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I

(Acts whose publication is obligatory)

**REGULATION (EC) No 2110/2005 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 14 December 2005
on access to Community external assistance**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 179 and 181a thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

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

Whereas:

(1) The practice of tying the granting of aid, directly or indirectly, to the purchase of goods and services procured by means of that aid in the donor country reduces its effectiveness and is not coherent with a pro-poor development policy. The untying of aid is not an aim in itself, but should be used as a tool to cross-fertilise other elements in the fight against poverty, such as ownership, regional integration and capacity building, with a focus on empowering local and regional suppliers of goods and services in developing countries.

(2) In March 2001, the Development Assistance Committee (DAC) of the Organisation for Economic Cooperation and Development (OECD) adopted a 'Recommendation on Untying Official Development Assistance to the Least Developed Countries' ⁽³⁾. The Member States adopted that recommendation and the Commission recognised the spirit of this Recommendation as a guidance for Community aid.

(3) On 14 March 2002, the General Affairs Council held in parallel with the European Council in Barcelona in preparation for the International Conference on Financing for Development, convened in Monterrey on 18 to 22 March 2002, concluded that the European Union would 'implement the DAC Recommendation on untying of aid to Least Developed Countries and continue discussions in view of further untying bilateral aid. The EU will also consider steps towards further untying of Community aid while maintaining the existing system of price preferences of the EU-ACP framework'.

(4) On 18 November 2002, the Commission adopted a communication to the Council and to the European Parliament entitled 'Untying: Enhancing the effectiveness of aid'. It presented the Commission's views on the issue and possible options for the implementation of the abovementioned Barcelona commitment within the EU Aid Assistance system.

(5) In its Conclusions on the Untying of Aid of 20 May 2003 the Council underlined the need to further untie Community aid. It agreed to the modalities detailed on the abovementioned Communication and decided on the options proposed.

(6) On 4 September 2003, the European Parliament adopted a resolution on the abovementioned Commission communication ⁽⁴⁾, in which it noted the need to further untie Community aid. It supported the modalities detailed in that Communication and agreed to the options proposed. It highlighted the need for further debate geared towards more untying on the basis of further studies and documented proposals, and called explicitly for 'a clear preference for local and regional cooperation, prioritising – in ranking order – suppliers from the recipient country, neighbouring developing countries, and other developing countries', in order to strengthen the efforts of the recipient countries to improve their own production at national, regional, local and family level, as well as actions aimed at improving the availability and accessibility to the public of foodstuffs and basic services, consistent with local habits and production and trading systems.

⁽¹⁾ OJ C 157, 28.6.2005, p. 99.

⁽²⁾ Opinion of the European Parliament of 23 June 2005 (not yet published in the Official Journal) and Council Decision of 21 November 2005.

⁽³⁾ OECD/DAC 2001 Report, 2002, Volume 3, No 1, p. 46.

⁽⁴⁾ OJ C 76 E, 25.3.2004, p. 474.

(7) Several elements need to be addressed in order to define access to Community external assistance. The rules of eligibility governing access by persons are laid down in Article 3. The rules governing the engagement of experts and the origin of supplies and materials purchased by eligible persons are laid down in Articles 4 and 5 respectively. The definition and modalities of implementation of reciprocity are set out in Article 6. Derogations and their implementation are provided for in Article 7. Specific provisions concerning operations financed through an international organisation or a regional organisation, or co-financed with a third country, are laid down in Article 8. Specific provisions concerning humanitarian aid are laid down in Article 9.

(8) Access to Community external assistance is defined in the basic acts regulating such assistance, in conjunction 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 ⁽¹⁾ (hereinafter the Financial Regulation). The changes made by this Regulation to access to Community aid entail amendments to all those instruments. All the modifications to the basic acts concerned are listed in Annex I to this Regulation.

(9) When awarding tenders under a Community instrument, special consideration will be given to respect for internationally agreed core labour standards of the International Labour Organisation (ILO), e.g. the conventions on freedom of association and collective bargaining, elimination of forced and compulsory labour, elimination of discrimination in respect of employment and occupation, and the abolition of child labour.

(10) When awarding tenders under a Community instrument, special consideration will be given to respect for the following internationally agreed environmental conventions: the Convention on Biological Diversity of 1992, the Cartagena Protocol on Biosafety of 2000 and the Kyoto Protocol to the United Nations Framework Convention on Climate Change of 1997,

HAVE ADOPTED THIS REGULATION:

Article 1

Scope

This Regulation lays down the rules for access by interested parties to Community external assistance instruments financed by the general budget of the European Union, as listed in Annex I.

⁽¹⁾ OJ L 248, 16.9.2002, p. 1.

Article 2

Definitions

For the interpretation of the terms used in this Regulation, reference is made to the Financial Regulation and to Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽²⁾.

Article 3

Rules of eligibility

1. Participation in the award of procurement or grant contracts financed under a Community instrument shall be open to all legal persons who are established in a Member State of the European Community, in an official candidate country as recognised by the European Community or in a Member State of the European Economic Area.

2. Participation in the award of procurement or grant contracts financed under a Community instrument with thematic scope, as defined in Annex I, Part A, shall be open to all legal persons who are established in a developing country, as specified in the OECD Development Assistance Committee list set out in Annex II, in addition to those legal persons already eligible by virtue of the instrument concerned.

3. Participation in the award of procurement or grant contracts financed under a Community instrument with geographical scope, as defined in Annex I, Part B, shall be open to all legal persons who are established in a developing country as specified in the OECD Development Assistance Committee list set out in Annex II and who are expressly mentioned as eligible, and to those already stated to be eligible by the instrument concerned.

4. Participation in the award of procurement or grant contracts financed under a Community instrument shall be open to all legal persons who are established in any country other than those referred in paragraphs 1, 2 and 3 of this Article, where reciprocal access to their external assistance has been established pursuant to Article 6.

5. Participation in the award of procurement or grant contracts financed under a Community instrument shall be open to international organisations.

6. The above is without prejudice to the participation of categories of organisations eligible for the award of any contract, or to the exception set out in Article 114(1) of the Financial Regulation.

⁽²⁾ OJ L 357, 31.12.2002, p. 1. Regulation as amended by Regulation (EC, Euratom) No 1261/2005 (OJ L 201, 2.8.2005, p. 3).

*Article 4***Experts**

All experts engaged by tenderers as defined in Articles 3 and 8 may be of any nationality. This Article is without prejudice to the qualitative and financial requirements set out in the Community's procurement rules.

*Article 5***Rules of origin**

All supplies and materials purchased under a contract financed under a Community instrument must originate from the Community or from an eligible country as defined in Articles 3 and 7 herein. The term 'origin' for the purpose of this Regulation is defined in the relevant Community legislation on rules of origin for customs purposes.

*Article 6***Reciprocity with third countries**

1. Reciprocal access to the Community's external assistance shall be granted for a country falling within the scope of Article 3(4), whenever such country grants eligibility on equal terms to the Member States and to the recipient country concerned.

2. The granting of reciprocal access to the Community's external assistance shall be based on a comparison between the EU and other donors and shall proceed at sectoral level, as defined by the OECD Development Assistance Committee categories, or at country level, regardless of whether the country concerned is a donor or a recipient country. The decision to grant such reciprocity to a donor country shall be based on the transparency, consistency and proportionality of the aid provided by that donor, including its qualitative and quantitative nature.

3. Reciprocal access to the Community's external assistance shall be established by means of a specific decision concerning a given country or a given regional group of countries. Such a decision shall be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾ under the procedures and relevant committee associated with the act concerned. The right of the European Parliament to be regularly informed pursuant to Article 7(3) of that Decision shall be fully respected. Such a decision shall run for a minimum period of one year.

4. Reciprocal access to the Community's external assistance in the least developed countries as listed in Annex II shall be automatically granted to the third countries listed in Annex III.

5. The recipient countries shall be consulted as part of the procedure described in paragraphs 1, 2 and 3.

*Article 7***Derogations from the rules of eligibility and origin**

1. In duly substantiated exceptional cases, the Commission may extend eligibility to legal persons from a country not eligible under Article 3.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

2. In duly substantiated exceptional cases, the Commission may allow the purchase of supplies and materials originating from a country not eligible under Article 3.

3. Derogations as provided for in paragraphs 1 and 2 may be justified on the basis of the unavailability of products and services in the markets of the countries concerned, for reasons of extreme urgency, or if the eligibility rules would make the realisation of a project, a programme or an action impossible or exceedingly difficult.

*Article 8***Operations involving international organisations or co-financing**

1. Whenever Community funding covers an operation implemented through an international organisation, participation in the appropriate contractual procedures shall be open to all legal persons who are eligible pursuant to Article 3 as well as to all legal persons who are eligible pursuant to the rules of that organisation, care being taken to ensure that equal treatment is afforded to all donors. The same rules shall apply in respect of supplies, materials and experts.

2. Whenever Community funding covers an operation co-financed with a third country, subject to reciprocity as defined in Article 6, or with a regional organisation, or with a Member State, participation in the appropriate contractual procedures shall be open to all legal persons who are eligible pursuant to Article 3 as well as to all legal persons who are eligible under the rules of such third country, regional organisation or Member State. The same rules shall apply in respect of supplies, materials and experts.

3. As far as food aid operations are concerned, the application of this Article shall be limited to emergency operations.

*Article 9***Humanitarian aid and NGOs**

1. For the purposes of humanitarian aid, within the meaning of Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid ⁽²⁾ and for the purposes of aid channelled directly through NGOs, within the meaning of Council Regulation (EC) No 1658/98 of 17 July 1998 on co-financing operations with European non-governmental development organisations (NGOs) in fields of interest to the developing countries ⁽³⁾, the provisions of Article 3 shall not apply to the eligibility criteria established for the selection of grant beneficiaries.

⁽²⁾ OJ L 163, 2.7.1996, 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).

⁽³⁾ OJ L 213, 30.7.1998, p. 1. Regulation as amended by Regulation (EC) No 1882/2003.

2. Beneficiaries of these grants shall abide by the rules established in this Regulation where the implementation of the assisted humanitarian action and aid channelled directly through NGOs within the meaning of Regulation (EC) no 1658/98 requires the award of procurement contracts.

Article 10

Respect for core principles and strengthening local markets

1. In order to accelerate the eradication of poverty through the promotion of local capacities, markets and purchases, special consideration shall be given to local and regional procurement in partner countries.

2. Tenderers who have been awarded contracts shall respect internationally agreed core labour standards, e.g. the ILO core labour standards, conventions on freedom of association and collective bargaining, elimination of forced and compulsory labour, elimination of discrimination in respect of employment and occupation, and the abolition of child labour.

3. Access by developing countries to Community external assistance shall be rendered possible by all such technical assistance as is deemed appropriate.

Article 11

Implementation of the Regulation

This Regulation amends and regulates the relevant parts of all existing Community instruments listed in Annex I. The Commission shall amend Annexes II to IV to this Regulation from time to time to take account of any amendments to OECD texts.

Article 12

Entry into force

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

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

Done at Strasbourg, 14 December 2005.

For the European Parliament
The President
J. BORRELL FONTELLES

For the Council
The President
C. CLARKE

ANNEX I

The following amendments are made to the Community instruments listed hereafter.

PART A – Community instruments with a thematic scope

- (1) Regulation (EC) No 1568/2003 of the European Parliament and of the Council of 15 July 2003 on aid to fight poverty diseases (HIV/AIDS, tuberculosis and malaria) in developing countries ⁽¹⁾:

— in Article 5(3) the following sentence is added:

‘Participation in contractual procedures implemented through an international organisation or co-financed with a third country is defined in Regulation (EC) No 2110/2005 of the European Parliament and of the Council of 14 December 2005 on access to Community external assistance ^(*).

^(*) OJ L 344, 27.12.2005, p. 1.’;

— Article 8 is replaced by the following:

‘Article 8

1. Eligibility for participation in tendering procedures under this Regulation shall be determined in accordance with the rules of eligibility, and the derogations therefrom, set out in Regulation (EC) No 2110/2005.

2. The origin of supplies and materials purchased under this Regulation shall be determined in accordance with the rules of origin, and the derogations therefrom, set out in Regulation (EC) No 2110/2005.’

- (2) Regulation (EC) No 1567/2003 of the European Parliament and of the Council of 15 July 2003 on aid for policies and actions on reproductive and sexual health and rights in developing countries ⁽²⁾:

— in Article 5(3) the following sentence is added:

‘Participation in contractual procedures implemented through an international organisation or co-financed with a third country is defined in Regulation (EC) No 2110/2005 of the European Parliament and of the Council of 14 December 2005 on access to Community external assistance ^(*).

^(*) OJ L 344, 27.12.2005, p. 1.’;

— Article 8 is replaced by the following:

‘Article 8

1. Eligibility for participation in tendering procedures under this Regulation shall be determined in accordance with the rules of eligibility, and the derogations therefrom, set out in Regulation (EC) No 2110/2005.

2. The origin of supplies and materials purchased under this Regulation shall be determined in accordance with the rules of origin, and the derogations therefrom, set out in Regulation (EC) No 2110/2005.’

⁽¹⁾ OJ L 224, 6.9.2003, p. 7.

⁽²⁾ OJ L 224, 6.9.2003, p. 1.

- (3) Regulation (EC) No 1724/2001 of the European Parliament and of the Council of 23 July 2001 concerning action against anti-personnel landmines in developing countries ⁽¹⁾:

— Article 4(2) is replaced by the following:

‘2. Eligibility for participation in tendering procedures under this Regulation shall be determined in accordance with the rules of eligibility, and the derogations therefrom, set out in Regulation (EC) No 2110/2005 of the European Parliament and of the Council of 14 December 2005 on access to Community external assistance (*).

—————
(*) OJ L 344, 27.12.2005, p. 1.’;

— in Article 8(2) the following sentence is added:

‘Participation in contractual procedures implemented through an international organisation or co-financed with a third country is defined in Regulation (EC) No 2110/2005.’

- (4) Regulation (EC) No 2493/2000 of the European Parliament and of the Council of 7 November 2000 on measures to promote the full integration of the environmental dimension in the development process of developing countries ⁽²⁾:

— in Article 5(3) the following sentence is added:

‘Participation in contractual procedures implemented through an international organisation or co-financed with a third country is defined in Regulation (EC) No 2110/2005 of the European Parliament and of the Council of 14 December 2005 on access to Community external assistance (*).

—————
(*) OJ L 344, 27.12.2005, p. 1.’;

— Article 8(8) is replaced by the following:

‘8. Eligibility for participation in tendering procedures under this Regulation shall be determined in accordance with the rules of eligibility, and the derogations therefrom, set out in Regulation (EC) No 2110/2005.’;

— Article 8(9) is replaced by the following:

‘9. The origin of supplies and materials purchased under this Regulation shall be determined in accordance with the rules of origin, and the derogations therefrom, set out in Regulation (EC) No 2110/2005.’

- (5) Regulation (EC) No 2494/2000 of the European Parliament and of the Council of 7 November 2000 on measures to promote the conservation and sustainable management of tropical forests and other forests in developing countries ⁽³⁾:

— in Article 6(3) the following sentence is added:

‘Participation in contractual procedures implemented through an international organisation or co-financed with a third country is defined in Regulation (EC) No 2110/2005 of the European Parliament and of the Council of 14 December 2005 on access to Community external assistance (*).

—————
(*) OJ L 344, 27.12.2005, p. 1.’;

— Article 9(8) is replaced by the following:

‘8. Eligibility for participation in tendering procedures under this Regulation shall be determined in accordance with the rules of eligibility, and the derogations therefrom, set out in Regulation (EC) No 2110/2005.’;

—————
⁽¹⁾ OJ L 234, 1.9.2001, p. 1.

⁽²⁾ OJ L 288, 15.11.2000, p. 1.

⁽³⁾ OJ L 288, 15.11.2000, p. 6.

— Article 9(9) is replaced by the following:

‘9. The origin of supplies and materials purchased under this Regulation shall be determined in accordance with the rules of origin, and the derogations therefrom, set out in Regulation (EC) No 2110/2005.’

- (6) Council Regulation (EC) No 975/1999 of 29 April 1999 laying down the requirements for the implementation of development cooperation operations which contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms ⁽¹⁾:

— Article 5 is replaced by the following:

‘Article 5

Eligibility for contracts shall be determined in accordance with the rules of eligibility, and the derogations therefrom, set out in Regulation (EC) No 2110/2005 of the European Parliament and of the Council of 14 December 2005 on access to Community external assistance ^(*).

^(*) OJ L 344, 27.12.2005, p. 1.’;

— Article 8 is replaced by the following:

‘Article 8

1. Eligibility for participation in tendering procedures under this Regulation shall be determined in accordance with the rules of eligibility, and the derogations therefrom, set out in Regulation (EC) No 2110/2005.

2. The origin of supplies and materials purchased under this Regulation shall be determined in accordance with the rules of origin, and the derogations therefrom, set out in Regulation (EC) No 2110/2005.’

- (7) Council Regulation (EC) No 2836/98 of 22 December 1998 on integrating of gender issues in development cooperation ⁽²⁾:

— in Article 5(4) the following sentence is added:

‘Participation in contractual procedures implemented through an international organisation or co-financed with a third country is defined in Regulation (EC) No 2110/2005 of the European Parliament and of the Council of 14 December 2005 on access to Community external assistance ^(*).

^(*) OJ L 344, 27.12.2005, p. 1.’;

— Article 7(6) is replaced by the following:

‘6. Eligibility for participation in tendering procedures under this Regulation shall be determined in accordance with the rules of eligibility, and the derogations therefrom, set out in Regulation (EC) No 2110/2005.’;

— Article 7(7) is replaced by the following:

‘7. The origin of supplies and materials purchased under this Regulation shall be determined in accordance with the rules of origin, and the derogations therefrom, set out in Regulation (EC) No 2110/2005.’

⁽¹⁾ OJ L 120, 8.5.1999, p. 1. Regulation as last amended by Regulation (EC) No 2240/2004 of the European Parliament and of the Council (OJ L 390, 31.12.2004, p. 3).

⁽²⁾ OJ L 354, 30.12.1998, p. 5. Regulation as amended by Regulation (EC) No 1882/2003.

- (8) Council Regulation (EC) No 1658/98 of 17 July 1998 on co-financing operations with European non-governmental development organisations (NGOs) in fields of interest to the developing countries ⁽¹⁾:

— Article 3(1) second indent is replaced by the following:

‘— They must have their headquarters in an eligible country and the headquarters must be the main centre for decisions relating to the co-financed operations, as defined in Regulation (EC) No 2110/2005 of the European Parliament and of the Council of 14 December 2005 on access to Community external assistance ^(*).

^(*) OJ L 344, 27.12.2005, p. 1.’;

— Article 3(1) third indent is replaced by the following:

‘— The majority of their funding must originate in an eligible country as defined in Regulation (EC) No 2110/2005.’;

— in Article 3 the following paragraph is added:

‘3. The origin of supplies and materials purchased under this Regulation shall be determined in accordance with the rules of origin, and the derogations therefrom, set out in Regulation (EC) No 2110/2005.’

- (9) Council Regulation (EC) No 2046/97 of 13 October 1997 on north-south cooperation in the campaign against drugs and drug addiction ⁽²⁾:

— Article 5 is replaced by the following:

Article 5

The cooperation partners eligible for financial support under this Regulation shall be regional and international organisations, in particular UNDCP, non-governmental organisations, national, provincial and local government departments and agencies, community-based organisations, institutes and public and private operators. Eligibility for contracts shall be determined in accordance with the rules of eligibility, and the derogations therefrom, set out in Regulation (EC) No 2110/2005 of the European Parliament and of the Council of 14 December 2005 on access to Community external assistance ^(*).

^(*) OJ L 344, 27.12.2005, p. 1.’;

— in Article 6(5) the following sentence is added:

‘Participation in contractual procedures implemented through an international organisation or co-financed with a third country is defined in Regulation (EC) No 2110/2005.’;

— Article 9(7) is replaced by the following:

‘7. Eligibility for participation in tendering procedures under this Regulation shall be determined in accordance with the rules of eligibility, and the derogations therefrom, set out in Regulation (EC) No 2110/2005.’;

— Article 9(8) is replaced by the following:

‘8. The origin of supplies and materials purchased under this Regulation shall be determined in accordance with the rules of origin, and the derogations therefrom, set out in Regulation (EC) No 2110/2005.’

⁽¹⁾ OJ L 213, 30.7.1998, p. 1. Regulation as amended by Regulation (EC) No 1882/2003.

⁽²⁾ OJ L 287, 21.10.1997, p. 1. Regulation as amended by Regulation (EC) No 1882/2003.

(10) Council Regulation (EC) No 2258/96 of 22 November 1996 on rehabilitation and reconstruction operations in developing countries ⁽¹⁾:

— in Article 4(4) the following sentence is added:

'Participation in contractual procedures implemented through an international organisation or co-financed with a third country is defined in Regulation (EC) No 2110/2005 of the European Parliament and of the Council of 14 December 2005 on access to Community external assistance (*).

(*) OJ L 344, 27.12.2005, p. 1.;

— Article 6(7) is replaced by the following:

'7. Eligibility for participation in tendering procedures under this Regulation shall be determined in accordance with the rules of eligibility, and the derogations therefrom, set out in Regulation (EC) No 2110/2005.;

— Article 6(8) is replaced by the following:

'8. The origin of supplies and materials purchased under this Regulation shall be determined in accordance with the rules of origin, and the derogations therefrom, set out in Regulation (EC) No 2110/2005.'

(11) Council Regulation (EC) No 1292/96 of 27 June 1996 on food-aid policy and food-aid management and special operations in support of food security ⁽²⁾:

— Article 9 is replaced by the following:

'Article 9

1. The countries eligible for Community aid for operations under this Regulation are listed in the Annex. In this connection, priority shall be given to the poorest sections of the population and to low-income countries with serious food shortages.

The Council, acting by a qualified majority on a proposal from the Commission, may amend that list.

Eligibility for contracts shall be determined in accordance with the rules of eligibility, and the derogations therefrom, set out in Regulation (EC) No 2110/2005 of the European Parliament and of the Council of 14 December 2005 on access to Community external assistance (*).

2. Non-profit-making non-governmental organisations (NGOs) eligible for direct or indirect Community financing for the implementation of operations under this Regulation must meet the following criteria:

- (a) they must be autonomous organisations in an eligible country under the laws in force in that country;
- (b) they must have their headquarters in an eligible country. The headquarters must be the effective decision-making centre for all co-financed operations;
- (c) they must show that they can successfully carry out food-aid operations; in particular through:
 - their administrative and financial management capacity,
 - their technical and logistical capacity to handle the proposed operation,
 - the results of operations implemented by the relevant NGOs carried out with Community finance or finance from the Member States,

⁽¹⁾ OJ L 306, 28.11.1996, p. 1. Regulation as amended by Regulation (EC) No 1882/2003.

⁽²⁾ OJ L 166, 5.7.1996, p. 1. Regulation as last amended by Regulation (EC) No 1882/2003.

- their experience in the field of food aid and food security,
 - their presence in the recipient country and their knowledge of that country or of developing countries;
- (d) they must undertake to comply with the conditions laid down by the Commission for the allocation of food aid.

(*) OJ L 344, 27.12.2005, p. 1.;

- in Article 10(2) the following sentence is added:

'Participation in contractual procedures implemented through an international organisation or co-financed with a third country is defined in Regulation (EC) No 2110/2005.;

- Article 11(1) is replaced by the following:

'1. Products shall be mobilised in the recipient country or in one of the developing countries (listed in the Annex), if possible one belonging to the same geographical region as the recipient country. The origin of supplies and materials purchased under this Regulation shall be determined in accordance with the rules of origin, and the derogations therefrom, set out in Regulation (EC) No 2110/2005.;

- Article 11(3) is deleted;

- Article 11(4) becomes Article 11(3);

- Article 17 first subparagraph is replaced by the following:

'Eligibility for participation in tendering procedures under this Regulation shall be determined in accordance with the rules of eligibility, and the derogations therefrom, set out in Regulation (EC) No 2110/2005.'

PART B – Community instruments with a geographical scope

- (12) Regulation (EC) No 257/2001 of the European Parliament and of the Council of 22 January 2001 regarding the implementation of measures to promote economic and social development in Turkey ⁽¹⁾:

- in Article 5(5) the following sentence is added:

'Participation in contractual procedures implemented through an international organisation or co-financed with a third country is also defined in Regulation (EC) No 2110/2005 of the European Parliament and of the Council of 14 December 2005 on access to Community external assistance (*).

(*) OJ L 344, 27.12.2005, p. 1.;

- in Article 6(7) the following sentence is added:

'Eligibility for participation in tendering procedures under this Regulation shall be further determined in accordance with the rules of eligibility, and the derogations therefrom, set out in Regulation (EC) No 2110/2005.;

- in Article 6(8) the following sentence is added:

'The origin of supplies and materials purchased under this Regulation shall be further defined in accordance with the rules of origin, and the derogations therefrom, set out in Regulation (EC) No 2110/2005.'

(1) OJ L 39, 9.2.2001, p. 1.

- (13) Regulation (EC) No 2130/2001 of the European Parliament and of the Council of 29 October 2001 on operations to aid uprooted people in Asia and Latin American developing countries ⁽¹⁾:

— in Article 7(3) the following sentence is added:

'Participation in contractual procedures implemented through an international organisation or co-financed with a third country is also defined in Regulation (EC) No 2110/2005 of the European Parliament and of the Council of 14 December 2005 on access to Community external assistance (*).

(*) OJ L 344, 27.12.2005, p. 1.;

— Article 10(2) is replaced by the following:

'2. Community assistance is available to partners who have their main office in a country eligible under this Regulation, as well as under Regulation (EC) No 2110/2005, provided that this office is the actual centre directing operations relating to their business activities. In exceptional cases, this office may be located in another third country.;

— in Article 13(1) the following sentence is added:

'Eligibility for participation in tendering procedures under this Regulation shall be further determined in accordance with the rules of eligibility, and the derogations therefrom, set out in Regulation (EC) No 2110/2005.;

— in Article 13(2) the following sentence is added:

'The origin of supplies and materials purchased under this Regulation shall be further determined in accordance with the rules of origin, and the derogations therefrom, set out in Regulation (EC) No 2110/2005.'

- (14) Regulation (EC) No 1726/2000 of the European Parliament and of the Council of 29 June 2000 on development cooperation with South Africa ⁽²⁾:

— Article 7(6) is replaced by the following:

'6. Eligibility for participation in tendering procedures under this Regulation shall be determined in accordance with the rules of eligibility, and the derogations therefrom, set out in Regulation (EC) No 2110/2005 of the European Parliament and of the Council of 14 December 2005 on access to Community external assistance (*).

(*) OJ L 344, 27.12.2005, p. 1.;

— Article 7(7) is replaced by the following:

'7. The origin of supplies and materials purchased under this Regulation shall be determined in accordance with the rules of origin, and derogations therefrom, set out in Regulation (EC) No 2110/2005.'

- (15) Council Regulation (EC) No 1734/94 of 11 July 1994 on financial and technical cooperation with the West Bank and the Gaza Strip ⁽³⁾:

— in Article 2(4) the following sentence is added:

'Participation in contractual procedures implemented through an international organisation is further defined in Regulation (EC) No 2110/2005 of the European Parliament and of the Council of 14 December 2005 on access to Community external assistance (*).

(*) OJ L 344, 27.12.2005, p. 1.'

⁽¹⁾ OJ L 287, 31.10.2001, p. 3. Regulation as amended by Regulation (EC) No 107/2005 (OJ L 23, 26.1.2005, p. 1).

⁽²⁾ OJ L 198, 4.8.2000, p. 1. Regulation as amended by Regulation (EC) No 1934/2004 (OJ L 338, 13.11.2004, p. 1).

⁽³⁾ OJ L 182, 16.7.1994, p. 4. Regulation as last amended by Regulation (EC) No 669/2004 of the European Parliament and of the Council (OJ L 105, 14.4.2004, p. 1).

ANNEX II

Development Assistance Committee list of aid recipients — as at 1 January 2003

Part I: Developing Countries and Territories (Official Development Assistance)					Part II: Countries and Territories in Transition (Official Aid)	
Least Developed Countries (LDCs)	Other Low-Income Countries (Other LICs) (per capita GNI <\$745 in 2001)	Lower Middle-Income Countries (LMICs) (per capita GNI \$746-\$9275 in 2001)	Upper middle-Income Countries (UMICs) (per capita GNI \$2976-\$9205 in 2001)	High-Income Countries (HICs) (per capita GNI >\$9206 in 2001)	Central and Eastern European Countries and New Independent States of the former Soviet Union (CEECs/NIS)	More Advanced Developing Countries and Territories
Afghanistan	Armenia (*)	Albania (*)	Botswana	Bahrain	Belarus (*)	Aruba (**)
Angola	Azerbaijan (*)	Algeria	Brazil		Bulgaria (*)	Bahamas
Bangladesh	Cameroon	Belize	Chile		Czech Republic (*)	Bermuda (**)
Benin	Congo, Rep.	Bolivia	Cook Islands		Estonia (*)	Brunei
Bhutan	Côte d'Ivoire	Bosnia and Herzegovina	Costa Rica		Hungary (*)	Cayman Islands (**)
Burkina Faso	Georgia (*)	Burkina Faso	Croatia		Latvia (*)	Chinese Taipei
Burundi	Ghana	China	Dominica		Lithuania (*)	Cyprus
Cambodia	India	Colombia	Gabon		Poland (*)	Falkland Islands (**)
Cape Verde	Indonesia	Cuba	Grenada		Romania (*)	French Polynesia (**)
Central African Republic	Kenya	Dominican Republic	Lebanon		Russia (*)	Gibraltar (**)
Chad	Korea, Democratic Republic	Ecuador	Malaysia		Slovak Republic (*)	Hong Kong, China (**)
Comoros	Kyrgyz Rep. (*)	Egypt	Mauritius		Ukraine (*)	Israel
Congo, Dem. Rep.	Moldova (*)	El Salvador	Mayotte (**)			Korea
Djibouti	Mongolia	Fiji	Nauru			Kuwait
Equatorial Guinea	Nicaragua	Guaemala	Panama			Libya
Eritrea	Nigeria	Guyama	St Helena (**)			Macao (**)
Ethiopia	Pakistan	Honduras	St Lucia			Malta
Gambia	Papua New Guinea	Iran	Venezuela			Netherlands Antilles (*)
Guinea	Tajikistan (*)	Iraq				New Caledonia (**)
Guinea-Bissau	Uzbekistan (*)	Jamaica				Qatar
Haiti	Viet Nam	Jordan				Singapore
Kiribati	Zimbabwe	Kazakhstan (*)				Slovenia
Laos		Macedonia (former Yugoslav Republic)				United Arab Emirates
Lesotho		Marshall Islands				Virgin Islands (UK) (**)
Liberia		Micronesia, Federated States				
Madagascar		Morocco				
Malawi		Namibia				
Maldives		Niue				
Mali		Palestinian Administered Areas				
Mauritania		Paraguay				
Mozambique		Peru				
Myanmar		Philippines				
Nepal		Serbia & Montenegro				
Niger		South Africa				
Rwanda		Sri Lanka				
Samoa		St Vincent & Grenadines				
Sao Tome and Principe		Suriname				
Senegal		Swaziland				
Sierra Leone		Syria				
Salomon Islands		Thailand				
Somalia		Tokelau (**)				
Sudan		Tongo				
Tanzania		Tunisia				
Timor-Leste		Turkey				
Togo		Turkmenistan (*)				
Tuvalu		Wallis and Futuma (**)				
Uganda						
Vanuatu						
Yemen						
Zambia						

(*) Central and Eastern European countries and New Independent States of the former Soviet union (CHEECs/NIS).

(**) Territory;

*ANNEX III***LIST OF OECD DEVELOPMENT ASSISTANCE COMMITTEE MEMBERS**

Australia, Austria, Belgium, Canada, Denmark, European Commission, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom, United States.

ANNEX IV

Extracts from the Recommendation on Untying Official Development Assistance to the Least Developed Countries by the Development Assistance Committee of the Organisation for Economic Cooperation and Development (OECD/DAC), March 2001**II. Implementation***(a) Coverage*

7. Untying is a complex process. Different approaches are required for different categories of ODA, and actions by Members to implement the Recommendation will vary in coverage and timing. Bearing this in mind, DAC Members will untie their ODA to the Least Developed Countries to the greatest extent possible and in accordance with the criteria and procedures set out in this Recommendation:
 - (i) DAC Members agree to untie, by 1 January 2002, ODA to the Least Developed Countries in the following areas: balance of payments and structural adjustment support; debt forgiveness; sector and multi-sector programme assistance; investment project aid; import and commodity support; commercial services contracts, and ODA to Non-Governmental Organisations for procurement related activities;
 - (ii) in respect of investment-related technical cooperation and free standing technical cooperation, it is recognised that DAC Members' policies may be guided by the importance of maintaining a basic sense of national involvement in donor countries alongside the objective of calling upon partner countries' expertise, bearing in mind the objectives and principles of this Recommendation. Free standing technical cooperation is excluded from the coverage of the Recommendation;
 - (iii) in respect of food aid, it is recognised that DAC Members' policies may be guided by the discussions and agreements in other international for a governing the provision of food aid, bearing in mind the objectives and principles of this Recommendation.
 8. This Recommendation does not apply to activities with a value of less than SDR 700 000 (SDR 130 000 in the case of investment-related technical cooperation).
-

**REGULATION (EC) No 2111/2005 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 14 December 2005**

**on the establishment of a Community list of air carriers subject to an operating ban within the
Community and on informing air transport passengers of the identity of the operating air carrier, and
repealing Article 9 of Directive 2004/36/EC**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

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

Whereas:

- (1) Action by the Community in the field of air transport should aim, as a priority, at ensuring a high level of protection for passengers from safety risks. Moreover, full account should be taken of the requirements of consumer protection in general.
- (2) A Community list of air carriers that do not meet relevant safety requirements should be brought to the notice of passengers so as to ensure the utmost transparency. This Community list should be based on common criteria drawn up at Community level.
- (3) Air carriers included in the Community list should be subject to an operating ban. The operating bans included in the Community list should apply throughout the territory of the Member States to which the Treaty applies.
- (4) Air carriers that do not enjoy traffic rights in one or more of the Member States may nonetheless fly to and from the Community when their aircraft, with or without crew, are leased by companies that do enjoy such rights. Provision should be made for an operating ban included in the Community list to apply equally to such air carriers, since these air carriers could otherwise operate in the Community while not complying with the relevant safety standards.
- (5) An air carrier which is subject to an operating ban could be permitted to exercise traffic rights by using wet-leased aircraft of an air carrier which is not subject to an operating ban, provided that the relevant safety standards are complied with.

- (6) The procedure for updating the Community list should allow for decisions to be taken swiftly, in order to provide adequate and up-to-date safety information to air passengers and to guarantee that air carriers that have remedied safety deficiencies are taken off the list as soon as possible. At the same time, the procedures should respect the air carrier's rights of defence and should be without prejudice to international agreements and conventions to which the Member States or the Community are parties, in particular the 1944 Chicago Convention on International Civil Aviation. The implementing measures on matters of procedure, to be adopted by the Commission, should notably cater for these requirements.

- (7) When an operating ban has been imposed on an air carrier, appropriate action should be taken with a view to assisting that air carrier in remedying the deficiencies that gave rise to that ban.

- (8) In exceptional cases, Member States should be allowed to take unilateral measures. In cases of urgency and when confronted with an unforeseen safety problem, Member States should have the possibility to impose immediately an operating ban in respect of their own territory. Moreover, where the Commission has decided not to include an air carrier in the Community list, Member States should also be able to impose or maintain an operating ban in view of a safety problem which does not exist in the other Member States. Member States should make restrictive application of these possibilities, taking account of the Community interest and with a view to presenting a common approach in respect of aviation safety. This should be without prejudice to Article 8 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 ⁽³⁾ and to Article 10 of Regulation (EC) No 1592/2002 of the European Parliament and of the Council of 15 July 2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency ⁽⁴⁾.

⁽¹⁾ Opinion of 28 September 2005 (not yet published in the Official Journal).

⁽²⁾ Opinion of the European Parliament of 16 November 2005 (not yet published in the Official Journal) and Council Decision of 5 December 2005.

⁽³⁾ OJ L 373, 31.12.1991, p. 4. Regulation as last amended by Commission Regulation (EC) No 2871/2000 (OJ L 333, 29.12.2000, p. 47).

⁽⁴⁾ OJ L 240, 7.9.2002, p. 1. Regulation as last amended by Commission Regulation (EC) No 1701/2003 (OJ L 243, 27.9.2003, p. 5).

- (9) Information on the safety of air carriers should be published in an effective manner, such as through use of the Internet.
- (10) In order for the competitive framework in air transport to yield the greatest possible benefits for companies and passengers, it is important that consumers receive the necessary information to be able to make informed choices.
- (11) The identity of the air carrier or carriers actually operating the flight is an essential piece of information. However, consumers concluding a contract of carriage, which could comprise both an outward and a return flight, are not always informed about the identity of the air carrier or carriers actually operating the flight or flights concerned.
- (12) Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours ⁽¹⁾ requires certain information to be made available to consumers, but that information does not include the identity of the operating air carrier.
- (13) Council Regulation (EEC) No 2299/89 of 24 July 1989 on a code of conduct for computer reservation systems (CRS) ⁽²⁾ entitles consumers booking a flight via a computer reservation system to be informed of the identity of the operating air carrier. Nevertheless, even in scheduled air transport, industry practices exist, such as wet leasing, or code sharing if booked without a CRS, where the air carrier which has sold the flight under its name does not actually operate it and where there is currently no legal right for the passenger to be informed of the identity of the air carrier actually performing the service.
- (14) These practices increase flexibility and allow a better provision of services to passengers. Moreover, a certain number of last-minute changes, in particular for technical reasons, is unavoidable and contributes to the safety of air transport. This flexibility should, however, be balanced by verification that the companies actually operating the flights meet safety requirements and by transparency for consumers in order to guarantee them the right of making an informed choice. A fair balance between the commercial viability of air carriers and passenger access to information should be sought.
- (15) Air carriers should pursue a policy of transparency vis-à-vis passengers regarding safety-related information. Publishing such information should contribute to passenger awareness of the reliability of air carriers in safety terms.
- (16) Air carriers are responsible for reporting safety deficiencies to the national air safety authorities as well as for addressing such deficiencies without delay. Air and ground crew are expected to take appropriate action when safety deficiencies are apparent to them. It would be contrary to the interests of aviation safety if staff were to be penalised for doing so, as follows from Article 8(4) of Directive 2003/42/EC of the European Parliament and of the Council of 13 June 2003 on occurrence reporting in civil aviation ⁽³⁾.
- (17) In addition to the situations covered by Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights ⁽⁴⁾, passengers should be offered the right to reimbursement or to re-routing in certain specific other situations falling within the scope of this Regulation, if there is a sufficiently close connection with the Community.
- (18) In addition to the rules set out in this Regulation, the implications of changes to the identity of the operating carrier for the performance of the contract of carriage should be governed by the laws of the Member States applicable to contracts and by relevant Community law, in particular Council Directives 90/314/EEC and 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ⁽⁵⁾.
- (19) This Regulation is part of a legislative process pursuing an efficient and coherent approach to reinforcing air safety in the Community, in which the European Aviation Safety Agency plays an important role. With an extension of the competencies of this Agency, such as in respect of third-country aircraft, its role under this Regulation could be further expanded. Special attention should be given to further improving the quality and quantity of safety inspections of aircraft and to harmonising these inspections.
- (20) Where there is a risk to safety that has not been adequately resolved by the Member State(s) concerned, the Commission should have the possibility of adopting immediate measures on a provisional basis. In such cases, the committee assisting the Commission in its work under this Regulation should act in accordance with the advisory procedure provided for in Article 3 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽⁶⁾.

⁽¹⁾ OJ L 158, 23.6.1990, p. 59.

⁽²⁾ OJ L 220, 29.7.1989, p. 1. Regulation as last amended by Regulation (EC) No 323/1999 (OJ L 40, 13.2.1999, p. 1).

⁽³⁾ OJ L 167, 4.7.2003, p. 23.

⁽⁴⁾ OJ L 46, 17.2.2004, p. 1.

⁽⁵⁾ OJ L 95, 21.4.1993, p. 29.

⁽⁶⁾ OJ L 184, 17.7.1999, p. 23.

(21) In all other cases, the committee assisting the Commission in its work under this Regulation should act in accordance with the regulatory procedure provided for in Article 5 of Decision 1999/468/EC.

(22) Since the relation between this Regulation and Article 9 of 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 ⁽¹⁾ would otherwise be unclear, that Article should be repealed with a view to providing legal certainty.

(23) Member States should lay down rules on penalties applicable to infringements of the provisions of Chapter III of this Regulation and ensure that these penalties are applied. The penalties, which may be of a civil or administrative nature, should be effective, proportionate and dissuasive.

(24) The Commission should analyse the application of this Regulation and, after a sufficient period, report on the efficiency of its provisions.

(25) Any competent civil aviation authority in the Community may decide that air carriers, including those not operating in the territory of the Member States to which the Treaty applies, might lodge a request with that authority to subject the air carrier so requesting to systematic checks in order to verify its likelihood of compliance with the relevant safety standards.

(26) This Regulation should not preclude the Member States from introducing a quality labelling system for air carriers at national level, for which the criteria might include considerations other than minimum safety requirements, in accordance with Community law.

(27) 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. Such arrangements have yet to enter into operation,

HAVE ADOPTED THIS REGULATION:

⁽¹⁾ OJ L 143, 30.4.2004, p. 76.

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

1. This Regulation establishes rules:

(a) on the establishment and publication of a Community list, based on common criteria, of air carriers which, for safety reasons, are subject to an operating ban in the Community;

and

(b) on informing air passengers of the identity of the air carrier operating the flights on which they travel.

2. The application of this Regulation 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.

3. Application of this Regulation to Gibraltar airport shall be suspended until the arrangements included in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 enter 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 Regulation, the following definitions shall apply:

(a) 'air carrier' means an air transport undertaking with a valid operating licence or equivalent;

(b) 'contract of carriage' means a contract for or including air transport services, including one where the carriage is composed of two or more flights operated by the same or different air carriers;

(c) 'air carriage contractor' means the carrier which concludes a contract of carriage with a passenger or, where the contract comprises a package, the tour operator. Any ticket seller shall also be deemed an air carriage contractor;

- (d) 'ticket seller' means the seller of an air ticket who arranges a contract of carriage with a passenger, whether for a flight on its own or as part of a package, other than an air carrier or a tour operator;
- (e) 'operating air carrier' means an air carrier that performs or intends to perform a flight under a contract of carriage with a passenger, or on behalf of another person, legal or natural, having a contract of carriage with that passenger;
- (f) 'operating authorisation or technical permission' means any legislative or administrative act by a Member State, which provides either that an air carrier may operate air services to and from its airports or that an air carrier may operate in its airspace or that an air carrier may exercise traffic rights;
- (g) 'operating ban' means the refusal, suspension, revocation or restriction of an air carrier's operating authorisation or technical permission for safety reasons, or any equivalent safety measures in respect of an air carrier which has no traffic rights in the Community but whose aircraft might otherwise be operated in the Community under a lease agreement;
- (h) 'package' means those services defined in Article 2(1) of Directive 90/314/EEC;
- (i) 'reservation' means the fact that the passenger has a ticket or other proof, which indicates that the reservation has been accepted and registered by the air carriage contractor;
- (j) 'relevant safety standards' means the international safety standards contained in the Chicago Convention and its Annexes as well as, where applicable, those in relevant Community law.

CHAPTER II

COMMUNITY LIST

Article 3

Establishment of the Community List

1. With a view to reinforcing air safety, a list of air carriers that are subject to an operating ban in the Community (hereinafter referred to as the Community list) shall be established. Each Member State shall enforce, within its territory, the operating bans included in the Community list in respect of the air carriers that are the subject of those bans.

2. The common criteria for imposing an operating ban on an air carrier, which shall be based on the relevant safety standards, are set out in the Annex (and are hereinafter referred to as the common criteria). The Commission may modify the Annex, in particular in order to take account of scientific and technical developments, in accordance with the procedure referred to in Article 15(3).

3. For the purpose of establishing the Community list for the first time, each Member State shall, by 16 February 2006, communicate to the Commission the identity of the air carriers that are subject to an operating ban in its territory, together with the reasons which led to the adoption of such bans and any other relevant information. The Commission shall inform the other Member States of these operating bans.

4. Within one month of receiving the information communicated by the Member States, the Commission shall, on the basis of the common criteria, decide on the imposition of an operating ban on the air carriers concerned and shall establish the Community list of air carriers on which it has imposed an operating ban, in accordance with the procedure referred to in Article 15(3).

Article 4

Updating of the Community list

1. The Community list shall be updated:

- (a) to impose an operating ban on an air carrier and include this air carrier on the Community list, on the basis of the common criteria;
- (b) to remove an air carrier from the Community list, if the safety deficiency or deficiencies that gave rise to the inclusion of the air carrier on the Community list have been remedied and there is no other reason, on the basis of the common criteria, to maintain the air carrier on the Community list;
- (c) to modify the conditions of an operating ban imposed on an air carrier which is included on the Community list.

2. The Commission, acting on its own initiative or at the request of a Member State, shall decide to update the Community list as soon as this is required under paragraph 1, in accordance with the procedure referred to in Article 15(3) and on the basis of the common criteria. At least every three months, the Commission shall verify whether it is appropriate to update the Community list.

3. Each Member State and the European Aviation Safety Agency shall communicate to the Commission all information that may be relevant in the context of updating the Community list. The Commission shall forward all relevant information to the other Member States.

Article 5

Provisional measures for updating of the Community list

1. Where it is evident that the continued operation of an air carrier in the Community is likely to constitute a serious risk to safety, and that such a risk has not been resolved satisfactorily by means of urgent measures taken by the Member State(s) concerned in accordance with Article 6(1), the Commission may provisionally adopt the measures referred to in Article 4(1)(a) or (c), in accordance with the procedure referred to in Article 15(2).

2. As soon as possible, and at most within 10 working days, the Commission shall submit the matter to the Committee referred to in Article 15(1) and shall decide to confirm, amend, revoke or extend the measure which it has adopted under paragraph 1 of this Article, acting in accordance with the procedure referred to in Article 15(3).

Article 6

Exceptional measures

1. In cases of urgency, this Regulation shall not preclude a Member State from reacting to an unforeseen safety problem by imposing an immediate operating ban in respect of its own territory, taking into account the common criteria.

2. A decision by the Commission not to include an air carrier in the Community list in accordance with the procedure referred to in Article 3(4) or 4(2) shall not preclude a Member State from imposing or maintaining an operating ban on the air carrier concerned in view of a safety problem specifically affecting that Member State.

3. In either of the situations referred to in paragraphs 1 and 2, the Member State concerned shall immediately inform the Commission, which shall inform the other Member States. In the situation referred to in paragraph 1, the Member State concerned shall without delay submit a request to the Commission to update the Community list, in accordance with Article 4(2).

Article 7

Rights of defence

The Commission shall ensure that, when it adopts decisions as referred to in Articles 3(4), 4(2) and 5, the air carrier concerned is given the opportunity of being heard, taking into account the need, in some cases, for an urgency procedure.

Article 8

Implementing measures

1. The Commission, acting in accordance with the procedure referred to in Article 15(3), shall, where appropriate, adopt implementing measures in order to lay down detailed rules in respect of the procedures referred to in this Chapter.

2. In deciding these measures the Commission shall take due account of the need for decisions to be taken swiftly on updating the Community list and shall, where appropriate, provide the possibility of an urgency procedure.

Article 9

Publication

1. The Community list and any modification thereto shall be published immediately in the *Official Journal of the European Union*.

2. The Commission and the Member States shall take the measures necessary to facilitate public access to the Community list, as most recently updated, in particular through the use of the Internet.

3. Air carriage contractors, national civil aviation authorities, the European Aviation Safety Agency and airports in the territory of the Member States shall bring the Community list to the attention of passengers, both via their websites and, where relevant, in their premises.

CHAPTER III

INFORMATION TO PASSENGERS

Article 10

Scope

1. The provisions of this Chapter shall apply in respect of the carriage of passengers by air, where the flight is part of a contract of carriage and that carriage started in the Community, and

(a) the flight departs from an airport on territory of a Member State to which the Treaty applies;

or

(b) the flight departs from an airport in a third country and arrives at an airport on territory of a Member State to which the Treaty applies;

or

(c) the flight departs from an airport in a third country and arrives at another such airport.

2. The provisions of this Chapter shall apply whether the flight is scheduled or non-scheduled and whether the flight is part of a package or not.

3. The provisions of this Chapter shall not affect the rights of passengers under Directive 90/314/EEC and Regulation (EEC) No 2299/89.

Article 11

Information on the identity of the operating air carrier

1. Upon reservation, the air carriage contractor shall inform the passenger of the identity of the operating air carrier or carriers, whatever the means used to make the reservation.

2. Where the identity of the operating air carrier or carriers is not yet known at the time of reservation, the air carriage contractor shall ensure that the passenger is informed of the name or names of the air carrier or carriers that is or are likely to act as operating air carrier or carriers on the flight or flights concerned. In such case, the air carriage contractor shall ensure that the passenger is informed of the identity of the operating air carrier or carriers as soon as such identity is established.

3. Wherever the operating air carrier or carriers is or are changed after reservation, the air carriage contractor shall, irrespective of the reason for the change, take immediately all appropriate steps to ensure that the passenger is informed of the change as soon as possible. In all cases, passengers shall be informed at check-in, or on boarding where no check-in is required for a connecting flight.

4. The air carrier or the tour operator, as the case may be, shall ensure that the relevant air carriage contractor is informed of the identity of the operating air carrier or carriers as soon as this is known, in particular in the event of a change of such identity.

5. If a ticket seller has not been informed of the identity of the operating air carrier, it shall not be responsible for not complying with the obligations provided for in this Article.

6. The obligation of the air carriage contractor to inform passengers of the identity of the operating air carrier or carriers shall be specified in the general terms of sale applicable to the contract of carriage.

Article 12

Right to reimbursement or re-routing

1. This Regulation shall not affect the right to reimbursement or re-routing as provided for in Regulation (EC) No 261/2004.

2. In cases where Regulation (EC) No 261/2004 does not apply, and

(a) the operating air carrier notified to the passenger has been entered on the Community list and is subject to an operating ban which has led to the cancellation of the flight concerned, or which would have led to such cancellation if the flight concerned had been operated in the Community

or

(b) the operating air carrier notified to the passenger has been replaced by another operating air carrier which has been entered on the Community list and is subject to an operating ban which has led to the cancellation of the flight concerned, or which would have led to such cancellation if the flight concerned had been operated in the Community,

the air carriage contractor which is party to the contract of carriage shall offer the passenger the right to reimbursement or re-routing provided for in Article 8 of Regulation (EC) No 261/2004, provided that, where the flight has not been cancelled, the passenger has chosen not to take that flight.

3. Paragraph 2 of this Article shall apply without prejudice to Article 13 of Regulation (EC) No 261/2004.

Article 13

Penalties

Member States shall ensure compliance with the rules set out in this Chapter and shall lay down penalties for infringement of these rules. The penalties shall be effective, proportionate and dissuasive.

CHAPTER IV

FINAL PROVISIONS

Article 14

Information and amendment

By 16 January 2009, the Commission shall report to the European Parliament and to the Council on the application of this Regulation. The report shall be accompanied, where necessary, by proposals for the amendment of this Regulation.

Article 15

Committee

1. The Commission shall be assisted by the Committee referred to in Article 12 of Regulation (EEC) No 3922/91 (the Committee).

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

3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

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

4. The Commission may consult the Committee on any other matter concerning the application of this Regulation.

5. The Committee shall adopt its Rules of Procedure.

Article 16

Repeal

Article 9 of Directive 2004/36/EC is hereby repealed.

Article 17

Entry into force

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

Articles 10, 11 and 12 shall apply from 16 July 2006 and Article 13 shall apply from 16 January 2007.

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

Done at Strasbourg, 14 December 2005.

For the European Parliament
The President
J. BORRELL FONTELLES

For the Council
The President
C. CLARKE

ANNEX

Common criteria for consideration of an operating ban for safety reasons at Community level

Decisions on action at Community level shall be taken according to the merits of each individual case. Depending upon the merits of each case, a carrier or all the carriers certified in the same state might be eligible for action at Community level.

In considering whether an air carrier should be totally or partially banned, it shall be assessed whether the air carrier is meeting the relevant safety standards taking into account the following:

1. Verified evidence of serious safety deficiencies on the part of an air carrier:
 - Reports showing serious safety deficiencies, or persistent failure by the carrier to address deficiencies identified by ramp inspections performed under the SAFA programme previously communicated to the carrier.
 - Serious safety deficiencies identified within the framework of the provisions for the gathering of information in Article 3 of Directive 2004/36/EC on the safety of third-country aircraft.
 - Operating ban imposed on a carrier by a third country because of substantiated deficiencies related to international safety standards.
 - Substantiated accident-related information or serious incident-related information indicating latent systemic safety deficiencies.
 2. Lack of ability and/or willingness of an air carrier to address safety deficiencies as demonstrated by:
 - Lack of transparency or adequate and timely communication on the part of a carrier in response to an enquiry by the civil aviation authority of a Member State regarding the safety aspect of its operation.
 - Inappropriate or insufficient corrective action plan presented in response to an identified serious safety deficiency.
 3. Lack of ability and/or willingness of the authorities responsible for the oversight of an air carrier to address safety deficiencies as demonstrated by:
 - Lack of cooperation with the civil aviation authority of a Member State by the competent authorities of another state, when concerns about the safety of the operation of a carrier licensed or certified in that state have been raised.
 - Insufficient ability of the competent authorities with regulatory oversight of the carrier to implement and enforce the relevant safety standards. Particular account should be taken of the following:
 - (a) audits and related corrective action plans established under ICAO's Universal Safety Oversight Audit Programme or under any applicable Community law;
 - (b) whether the operating authorisation or technical permission of any carrier under the oversight of that state has previously been refused or revoked by another state;
 - (c) the air operator's certificate has not been issued by the competent authority of the state where the carrier has its principle place of business.
 - Insufficient ability of the competent authorities of the state in which the aircraft used by the air carrier is registered to oversee the aircraft used by the carrier in accordance with its obligations under the Chicago Convention.
-

COUNCIL REGULATION (EC) No 2112/2005
of 21 November 2005
on access to Community external assistance

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 181a thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Whereas:

- (1) The practice of tying the granting of aid, directly or indirectly, to the purchase of goods and services procured by means of that aid in the donor country reduces its effectiveness and is not coherent with a pro-poor development policy. The untying of aid is not an aim in itself, but should be used as a tool to cross-fertilise other elements in the fight against poverty, such as ownership, regional integration and capacity building, with a focus on empowering local and regional suppliers of goods and services in developing countries.
- (2) In March 2001, the Development Assistance Committee (DAC) of the Organisation for Economic Cooperation and Development (OECD) adopted a 'Recommendation on Untying Official Development Assistance to the Least Developed Countries' ⁽²⁾. The Member States adopted that recommendation and the Commission recognised the spirit of this recommendation as guidance for Community aid.
- (3) On 14 March 2002, the General Affairs Council held in parallel with the European Council in Barcelona in preparation for the International Conference on Financing for Development, convened in Monterrey on 18 to 22 March 2002, concluded that the European Union would 'implement the DAC recommendation on untying of aid to least developed countries and continue discussions in view of further untying bilateral aid. The EU will also consider steps towards further untying of Community aid while maintaining the existing system of price preferences of the EU-ACP framework'.
- (4) On 18 November 2002, the Commission adopted a communication to the Council and to the European Parliament entitled 'Untying: Enhancing the effectiveness of aid'. It presented the Commission's views on the issue and possible options for the implementation of the abovementioned Barcelona commitment within the EU aid assistance system.
- (5) In its Conclusions on the Untying of Aid of 20 May 2003 the Council underlined the need to further untie Community aid. It agreed to the modalities detailed on the abovementioned Communication and decided on the options proposed.
- (6) On 4 September 2003, the European Parliament adopted a resolution on the abovementioned Commission communication ⁽³⁾, in which it noted the need to further untie Community aid. It supported the modalities detailed in that Communication and agreed to the options proposed. It highlighted the need for further debate geared towards more untying on the basis of further studies and documented proposals, and called explicitly for 'a clear preference for local and regional cooperation, prioritising – in ranking order – suppliers from the recipient country, neighbouring developing countries, and other developing countries', in order to strengthen the efforts of the recipient countries to improve their own production at national, regional, local and family level, as well as actions aimed at improving the availability and accessibility to the public of foodstuffs and basic services, consistent with local habits and production and trading systems.
- (7) Several elements need to be addressed in order to define access to Community external assistance. The rules of eligibility governing access by persons are laid down in Article 3. The rules governing the engagement of experts and the origin of supplies and materials purchased by eligible persons are laid down in Articles 4 and 5 respectively. The definition and modalities of implementation of reciprocity are set out in Article 6. Derogations and their implementation are provided for in Article 7. Specific provisions concerning operations financed through an international organisation or a regional organisation, or co-financed with a third country, are laid down in Article 8. Specific provisions concerning humanitarian aid are laid down in Article 9.

⁽¹⁾ OJ C 157, 28.6.2005, p. 99.

⁽²⁾ OECD/DAC 2001 Report, 2002, Volume 3, No 1, p. 46.

⁽³⁾ OJ C 76 E, 25.3.2004, p. 474.

- (8) Access to Community external assistance is defined in the basic acts regulating such assistance, in conjunction 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 ⁽¹⁾ (hereinafter the Financial Regulation). The changes made by this Regulation to access to Community aid entail amendments to all those instruments. All the modifications to the basic acts concerned are listed in Annex I to this Regulation.
- (9) When awarding tenders under a Community instrument, special consideration will be given to respect for internationally agreed core labour standards of the International Labour Organisation (ILO), e.g. the conventions on freedom of association and collective bargaining, elimination of forced and compulsory labour, elimination of discrimination in respect of employment and occupation, and the abolition of child labour.
- (10) When awarding tenders under a Community instrument, special consideration will be given to respect for the following internationally agreed environmental conventions: the Convention on Biological Diversity of 1992, the Cartagena Protocol on Biosafety of 2000 and the Kyoto Protocol to the United Nations Framework Convention on Climate Change of 1997,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

This Regulation lays down the rules for access by interested parties to Community external assistance instruments financed by the general budget of the European Union, as listed in Annex I.

Article 2

Definitions

For the interpretation of the terms used in this Regulation, reference is made to the Financial Regulation and to Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽²⁾.

⁽¹⁾ OJ L 248, 16.9.2002, p. 1.

⁽²⁾ OJ L 357, 31.12.2002, p. 1. Regulation as amended by Regulation (EC, Euratom) No 1261/2005 (OJ L 201, 2.8.2005, p. 3).

Article 3

Rules of eligibility

1. Participation in the award of procurement or grant contracts financed under a Community instrument shall be open to all legal persons who are established in a Member State of the European Community, in an official candidate country as recognised by the European Community or in a Member State of the European Economic Area.
2. Participation in the award of procurement or grant contracts financed under a Community instrument with thematic scope, as defined in Annex I, Part A, shall be open to all legal persons who are established in a developing country, as specified in the OECD Development Assistance Committee list set out in Annex II, in addition to those legal persons already eligible by virtue of the instrument concerned.
3. Participation in the award of procurement or grant contracts financed under a Community instrument with geographical scope, as defined in Annex I, Part B, shall be open to all legal persons who are established in a developing country as specified in the OECD Development Assistance Committee list set out in Annex II and who are expressly mentioned as eligible, and to those already stated to be eligible by the instrument concerned.
4. Participation in the award of procurement or grant contracts financed under a Community instrument shall be open to all legal persons who are established in any country other than those referred in paragraphs 1, 2 and 3 of this Article, where reciprocal access to their external assistance has been established pursuant to Article 6.
5. Participation in the award of procurement or grant contracts financed under a Community instrument shall be open to international organisations.
6. The above is without prejudice to the participation of categories of organisations eligible for the award of any contract, or to the exception set out in Article 114(1) of the Financial Regulation.

Article 4

Experts

All experts engaged by tenderers as defined in Articles 3 and 8 may be of any nationality. This Article is without prejudice to the qualitative and financial requirements set out in the Community's procurement rules.

*Article 5***Rules of origin**

All supplies and materials purchased under a contract financed under a Community instrument must originate from the Community or from an eligible country as defined in Articles 3 and 7 herein. The term 'origin' for the purpose of this Regulation is defined in the relevant Community legislation on rules of origin for customs purposes.

*Article 6***Reciprocity with third countries**

1. Reciprocal access to the Community's external assistance shall be granted for a country falling within the scope of Article 3(4), whenever such country grants eligibility on equal terms to the Member States and to the recipient country concerned.

2. The granting of reciprocal access to the Community's external assistance shall be based on a comparison between the EU and other donors and shall proceed at sectoral level, as defined by the OECD Development Assistance Committee categories, or at country level, regardless of whether the country concerned is a donor or a recipient country. The decision to grant such reciprocity to a donor country shall be based on the transparency, consistency and proportionality of the aid provided by that donor, including its qualitative and quantitative nature.

3. Reciprocal access to the Community's external assistance shall be established by means of a specific decision concerning a given country or a given regional group of countries. Such a decision shall be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾ under the procedures and relevant committee associated with the act concerned. The right of the European Parliament to be regularly informed pursuant to Article 7(3) of that Decision shall be fully respected. Such a decision shall run for a minimum period of one year.

4. Reciprocal access to the Community's external assistance in the least developed countries as listed in Annex II shall be automatically granted to the third countries listed in Annex III.

5. The recipient countries shall be consulted as part of the procedure described in paragraphs 1, 2 and 3.

*Article 7***Derogations from the rules of eligibility and origin**

1. In duly substantiated exceptional cases, the Commission may extend eligibility to legal persons from a country not eligible under Article 3.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

2. In duly substantiated exceptional cases, the Commission may allow the purchase of supplies and materials originating from a country not eligible under Article 3.

3. Derogations as provided for in paragraphs 1 and 2 may be justified on the basis of the unavailability of products and services in the markets of the countries concerned, for reasons of extreme urgency, or if the eligibility rules would make the realisation of a project, a programme or an action impossible or exceedingly difficult.

*Article 8***Operations involving international organisations or co-financing**

1. Whenever Community funding covers an operation implemented through an international organisation, participation in the appropriate contractual procedures shall be open to all legal persons who are eligible pursuant to Article 3 as well as to all legal persons who are eligible pursuant to the rules of that organisation, care being taken to ensure that equal treatment is afforded to all donors. The same rules shall apply in respect of supplies, materials and experts.

2. Whenever Community funding covers an operation co-financed with a third country, subject to reciprocity as defined in Article 6, or with a regional organisation, or with a Member State, participation in the appropriate contractual procedures shall be open to all legal persons who are eligible pursuant to Article 3 as well as to all legal persons who are eligible under the rules of such third country, regional organisation or Member State. The same rules shall apply in respect of supplies, materials and experts.

3. As far as food aid operations are concerned, the application of this Article shall be limited to emergency operations.

*Article 9***Humanitarian aid and NGOs**

1. For the purposes of humanitarian aid, within the meaning of Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid ⁽²⁾ and for the purposes of aid channeled directly through NGOs, within the meaning of Council Regulation (EC) No 1658/98 of 17 July 1998 on co-financing operations with European non-governmental development organisations (NGOs) in fields of interest to the developing countries ⁽³⁾, the provisions of Article 3 shall not apply to the eligibility criteria established for the selection of grant beneficiaries.

⁽²⁾ OJ L 163, 2.7.1996, 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).

⁽³⁾ OJ L 213, 30.7.1998, p. 1. Regulation as amended by Regulation (EC) No 1882/2003.

2. Beneficiaries of these grants shall abide by the rules established in this Regulation where the implementation of the assisted humanitarian action and aid channeled directly through NGOs within the meaning of Regulation (EC) no 1658/98 requires the award of procurement contracts.

Article 10

Respect for core principles and strengthening local markets

1. In order to accelerate the eradication of poverty through the promotion of local capacities, markets and purchases, special consideration shall be given to local and regional procurement in partner countries.

2. Tenderers who have been awarded contracts shall respect internationally agreed core labour standards, e.g. the ILO core labour standards, conventions on freedom of association and collective bargaining, elimination of forced and compulsory labour, elimination of discrimination in respect of employment and occupation, and the abolition of child labour.

3. Access by developing countries to Community external assistance shall be rendered possible by all such technical assistance as is deemed appropriate.

Article 11

Implementation of the Regulation

This Regulation amends and regulates the relevant parts of all existing Community instruments listed in Annex I. The Commission shall amend Annexes II to IV to this Regulation from time to time to take account of any amendments to OECD texts.

Article 12

Entry into force

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

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

Done at Brussels, 21 November 2005.

For the Council
The President
J. STRAW

ANNEX I

The following amendments are made to the Community instruments listed hereafter.

PART A — Community instruments with a thematic scope

1. Council Regulation (EC) No 1725/2001 of 23 July 2001 concerning action against anti-personnel landmines in third countries other than developing countries ⁽¹⁾:

— Article 4(2) is replaced by the following:

‘2. Eligibility for participation in tendering procedures under this Regulation shall be determined in accordance with the rules of eligibility, and the derogations therefrom, set out in Council Regulation (EC) No 2112/2005 of 21 November 2005 on access to Community external assistance ^(*):

(*) OJ L 344, 27.12.2005, p. 23.’

— in Article 7(3) the following sentence is added:

‘Participation in contractual procedures implemented through an international organisation or co-financed with a third country is defined in the Regulation (EC) No 2112/2005.’

2. Council Regulation (EC) No 976/1999 of 29 April 1999 laying down the requirements for the implementation of Community operations, other than those of development cooperation, which, within the framework of Community cooperation policy, contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms in third countries ⁽²⁾:

— in Article 5(1) the following sentence is added:

‘Eligibility for grant contracts shall be further determined in accordance with the rules of eligibility, and the derogations therefrom, set out in Council Regulation (EC) No 2112/2005 of 21 November 2005 on access to Community external assistance ^(*).

(*) OJ L 344, 27.12.2005, p. 23.’

— Article 6 is replaced by the following:

‘Article 6

To be eligible for Community aid, the partners referred to in Article 5(1) must have their main headquarters in a country eligible for Community aid under this Regulation, as well as under Regulation (EC) No 2112/2005. Such headquarters must be the effective decision-making centre for all operations financed under this Regulation. Exceptionally, the headquarters may be in another third country.’

— Article 9 is replaced by the following:

‘Article 9

1. Eligibility for participation in tendering procedures under this Regulation shall be determined in accordance with the rules of eligibility, and the derogations therefrom, laid down in this Regulation, as well as those set out in Regulation (EC) No 2112/2005.

⁽¹⁾ OJ L 234, 1.9.2001, p. 6.

⁽²⁾ OJ L 120, 8.5.1999, p. 8. Regulation as last amended by Regulation (EC) No 2242/2004 (OJ L 390, 31.12.2004, p. 21).

2. The origin of supplies and materials purchased under this Regulation shall be further determined in accordance with the rules of origin, and the derogations therefrom, set out in Regulation (EC) No 2112/2005.'

PART B — Community instruments with a geographical scope

3. Council Regulation (EC) No 2500/2001 of 17 December 2001 concerning pre-accession financial assistance for Turkey ⁽¹⁾:

— in Article 8(7) the following sentence is added to the first subparagraph:

'Eligibility for participation in tendering procedures under this Regulation shall be further determined in accordance with the rules of eligibility, and the derogations therefrom, set out in Council Regulation (EC) No 2112/2005 of 21 November 2005 on access to Community external assistance (*).

(*) OJ L 344, 27.12.2005, p. 23.'

— in Article 8(7) the following sentence is added to the second subparagraph:

'Participation in contractual procedures implemented through an international organisation or co-financed with a third country is further defined in Regulation (EC) No 2112/2005.'

— in Article 8 the following paragraph is added:

'8. The origin of supplies and materials purchased under this Regulation shall be further defined in accordance with the rules of origin, and the derogations therefrom, set out in Regulation (EC) No 2112/2005.'

4. Council Regulation (EC) No 2666/2000 of 5 December 2000 on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia ⁽²⁾:

— in Article 7(3) the following sentence is added:

'Eligibility for participation in tendering procedures under this Regulation shall be further determined in accordance with the rules of eligibility, and the derogations therefrom, set out in Council Regulation (EC) No 2112/2005 of 21 November 2005 on access to Community external assistance (*).

(*) OJ L 344, 27.12.2005, p. 23.'

— Article 7(4) is replaced by the following:

'4. Participation in contractual procedures implemented through an international organisation or co-financed with a third country is defined in Regulation (EC) No 2112/2005'

5. Council Regulation (EC, Euratom) No 99/2000 of 29 December 1999 concerning the provision of assistance to the partner States in Eastern Europe and Central Asia ⁽³⁾:

— in Article 11(3) the following sentence is added:

'The origin of supplies and materials purchased under this Regulation shall be further determined in accordance with the rules of origin, and the derogations therefrom, set out in Council Regulation (EC) No 2112/2005 of 21 November 2005 on access to Community external assistance (*).

(*) OJ L 344, 27.12.2005, p. 23.'

⁽¹⁾ OJ L 342, 27.12.2001, p. 1. Regulation as last amended by Regulation (EC) No 850/2005 (OJ L 141, 4.6.2005, p. 1).

⁽²⁾ OJ L 306, 7.12.2000, p. 1. Regulation as last amended by Regulation (EC) No 2257/2004 (OJ L 389, 30.12.2004, p. 1).

⁽³⁾ OJ L 12, 18.1.2000, p. 1.

- in Article 11(4) the following sentence is added:

'Eligibility for participation in tendering procedures under this Regulation shall be further determined in accordance with the rules of eligibility, and the derogations therefrom, set out in Regulation (EC) No 2112/2005.'

- in Article 11(5) the following sentence is added:

'Participation in contractual procedures implemented through an international organisation or co-financed with a third country is further defined in Regulation (EC) No 2112/2005.'

6. Council Regulation (EC) No 1267/1999 of 21 June 1999 establishing an Instrument for Structural Policies for Pre-Accession ⁽¹⁾:

- in Article 6a(1) the following sentence is added:

'Eligibility for participation in tendering procedures under this Regulation shall be further determined in accordance with the rules of eligibility, and the derogations therefrom, set out in Council Regulation (EC) No 2112/2005 of 21 November 2005 on access to Community external assistance (*).

(*) OJ L 344, 27.12.2005, p. 23.'

- in Article 6a(2) the following subparagraph is added:

'Participation in contractual procedures implemented through an international organisation or co-financed with a third country is further defined in Regulation (EC) No 2112/2005.'

7. Council Regulation (EC) No 1268/1999 of 21 June 1999 on Community support for pre-accession measures for agriculture and rural development in the applicant countries of central and eastern Europe in the pre-accession period ⁽²⁾:

- in Article 3(3) the following sentence is added:

'Eligibility for participation in tendering procedures under this Regulation shall be determined in accordance with the rules of eligibility and the derogations therefrom laid down herein, as well as in Council Regulation (EC) No 2112/2005 of 21 November 2005 on access to Community external assistance (*).

(*) OJ L 344, 27.12.2005, p. 23.'

8. Council Regulation (EC) No 1488/96 of 23 July 1996 on financial and technical measures to accompany (MEDA) the reform of economic and social structures in the framework of the Euro-Mediterranean Partnership ⁽³⁾:

- in Article 8(1) the following sentence is added:

'Eligibility for participation in tendering procedures under this Regulation shall be determined in accordance with the rules of eligibility and the derogations therefrom laid down herein, as well as in Council Regulation (EC) No 2112/2005 of 21 November 2005 on access to Community external assistance (*).

(*) OJ L 344, 27.12.2005, p. 23.'

- in Article 8(8) the following sentence is added:

'Participation in contractual procedures implemented through an international organisation or co-financed with a third country is defined in Regulation (EC) No 2112/2005.'

⁽¹⁾ OJ L 161, 26.6.1999, p. 73. Regulation as last amended by Regulation (EC) No 2257/2004.

⁽²⁾ OJ L 161, 26.6.1999, p. 87. Regulation as last amended by Regulation (EC) No 2257/2004.

⁽³⁾ OJ L 189, 30.7.1996, p. 1. Regulation as last amended by Regulation (EC) No 2698/2000 (OJ L 311, 12.12.2000, p. 1).

9. Council Regulation (EEC) No 1762/92 of 29 June 1992 on the implementation of the Protocols on financial and technical cooperation concluded by the Community with Mediterranean non-member countries ⁽¹⁾:
- in Article 2(1) the following subparagraph is added:
- 'Participation in contractual procedures implemented through an international organisation or co-financed with a third country is further defined in Council Regulation (EC) No 2112/2005 of 21 November 2005 on access to Community external assistance (*).
- (*) OJ L 344, 27.12.2005, p. 23.'
10. Council Regulation (EEC) No 443/92 of 25 February 1992 on financial and technical assistance to, and economic cooperation with, the developing countries in Asia and Latin America ⁽²⁾:
- in Article 9 the following subparagraph is added:
- 'Participation in contractual procedures implemented through an international organisation or co-financed with a third country is further defined in Council Regulation (EC) No 2112/2005 of 21 November 2005 on access to Community external assistance (*).
- (*) OJ L 344, 27.12.2005, p. 23.'
- in Article 13 the following subparagraph is added:
- 'Eligibility for participation in tendering procedures under this Regulation shall be further determined in accordance with the rules of eligibility, and the derogations therefrom, set out in Regulation (EC) No 2112/2005.'

(1) OJ L 181, 1.7.1992, p. 1.

(2) OJ L 52, 27.2.1992, p. 1. Regulation as amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

ANNEX II

Development Assistance Committee list of aid recipients — as at 1 January 2003

Part I: Developing Countries and Territories (Official Development Assistance)					Part II: Countries and Territories in Transition (Official Aid)	
Least Developed Countries (LDCs)	Other Low-Income Countries (Other LICs) (per capita GNI <\$745 in 2001)	Lower Middle-Income Countries (LMICs) (per capita GNI \$746-\$2975 in 2001)	Upper middle-Income Countries (UMICs) (per capita GNI \$2976-\$9205 in 2001)	High-Income Countries (HICs) (per capita GNI >\$9206 in 2001)	Central and Eastern European Countries and New Independent States of the former Soviet Union (CEECs/NIS)	More Advanced Developing Countries and Territories
Afghanistan	Armenia (*)	Albania (*)	Botswana	Bahrain	Belarus (*)	Aruba (**)
Angola	Azerbaijan (*)	Algeria	Brazil		Bulgaria (*)	Bahamas
Bangladesh	Cameroon	Belize	Chile		Czech Republic (*)	Bermuda (**)
Benin	Congo, Rep.	Bolivia	Cook Islands		Estonia (*)	Brunei
Bhutan	Côte d'Ivoire	Bosnia and Herzegovina	Costa Rica		Hungary (*)	Cayman Islands (**)
Burkina Faso	Georgia (*)	China	Croatia (*)		Latvia (*)	Chinese Taipei
Burundi	Ghana	Colombia	Dominica		Lithuania (*)	Cyprus
Cambodia	India	Cuba	Gabon		Poland (*)	Falkland Islands (**)
Cape Verde	Indonesia	Dominican Republic	Grenada		Romania (*)	French Polynesia (**)
Central African Republic	Kenya	Ecuador	Lebanon		Russia (*)	Gibraltar (**)
Chad	Korea, Democratic Republic	Egypt	Malaysia		Slovak Republic (*)	Hong Kong, China (**)
Comoros	Kyrgyz Rep. (*)	El Salvador	Mauritius		Ukraine (*)	Israel
Congo, Dem. Rep.	Moldova (*)	Fiji	Mayotte (**)			Korea
Djibouti	Mongolia	Guaemala	Nauru			Kuwait
Equatorial Guinea	Nicaragua	Guyama	Panama			Libya
Eritrea	Nigeria	Honduras	St Helena (**)			Macao (**)
Ethiopia	Pakistan	Iran	St Lucia			Malta
Gambia	Papua New Guinea	Iraq	Venezuela			Netherlands Antilles (*)
Guinea	Tajikistan (*)	Jamaica				New Caledonia (**)
Guinea-Bissau	Uzbekistan (*)	Jordan				Qatar
Haiti	Viet Nam	Kazakhstan (*)				Singapore
Kiribati	Zimbabwe	Macedonia (former Yugoslav Republic)				Slovenia
Laos		Marshall Islands				United Arab Emirates
Lesotho		Micronesia, Federated States				Virgin Islands (UK) (**)
Liberia		Morocco				
Madagascar		Namibia				
Malawi		Niue				
Maldives		Palestinian Administered Areas				
Mali		Paraguay				
Mauritania		Peru				
Mozambique		Philippines				
Myanmar		Serbia & Montenegro				
Nepal		South Africa				
Niger		Sri Lanka				
Rwanda		St Vincent & Grenadines				
Samoa		Suriname				
Sao Tome and Principe		Swaziland				
Senegal		Syria				
Sierra Leone		Thailand				
Salomon Islands		Tokelau (**)				
Somalia		Togo				
Sudan		Tunisia				
Tanzania		Turkey				
Timor-Leste		Turkmenistan (*)				
Togo		Wallis and Futuma (**)				
Tuvalu						
Uganda						
Vanuatu						
Yemen						
Zambia						

(*) Central and Eastern European countries and New Independent States of the former Soviet union (CEECs/NIS).

(**) Territory;

*ANNEX III***LIST OF OECD DEVELOPMENT ASSISTANCE COMMITTEE MEMBERS**

Australia, Austria, Belgium, Canada, Denmark, European Commission, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom, United States.

ANNEX IV

Extracts from the Recommendation on Untying Official Development Assistance to the Least Developed Countries by the Development Assistance Committee of the Organisation for Economic Cooperation and Development (OECD/DAC), March 2001**II. Implementation***(a) Coverage*

7. Untying is a complex process. Different approaches are required for different categories of ODA, and actions by Members to implement the recommendation will vary in coverage and timing. Bearing this in mind, DAC Members will untie their ODA to the least developed countries to the greatest extent possible and in accordance with the criteria and procedures set out in this recommendation:
 - (i) DAC Members agree to untie, by 1 January 2002, ODA to the least developed countries in the following areas: balance of payments and structural adjustment support; debt forgiveness; sector and multi-sector programme assistance; investment project aid; import and commodity support; commercial services contracts, and ODA to non-governmental organisations for procurement related activities.
 - (ii) In respect of investment-related technical cooperation and free-standing technical cooperation, it is recognised that DAC Members' policies may be guided by the importance of maintaining a basic sense of national involvement in donor countries alongside the objective of calling upon partner countries' expertise, bearing in mind the objectives and principles of this recommendation. Free-standing technical cooperation is excluded from the coverage of the recommendation.
 - (iii) In respect of food aid, it is recognised that DAC Members' policies may be guided by the discussions and agreements in other international fora governing the provision of food aid, bearing in mind the objectives and principles of this recommendation.
 8. This recommendation does not apply to activities with a value of less than SDR 700 000 (SDR 130 000 in the case of investment-related technical cooperation).
-

**DECISION No 2113/2005/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 14 December 2005**

amending Decision No 2256/2003/EC with a view to extension of the programme in 2006 for the dissemination of good practices and monitoring of the take-up of information and communication technologies (ICTs)

(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 157(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure set out in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) Decision No 2256/2003/EC ⁽³⁾, established the Modinis programme for the monitoring of the eEurope 2005 Action Plan, dissemination of good practices and the improvement of information and network security for the period from 1 January 2003 to 31 December 2005.
- (2) Decision No 2256/2003/EC was amended by Decision No 787/2004/EC in order to adapt the reference amounts to take account of the enlargement of the European Union.
- (3) In its Resolution of 9 December 2004 on looking into the future of information communication technologies (ICT) ⁽⁴⁾, the Council invited the Commission to start preparatory work for the follow-up to the eEurope 2005 Action Plan as an important part of the new Agenda for the Information Society beyond 2005.
- (4) The Commission Communication of 19 November 2004, entitled 'Challenges for the European Information Society beyond 2005', analyses the challenges that a European information society strategy up to 2010 must address. It

argues for wider use of ICTs and for continued policy attention to ICT-related issues, which involves the need for monitoring and exchange of good practices. That Communication was the starting point for a reflection process that led to a new Information Society initiative in 2005, to start in 2006.

- (5) The new initiative, entitled 'i2010: European Information Society', was announced in the Commission Communication of 2 February 2005 to the Spring European Council, entitled 'Working together for growth and jobs – A new start for the Lisbon Strategy', aiming at stimulating the take-up of ICTs.
- (6) The Commission Communication of 1 June 2005, entitled 'i2010 – A European Information Society for growth and employment', outlines the key policy priorities of a five-year strategy to promote an open and competitive digital economy. The promotion of exchange of good practices and the monitoring of the take-up of ICT-enabled services will continue to support the dialogue with stakeholders and Member States, notably in the context of the open method of coordination.
- (7) In the proposal for a decision of the European Parliament and of the Council establishing a competitiveness and innovation framework programme (2007 to 2013), a framework programme for Community action in the field of competitiveness and innovation, covering the period 2007 to 2013, is proposed which brings together specific Community measures contributing to entrepreneurship, SMEs, industrial competitiveness, innovation, information and communication technology, environmental technologies and intelligent energy, including those measures provided for in Decision No 2256/2003/EC.
- (8) Regulation (EC) No 808/2004 of the European Parliament and of the Council of 21 April 2004 concerning Community statistics on the information society ⁽⁵⁾ establishes a common framework for the systematic production of Community statistics on the information society. These statistics include information required for the eEurope benchmarking process, are relevant to the structural indicators supporting the monitoring of performance of Member States and are necessary in order to provide a uniform basis for analysis of the Information Society.

⁽¹⁾ Opinion delivered on 27 October 2005 (not yet published in the Official Journal).

⁽²⁾ Opinion of the European Parliament of 15 November 2005 (not yet published in the Official Journal) and Council Decision of 1 December 2005.

⁽³⁾ OJ L 336, 23.12.2003, p. 1. Decision as amended by Decision No 787/2004/EC (OJ L 138, 30.4.2004, p. 12).

⁽⁴⁾ OJ C 62, 12.3.2005, p. 1.

⁽⁵⁾ OJ L 143, 30.4.2004, p. 49.

- (9) In the 12 months between the expiry of the eEurope 2005 Action Plan and the anticipated start of the Framework Programme in 2007, the take-up of ICTs across the economy needs to be monitored and supported through continuation of benchmarking and statistical analysis based on structural indicators, and the exchange of good practices. The actions taken under the programme on benchmarking, good practices and policy coordination in 2006 will support the achievement of the objectives of the abovementioned Commission Communications of 2 February 2005 and 1 June 2005.
- (10) The mechanisms for monitoring and for the exchange of experiences, benchmarking activities, dissemination of good practices and analysis of economic and societal consequences of the information society should be continued in 2006 to achieve the objectives of the Commission Communication of 2 February 2005, aiming at stimulating the take-up of ICTs as a continuation of the eEurope agenda, and those of the Commission Communication of 1 June 2005.
- (11) Decision No 2256/2003/EC should therefore be amended,
- (c) to analyse the economic and societal consequences of the information society with a view to facilitating policy discussions particularly in terms of competitiveness, growth and employment as well as in terms of social inclusion.
2. The activities of the programme shall be actions of a cross-sectorial nature, complementing Community actions in other fields. None of these actions shall duplicate the work being carried out in these fields under other Community programmes. The actions taken under the programme on benchmarking, good practices and policy coordination shall work to achieve the objectives of the Commission Communication of 2 February 2005 to the Spring European Council, entitled "Working together for growth and jobs – A new start for the Lisbon Strategy", aiming at stimulating the take-up of ICTs as a continuation of the eEurope agenda and in particular promoting broadband, eGovernment, eBusiness, eHealth and eLearning, and the objectives of the Commission Communication of 1 June 2005, entitled "i2010 – A European Information Society for growth and employment", promoting an open and competitive digital economy.
3. The programme shall also provide a common framework for complementary interaction at European level of the various national, regional and local levels.;

HAVE ADOPTED THIS DECISION:

Article 1

Decision No 2256/2003/EC is hereby amended as follows:

1. the following Article shall be inserted:

'Article 1a

1. The programme for 2006 shall continue the monitoring of the take-up and use of information and communication technologies (ICTs) across the economy and the dissemination of good practices, and shall have the following objectives:

- (a) to monitor performance of and within Member States and to compare it with the best in the world by using, where possible, official statistics;
- (b) to support efforts by Member States to stimulate the use of ICTs at national, regional or local level, by analysis of good practices and by the complementary interaction of developing mechanisms of exchange of experiences;

2. the following Article shall be inserted:

'Article 2a

In order to attain the objectives referred to in Article 1a, the following categories of actions shall be undertaken:

- (a) Action 1

Monitoring and comparison of performance:

- data collection and analysis on the basis of the benchmarking indicators as defined in the Council resolution of 18 February 2003 on the implementation of the eEurope 2005 Action Plan, including regional indicators, where appropriate, and Regulation (EC) No 808/2004 of the European Parliament and of the Council of 21 April 2004 concerning Community statistics on the information society (*).

- (b) Action 2

Dissemination of good practices:

- studies to identify good practices, at national, regional and local level, contributing to successful take up of ICTs across the economy,

- support for targeted conferences, seminars or workshops, dissemination, information and communication activities in support of the objectives of the Commission Communication of 2 February 2005 to the Spring European Council, entitled “Working together for growth and jobs – A new start for the Lisbon Strategy”, aiming at stimulating the take-up of ICTs as a continuation of the eEurope agenda, and the Commission Communication of 1 June 2005, entitled “i2010 – A European Information Society for growth and employment”, promoting an open and competitive digital economy, in order to promote cooperation and exchange of experiences and good practices as defined in Article 1a(1)(b).

(c) Action 3

Analysis and strategic discussion:

- support the work of social and economic experts with a view to providing the Commission with input as regards prospective policy analysis.

(*) OJ L 143, 30.4.2004, p. 49.’

3. in Article 4, the first paragraph shall be replaced by the following:

‘The programme shall cover the period from 1 January 2003 to 31 December 2006.

The financial framework for the implementation of this programme is hereby set at EUR 30 160 000.’.

4. the Annex shall be replaced by the text in the Annex to this Decision.

Article 2

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

Article 3

This Decision is addressed to the Member States.

Done at Strasbourg, 14 December 2005.

For the European Parliament
The President
J. BORRELL FONTELLES

For the Council
The President
C. CLARKE

ANNEX

ANNEX

Multianual programme for the monitoring of eEurope, dissemination of good practices and the improvement of network and information security (Modinis)**Indicative breakdown of expenditure 2003 to 2005**

Percentages of total budget by category and year				
	2003	2004	2005	Total 2003 to 2005
Action 1 – Monitoring and comparison of performance	12 %	14 %	14 %	40 %
Action 2 – Dissemination of good practices	8 %	10 %	12 %	30 %
Action 3 – Analysis and strategic discussion	2 %	3 %	3 %	8 %
Action 4 – Improvement of network and information security	17 %	5 %	0 %	22 %
Percentage of Total	39 %	32 %	29 %	100 %

Indicative breakdown of expenditure 2006

Percentages of total budget by category and year	
	2006
Action 1 – Monitoring and comparison of performance	55 %
Action 2 – Dissemination of good practices	30 %
Action 3 – Analysis and strategic discussion	15 %
Action 4 – Improvement of network and information security	0 %
Percentage of Total	100 %

DIRECTIVE 2005/82/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 14 December 2005****repealing Council Directive 90/544/EEC on the frequency bands designated for the coordinated introduction of pan-European land-based public radio paging in the Community**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

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

Whereas:

(1) Directive 90/544/EEC ⁽⁴⁾ required Member States to designate, by 31 December 1992, in the 169,4 to 169,8 MHz radio spectrum band four channels for the pan-European land-based public radio paging service (hereinafter ERMES) and to prepare, as quickly as possible, plans to enable pan-European public radio paging service to occupy the whole band 169,4 to 169,8 MHz according to commercial demand.

(2) Use of the 169,4 to 169,8 MHz spectrum band for ERMES in the Community has decreased or even ceased, so that this band is not currently being efficiently utilised by ERMES and could be better used to fulfil other Community policy needs.

(3) Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision) ⁽⁵⁾ established a Community policy and legal framework to ensure coordination of policy approaches and, where appropriate, harmonised conditions with regard to availability and efficient use of the spectrum band necessary for the establishment and functioning of the internal market. That Decision allows the Commission to adopt technical implementing measures to ensure harmonised conditions for the availability and efficient use of the spectrum band.

(4) Since the 169,4 to 169,8 MHz band is appropriate for applications benefiting people with impairments or disabilities, and considering that promotion of such applications is a policy objective for the Community together with the general objective of ensuring the functioning of the internal market, the Commission pursuant to Article 4(2) of the Radio Spectrum Decision issued the European Conference of Postal and Telecommunications Administration (hereinafter the CEPT) with a mandate to examine, *inter alia*, applications related to assistance for people with disabilities.

(5) As mandated, the CEPT produced a new frequency plan, and a channel arrangement allowing six types of preferred applications to share the band in order to meet several Community policy needs.

(6) For these reasons and in accordance with the objectives of the Radio Spectrum Decision, Directive 90/544/EEC should be repealed,

⁽¹⁾ Opinion delivered on 27 October 2005 (not yet published in the Official Journal).

⁽²⁾ Opinion delivered on 17 November 2005, following non-compulsory consultation (not yet published in the Official Journal).

⁽³⁾ Opinion of the European Parliament of 15 November 2005 (not yet published in the Official Journal) and Council Decision of 1 December 2005.

⁽⁴⁾ OJ L 310, 9.11.1990, p. 28.

⁽⁵⁾ OJ L 108, 24.4.2002, p. 1.

HAVE ADOPTED THIS DIRECTIVE:

Article 3

Article 1

This Directive is addressed to the Member States.

Directive 90/544/EEC is hereby repealed with effect from 27 December 2005.

Done at Strasbourg, 14 December 2005.

Article 2

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

For the European Parliament

The President

J. BORRELL FONTELLES

For the Council

The President

C. CLARKE

DIRECTIVE 2005/84/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 14 December 2005

amending for the 22nd time Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (phthalates in toys and childcare articles)

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 ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

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

Whereas:

(1) Article 14 of the Treaty establishes an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured.

(2) Work on the internal market should improve the quality of life, health protection and consumer safety. This Directive complies with the requirements of ensuring a high level of health protection and of consumer protection in the definition and implementation of all Community policies and activities.

(3) The use of certain phthalates in toys and childcare articles made of plasticised material or including parts made of plasticised material should be prohibited as the presence of certain phthalates presents or could potentially present risks related to the health of children. Toys and childcare articles which, although not intended for that purpose, can be put in the mouth, may under certain circumstances present a risk to the health of small children if they are made of plasticised material, or include parts made of plasticised material, which contains certain phthalates.

(4) The Scientific Committee on Toxicity, Ecotoxicity and the Environment (SCTEE), after being consulted by the Commission, has delivered opinions on the health risks raised by these phthalates.

(5) Commission Recommendation 98/485/EC of 1 July 1998 on childcare articles and toys intended to be placed in the mouth by children of less than three years of age, made of soft PVC containing certain phthalates ⁽⁴⁾, invited Member States to take measures to ensure a high level of child health protection with regard to these products.

(6) Since 1999, the use of six phthalates in toys and childcare articles intended to be placed in the mouth by children under the age of three is subject to a temporary ban at European Union level following the adoption of Commission Decision 1999/815/EC ⁽⁵⁾ in the framework of Council Directive 92/59/EEC of 29 June 1992 on general product safety ⁽⁶⁾. This Decision is being renewed regularly.

(7) Limitations already adopted by certain Member States on the placing on the market of toys and childcare articles because of their phthalate content directly affect the completion and functioning of the internal market. It is therefore necessary to approximate the laws of the Member States in this field and consequently to amend Annex I to Directive 76/769/EEC ⁽⁷⁾.

(8) The precautionary principle should be applied where scientific evaluation does not allow the risk to be determined with sufficient certainty in order to ensure a high level of protection of health, in particular for children.

(9) Children as developing organisms are particularly vulnerable to reprotoxic substances. Therefore, the exposure of children to all practically avoidable sources of emissions of these substances, especially from articles which are put into the mouth by children, should be reduced as far as possible.

⁽¹⁾ OJ C 116 E, 26.4.2000, p. 14.

⁽²⁾ OJ C 117, 26.4.2000, p. 59.

⁽³⁾ Opinion of the European Parliament of 6 July 2000 (OJ C 121, 24.4.2001, p. 410), Council Common Position of 4 April 2005 (OJ C 144 E, 14.6.2005, p. 24), Position of the European Parliament of 5 July 2005 (not yet published in the Official Journal) and Council Decision of 23 November 2005.

⁽⁴⁾ OJ L 217, 5.8.1998, p. 35.

⁽⁵⁾ OJ L 315, 9.12.1999, p. 46. Decision as last amended by Decision 2004/781/EC (OJ L 344, 20.11.2004, p. 35).

⁽⁶⁾ OJ L 228, 11.8.1992, p. 24. Directive repealed by Directive 2001/95/EC of the European Parliament and of the Council (OJ L 11, 15.1.2002, p. 4).

⁽⁷⁾ OJ L 262, 27.9.1976, p. 201. Directive as last amended by Commission Directive 2004/98/EC (OJ L 305, 1.10.2004, p. 63).

- (10) During risk assessments and/or within the framework of Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances ⁽¹⁾, di(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP) and benzyl butyl phthalate (BBP) have been identified as reprotoxic substances and have therefore been classified as reprotoxic, category 2.
- (11) Scientific information regarding di-isononyl phthalate (DINP), di-isodecyl phthalate (DIDP) and di-n-octyl phthalate (DNOP) is either lacking or conflictual, but it cannot be excluded that they pose a potential risk if used in toys and childcare articles, which are by definition produced for children.
- (12) The uncertainties in the evaluation of exposure to these phthalates, such as mouthing times and exposure to emissions from other sources, require that precautionary considerations be taken into account. Therefore, restrictions on the use of these phthalates for toys and childcare articles and on the placing on the market of such articles should be introduced. However, the restrictions for DINP, DIDP and DNOP should be less severe than the ones proposed for DEHP, DBP and BBP for reasons of proportionality.
- (13) The Commission should review other applications of articles made from plasticised material or including parts made from plasticised material which may expose people to risks, especially those used in medical devices.
- (14) In line with the Commission Communication on the Precautionary Principle, the measures based on this principle should be subject to review in the light of new scientific information.
- (15) The Commission, in cooperation with the Member State authorities responsible for market surveillance and enforcement for toys and childcare articles, and in consultation with the relevant organisations of producers and importers, should monitor the use of phthalates and other substances as plasticisers in toys and childcare articles.
- (16) For the purpose of Directive 76/769/EEC, the term 'childcare article' should be defined.
- (17) In accordance with paragraph 34 of the Interinstitutional Agreement on Better Law-making ⁽²⁾, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
- (18) The Commission will review the use of the phthalates listed in Annex I to Directive 76/769/EEC in other products when the risk evaluation under Council Regulation (EEC) No 793/93 of 23 March 1993 on the evaluation and control of the risks of existing substances ⁽³⁾ will have been concluded.
- (19) This Directive applies without prejudice to Community legislation laying down minimum requirements for the protection of workers contained in Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work ⁽⁴⁾ and in individual directives based thereon, in particular Council Directive 90/394/EEC of 28 June 1990 on the protection of workers from the risks related to exposure to carcinogens at work ⁽⁵⁾ and Council Directive 98/24/EC of 7 April 1998 on protection of health and safety of workers from the risk related to chemical agents at work ⁽⁶⁾,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 76/769/EEC is amended as follows:

1. the following point shall be added to Article 1(3):
 - (c) "childcare article" means any product intended to facilitate sleep, relaxation, hygiene, the feeding of children or sucking on the part of children.;
2. Annex I shall be amended as set out in the Annex to this Directive.

⁽²⁾ OJ C 321, 31.12.2003, p. 1.

⁽³⁾ OJ L 84, 5.4.1993, 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).

⁽⁴⁾ OJ L 183, 29.6.1989, p. 1. Directive as amended by Regulation (EC) No 1882/2003.

⁽⁵⁾ OJ L 196, 26.7.1990, p. 1. Directive repealed by Directive 2004/37/EC of the European Parliament and of the Council (OJ L 158, 30.4.2004, p. 50).

⁽⁶⁾ OJ L 131, 5.5.1998, p. 11.

⁽¹⁾ OJ 196, 16.8.1967, p. 1. Directive as last amended by Commission Directive 2004/73/EC (OJ L 152, 30.4.2004, p. 1).

Article 2

The Commission shall re-evaluate, by 16 January 2010 at the latest, the measures provided for in Directive 76/769/EEC as amended by this Directive in the light of new scientific information on substances described in the Annex to this Directive and their substitutes, and if justified, these measures shall be modified accordingly.

Article 3

1. By 16 July 2006 Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

They shall apply these measures from 16 January 2007.

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

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 4

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 5

This Directive is addressed to the Member States.

Done at Strasbourg, 14 December 2005.

For the European Parliament
The President
J. BORRELL FONTELLES

For the Council
The President
C. CLARKE

ANNEX

The following points shall be added to Annex I to Directive 76/769/EEC:

<p>[XX.] The following phthalates (or other CAS- and EINECS numbers covering the substance):</p> <p>bis (2-ethylhexyl) phthalate (DEHP) CAS No 117-81-7 Einecs No 204-211-0</p> <p>dibutyl phthalate (DBP) CAS No 84-74-2 Einecs No 201-557-4</p> <p>benzyl butyl phthalate (BBP) CAS No 85-68-7 Einecs No 201-622-7</p>	<p>Shall not be used as substances or as constituents of preparations, at concentrations of greater than 0,1 % by mass of the plasticised material, in toys and childcare articles.</p> <p>Such toys and childcare articles containing these phthalates in a concentration greater than the limit mentioned above shall not be placed on the market.</p>
<p>[XXa.] The following phthalates (or other CAS- and EINECS numbers covering the substance):</p> <p>di-“isononyl” phthalate (DINP) CAS No 28553-12-0 and 68515-48-0 Einecs No 249-079-5 and 271-090-9</p> <p>di-“isodecyl” phthalate (DIDP) CAS No 26761-40-0 and 68515-49-1 Einecs No 247-977-1 and 271-091-4</p> <p>di-n-octyl phthalate (DNOP) CAS No 117-84-0 Einecs No 204-214-7</p>	<p>Shall not be used as substances or as constituents of preparations, at concentrations of greater than 0,1 % by mass of the plasticised material, in toys and childcare articles which can be placed in the mouth by children.</p> <p>Such toys and childcare articles containing these phthalates in a concentration greater than the limit mentioned above shall not be placed on the market.’</p>

DIRECTIVE 2005/88/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 14 December 2005

amending Directive 2000/14/EC on the approximation of the laws of the Member States relating to the noise emission in the environment by equipment for use outdoors

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

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

Whereas:

- (1) Directive 2000/14/EC of the European Parliament and of the Council ⁽³⁾ has been the subject of a review by the Working Group on Outdoor Equipment, set up by the Commission.
- (2) In its report dated 8 July 2004, this Working Group concluded that a number of the stage II limits due to be mandatorily applied as from 3 January 2006 were not technically feasible. However, the intention was never to restrict the placing on the market or putting into service of equipment solely based on technical feasibility.
- (3) It is therefore necessary to provide that certain types of equipment listed in Article 12 of Directive 2000/14/EC, which would not be able to meet the stage II limits by 3 January 2006 solely for technical reasons, can still be placed on the market and/or put into service as from that date.
- (4) The experience of the first five years of application of Directive 2000/14/EC has demonstrated that more time is needed to fulfil the provisions under Articles 16 and 20

thereof and highlighted the need to review that Directive with a view to its possible amendment, in particular with respect to the stage II limits referred to therein. It is therefore necessary to extend by two years the deadline for submission of the report to the European Parliament and to the Council on the Commission's experience in implementing and administering Directive 2000/14/EC as referred to in Article 20(1) of that Directive.

- (5) Article 20(3) of Directive 2000/14/EC provides for the submission, by the Commission, of a report to the European Parliament and to the Council on whether, and to what extent, technical progress allows a reduction of limit values for lawnmowers and lawn trimmers/lawn-edge trimmers. In view of the fact that the obligations contained in Article 20(1) of that Directive are more prescriptive than those in Article 20(3), and in order to avoid duplication of effort, it is appropriate to include these types of equipment in the general report provided for in Article 20(1) of that Directive. Consequently, the separate reporting obligation in Article 20(3) of that Directive should be deleted.

- (6) Since the objective of this Directive, namely, to ensure the ongoing functioning of the internal market by requiring equipment used outdoors to comply with harmonised environmental noise provisions, cannot be sufficiently achieved by Member States and can therefore, by reason of the scale and effects of the proposed action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective, in that its scope is confined to those types of equipment for which compliance with the stage II limits is presently impossible for technical reasons.

- (7) In accordance with point 34 of the Interinstitutional agreement on better law making ⁽⁴⁾, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

- (8) Directive 2000/14/EC should therefore be amended accordingly,

⁽¹⁾ Opinion delivered on 27 October 2005 (not yet published in the Official Journal).

⁽²⁾ Opinion of the European Parliament of 26 October 2005 (not yet published in the Official Journal) and Council Decision of 8 December 2005.

⁽³⁾ OJ L 162, 3.7.2000, p. 1.

⁽⁴⁾ OJ C 321, 31.12.2003, p. 1.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2000/14/EC is hereby amended as follows:

1. The table in Article 12 shall be replaced by the following:

Type of equipment	Net installed power P (in kW) Electric power P_{el} ⁽¹⁾ in kW Mass of appliance m in kg Cutting width L in cm	Permissible sound power level in dB/1 pW	
		Stage I as from 3 January 2002	Stage II as from 3 January 2006
Compaction machines (vibrating rollers, vibratory plates, vibratory rammers)	$P \leq 8$	108	105 ⁽²⁾
	$8 < P \leq 70$	109	106 ⁽²⁾
	$P > 70$	$89 + 11 \lg P$	$86 + 11 \lg P$ ⁽²⁾
Tracked dozers, tracked loaders, tracked excavator-loaders	$P \leq 55$	106	103 ⁽²⁾
	$P > 55$	$87 + 11 \lg P$	$84 + 11 \lg P$ ⁽²⁾
Wheeled dozers, wheeled loaders, wheeled excavator-loaders, dumpers, graders, loader-type landfill compactors, combustion-engine driven counterbalanced lift trucks, mobile cranes, compaction machines (non-vibrating rollers), paver-finishers, hydraulic power packs	$P \leq 55$	104	101 ⁽²⁾ ⁽³⁾
	$P > 55$	$85 + 11 \lg P$	$82 + 11 \lg P$ ⁽²⁾ ⁽³⁾
Excavators, builders' hoists for the transport of goods, construction winches, motor hoes	$P \leq 15$	96	93
	$P > 15$	$83 + 11 \lg P$	$80 + 11 \lg P$
Hand-held concrete-breakers and picks	$m \leq 15$	107	105
	$15 < m < 30$	$94 + 11 \lg m$	$92 + 11 \lg m$ ⁽²⁾
	$m \geq 30$	$96 + 11 \lg m$	$94 + 11 \lg m$
Tower cranes		$98 + \lg P$	$96 + \lg P$
Welding and power generators	$P_{el} \leq 2$	$97 + \lg P_{el}$	$95 + \lg P_{el}$
	$2 < P_{el} \leq 10$	$98 + \lg P_{el}$	$96 + \lg P_{el}$
	$10 > P_{el}$	$97 + \lg P_{el}$	$95 + \lg P_{el}$
Compressors	$P \leq 15$	99	97
	$P > 15$	$97 + 2 \lg P$	$95 + 2 \lg P$
Lawnmowers, lawn trimmers/lawn-edge trimmers	$L \leq 50$	96	94 ⁽²⁾
	$50 < L \leq 70$	100	98
	$70 < L \leq 120$	100	98 ⁽²⁾
	$L > 120$	105	103 ⁽²⁾

⁽¹⁾ P_{el} for welding generators: conventional welding current multiplied by the conventional load voltage for the lowest value of the duty factor given by the manufacturer.

P_{el} for power generators: prime power according to ISO 8528-1:1993, clause 13.3.2

⁽²⁾ The figures for stage II are merely indicative for the following types of equipment:

- walk-behind vibrating rollers;
- vibratory plates (> 3kW);
- vibratory rammers;
- dozers (steel tracked);
- loaders (steel tracked > 55 kW);
- combustion-engine driven counterbalanced lift trucks;
- compacting screed paver-finishers;
- hand-held internal combustion-engine concrete-breakers and picks (15<m<30)
- lawnmowers, lawn trimmers/lawn-edge trimmers.

Definitive figures will depend on amendment of the Directive following the report required in Article 20(1). In the absence of any such amendment, the figures for stage I will continue to apply for stage II.

⁽³⁾ For single-engine mobile cranes, the figures for stage I shall continue to apply until 3 January 2008. After that date, stage II figures shall apply.

The permissible sound power level shall be rounded up or down to the nearest integer number (less than 0,5, use lower number; greater than or equal to 0,5, use higher number)

2. Article 20 shall be amended as follows:

- (a) In the first sentence of paragraph 1, the words 'Not later than 3 January 2005' shall be replaced by 'Not later than 3 January 2007';
- (b) Paragraph 3 shall be deleted.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2005 at the latest. They shall forthwith inform the Commission thereof.

They shall apply those measures from 3 January 2006.

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

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Strasbourg, 14 December 2005.

For the European Parliament
The President
J. BORRELL FONTELLES

For the Council
The President
C. CLARKE

COMMISSION DECISION

of 20 December 2005

on the harmonisation of the 169,4-169,8125 MHz frequency band in the Community

(notified under document number C(2005) 5003)

(Text with EEA relevance)

(2005/928/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision) ⁽¹⁾, and in particular Article 4(3) thereof,

Whereas:

- (1) Council Directive 90/544/EEC of 9 October 1990 on the frequency bands designated for the coordinated introduction of pan-European land-based public radio paging in the Community (the ERMES Directive) ⁽²⁾ was repealed on 27 December 2005 by Directive 2005/82/EC of the European Parliament and of the Council ⁽³⁾. That Directive required Member States to designate in the 169,4 to 169,8 MHz radio spectrum band four channels for the pan-European land-based public radio paging service (hereinafter referred to as 'ERMES') and to ensure that ERMES services occupy, as quickly as possible, the whole of the 169,4 to 169,8 MHz radio spectrum band according to commercial demand.
- (2) The use of the 169,4 to 169,8 MHz radio spectrum band for ERMES in the Community has decreased dramatically or even ceased altogether, with the result that this radio spectrum band is not being efficiently utilised by ERMES and could therefore be better used to fulfil other Community policy needs.
- (3) Pursuant to Article 4(2) of the Radio Spectrum Decision, the Commission issued on 7 July 2003 a mandate to the European Conference of Postal and Telecommunications Administrations (hereinafter referred to as 'CEPT') to collect

information on the current and future possible applications of the 169,4 to 169,8 MHz band, to identify a list of alternative options for the use of the radio spectrum band and in particular those which are not related only to traditional electronic communications. The CEPT was asked to evaluate, for each possible application, co-existence between various applications and the possibility of using alternative radio spectrum bands, in line with the principles of the Framework Directive. The radio spectrum band, which is already partially harmonised, is appropriate for certain applications related to the establishment and functioning of the internal market in a number of Community policy areas, among which some are likely to benefit disabled people or assist justice and home affairs collaboration in the European Union.

- (4) Article 8(4) of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for the electronic communications networks and services (Framework Directive) ⁽⁴⁾ requires Member States to promote the interests of European Union citizens by inter alia addressing the needs of specific social groups, in particular hearing impaired persons and persons requiring urgent assistance.
- (5) Based on technical investigations and on collection of information, the CEPT confirmed that despite the adoption of Directive 90/544/EEC, the use of this radio spectrum band for ERMES has remained very limited and that the need for radio messaging or paging systems has changed in Europe as the functions thereof have been replaced by other technologies such as short messaging systems (SMS) over GSM.
- (6) The designation of parts of the 169,4 to 169,8 MHz radio spectrum band for ERMES should therefore be modified in the Community in order to ensure more efficient use of this radio spectrum band, while preserving its harmonised character.

⁽¹⁾ OJ L 108, 24.4.2002, p. 1.

⁽²⁾ OJ L 310, 9.11.1990, p. 28.

⁽³⁾ OJ L 344, 27.12.2005, p. 38.

⁽⁴⁾ OJ L 108, 24.4.2002, p. 33.

- (7) As mandated, the CEPT has produced a new frequency plan and channel arrangement allowing six types of preferred applications to share the radio spectrum band from 169,4 up to 169,8125 MHz, in order to meet several Community policy needs. These needs include assistance through the use of hearing aids to persons suffering from hearing disability, for whom a harmonised radio spectrum band in the Community would improve travelling conditions between Member States and reduce equipment prices through economies of scale; the development of the internal market for social alarms, which allow elderly or disabled people to send alarm messages for assistance, asset tracking or tracing devices, which would assist in tracking and recovering stolen goods across the Community, meter reading systems used by water and electricity utility companies; and existing paging systems such as ERMES as well as private mobile radio systems (PMR) when employed for temporary use, to assist in the coverage of special temporary events for a period of a few days up to a few months.
- (8) The results of the mandate to the CEPT, which the Commission regards as satisfactory, should be made applicable in the Community and implemented by the Member States. The remaining ERMES and/or PMR authorisations which are not in conformity with the new frequency plan and channel arrangement should be allowed to remain unaffected until their expiry or until ERMES and/or PMR applications can be moved to the appropriate radio spectrum bands without excessive burden.
- (9) When allowing access to radio spectrum the least onerous authorisation system should be used, in accordance with Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) ⁽¹⁾, including absence of individual rights of use.
- (10) Without prejudice to the fact that spectrum requirements of specific policies may require exclusive frequency designations, it is generally appropriate to propose as generic allocations as possible for radio spectrum bands so as to steer their usage only by defining specific usage constraints such as duty cycle or power levels, and to ensure through harmonised standards recognised under the Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity ⁽²⁾ that equipment operating in the allocated radio spectrum minimises use of the radio spectrum in a way to avoid harmful interference.
- (11) Coordination of channels in the high power part of the 169,4 – 169,8125 MHz band between neighbouring countries will be ensured by bi- or multilateral agreements.
- (12) In order to ensure effective use of the 169,4 to 169,8125 MHz band also in the longer term administrations should continue with studies that may increase efficiency, in particular the utilisation of the identified guard band.
- (13) The measures provided for in this Decision are in accordance with the opinion of the Radio Spectrum Committee.

HAS ADOPTED THIS DECISION:

Article 1

Subject matter

The subject matter of this Decision is the harmonisation of the conditions for the availability and efficient use of the 169,4 – 169,8125 MHz radio spectrum band in the Community.

Article 2

Definitions

For the purposes of this Decision,

- (a) 'hearing aid' means a radio communications system which usually includes one or more radio transmitters and one or more radio receivers allowing persons suffering from hearing disability to increase their listening capability;
- (b) 'social alarm' means a reliable radio communications system and network including portable equipment which allows a person in distress in a limited area to initiate a call for assistance by a simple manipulation;
- (c) 'meter reading system' means a system which allows remote status monitoring, measuring and service commands using radio communication devices;
- (d) 'tracing and asset tracking system' means a system which allows the tracing and tracking of goods, leading to their recovery, consisting in general of a radio transmitter placed on the item to be protected and a receiver and may also include an alarm;
- (e) 'paging system' means a system allowing one-way radio communications between the sender and the receiver using a base station with the mobile as a receiver;

⁽¹⁾ OJ L 108, 24.4.2002, p. 21.

⁽²⁾ OJ L 91, 7.4.1999, p. 10. 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).

(f) 'private mobile radio communications (PMR)' means a land mobile communications service using simplex, half duplex and possibly full duplex modes at the terminal level to provide closed user group communications.

Article 3

Harmonised applications

1. The 169,4 – 169,8125 MHz band shall be divided into a low power part and a high power part. Its frequency plan and the channelling arrangements shall be laid down in the Annex to this Decision.

2. The low power part of the 169,4 – 169,8125 MHz radio spectrum band shall accommodate the following preferred applications:

- (a) exclusive use for hearing aids;
- (b) exclusive use for social alarms;
- (c) non-exclusive use for meter reading systems;
- (d) non-exclusive use for low power transmitters for tracking and asset tracing systems.

3. The high power part of the 169,4 – 169,8125 MHz band shall accommodate the following preferred applications:

- (a) high power transmitters for tracing and asset tracking systems;
- (b) existing paging systems or paging systems relocating from other channels in the radio spectrum band.

4. Alternative applications for the 169,4 – 169,8125 MHz radio spectrum band may be implemented provided that they do not constrain the harmonised implementation of the preferred applications. These alternative applications shall be:

- (a) hearing aids, for the non-exclusive, low power part of the radio spectrum band;

(b) tracing, paging, temporary use or private mobile radio communications on a national basis in the high power part of the band.

5. The maximum radiated power in the low power part of the 169,4 – 169,8125 MHz radio spectrum band shall be limited to 0,5 Watt effective radiated power (e.r.p.). The maximum duty cycles for the meter reading systems and tracing and asset tracking system in the low power part of the 169,4 – 169,8125 MHz radio spectrum band shall be < 10 % and < 1 % respectively.

6. The use of the 169,4 – 169,8125 MHz radio spectrum band by paging systems and private mobile radio communications that is authorised at the date of notification of this Decision and which is not in conformity with Article 3 paragraphs 1 to 5, may continue for as long as the authorisations for such services, existing at the date of notification of this Decision, remain valid.

Article 4

Implementation of Article 3

Article 3 shall apply from 27 December 2005.

Article 5

Review

Member States shall keep the use of the 169,4 – 169,8125 MHz radio spectrum band under review to ensure the efficient use thereof and report their findings to the Commission.

Article 6

Addressees

This Decision is addressed to the Member States.

Done at Brussels, 20 December 2005.

For the Commission

Viviane REDING

Member of the Commission

ANNEX

Frequency plan for the 169,4 - 169,8125 MHz radio spectrum band

Low power applications					High power applications																					
Specific low power applications			Hearing aids		Social alarms		Hearing aids		Social alarms		Guardband															
Hearing aids			Exclusive use		Exclusive use		Exclusive use		Social alarms		These channels could be used on a national basis for high power applications such as paging, tracing, temporary use or PMR.															
12,5			50		12,5		12,5		12,5		12,5 (1)															
1a	1b	2a	2b	3a	3b	4a	4b+5+6a	6b+7+8a	8b	9a	9b	10a	10b	11a	11b	12a	12b	13a	13b	14a	14b	15a	15b	16a	16b	

Legend:

1st row: category application, i.e. low power applications or high power applications;

2nd row: preferred applications:

- Specific low power applications: see Article 3(2)(c) and (d).
 - Social alarms: see Article 3(2)(b).
 - Hearing aids: see Article 3(2)(a).
 - Tracking and tracing system (high power part): see Article 3(3)(a)
 - Paging system: see Article 3(3)(b)
- 3rd row: alternative applications: see Article 3(4);
- 4th and 5th rows: channel raster (in kHz) and channel number.

(1) Due to the possibility of using any high power channel for the temporary use application. However, to facilitate border coordination, systems using 25 kHz channels must respect the channel raster starting from the lower edge of the channel 9.

Channelling arrangement for the 169,4 – 169,8125 MHz band

12,5 kHz bandwidth		25 kHz bandwidth		50 kHz bandwidth	
Channel number	Centre frequency	Channel number	Centre frequency	Channel number	Centre frequency
1a	169,406250	1	169,412500	'0'	169,437500
1b	169,418750				
2a	169,431250	2	169,437500		
2b	169,443750				
3a	169,456250	3	169,462500		
3b	169,468750				
4a	169,481250	4	169,487500		
4b	169,493750				
5a	169,506250	5	169,512500	'1'	169,512500
5b	169,518750				
6a	169,531250	6	169,537500		
6b	169,543750				
7a	169,556250	7	169,562500	'2'	169,562500
7b	169,568750				
8a	169,581250	8	169,587500		
8b	169,593750				
12,5 kHz 'guard band'					
9a	169,618750	9	169,625000		
9b	169,631250				
10a	169,643750	10	169,650000		
10b	169,656250				
11a	169,668750	11	169,675000		
11b	169,681250				
12a	169,693750	12	169,700000		
12b	169,706250				
13a	169,718750	13	169,725000		
13b	169,731250				
14a	169,743750	14	169,750000		
14b	169,756250				
15a	169,768750	15	169,775000		
15b	169,781250				
16a	169,793750	16	169,800000		
16b	169,806250				

CORRIGENDA

Corrigendum to Directive 2005/44/EC of the European Parliament and of the Council of 7 September 2005 on harmonised river information services (RIS) on inland waterways in the Community

(Official Journal of the European Union L 255 of 30 September 2005)

On page 155, Article 5(2), under points (a) and (c):

for:

- '2. (...) The establishment shall be carried out in accordance with the following time-table:
- (a) the RIS guidelines by 20 June 2006,
 - (b) (...)
 - (c) the technical specifications regarding the vessel tracking and tracing systems by 20 December 2006.'

read:

- '2. (...) The establishment shall be carried out in accordance with the following time-table:
- (a) the RIS guidelines by 20 July 2006,
 - (b) (...)
 - (c) the technical specifications regarding the vessel tracking and tracing systems by 20 January 2007.'
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