supporting bodies in accordance with the general criteria set out in the Annex and specified in detail in each annual grants programme. It shall take transnational and multidisciplinary aspects into account. It shall focus on aligning the substance of activities so as to guarantee effective and equivalent levels of protection on the basis of mutually agreed best practice while also respecting the distinct traditions of each Member State.

#### *Article 2*

##### **Access to the programme**

1. To qualify for a Community grant for an activity aimed at protecting the Community's financial interests, grant beneficiaries must comply with the provisions set out in the Annex. The activity must conform to the principles underlying Community activity in the field of the protection of the Community's financial interests and take account of the specific criteria laid down in the related calls for proposals, in accordance with the priorities set out in the annual grants programme detailing the general criteria set out in the Annex.

2. To qualify for a Community operating grant under the ongoing work programme of a body which pursues an objective of general European interest in the field of the

protection of the Community's financial interests, the body concerned must satisfy the general criteria set out in the Annex.

3. Applications for operating grants must contain all necessary information, to enable the Commission to select beneficiaries, on:

- the type of body,
- the measures to protect the Community's financial interests,
- the likely cost of implementing the measures,
- all criteria set out in point 4 of the Annex.

#### *Article 3*

##### **Participation by countries outside the Community**

In addition to beneficiaries and bodies located in the Member States, participation in the Community action programme shall be open to those located in:

- (a) acceding countries which signed the Accession Treaty on 16 April 2004;
- (b) the EFTA/EEA countries, in accordance with the conditions laid down in the EEA Agreement;
- (c) Bulgaria and Romania, in accordance with the conditions laid down in the Europe Agreements, in their additional protocols and in the decisions of the respective Association Councils;
- (d) Turkey, in accordance with Council Decision 2002/179/EC of 17 December 2001 concerning the conclusion of a Framework Agreement between the European Community and the Republic of Turkey on the general principles for the participation of the Republic of Turkey in Community programmes <sup>(1)</sup>.

#### *Article 4*

##### **Selection of beneficiaries**

1. The programme covers one type of awarding procedure by means of a call for proposals for all beneficiaries.

<sup>(1)</sup> OJ L 61, 2.3.2002, p. 27.

2. The bodies to receive grants for activities shall be selected following a call for proposals, in accordance with the priorities set out in the annual grants programme, which details the general criteria referred to in the Annex. Grants awarded for an activity covered by the programme shall meet the general criteria set out in the Annex.

3. The bodies to receive operating grants shall be selected following a call for proposals. The award of an operating grant on the basis of a beneficiary's ongoing work programme shall meet the general criteria set out in the Annex. On the basis of the call for proposals, the Commission shall draw up a list of the beneficiaries and the amounts approved, in accordance with Article 116 of Regulation (EC, Euratom) No 1605/2002.

#### Article 5

#### Awarding of the grant

1. Financial assistance granted for activities may not cover all eligible expenditure. The amount of a grant for an activity awarded under the programme may not exceed the following rates:

- (a) 50 % of eligible expenditure for technical support;
- (b) 80 % of eligible expenditure for training measures, promoting exchanges of specialised staff and the holding of seminars and conferences, provided that the beneficiaries are those referred to in point 2, first indent of the Annex;
- (c) 90 % of eligible expenditure for the holding of seminars and conferences, etc., provided that the beneficiaries are those referred to in point 2, second and third indents of the Annex.

2. The amount of an operating grant awarded under this programme may not exceed 70 % of the eligible expenditure of the body for the calendar year for which the grant is awarded.

Pursuant to Article 113(2) of Regulation (EC, Euratom) No 1605/2002, where such operating grants are renewed, they shall be gradually decreased. If a grant is awarded to a body which received an operating grant the preceding year, the

percentage of Community co-financing represented by the new grant shall be at least 10 percentage points lower than the Community co-financing percentage represented by the grant in the preceding year.

#### Article 6

#### Financial provisions

1. This programme shall start on 1 January 2004 and end on 31 December 2006.
2. The financial framework for the implementation of the programme for the period 2004 to 2006 shall be EUR 11 775 000.
3. The annual appropriations shall be authorised by the budgetary authority within the limits of the financial perspective.

#### Article 7

#### Monitoring and evaluation

The Commission shall present to the European Parliament and the Council:

- (a) by 30 June 2006 at the latest, a report by OLAF on the implementation of the programme and the appropriateness of continuing it;
- (b) by 31 December 2007 at the latest, a report by OLAF on the achievement of the objectives of the programme. The report, based on the results obtained by the beneficiaries, shall assess, in particular, their effectiveness in achieving the objectives defined in Article 1 and in the Annex.

#### Article 8

#### Entry into force

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Strasbourg, 21 April 2004.

For the European Parliament

The President

P. COX

For the Council

The President

D. ROCHE

## ANNEX

**1. ACTIVITIES SUPPORTED**

The general objective laid down in Article 1 is to reinforce Community action to prevent fraud affecting the Community's financial interests and to combat such fraud by promoting actions in this field and the operation of bodies engaged in it.

Activities of bodies which may help to reinforce and increase the effectiveness of Community action, in accordance with Article 2, include the following:

- organisation of seminars and conferences,
- promotion of scientific studies and discussions on Community policies in the field of the protection of the Community's financial interests,
- coordination of activities relating to the protection of the Community's financial interests,
- training and awareness,
- promoting exchanges of specialised staff,
- dissemination of scientific information on Community action,
- development and supply of specific IT tools,
- technical assistance,
- promoting and expanding the exchange of data.

**2. CARRYING OUT THE ACTIVITIES SUPPORTED**

The activities carried out by bodies which may receive a Community grant under the programme come under the heading of actions aimed at strengthening Community measures to protect financial interests and pursue objectives of general European interest in this field or an objective which is part of the European Union's policy in this area.

In accordance with Article 2 of the Decision, the following bodies shall have access to the programme:

- all national or regional administrations of a Member State or country outside the Community, as defined in Article 3, which promote the strengthening of the Community's action in the field of the protection of the Community's financial interests,
- all research and education institutes that have had legal personality for at least one year and are established and operating in a Member State or in a country outside the Community, as defined in Article 3, and that promote the strengthening of the Community's action in protecting its financial interests,
- all non-profit-making bodies that have had legal personality for at least one year and are legally established in a Member State or country outside the Community, as defined in Article 3, and that promote the strengthening of Community action to protect the Community's financial interests.

An annual operating grant may be awarded to support implementation of such a body's ongoing programme of work.

**3. SELECTION OF BENEFICIARIES**

Bodies entitled to receive a grant for the activity or an operating grant under point 2 will be selected on the basis of calls for proposals.

#### 4. CHARACTERISTICS OF GRANT APPLICATIONS ON WHICH ASSESSMENT IS BASED

Applications for grants for activities or, where appropriate, operating grants are assessed in the light of:

- consistency of the proposed activity in relation to the objectives of the programme,
- complementarity of the proposed activity with other assisted activities,
- feasibility of the proposed activity, i.e. the real possibility that it can be carried out using the proposed means,
- the cost-benefit ratio,
- the added utility of the proposed activity,
- size of public targeted by the proposed activity,
- transnational and multidisciplinary aspects of the activity,
- geographic scope of the proposed measure.

#### 5. ELIGIBLE EXPENDITURE

Pursuant to point 2, only the expenditure required for the successful implementation of the activity is taken into account when calculating the grant.

Also eligible is expenditure in connection with the participation of representatives of the Balkan countries forming part of the stabilisation and association process for countries of south eastern Europe <sup>(1)</sup> and certain countries of the Commonwealth of Independent States <sup>(2)</sup>.

#### 6. CHECKS AND AUDITS

- 6.1. The beneficiary of an operating grant must keep available for the Commission all the supporting documents, in particular the audited financial statement, regarding expenditure incurred during the grant year for a period of five years following the last payment. The beneficiary of a grant must ensure that, where applicable, supporting documents in the possession of partners or members are made available to the Commission.
- 6.2. The Commission may have an audit of the use made of the grant carried out either directly by its own staff or by any other qualified outside body of its choice. Such audits may be carried out throughout the lifetime of the agreement and for a period of five years from the date of payment of the balance. Where appropriate, the audit findings may lead to recovery decisions by the Commission.
- 6.3. Commission staff and outside personnel authorised by the Commission have appropriate right of access to sites and premises where the action is carried out and to all the information, including information in electronic format, needed in order to conduct such audits.
- 6.4. The Court of Auditors and OLAF must enjoy the same rights, especially of access, as the persons referred to in point 6.3.
- 6.5. Furthermore, in order to protect the European Community's financial interests against fraud and other irregularities, the Commission carries out on-the-spot checks and inspections under this programme in accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities <sup>(3)</sup>. Where necessary, investigations must be conducted by the European Anti-Fraud Office (OLAF) and governed by Regulation (EC) No 1073/1999 of the European Parliament and of the Council <sup>(4)</sup>.

<sup>(1)</sup> Former Yugoslav Republic of Macedonia, Albania, Serbia and Montenegro, Bosnia-Herzegovina and Croatia.

<sup>(2)</sup> Belarus, Moldavia, Russian Federation and Ukraine.

<sup>(3)</sup> OJ L 292, 15.11.1996, p. 2.

<sup>(4)</sup> OJ L 136, 31.5.1999, p. 1.

**7. MANAGEMENT OF THE PROGRAMME**

On the basis of a cost-effectiveness analysis, the Commission may employ experts and make use of any other form of technical and administrative assistance not involving public authority tasks outsourced under ad hoc service contracts. It may also finance studies and organise meetings of experts to facilitate the implementation of the programme, and take information, publication and dissemination measures directly linked to fulfilling the objectives of the programme.

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**REGULATION (EC) No 805/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of 21 April 2004**

**creating a European Enforcement Order for uncontested claims**

THE EUROPEAN PARLIAMENT AND THE  
COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 61(c) and the second indent of Article 67(5) thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the Opinion of the European Economic and Social Committee <sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(3)</sup>,

Whereas:

- (1) The Community has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is ensured. To this end, the Community is to adopt, inter alia, measures in the field of judicial cooperation in civil matters that are necessary for the proper functioning of the internal market.
- (2) On 3 December 1998, the Council adopted an Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice <sup>(4)</sup> (the Vienna Action Plan).
- (3) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judicial decisions as the cornerstone for the creation of a genuine judicial area.
- (4) On 30 November 2000, the Council adopted a programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters <sup>(5)</sup>. This programme includes in its first stage the abolition of exequatur, that is to say, the creation of a European Enforcement Order for uncontested claims.

(5) The concept of 'uncontested claims' should cover all situations in which a creditor, given the verified absence of any dispute by the debtor as to the nature or extent of a pecuniary claim, has obtained either a court decision against that debtor or an enforceable document that requires the debtor's express consent, be it a court settlement or an authentic instrument.

(6) The absence of objections from the debtor as stipulated in Article 3(1)(b) can take the shape of default of appearance at a court hearing or of failure to comply with an invitation by the court to give written notice of an intention to defend the case.

(7) This Regulation should apply to judgments, court settlements and authentic instruments on uncontested claims and to decisions delivered following challenges to judgments, court settlements and authentic instruments certified as European Enforcement Orders.

(8) In its Tampere conclusions, the European Council considered that access to enforcement in a Member State other than that in which the judgment has been given should be accelerated and simplified by dispensing with any intermediate measures to be taken prior to enforcement in the Member State in which enforcement is sought. A judgment that has been certified as a European Enforcement Order by the court of origin should, for enforcement purposes, be treated as if it had been delivered in the Member State in which enforcement is sought. In the United Kingdom, for example, the registration of a certified foreign judgment will therefore follow the same rules as the registration of a judgment from another part of the United Kingdom and is not to imply a review as to the substance of the foreign judgment. Arrangements for the enforcement of judgments should continue to be governed by national law.

(9) Such a procedure should offer significant advantages as compared with the exequatur procedure provided for 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 <sup>(6)</sup>, in that there is no need for approval by the

<sup>(1)</sup> OJ C 203 E, 27.8.2002, p. 86.

<sup>(2)</sup> OJ C 85, 8.4.2003, p. 1.

<sup>(3)</sup> Opinion of the European Parliament of 8 April 2003 (OJ C 64 E, 12.3.2004, p. 79), Council Common Position of 6.2.2004 (not yet published in the Official Journal) and Position of the European Parliament of 30.3.2004 (not yet published in the Official Journal).

<sup>(4)</sup> OJ C 19, 23.1.1999, p. 1.

<sup>(5)</sup> OJ C 12, 15.1.2001, p. 1.

<sup>(6)</sup> OJ L 12, 16.1.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 1496/2002 (OJ L 225, 22.8.2002, p. 13).

- judiciary in a second Member State with the delays and expenses that this entails.
- (10) Where a court in a Member State has given judgment on an uncontested claim in the absence of participation of the debtor in the proceedings, the abolition of any checks in the Member State of enforcement is inextricably linked to and dependent upon the existence of a sufficient guarantee of observance of the rights of the defence.
- (11) This Regulation seeks to promote the fundamental rights and takes into account the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure full respect for the right to a fair trial as recognised in Article 47 of the Charter.
- (12) Minimum standards should be established for the proceedings leading to the judgment in order to ensure that the debtor is informed about the court action against him, the requirements for his active participation in the proceedings to contest the claim and the consequences of his non-participation in sufficient time and in such a way as to enable him to arrange for his defence.
- (13) Due to differences between the Member States as regards the rules of civil procedure and especially those governing the service of documents, it is necessary to lay down a specific and detailed definition of those minimum standards. In particular, any method of service that is based on a legal fiction as regards the fulfilment of those minimum standards cannot be considered sufficient for the certification of a judgment as a European Enforcement Order.
- (14) All the methods of service listed in Articles 13 and 14 are characterised by either full certainty (Article 13) or a very high degree of likelihood (Article 14) that the document served has reached its addressee. In the second category, a judgment should only be certified as a European Enforcement Order if the Member State of origin has an appropriate mechanism in place enabling the debtor to apply for a full review of the judgment under the conditions set out in Article 19 in those exceptional cases where, in spite of compliance with Article 14, the document has not reached the addressee.
- (15) Personal service on certain persons other than the debtor himself pursuant to Article 14(1)(a) and (b) should be understood to meet the requirements of those provisions only if those persons actually accepted/received the document in question.
- (16) Article 15 should apply to situations where the debtor cannot represent himself in court, as in the case of a legal person, and where a person to represent him is determined by law as well as situations where the debtor has authorised another person, in particular a lawyer, to represent him in the specific court proceedings at issue.
- (17) The courts competent for scrutinising full compliance with the minimum procedural standards should, if satisfied, issue a standardised European Enforcement Order certificate that makes that scrutiny and its result transparent.
- (18) Mutual trust in the administration of justice in the Member States justifies the assessment by the court of one Member State that all conditions for certification as a European Enforcement Order are fulfilled to enable a judgment to be enforced in all other Member States without judicial review of the proper application of the minimum procedural standards in the Member State where the judgment is to be enforced.
- (19) This Regulation does not imply an obligation for the Member States to adapt their national legislation to the minimum procedural standards set out herein. It provides an incentive to that end by making available a more efficient and rapid enforceability of judgments in other Member States only if those minimum standards are met.
- (20) Application for certification as a European Enforcement Order for uncontested claims should be optional for the creditor, who may instead choose the system of recognition and enforcement under Regulation (EC) No 44/2001 or other Community instruments.
- (21) When a document has to be sent from one Member State to another for service there, this Regulation and in particular the rules on service set out herein should apply together with Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters <sup>(1)</sup>, and in particular Article 14 thereof in conjunction with Member States declarations made under Article 23 thereof.
- (22) Since the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community

<sup>(1)</sup> OJ L 160, 30.6.2000, p. 37.

may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

- (23) 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 <sup>(1)</sup>.
- (24) 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, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Regulation.
- (25) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of this Regulation, and is therefore not bound by it or subject to its application.
- (26) Pursuant to the second indent of Article 67(5) of the Treaty, the codecision procedure is applicable from 1 February 2003 for the measures laid down in this Regulation,

HAVE ADOPTED THIS REGULATION:

#### CHAPTER I

#### SUBJECT MATTER, SCOPE AND DEFINITIONS

##### Article 1

##### Subject matter

The purpose of this Regulation is to create a European Enforcement Order for uncontested claims to permit, by laying down minimum standards, the free circulation of judgments, court settlements and authentic instruments throughout all Member States without any intermediate proceedings needing to be brought in the Member State of enforcement prior to recognition and enforcement.

<sup>(1)</sup> OJ L 184, 17.7.1999, p. 23.

##### Article 2

##### Scope

1. This Regulation shall apply in civil and commercial matters, whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of State authority ('acta iure imperii').
2. This Regulation shall not apply to:
  - (a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;
  - (b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
  - (c) social security;
  - (d) arbitration.
3. In this Regulation, the term 'Member State' shall mean Member States with the exception of Denmark.

##### Article 3

##### Enforcement titles to be certified as a European Enforcement Order

1. This Regulation shall apply to judgments, court settlements and authentic instruments on uncontested claims.

A claim shall be regarded as uncontested if:

- (a) the debtor has expressly agreed to it by admission or by means of a settlement which has been approved by a court or concluded before a court in the course of proceedings; or
- (b) the debtor has never objected to it, in compliance with the relevant procedural requirements under the law of the Member State of origin, in the course of the court proceedings; or
- (c) the debtor has not appeared or been represented at a court hearing regarding that claim after having initially objected to the claim in the course of the court proceedings, provided that such conduct amounts to a tacit admission of the claim or of the facts alleged by the creditor under the law of the Member State of origin; or
- (d) the debtor has expressly agreed to it in an authentic instrument.

2. This Regulation shall also apply to decisions delivered following challenges to judgments, court settlements or authentic instruments certified as European Enforcement Orders.

#### Article 4

### Definitions

For the purposes of this Regulation, the following definitions shall apply:

1. 'judgment': any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court;
2. 'claim': a claim for payment of a specific sum of money that has fallen due or for which the due date is indicated in the judgment, court settlement or authentic instrument;
3. 'authentic instrument':
  - (a) a document which has been formally drawn up or registered as an authentic instrument, and the authenticity of which:
    - (i) relates to the signature and the content of the instrument; and
    - (ii) has been established by a public authority or other authority empowered for that purpose by the Member State in which it originates;
  - or
  - b) an arrangement relating to maintenance obligations concluded with administrative authorities or authenticated by them;
4. 'Member State of origin': the Member State in which the judgment has been given, the court settlement has been approved or concluded or the authentic instrument has been drawn up or registered, and is to be certified as a European Enforcement Order;
5. 'Member State of enforcement': the Member State in which enforcement of the judgment, court settlement or authentic instrument certified as a European Enforcement Order is sought;
6. 'court of origin': the court or tribunal seised of the proceedings at the time of fulfilment of the conditions set out in Article 3(1)(a), (b) or (c);
7. in Sweden, in summary proceedings concerning orders to pay (betalningsföreläggande), the expression 'court' includes the Swedish enforcement service (kronofogdemyndighet).

## CHAPTER II

### EUROPEAN ENFORCEMENT ORDER

#### Article 5

### Abolition of exequatur

A judgment which has been certified as a European Enforcement Order in the Member State of origin shall be recognised and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition.

#### Article 6

### Requirements for certification as a European Enforcement Order

1. A judgment on an uncontested claim delivered in a Member State shall, upon application at any time to the court of origin, be certified as a European Enforcement Order if:
  - (a) the judgment is enforceable in the Member State of origin; and
  - (b) the judgment does not conflict with the rules on jurisdiction as laid down in sections 3 and 6 of Chapter II of Regulation (EC) No 44/2001; and
  - (c) the court proceedings in the Member State of origin met the requirements as set out in Chapter III where a claim is uncontested within the meaning of Article 3(1)(b) or (c); and
  - (d) the judgment was given in the Member State of the debtor's domicile within the meaning of Article 59 of Regulation (EC) No 44/2001, in cases where
    - a claim is uncontested within the meaning of Article 3(1)(b) or (c); and
    - it relates to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession; and
    - the debtor is the consumer.
2. Where a judgment certified as a European Enforcement Order has ceased to be enforceable or its enforceability has been suspended or limited, a certificate indicating the lack or limitation of enforceability shall, upon application at any time to the court of origin, be issued, using the standard form in Annex IV.

3. Without prejudice to Article 12(2), where a decision has been delivered following a challenge to a judgment certified as a European Enforcement Order in accordance with paragraph 1 of this Article, a replacement certificate shall, upon application at any time, be issued, using the standard form in Annex V, if that decision on the challenge is enforceable in the Member State of origin.

#### Article 7

##### **Costs related to court proceedings**

Where a judgment includes an enforceable decision on the amount of costs related to the court proceedings, including the interest rates, it shall be certified as a European Enforcement Order also with regard to the costs unless the debtor has specifically objected to his obligation to bear such costs in the course of the court proceedings, in accordance with the law of the Member State of origin.

#### Article 8

##### **Partial European Enforcement Order certificate**

If only parts of the judgment meet the requirements of this Regulation, a partial European Enforcement Order certificate shall be issued for those parts.

#### Article 9

##### **Issue of the European Enforcement Order certificate**

1. The European Enforcement Order certificate shall be issued using the standard form in Annex I.
2. The European Enforcement Order certificate shall be issued in the language of the judgment.

#### Article 10

##### **Rectification or withdrawal of the European Enforcement Order certificate**

1. The European Enforcement Order certificate shall, upon application to the court of origin, be
  - (a) rectified where, due to a material error, there is a discrepancy between the judgment and the certificate;
  - (b) withdrawn where it was clearly wrongly granted, having regard to the requirements laid down in this Regulation.
2. The law of the Member State of origin shall apply to the rectification or withdrawal of the European Enforcement Order certificate.

3. An application for the rectification or withdrawal of a European Enforcement Order certificate may be made using the standard form in Annex VI.

4. No appeal shall lie against the issuing of a European Enforcement Order certificate.

#### Article 11

##### **Effect of the European Enforcement Order certificate**

The European Enforcement Order certificate shall take effect only within the limits of the enforceability of the judgment.

#### CHAPTER III

##### **MINIMUM STANDARDS FOR UNCONTESTED CLAIMS PROCEDURES**

#### Article 12

##### **Scope of application of minimum standards**

1. A judgment on a claim that is uncontested within the meaning of Article 3(1)(b) or (c) can be certified as a European Enforcement Order only if the court proceedings in the Member State of origin met the procedural requirements as set out in this Chapter.
2. The same requirements shall apply to the issuing of a European Enforcement Order certificate or a replacement certificate within the meaning of Article 6(3) for a decision following a challenge to a judgment where, at the time of that decision, the conditions of Article 3(1)(b) or (c) are fulfilled.

#### Article 13

##### **Service with proof of receipt by the debtor**

1. The document instituting the proceedings or an equivalent document may have been served on the debtor by one of the following methods:
  - (a) personal service attested by an acknowledgement of receipt, including the date of receipt, which is signed by the debtor;

- (b) personal service attested by a document signed by the competent person who effected the service stating that the debtor has received the document or refused to receive it without any legal justification, and the date of the service;
- (c) postal service attested by an acknowledgement of receipt including the date of receipt, which is signed and returned by the debtor;
- (d) service by electronic means such as fax or e-mail, attested by an acknowledgement of receipt including the date of receipt, which is signed and returned by the debtor.

2. Any summons to a court hearing may have been served on the debtor in compliance with paragraph 1 or orally in a previous court hearing on the same claim and stated in the minutes of that previous court hearing.

#### Article 14

##### Service without proof of receipt by the debtor

1. Service of the document instituting the proceedings or an equivalent document and any summons to a court hearing on the debtor may also have been effected by one of the following methods:

- (a) personal service at the debtor's personal address on persons who are living in the same household as the debtor or are employed there;
- (b) in the case of a self-employed debtor or a legal person, personal service at the debtor's business premises on persons who are employed by the debtor;
- (c) deposit of the document in the debtor's mailbox;
- (d) deposit of the document at a post office or with competent public authorities and the placing in the debtor's mailbox of written notification of that deposit, provided that the written notification clearly states the character of the document as a court document or the legal effect of the notification as effecting service and setting in motion the running of time for the purposes of time limits;
- (e) postal service without proof pursuant to paragraph 3 where the debtor has his address in the Member State of origin;
- (f) electronic means attested by an automatic confirmation of delivery, provided that the debtor has expressly accepted this method of service in advance.

2. For the purposes of this Regulation, service under paragraph 1 is not admissible if the debtor's address is not known with certainty.

3. Service pursuant to paragraph 1, (a) to (d), shall be attested by:

- (a) a document signed by the competent person who effected the service, indicating:
  - (i) the method of service used; and
  - (ii) the date of service; and
  - (iii) where the document has been served on a person other than the debtor, the name of that person and his relation to the debtor,

or

- b) an acknowledgement of receipt by the person served, for the purposes of paragraphs 1(a) and (b).

#### Article 15

##### Service on the debtor's representatives

Service pursuant to Articles 13 or 14 may also have been effected on a debtor's representative.

#### Article 16

##### Provision to the debtor of due information about the claim

In order to ensure that the debtor was provided with due information about the claim, the document instituting the proceedings or the equivalent document must have contained the following:

- (a) the names and the addresses of the parties;
- (b) the amount of the claim;
- (c) if interest on the claim is sought, the interest rate and the period for which interest is sought unless statutory interest is automatically added to the principal under the law of the Member State of origin;
- (d) a statement of the reason for the claim.

## Article 17

**Provision to the debtor of due information about the procedural steps necessary to contest the claim**

The following must have been clearly stated in or together with the document instituting the proceedings, the equivalent document or any summons to a court hearing:

- (a) the procedural requirements for contesting the claim, including the time limit for contesting the claim in writing or the time for the court hearing, as applicable, the name and the address of the institution to which to respond or before which to appear, as applicable, and whether it is mandatory to be represented by a lawyer;
- (b) the consequences of an absence of objection or default of appearance, in particular, where applicable, the possibility that a judgment may be given or enforced against the debtor and the liability for costs related to the court proceedings.

## Article 18

**Cure of non-compliance with minimum standards**

1. If the proceedings in the Member State of origin did not meet the procedural requirements as set out in Articles 13 to 17, such non-compliance shall be cured and a judgment may be certified as a European Enforcement Order if:

- (a) the judgment has been served on the debtor in compliance with the requirements pursuant to Article 13 or Article 14; and
- (b) it was possible for the debtor to challenge the judgment by means of a full review and the debtor has been duly informed in or together with the judgment about the procedural requirements for such a challenge, including the name and address of the institution with which it must be lodged and, where applicable, the time limit for so doing; and
- (c) the debtor has failed to challenge the judgment in compliance with the relevant procedural requirements.

2. If the proceedings in the Member State of origin did not comply with the procedural requirements as set out in Article 13 or Article 14, such non-compliance shall be cured if it is proved by the conduct of the debtor in the court proceedings that he has personally received the document to be served in sufficient time to arrange for his defence.

## Article 19

**Minimum standards for review in exceptional cases**

1. Further to Articles 13 to 18, a judgment can only be certified as a European Enforcement Order if the debtor is entitled, under the law of the Member State of origin, to apply for a review of the judgment where:

- (a) (i) the document instituting the proceedings or an equivalent document or, where applicable, the summons to a court hearing, was served by one of the methods provided for in Article 14; and
- (ii) service was not effected in sufficient time to enable him to arrange for his defence, without any fault on his part;

or

- (b) the debtor was prevented from objecting to the claim by reason of force majeure, or due to extraordinary circumstances without any fault on his part,

provided in either case that he acts promptly.

2. This Article is without prejudice to the possibility for Member States to grant access to a review of the judgment under more generous conditions than those mentioned in paragraph 1.

## CHAPTER IV

**ENFORCEMENT**

## Article 20

**Enforcement procedure**

1. Without prejudice to the provisions of this Chapter, the enforcement procedures shall be governed by the law of the Member State of enforcement.

A judgment certified as a European Enforcement Order shall be enforced under the same conditions as a judgment handed down in the Member State of enforcement.

2. The creditor shall be required to provide the competent enforcement authorities of the Member State of enforcement with:

- (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and
- (b) a copy of the European Enforcement Order certificate which satisfies the conditions necessary to establish its authenticity; and

(c) where necessary, a transcription of the European Enforcement Order certificate or a translation thereof into the official language of the Member State of enforcement or, if there are several official languages in that Member State, the official language or one of the official languages of court proceedings of the place where enforcement is sought, in conformity with the law of that Member State, or into another language that the Member State of enforcement has indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Community other than its own which it can accept for the completion of the certificate. The translation shall be certified by a person qualified to do so in one of the Member States.

3. No security, bond or deposit, however described, shall be required of a party who in one Member State applies for enforcement of a judgment certified as a European Enforcement Order in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement.

#### Article 21

##### Refusal of enforcement

1. Enforcement shall, upon application by the debtor, be refused by the competent court in the Member State of enforcement if the judgment certified as a European Enforcement Order is irreconcilable with an earlier judgment given in any Member State or in a third country, provided that:

- (a) the earlier judgment involved the same cause of action and was between the same parties; and
- (b) the earlier judgment was given in the Member State of enforcement or fulfils the conditions necessary for its recognition in the Member State of enforcement; and
- (c) the irreconcilability was not and could not have been raised as an objection in the court proceedings in the Member State of origin.

2. Under no circumstances may the judgment or its certification as a European Enforcement Order be reviewed as to their substance in the Member State of enforcement.

#### Article 22

##### Agreements with third countries

This Regulation shall not affect agreements by which Member States undertook, prior to the entry into force of Regulation (EC) No 44/2001, pursuant to Article 59 of the Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, not to recognise judgments given, in particular in other Contracting States to that

Convention, against defendants domiciled or habitually resident in a third country where, in cases provided for in Article 4 of that Convention, the judgment could only be founded on a ground of jurisdiction specified in the second paragraph of Article 3 of that Convention.

#### Article 23

##### Stay or limitation of enforcement

Where the debtor has

- challenged a judgment certified as a European Enforcement Order, including an application for review within the meaning of Article 19, or
- applied for the rectification or withdrawal of a European Enforcement Order certificate in accordance with Article 10,

the competent court or authority in the Member State of enforcement may, upon application by the debtor:

- (a) limit the enforcement proceedings to protective measures; or
- (b) make enforcement conditional on the provision of such security as it shall determine; or
- (c) under exceptional circumstances, stay the enforcement proceedings.

#### CHAPTER V

##### COURT SETTLEMENTS AND AUTHENTIC INSTRUMENTS

#### Article 24

##### Court settlements

1. A settlement concerning a claim within the meaning of Article 4(2) which has been approved by a court or concluded before a court in the course of proceedings and is enforceable in the Member State in which it was approved or concluded shall, upon application to the court that approved it or before which it was concluded, be certified as a European Enforcement Order using the standard form in Annex II.

2. A settlement which has been certified as a European Enforcement Order in the Member State of origin shall be enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its enforceability.



3. The provisions of Chapter II, with the exception of Articles 5, 6(1) and 9(1), and of Chapter IV, with the exception of Articles 21(1) and 22, shall apply as appropriate.

#### Article 25

#### Authentic instruments

1. An authentic instrument concerning a claim within the meaning of Article 4(2) which is enforceable in one Member State shall, upon application to the authority designated by the Member State of origin, be certified as a European Enforcement Order, using the standard form in Annex III.

2. An authentic instrument which has been certified as a European Enforcement Order in the Member State of origin shall be enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its enforceability.

3. The provisions of Chapter II, with the exception of Articles 5, 6(1) and 9(1), and of Chapter IV, with the exception of Articles 21(1) and 22, shall apply as appropriate.

#### CHAPTER VI

#### TRANSITIONAL PROVISION

#### Article 26

#### Transitional provision

This Regulation shall apply only to judgments given, to court settlements approved or concluded and to documents formally drawn up or registered as authentic instruments after the entry into force of this Regulation.

#### CHAPTER VII

#### RELATIONSHIP WITH OTHER COMMUNITY INSTRUMENTS

#### Article 27

#### Relationship with Regulation (EC) No 44/2001

This Regulation shall not affect the possibility of seeking recognition and enforcement, in accordance with Regulation (EC) No 44/2001, of a judgment, a court settlement or an authentic instrument on an uncontested claim.

#### Article 28

#### Relationship with Regulation (EC) No 1348/2000

This Regulation shall not affect the application of Regulation (EC) No 1348/2000.

#### CHAPTER VIII

#### GENERAL AND FINAL PROVISIONS

#### Article 29

#### Information on enforcement procedures and authorities

The Member States shall cooperate to provide the general public and professional circles with information on:

- (a) the methods and procedures of enforcement in the Member States; and
- (b) the competent authorities for enforcement in the Member States,

in particular via the European Judicial Network in civil and commercial matters established in accordance with Decision 2001/470/EC <sup>(1)</sup>.

#### Article 30

#### Information relating to redress procedures, languages and authorities

1. The Member States shall notify the Commission of:
  - (a) the procedures for rectification and withdrawal referred to in Article 10(2) and for review referred to in Article 19(1);
  - (b) the languages accepted pursuant to Article 20(2)(c);
  - (c) the lists of the authorities referred to in Article 25;

and any subsequent changes thereof.

2. The Commission shall make the information notified in accordance with paragraph 1 publicly available through publication in the *Official Journal of the European Union* and through any other appropriate means.

<sup>(1)</sup> OJ L 174, 27.6.2001, p. 25.

*Article 31***Amendments to the Annexes**

Any amendment to the standard forms in the Annexes shall be adopted in accordance with the advisory procedure referred to in Article 32(2).

*Article 32***Committee**

1. The Commission shall be assisted by the committee provided for by Article 75 of Regulation (EC) No 44/2001.

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. The Committee shall adopt its Rules of Procedure.

*Article 33***Entry into force**

This Regulation shall enter into force on 21 January 2004.

It shall apply from 21 October 2005, with the exception of Articles 30, 31 and 32, which shall apply from 21 January 2005.

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 Strasbourg, 21 April 2004.

*For the European Parliament*

*The President*

P. COX

*For the Council*

*The President*

D. ROCHE

## ANNEX I

## EUROPEAN ENFORCEMENT ORDER CERTIFICATE — JUDGMENT

1. Member State of origin: AT  BE  DE  EL  ES  FI  FR   
 IE  IT  LU  NL  PT  SE  UK
2. Court/Tribunal issuing the certificate
- 2.1. Name:
- 2.2. Address:
- 2.3. Tel./fax/e-mail:
3. If different, Court/Tribunal giving the judgment
- 3.1. Name:
- 3.2. Address:
- 3.3. Tel./fax/e-mail:
4. Judgment
- 4.1. Date:
- 4.2. Reference number:
- 4.3. The parties
- 4.3.1. Name and address of creditor(s):
- 4.3.2. Name and address of debtor(s):
5. Monetary claim as certified
- 5.1. Principal Amount :
- 5.1.1. Currency      Euro   
                       Swedish Kronor   
                       Pounds Sterling   
                       other (explain)
- 5.1.2. If the claim is for periodical payments
- 5.1.2.1. Amount of each instalment:
- 5.1.2.2. Due date of first instalment:
- 5.1.2.3. Due dates of following instalments
- weekly  monthly  other (explain)

- 5.1.2.4. Period of the claim
- 5.1.2.4.1. Currently indefinite  or
- 5.1.2.4.2. Due date of last instalment:
- 5.2. Interest
- 5.2.1. Interest rate
- 5.2.1.1. ... % or
- 5.2.1.2. ... % above the base rate of the ECB <sup>(1)</sup>
- 5.2.1.3. Other (explain)
- 5.2.2. Interest to be collected as from:
- 5.3. Amount of reimbursable costs if specified in the judgment:
6. Judgment is enforceable in the Member State of origin
7. Judgment is still subject to the possibility of a challenge  
Yes  No
8. Judgment is on an uncontested claim under Article 3(1)
9. Judgment is in compliance with Article 6(1) (b)
10. The judgment concerns matters relating to consumer contracts  
Yes  No
- 10.1. If yes:  
The debtor is the consumer  
Yes  No
- 10.2. If yes:  
The debtor is domiciled in the Member State of origin (within the meaning of Article 59 of Regulation (EC) 44/2001)
11. Service of the document instituting the proceedings under Chapter III, where applicable  
Yes  No
- 11.1. Service was effected in compliance with Article 13   
or service was effected in compliance with Article 14   
or it is proved in accordance with Article 18(2) that the debtor has received the document

<sup>(1)</sup> Interest rate applied by the European Central Bank to its main refinancing operations.

11.2. Due information

The debtor was informed in compliance with Articles 16 and 17

12. Service of summons, where applicable

Yes  No

12.1. Service was effected in compliance with Article 13

or service was effected in compliance with Article 14

or it is proved in accordance with Article 18(2) that the debtor has received the summons

12.2. Due information

The debtor was informed in compliance with Article 17

13. Cure of non-compliance with procedural minimum standards pursuant to Article 18(1)

13.1. Service of the judgment was effected in compliance with Article 13

or service of the judgment was effected in compliance with Article 14

or it is proved in accordance with Article 18(2) that the debtor has received the judgment

13.2. Due information

The debtor was informed in compliance with Article 18(1)(b)

13.3. It was possible for the debtor to challenge the judgment

Yes  No

13.4. The debtor failed to challenge the judgment in compliance with the relevant procedural requirements

Yes  No

Done at . . . . . date . . . . .

.....  
Signature and/or stamp

\_\_\_\_\_

## ANNEX II

## EUROPEAN ENFORCEMENT ORDER CERTIFICATE — COURT SETTLEMENT

1. Member State of origin: AT  BE  DE  EL  ES  FI  FR   
 IE  IT  LU  NL  PT  SE  UK
2. Court issuing the certificate
- 2.1. Name:
- 2.2. Address:
- 2.3. Tel./fax/e-mail:
3. If different, Court approving the settlement or before which it was concluded
- 3.1. Name:
- 3.2. Address:
- 3.3. Tel./fax/e-mail:
4. Court settlement
- 4.1. Date:
- 4.2. Reference number:
- 4.3. The parties
- 4.3.1. Name and address of creditor(s):
- 4.3.2. Name and address of debtor(s):
5. Monetary claim as certified
- 5.1. Principal Amount:
- 5.1.1. Currency Euro   
 Swedish Kronor   
 Pounds Sterling   
 other (explain)
- 5.1.2. If the claim is for periodical payments
- 5.1.2.1. Amount of each instalment:
- 5.1.2.2. Due date of first instalment:
- 5.1.2.3. Due dates of following instalments  
 weekly  monthly  other (explain)

5.1.2.4. Period of the claim

5.1.2.4.1. Currently indefinite  or

5.1.2.4.2. Due date of last instalment:

5.2. Interest

5.2.1. Interest rate

5.2.1.1. ... % or

5.2.1.2. ... % above the base rate of the ECB <sup>(1)</sup>

5.2.1.3. Other (explain)

5.2.2. Interest to be collected as from:

5.3. Amount of reimbursable costs if specified in the court settlement:

6. The court settlement is enforceable in the Member State of origin

Done at . . . . . date . . . . .

.....  
Signature and/or stamp

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<sup>(1)</sup> Interest rate applied by the European Central Bank to its main refinancing operations.

## ANNEX III

## EUROPEAN ENFORCEMENT ORDER CERTIFICATE — AUTHENTIC INSTRUMENT

1. Member State of origin: AT  BE  DE  EL  ES  FI  FR   
 IE  IT  LU  NL  PT  SE  UK
2. Court/Authority issuing the certificate
- 2.1. Name:
- 2.2. Address:
- 2.3. Tel./fax/e-mail:
3. If different, Court/Authority drawing up or registering the authentic instrument
- 3.1. Name:
- 3.2. Address:
- 3.3. Tel./fax/e-mail:
4. Authentic instrument
- 4.1. Date:
- 4.2. Reference number:
- 4.3. The parties
- 4.3.1. Name and address of creditor(s):
- 4.3.2. Name and address of debtor(s):
5. Monetary claim as certified
- 5.1. Principal Amount:
- 5.1.1. Currency Euro   
 Swedish Kronor   
 Pounds Sterling   
 other (explain)
- 5.1.2. If the claim is for periodical payments
- 5.1.2.1. Amount of each instalment:
- 5.1.2.2. Due date of first instalment:
- 5.1.2.3. Due dates of following instalments  
 weekly  monthly  other (explain)



- 5.1.2.4. Period of the claim
- 5.1.2.4.1. Currently indefinite  or
- 5.1.2.4.2. Due date of last instalment
- 5.2. Interest
- 5.2.1. Interest rate
- 5.2.1.1. ... % or
- 5.2.1.2. ... % above the base rate of the ECB <sup>(1)</sup>
- 5.2.1.3. Other (explain)
- 5.2.2. Interest to be collected as from:
- 5.3. Amount of reimbursable costs if specified in the authentic instrument:
6. The authentic instrument is enforceable in the Member State of origin

Done at . . . . . date . . . . .

.....  
Signature and/or stamp

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<sup>(1)</sup> Interest rate applied by the European Central Bank to its main refinancing operations.

## ANNEX IV

**CERTIFICATE OF LACK OR LIMITATION OF ENFORCEABILITY**  
(Article 6(2))

1. Member State of origin: AT  BE  DE  EL  ES  FI  FR   
IE  IT  LU  NL  PT  SE  UK
2. Court/Authority issuing the certificate
- 2.1. Name:
- 2.2. Address:
- 2.3. Tel./fax/e-mail:
3. If different, Court/Authority issuing the judgment/Court settlement/Authentic Instrument (\*)
- 3.1. Name:
- 3.2. Address:
- 3.3. Tel./fax/e-mail:
4. Judgment/Court settlement/Authentic Instrument (\*)
- 4.1. Date:
- 4.2. Reference number:
- 4.3. The parties
- 4.3.1. Name and address of creditor(s):
- 4.3.2. Name and address of debtor(s):
5. This judgment/court settlement/authentic instrument (\*) was certified as a European Enforcement Order but
- 5.1. the judgment/court settlement/authentic instrument (\*) is no longer enforceable
- 5.2. Enforcement is temporarily
- 5.2.1. stayed
- 5.2.2. limited to protective measures

---

(\*) Delete as appropriate.

5.2.3. conditional upon the provision of a security which is still outstanding

5.2.3.1. Amount of the security:

- 5.2.3.2. Currency      Euro   
                         Swedish Kronor   
                         Pounds Sterling   
                         other(explain)

5.2.4. Other (explain)

Done at ..... date .....

.....  
Signature and/or stamp

\_\_\_\_\_

## ANNEX V

**EUROPEAN ENFORCEMENT ORDER REPLACEMENT CERTIFICATE FOLLOWING A CHALLENGE**  
(Article 6(3))

A. The following judgment/court settlement/authentic instrument (\*) certified as a European Enforcement Order was challenged

1. Member State of origin: AT  BE  DE  EL  ES  FI  FR   
IE  IT  LU  NL  PT  SE  UK

2. Court/Authority issuing the certificate

2.1. Name:

2.2. Address:

2.3. Tel./fax/e-mail:

3. If different, Court/Authority issuing the judgment/Court settlement/Authentic Instrument (\*)

3.1. Name:

3.2. Address:

3.3. Tel./fax/e-mail:

4. Judgment/Court settlement/Authentic Instrument (\*)

4.1. Date:

4.2. Reference number:

4.3. The parties

4.3.1. Name and address of creditor(s):

4.3.2. Name and address of debtor(s):

B. Upon that challenge the following decision has been handed down and is hereby certified as a European Enforcement Order replacing the original European Enforcement Order.

1. Court

1.1. Name:

1.2. Address:

1.3. Tel./fax/e-mail:

---

(\*) Delete as appropriate.



7. The decision concerns matters relating to consumer contracts
- Yes  No
- 7.1. If yes:
- The debtor is the consumer
- Yes  No
- 7.2. If yes:
- The debtor is domiciled in the Member State of origin in the meaning of Article 59 of Regulation (EC) No 44/2001
8. At the time of the decision following the challenge, the claim is uncontested within the meaning of Article 3(1)(b) or (c)
- Yes  No
- If yes:
- 8.1. Service of the document instituting the challenge.
- Did the creditor lodge the challenge?
- Yes  No
- If yes:
- 8.1.1. Service was effected in compliance with Article 13
- or service was effected in compliance with Article 14
- or it is proved in accordance with Article 18(2) that the debtor has received the document
- 8.1.2. Due information
- The debtor was informed in compliance with Articles 16 and 17
- 8.2. Service of summons, where applicable
- Yes  No
- If yes:
- 8.2.1. Service was effected in compliance with Article 13
- or service was effected in compliance with Article
- or it is proved in accordance with Article 18(2) that the debtor has received the summons
- 8.2.2. Due information
- The debtor was informed in compliance with Article 17

- 8.3. Cure of non-compliance with procedural minimum standards pursuant to Article 18(1)
- 8.3.1. Service of the decision was effected in compliance with Article 13   
or Service of the decision was effected in compliance with Article 14   
or it is proved in accordance with Article 18(2) that the debtor has received the decision
- 8.3.2. Due information  
The debtor was informed in compliance with Article 18(1)(b)

Done at . . . . . date . . . . .

.....  
Signature and/or stamp

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## ANNEX VI

**APPLICATION FOR RECTIFICATION OR WITHDRAWAL OF THE EUROPEAN ENFORCEMENT ORDER  
CERTIFICATE (Article 10(3))**

## THE FOLLOWING EUROPEAN ENFORCEMENT ORDER CERTIFICATE

1. Member State of origin: AT  BE  DE  EL  ES  FI  FR   
IE  IT  LU  NL  PT  SE  UK
  
2. Court/Authority issuing the certificate
  - 2.1. Name:
  - 2.2. Address:
  - 2.3. Tel./fax/e-mail:
  
3. If different, Court/Authority issuing the judgment/Court settlement/Authentic Instrument (\*)
  - 3.1. Name:
  - 3.2. Address:
  - 3.3. Tel./fax/e-mail:
  
4. Judgment/Court settlement/Authentic Instrument
  - 4.1. Date:
  - 4.2. Reference number:
  - 4.3. The parties
    - 4.3.1. Name and address of creditor(s):
    - 4.3.2. Name and address of debtor(s):

HAS TO BE

5. RECTIFIED as due to a material error there is the following discrepancy between the European Enforcement Order certificate and the underlying judgment/court settlement/authentic instrument (explain)

---

(\*) Delete as appropriate.



6. WITHDRAWN because:
- 6.1. the certified judgment was related to a consumer contract but was given in a Member State where the consumer is not domiciled within the meaning of Article 59 of Regulation (EC) No 44/2001
  - 6.2. the European Enforcement Order certificate was clearly wrongly granted for another reason (explain)

Done at . . . . . date . . . . .

.....  
Signature and/or stamp

\_\_\_\_\_

**REGULATION (EC) No 806/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of 21 April 2004**

**on promoting gender equality in development cooperation**

THE EUROPEAN PARLIAMENT AND THE  
COUNCIL OF THE EUROPEAN UNION,

equality through the gender mainstreaming strategy, there is a need to combine it with specific measures in favour of women of all ages.

Having regard to the Treaty establishing the European Community, and in particular Article 179 thereof,

Having regard to the proposal from the Commission,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(1)</sup>,

- (6) Women's contribution to development is achieved in the face of numerous obstacles, limiting the outcome of their work and reducing the benefits for themselves and to society as a whole. The importance of women's economic, social, and environmental roles across the life course, in developing countries has led to increasing international recognition that their full participation without discrimination is indispensable for sustainable and effective development.

Whereas:

- (1) The United Nations Millennium Development Goals call for gender equality and empowerment of women, setting clear targets in the field of education that have to be achieved no later than 2015.
- (2) Two-thirds of children out of school are girls. Enrolment rates for girls are still lower than those for boys and drop-out rates for girls are higher.
- (3) Article 3(2) of the Treaty stipulates that in all the activities referred to therein, including a policy in the sphere of development cooperation, the Community is to aim to eliminate inequalities, and to promote equality, between men and women.
- (4) A disproportionate majority of the world's poor are women. Therefore, the promotion of gender equality is important for the overarching goal of poverty reduction by 2015.
- (5) Gender equality of women and men of all ages is recognised as being important to effective and efficient work against poverty. To achieve the goal of gender
- (7) The Community and its Member States were signatories to the Declaration and Platform for Action of the 1995 Fourth World Conference on Women in Beijing, which stressed the need for action against world-wide obstacles to gender equality and established gender mainstreaming as a strategy to promote gender equality.
- (8) The United Nations Convention on the Elimination of all forms of Discrimination against Women considers discrimination against women as an obstacle to development, and the parties to the Convention agree to eliminate this discrimination using all appropriate means.
- (9) Council Regulation (EC) No 2836/98 of 22 December 1998 on integrating of gender issues in development cooperation <sup>(2)</sup> aims to support the mainstreaming of gender analysis in all area of development cooperation policies and to support and facilitate the inclusions of actions addressing major gender disparities. It ensures that gender equality is promoted in national plans designed to implement major elements of the Beijing Platform for Action. That Regulation expired on 31 December 2003.

<sup>(1)</sup> Opinion of the European Parliament of 18 December 2003 (not yet published in the Official Journal), Common Position of the Council of 19 February 2004 (not yet published in the Official Journal) and Position of the European Parliament of 30 March 2004 (not yet published in the Official Journal).

<sup>(2)</sup> OJ L 354, 30.12.1998, p. 5. Regulation as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

(10) The Declaration by the Council and the Commission on the European Community's development policy, adopted on 10 November 2000, states that gender equality is a cross-cutting issue.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

(11) The Commission's Communication to the Council and the European Parliament of 21 June 2001 on the Programme of Action on the mainstreaming of gender equality in Community development cooperation sets the implementation framework for that mainstreaming. That programme of action was endorsed by the Council in its Conclusions of 8 November 2001.

SCOPE

Article 1

1. The purpose of this Regulation is to implement measures to promote gender equality in Community development cooperation policies, strategies and interventions.

(12) The European Parliament stressed in its Resolution of 25 April 2002 <sup>(1)</sup> on that programme of action its commitment to gender mainstreaming as the approach to furthering the goal of gender equality and improving the position of women in developing countries.

To this end, the Community shall provide financial assistance and appropriate expertise aimed at promoting gender equality into all its development cooperation policies and interventions in developing countries.

(13) This Regulation lays down, for the entire duration of the programme, a financial framework constituting the prime reference, within the meaning of point 33 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure <sup>(2)</sup>, for the budgetary authority during the annual budgetary procedure. In general, EC development-related funding should also contribute towards gender equality as a cross-cutting issue.

2. The Community support shall be aimed at complementing and reinforcing the policies and capacities of developing countries as well as the assistance provided through other instruments of development cooperation.

Article 2

For the purposes of this Regulation:

(14) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(3)</sup>.

(a) 'gender mainstreaming' concerns planning, (re)organisation, improvement, and evaluation of policy processes, so that a gender equality perspective is incorporated in all development policies, strategies and interventions, at all levels and at all stages by the actors normally involved therein;

(15) Since the objective of the proposed action, namely to promote gender equality in development cooperation, cannot be sufficiently achieved by the Member States, and can therefore, by reason of the scale and effects of that action, 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 that objective,

(b) specific measures to prevent or compensate for disadvantages linked to sex may be maintained or introduced with a view to ensuring equality in practice between men and women; such measures should, in the first instance, aim at improving the situation of women in the field covered by this Regulation.

Article 3

The objectives to be pursued by this Regulation, in accordance with the goal of promoting gender equality and empower women as specified by the United Nations Millennium Development Goals, the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, the Beijing Declaration and Platform for Action adopted at the Fourth World Conference on Women, the outcome of the

<sup>(1)</sup> OJ C 131 E, 5.6.2003, p. 153

<sup>(2)</sup> OJ C 172, 18.6.1999, p. 1. Agreement as amended by Decision 2003/429/EC of the European Parliament and of the Council (OJ L 147, 14.6.2003, p. 25).

<sup>(3)</sup> OJ L 184, 17.7.1999, p. 23.

Special Session of the General Assembly 'Women 2000: gender equality, development and peace for the 21st Century', are the following:

- (a) to support gender mainstreaming in all areas of development cooperation, combined with specific measures in favour of women of all ages, with the goal of promoting gender equality as an important contribution to poverty reduction;
- (b) to support endogenous public and private capacities in developing countries which can take the responsibility and initiative for promoting gender equality.

#### Article 4

1. Activities in the field of promoting gender equality eligible for financing include, in particular:

- (a) supporting specific measures related to access to, and monitoring of, resources and services for women, in particular, in the areas of education and training, health, economic and social activities, employment and infrastructure, and to participation in political decision-making processes;
- (b) promoting the collection, dissemination, analysis and improvement of statistics disaggregated by sex and age, development and dissemination of methodologies, guidelines, ex-ante and ex-post gender impact assessments, thematic studies, qualitative and quantitative indicators, and other operational instruments;
- (c) supporting awareness-raising and advocacy work and the establishment of stakeholders' networks in the field of gender equality;
- (d) supporting activities aiming at strengthening institutional and operational capacities of key stakeholders in partner countries in the development process, such as the provision of gender specialists, training and technical assistance.

2. The instruments to be financed in the course of the activities referred to in paragraph 1 may take the form of:

- (a) methodological and organisational studies on gender mainstreaming relevant to all age-groups;
- (b) technical assistance including gender impact assessment, education, training, the information society or other services;

(c) supplies, audits, evaluation and monitoring missions.

3. Community financing may cover:

- (a) investment projects, with the exception of the purchase of real estate, and
- (b) operating expenditure of a beneficiary body including recurring administrative and maintenance costs that should not exceed the cost foreseen for administrative expenditure.

Operating grants shall be awarded on a gradually decreasing basis.

#### Article 5

In the selection and implementation of activities referred to in Article 4(1), particular attention shall be paid to:

- (a) the potential of interventions and programmes to act as a catalyst and a multiplier in order to support the strategy of gender mainstreaming on a large scale in Community interventions;
- (b) strengthening strategic partnerships and initiating transnational cooperation which reinforces, in particular, regional cooperation in the area of gender equality;
- (c) the pursuit of cost-effectiveness and sustainable impact in the design and planning of interventions;
- (d) the clear definition and monitoring of objectives and indicators;
- (e) efforts made to promote synergies with policies and programmes targeting reproductive and sexual health and rights and poverty diseases, in particular HIV/AIDS programmes, measures to combat violence, girl-child issues, the education and training of women of all ages, ageing people, the environment, human rights, conflict prevention, democratisation and the participation of women in the political, economic and social decision-making process;
- (f) gender mainstreaming in the six priority areas of EC development policy;

(g) the importance of paying special attention to the education of girls, and to the fact that the situation of unequal opportunities for girls could start to be redressed by recruiting and training local female teachers.

(e) international organisations, such as the United Nations and its agencies, funds and programmes, as well as development banks, financial institutions, global initiatives, international public/private partnerships;

(f) research and development studies institutes and universities.

## CHAPTER II

### IMPLEMENTATION OF AID

#### Article 6

1. Financial support pursuant to this Regulation shall take the form of grants or contracts.

2. A grant may finance the entire costs of an action only if it is shown that this is essential for it to be carried out, with the exception of actions resulting from the implementation of financing agreements with third countries or actions managed by international organisations. In other cases, a financial contribution from the beneficiaries defined in Article 7 shall be sought. In specifying the amount of the contribution requested, regard shall be given to the capacity of the partners concerned and the nature of the operation in question.

3. Contracts with beneficiaries may cover the financing of their operating expenditure, in accordance with Article 4(3)(b).

4. The provision of financial assistance under this Regulation may entail co-financing with other donors, in particular with Member States, the United Nations, and international or regional development banks or financial institutions.

#### Article 7

1. The partners eligible for financial assistance under this Regulation include:

(a) administrative authorities and agencies at national, regional and local government levels;

(b) local communities, NGOs, particularly those operating in the field of gender equality, women's organisations, community-based organisations, trade unions, and other not-for-profit natural and legal persons;

(c) the local private sector;

(d) regional organisations;

2. Without prejudice to paragraph 1(e), Community financial assistance in the form of grants shall be available to partners whose head office is located in a Member State or in a third country that is a beneficiary or potential beneficiary of Community assistance under this Regulation, provided that this office is the actual centre which directs business operations. In exceptional cases, this office may be located in another third country. Priority will be given to endogenous structures that can play a role in developing local capacities with respect to gender.

#### Article 8

1. Where operations are the subject of financing agreements between the Community and the recipient country, such agreements shall stipulate that the payment of taxes, duties or any other charges is not to be covered by the Community.

2. All financing agreements, grant agreements or contracts concluded pursuant to this Regulation shall provide for the Commission and the Court of Auditors to conduct on-the-spot checks in accordance with the usual procedures laid down by the Commission under the rules in force, in particular those of the Financial Regulation applicable to the general budget of the European Communities <sup>(1)</sup>.

3. The necessary measures shall be taken to emphasise the Community character of the aid provided pursuant to this Regulation.

#### Article 9

1. Participation in invitations to tender and the award of procurement contracts shall be open on equal terms to all natural and legal persons of the Member States, assimilated countries, and in all developing countries. It shall be open to other third countries on the condition of reciprocity. It may be extended, under exceptional and duly justified circumstances, to other third countries.

2. Supplies shall originate in the Member States, the beneficiary country or other developing countries. In the cases mentioned in paragraph 1, supplies may originate in other third countries.

<sup>(1)</sup> Council Regulation (EC, Euratom) No 1605/2002 (OJ L 248, 16.9.2002, p. 1).

*Article 10*

1. In order to secure the objectives of consistency and complementarity referred to in the Treaty and to ensure maximum effectiveness of these operations as a whole, the Commission may take all necessary coordination measures, including in particular:

- (a) the establishment of a system for the systematic exchange and analysis of information on the operations financed and those which the Community and the Member States propose to finance;
- (b) the on-the-spot coordination of the implementation of operations through regular meetings and exchanges of information between the representatives of the Commission and the Member States in the recipient country, local authorities and other decentralised bodies.

2. The Commission should raise the question of gender as a standing item on the agenda during meetings between representatives of the Commission, Member States and partner countries in order to increase awareness of gender issues in emerging areas of development cooperation.

3. The Commission shall draw on the experiences of Member States, other donors and partner countries in the field of gender mainstreaming and women's empowerment.

4. The Commission, together with the Member States, may take any initiative necessary for ensuring proper coordination with the other donors concerned, in particular those forming part of the United Nations system.

## CHAPTER III

**FINANCIAL PROVISIONS AND RELEVANT DECISION-MAKING PROCEDURES***Article 11*

1. The financial framework for the implementation of this Regulation for the period 2004 to 2006 is hereby set at EUR 9 million.

2. The annual appropriations shall be authorised by the budgetary authority within the limits of the financial perspectives.

*Article 12*

1. The Commission shall be responsible for drafting strategic programming guidelines, defining the Community's cooperation in terms of measurable objectives, priorities,

deadlines for specific areas of action, assumptions and expected outcomes. Programming shall be multiannual and indicative.

2. An annual exchange of views shall take place once a year on the basis of a presentation by the representative of the Commission of the general guidelines for the operations to be carried out, in the framework of a joint meeting of the Committees referred to in Article 14(1).

*Article 13*

1. The Commission shall be responsible for appraising, deciding on and administering operations covered by this Regulation according to the budgetary and other procedures in force, and in particular those laid down in the Financial Regulation.

2. The work programme shall be adopted under the procedure referred to in Article 14(2).

*Article 14*

1. The Commission shall be assisted by the geographically competent Committee for development.

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

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at 45 days.

3. The Committee shall adopt its rules of procedure.

## CHAPTER IV

**REPORTS***Article 15*

1. After each budget year, the Commission shall submit in its annual report on EC development policy to the European Parliament and to the Council, information on the operations financed in the course of that year and the Commission's conclusions on the implementation of this Regulation over the previous budget year.

The summary shall in particular provide information about the strengths, weaknesses and outcomes of operations, those with whom contracts have been concluded as well as the results of any independent evaluations of specific operations.

2. One year before the expiry of this Regulation, the Commission shall submit an independent appraisal report on its implementation to the European Parliament and the Council with a view to establishing whether its objectives have been achieved and providing guidelines for improving the effectiveness of future operations. On the basis of this appraisal report, the Commission may make proposals for the future of this Regulation and, if necessary, proposals for its amendment.

*Article 16*

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 2006.

Done at Strasbourg, 21 April 2004.

*For the European Parliament*

*The President*

P. COX

*For the Council*

*The President*

D. ROCHE

**REGULATION (EC) No 807/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of 21 April 2004**

**amending Council Regulation (EC) No 2236/95 laying down general rules for the granting of  
Community financial aid in the field of trans-European networks**

THE EUROPEAN PARLIAMENT AND THE  
COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the first paragraph of Article 156 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>(2)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(3)</sup>,

Whereas:

- (1) The High-Level Group on the trans-European transport network chaired by Mr Karel Van Miert expressed concern that the delays in the cross-border sections of the priority projects on the trans-European transport network (TEN) were having an adverse effect on the profitability of the investments made by the Member States in the sections in their own country, denying them the benefit of economies of scale, and recommended that the rate of Community financing should be differentiated, according to the benefits to other countries, in particular the neighbouring countries, stressing that such modulation should in the first instance benefit the cross-border projects used by long-distance transport services. Moreover, the Community financing rate should be differentiated according to the extent to which the project's economic benefits exceed its financial profitability.
- (2) To this end the High-Level Group recommended a higher rate of Community aid to promote completion of the cross-border connections for the priority projects and added that the budgetary impact of such a change would be limited. This should be implemented bearing

in mind the need to focus TENs resources on key projects, while recognising the need for continued financial support for non-priority projects.

- (3) The possibility should be given to meet the budgetary commitments by means of annual instalments, while basing them on a global and multiannual legal commitment.
- (4) A temporary increase in the rate of Community aid may provide an incentive for actors to speed up and to render effective the implementation of priority projects covered by this Regulation.
- (5) The establishment of public-private partnerships (or of other forms of cooperation between the public and private sectors) demands a firm financial commitment from institutional investors which is sufficiently attractive to raise private capital. Granting Community financial aid on a multiannual basis would remove the uncertainties which are slowing down project development. Measures should therefore be taken to grant financial support to the projects selected on the basis of a multiannual legal commitment.
- (6) Cross-border connections between energy networks are important for ensuring smooth operation of the internal market, security of supply and optimum use of energy infrastructure. Priority projects on the energy networks, which are necessary in the interests of the European economy but unprofitable in business terms and which do not distort competition between enterprises, should therefore also qualify for higher financial aid. This aid is in respect of priority projects on the energy networks.
- (7) Council Regulation (EC) No 2236/95 <sup>(4)</sup> should be adapted to take account of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(5)</sup>.

<sup>(1)</sup> OJ C 75 E, 26.3.2002, p. 316 and OJ C 151 E, 25.6.2002, p. 291.

<sup>(2)</sup> OJ C 125, 27.5.2002, p. 13.

<sup>(3)</sup> Opinion of the European Parliament of 2 July 2002 (OJ C 271 E, 12.11.2003, p. 163), Council Common Position of 24 February 2004 (not yet published in the Official Journal) and Position of the European Parliament of 30 March 2004 (not yet published in the Official Journal).

<sup>(4)</sup> OJ L 228, 23.9.1995, p. 1. Regulation as amended by Regulation (EC) No 1655/1999 of the European Parliament and of the Council (OJ L 197, 29.7.1999, p. 1).

<sup>(5)</sup> OJ L 184, 17.7.1999, p. 23.



(8) Regulation (EC) No 2236/95 should therefore be amended accordingly,

b) the following paragraph shall be added:

HAVE ADOPTED THIS REGULATION:

#### Article 1

Regulation (EC) No 2236/95 is hereby amended as follows:

1. Article 5 shall be amended as follows:

(a) paragraph 3 shall be replaced by the following:

'3. Regardless of the form of intervention chosen, the total amount of Community aid under this Regulation shall not exceed 10 % of the total investment cost. However, the total amount of Community aid may exceptionally reach 20 % of the total investment cost in the following cases:

(a) projects concerning satellite positioning and navigation systems, as provided for in Article 17 of Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network (\*);

(b) priority projects on the energy networks;

(c) sections of the projects of European interest, provided that the projects are started before 2010, identified in Annex III to Decision No 1692/96/EC with the aim of eliminating bottlenecks and/or filling in missing sections, if such sections are cross border or cross natural barrier, and contribute to the integration of the internal market in an enlarged Community, promote safety, ensure the interoperability of the national networks and/or strongly contribute to the reduction of imbalances between modes of transport, in favour of the most environment-friendly modes. This rate shall be differentiated according to the benefits to other countries, in particular neighbouring Member States.

(\* ) OJ L 228, 9.9.1996, p. 1. Decision as amended by Decision No 1346/2001/EC (OJ L 185, 6.7.2001, p. 1).'

'5. In the case of the projects referred to in paragraph 3, within the limits of this Regulation, the legal commitment shall be multiannual and the budgetary commitments shall be met in annual instalments.';

2. in Article 13, the following paragraph shall be added:

'4. If, 10 years after the financial aid was awarded, the operation in question has not been completed, the Commission may demand reimbursement of the aid paid, with due regard to the principle of proportionality, taking into account all relevant factors.';

3. Article 17 shall be replaced by the following:

'Article 17

#### Committee procedure

1. The Commission shall be responsible for the implementation of this Regulation.

2. The Commission shall be assisted by a committee. The European Investment Bank shall appoint a representative to the Committee who shall not vote.

3. Where reference is made to this Article, Articles 5 and 7 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (\*) shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

4. The Committee shall adopt its Rules of Procedure.

(\* ) OJ L 184, 17.7.1999, p. 23.'

4. in Article 18, the following paragraph shall be added:

'The allocation of funds shall be linked to the qualitative and quantitative level of implementation.'

#### Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 21 April 2004.

*For the European Parliament*  
*The President*  
P. COX

*For the Council*  
*The President*  
D. ROCHE

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**REGULATION (EC) No 808/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of 21 April 2004**

**concerning Community statistics on the information society**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE  
COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European  
Community, and in particular Article 285(1) thereof,

Having regard to the proposal from the Commission,

Acting in accordance with the procedure laid down in Article  
251 of the Treaty <sup>(1)</sup>,

Whereas:

- (1) The European Council in Lisbon in March 2000 set the target for Europe to become within ten years the most competitive and dynamic knowledge-based economy in the world.
- (2) The eEurope Action Plan 2002 — endorsed at the Feira European Council in June 2000 — established a process of target-setting and benchmarking to bring Europe online as fast as possible.
- (3) The European Council in Seville in June 2002 endorsed the aims of the eEurope Action Plan 2005, which called for a legal basis to ensure regular and comparable data provision in Member States and enable greater use of official statistics on the information society.
- (4) The structural indicators which are used in the annual Spring Report to the European Council require indicators based on coherent statistical information from the information society domain.
- (5) The process of benchmarking eEurope as part of the implementation of eEurope Action Plans requires indicators based on coherent statistical information from the information society domain.
- (6) Harmonised statistics on Information and Communications Technologies (ICT) usage in enterprises are needed on an annual basis by the Commission's services.

(7) Harmonised statistics on ICT usage by individuals and in households are needed on an annual basis by the Commission's services.

(8) The rapidly changing nature of the information society domain requires that the statistics that are produced adapt to new developments. This can be provided for by having modules with a fixed duration and by allowing for modification through implementing measures taking into consideration Member States' resources and the burden on respondents, technical and methodological feasibility and the reliability of results.

(9) The production of specific Community statistics is governed by the rules set out in Council Regulation (EC) No 322/97 of 17 February 1997 on Community Statistics <sup>(2)</sup>.

(10) Since the objective of the proposed action, namely the establishment of a common framework for the systematic production of Community statistics on the information society, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(11) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(3)</sup>.

(12) The Statistical Programme Committee, established by Council Decision 89/382/EEC, Euratom <sup>(4)</sup>, has been consulted in accordance with Article 3 thereof,

<sup>(2)</sup> OJ L 52, 22.2.1997, p. 1. Regulation as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

<sup>(3)</sup> OJ L 184, 17.7.1999, p. 23.

<sup>(4)</sup> OJ L 181, 28.6.1989, p. 47.

<sup>(1)</sup> Opinion of the European Parliament of 29 January 2004 (not yet published in the Official Journal) and Council Decision of 16 April 2004.

HAVE ADOPTED THIS REGULATION:

*Article 5*

*Article 1*

**Objective**

The objective of this Regulation shall be to establish a common framework for the systematic production of Community statistics on the information society.

*Article 2*

**Definitions**

For the purpose of this Regulation:

- (a) 'Community statistics' shall have the meaning assigned to it in Article 2 of Regulation (EC) No 322/97;
- (b) 'production of statistics' shall have the meaning assigned to it in Article 2 of Regulation (EC) No 322/97;
- (c) 'reference period' shall mean a period to which data refer;
- (d) 'reference year' shall mean a reference period of one calendar year;
- (e) 'collection period' shall mean a period specified in implementing measures during which a collection of data takes place.

*Article 3*

**Scope**

1. The statistics to be compiled shall include information required for the eEurope benchmarking process, and useful to the structural indicators, and other information necessary to provide a uniform basis on which to analyse the information society.
2. The statistics shall be grouped as modules, as defined in Annexes I and II.

*Article 4*

**Modules**

The modules in this Regulation shall cover the following domains:

- enterprises and the information society, as defined in Annex I,
- individuals, households and the information society, as defined in Annex II.

**Methodological manual**

The Commission, in close cooperation with Member States, shall draw up, and update as made necessary by new implementing measures, a methodological manual which contains recommended guidelines concerning the Community statistics produced pursuant to this Regulation.

*Article 6*

**Transmission of data**

1. Member States shall transmit the aggregate data and the metadata required by this Regulation and its implementing measures, including confidential aggregate data, to the Commission (Eurostat) in accordance with the existing Community provisions on transmission of data subject to statistical confidentiality. Those Community provisions shall apply to the treatment of the results, in so far as they include confidential data.
2. Member States shall transmit the data and metadata required by this Regulation in electronic form, in accordance with an interchange standard agreed between the Commission and the Member States.

*Article 7*

**Quality criteria and reports**

1. The Commission (Eurostat) shall assess the quality of the data transmitted.
2. The Commission (Eurostat), in close cooperation with Member States, shall develop recommended common standards designed to ensure the quality (according to the standard Eurostat quality criteria) of the data provided. These standards shall be published in the methodological manual.
3. Member States shall take all measures necessary to ensure the quality of the data transmitted.
4. Within a set period after the deadline for transmission of final results, Member States shall supply the Commission (Eurostat) with a report on the quality of the data transmitted on the basis of the standards referred to in paragraph 2. These reports shall specify instances in which the said standards have not been complied with. The period shall be agreed upon during the development of implementing measures.

*Article 8***Implementing measures**

1. The measures for implementing the modules of this Regulation shall concern the selection and specification, adjustment and modification of subjects and their characteristics, the coverage, reference periods and breakdowns of characteristics, the periodicity and timing of data provision and the deadlines for transmission of results.

2. Implementing measures, including adjustment and updating measures to take account of economic and technical changes, shall be laid down in accordance with the procedure referred to in Article 9(2), taking into consideration Member States' resources and the burden on respondents, technical and methodological feasibility and reliability of results.

3. Implementing measures shall be drawn up at least nine months before the start of a data collection period.

*Article 9***Committee**

1. The Commission shall be assisted by the Statistical Programme Committee established by Decision 89/382/EEC, Euratom, hereinafter referred to as 'the 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.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 21 April 2004.

*For the European Parliament*

*The President*

P. COX

*For the Council*

*The President*

D. ROCHE

*Article 10***Financing**

1. For at least the first year in which Community statistics as provided for in implementing measures adopted pursuant to this Regulation are produced by Member States, the Commission shall make a financial contribution to the Member States to help cover the costs incurred by them in producing, processing and transmitting those statistics. The amount of the financial contribution shall not exceed 90 % of such costs.

2. The conditions and procedures for making the financial contribution and for its payment and control shall be in accordance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities <sup>(1)</sup>.

3. If budgetary conditions so permit, the Commission shall continue to make a financial contribution to Member States in order to help offset the costs of providing these statistics in subsequent years.

4. The budgetary authority shall authorise the appropriations available for such financial contribution in the framework of the annual budgetary procedures of the European Communities.

*Article 11***Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

<sup>(1)</sup> OJ L 248, 16.9.2002, p. 1.

## ANNEX I

**Module 1: Enterprises and the information society**a) *Aims*

The aim of this module is the timely provision of statistics on enterprises and the information society. This module provides a framework for the requirements in terms of coverage, duration and periodicity, subjects covered, breakdowns of data provision and any necessary pilot studies.

b) *Coverage*

This module covers business activities within Sections D to K and Division 92 of the statistical classification of economic activities in the European Community (NACE REV. 1.1). Section J will be included subject to successful prior pilot studies.

The statistics will be compiled for enterprise units.

c) *Duration and periodicity of data provision*

Statistics will be provided annually for up to five reference years following the date of entry into force of this Regulation. Not all characteristics will necessarily be provided each year; the periodicity of provision for each characteristic will be specified and agreed upon as part of the implementing measures referred to in Article 8.

d) *Subjects covered*

The characteristics to be provided will be drawn from the following list of subjects:

- ICT systems and their usage in enterprises,
- use of internet and other electronic networks by enterprises,
- e-commerce and e-business processes,
- ICT competence in the enterprise unit and the demand for ICT skills,
- barriers to use of ICT, internet and other electronic networks, e-commerce and e-business processes,
- ICT expenditure and investment,
- ICT security,
- perceived effects of ICT usage on enterprises.

Not all subjects will necessarily be covered each year.

e) *Breakdowns of data provision*

Not all breakdowns will necessarily be provided each year; the breakdowns required will be drawn from the following list and agreed upon as part of the implementing measures:

- by size class,
- by NACE heading,
- by region: regional breakdowns will be limited to no more than three groupings.

f) *Pilot studies*

Whenever significant new data requirements are identified or insufficient quality of data is to be expected, the Commission will institute pilot studies to be completed on a voluntary basis by the Member States before any data collection. Such pilot studies will be carried out in order to assess the feasibility of the relevant data collection, taking into consideration the benefits of the availability of the data in relation to the collection costs and the burden on respondents.

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## ANNEX II

**Module 2: Individuals, households and the information society**a) *Aims*

The aim of this module is the timely provision of statistics on individuals, households and the information society. This module provides a framework for the requirements in terms of coverage, duration and periodicity, subjects covered, breakdowns of data provision and any necessary pilot studies.

b) *Coverage*

This module covers statistics about individuals and households.

c) *Duration and periodicity of data provision*

Statistics will be provided annually for up to five reference years following the date of entry into force of this Regulation. Not all characteristics will necessarily be provided each year; the periodicity of provision for each characteristic will be specified and agreed upon as part of the implementing measures referred to in Article 8.

d) *Subjects covered*

The characteristics to be provided will be drawn from the following list of subjects:

- access to and use of ICT systems by individuals and/or in households,
- use of internet for different purposes by individuals and/or in households,
- ICT security,
- ICT competence,
- barriers to use of ICT and the Internet,
- perceived effects of ICT usage on individuals and/or on households.

Not all subjects will necessarily be covered each year.

e) *Breakdowns of data provision*

Not all breakdowns will necessarily be provided each year; the breakdowns required will be drawn from the following list and agreed upon as part of the implementing measures:

## A. for statistics supplied for households:

- by household type;

## B. for statistics supplied for individuals:

- by age group,
- by sex,
- by education level,
- by employment situation,
- by region.



f) *Pilot studies*

Whenever significant new data requirements are identified or insufficient quality of data is to be expected, the Commission will institute pilot studies to be completed on a voluntary basis by the Member States before any data collection. Such pilot studies will be carried out in order to assess the feasibility of the relevant data collection, taking into consideration the benefits of the availability of the data in relation to the collection costs and the burden on respondents.

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**DIRECTIVE 2004/35/CE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of 21 April 2004**

**on environmental liability with regard to the prevention and remedying of environmental damage**

THE EUROPEAN PARLIAMENT AND THE  
COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the Opinion of the European Economic and Social Committee <sup>(2)</sup>,

After consulting the Committee of the Regions ,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(3)</sup>, in the light of the joint text approved by the Conciliation Committee on 10 March 2004,

Whereas:

- (1) There are currently many contaminated sites in the Community, posing significant health risks, and the loss of biodiversity has dramatically accelerated over the last decades. Failure to act could result in increased site contamination and greater loss of biodiversity in the future. Preventing and remedying, insofar as is possible, environmental damage contributes to implementing the objectives and principles of the Community's environment policy as set out in the Treaty. Local conditions should be taken into account when deciding how to remedy damage.
- (2) The prevention and remedying of environmental damage should be implemented through the furtherance of the 'polluter pays' principle, as indicated in the Treaty

and in line with the principle of sustainable development. The fundamental principle of this Directive should therefore be that an operator whose activity has caused the environmental damage or the imminent threat of such damage is to be held financially liable, in order to induce operators to adopt measures and develop practices to minimise the risks of environmental damage so that their exposure to financial liabilities is reduced.

- (3) Since the objective of this Directive, namely to establish a common framework for the prevention and remedying of environmental damage at a reasonable cost to society, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level by reason of the scale of this Directive and its implications in respect of other Community legislation, namely Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds <sup>(4)</sup>, Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora <sup>(5)</sup>, and Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy <sup>(6)</sup>, 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.
- (4) Environmental damage also includes damage caused by airborne elements as far as they cause damage to water, land or protected species or natural habitats.
- (5) Concepts instrumental for the correct interpretation and application of the scheme provided for by this Directive should be defined especially as regards the definition of environmental damage. When the concept in question derives from other relevant Community legislation, the same definition should be used so that common criteria can be used and uniform application promoted.

<sup>(1)</sup> OJ C 151 E, 25.6.2002, p. 132.

<sup>(2)</sup> OJ C 241, 7.10.2002, p. 162.

<sup>(3)</sup> Opinion of the European Parliament of 14 May 2003 (not yet published in the Official Journal), Council Common Position of 18 September 2003 (OJ C 277 E, 18.11.2003, p.10) and Position of the European Parliament of 17 December 2003 (not yet published in the Official Journal). Legislative resolution of the European Parliament of 31 March 2004 and Council Decision of 30 March 2004.

<sup>(4)</sup> OJ L 103, 25.4.1979, p. 1. Directive as last amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

<sup>(5)</sup> OJ L 206, 22.7.1992, p. 7. Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

<sup>(6)</sup> OJ L 327, 22.12.2000, p. 1. Directive as amended by Decision No 2455/2001/EC (OJ L 331, 15.12.2001, p. 1).

- (6) Protected species and natural habitats might also be defined by reference to species and habitats protected in pursuance of national legislation on nature conservation. Account should nevertheless be taken of specific situations where Community, or equivalent national, legislation allows for certain derogations from the level of protection afforded to the environment.
- (7) For the purposes of assessing damage to land as defined in this Directive the use of risk assessment procedures to determine to what extent human health is likely to be adversely affected is desirable.
- (8) This Directive should apply, as far as environmental damage is concerned, to occupational activities which present a risk for human health or the environment. Those activities should be identified, in principle, by reference to the relevant Community legislation which provides for regulatory requirements in relation to certain activities or practices considered as posing a potential or actual risk for human health or the environment.
- (9) This Directive should also apply, as regards damage to protected species and natural habitats, to any occupational activities other than those already directly or indirectly identified by reference to Community legislation as posing an actual or potential risk for human health or the environment. In such cases the operator should only be liable under this Directive whenever he is at fault or negligent.
- (10) Express account should be taken of the Euratom Treaty and relevant international conventions and of Community legislation regulating more comprehensively and more stringently the operation of any of the activities falling under the scope of this Directive. This Directive, which does not provide for additional rules of conflict of laws when it specifies the powers of the competent authorities, is without prejudice to the rules on international jurisdiction of courts as provided, inter alia, 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 <sup>(1)</sup>. This Directive should not apply to activities the main purpose of which is to serve national defence or international security.
- (11) This Directive aims at preventing and remedying environmental damage, and does not affect rights of compensation for traditional damage granted under any relevant international agreement regulating civil liability.
- (12) Many Member States are party to international agreements dealing with civil liability in relation to specific fields. These Member States should be able to remain so after the entry into force of this Directive, whereas other Member States should not lose their freedom to become parties to these agreements.
- (13) Not all forms of environmental damage can be remedied by means of the liability mechanism. For the latter to be effective, there need to be one or more identifiable polluters, the damage should be concrete and quantifiable, and a causal link should be established between the damage and the identified polluter(s). Liability is therefore not a suitable instrument for dealing with pollution of a widespread, diffuse character, where it is impossible to link the negative environmental effects with acts or failure to act of certain individual actors.
- (14) This Directive does not apply to cases of personal injury, to damage to private property or to any economic loss and does not affect any right regarding these types of damages.
- (15) Since the prevention and remedying of environmental damage is a task directly contributing to the pursuit of the Community's environment policy, public authorities should ensure the proper implementation and enforcement of the scheme provided for by this Directive.
- (16) Restoration of the environment should take place in an effective manner ensuring that the relevant restoration objectives are achieved. A common framework should be defined to that end, the proper application of which should be supervised by the competent authority.
- (17) Appropriate provision should be made for those situations where several instances of environmental damage have occurred in such a manner that the competent authority cannot ensure that all the necessary remedial measures are taken at the same time. In such a case, the competent authority should be entitled to decide which instance of environmental damage is to be remedied first.
- (18) According to the 'polluter-pays' principle, an operator causing environmental damage or creating an imminent threat of such damage should, in principle, bear the cost of the necessary preventive or remedial measures. In cases where a competent authority acts, itself or through a third party, in the place of an operator, that

<sup>(1)</sup> OJ L 12, 16.1.2001, p. 1. Regulation as amended by Commission Regulation (EC) No 1496/2002 (OJ L 225, 22.8.2002, p. 13).

- authority should ensure that the cost incurred by it is recovered from the operator. It is also appropriate that the operators should ultimately bear the cost of assessing environmental damage and, as the case may be, assessing an imminent threat of such damage occurring.
- (19) Member States may provide for flat-rate calculation of administrative, legal, enforcement and other general costs to be recovered.
- (20) An operator should not be required to bear the costs of preventive or remedial actions taken pursuant to this Directive in situations where the damage in question or imminent threat thereof is the result of certain events beyond the operator's control. Member States may allow that operators who are not at fault or negligent shall not bear the cost of remedial measures, in situations where the damage in question is the result of emissions or events explicitly authorised or where the potential for damage could not have been known when the event or emission took place.
- (21) Operators should bear the costs relating to preventive measures when those measures should have been taken as a matter of course in order to comply with the legislative, regulatory and administrative provisions regulating their activities or the terms of any permit or authorisation.
- (22) Member States may establish national rules covering cost allocation in cases of multiple party causation. Member States may take into account, in particular, the specific situation of users of products who might not be held responsible for environmental damage in the same conditions as those producing such products. In this case, apportionment of liability should be determined in accordance with national law.
- (23) Competent authorities should be entitled to recover the cost of preventive or remedial measures from an operator within a reasonable period of time from the date on which those measures were completed.
- (24) It is necessary to ensure that effective means of implementation and enforcement are available, while ensuring that the legitimate interests of the relevant operators and other interested parties are adequately safeguarded. Competent authorities should be in charge of specific tasks entailing appropriate administrative discretion, namely the duty to assess the significance of the damage and to determine which remedial measures should be taken.
- (25) Persons adversely affected or likely to be adversely affected by environmental damage should be entitled to ask the competent authority to take action. Environmental protection is, however, a diffuse interest on behalf of which individuals will not always act or will not be in a position to act. Non-governmental organisations promoting environmental protection should therefore also be given the opportunity to properly contribute to the effective implementation of this Directive.
- (26) The relevant natural or legal persons concerned should have access to procedures for the review of the competent authority's decisions, acts or failure to act.
- (27) Member States should take measures to encourage the use by operators of any appropriate insurance or other forms of financial security and the development of financial security instruments and markets in order to provide effective cover for financial obligations under this Directive.
- (28) Where environmental damage affects or is likely to affect several Member States, those Member States should cooperate with a view to ensuring proper and effective preventive or remedial action in respect of any environmental damage. Member States may seek to recover the costs for preventive or remedial actions.
- (29) This Directive should not prevent Member States from maintaining or enacting more stringent provisions in relation to the prevention and remedying of environmental damage; nor should it prevent the adoption by Member States of appropriate measures in relation to situations where double recovery of costs could occur as a result of concurrent action by a competent authority under this Directive and by a person whose property is affected by the environmental damage.
- (30) Damage caused before the expiry of the deadline for implementation of this Directive should not be covered by its provisions.
- (31) Member States should report to the Commission on the experience gained in the application of this Directive so as to enable the Commission to consider, taking into account the impact on sustainable development and future risks to the environment, whether any review of this Directive is appropriate,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

**Subject matter**

The purpose of this Directive is to establish a framework of environmental liability based on the 'polluter-pays' principle, to prevent and remedy environmental damage.

*Article 2*

**Definitions**

For the purpose of this Directive the following definitions shall apply:

1. 'environmental damage' means:

- (a) damage to protected species and natural habitats, which is any damage that has significant adverse effects on reaching or maintaining the favourable conservation status of such habitats or species. The significance of such effects is to be assessed with reference to the baseline condition, taking account of the criteria set out in Annex I;

Damage to protected species and natural habitats does not include previously identified adverse effects which result from an act by an operator which was expressly authorised by the relevant authorities in accordance with provisions implementing Article 6(3) and (4) or Article 16 of Directive 92/43/EEC or Article 9 of Directive 79/409/EEC or, in the case of habitats and species not covered by Community law, in accordance with equivalent provisions of national law on nature conservation.

- (b) water damage, which is any damage that significantly adversely affects the ecological, chemical and/or quantitative status and/or ecological potential, as defined in Directive 2000/60/EC, of the waters concerned, with the exception of adverse effects where Article 4(7) of that Directive applies;
- (c) land damage, which is any land contamination that creates a significant risk of human health being adversely affected as a result of the direct or indirect introduction, in, on or under land, of substances, preparations, organisms or micro-organisms;

2. 'damage' means a measurable adverse change in a natural resource or measurable impairment of a natural resource service which may occur directly or indirectly;

3. 'protected species and natural habitats' means:

- (a) the species mentioned in Article 4(2) of Directive 79/409/EEC or listed in Annex I thereto or listed in Annexes II and IV to Directive 92/43/EEC;
- (b) the habitats of species mentioned in Article 4(2) of Directive 79/409/EEC or listed in Annex I thereto or listed in Annex II to Directive 92/43/EEC, and the natural habitats listed in Annex I to Directive 92/43/EEC and the breeding sites or resting places of the species listed in Annex IV to Directive 92/43/EEC; and
- (c) where a Member State so determines, any habitat or species, not listed in those Annexes which the Member State designates for equivalent purposes as those laid down in these two Directives;

4. 'conservation status' means:

- (a) in respect of a natural habitat, the sum of the influences acting on a natural habitat and its typical species that may affect its long-term natural distribution, structure and functions as well as the long-term survival of its typical species within, as the case may be, the European territory of the Member States to which the Treaty applies or the territory of a Member State or the natural range of that habitat;

The conservation status of a natural habitat will be taken as 'favourable' when:

- its natural range and areas it covers within that range are stable or increasing,
- the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and
- the conservation status of its typical species is favourable, as defined in (b);

- (b) in respect of a species, the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations within, as the case may be, the European territory of the Member States to which the Treaty applies or the territory of a Member State or the natural range of that species;

The conservation status of a species will be taken as 'favourable' when:

- population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats,
- the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and
- there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis;

5. 'waters' mean all waters covered by Directive 2000/60/EC;
6. 'operator' means any natural or legal, private or public person who operates or controls the occupational activity or, where this is provided for in national legislation, to whom decisive economic power over the technical functioning of such an activity has been delegated, including the holder of a permit or authorisation for such an activity or the person registering or notifying such an activity;
7. 'occupational activity' means any activity carried out in the course of an economic activity, a business or an undertaking, irrespectively of its private or public, profit or non-profit character;
8. 'emission' means the release in the environment, as a result of human activities, of substances, preparations, organisms or micro-organisms;
9. 'imminent threat of damage' means a sufficient likelihood that environmental damage will occur in the near future;
10. 'preventive measures' means any measures taken in response to an event, act or omission that has created an imminent threat of environmental damage, with a view to preventing or minimising that damage;
11. 'remedial measures' means any action, or combination of actions, including mitigating or interim measures to restore, rehabilitate or replace damaged natural resources and/or impaired services, or to provide an equivalent alternative to those resources or services as foreseen in Annex II;
12. 'natural resource' means protected species and natural habitats, water and land;
13. 'services' and 'natural resources services' mean the functions performed by a natural resource for the benefit of another natural resource or the public;
14. 'baseline condition' means the condition at the time of the damage of the natural resources and services that would have existed had the environmental damage not occurred, estimated on the basis of the best information available;
15. 'recovery', including 'natural recovery', means, in the case of water, protected species and natural habitats the return of damaged natural resources and/or impaired services to baseline condition and in the case of land damage, the elimination of any significant risk of adversely affecting human health;
16. 'costs' means costs which are justified by the need to ensure the proper and effective implementation of this Directive including the costs of assessing environmental damage, an imminent threat of such damage, alternatives for action as well as the administrative, legal, and enforcement costs, the costs of data collection and other general costs, monitoring and supervision costs.

### Article 3

#### Scope

1. This Directive shall apply to:
  - (a) environmental damage caused by any of the occupational activities listed in Annex III, and to any imminent threat of such damage occurring by reason of any of those activities;
  - (b) damage to protected species and natural habitats caused by any occupational activities other than those listed in Annex III, and to any imminent threat of such damage occurring by reason of any of those activities, whenever the operator has been at fault or negligent.
2. This Directive shall apply without prejudice to more stringent Community legislation regulating the operation of any of the activities falling within the scope of this Directive and without prejudice to Community legislation containing rules on conflicts of jurisdiction.

3. Without prejudice to relevant national legislation, this Directive shall not give private parties a right of compensation as a consequence of environmental damage or of an imminent threat of such damage.

#### Article 4

##### Exceptions

1. This Directive shall not cover environmental damage or an imminent threat of such damage caused by:

- (a) an act of armed conflict, hostilities, civil war or insurrection;
- (b) a natural phenomenon of exceptional, inevitable and irresistible character.

2. This Directive shall not apply to environmental damage or to any imminent threat of such damage arising from an incident in respect of which liability or compensation falls within the scope of any of the International Conventions listed in Annex IV, including any future amendments thereof, which is in force in the Member State concerned.

3. This Directive shall be without prejudice to the right of the operator to limit his liability in accordance with national legislation implementing the Convention on Limitation of Liability for Maritime Claims (LLMC), 1976, including any future amendment to the Convention, or the Strasbourg Convention on Limitation of Liability in Inland Navigation (CLNI), 1988, including any future amendment to the Convention.

4. This Directive shall not apply to such nuclear risks or environmental damage or imminent threat of such damage as may be caused by the activities covered by the Treaty establishing the European Atomic Energy Community or caused by an incident or activity in respect of which liability or compensation falls within the scope of any of the international instruments listed in Annex V, including any future amendments thereof.

5. This Directive shall only apply to environmental damage or to an imminent threat of such damage caused by pollution of a diffuse character, where it is possible to establish a causal link between the damage and the activities of individual operators.

6. This Directive shall not apply to activities the main purpose of which is to serve national defence or international security nor to activities the sole purpose of which is to protect from natural disasters.

#### Article 5

##### Preventive action

1. Where environmental damage has not yet occurred but there is an imminent threat of such damage occurring, the operator shall, without delay, take the necessary preventive measures.

2. Member States shall provide that, where appropriate, and in any case whenever an imminent threat of environmental damage is not dispelled despite the preventive measures taken by the operator, operators are to inform the competent authority of all relevant aspects of the situation, as soon as possible.

3. The competent authority may, at any time:

- (a) require the operator to provide information on any imminent threat of environmental damage or in suspected cases of such an imminent threat;
- (b) require the operator to take the necessary preventive measures;
- (c) give instructions to the operator to be followed on the necessary preventive measures to be taken; or
- (d) itself take the necessary preventive measures.

4. The competent authority shall require that the preventive measures are taken by the operator. If the operator fails to comply with the obligations laid down in paragraph 1 or 3(b) or (c), cannot be identified or is not required to bear the costs under this Directive, the competent authority may take these measures itself.

#### Article 6

##### Remedial action

1. Where environmental damage has occurred the operator shall, without delay, inform the competent authority of all relevant aspects of the situation and take:

- (a) all practicable steps to immediately control, contain, remove or otherwise manage the relevant contaminants and/or any other damage factors in order to limit or to prevent further environmental damage and adverse effects on human health or further impairment of services and
- (b) the necessary remedial measures, in accordance with Article 7.

2. The competent authority may, at any time:
- (a) require the operator to provide supplementary information on any damage that has occurred;
  - (b) take, require the operator to take or give instructions to the operator concerning, all practicable steps to immediately control, contain, remove or otherwise manage the relevant contaminants and/or any other damage factors in order to limit or to prevent further environmental damage and adverse effect on human health, or further impairment of services;
  - (c) require the operator to take the necessary remedial measures;
  - (d) give instructions to the operator to be followed on the necessary remedial measures to be taken; or
  - (e) itself take the necessary remedial measures.

3. The competent authority shall require that the remedial measures are taken by the operator. If the operator fails to comply with the obligations laid down in paragraph 1 or 2(b), (c) or (d), cannot be identified or is not required to bear the costs under this Directive, the competent authority may take these measures itself, as a means of last resort.

#### Article 7

##### Determination of remedial measures

1. Operators shall identify, in accordance with Annex II, potential remedial measures and submit them to the competent authority for its approval, unless the competent authority has taken action under Article 6(2)(e) and (3).
2. The competent authority shall decide which remedial measures shall be implemented in accordance with Annex II, and with the cooperation of the relevant operator, as required.
3. Where several instances of environmental damage have occurred in such a manner that the competent authority cannot ensure that the necessary remedial measures are taken at the same time, the competent authority shall be entitled to decide which instance of environmental damage must be remedied first.

In making that decision, the competent authority shall have regard, *inter alia*, to the nature, extent and gravity of the various instances of environmental damage concerned, and to the possibility of natural recovery. Risks to human health shall also be taken into account.

4. The competent authority shall invite the persons referred to in Article 12(1) and in any case the persons on whose land remedial measures would be carried out to submit their observations and shall take them into account.

#### Article 8

##### Prevention and remediation costs

1. The operator shall bear the costs for the preventive and remedial actions taken pursuant to this Directive.
2. Subject to paragraphs 3 and 4, the competent authority shall recover, *inter alia*, via security over property or other appropriate guarantees from the operator who has caused the damage or the imminent threat of damage, the costs it has incurred in relation to the preventive or remedial actions taken under this Directive.

However, the competent authority may decide not to recover the full costs where the expenditure required to do so would be greater than the recoverable sum or where the operator cannot be identified.

3. An operator shall not be required to bear the cost of preventive or remedial actions taken pursuant to this Directive when he can prove that the environmental damage or imminent threat of such damage:

- (a) was caused by a third party and occurred despite the fact that appropriate safety measures were in place; or
- (b) resulted from compliance with a compulsory order or instruction emanating from a public authority other than an order or instruction consequent upon an emission or incident caused by the operator's own activities.

In such cases Member States shall take the appropriate measures to enable the operator to recover the costs incurred.

4. The Member States may allow the operator not to bear the cost of remedial actions taken pursuant to this Directive where he demonstrates that he was not at fault or negligent and that the environmental damage was caused by:

- (a) an emission or event expressly authorised by, and fully in accordance with the conditions of, an authorisation conferred by or given under applicable national laws and regulations which implement those legislative measures adopted by the Community specified in Annex III, as applied at the date of the emission or event;



(b) an emission or activity or any manner of using a product in the course of an activity which the operator demonstrates was not considered likely to cause environmental damage according to the state of scientific and technical knowledge at the time when the emission was released or the activity took place.

5. Measures taken by the competent authority in pursuance of Article 5(3) and (4) and Article 6(2) and (3) shall be without prejudice to the liability of the relevant operator under this Directive and without prejudice to Articles 87 and 88 of the Treaty.

#### Article 9

#### Cost allocation in cases of multiple party causation

This Directive is without prejudice to any provisions of national regulations concerning cost allocation in cases of multiple party causation especially concerning the apportionment of liability between the producer and the user of a product.

#### Article 10

#### Limitation period for recovery of costs

The competent authority shall be entitled to initiate cost recovery proceedings against the operator, or if appropriate, a third party who has caused the damage or the imminent threat of damage in relation to any measures taken in pursuance of this Directive within five years from the date on which those measures have been completed or the liable operator, or third party, has been identified, whichever is the later.

#### Article 11

#### Competent authority

1. Member States shall designate the competent authority(ies) responsible for fulfilling the duties provided for in this Directive.

2. The duty to establish which operator has caused the damage or the imminent threat of damage, to assess the significance of the damage and to determine which remedial measures should be taken with reference to Annex II shall rest with the competent authority. To that effect, the competent authority shall be entitled to require the relevant operator to carry out his own assessment and to supply any information and data necessary.

3. Member States shall ensure that the competent authority may empower or require third parties to carry out the necessary preventive or remedial measures.

4. Any decision taken pursuant to this Directive which imposes preventive or remedial measures shall state the exact grounds on which it is based. Such decision shall be notified forthwith to the operator concerned, who shall at the same time be informed of the legal remedies available to him under the laws in force in the Member State concerned and of the time-limits to which such remedies are subject.

#### Article 12

#### Request for action

1. Natural or legal persons:

- (a) affected or likely to be affected by environmental damage or
- (b) having a sufficient interest in environmental decision making relating to the damage or, alternatively,
- (c) alleging the impairment of a right, where administrative procedural law of a Member State requires this as a precondition,

shall be entitled to submit to the competent authority any observations relating to instances of environmental damage or an imminent threat of such damage of which they are aware and shall be entitled to request the competent authority to take action under this Directive.

What constitutes a 'sufficient interest' and 'impairment of a right' shall be determined by the Member States.

To this end, the interest of any non-governmental organisation promoting environmental protection and meeting any requirements under national law shall be deemed sufficient for the purpose of subparagraph (b). Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (c).

2. The request for action shall be accompanied by the relevant information and data supporting the observations submitted in relation to the environmental damage in question.

3. Where the request for action and the accompanying observations show in a plausible manner that environmental damage exists, the competent authority shall consider any such observations and requests for action. In such circumstances the competent authority shall give the relevant operator an opportunity to make his views known with respect to the request for action and the accompanying observations.

4. The competent authority shall, as soon as possible and in any case in accordance with the relevant provisions of national law, inform the persons referred to in paragraph 1, which submitted observations to the authority, of its decision to

accede to or refuse the request for action and shall provide the reasons for it.

5. Member States may decide not to apply paragraphs 1 and 4 to cases of imminent threat of damage.

#### Article 13

##### Review procedures

1. The persons referred to in Article 12(1) shall have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or failure to act of the competent authority under this Directive.

2. This Directive shall be without prejudice to any provisions of national law which regulate access to justice and those which require that administrative review procedures be exhausted prior to recourse to judicial proceedings.

#### Article 14

##### Financial security

1. Member States shall take measures to encourage the development of financial security instruments and markets by the appropriate economic and financial operators, including financial mechanisms in case of insolvency, with the aim of enabling operators to use financial guarantees to cover their responsibilities under this Directive.

2. The Commission, before 30 April 2010 shall present a report on the effectiveness of the Directive in terms of actual remediation of environmental damages, on the availability at reasonable costs and on conditions of insurance and other types of financial security for the activities covered by Annex III. The report shall also consider in relation to financial security the following aspects: a gradual approach, a ceiling for the financial guarantee and the exclusion of low-risk activities. In the light of that report, and of an extended impact assessment, including a cost-benefit analysis, the Commission shall, if appropriate, submit proposals for a system of harmonised mandatory financial security.

#### Article 15

##### Cooperation between Member States

1. Where environmental damage affects or is likely to affect several Member States, those Member States shall cooperate, including through the appropriate exchange of information, with a view to ensuring that preventive action and, where necessary, remedial action is taken in respect of any such environmental damage.

2. Where environmental damage has occurred, the Member State in whose territory the damage originates shall provide sufficient information to the potentially affected Member States.

3. Where a Member State identifies damage within its borders which has not been caused within them it may report the issue to the Commission and any other Member State concerned; it may make recommendations for the adoption of preventive or remedial measures and it may seek, in accordance with this Directive, to recover the costs it has incurred in relation to the adoption of preventive or remedial measures.

#### Article 16

##### Relationship with national law

1. This Directive shall not prevent Member States from maintaining or adopting more stringent provisions in relation to the prevention and remedying of environmental damage, including the identification of additional activities to be subject to the prevention and remediation requirements of this Directive and the identification of additional responsible parties.

2. This Directive shall not prevent Member States from adopting appropriate measures, such as the prohibition of double recovery of costs, in relation to situations where double recovery could occur as a result of concurrent action by a competent authority under this Directive and by a person whose property is affected by environmental damage.

#### Article 17

##### Temporal application

This Directive shall not apply to:

- damage caused by an emission, event or incident that took place before the date referred to in Article 19(1),
- damage caused by an emission, event or incident which takes place subsequent to the date referred to in Article 19(1) when it derives from a specific activity that took place and finished before the said date,
- damage, if more than 30 years have passed since the emission, event or incident, resulting in the damage, occurred.

#### Article 18

##### Reports and review

1. Member States shall report to the Commission on the experience gained in the application of this Directive by 30 April 2013 at the latest. The reports shall include the information and data set out in Annex VI.

2. On that basis, the Commission shall submit a report to the European Parliament and to the Council before 30 April 2014, which shall include any appropriate proposals for amendment.

3. The report, referred to in paragraph 2, shall include a review of:

(a) the application of:

- Article 4(2) and (4) in relation to the exclusion of pollution covered by the international instruments listed in Annexes IV and V from the scope of this Directive, and
- Article 4(3) in relation to the right of an operator to limit his liability in accordance with the international conventions referred to in Article 4(3).

The Commission shall take into account experience gained within the relevant international fora, such as the IMO and Euratom and the relevant international agreements, as well as the extent to which these instruments have entered into force and/or have been implemented by Member States and/or have been modified, taking account of all relevant instances of environmental damage resulting from such activities and the remedial action taken and the differences between the liability levels in Member States, and considering the relationship between shipowners' liability and oil receivers' contributions, having due regard to any relevant study undertaken by the International Oil Pollution Compensation Funds.

- b) the application of this Directive to environmental damage caused by genetically modified organisms (GMOs), particularly in the light of experience gained within relevant international fora and Conventions, such as the Convention on Biological Diversity and the Cartagena Protocol on Biosafety, as well as the results of any incidents of environmental damage caused by GMOs;
- c) the application of this Directive in relation to protected species and natural habitats;

d) the instruments that may be eligible for incorporation into Annexes III, IV and V.

#### Article 19

#### Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 April 2007. They shall forthwith inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a 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 together with a table showing how the provisions of this Directive correspond to the national provisions adopted.

#### Article 20

#### Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

#### Article 21

#### Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 21 April 2004.

*For the European Parliament*

*The President*

P. COX

*For the Council*

*The President*

D. ROCHE

## ANNEX I

**CRITERIA REFERRED TO IN ARTICLE 2(1)(A)**

The significance of any damage that has adverse effects on reaching or maintaining the favourable conservation status of habitats or species has to be assessed by reference to the conservation status at the time of the damage, the services provided by the amenities they produce and their capacity for natural regeneration. Significant adverse changes to the baseline condition should be determined by means of measurable data such as:

- the number of individuals, their density or the area covered,
- the role of the particular individuals or of the damaged area in relation to the species or to the habitat conservation, the rarity of the species or habitat (assessed at local, regional and higher level including at Community level),
- the species' capacity for propagation (according to the dynamics specific to that species or to that population), its viability or the habitat's capacity for natural regeneration (according to the dynamics specific to its characteristic species or to their populations),
- the species' or habitat's capacity, after damage has occurred, to recover within a short time, without any intervention other than increased protection measures, to a condition which leads, solely by virtue of the dynamics of the species or habitat, to a condition deemed equivalent or superior to the baseline condition.

Damage with a proven effect on human health must be classified as significant damage.

The following does not have to be classified as significant damage:

- negative variations that are smaller than natural fluctuations regarded as normal for the species or habitat in question,
- negative variations due to natural causes or resulting from intervention relating to the normal management of sites, as defined in habitat records or target documents or as carried on previously by owners or operators,
- damage to species or habitats for which it is established that they will recover, within a short time and without intervention, either to the baseline condition or to a condition which leads, solely by virtue of the dynamics of the species or habitat, to a condition deemed equivalent or superior to the baseline condition.

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## ANNEX II

**REMEDYING OF ENVIRONMENTAL DAMAGE**

This Annex sets out a common framework to be followed in order to choose the most appropriate measures to ensure the remedying of environmental damage.

**1. Remediation of damage to water or protected species or natural habitats**

Remedying of environmental damage, in relation to water or protected species or natural habitats, is achieved through the restoration of the environment to its baseline condition by way of primary, complementary and compensatory remediation, where:

- (a) 'Primary' remediation is any remedial measure which returns the damaged natural resources and/or impaired services to, or towards, baseline condition;
- (b) 'Complementary' remediation is any remedial measure taken in relation to natural resources and/or services to compensate for the fact that primary remediation does not result in fully restoring the damaged natural resources and/or services;
- (c) 'Compensatory' remediation is any action taken to compensate for interim losses of natural resources and/or services that occur from the date of damage occurring until primary remediation has achieved its full effect;
- (d) 'interim losses' means losses which result from the fact that the damaged natural resources and/or services are not able to perform their ecological functions or provide services to other natural resources or to the public until the primary or complementary measures have taken effect. It does not consist of financial compensation to members of the public.

Where primary remediation does not result in the restoration of the environment to its baseline condition, then complementary remediation will be undertaken. In addition, compensatory remediation will be undertaken to compensate for the interim losses.

Remedying of environmental damage, in terms of damage to water or protected species or natural habitats, also implies that any significant risk of human health being adversely affected be removed.

**1.1. Remediation objectives**

Purpose of primary remediation

- 1.1.1. The purpose of primary remediation is to restore the damaged natural resources and/or services to, or towards, baseline condition.

Purpose of complementary remediation

- 1.1.2. Where the damaged natural resources and/or services do not return to their baseline condition, then complementary remediation will be undertaken. The purpose of complementary remediation is to provide a similar level of natural resources and/or services, including, as appropriate, at an alternative site, as would have been provided if the damaged site had been returned to its baseline condition. Where possible and appropriate the alternative site should be geographically linked to the damaged site, taking into account the interests of the affected population.

Purpose of compensatory remediation

- 1.1.3. Compensatory remediation shall be undertaken to compensate for the interim loss of natural resources and services pending recovery. This compensation consists of additional improvements to protected natural habitats and species or water at either the damaged site or at an alternative site. It does not consist of financial compensation to members of the public.

## 1.2. *Identification of remedial measures*

### Identification of primary remedial measures

- 1.2.1. Options comprised of actions to directly restore the natural resources and services towards baseline condition on an accelerated time frame, or through natural recovery, shall be considered.

### Identification of complementary and compensatory remedial measures

- 1.2.2. When determining the scale of complementary and compensatory remedial measures, the use of resource-to-resource or service-to-service equivalence approaches shall be considered first. Under these approaches, actions that provide natural resources and/or services of the same type, quality and quantity as those damaged shall be considered first. Where this is not possible, then alternative natural resources and/or services shall be provided. For example, a reduction in quality could be offset by an increase in the quantity of remedial measures.
- 1.2.3. If it is not possible to use the first choice resource-to-resource or service-to-service equivalence approaches, then alternative valuation techniques shall be used. The competent authority may prescribe the method, for example monetary valuation, to determine the extent of the necessary complementary and compensatory remedial measures. If valuation of the lost resources and/or services is practicable, but valuation of the replacement natural resources and/or services cannot be performed within a reasonable time-frame or at a reasonable cost, then the competent authority may choose remedial measures whose cost is equivalent to the estimated monetary value of the lost natural resources and/or services.

The complementary and compensatory remedial measures should be so designed that they provide for additional natural resources and/or services to reflect time preferences and the time profile of the remedial measures. For example, the longer the period of time before the baseline condition is reached, the greater the amount of compensatory remedial measures that will be undertaken (other things being equal).

## 1.3. *Choice of the remedial options*

- 1.3.1. The reasonable remedial options should be evaluated, using best available technologies, based on the following criteria:
- The effect of each option on public health and safety,
  - The cost of implementing the option,
  - The likelihood of success of each option,
  - The extent to which each option will prevent future damage, and avoid collateral damage as a result of implementing the option,
  - The extent to which each option benefits to each component of the natural resource and/or service,
  - The extent to which each option takes account of relevant social, economic and cultural concerns and other relevant factors specific to the locality,
  - The length of time it will take for the restoration of the environmental damage to be effective,
  - The extent to which each option achieves the restoration of site of the environmental damage,
  - The geographical linkage to the damaged site.

- 1.3.2. When evaluating the different identified remedial options, primary remedial measures that do not fully restore the damaged water or protected species or natural habitat to baseline or that restore it more slowly can be chosen. This decision can be taken only if the natural resources and/or services foregone at the primary site as a result of the decision are compensated for by increasing complementary or compensatory actions to provide a similar level of natural resources and/or services as were foregone. This will be the case, for example, when the equivalent natural resources and/or services could be provided elsewhere at a lower cost. These additional remedial measures shall be determined in accordance with the rules set out in section 1.2.2.
- 1.3.3. Notwithstanding the rules set out in section 1.3.2. and in accordance with Article 7(3), the competent authority is entitled to decide that no further remedial measures should be taken if:
- (a) the remedial measures already taken secure that there is no longer any significant risk of adversely affecting human health, water or protected species and natural habitats, and
  - (b) the cost of the remedial measures that should be taken to reach baseline condition or similar level would be disproportionate to the environmental benefits to be obtained.

## 2. Remediation of land damage

The necessary measures shall be taken to ensure, as a minimum, that the relevant contaminants are removed, controlled, contained or diminished so that the contaminated land, taking account of its current use or approved future use at the time of the damage, no longer poses any significant risk of adversely affecting human health. The presence of such risks shall be assessed through risk-assessment procedures taking into account the characteristic and function of the soil, the type and concentration of the harmful substances, preparations, organisms or micro-organisms, their risk and the possibility of their dispersion. Use shall be ascertained on the basis of the land use regulations, or other relevant regulations, in force, if any, when the damage occurred.

If the use of the land is changed, all necessary measures shall be taken to prevent any adverse effects on human health.

If land use regulations, or other relevant regulations, are lacking, the nature of the relevant area where the damage occurred, taking into account its expected development, shall determine the use of the specific area.

A natural recovery option, that is to say an option in which no direct human intervention in the recovery process would be taken, shall be considered.

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## ANNEX III

## ACTIVITIES REFERRED TO IN ARTICLE 3(1)

1. The operation of installations subject to permit in pursuance of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control <sup>(1)</sup>. That means all activities listed in Annex I of Directive 96/61/EC with the exception of installations or parts of installations used for research, development and testing of new products and processes.
2. Waste management operations, including the collection, transport, recovery and disposal of waste and hazardous waste, including the supervision of such operations and after-care of disposal sites, subject to permit or registration in pursuance of Council Directive 75/442/EEC of 15 July 1975 on waste <sup>(2)</sup> and Council Directive 91/689/EEC of 12 December 1991 on hazardous waste <sup>(3)</sup>.

Those operations include, inter alia, the operation of landfill sites under Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste <sup>(4)</sup> and the operation of incineration plants under Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste <sup>(5)</sup>.

For the purpose of this Directive, Member States may decide that those operations shall not include the spreading of sewage sludge from urban waste water treatment plants, treated to an approved standard, for agricultural purposes.

3. All discharges into the inland surface water, which require prior authorisation in pursuance of Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances, discharged into the aquatic environment of the Community <sup>(6)</sup>.
4. All discharges of substances into groundwater which require prior authorisation in pursuance of Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances <sup>(7)</sup>.
5. The discharge or injection of pollutants into surface water or groundwater which require a permit, authorisation or registration in pursuance of Directive 2000/60/EC.
6. Water abstraction and impoundment of water subject to prior authorisation in pursuance of Directive 2000/60/EC.
7. Manufacture, use, storage, processing, filling, release into the environment and onsite transport of
  - (a) dangerous substances as defined in Article 2(2) of Council Directive 67/548/EEC of 27 June 1967 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous substances <sup>(8)</sup>;
  - (b) dangerous preparations as defined in Article 2(2) of Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations <sup>(9)</sup>;
  - (c) plant protection products as defined in Article 2(1) of Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market <sup>(10)</sup>;
  - (d) biocidal products as defined in Article 2(1)(a) of Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market <sup>(11)</sup>.

<sup>(1)</sup> OJ L 257, 10.10.1996, p. 26. Directive as last amended by Regulation (EC) No 1882/2003.

<sup>(2)</sup> OJ L 194, 25.7.1975, p. 39. Directive as last amended by Regulation (EC) No 1882/2003.

<sup>(3)</sup> OJ L 377, 31.12.1991, p. 20. Directive as amended by Directive 94/31/EC (OJ L 168, 2.7.1994, p. 28).

<sup>(4)</sup> OJ L 182, 16.7.1999, p. 1. Directive as amended by Regulation (EC) No 1882/2003.

<sup>(5)</sup> OJ L 332, 28.12.2000, p. 91.

<sup>(6)</sup> OJ L 129, 18.5.1976, p. 23. Directive as last amended by Directive 2000/60/EC.

<sup>(7)</sup> OJ L 20, 26.1.1980, p. 43. Directive as amended by Directive 91/692/EEC (OJ L 377, 31.12.1991, p. 48).

<sup>(8)</sup> OJ 196, 16.8.1967, p. 1. Directive as last amended by Regulation (EC) No 807/2003.

<sup>(9)</sup> OJ L 200, 30.7.1999, p. 1. Directive as last amended by Regulation (EC) No 1882/2003.

<sup>(10)</sup> OJ L 230, 19.8.1991, p. 1. Directive as last amended by Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).

<sup>(11)</sup> OJ L 123, 24.4.1998, p. 1. Directive as amended by Regulation (EC) No 1882/2003.



8. Transport by road, rail, inland waterways, sea or air of dangerous goods or polluting goods as defined either in Annex A to Council Directive 94/55/EC of 21 November 1994 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road <sup>(1)</sup> or in the Annex to Council Directive 96/49/EC of 23 July 1996 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail <sup>(2)</sup> or as defined in Council Directive 93/75/EEC of 13 September 1993 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods <sup>(3)</sup>.
  9. The operation of installations subject to authorisation in pursuance of Council Directive 84/360/EEC of 28 June 1984 on the combating of air pollution from industrial plants <sup>(4)</sup> in relation to the release into air of any of the polluting substances covered by the aforementioned Directive.
  10. Any contained use, including transport, involving genetically modified micro-organisms as defined by Council Directive 90/219/EEC of 23 April 1990 on the contained use of genetically modified micro-organisms <sup>(5)</sup>.
  11. Any deliberate release into the environment, transport and placing on the market of genetically modified organisms as defined by Directive 2001/18/EC of the European Parliament and of the Council <sup>(6)</sup>.
  12. Transboundary shipment of waste within, into or out of the European Union, requiring an authorisation or prohibited in the meaning of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community <sup>(7)</sup>.
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<sup>(1)</sup> OJ L 319, 12.12.1994, p. 7. Directive as last amended by Commission Directive 2003/28/EC (OJ L 90, 8.4.2003, p. 45).

<sup>(2)</sup> OJ L 235, 17.9.1996, p. 25. Directive as last amended by Commission Directive 2003/29/EC (OJ L 90, 8.4.2003, p. 47).

<sup>(3)</sup> OJ L 247, 5.10.1993, p. 19. Directive as last amended by Directive 2002/84/EC of the European Parliament and of the Council (OJ L 324, 29.11.2002, p. 53).

<sup>(4)</sup> OJ L 188, 16.7.1984, p. 20. Directive as amended by Directive 91/692/EEC (OJ L 377, 31.12.1991, p. 48).

<sup>(5)</sup> OJ L 117, 8.5.1990, p. 1. Directive as last amended by Regulation (EC) No 1882/2003.

<sup>(6)</sup> OJ L 106, 17.4.2001, p. 1. Directive as last amended by Regulation (EC) No 1830/2003 (OJ L 268, 18.10.2003, p. 24).

<sup>(7)</sup> OJ L 30, 6.2.1993, p. 1. Regulation as last amended by Commission Regulation (EC) No 2557/2001 (OJ L 349, 31.12.2001, p. 1).

## ANNEX IV

**INTERNATIONAL CONVENTIONS REFERRED TO IN ARTICLE 4(2)**

- (a) the International Convention of 27 November 1992 on Civil Liability for Oil Pollution Damage;
  - (b) the International Convention of 27 November 1992 on the Establishment of an International Fund for Compensation for Oil Pollution Damage;
  - (c) the International Convention of 23 March 2001 on Civil Liability for Bunker Oil Pollution Damage;
  - (d) the International Convention of 3 May 1996 on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea;
  - (e) the Convention of 10 October 1989 on Civil Liability for Damage Caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels.
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## ANNEX V

**INTERNATIONAL INSTRUMENTS REFERRED TO IN ARTICLE 4(4)**

- (a) the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy and the Brussels Supplementary Convention of 31 January 1963;
  - (b) the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage;
  - (c) the Convention of 12 September 1997 on Supplementary Compensation for Nuclear Damage;
  - (d) the Joint Protocol of 21 September 1988 relating to the Application of the Vienna Convention and the Paris Convention;
  - (e) the Brussels Convention of 17 December 1971 relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material.
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## ANNEX VI

**INFORMATION AND DATA REFERRED TO IN ARTICLE 18(1)**

The reports referred to in Article 18(1) shall include a list of instances of environmental damage and instances of liability under this Directive, with the following information and data for each instance:

1. Type of environmental damage, date of occurrence and/or discovery of the damage and date on which proceedings were initiated under this Directive.
2. Activity classification code of the liable legal person(s) <sup>(1)</sup>.
3. Whether there has been resort to judicial review proceedings either by liable parties or qualified entities. (The type of claimants and the outcome of proceedings shall be specified.)
4. Outcome of the remediation process.
5. Date of closure of proceedings.

Member States may include in their reports any other information and data they deem useful to allow a proper assessment of the functioning of this Directive, for example:

1. Costs incurred with remediation and prevention measures, as defined in this Directive:
  - paid for directly by liable parties, when this information is available;
  - recovered ex post facto from liable parties;
  - unrecovered from liable parties. (Reasons for non-recovery should be specified.)
2. Results of the actions to promote and the implementation of the financial security instruments used in accordance with this Directive.
3. An assessment of the additional administrative costs incurred annually by the public administration in setting up and operating the administrative structures needed to implement and enforce this Directive.

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<sup>(1)</sup> The NACE code can be used (Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community (OJ L 293, 24.10.1990, p. 1).

**Commission declaration on Article 14(2) — Environmental liability Directive**

The Commission takes note of article 14(2). In accordance with this article, the Commission will present a report, six years after the entry into force of the Directive, covering, *inter alia*, the availability at reasonable costs and conditions of insurance and other types of financial security. The report will in particular take into account the development by the market forces of appropriate financial security products in relation to the aspects referred to. It will also consider a gradual approach according to the type of damage and the nature of the risks. In the light of the report, the Commission will, if appropriate, submit as soon as possible proposals. The Commission will carry out an impact assessment, extended to the economic, social and environmental aspects, in accordance with the relevant existing rules and in particular the inter-institutional agreement on Better Law-Making and its Communication on Impact Assessment [COM(2002) 276 final].

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**DIRECTIVE 2004/36/CE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of 21 April 2004**

**on the safety of third-country aircraft using Community airports**

THE EUROPEAN PARLIAMENT AND THE  
COUNCIL OF THE EUROPEAN UNION,

the Annexes to the Convention on International Civil Aviation, signed in Chicago on 7 December 1944 ('the Chicago Convention').

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

- (4) In order to establish and maintain a high uniform level of civil aviation safety in Europe, a harmonised approach to the effective enforcement of international safety standards within the Community should be introduced. To that end, it is necessary to harmonise the rules and procedures for ramp inspections of third-country aircraft landing at airports located in the Member States.

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the Opinion of the European Economic and Social Committee <sup>(2)</sup>,

- (5) A harmonised approach to the effective enforcement of international safety standards by the Member States will avoid distortions of competition. A common stance on third-country aircraft that fail to comply with international safety standards will be of benefit to the position of the Member States.

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(3)</sup>, in the light of the joint text approved by the Conciliation Committee on 26 February 2004,

- (6) Aircraft landing in the Member States should undergo an inspection when it is suspected that they do not comply with international safety standards.

Whereas:

(1) The Resolution on the air disaster off the coast of the Dominican Republic adopted by the European Parliament on 15 February 1996 <sup>(4)</sup> highlights the need for the Community to take a more active stance and develop a strategy to improve the safety of its citizens travelling by air or living near airports.

- (7) Inspections may also be carried out in accordance with a spot-check procedure in the absence of any particular suspicion, provided that Community and international law is observed. In particular, the inspections should be carried out in a non-discriminatory way.

(2) The Commission has issued a Communication to the European Parliament and the Council entitled 'Defining a Community Aviation Safety Improvement Strategy'.

- (8) Inspections could be stepped up in the case of aircraft in which defects have already been identified frequently in the past, or on aircraft belonging to airlines whose aircraft have frequently attracted attention.

(3) That Communication clearly states that safety may be effectively enhanced by ensuring that aircraft comply fully with the international safety standards contained in

- (9) Information gathered in each Member State should be made available to all the other Member States and the Commission in order to ensure the most efficient monitoring of the compliance of third country aircraft with international safety standards.

<sup>(1)</sup> OJ C 103 E, 30.4.2002, p. 351.

<sup>(2)</sup> OJ C 241, 7.10.2002, p. 33.

<sup>(3)</sup> Opinion of the European Parliament of 3 September 2002 (OJ C 272 E, 13.11.2003, p. 343), Council Common Position of 13 June 2003 (OJ C 233 E, 30.09.2003, p.12) and Position of the European Parliament of 9 October 2003 (not yet published in the Official Journal). European Parliament legislative resolution of 1 April 2004 and Council Decision of 30 March 2004.

<sup>(4)</sup> OJ C 65, 4.3.1996, p. 172.

- (10) For these reasons there is a need to establish, at Community level, a procedure for the assessment of third-country aircraft and related cooperation mechanisms between the competent authorities of the Member States to exchange information.
- (11) The sensitive nature of safety-related information requires that Member States should take necessary measures, in accordance with their national law, to ensure appropriate confidentiality of the information received by them.
- (12) Without prejudice to the public's right of access to the Commission's documents as laid down in Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents <sup>(1)</sup>, the Commission should adopt measures for the dissemination to interested parties of such information and the associated conditions.
- (13) Aircraft on which corrective measures are required should, where the identified deficiencies are clearly hazardous to safety, be grounded until the non-compliance with international safety standards has been rectified.
- (14) The facilities in the airport of inspection may be such that the competent authority will be obliged to authorise the aircraft to transfer to an appropriate airport, provided that conditions for a safe transfer are complied with.
- (15) In order to carry out its tasks under this Directive, the Commission should be assisted by the committee instituted by Article 12 of Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation <sup>(2)</sup>.
- (16) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(3)</sup>.
- (17) The Commission should place at the disposal of the committee instituted by Article 12 of Regulation (EEC) No 3922/91 statistics and information collected in compliance with other Community measures concerning specific incidents that could be relevant to uncovering deficiencies representing a threat to civil aviation safety.
- (18) It is necessary to take into account the cooperation and information exchanges occurring within the framework of the Joint Aviation Authorities (JAA) and the European Civil Aviation Conference (ECAC). Moreover, the greatest possible use should be made of existing expertise in procedures of Safety Assessment of Foreign Aircraft (SAFA).
- (19) Account should be taken of the role of the European Aviation Safety Agency (EASA) in civil aviation safety policy, including the establishment of procedures that aim to establish and maintain a high uniform level of civil aviation safety in Europe.
- (20) Arrangements for greater cooperation over the use of Gibraltar airport were agreed in London on 2 December 1987 by the Kingdom of Spain and the United Kingdom in a joint declaration by the Ministers of Foreign Affairs of the two countries, and such arrangements have yet to come into operation,

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

#### **Scope and objective**

1. Within the framework of the Community's overall strategy to establish and maintain a high uniform level of civil aviation safety in Europe, this Directive introduces a harmonised approach to the effective enforcement of international safety standards within the Community by harmonising the rules and procedures for ramp inspections of third-country aircraft landing at airports located in the Member States.

2. This Directive shall be without prejudice to the Member States' right to carry out inspections not covered by this Directive and to ground, ban, or impose conditions on any aircraft landing at their airports in accordance with Community and international law.

<sup>(1)</sup> OJ L 145, 31.5.2001, p. 43.

<sup>(2)</sup> OJ L 373, 31.12.1991, p. 4. Regulation as last amended by Regulation (EC) No 1592/2002 of the European Parliament and of the Council (OJ L 240, 7.9.2002, p. 1).

<sup>(3)</sup> OJ L 184, 17.7.1999, p. 23.

3. State aircraft, as defined in the Chicago Convention, and aircraft of a maximum take-off weight of less than 5 700 kg not engaged in commercial air transport are excluded from the scope of this Directive.

4. The application of this Directive to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.

5. The application of this Directive to Gibraltar airport shall be suspended until the arrangements in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 have come into operation. The Governments of Spain and the United Kingdom will inform the Council of such date of entry into operation.

#### Article 2

##### Definitions

For the purpose of this Directive:

- (a) 'grounding' means the formal prohibition of an aircraft to leave an airport, and the taking of such steps as are necessary to detain it;
- (b) 'international safety standards' means the safety standards contained in the Chicago Convention and its Annexes, as in force at the time of the inspection;
- (c) 'ramp inspection' means the examination of third-country aircraft in accordance with Annex II;
- (d) 'third-country aircraft' means an aircraft which is not used or operated under the control of a competent authority of a Member State.

#### Article 3

##### Collection of information

Member States shall put in place a mechanism to collect any information deemed useful for the fulfilment of the objective stated in Article 1, including:

- (a) important safety information accessible, in particular, through:
  - pilot reports,

- maintenance organisation reports,
- incident reports,
- other organisations, independent from the competent authorities of the Member States,
- complaints;

(b) information on action taken subsequent to a ramp inspection, such as:

- aircraft grounded,
- aircraft or operator banned from the Member State concerned,
- corrective action required,
- contacts with the operator's competent authority;

(c) follow-up information concerning the operator, such as:

- corrective action implemented,
- recurrence of discrepancy.

This information shall be kept, using a standard report form containing the items described, in the form set out in Annex I.

#### Article 4

##### Ramp inspection

1. Each Member State shall put in place the appropriate means to ensure that third-country aircraft suspected of non-compliance with international safety standards landing at any of its airports open to international air traffic shall be subject to ramp inspections. In implementing such procedures, particular attention shall be given by the competent authority to aircraft:

- where information has been received indicating poor maintenance condition or obvious damage or defects;
- which have been reported as performing abnormal manoeuvres since entering the airspace of a Member State such as to give rise to serious safety concerns;



- in respect of which a previous ramp inspection has revealed deficiencies which give rise to serious concern that the aircraft does not comply with international safety standards and where the Member State is concerned that the defects may not have been corrected;
- where there is evidence that the competent authorities of the country of registration may not be exercising proper safety oversight; or
- where information collected under Article 3 gives cause for concern about the operator or where a previous ramp inspection of an aircraft used by the same operator has revealed deficiencies.

2. Member States may establish rules in order to carry out ramp inspections in accordance with a spot-check procedure in the absence of any particular suspicion, provided that such rules comply with Community and international law. Such a procedure shall, however, be carried out in a non-discriminatory way.

3. Member States shall ensure that appropriate ramp inspections and other surveillance measures as decided within the framework of Article 8(3) will be implemented.

4. The ramp inspection shall be performed in accordance with the procedure described in Annex II and using a ramp inspection report form containing at least the items described in the form set out in Annex II. On completion of the ramp inspection, the commander of the aircraft or a representative of the aircraft operator shall be informed of the ramp inspection findings and, if significant defects have been found, the report shall be sent to the operator of the aircraft and to the competent authorities concerned.

5. When performing a ramp inspection under this Directive, the competent authority concerned shall make all possible efforts to avoid an unreasonable delay of the aircraft inspected.

#### Article 5

### Exchange of information

1. The competent authorities of the Member States shall participate in a mutual exchange of information. Such information shall, at the request of a competent authority, include a list of airports of the Member State concerned that are open to international air traffic with an indication, for each calendar year, of the number of ramp inspections performed and the number of movements of third-country aircraft at each airport on that list.

2. All standard reports referred to in Article 3 and the ramp inspection reports referred to in Article 4(4) shall be made available without delay to the Commission and, at their request, to the competent authorities of the Member States and to the European Aviation Safety Agency (EASA).

3. Whenever a standard report shows the existence of a potential safety threat, or a ramp inspection report shows that an aircraft does not comply with international safety standards and may pose a potential safety threat, the report will be communicated without delay to each competent authority of the Member States and the Commission.

#### Article 6

### Protection and dissemination of information

1. Member States shall, in accordance with their national legislation, take the necessary measures to ensure appropriate confidentiality of the information received by them under Article 5. They shall use this information solely for the purpose of this Directive.

2. The Commission shall publish yearly an aggregated information report available to the public and the industry stakeholders containing an analysis of all information received in accordance with Article 5. That analysis shall be simple and easy to understand and shall indicate whether there exists an increased safety risk to air passengers. In the analysis, the source of that information shall be disidentified.

3. Without prejudice to the public's right of access to the Commission's documents as laid down in Regulation (EC) No 1049/2001, the Commission shall adopt, on its own initiative and in accordance with the procedure referred to in Article 10(2), measures for the dissemination to interested parties of the information referred to in paragraph 1 and the associated conditions. These measures, which may be general or individual, shall be based on the need:

- to provide persons and organisations with the information they need to improve civil aviation safety;

- to limit the dissemination of information to what is strictly required for the purposes of its users, in order to ensure appropriate confidentiality of that information.

4. Whenever information concerning aircraft deficiencies is given voluntarily, the ramp inspection reports referred to in Article 4(4) shall be disidentified regarding the source of such information.

*Article 7***Grounding of aircraft**

1. Where non-compliance with international safety standards is clearly hazardous to flight safety, measures should be taken by the aircraft operator to rectify the deficiencies before flight departure. If the competent authority performing the ramp inspection is not satisfied that corrective action will be carried out before the flight, it shall ground the aircraft until the hazard is removed and shall immediately inform the competent authorities of the operator concerned and of the State of registration of the aircraft.

2. The competent authority of the Member State performing the ramp inspection may, in coordination with the State responsible for the operation of the aircraft concerned or the State of registration of the aircraft, prescribe the necessary conditions under which the aircraft can be allowed to fly to an airport at which the deficiencies can be corrected. If the deficiency affects the validity of the certificate of airworthiness for the aircraft, the grounding may only be lifted if the operator obtains permission from the State or States which will be overflown on that flight.

*Article 8***Safety improvement and implementation measures**

1. Member States shall report to the Commission on the operational measures taken to implement the requirements of Articles 3, 4 and 5.

2. On the basis of the information collected under paragraph 1, the Commission may, in accordance with the procedure referred to in Article 10(2), take any appropriate measures to facilitate the implementation of Articles 3, 4 and 5 such as:

- establish the list of information to be collected;
- detail the content of, and procedures for, ramp inspections;
- define the format for the storage and dissemination of data;
- create or support the appropriate bodies for managing or operating the tools necessary for the collection and exchange of information.

3. On the basis of the information received under Articles 3, 4 and 5, and in accordance with the procedure referred to in Article 10(2), a decision may be taken on appropriate ramp inspection and other surveillance measures, in particular those of a specific operator or of operators of a specific third country, pending the adoption by the competent authority of that third country of satisfactory arrangements for corrective measures.

4. The Commission may take any appropriate measures to cooperate with and assist third countries to improve their aviation safety oversight capabilities.

*Article 9***Imposition of a ban or conditions on operation**

If a Member State decides to ban from its airports or impose conditions on the operation of a specific operator or operators of a specific third country pending the adoption by the competent authority of that third country of satisfactory arrangements for corrective measures:

- (a) that Member State shall notify the Commission of the measures taken, and the Commission shall transmit the information to the other Member States;
- (b) the Commission, acting in accordance with the procedure referred to in Article 10(3), may issue such recommendations and take such actions as it considers necessary; it may, moreover, extend the measures notified under (a) to the whole Community following the submission of a draft of the measures to be taken in accordance with the procedure referred to in Article 10(2).

*Article 10***Committee procedure**

1. The Commission shall be assisted by the committee set up by Article 12 of Regulation (EEC) No 3922/91.

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, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

4. The Committee shall adopt its rules of procedure.

5. The Committee may furthermore be consulted by the Commission on any other matter concerning the application of this Directive.

#### Article 11

### Implementation

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 April 2006. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

#### Article 12

### Amendment of Annexes

The Annexes to this Directive may be amended in accordance with the procedure referred to in Article 10(2).

#### Article 13

### Report

By 30 April 2008 the Commission shall submit a report to the European Parliament and the Council on the application of this Directive, and in particular on Article 9, which, inter alia, takes into account developments in the Community and in international fora. The report may be accompanied by proposals for an amendment of this Directive.

#### Article 14

### Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

#### Article 15

This Directive is addressed to the Member States.

Done at Strasbourg, 21 April 2004.

*For the European Parliament*

*The President*

P. COX

*For the Council*

*The President*

D. ROCHE

ANNEX I



National Aviation Authority (Name)

(State)

# SAFA

## Standard Report

<sup>1</sup> No: \_\_\_\_\_

<sup>2</sup> Source: ..... SR

<sup>3</sup> Date: ..... \_ \_ \_ \_ \_

<sup>4</sup> Place: ..... \_ \_ \_ \_ \_

<sup>5</sup> (Unused)

<sup>6</sup> Operator: ..... \_ \_ \_

<sup>7</sup> AOC number:

<sup>8</sup> State: ..... \_ \_

..... \_ \_ \_ \_ \_

<sup>9</sup> Route: from ..... \_ \_ \_

<sup>10</sup> Flight number: ..... \_ \_ \_ \_ \_

<sup>11</sup> Route: to ..... \_ \_ \_

<sup>12</sup> Flight number: ..... \_ \_ \_ \_ \_

<sup>13</sup> Chartered by Operator\*: \_ \_ \_

<sup>14</sup> Charterer's State: ..... \_ \_

\* (where applicable)

<sup>15</sup> Aircraft Type ..... \_ \_ \_

<sup>16</sup> Registration mark ..... \_ \_ \_ \_ \_

<sup>17</sup> Construction number ..... \_ \_ \_ \_ \_

<sup>18</sup> Flight crew: State of licensing: ..... \_ \_

<sup>19</sup> Remarks:

.....  
.....  
.....  
.....

<sup>20</sup> Action taken:

.....  
.....  
.....  
.....

<sup>21</sup> (Unused)

<sup>22</sup> National Coordinator's name ..... \_ \_ \_ \_ \_

<sup>23</sup> Signature ..... \_ \_ \_ \_ \_

## ANNEX II

- I. The ramp inspection should cover all or a selection of the following aspects, according to the time available.
  1. Check for presence and validity of the documents necessary for international flights such as: registration certificate, log book, certificate of airworthiness, crew licences, radio licence, list of passengers and freight.
  2. Check that flight crew composition and qualifications comply with the requirements of Annex 1 and Annex 6 to the Chicago Convention (ICAO annexes).
  3. Check of operational documentation (flight data, operational flight plan, technical log), and of flight preparation necessary to show that the flight is prepared in accordance with ICAO Annex 6.
  4. Check for presence and status of items required for international navigation in accordance with ICAO Annex 6.
    - Air operator certificate
    - Noise and Emission Certificate
    - Operation manual (including Minimum Equipment List) and flight manual
    - Safety equipment
    - Security cabin equipment
    - Equipment necessary for the specific flight including radio communication and radio navigation equipment
    - Flight data recorders.
  5. Check that the condition of the aircraft and its equipment (including damage and repairs) ensures continuous compliance with ICAO Annex 8 standards.
- II. An inspection report must be drawn up after the ramp inspection and must include standard general information described above and a list of items checked, together with an indication of any deficiencies found for each of these items and/or any specific remark that may be necessary.



National Aviation Authority (Name)

(State)

# SAFA

## Ramp Inspection Report

<sup>1</sup> No: \_\_\_\_\_

<sup>2</sup> Source: RI

<sup>3</sup> Date: \_\_\_\_\_

<sup>4</sup> Place: \_\_\_\_\_

<sup>5</sup> Local time: \_\_\_\_:\_\_\_\_

<sup>6</sup> Operator: \_\_\_\_\_

<sup>7</sup> AOC number: \_\_\_\_\_

<sup>8</sup> State: \_\_\_\_\_

<sup>9</sup> Route: from \_\_\_\_\_

<sup>10</sup> Flight number: \_\_\_\_\_

<sup>11</sup> Route: to \_\_\_\_\_

<sup>12</sup> Flight number: \_\_\_\_\_

<sup>13</sup> Chartered by Operator\* \_\_\_\_

<sup>14</sup> Charterer's State: \_\_\_\_\_

\* (where applicable)

<sup>15</sup> Aircraft Type \_\_\_\_\_

<sup>16</sup> Registration mark \_\_\_\_\_

<sup>17</sup> Construction number \_\_\_\_\_

<sup>18</sup> Flight crew: State of licensing: \_\_\_\_\_

<sup>19</sup> Remarks:

Code / Std / Remark

\_\_\_\_ — .....  
\_\_\_\_ — .....  
\_\_\_\_ — .....  
\_\_\_\_ — .....

<sup>20</sup> Action taken:

.....  
.....  
.....

<sup>21</sup> Inspectors' names: .....

This report represents an indication of what was found on this occasion and must not be construed as a determination that the aircraft is fit for the intended flight.

<sup>22</sup> National Coordinator's name .....

<sup>23</sup> Signature .....

National Aviation Authority (Name)

(State)

Item	Checked	Remark
<b>A. Flight Deck</b>		
<b>General</b>		
1. General condition . . . . .	1 <input type="checkbox"/>	1 <input type="checkbox"/>
2. Emergency exit . . . . .	2 <input type="checkbox"/>	2 <input type="checkbox"/>
3. Equipment . . . . .	3 <input type="checkbox"/>	3 <input type="checkbox"/>
<b>Documentation</b>		
4. Manuals . . . . .	4 <input type="checkbox"/>	4 <input type="checkbox"/>
5. Checklists . . . . .	5 <input type="checkbox"/>	5 <input type="checkbox"/>
6. Radio navigation charts . . . . .	6 <input type="checkbox"/>	6 <input type="checkbox"/>
7. Minimum equipment list . . . . .	7 <input type="checkbox"/>	7 <input type="checkbox"/>
8. Certificate of registration . . . . .	8 <input type="checkbox"/>	8 <input type="checkbox"/>
9. Noise certificate (where applicable) . . . . .	9 <input type="checkbox"/>	9 <input type="checkbox"/>
10. AOC or equivalent . . . . .	10 <input type="checkbox"/>	10 <input type="checkbox"/>
11. Radio licence . . . . .	11 <input type="checkbox"/>	11 <input type="checkbox"/>
12. C of A . . . . .	12 <input type="checkbox"/>	12 <input type="checkbox"/>
<b>Flight data</b>		
13. Operational flight plan . . . . .	13 <input type="checkbox"/>	13 <input type="checkbox"/>
14. Load distribution . . . . .	14 <input type="checkbox"/>	14 <input type="checkbox"/>
<b>Safety Equipment</b>		
15. Hand fire extinguishers . . . . .	15 <input type="checkbox"/>	15 <input type="checkbox"/>
16. Life jackets / flotation device . . . . .	16 <input type="checkbox"/>	16 <input type="checkbox"/>
17. Harness . . . . .	17 <input type="checkbox"/>	17 <input type="checkbox"/>
18. Oxygen equipment . . . . .	18 <input type="checkbox"/>	18 <input type="checkbox"/>
19. Flash light . . . . .	19 <input type="checkbox"/>	19 <input type="checkbox"/>
<b>Flight crew</b>		
20. Flight crew . . . . .	20 <input type="checkbox"/>	20 <input type="checkbox"/>
<b>Journey log book /technical log or equivalent</b>		
21. Journey log book . . . . .	21 <input type="checkbox"/>	21 <input type="checkbox"/>
22. Maintenance release . . . . .	22 <input type="checkbox"/>	22 <input type="checkbox"/>
23. Deferred defect rectification . . . . .	23 <input type="checkbox"/>	23 <input type="checkbox"/>
24. Preflight inspection . . . . .	24 <input type="checkbox"/>	24 <input type="checkbox"/>

Item	Checked	Remark
<b>B. Safety / Cabin</b>		
1. General internal condition . . . . .	1 <input type="checkbox"/>	1 <input type="checkbox"/>
2. Cabin attendant's seat . . . . .	2 <input type="checkbox"/>	2 <input type="checkbox"/>
3. First aid kit / emergency medical kit . . . . .	3 <input type="checkbox"/>	3 <input type="checkbox"/>
4. Hand fire extinguishers . . . . .	4 <input type="checkbox"/>	4 <input type="checkbox"/>
5. Life jackets / flotation devices . . . . .	5 <input type="checkbox"/>	5 <input type="checkbox"/>
6. Seat belts . . . . .	6 <input type="checkbox"/>	6 <input type="checkbox"/>
7. Emergency exit, lighting and marking, torches . . . . .	7 <input type="checkbox"/>	7 <input type="checkbox"/>
8. Slides / life-rafts (as required) . . . . .	8 <input type="checkbox"/>	8 <input type="checkbox"/>
9. Oxygen supply (crew and passengers) . . . . .	9 <input type="checkbox"/>	9 <input type="checkbox"/>
10. Safety instructions . . . . .	10 <input type="checkbox"/>	10 <input type="checkbox"/>
11. Sufficient number of cabin crew members . . . . .	11 <input type="checkbox"/>	11 <input type="checkbox"/>
12. Access to emergency exits . . . . .	12 <input type="checkbox"/>	12 <input type="checkbox"/>
13. Safety of passenger baggage . . . . .	13 <input type="checkbox"/>	13 <input type="checkbox"/>
14. Sufficient seat capacity . . . . .	14 <input type="checkbox"/>	14 <input type="checkbox"/>
<b>C. Aircraft Condition</b>		
1. General external condition . . . . .	1 <input type="checkbox"/>	1 <input type="checkbox"/>
2. Doors and hatches . . . . .	2 <input type="checkbox"/>	2 <input type="checkbox"/>
3. Flight controls . . . . .	3 <input type="checkbox"/>	3 <input type="checkbox"/>
4. Wheels and tyres . . . . .	4 <input type="checkbox"/>	4 <input type="checkbox"/>
5. Undercarriage . . . . .	5 <input type="checkbox"/>	5 <input type="checkbox"/>
6. Wheel well . . . . .	6 <input type="checkbox"/>	6 <input type="checkbox"/>
7. Intake & exhaust nozzle . . . . .	7 <input type="checkbox"/>	7 <input type="checkbox"/>
8. Fan blades . . . . .	8 <input type="checkbox"/>	8 <input type="checkbox"/>
9. Propellers . . . . .	9 <input type="checkbox"/>	9 <input type="checkbox"/>
10. Obvious repairs . . . . .	10 <input type="checkbox"/>	10 <input type="checkbox"/>
11. Obvious unrepaired damage . . . . .	11 <input type="checkbox"/>	11 <input type="checkbox"/>
12. Leakage	12 <input type="checkbox"/>	12 <input type="checkbox"/>
<b>D. Cargo</b>		
1. General condition of cargo compartment . . . . .	1 <input type="checkbox"/>	1 <input type="checkbox"/>
2. Dangerous goods . . . . .	2 <input type="checkbox"/>	2 <input type="checkbox"/>
3. Security of cargo on board . . . . .	3 <input type="checkbox"/>	3 <input type="checkbox"/>



**DIRECTIVE 2004/42/CE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of 21 April 2004**

**on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain paints and varnishes and vehicle refinishing products and amending Directive 1999/13/EC**

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 <sup>(1)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(2)</sup>,

Whereas:

- (1) Directive 2001/81/EC of the European Parliament and the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants <sup>(3)</sup> sets national ceilings for emissions of certain pollutants, including volatile organic compounds (hereinafter: 'VOCs'), to be attained by 2010 as part of the Community's integrated strategy to combat acidification and ground-level ozone, but does not include limit values for emissions of those pollutants from specific sources.
- (2) In order to comply with the national ceiling for emissions of VOCs, Member States have to target a number of different categories of sources of these emissions.
- (3) This Directive complements measures taken at national level in order to ensure compliance with the ceiling for emissions of VOCs.
- (4) In the absence of Community provisions, legislation in the Member States imposing limit values for VOCs in

certain categories of products might differ. Such disparities, together with the absence of such legislation in some Member States, would be liable to create unnecessary barriers to trade and distortion of competition within the internal market.

- (5) National laws and provisions which, for the purposes of combating ground-level ozone, establish limit values for the content of VOCs in the products covered by this Directive therefore need to be harmonised in order to ensure that they do not restrict the free movement of these products.

- (6) Since the objective of the proposed action, namely reducing emissions of VOCs, cannot be sufficiently achieved by the Member States, because emissions of VOCs in one Member State affect air quality in other Member States and reductions of VOC emissions can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.

- (7) The VOC content of paints, varnishes and vehicle refinishing products gives rise to significant emissions of VOCs into the air, which contribute to the local and transboundary formation of photochemical oxidants in the boundary layer of the troposphere.

- (8) The VOC content of certain paints and varnishes and vehicle refinishing products should therefore be reduced as much as is technically and economically feasible taking into account climatic conditions.

- (9) A high level of environmental protection requires the setting and achievement of content limit values for VOCs used in products covered by this Directive.

- (10) Provision should be made for transitional measures for products produced before the requirements of this Directive come into force.

<sup>(1)</sup> OJ C 220, 16.9.2003, p. 43.

<sup>(2)</sup> Opinion of the European Parliament of 25 September 2003 (not yet published in the Official Journal), Council Common Position of 7 January 2004 (OJ C 79 E, 30.3.2004, p. 1), and Position of the European Parliament of 30 March 2004 (not yet published in the Official Journal).

<sup>(3)</sup> OJ L 309, 27.11.2001, p. 22.

- (11) Member States should be able to grant individual licences for the sale and purchase for specific purposes of products in strictly limited quantities which do not comply with the solvent limit values established by this Directive.
- (12) This Directive complements Community provisions on the labelling of chemical substances and preparations.
- (13) The protection of the health of consumers and/or workers and the protection of the working environment should not fall within the scope of this Directive, and measures taken by Member States for these purposes should therefore not be affected by this Directive.
- (14) Content limit values need to be monitored in order to determine whether the mass concentrations of VOCs found in each category of paints, varnishes and vehicle refinishing products covered by this Directive are within the permitted limits.
- (15) As the VOC content of products used for certain vehicle refinishing activities are now regulated under this Directive, Council Directive 1999/13/EC of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations <sup>(1)</sup> should be amended accordingly.
- (16) Member States should, nevertheless, be able to maintain or introduce national measures for the control of emissions from vehicle refinishing activities involving the coating of road vehicles as defined in Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers <sup>(2)</sup>, or part of them, carried out as part of vehicle repair, conservation or decoration outside of manufacturing installations.
- (17) This Directive should not apply to products sold for exclusive use in installations authorised according to Directive 1999/13/EC where emission limiting measures provide alternative means of achieving at least equivalent VOC emission reductions.
- (18) The 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.
- (19) Member States should report to the Commission on the experience gained in the application of this Directive.
- (20) A review should be made both of the scope for reducing the VOC content of products outside the scope of this Directive and the possibility of further reducing the VOC limit values already provided for.
- (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 <sup>(3)</sup>,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

**Purpose and scope**

1. The purpose of this Directive is to limit the total content of VOCs in certain paints and varnishes and vehicle refinishing products in order to prevent or reduce air pollution resulting from the contribution of VOCs to the formation of tropospheric ozone.
2. To achieve the objective set out in paragraph 1, this Directive approximates the technical specifications for certain paints and varnishes and vehicle refinishing products.
3. This Directive shall apply to the products set out in Annex I.
4. This Directive does not prejudice or affect measures, including labelling requirements, taken at Community or national level to protect the health of consumers and of workers and their working environment.

<sup>(1)</sup> OJ L 85, 29.3.1999, p. 1. Directive as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

<sup>(2)</sup> OJ L 42, 23.2.1970, p. 1. Directive as last amended by Directive 2004/3/EC of the European Parliament and of the Council (OJ L 49, 19.2.2004, p. 36).

<sup>(3)</sup> OJ L 184, 17.7.1999, p. 23.

*Article 2***Definitions**

For the purposes of this Directive, the following definitions shall apply:

1. 'Competent authority' means the authority or authorities or bodies responsible under the legal provisions of the Member States for carrying out the obligations arising from this Directive;
2. 'Substances' means any chemical element and its compounds, as they occur in the natural state or as produced by industry, whether in solid or liquid or gaseous form;
3. 'Preparation' means mixtures or solutions composed of two or more substances;
4. 'Organic compound' means any compound containing at least the element carbon and one or more of hydrogen, oxygen, sulphur, phosphorus, silicon, nitrogen, or a halogen, with the exception of carbon oxides and inorganic carbonates and bicarbonates;
5. 'Volatile organic compound (VOC)' means any organic compound having an initial boiling point less than or equal to 250°C measured at a standard pressure of 101,3 kPa;
6. 'VOC content' means the mass of volatile organic compounds, expressed in grams/litre (g/l), in the formulation of the product in its ready to use condition. The mass of volatile organic compounds in a given product which react chemically during drying to form part of the coating shall not be considered part of the VOC content;
7. 'Organic solvent' means any VOC which is used alone or in combination with other agents to dissolve or dilute raw materials, products, or waste materials, or is used as a cleaning agent to dissolve contaminants, or as a dispersion medium, or as a viscosity adjuster, or as a surface tension adjuster, or as a plasticiser, or as a preservative;
8. 'Coating' means any preparation, including all the organic solvents or preparations containing organic solvents necessary for its proper application, which is used to provide a film with decorative, protective or other functional effect on a surface;
9. 'Film' means a continuous layer resulting from the application of one or more coats to a substrate;

10. 'Water-borne coatings (WB)' means coatings the viscosity of which is adjusted by the use of water;

11. 'Solvent-borne coatings (SB)' means coatings the viscosity of which is adjusted by the use of organic solvent;

12. 'Placing on the market' means making available to third parties, whether in exchange for payment or not. Importation into the Community customs territory shall be deemed to be placing on the market for the purposes of this Directive.

*Article 3***Requirements**

1. Member States shall ensure that the products set out in Annex I are placed on the market within their territory after the dates laid down in Annex II only if they have a VOC content not exceeding the limit values set out in Annex II and comply with Article 4.

For determining compliance with the VOC content limit values set out in Annex II, the analytical methods referred to in Annex III shall be used.

For products set out in Annex I to which solvents or other components containing solvents have to be added in order for the product to be ready for use, the limit values in Annex II shall apply to the VOC content of the product in its ready for use condition.

2. By way of derogation from paragraph 1, Member States shall exempt from compliance with the above requirements products sold for exclusive use in an activity covered by Directive 1999/13/EC and carried out in a registered or authorised installation according to Articles 3 and 4 of that Directive.

3. For the purposes of restoration and maintenance of buildings and vintage vehicles designated by competent authorities as being of particular historical and cultural value, Member States may grant individual licences for the sale and purchase in strictly limited quantities of products which do not meet the VOC limit values laid down in Annex II.

4. Products falling under the scope of this Directive which are shown to be produced before the dates laid down in Annex II and do not fulfil the requirements of paragraph 1 may be placed on the market for a period of 12 months following the date on which the requirement applying to the product in question comes into force.

*Article 4***Labelling**

Member States shall ensure that the products set out in Annex I carry a label when they are placed on the market. The label shall indicate:

- (a) the subcategory of the product and the relevant VOC limit values in g/l as referred to in Annex II;
- (b) the maximum content of VOC in g/l of the product in a ready to use condition.

*Article 5***Competent authority**

Member States shall designate a competent authority responsible for fulfilling the obligations laid down in this Directive, and shall inform the Commission thereof not later than 30 April 2005.

*Article 6***Monitoring**

Member States shall set up a monitoring programme for the purpose of verifying compliance with this Directive.

*Article 7***Reporting**

Member States shall report the results of the monitoring programme to demonstrate compliance with the Directive and the categories and quantities of products licensed according to Article 3(3). The first two reports shall be submitted to the Commission 18 months after the dates for compliance with the VOC content limit values laid down in Annex II; subsequently a report shall be submitted every five years. The Commission shall develop in advance a common format for the submission of monitoring data in accordance with the procedure referred to in Article 12(2). Annual data shall be made available to the Commission upon request.

*Article 8***Free circulation**

Member States shall not, on the grounds dealt with in this Directive, prohibit, restrict or prevent the placing on the market of products falling under the scope of this Directive

which, in their ready for use condition, comply with the requirements of this Directive.

*Article 9***Review**

The Commission is invited to submit to the European Parliament and the Council:

1. by 2008 at the latest, a report based on the results of the review referred to in Article 10 of Directive 2001/81/EC. This report shall examine:
  - (a) the broad scope and potential for making reductions in the VOC content of products outside the scope of this Directive including aerosols for paints and varnishes;
  - (b) the possible introduction of a further (phase II) reduction in the VOC content of vehicle refinishing products;
  - (c) any new element relating to the socio-economic impact of the application of phase II as foreseen for paints and varnishes;
2. at the latest 30 months after the date of implementation of the VOC content limit values of Annex II phase II, a report taking account, in particular, of the reports referred to in Article 7 and of any technological developments in the manufacture of paints, varnishes and vehicle refinishing products. This report shall examine the broad scope and potential for making further reductions in VOC content of products inside the scope of this Directive, including the possible distinction between paints used for interiors and exteriors in subcategories (d) and (e) of Annex I, point 1.1. and Annex II, section A.

These reports shall be accompanied, if appropriate, by proposals to amend this Directive.

*Article 10***Penalties**

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take the necessary measures to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify those rules and measures to the Commission by 30 October 2005 at the latest, and shall notify it without delay of any subsequent amendment affecting them.

## Article 11

**Adaptation to technical progress**

Any amendments necessary in order to adapt Annex III to take account of technical progress shall be adopted by the Commission in accordance with the procedure referred to in Article 12(2).

## Article 12

**Committee**

1. The Commission shall be assisted by the committee established by Article 13 of Council Directive 1999/13/EC, hereinafter referred to as 'the 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. The Committee shall adopt its rules of procedure.

## Article 13

**Amendment of Directive 1999/13/EC**

1. Directive 1999/13/EC is hereby amended as follows:

in Annex I, in the section entitled 'Vehicle refinishing', the following indent shall be deleted:

— the coating of road vehicles as defined in Directive 70/156/EEC, or part of them, carried out as part of vehicle repair, conservation or decoration outside of manufacturing installations, or'.

2. Notwithstanding paragraph 1, Member States may maintain or introduce national measures for the control of emissions from vehicle-refinishing activities deleted from the scope of Directive 1999/13/EC.

## Article 14

**Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 October 2005 at the latest, and shall immediately inform the Commission thereof.

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 provisions of national law which they adopt in the field covered by this Directive, together with a table showing how the provisions of this Directive correspond to the national provisions adopted.

## Article 15

**Entry into force of the Directive**

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

## Article 16

**Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 21 April 2004.

*For the European Parliament*

*The President*

P. COX

*For the Council*

*The President*

D. ROCHE

## ANNEX I

## SCOPE

1. For the purposes of this Directive, paints and varnishes means products listed in the subcategories below, excluding aerosols. They are coatings applied to buildings, their trim and fittings, and associated structures for decorative, functional and protective purpose.
  - 1.1. Subcategories:
    - a) 'matt coatings for interior walls and ceilings' means coatings designed for application to indoor walls and ceilings with a degree of gloss  $\leq 25@60^\circ$ .
    - b) 'glossy coatings for interior walls and ceilings' means coatings designed for application to indoor walls and ceilings with a degree of gloss  $> 25@60^\circ$ .
    - c) 'coatings for exterior walls of mineral substrate' means coatings designed for application to outdoor walls of masonry, brick or stucco;
    - d) 'interior/exterior trim and cladding paints for wood, metal or plastic' means coatings designed for application to trim and cladding which produce an opaque film. These coatings are designed for either a wood, metal or a plastic substrate. This subcategory includes undercoats and intermediate coatings;
    - e) 'interior/exterior trim varnishes and woodstains' means coatings designed for application to trim which produce a transparent or semi-transparent film for decoration and protection of wood, metal and plastics. This subcategory includes opaque woodstains. Opaque woodstains means coatings producing an opaque film for the decoration and protection of wood, against weathering, as defined in EN 927-1, within the semi-stable category;
    - f) 'minimal build woodstains' means woodstains which, in accordance with EN 927-1:1996, have a mean thickness of less than  $5\mu\text{m}$  when tested according to ISO 2808: 1997, method 5A;
    - g) 'primers' means coatings with sealing and/or blocking properties designed for use on wood or walls and ceilings;
    - h) 'binding primers' means coatings designed to stabilise loose substrate particles or impart hydrophobic properties and/or to protect wood against blue stain;
    - i) 'one-pack performance coatings' means performance coatings based on film-forming material. They are designed for applications requiring a special performance, such as primer and topcoats for plastics, primer coat for ferrous substrates, primer coat for reactive metals such as zinc and aluminium, anticorrosion finishes, floor coatings, including for wood and cement floors, graffiti resistance, flame retardant, and hygiene standards in the food or drink industry or health services;
    - j) 'two-pack performance coatings' means coatings with the same use as one-performance coatings, but with a second component (e.g. tertiary amines) added prior to application;
    - k) 'multicoloured coatings' means coatings designed to give a two-tone or multiple-colour effect, directly from the primary application;
    - l) 'decorative effect coatings' means coatings designed to give special aesthetic effects over specially prepared pre-painted substrates or base coats and subsequently treated with various tools during the drying period.
2. For the purposes of this Directive, 'vehicle refinishing products' means products listed in the subcategories below. They are used for the coating of road vehicles as defined in Directive 70/156/EEC, or part of them, carried out as part of vehicle repair, conservation or decoration outside of manufacturing installations.

## 2.1. Subcategories:

- a) 'preparatory and cleaning' means products designed to remove old coatings and rust, either mechanically or chemically, or to provide a key for new coatings:
    - (i) preparatory products include gunwash (a product designed for cleaning spray-guns and other equipment), paint strippers, degreasers (including anti-static types for plastic) and silicone removers;
    - (ii) 'precleaner' means a cleaning product designed for the removal of surface contamination during preparation for and prior to the application of coating materials;
  - b) 'Bodyfiller/stopper' means heavy-bodied compounds designed to be applied to fill deep surface imperfections prior to the application of the surfacer/filler;
  - c) 'primer' means any coating that is designed for application to bare metal or existing finishes to provide corrosion protection prior to application of a primer surfacer:
    - (i) 'surfacer/filler' means a coating designed for application immediately prior to the application of topcoat for the purpose of corrosion resistance, to ensure adhesion of the topcoat, and to promote the formation of a uniform surface finish by filling in minor surface imperfections;
    - (ii) 'general metal primer' means a coating designed for application as primers, such as adhesion promoters, sealers, surfacers, undercoats, plastic primers, wet-on-wet, non-sand fillers and spray fillers;
    - (iii) 'wash primer' means coatings containing at least 0,5 % by weight of phosphoric acid designed to be applied directly to bare metal surfaces to provide corrosion resistance and adhesion; coatings used as weldable primers; and mordant solutions for galvanised and zinc surfaces;
  - d) 'topcoat' means any pigmented coating that is designed to be applied either as a single-layer or as a multiple-layer base to provide gloss and durability. It includes all products involved such as base coatings and clear coatings:
    - (i) 'base coatings' means pigmented coatings designed to provide colour and any desired optical effects, but not the gloss or surface resistance of the coating system;
    - (ii) 'clear coating' means a transparent coating designed to provide the final gloss and resistance properties of the coating system;
  - e) 'special finishes' means coatings designed for application as topcoats requiring special properties, such as metallic or pearl effect, in a single layer, high-performance solid-colour and clear coats, (e.g. anti-scratch and fluorinated clear-coat), reflective base coat, texture finishes (e.g. hammer), anti-slip, under-body sealers, anti-chip coatings, interior finishes; and aerosols.
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## ANNEX II

## A. MAXIMUM VOC CONTENT LIMIT VALUES FOR PAINTS AND VARNISHES

	Product Subcategory	Type	Phase I (g/l (*)) (from 1.1.2007)	Phase II (g/l (*)) (from 1.1.2010)
a	Interior matt walls and ceilings (Gloss <25@60°)	WB	75	30
		SB	400	30
b	Interior glossy walls and ceilings (Gloss >25@60°)	WB	150	100
		SB	400	100
c	Exterior walls of mineral substrate	WB	75	40
		SB	450	430
d	Interior/exterior trim and cladding paints for wood and metal	WB	150	130
		SB	400	300
e	Interior/exterior trim varnishes and woodstains, including opaque woodstains	WB	150	130
		SB	500	400
f	Interior and exterior minimal build woodstains	WB	150	130
		SB	700	700
g	Primers	WB	50	30
		SB	450	350
h	Binding primers	WB	50	30
		SB	750	750
i	One-pack performance coatings	WB	140	140
		SB	600	500
j	Two-pack reactive performance coatings for specific end use such as floors	WB	140	140
		SB	550	500
k	Multi-coloured coatings	WB	150	100
		SB	400	100
l	Decorative effect coatings	WB	300	200
		SB	500	200

(\*) g/l ready to use



**B. MAXIMUM VOC CONTENT LIMIT VALUES FOR VEHICLE REFINISHING PRODUCTS**

	Product Subcategory	Coatings	VOC g/l (*) (1.1.2007)
a	Preparatory and cleaning	Preparatory	850
		Pre-cleaner	200
b	Bodyfiller/stopper	All types	250
c	Primer	Surfacer/filler and general (metal) primer	540
		Wash primer	780
d	Topcoat	All types	420
e	Special finishes	All types	840

(\*) g/l of ready for use product. Except for subcategory (a) any water content of the product ready for use should be discounted.

## ANNEX III

**METHODS REFERRED TO IN ARTICLE 3.1**

Parameter	Unit	Test	
		Method	Date of publication
VOC content	g/l	ISO 11890-2	2002
VOC content where reactive diluents are present	g/l	ASTMD 2369	2003

## II

(Acts whose publication is not obligatory)

## COUNCIL

## COUNCIL DECISION

of 21 April 2004

**concerning the conclusion of the Agreement between the European Community and the Macao Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation**

(2004/424/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3)(b), in conjunction with the second sentence of the first subparagraph of Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

Whereas:

- (1) The Commission, acting on behalf of the European Community, has negotiated an Agreement with the Macao Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation.
- (2) This Agreement was signed, on behalf of the European Community, on 13 October 2003 subject to its possible conclusion at a later date.
- (3) This Agreement should be approved.
- (4) The Agreement establishes a Readmission Committee which may take decisions having legal effect. It is thus necessary to specify who represents the Community within this Committee and to provide for a procedure laying down how a Community position is adopted.
- (5) 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 has notified its wish to take part in the adoption and application of this Decision.

- (6) In accordance with Articles 1 and 2 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, and without prejudice to Article 4 of the said Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

- (7) 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 does not take part in the adoption of this Decision and is not bound by it or subject to its application,

HAS DECIDED AS FOLLOWS:

*Article 1*

The Agreement between the European Community and the Macao Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation and the Declarations annexed thereto is hereby approved on behalf of the Community.

<sup>(1)</sup> Opinion delivered on 26 February 2004 (not yet published in the Official Journal).

The text of the Agreement is attached to this Decision.

*Article 2*

The President of the Council shall give the notification provided for in Article 20(2) of the Agreement <sup>(1)</sup>.

For all other Readmission Committee's decisions, the position of the Community shall be adopted by the Council, acting by qualified majority, on a proposal by the Commission.

*Article 3*

The Commission, assisted by experts from Member States, shall represent the Community in the Readmission Committee established by Article 17 of the Agreement.

*Article 5*

This Decision shall be published in the *Official Journal of the European Union*.

*Article 4*

The position of the Community within the Readmission Committee with regard to the adoption of its rules of procedure as required under Article 17(5) of the Agreement shall be adopted by the Commission after consultation with a special committee designated by the Council.

Done at Luxembourg, 21 April 2004.

*For the Council*  
*The President*  
J. WALSH

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<sup>(1)</sup> The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

**AGREEMENT****between the European Community and the Macao Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation**

THE EUROPEAN COMMUNITY,

hereinafter referred to as 'the Community',

and

THE MACAO SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA,

hereinafter referred to as 'the Macao SAR', duly authorised to conclude this Agreement by the Central People's Government of the People's Republic of China,

hereinafter referred to as the 'Contracting Parties',

DETERMINED to strengthen their cooperation in order to combat illegal immigration more effectively,

REFERRING to Council Regulation (EC) No 539/2001 of 15 March 2001, listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 81, 23.3.2001, p. 1), and in particular Article 1(2) in conjunction with Annex II thereof, exempting holders of a 'Região Administrativa Especial de Macau' Passport from the requirement, for stays of no more than three months in all, to be in possession of a visa when crossing the external borders of the Member States of the European Union,

DESIRING to establish, by means of this Agreement and on the basis of reciprocity, rapid and effective procedures for the identification and return of persons who do not, or no longer, fulfil the conditions for entry to, presence in, or residence on the territories of the Macao SAR or one of the Member States of the European Union, and to facilitate the transit of such persons in a spirit of cooperation,

CONSIDERING that the provisions of this Agreement, which falls within the scope of Title IV of the Treaty establishing the European Community, do not apply to the Kingdom of Denmark, in accordance with the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community,

HAVE AGREED AS FOLLOWS:

*Article 1***Definitions**

(d) 'Person of another jurisdiction' shall mean any person who is neither a permanent resident of the Macao SAR, nor a national of a Member State;

For the purpose of this Agreement:

(a) 'Member State' shall mean any Member State of the European Union, with the exception of the Kingdom of Denmark;

(b) 'National of a Member State' shall mean any person who holds the nationality, as defined for Community purposes, of a Member State;

(c) 'Permanent resident of the Macao SAR' shall mean any person who has the right to reside permanently in the Macao SAR;

(e) 'Residence authorisation' shall mean a permit of any type issued by the Macao SAR or one of the Member States entitling a person to reside on its territory. This shall not include temporary permissions to remain on its territory in connection with the processing of an asylum application or an application for a residence authorisation;

(f) 'Visa' shall mean an authorisation issued or a decision taken by the Macao SAR or one of the Member States which is required for entry in, or transit through, its territory. This shall not include airport transit visa.

## SECTION I

**READMISSION OBLIGATIONS BY THE MACAO SAR***Article 2***Readmission of permanent residents and former permanent residents**

1. The Macao SAR shall readmit, upon application by a Member State and without any formalities other than those specified in this Agreement, all persons who do not, or who no longer, fulfil the conditions in force for entry to, presence in, or residence on, the territory of the requesting Member State provided that it is proved, or may be validly presumed that they are permanent residents of the Macao SAR.

The same shall apply to persons who, since entering the territory of a Member State, have lost their right to permanent residence in the Macao SAR, unless such persons have been naturalised by that Member State.

2. At the request of a Member State, the Macao SAR shall, as necessary and without delay, issue the person to be readmitted with the travel document required for his or her return that is of a period of validity of at least 6 (six) months. If, for legal or factual reasons, the person concerned cannot be transferred within the period of validity of the travel document that was initially issued, the Macao SAR shall issue a new travel document with the same period of validity within 14 (fourteen) days. If the Macao SAR has not replied to the request by a Member State within 15 (fifteen) days, it shall be deemed to accept the use of the EU standard travel document for expulsion purposes.

*Article 3***Readmission of persons of another jurisdiction**

1. The Macao SAR shall readmit, upon application by a Member State and without any formalities other than those specified in this Agreement, all persons of another jurisdiction who do not, or who no longer, fulfil the conditions in force for entry to, presence in, or residence on, the territory of the requesting Member State provided that it is proved, or may be validly presumed, that such persons:

- (a) at the time of entry in the Member State concerned held a valid residence authorisation issued by the Macao SAR; or
- (b) after having entered the territory of the Macao SAR, proceed to enter unlawfully the territory of the Member States, coming directly from the territory of the Macao SAR.

2. The readmission obligation in paragraph 1 shall not apply if:

- (a) the person of another jurisdiction merely transited without entering the territory of the Macao SAR; or
- (b) the requesting Member State has issued to the person of another jurisdiction a residence authorisation before or after entering its territory unless that person is in possession of a residence permit, issued by the Macao SAR, which has a longer period of validity.

3. At the request of a Member State, the Macao SAR shall, as necessary and without delay, issue the person to be readmitted with the travel document required for his or her return that is of a period of validity of at least 6 (six) months. If, for legal or factual reasons, the person concerned cannot be transferred within the period of validity of the travel document that was initially issued, the Macao SAR shall issue a new travel document with the same period of validity within 14 (fourteen) days. If the Macao SAR has not replied to the request by a Member State within 15 (fifteen) days, it shall be deemed to accept the use of the EU standard travel document for expulsion purposes.

## SECTION II

**READMISSION OBLIGATIONS BY THE COMMUNITY***Article 4***Readmission of own and former own nationals**

1. A Member State shall readmit, upon application by the Macao SAR and without any formalities other than those specified in this Agreement, all persons who do not, or who no longer, fulfil the conditions in force for entry to, presence in, or residence on, the territory of the Macao SAR provided that it is proved, or may be validly presumed, that they are nationals of that Member State. The same shall apply to persons who have been deprived of, or who have renounced, the nationality of a Member State since entering the territory of the Macao SAR unless such persons are permanent residents of the latter.

2. At the request of the Macao SAR, a Member State shall, as necessary and without delay, issue the person to be readmitted with the travel document required for his or her return that is of a period of validity of at least 6 (six) months. If, for legal or factual reasons, the person concerned cannot be transferred within the period of validity of the travel document that was initially issued, the Member State concerned shall issue a new travel document with the same period of validity within 14 (fourteen) days. If the Member State has not replied to the request by the Macao SAR within 15 (fifteen) days, it shall be deemed to accept the use of the 'Travel Permit of Exceptional Use' of the Macao SAR.

## Article 5

## SECTION III

**Readmission of persons of another jurisdiction**

1. A Member State shall readmit, upon application by the Macao SAR and without any formalities other than those specified in this Agreement, all persons of another jurisdiction who do not, or who no longer, fulfil the conditions in force for entry to, presence in, or residence on, the territory of the Macao SAR provided that it is proved, or may be validly presumed, that such persons:

- (a) at the time of entry in the Macao SAR held a valid residence authorisation issued by the requested Member State; or
- (b) after having entered the territory of the requested Member State, proceeded to enter unlawfully the territory of the Macao SAR, coming directly from the territory of the requested Member State.

2. The readmission obligation in paragraph 1 shall not apply if:

- (a) the person of another jurisdiction has been in airside transit via an International airport of the requested Member State; or
- (b) the Macao SAR has issued to the person of another jurisdiction a residence authorisation before or after entering its territory unless that person is in possession of a residence permit, issued by the requested Member State, which has a longer period of validity.

3. If two or more Member States issued a residence authorisation, the readmission obligation in paragraph 1 is for the Member State that issued the document with a longer period of validity or, if one or several of them have already expired, the document that is still valid. If all of the documents have already expired, the readmission obligation in paragraph 1 is for the Member State that issued the document with the most recent expiry date.

4. At the request of the Macao SAR, a Member State shall, as necessary and without delay, issue the person to be readmitted with the travel document required for his or her return that is of a period of validity of at least 6 (six) months. If, for legal or factual reasons, the person concerned cannot be transferred within the period of validity of the travel document that was initially issued, the Member State concerned shall issue a new travel document with the same period of validity within 14 (fourteen) days. If the Member State has not replied to the request by the Macao SAR within 15 (fifteen) days, it shall be deemed to accept the use of the 'Travel Permit of Exceptional Use' of the Macao SAR.

**READMISSION PROCEDURE***Article 6***Principle**

1. Subject to paragraph 2, a transfer of a person to be readmitted on the basis of one of the obligations contained in Articles 2 to 5 shall require the submission of a readmission application to the competent authority of the requested Contracting Party.

2. The readmission application may be replaced by a written communication to the requested Contracting Party within a reasonable time period prior to the return of the person concerned provided that:

- (a) the person to be readmitted is in possession of a valid travel document and, where applicable, a valid residence authorisation of the requested Contracting Party; and
- (b) the person to be readmitted is willing to return to the requested Contracting Party.

*Article 7***Readmission application**

1. Any readmission application is to contain the following information:

- (a) the particulars of the person to be readmitted (e.g. given names, surnames, date of birth, and, where possible, place of birth, and the last place of residence);
- (b) indication of the means which provide proof or valid presumption of nationality or permanent residence and, where possible, copies of documents.

2. To the extent possible, the readmission application should also contain the following information:

- (a) a statement indicating that the person to be transferred may need help or care, provided the person concerned has explicitly consented to the statement;
- (b) any other protection or security measure which may be necessary in the individual transfer case.

3. A common form to be used for readmission applications is attached as Annex 5 to this Agreement.

*Article 8***Means of evidence regarding nationality and permanent residence**

1. Proof of nationality or permanent residence pursuant to Article 2(1) and Article 4(1) can be furnished through the documents listed in Annex 1 to this Agreement, even if their period of validity has expired. If such documents are presented, the Member States shall recognise the nationality, and the Macao SAR shall recognise the permanent residence, without further formalities. Proof of nationality or permanent residence cannot be furnished through false documents.
2. Valid presumption of nationality or permanent residence pursuant to Article 2(1) and Article 4(1) can be furnished through the documents listed in Annex 2 to this Agreement, even if their period of validity has expired. If such documents are presented, the Member States shall deem the nationality, and the Macao SAR shall deem the permanent residence, to be established unless they can prove otherwise.
3. If none of the documents listed in Annexes 1 or 2 can be presented, the competent authorities of the Macao SAR or the Member State concerned shall, upon request, make arrangements to interview by any means the person to be readmitted without undue delay in order to establish his or her nationality or permanent residence.

*Article 9***Means of evidence regarding persons of another jurisdiction**

1. Proof of the conditions for the readmission of persons of another jurisdiction laid down in Article 3(1) and Article 5(1) can be furnished through the means of evidence listed in Annex 3 to this Agreement; it cannot be furnished through false documents. Any such proof shall be mutually recognised by the Contracting Parties without further formalities.
2. Valid presumption of the conditions for the readmission of persons of another jurisdiction laid down in Article 3(1) and Article 5(1) can be furnished through the means of evidence listed in Annex 4 to this Agreement. Where such prima facie evidence is presented, the Contracting Parties shall deem the conditions to be established unless they can prove otherwise.
3. The unlawfulness of entry, presence or residence may be established by means of the travel documents of the person concerned being missing, or in which the necessary visa or other residence authorisation for the territory of the requesting Member State or the Macao SAR are missing. A statement by the competent authority of the requesting Contracting Party that the person concerned has been found not having the necessary travel documents, visa or residence authorisation

shall likewise provide valid presumption of the unlawful entry, presence or residence.

*Article 10***Time limits**

1. The application for readmission must be submitted to the competent authority of the requested Contracting Party within a maximum of one year after the requesting authority has gained knowledge that a person of another jurisdiction does not, or does no longer, fulfil the conditions in force for entry, presence or residence. Where there are legal or factual obstacles to the application being submitted in time, the time limit shall, upon request, be extended but only until the obstacles have ceased to exist.
2. A readmission application must be replied to without undue delay, and in any event within a maximum of one month; reasons shall be given for refusal of a readmission request. This time limit begins to run with the date of receipt of the readmission request. Upon expiry of this time limit the transfer shall be deemed to have been agreed to.
3. After agreement has been given or, where appropriate, upon expiry of the one month time limit, the person concerned shall be transferred without undue delay and, at the most, within three months. Upon application, this time limit may be extended by the time taken to deal with legal or practical obstacles.

*Article 11***Transfer modalities and modes of transportation**

1. Before returning a person, the competent authorities of the Macao SAR and the Member State concerned shall make arrangements in writing and in advance regarding the transfer date, the border crossing point and possible escorts.
2. No means of transportation, whether by air, land or sea, shall be prohibited but, as a rule, return shall take place by air. Return by air is not restricted to the use of national carriers or security staff of the requesting Contracting Party, and may take place by using scheduled flights as well as charter flights.

## SECTION IV

**TRANSIT OPERATIONS***Article 12***Principles**

1. The Macao SAR shall allow the transit of persons of another jurisdiction through its territory if a Member State so



requests, and a Member State shall authorise the transit of persons of another jurisdiction through its territory if the Macao SAR so requests, if the onward journey in possible other States of transit and the readmission by the State of destination is assured.

2. The Member States and the Macao SAR should restrict the transit of persons of another jurisdiction to cases where such persons cannot be returned to the State of destination directly.

3. Transit can be refused by the Macao SAR or a Member State:

(a) if the person of another jurisdiction runs the risk of persecution, or could be subjected to criminal prosecution or sanctions in another State of transit or in the State of destination, or could be threatened by criminal prosecution on the territory of the requested Member State or the Macao SAR;

(b) on grounds of public health, domestic security or other fundamental interests of the legal order.

4. The Macao SAR or a Member State may revoke any authorisation issued if circumstances referred to in paragraph 3 subsequently arise or come to light which stand in the way of the transit operation, or if the onward journey in possible States of transit or the readmission by the State of destination is no longer assured.

#### Article 13

### Transit procedure

1. An application for transit must be submitted to the competent authorities in writing and is to contain the following information:

(a) type of transit (by air, land or sea), possible other States of transit and intended final destination;

(b) the particulars of the person concerned (e.g. given name, surname, date of birth, and — where possible — place of birth, nationality, type and number of travel document);

(c) envisaged border crossing point, time of transfer and possible use of escorts;

(d) a declaration that from the viewpoint of the requesting Contracting Party the conditions pursuant to Article 12(2) are met, and that no reasons for a refusal pursuant to Article 12(3) are known of.

A common form to be used for transit applications is attached as Annex 6 to this Agreement.

2. The competent authority of the requested Contracting Party shall, without undue delay and in writing, inform the requesting competent authority of the admission, confirming the border crossing point and the envisaged time of admission, or inform it of the admission refusal and of the reasons for such refusal.

3. If the transit is effected by air, the person to be readmitted and possible escorts shall be exempted from having to obtain an airport transit visa.

4. The competent authorities of the requested Contracting Party shall, subject to mutual consultations, support the transit, in particular through the surveillance of the persons in question and the provision of suitable amenities for that purpose.

## SECTION V

### COSTS

#### Article 14

### Transport and transit costs

Without prejudice to the right of the competent authorities to recover the costs associated with the readmission from the person to be readmitted or third parties, all transport costs incurred in connection with readmission and transit pursuant to this Agreement as far as the border of the State of final destination shall be borne by the requesting Contracting Party.

## SECTION VI

### DATA PROTECTION AND NON-AFFECTION CLAUSE

#### Article 15

### Data protection

1. The communication of personal data shall only take place if such communication is necessary for the implementation of this Agreement by the competent authorities of the Macao SAR or the Member States.

2. The processing and treatment of personal data in a particular case shall be subject to the Macao SAR law and, where the controller is a competent authority of a Member State, to the provisions of 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 (OJ L 281, 23.11.1995, p. 31) and of national legislation adopted pursuant to this Directive.

3. Additionally, the following principles shall apply:

- (a) personal data must be processed fairly and lawfully;
- (b) personal data must be collected for the specified, explicit and legitimate purpose of implementing this Agreement and not further processed by the communicating or by the recipient in a way incompatible with that purpose;
- (c) personal data must be adequate, relevant and not excessive in relation to the purpose for which they are collected and/or further processed; in particular, personal data communicated may concern only the following:
  - the particulars of the person to be transferred (e.g. surname, given name, any previous names, nicknames or pseudonyms, date and place of birth, sex, current and any previous nationality),
  - identity card or passport (number, period of validity, date of issue, issuing authority, place of issue),
  - stopping places and itineraries,
  - other information needed to identify the person to be transferred or to examine the readmission requirements pursuant to this Agreement.
- (d) personal data must be accurate and, where necessary, kept up to date;
- (e) personal data must be kept in a form which permits identification of data subjects for no longer than is necessary for the purpose for which the data were collected or for which they are further processed;
- (f) both the communicating authority and the recipient shall take every reasonable step to ensure as appropriate the rectification, erasure or blocking of personal data where the processing does not comply with the provisions of this Article, in particular because the data are not adequate, relevant, accurate, or they are excessive in relation to the purpose of processing. This includes the notification of any rectification, erasure or blocking to the other Party;
- (g) upon request, the recipient shall inform the communicating authority of the use of the communicated data and of the results obtained therefrom;
- (h) personal data may only be communicated to the competent authorities. Further communication to other bodies requires the prior consent of the communicating authority;

- i) the communicating and the receiving authorities are under the obligation to make a written record of the communication and receipt of personal data.

#### Article 16

#### Non-affection clause

1. This Agreement shall be without prejudice to the rights, obligations and responsibilities arising from International Law applicable to the Community, the Member States and the Macao SAR.

2. Nothing in this Agreement shall prevent the return of a person under other formal or informal arrangements.

#### SECTION VII

#### IMPLEMENTATION AND APPLICATION

#### Article 17

#### Readmission Committee

1. The Contracting Parties shall provide each other with mutual assistance in the application and interpretation of this Agreement. To this end, they shall set up a Readmission Committee which will, in particular, have the task:

- (a) to monitor the application of this Agreement;
- (b) to decide on implementing arrangements necessary for the uniform execution of it;
- (c) to have a regular exchange of information on the implementing Protocols drawn up by individual Member States and the Macao SAR pursuant to Article 18;
- (d) to recommend amendments to this Agreement.

2. Recommendations of the Readmission Committee for amendment of the Annexes to this Agreement may be approved by the Parties through a simplified procedure.

3. The Readmission Committee shall be composed by representatives of the Community and the Macao SAR; the Community shall be represented by the Commission of the European Communities, assisted by experts from Member States.

4. The Readmission Committee shall meet where necessary at the request of one of the Contracting Parties.

5. The Readmission Committee shall establish its rules of procedures.

#### *Article 18*

### **Implementing Protocols**

1. The Macao SAR and a Member State may draw up implementing Protocols which shall cover rules on:

- (a) the designation of the competent authorities, the border crossing points, the exchange of contact points and the languages in communication;
- (b) the conditions for transit of persons of another jurisdiction under escort;
- (c) means and documents additional to those listed in Annexes 1 to 4 to this Agreement.

2. The implementing Protocols referred to in paragraph 1 will enter into force only after the Readmission Committee, established by Article 17, has been notified.

3. The Macao SAR agrees to apply any provision of an implementing Protocol drawn up with one Member State also in its relations with any other Member State upon request of the latter.

#### *Article 19*

### **Relation to bilateral readmission agreements or arrangements of Member States**

The provisions of this Agreement shall take precedence over the provisions of any bilateral agreement or arrangement on the readmission of persons residing without authorisation

which have been or may, under Article 18, be concluded between individual Member States and the Macao SAR, in so far as the provisions of the latter are incompatible with those of this Agreement.

## SECTION VIII

### **FINAL PROVISIONS**

#### *Article 20*

### **Entry into force, duration and termination**

1. This Agreement shall be ratified or approved by the Contracting Parties in accordance with their respective procedures.

2. This Agreement shall enter into force on the first day of the second month after the date on which the Contracting Parties notify each other that the procedures referred to in the first paragraph have been completed.

3. This Agreement shall remain in force indefinitely, unless terminated in accordance with paragraph 4 of this Article.

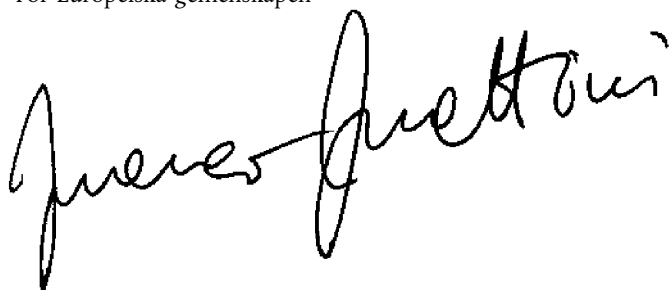
4. Each Contracting Party may terminate this Agreement by giving written notice to the other Contracting Party. This Agreement shall cease to apply six months after the date of such notification.

#### *Article 21*

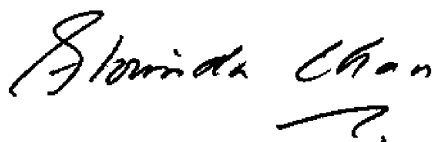
### **Annexes**

Done at Luxembourg on the thirteenth day of October in the year two thousand and three in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, and Swedish languages, each of these texts being equally authentic.

Por la Comunidad Europea  
For Det Europæiske Fællesskab  
Für die Europäische Gemeinschaft  
Για την Ευρωπαϊκή Κοινότητα  
For the European Community  
Pour la Communauté européenne  
Per la Comunità europea  
Voor de Europese Economische Gemeenschap  
Pela Comunidade Europeia  
Euroopan yhteisön puolesta  
För Europeiska gemenskapen



Por la Región Administrativa Especial de Macao de la República Popular de China  
For Folkerepublikken Kinas særlige administrative region Macao  
Für die Sonderverwaltungsregion Macau der Volksrepublik China  
Για την Ειδική Διοικητική Περιφέρεια Μακάο της Λαϊκής Δημοκρατίας της Κίνας  
For the Macao Special Administrative Region of the People's Republic of China  
Pour la région administrative spéciale de Macao de la République populaire de Chine  
Per la Regione ad amministrazione speciale di Macao della Repubblica popolare cinese  
Voor de Speciale Administratieve Regio Macao van de Volksrepubliek China  
Pela Região Administrativa Especial de Macau da República Popular da China  
Kiinan kansantasavallan Macaon erityishallintotalueen puolesta  
För folkrepubliken Kinas särskilda administrativa region Macao



## ANNEX I

**Common list of documents the presentation of which is considered as proof of nationality or permanent residence**

(Article 2(1), Article 3(1), Article 4(1) and Article 5(1))

## Member States:

- passports of any kind (national passports, diplomatic passports, service passports, collective passports and surrogate passports including children's passports),
- identity cards of any kind (including temporary and provisional ones),
- service books and military identity cards,
- seaman's registration books and skippers' service cards,
- official documents indicating the nationality of the person concerned.

## Macao:

- Macao Special Administrative Region Passports (Passaporte da Região Administrativa Especial de Macau),
- Permanent Resident Identity Card of the Macao Special Administrative Region (Bilhete de Identidade de Residente Permanente da Região Administrativa Especial de Macau),
- Official documents indicating the permanent residence status of the person concerned.

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## ANNEX 2

**Common list of documents the presentation of which is considered as valid presumption of nationality or permanent residence**

(Article 2(1), Article 3(1), Article 4(1) and Article 5(1))

- photocopies of any of the documents listed in Annex 1 to this Agreement,
  - Macao Resident Identity Card carrying date of first issue at least seven years ago,
  - birth certificates and photocopies thereof,
  - statements by witnesses,
  - statements made by the person concerned and language spoken by him or her, including by means of an official test result,
  - any other document which may help to establish the nationality or the permanent residence status of the person concerned, such as driving licences and company identity cards.
-

## ANNEX 3

**Common list of documents which are considered as proof of the conditions for the readmission of persons of another jurisdiction**

(Article 3(1) and Article 5(1))

- visa, entry/departure stamps or similar endorsement in the travel document of the person concerned,
  - tickets as well as certificates and bills of any kind (e.g. hotel bills, appointment cards for doctors/dentists, entry cards for public/private institutions, etc.) which clearly show that the person concerned stayed on the territory of the requested Member State or the Macao SAR,
  - railway tickets and tickets and/or passenger lists of air or boat passages which show the itinerary on the territory of the requested state,
  - information showing that the person concerned has used the services of a courier or travel agency.
-

## ANNEX 4

**Common list of documents which are considered as prima facie evidence of the conditions for the readmission of persons of another jurisdiction**

(Article 3(1) and Article 5(1))

- official statements made, in particular, by border authority staff and other witnesses who can testify to the person concerned crossing the border,
  - description of place and circumstances under which the person concerned has been intercepted after entering the territory of the requesting Member State or the Macao SAR,
  - information related to the identity and/or stay of a person which has been provided by an International organisation,
  - reports/confirmation of information by family members, travelling companions, etc.,
  - statement by the person concerned.
-



ANNEX 5



[Emblem of the Macao SAR]

..... (Place and date)

..... (Designation of requesting authority)

Reference

.....

To

.....

.....

..... (Designation of receiving authority)

READMISSION APPLICATION

pursuant to Article 7 of the Agreement of 13 October 2003 between the European Community and the Macao SAR on the readmission of persons residing without authorisation

A. PERSONAL DETAILS

1. Full name (underline surname):

.....

2. Maiden name:

.....

3. Date and place of birth:

.....

4. Sex and physical description (height, colour of eyes, distinguishing marks, etc.):

.....

5. Father's and mother's name:

.....

6. Also known as (earlier names, nicknames or pseudonyms):

.....

7. Nationality and language:

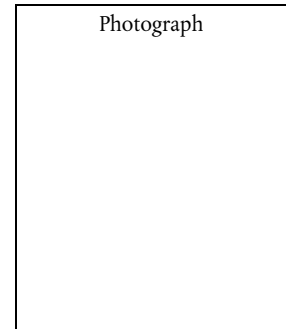
.....

8. Last residence in the requesting State:

.....

9. Address in the requested State:

.....



B. SPECIAL CIRCUMSTANCES RELATING TO THE TRANSFEREE

1. State of health

(e.g. possible reference to special medical care; Latin name of contagious disease):

.....

2. Indication of particularly dangerous person

(e.g. suspected of serious offence; aggressive behaviour):

.....

C. MEANS OF EVIDENCE ATTACHED

1. .... (type of document) ..... (serial number, date and place of issue)

..... (issuing authority) ..... (expiry date)

2. .... (type of document) ..... (serial number, date and place of issue)

..... (issuing authority) ..... (expiry date)

3. .... (type of document) ..... (serial number, date and place of issue)

..... (issuing authority) ..... (expiry date)

4. .... (type of document) ..... (serial number, date and place of issue)

..... (issuing authority) ..... (expiry date)

5. .... (type of document) ..... (serial number, date and place of issue)

..... (issuing authority) ..... (expiry date)

D. OBSERVATIONS

.....  
.....  
.....

.....  
(Signature) (Seal/stamp)

ANNEX 6



[Emblem of the Macao SAR]

..... (Place and date)

..... (Designation of requesting authority)

Reference

.....

To

.....

.....

..... (Designation of receiving authority)

TRANSIT APPLICATION

pursuant to Article 13 of the Agreement of 13 October 2003 between the European Community and the Macao SAR on the readmission of persons residing without authorisation

A. PERSONAL DETAILS

1. Full name (underline surname):

.....

2. Maiden name:

.....

3. Date and place of birth:

.....

4. Sex and physical description (height, colour of eyes, distinguishing marks, etc.):

.....

5. Also known as (earlier names, nicknames or pseudonyms):

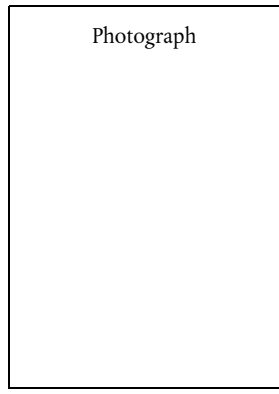
.....

6. Nationality and language:

.....

7. Type and number of travel document

.....



B. TRANSIT OPERATION

1. Type of transit

by air

by sea

by land

2. State of final destination

.....

3. Possible other States of transit

.....

4. Proposed border crossing point, date, time of transfer and possible escorts

.....

.....

.....

5. Admission guaranteed in any other transit State and in the State of final destination

(Article 12 paragraph 2)

yes

no

6. Knowledge of any reason for a refusal of transit

(Article 12 paragraph 3)

yes

no

C. OBSERVATIONS

.....

.....

.....

.....

(Signature)

(Seal/stamp)

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**JOINT DECLARATION ON STATELESS PERSONS**

The Contracting Parties take note that, at present, no International Convention or agreement dealing with stateless persons is applicable to the Macao SAR. They therefore agree that this category of persons shall be covered by the definition of 'person of another jurisdiction' in Article 1(d).

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**JOINT DECLARATION ON VISAS**

The Contracting Parties take note that, under Macao's current laws, visas are issued upon arrival only, and expire upon departure from Macao. Consequently, it is legally impossible for a third country national to enter an EU Member State while holding a valid visa for Macao.

The Parties agree to consult each other in due time, should this legal situation change.

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**JOINT DECLARATION ON ARTICLE 3(2)(a)**

The Contracting Parties agree that persons of another jurisdiction who are 'merely transiting without entering' in the meaning of Article 3(2)(a) are persons whose transit is taking place with the knowledge or under the escort of the competent authorities of the Macao SAR.

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**JOINT DECLARATION CONCERNING DENMARK**

The Contracting Parties take note that this Agreement does not apply to the territory or to the nationals of the Kingdom of Denmark. In such circumstances it is appropriate that the Macao SAR and Denmark conclude a readmission agreement in the same terms as this Agreement.

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**JOINT DECLARATION CONCERNING ICELAND AND NORWAY**

The Contracting Parties take note of the close relationship between the European Community and Iceland and Norway, particularly by virtue of the Agreement of 18 May 1999 concerning the association of these countries with the implementation, application and development of the Schengen acquis. In such circumstances it is appropriate that the Macao SAR concludes a readmission agreement with Iceland and Norway in the same terms as this Agreement.

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