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Contents

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REGULATIONS

- ★ Regulation (EC) No 661/2009 of the European Parliament and of the Council of 13 July 2009 concerning type-approval requirements for the general safety of motor vehicles, their trailers and systems, components and separate technical units intended therefor ⁽¹⁾ 1
- ★ Regulation (EC) No 662/2009 of the European Parliament and of the Council of 13 July 2009 establishing a procedure for the negotiation and conclusion of agreements between Member States and third countries on particular matters concerning the law applicable to contractual and non-contractual obligations 25
- ★ Regulation (EC) No 663/2009 of the European Parliament and of the Council of 13 July 2009 establishing a programme to aid economic recovery by granting Community financial assistance to projects in the field of energy 31
- ★ Council Regulation (EC) No 664/2009 of 7 July 2009 establishing a procedure for the negotiation and conclusion of agreements between Member States and third countries concerning jurisdiction, recognition and enforcement of judgments and decisions in matrimonial matters, matters of parental responsibility and matters relating to maintenance obligations, and the law applicable to matters relating to maintenance obligations 46

Corrigenda

- ★ Corrigendum to Regulation (EC) No 595/2009 of the European Parliament and of the Council of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information and amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and repealing Directives 80/1269/EEC, 2005/55/EC and 2005/78/EC (OJ L 188, 18.7.2009) 52

⁽¹⁾ Text with EEA relevance

I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

REGULATION (EC) No 661/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 July 2009

concerning type-approval requirements for the general safety of motor vehicles, their trailers and systems, components and separate technical units intended therefor

(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⁾,

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

Whereas:

(1) The internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured. To that end, a comprehensive Community type-approval system for motor vehicles, established by Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) ⁽³⁾, is in place.

(2) This Regulation is a separate regulation for the purposes of the Community type-approval procedure provided for by Directive 2007/46/EC. Therefore, Annexes IV, VI, XI and XV to that Directive should be amended accordingly.

(3) This Regulation is without prejudice to the vehicle single-step and mixed type-approval procedure set out in Article 6 of Directive 2007/46/EC.

(4) The technical requirements for the type-approval of motor vehicles with regard to numerous safety and environmental elements have been harmonised at Community level in order to avoid requirements that differ from one Member State to another, and to ensure a high level of road safety and environmental protection throughout the Community.

(5) Therefore, this Regulation also aims at enhancing the competitiveness of the Community automotive industry whilst enabling Member States to exercise effective market surveillance of compliance with the detailed type-approval requirements of this Regulation as regards the placing on the market of the products concerned.

(6) It is appropriate to set out requirements regarding both the general safety of motor vehicles and the environmental performance of tyres, due to the availability of tyre pressure monitoring systems which enhance at the same time the safety and environmental performance of tyres.

(7) Following the request of the European Parliament, a new regulatory approach has been applied to Community vehicle legislation. This Regulation should therefore lay down only fundamental provisions on vehicle safety and CO₂ and noise emissions from tyres, whereas the technical specifications should be laid down by implementing measures 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 ⁽⁴⁾.

⁽¹⁾ Opinion of 14 January 2009 (not yet published in the Official Journal).

⁽²⁾ Opinion of the European Parliament of 10 March 2009 (not yet published in the Official Journal) and Council Decision of 22 June 2009.

⁽³⁾ OJ L 263, 9.10.2007, p. 1.

⁽⁴⁾ OJ L 184, 17.7.1999, p. 23.

- (8) In particular, the Commission should be empowered to establish the specific procedures, tests and requirements for the type-approval of motor vehicles, components and separate technical units; to define more precisely the characteristics a tyre must fulfil to be defined as 'special use tyre', 'off-road professional tyre', 'reinforced tyre', 'extra load tyre', 'snow tyre', 'T-type temporary-use spare tyre' or 'traction tyre'; to set out specific safety requirements for vehicles intended for the transport of dangerous goods by road within or between Member States; to exempt certain vehicles or classes of vehicles of categories M₂, M₃, N₂ and N₃ from the obligation to install advanced emergency braking systems and/or lane departure warning systems; to amend the limit values on rolling resistance and rolling noise for tyres as a result of changes in test procedures without lowering the level of protection of the environment; to establish rules on the procedure for the determination of noise levels of tyres; to shorten the sell-off period for tyres not complying with the requirements set out in this Regulation and its implementing measures; and to amend Annex IV to include the Regulations of the United Nations Economic Commission for Europe (UNECE Regulations) which are mandatory under Council Decision 97/836/EC of 27 November 1997 with a view to accession by the European Community to the Agreement of the United Nations Economic Commission for Europe concerning the adoption of uniform technical prescriptions for wheeled vehicles, equipment and parts which can be fitted to and/or be used on wheeled vehicles and the conditions for reciprocal recognition of approvals granted on the basis of these prescriptions⁽¹⁾. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, inter alia, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (9) In addition to the ongoing Commission initiative aiming at defining a road grading system, the Commission should, within 12 months of the entry into force of this Regulation, bring forward a proposal on the classification of EU roads according to noise generation that will complement noise mapping in motor vehicle transportation with a view to fixing appropriate priorities and road surface requirements and setting maximum road noise generation limits.
- (10) Technical progress in the area of advanced vehicle safety systems offers new possibilities for casualty reduction. In order to minimise the number of casualties, it is necessary to introduce some of the relevant new technologies.
- (11) The mandatory and consistent use of state-of-the art tyre manufacturing technologies and low rolling resistance tyres is essential to reduce the share of greenhouse gas emissions of road traffic in the transport sector, while at the same time promoting innovation, employment and the competitiveness of the Community automotive industry.
- (12) In order to simplify type-approval legislation in line with the recommendations contained in the final report of the CARS 21 High Level Group, it is appropriate to repeal several Directives without reducing the level of protection of road users. The requirements set out in those Directives should be carried over to this Regulation and should be replaced, where appropriate, with references to the corresponding UNECE Regulations, as incorporated into Community law in accordance with Decision 97/836/EC. To reduce the administrative burden of the type-approval process, it is appropriate to allow vehicle manufacturers to obtain type-approval for the purposes of this Regulation, where appropriate, by means of obtaining approval in accordance with the relevant UNECE Regulation as listed in Annex IV to this Regulation.
- (13) It is appropriate that vehicles be designed, constructed and assembled so as to minimise the risk of injury to their occupants and other road users. For this purpose, it is necessary that manufacturers ensure that vehicles comply with the relevant requirements set out in this Regulation and its implementing measures. Those provisions should include, but not be limited to, requirements relating to vehicle structural integrity, systems to aid the driver's control of the vehicle, systems to provide the driver with visibility and information on the state of the vehicle and the surrounding area, vehicle lighting systems, vehicle occupant protection systems, the vehicle exterior and accessories, vehicle masses and dimensions, vehicle tyres and advanced vehicle systems and various other items. In addition, it is necessary that vehicles comply with specific provisions relating to certain goods vehicles and their trailers, or specific provisions relating to buses, as the case may be.
- (14) The timetable for the introduction of specific new requirements for the type-approval of vehicles should take into account the technical feasibility of those requirements. In general, the requirements should initially apply only to new types of vehicle. Existing types of vehicle should be allowed an additional time period to comply with the requirements. Furthermore, mandatory installation of tyre pressure monitoring systems should initially apply only to passenger cars. Mandatory installation of other advanced safety features should initially apply only to heavy goods vehicles.
- (15) The Commission should continue to assess the technical and economic feasibility and market maturity of other advanced safety features, and present a report, including, if appropriate, proposals for amendment to this Regulation, by 1 December 2012, and every three years thereafter.

⁽¹⁾ OJ L 346, 17.12.1997, p. 78.

- (16) The Commission should assess the feasibility of extending the mandatory installation of tyre pressure monitoring systems, lane departure warning systems and advanced emergency braking systems to other categories of vehicle and, if appropriate, propose an amendment to this Regulation.
- (17) The Commission should assess the feasibility of strengthening the requirements for wet grip for tyres, and if appropriate, propose an amendment to this Regulation. Member States should ensure effective market surveillance.
- (18) The full potential of increasing safety, reducing CO₂ emissions and lowering traffic noise can only be achieved in combination with a labelling scheme aimed at informing consumers of the performance of tyres.
- (19) It is appropriate to implement the measures announced in the Communication from the Commission of 7 February 2007 entitled 'Results of the review of the Community Strategy to reduce CO₂ emissions from passenger cars and light-commercial vehicles' aiming at reducing CO₂ emissions from tyres. This reduction should be achieved through a combination of low rolling resistance tyres and the use of tyre pressure monitoring systems. At the same time, it is also appropriate to set out requirements aiming at reducing tyre road noise and wet grip requirements ensuring that tyre safety levels are maintained. The related implementation timetable should reflect the degree of challenge in meeting all of those requirements. In particular, due to the challenge in meeting the requirements regarding rolling noise and taking into account the time needed by industry to replace existing lines of tyres, it is appropriate to provide for a longer period for implementation of rolling noise requirements with regard to new tyres of existing types.
- (20) Some categories of tyres, including professional off-road tyres which are subject to a speed restriction and tyres intended only for vehicles registered before 1990, are likely to be produced in very small quantities. Therefore, it is appropriate to exempt such categories of tyres from certain requirements set out in this Regulation and its implementing measures, where such requirements are incompatible with the use of the tyres, or where the additional burden imposed by them is disproportionate.
- (21) With regard to retreaded tyres, the Commission should make a proper assessment of this sector, involving all stakeholders, and evaluate whether there is any need to adapt the regulatory regime.
- (22) It is appropriate to establish allowances with regard to some of the rolling resistance or rolling noise limit values for certain specific categories of tyres to take into account their design or performance characteristics. In particular, it is appropriate to establish such allowances for tyres designed to have improved traction and braking performance in severe snow conditions.
- (23) Special use tyres are employed on vehicles accessing construction, logging and mining sites and are therefore primarily designed to give better performance off-road than tyres intended for road use only. To achieve this performance, they are constructed from materials that enable them to better resist damage than normal tyres, and have a block tread pattern. As both of these essential design features cause special use tyres to generate more noise than normal tyres, they should be permitted to emit more noise than normal tyres.
- (24) Electronic stability control systems, advanced emergency braking systems and lane departure warning systems have a high potential to considerably reduce casualties. Therefore, requirements for such systems should be established by the Commission in line with UNECE Regulations for those vehicle categories in which their application is appropriate and for which it is demonstrated that they will improve the overall level of safety. Sufficient lead time until implementation of these requirements should be provided for in order to allow for implementation measures to be adopted, and subsequently for development and in-vehicle application of these complex technologies.
- (25) With effect from 2011 for new type approvals and from 2014 for new vehicles, the implementation deadlines for the mandatory fitting of electronic stability control systems on heavy duty vehicles should follow the dates set out in this Regulation.
- (26) Until electronic stability control systems are introduced, the Commission should take measures and run campaigns to provide information on their effectiveness and to promote their sale. In addition, the Commission should monitor price developments to ascertain whether the price of new cars is being disproportionately increased as a result of equipping them to meet new safety standards.
- (27) Future measures proposed on the basis of this Regulation or procedures to be implemented in application of it should comply with the principles set out by the Commission in its Communication of 7 February 2007 entitled 'A Competitive Automotive Regulatory Framework for the 21st Century'. In particular, for the purposes of better regulation and simplification and in order to avoid constant updating of existing Community legislation on issues of technical specifications, this Regulation should make references to existing international standards and regulations without reproducing them in the Community legal framework.

- (28) It is important that replacement components for systems which are covered by this Regulation be subject to equivalent safety requirements and approval procedures. Therefore it is appropriate to provide for the approval of replacement components and separate technical units.
- (29) Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.
- (30) This Regulation relates to Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information ⁽¹⁾ and to Regulation (EC) No 443/2009 of the European Parliament and of the Council of 23 April 2009 setting emission performance standards for new passenger cars as part of the Community's integrated approach to reduce CO₂ emissions from light-duty vehicles ⁽²⁾. In particular, the measures of this Regulation regarding the reduction of CO₂ emissions should be linked as far as possible to the additional measures for achieving a further reduction of 10g CO₂ on the basis of the 130 g CO₂ emissions target.
- (31) The Commission should in due course propose, as a more integrated approach, further amendments to this Regulation or submit other proposals pursuant to a comprehensive impact assessment which addresses all possible additional measures aimed at achieving the desired CO₂ emissions targets and which covers other available technologies on the market, including tyre pressure retention technologies, improvement to road surfaces and any other relevant new technology, as well as requirements regarding air conditioning efficiency, which already do have or could have a clear effect on tyre rolling resistance or vehicle fuel economy and CO₂ emissions.
- (32) A coherent and comprehensive approach should be implemented to address the problem of road noise. With respect to the significant contribution of road surfaces to road noise, ISO 10844 is currently being revised and should be considered in this context with the objective of further optimising road surfaces. Member States should invest more heavily under the existing ISO standards in order to improve their road surfaces. Furthermore, a comprehensive noise emissions policy covering all transport systems should be developed, covering aviation and rail noise in addition to road transport noise.
- (33) With effect from the dates of application to new vehicles, new components and separate technical units of the relevant requirements set out in this Regulation, the following Directives should therefore be repealed:
- Council Directive 70/221/EEC of 20 March 1970 on the approximation of the laws of the Member States relating to fuel tanks and rear underrun protection of motor vehicles and their trailers ⁽³⁾,
 - Council Directive 70/222/EEC of 20 March 1970 on the approximation of the laws of the Member States relating to the space for mounting and the fixing of rear registration plates on motor vehicles and their trailers ⁽⁴⁾,
 - Council Directive 70/311/EEC of 8 June 1970 on the approximation of the laws of the Member States relating to the steering equipment for motor vehicles and their trailers ⁽⁵⁾,
 - Council Directive 70/387/EEC of 27 July 1970 on the approximation of the laws of the Member States relating to the doors of motor vehicles and their trailers ⁽⁶⁾,
 - Council Directive 70/388/EEC of 27 July 1970 on the approximation of the laws of the Member States relating to audible warning devices for motor vehicles ⁽⁷⁾,
 - Council Directive 71/320/EEC of 26 July 1971 on the approximation of the laws of the Member States relating to the braking devices of certain categories of motor vehicles and of their trailers ⁽⁸⁾,
 - Council Directive 72/245/EEC of 20 June 1972 relating to the radio interference (electromagnetic compatibility) of vehicles ⁽⁹⁾,
 - Council Directive 74/60/EEC of 17 December 1973 on the approximation of the laws of the Member States relating to the interior fittings of motor vehicles ⁽¹⁰⁾,

⁽³⁾ OJ L 76, 6.4.1970, p. 23.

⁽⁴⁾ OJ L 76, 6.4.1970, p. 25.

⁽⁵⁾ OJ L 133, 18.6.1970, p. 10.

⁽⁶⁾ OJ L 176, 10.8.1970, p. 5.

⁽⁷⁾ OJ L 176, 10.8.1970, p. 12.

⁽⁸⁾ OJ L 202, 6.9.1971, p. 37.

⁽⁹⁾ OJ L 152, 6.7.1972, p. 15.

⁽¹⁰⁾ OJ L 38, 11.2.1974, p. 2.

⁽¹⁾ OJ L 171, 29.6.2007, p. 1.

⁽²⁾ OJ L 140, 5.6.2009, p. 1.

- Council Directive 74/61/EEC of 17 December 1973 on the approximation of the laws of the Member States relating to devices to prevent the unauthorized use of motor vehicles ⁽¹⁾,
- Council Directive 74/297/EEC of 4 June 1974 on the approximation of the laws of the Member States relating to the interior fittings of motor vehicles (the behaviour of the steering mechanism in the event of an impact) ⁽²⁾,
- Council Directive 74/408/EEC of 22 July 1974 relating to motor vehicles with regard to the seats, their anchorages and head restraints ⁽³⁾,
- Council Directive 74/483/EEC of 17 September 1974 on the approximation of the laws of the Member States relating to the external projections of motor vehicles ⁽⁴⁾,
- Council Directive 75/443/EEC of 26 June 1975 on the approximation of the laws of the Member States relating to the reverse and speedometer equipment of motor vehicles ⁽⁵⁾,
- Council Directive 76/114/EEC of 18 December 1975 on the approximation of the laws of the Member States relating to statutory plates and inscriptions for motor vehicles and their trailers, and their location and method of attachment ⁽⁶⁾,
- Council Directive 76/115/EEC of 18 December 1975 on the approximation of the laws of the Member States relating to anchorages for motor-vehicle safety belts ⁽⁷⁾,
- Council Directive 76/756/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to the installation of lighting and light-signalling devices on motor vehicles and their trailers ⁽⁸⁾,
- Council Directive 76/757/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to retro-reflectors for motor vehicles and their trailers ⁽⁹⁾,
- Council Directive 76/758/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to the end-outline marker lamps, front position (side) lamps, rear position (side) lamps, stop lamps, daytime running lamps and side marker lamps for motor vehicles and their trailers ⁽¹⁰⁾,
- Council Directive 76/759/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to direction indicator lamps for motor vehicles and their trailers ⁽¹¹⁾,
- Council Directive 76/760/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to the rear registration plate lamps for motor vehicles and their trailers ⁽¹²⁾,
- Council Directive 76/761/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to motor vehicle headlamps which function as main-beam and/or dipped-beam headlamps and to light sources (filament lamps and others) for use in approved lamp units of motor vehicles and of their trailers ⁽¹³⁾,
- Council Directive 76/762/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to front fog lamps for motor vehicles ⁽¹⁴⁾,
- Council Directive 77/389/EEC of 17 May 1977 on the approximation of the laws of the Member States relating to motor-vehicle towing-devices ⁽¹⁵⁾,
- Council Directive 77/538/EEC of 28 June 1977 on the approximation of the laws of the Member States relating to rear fog lamps for motor vehicles and their trailers ⁽¹⁶⁾,
- Council Directive 77/539/EEC of 28 June 1977 on the approximation of the laws of the Member States relating to reversing lamps for motor vehicles and their trailers ⁽¹⁷⁾,
- Council Directive 77/540/EEC of 28 June 1977 on the approximation of the laws of the Member States relating to parking lamps for motor vehicles ⁽¹⁸⁾,

⁽¹⁾ OJ L 38, 11.2.1974, p. 22.

⁽²⁾ OJ L 165, 20.6.1974, p. 16.

⁽³⁾ OJ L 221, 12.8.1974, p. 1.

⁽⁴⁾ OJ L 266, 2.10.1974, p. 4.

⁽⁵⁾ OJ L 196, 26.7.1975, p. 1.

⁽⁶⁾ OJ L 24, 30.1.1976, p. 1.

⁽⁷⁾ OJ L 24, 30.1.1976, p. 6.

⁽⁸⁾ OJ L 262, 27.9.1976, p. 1.

⁽⁹⁾ OJ L 262, 27.9.1976, p. 32.

⁽¹⁰⁾ OJ L 262, 27.9.1976, p. 54.

⁽¹¹⁾ OJ L 262, 27.9.1976, p. 71.

⁽¹²⁾ OJ L 262, 27.9.1976, p. 85.

⁽¹³⁾ OJ L 262, 27.9.1976, p. 96.

⁽¹⁴⁾ OJ L 262, 27.9.1976, p. 122.

⁽¹⁵⁾ OJ L 145, 13.6.1977, p. 41.

⁽¹⁶⁾ OJ L 220, 29.8.1977, p. 60.

⁽¹⁷⁾ OJ L 220, 29.8.1977, p. 72.

⁽¹⁸⁾ OJ L 220, 29.8.1977, p. 83.

- Council Directive 77/541/EEC of 28 June 1977 on the approximation of the laws of the Member States relating to safety belts and restraint systems of motor vehicles ⁽¹⁾,
- Council Directive 77/649/EEC of 27 September 1977 on the approximation of the laws of the Member States relating to the field of vision of motor vehicle drivers ⁽²⁾,
- Council Directive 78/316/EEC of 21 December 1977 on the approximation of the laws of the Member States relating to the interior fittings of motor vehicles (identification of controls, tell-tales and indicators) ⁽³⁾,
- Council Directive 78/317/EEC of 21 December 1977 on the approximation of the laws of the Member States relating to the defrosting and demisting systems of glazed surfaces of motor vehicles ⁽⁴⁾,
- Council Directive 78/318/EEC of 21 December 1977 on the approximation of the laws of the Member States relating to the wiper and washer systems of motor vehicles ⁽⁵⁾,
- Council Directive 78/549/EEC of 12 June 1978 on the approximation of the laws of the Member States relating to the wheel guards of motor vehicles ⁽⁶⁾,
- Council Directive 78/932/EEC of 16 October 1978 on the approximation of the laws of the Member States relating to head restraints of seats of motor vehicles ⁽⁷⁾,
- Council Directive 89/297/EEC of 13 April 1989 on the approximation of the laws of the Member States relating to the lateral protection (side guards) of certain motor vehicles and their trailers ⁽⁸⁾,
- Council Directive 91/226/EEC of 27 March 1991 on the approximation of the laws of the Member States relating to the spray-suppression systems of certain categories of motor vehicles and their trailers ⁽⁹⁾,
- Council Directive 92/21/EEC of 31 March 1992 on the masses and dimensions of motor vehicles of category M₁ ⁽¹⁰⁾,
- Council Directive 92/22/EEC of 31 March 1992 on safety glazing and glazing materials on motor vehicles and their trailers ⁽¹¹⁾,
- Council Directive 92/23/EEC of 31 March 1992 relating to tyres for motor vehicles and their trailers and to their fitting ⁽¹²⁾,
- Council Directive 92/24/EEC of 31 March 1992 relating to speed limitation devices or similar speed limitation on-board systems of certain categories of motor vehicles ⁽¹³⁾,
- Council Directive 92/114/EEC of 17 December 1992 relating to the external projections forward of the cab's rear panel of motor vehicles of category N ⁽¹⁴⁾,
- Directive 94/20/EC of the European Parliament and of the Council of 30 May 1994 relating to the mechanical coupling devices of motor vehicles and their trailers and their attachment to those vehicles ⁽¹⁵⁾,
- Directive 95/28/EC of the European Parliament and of the Council of 24 October 1995 relating to the burning behaviour of materials used in the interior construction of certain categories of motor vehicle ⁽¹⁶⁾,
- Directive 96/27/EC of the European Parliament and of the Council of 20 May 1996 on the protection of occupants of motor vehicles in the event of a side impact and amending Directive 70/156/EEC ⁽¹⁷⁾,
- Directive 96/79/EC of the European Parliament and of the Council of 16 December 1996 on the protection of occupants of motor vehicles in the event of a frontal impact and amending Directive 70/156/EEC ⁽¹⁸⁾,
- Directive 97/27/EC of the European Parliament and of the Council of 22 July 1997 relating to the masses and dimensions of certain categories of motor vehicles and their trailers and amending Directive 70/156/EEC ⁽¹⁹⁾,

⁽¹⁾ OJ L 220, 29.8.1977, p. 95.

⁽²⁾ OJ L 267, 19.10.1977, p. 1.

⁽³⁾ OJ L 81, 28.3.1978, p. 3.

⁽⁴⁾ OJ L 81, 28.3.1978, p. 27.

⁽⁵⁾ OJ L 81, 28.3.1978, p. 49.

⁽⁶⁾ OJ L 168, 26.6.1978, p. 45.

⁽⁷⁾ OJ L 325, 20.11.1978, p. 1.

⁽⁸⁾ OJ L 124, 5.5.1989, p. 1.

⁽⁹⁾ OJ L 103, 23.4.1991, p. 5.

⁽¹⁰⁾ OJ L 129, 14.5.1992, p. 1.

⁽¹¹⁾ OJ L 129, 14.5.1992, p. 11.

⁽¹²⁾ OJ L 129, 14.5.1992, p. 95.

⁽¹³⁾ OJ L 129, 14.5.1992, p. 154.

⁽¹⁴⁾ OJ L 409, 31.12.1992, p. 17.

⁽¹⁵⁾ OJ L 195, 29.7.1994, p. 1.

⁽¹⁶⁾ OJ L 281, 23.11.1995, p. 1.

⁽¹⁷⁾ OJ L 169, 8.7.1996, p. 1.

⁽¹⁸⁾ OJ L 18, 21.1.1997, p. 7.

⁽¹⁹⁾ OJ L 233, 25.8.1997, p. 1.

- Directive 98/91/EC of the European Parliament and of the Council of 14 December 1998 relating to motor vehicles and their trailers intended for the transport of dangerous goods by road and amending Directive 70/156/EEC relating to the type approval of motor vehicles and their trailers ⁽¹⁾,
- Directive 2000/40/EC of the European Parliament and of the Council of 26 June 2000 on the approximation of the laws of the Member States relating to the front underrun protection of motor vehicles and amending Council Directive 70/156/EEC ⁽²⁾,
- Directive 2001/56/EC of the European Parliament and of the Council of 27 September 2001 relating to heating systems for motor vehicles and their trailers, amending Council Directive 70/156/EEC and repealing Council Directive 78/548/EEC ⁽³⁾,
- Directive 2001/85/EC of the European Parliament and of the Council of 20 November 2001 relating to special provisions for vehicles used for the carriage of passengers comprising more than eight seats in addition to the driver's seat, and amending Directives 70/156/EEC and 97/27/EC ⁽⁴⁾,
- Directive 2003/97/EC of the European Parliament and of the Council of 10 November 2003 on the approximation of the laws of the Member States relating to the type-approval of devices for indirect vision and of vehicles equipped with these devices, amending Directive 70/156/EEC and repealing Directive 71/127/EEC ⁽⁵⁾.

(34) Since the objective of this Regulation, namely the achievement of the internal market through the introduction of common technical requirements concerning the safety and environmental performance of motor vehicles and tyres, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

⁽¹⁾ OJ L 11, 16.1.1999, p. 25.

⁽²⁾ OJ L 203, 10.8.2000, p. 9.

⁽³⁾ OJ L 292, 9.11.2001, p. 21.

⁽⁴⁾ OJ L 42, 13.2.2002, p. 1.

⁽⁵⁾ OJ L 25, 29.1.2004, p. 1.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter

This Regulation establishes requirements:

1. for the type-approval of motor vehicles, their trailers and systems, components and separate technical units intended therefor with regard to their safety,
2. for the type-approval of motor vehicles, in respect of tyre pressure monitoring systems, with regard to their safety, fuel efficiency and CO₂ emissions and, in respect of gear shift indicators, with regard to their fuel efficiency and CO₂ emissions; and
3. for the type-approval of newly-manufactured tyres with regard to their safety, rolling resistance performance and rolling noise emissions.

Article 2

Scope

This Regulation shall apply to vehicles of categories M, N and O and systems, components and separate technical units intended therefor as defined in Section A of Annex II to Directive 2007/46/EC, subject to Articles 5 to 12 of this Regulation.

Article 3

Definitions

For the purposes of this Regulation, the definitions laid down in Article 3 of Directive 2007/46/EC shall apply.

In addition, the following definitions shall apply:

1. 'electronic stability control' means an electronic control function for a vehicle which improves the dynamic stability of the vehicle;
2. 'class I M₂ or M₃ vehicle' means an M₂ or M₃ vehicle with a capacity exceeding 22 passengers in addition to the driver constructed with areas for standing passengers to allow frequent passenger movement;
3. 'class A M₂ or M₃ vehicle' means an M₂ or M₃ vehicle with a capacity not exceeding 22 passengers, in addition to the driver, designed to carry standing passengers and having seats and provision for standing passengers;
4. 'lane departure warning system' means a system to warn the driver of unintentional drift of the vehicle out of its travel lane;

5. 'advanced emergency braking system' means a system which can automatically detect an emergency situation and activate the vehicle braking system to decelerate the vehicle with the purpose of avoiding or mitigating a collision;
6. 'load-capacity index' means one or two numbers which indicate the load the tyre can carry in single or in single and dual formation at the speed corresponding to the associated speed category and when used in conformity with requirements specified by the manufacturer;
7. 'tyre pressure monitoring system' means a system fitted on a vehicle which can evaluate the pressure of the tyres or the variation of pressure over time and transmit corresponding information to the user while the vehicle is running;
8. 'special use tyre' means a tyre intended for mixed use both on- and off-road or for other special duty;
9. 'off-road professional tyre' means a special use tyre primarily used in severe off-road conditions;
10. 'reinforced tyre' or 'extra load tyre' means a C1 pneumatic tyre structure in which the carcass is designed to carry a greater load than the corresponding standard tyre;
11. 'snow tyre' means a tyre whose tread pattern, tread compound or structure is primarily designed to achieve in snow conditions a performance better than that of a normal tyre with regard to its ability to initiate or maintain vehicle motion;
12. 'T-type temporary-use spare tyre' means a temporary-use spare tyre designed for use at inflation pressures higher than those established for standard and reinforced tyres;
13. 'traction tyre' means a tyre of classes C2 or C3 bearing the inscription 'M + S', 'M.S.' or 'M&S' and intended to be fitted to a vehicle drive axle or axles;
14. 'unprotected road user' means pedestrians, cyclists and motorcyclists;
15. 'gear shift indicator' or 'GSI' means a visible indicator recommending that the driver shift gear;
16. 'manual gearbox' means a gearbox that can be operated in a mode where the shift between all or some of the gears is always an immediate consequence of an action of the driver, regardless of its physical implementation; this does not cover systems where the driver can only preselect a certain gear shift strategy or limit the number of gears available for driving, and where the actual gear shifts are initiated independently of the decision of the driver according to certain driving patterns.

CHAPTER II

OBLIGATIONS OF MANUFACTURERS*Article 4***General obligations**

1. Manufacturers shall demonstrate that all new vehicles sold, registered or put into service within the Community are type-approved in accordance with this Regulation and its implementing measures.
2. Manufacturers may choose to apply for type-approval with regard to all the systems, and the installation of all the components and separate technical units covered by this Regulation, or for type-approval with regard to one or more systems and the installation of one or more components and one or more separate technical units covered by this Regulation. Type-approval in accordance with the UNECE Regulations listed in Annex IV shall be considered as EC type-approval in accordance with this Regulation and its implementing measures.
3. Manufacturers shall demonstrate that all new systems, components and separate technical units sold or put into service within the Community are type-approved in accordance with this Regulation and its implementing measures.

*Article 5***General requirements and tests**

1. Manufacturers shall ensure that vehicles are designed, constructed and assembled so as to minimise the risk of injury to vehicle occupants and other road users.
2. Manufacturers shall ensure that vehicles, systems, components and separate technical units comply with the relevant requirements set out in this Regulation and its implementing measures, including the requirements relating to:
 - (a) vehicle structure integrity, including impact tests;
 - (b) systems to aid the driver's control of the vehicle, including steering, braking and electronic stability control systems;
 - (c) systems to provide the driver with visibility and information on the state of the vehicle and the surrounding area, including glazing, mirrors and driver information systems;
 - (d) vehicle lighting systems;
 - (e) vehicle occupant protection, including interior fittings, head restraints, seat belts, 'ISOfix' anchorages or built-in child restraints and vehicle doors;
 - (f) the vehicle exterior and accessories;
 - (g) electromagnetic compatibility;

- (h) audible warning devices;
- (i) heating systems;
- (j) devices to prevent unauthorised use;
- (k) vehicle identification systems;
- (l) masses and dimensions;
- (m) electrical safety;
- (n) gear shift indicators.

3. The requirements referred to in paragraphs 1 and 2 shall apply to vehicles and systems, components and separate technical units intended therefor, as specified in Annex I.

Article 6

Specific requirements relating to certain vehicles of categories N and O

1. In addition to the requirements contained in Articles 5, 8, 9, 10 and 12 and the implementing measures thereof, vehicles of categories N and O shall, where relevant, meet the requirements set out in paragraphs 2 to 5 of this Article and the implementing measures thereof.

2. Vehicles of categories N₂ and N₃ shall be constructed to ensure that, in the event of a front collision with another vehicle, the risk of injury to a vehicle occupant due to underrun is minimised.

3. Vehicles of categories N₂, N₃, O₃ and O₄ shall be constructed to ensure that, in the event of the vehicle being hit from the side by an unprotected road user, the risk of injury to that unprotected road user due to underrun is minimised.

4. The vehicle cab or the space provided for the driver and passengers shall be of sufficient strength to offer protection to the occupants in the event of an impact, taking account of UNECE Regulation 29.

5. Vehicles of categories N₂, N₃, O₃ and O₄ shall be constructed so as to minimise the effect of spray emissions from the vehicle on the ability of drivers of other vehicles to see.

Article 7

Specific requirements relating to vehicles of categories M₂ and M₃

1. In addition to the requirements contained in Articles 5, 8, 9, 10 and 12 and the implementing measures thereof, vehicles

of categories M₂ and M₃ shall meet the requirements set out in paragraphs 2 to 5 of this Article and the implementing measures thereof.

2. The carrying capacity of a vehicle, including seated and standing passengers and wheelchair users, shall be appropriate to the mass, size and layout of the vehicle.

3. Vehicle bodies shall be designed and constructed so as to enable the vehicle to be operated in a safe and stable manner, even at full capacity. Suitable provisions shall be made to ensure safe access to and exit from the vehicle, particularly in the case of an emergency.

4. Vehicles of Class I shall be accessible for people with reduced mobility, including wheelchair users.

5. Materials used in the construction of the inside of bus and coach bodywork shall, as far as possible, prevent or at least retard fire in order to allow occupants to evacuate the vehicle in the event of fire.

Article 8

Classification of tyres

1. Tyres shall be classified as follows:

(a) class C1 tyres — tyres designed primarily for vehicles of categories M₁, N₁, O₁ and O₂;

(b) class C2 tyres — tyres designed primarily for vehicles of categories M₂, M₃, N, O₃ and O₄ with a load capacity index in single formation ≤ 121 and the speed category symbol ≥ 'N';

(c) class C3 tyres — tyres designed primarily for vehicles of categories M₂, M₃, N, O₃ and O₄ with one of the following load capacity indices:

(i) a load capacity index in single formation ≤ 121 and the speed category symbol ≤ 'M';

(ii) a load capacity index in single formation ≥ 122.

A tyre may be classified in more than one class provided that it meets all the relevant requirements of each class in which it is classified.

2. The list of load-capacity indices and their corresponding masses contained in UNECE Regulations 30 and 54 shall apply.

Article 9

Specific provisions relating to vehicle tyres, installation of tyres and tyre pressure monitoring systems

1. All tyres provided as part of the equipment of a vehicle, including, where appropriate, any spare tyres, shall be suitable for use on the vehicles for which they are intended, particularly with regard to their dimensions, speed and load performance characteristics.

2. Vehicles of category M₁ shall be equipped with an accurate tyre pressure monitoring system capable of giving, when necessary, an in-car warning to the driver when a loss of pressure occurs in any tyre, in the interests of optimum fuel consumption and road safety. Appropriate limits in the technical specifications shall be set to achieve this, which shall furthermore allow for a technology-neutral and cost-effective approach in the development of accurate tyre pressure monitoring systems.

3. All C1 tyres shall meet the wet grip requirements contained in Part A of Annex II.

4. All tyres shall meet the rolling resistance requirements contained in Part B of Annex II.

5. All tyres shall meet the rolling noise requirements contained in Part C of Annex II.

6. Paragraphs 3, 4 and 5 shall not apply to:

- (a) tyres whose speed rating is less than 80 km/h;
- (b) tyres whose nominal rim diameter does not exceed 254 mm or is 635 mm or more;
- (c) T-type temporary-use spare tyres;
- (d) tyres designed only to be fitted to vehicles registered for the first time before 1 October 1990;
- (e) tyres fitted with additional devices to improve traction properties.

7. The requirements regarding rolling resistance and rolling noise set out in Parts B and C of Annex II shall not apply to off-road professional tyres.

Article 10

Advanced vehicle systems

1. Subject to exemptions established in accordance with Article 14(3)(a), vehicles of categories M₂, M₃, N₂ and N₃ shall be equipped with an advanced emergency braking system which shall meet the requirements of this Regulation and its implementing measures.

2. Subject to exemptions established in accordance with Article 14(3)(a), vehicles of categories M₂, M₃, N₂ and N₃ shall be equipped with a lane departure warning system which shall meet the requirements of this Regulation and its implementing measures.

Article 11

Gear shift indicators

Vehicles of category M₁ with a reference mass not exceeding 2 610 kg and vehicles to which type-approval is extended in accordance with Article 2(2) of Regulation (EC) No 715/2007 which are fitted with a manual gearbox shall be equipped with gear shift indicators in accordance with the requirements of this Regulation and its implementing measures.

Article 12

Electronic stability control systems

1. Vehicles of categories M₁ and N₁ shall be equipped with an electronic stability control system meeting the requirements of this Regulation and its implementing measures.

2. With the exception of off-road vehicles as defined in points 4.2 and 4.3 of Section A of Annex II to Directive 2007/46/EC, the following vehicles shall be equipped with an electronic stability control system meeting the requirements of this Regulation and its implementing measures:

- (a) vehicles of categories M₂ and M₃, except for those with more than three axles, articulated buses and coaches, and buses of Class I or Class A;
- (b) vehicles of categories N₂ and N₃ except for those with more than three axles, tractors for semi-trailers with a gross vehicle mass between 3.5 and 7.5 tonnes, and special purpose vehicles as defined in points 5.7 and 5.8 of Section A of Annex II to Directive 2007/46/EC;
- (c) vehicles of categories O₃ and O₄ equipped with air suspension, except for those with more than three axles, trailers for exceptional load transport and trailers with areas for standing passengers.

CHAPTER III

OBLIGATIONS OF THE MEMBER STATES

Article 13

Type-approval of vehicles, components and separate technical units

1. With effect from 1 November 2011, national authorities shall refuse, on grounds relating to electronic stability control systems, to grant EC type-approval or national type-approval in respect of new types of vehicle of categories M₁ and N₁ which do not comply with this Regulation and its implementing measures.

Following the implementation dates set out in Table 1 of Annex V, national authorities shall refuse, on grounds relating to electronic stability control systems, to grant EC type-approval or national type-approval in respect of new types of vehicle of categories M₂, M₃, N₂, N₃, O₃ and O₄, which do not comply with this Regulation and its implementing measures.

2. With effect from 1 November 2012, national authorities shall refuse to grant on grounds relating to the areas of vehicle safety and tyres covered by Articles 5 to 8, Article 9(2) and Article 11:

(a) EC type-approval or national type-approval in respect of new types of vehicle of the categories specified in those Articles and their implementing measures, where such vehicles do not comply with this Regulation and its implementing measures; and

(b) EC component/separate technical unit type-approval in respect of new types of components or separate technical units intended for such vehicles, where such components or separate technical units do not comply with this Regulation and its implementing measures.

3. With effect from 1 November 2012, national authorities shall refuse, on grounds relating to the areas of tyres covered by Article 9(1) and (3) to (7) and Annex II, with the exception of the rolling resistance limit values set out in Table 2 of Part B of Annex II, to grant EC component/separate technical unit type-approval in respect of new types of tyre which do not comply with this Regulation and its implementing measures.

With effect from 1 November 2013, national authorities shall refuse, on grounds relating to the areas of tyres covered by Article 9(1) and (3) to (7) and Annex II, with the exception of the rolling resistance limit values set out in Table 2 of Part B of Annex II, to grant EC type-approval or national type-approval in respect of new types of vehicle of the categories M, N and O which do not comply with this Regulation and its implementing measures.

4. Following the implementation dates set out in Table 2 of Annex V, national authorities shall, on grounds relating to electronic stability control systems, consider certificates of conformity for new vehicles of categories M₂, M₃, N₂, N₃, O₃ and O₄ to be no longer valid for the purposes of Article 26 of Directive 2007/46/EC, and shall prohibit the registration, sale and entry into service of such vehicles, where such vehicles do not comply with this Regulation and its implementing measures.

5. With effect from 1 November 2014, national authorities shall, on grounds relating to the areas of vehicle safety and tyres covered by Articles 5, 6, 7 and 8, Article 9(1) to (4), Article 11, Article 12(1) and Parts A and B of Annex II, with the exception of the rolling resistance limit values for C3 tyres and the rolling resistance limit values set out in Table 2 of Part B of Annex II:

(a) consider certificates of conformity for new vehicles of the categories specified in those Articles to be no longer valid for the purposes of Article 26 of Directive 2007/46/EC, and prohibit the registration, sale and entry into service of such vehicles, where such vehicles do not comply with this Regulation and its implementing measures; and

(b) prohibit the sale and entry into service of new components or separate technical units intended for such vehicles, where such components or separate technical units do not comply with this Regulation and its implementing measures.

6. With effect from 1 November 2016, national authorities shall, on grounds relating to tyre rolling noise and, in the case of C3 tyres, also on grounds relating to tyre rolling resistance, with the exception of the rolling resistance limit values set out in Table 2 of Part B of Annex II:

(a) consider certificates of conformity for new vehicles of categories M, N and O to be no longer valid for the purposes of Article 26 of Directive 2007/46/EC, and prohibit the registration, sale and entry into service of such vehicles, where such vehicles do not comply with this Regulation and its implementing measures; and

(b) prohibit the sale and entry into service of new tyres intended for such vehicles, where such tyres do not comply with this Regulation and its implementing measures.

7. With effect from 1 November 2016 national authorities shall refuse, on grounds relating to tyre rolling resistance, to grant EC component/separate technical unit type-approval in respect of new types of tyres which do not comply with the rolling resistance limit values set out in Table 2 of Part B of Annex II.

8. With effect from 1 November 2017 national authorities shall refuse, on grounds relating to tyre rolling resistance, to grant EC type-approval or national type-approval in respect of new types of vehicle of categories M, N and O which do not comply with the rolling resistance limit values set out in Table 2 of Part B of Annex II.

9. With effect from 1 November 2018 national authorities shall:

(a) on grounds relating to the rolling resistance limit values of C1 and C2 tyres set out in Table 2 of Part B of Annex II, consider certificates of conformity for new vehicles of categories M, N and O to be no longer valid for the purposes of Article 26 of Directive 2007/46/EC, and prohibit the registration, sale and entry into service of such vehicles, where such vehicles do not comply with this Regulation and its implementing measures; and

(b) prohibit the sale and entry into service of new tyres intended for such vehicles, where such tyres do not comply with the rolling resistance limit values set out in Table 2 of Part B of Annex II.

10. With effect from 1 November 2020 national authorities shall:

(a) on grounds relating to the rolling resistance limit values of C3 tyres set out in Table 2 of Part B of Annex II, consider certificates of conformity for new vehicles of categories M, N and O to be no longer valid for the purposes of Article 26 of Directive 2007/46/EC, and prohibit the registration, sale and entry into service of such vehicles, where such vehicles do not comply with this Regulation and its implementing measures; and

(b) prohibit the sale and entry into service of new tyres intended for such vehicles, where such tyres do not comply with the rolling resistance limit values set out in Table 2 of Part B of Annex II.

11. C1, C2 and C3 tyres that were manufactured prior to the dates set out in paragraphs 5, 6, 9 and 10 and which do not comply with the requirements of Annex II may be sold for a period not exceeding 30 months from those dates.

12. With effect from 1 November 2013 national authorities shall refuse, on grounds relating to the areas of vehicle safety covered in Article 10, to grant EC type-approval or national type-approval in respect of new types of vehicle of categories M₂, M₃, N₂ and N₃, where such vehicles do not comply with this Regulation and its implementing measures.

13. With effect from 1 November 2015 national authorities shall, on grounds relating to vehicle safety covered in Article 10, consider certificates of conformity for new vehicles of categories M₂, M₃, N₂ and N₃ to be no longer valid for the purposes of Article 26 of Directive 2007/46/EC, and prohibit the registration, sale and entry into service of such vehicles, where such vehicles do not comply with this Regulation and its implementing measures.

14. National authorities shall permit the sale and entry into service of vehicles, components and separate technical units type-approved before the dates referred to in paragraphs 1, 2 and 3 and continue to grant extension of approvals to those vehicles, components and separate technical units under the terms of the regulatory act under which they were originally permitted or granted, unless the requirements applying to such vehicles, components or separate technical units have been modified or new requirements have been added by this Regulation and its implementing measures.

National authorities shall permit the sale and entry into service of and continue to grant extensions to EC type-approval to replacement components and separate technical units, with

the exception of replacement tyres, intended for vehicles type-approved before the dates referred to in paragraphs 1, 2 and 3, under the terms of the regulatory act under which they were originally permitted or granted.

15. Without prejudice to paragraphs 1 to 14, and subject to entry into force of the implementing measures referred to in Article 14, if a manufacturer so requests, national authorities may not, on grounds relating to the areas of vehicle safety and tyres covered in Articles 5 to 12:

(a) refuse to grant EC type-approval or national type-approval for a new type of vehicle or to grant EC component/separate technical unit type-approval for a new type of component or separate technical unit, where such vehicle, component or separate technical unit complies with this Regulation and its implementing measures; or

(b) prohibit the registration, sale or entry into service of a new vehicle or prohibit the sale or entry into service of a new component or separate technical unit, where the vehicle, component or separate technical unit concerned complies with this Regulation and its implementing measures.

CHAPTER IV

IMPLEMENTATION

Article 14

Implementing measures

1. The Commission shall adopt the following implementing measures:

(a) detailed rules concerning the specific procedures, tests and technical requirements for the type-approval of motor vehicles, their trailers and components and separate technical units with regard to the provisions of Articles 5 to 12;

(b) detailed rules concerning specific safety requirements for vehicles intended for the transport of dangerous goods by road within or between Member States, taking account of UNECE Regulation 105;

(c) a more precise definition of the physical characteristics and performance requirements a tyre must fulfil to be defined as 'special use tyre', 'off-road professional tyre', 'reinforced tyre', 'extra load tyre', 'snow tyre', 'T-type temporary-use spare tyre' or 'traction tyre' in accordance with points 8 to 13 of the second paragraph of Article 3;

(d) measures amending the limit values on rolling resistance and rolling noise laid down in Parts B and C of Annex II insofar as is necessary as a result of changes in test procedures and without lowering the level of protection of the environment;

(e) detailed rules on the procedure for the determination of the noise levels referred to in point 1 of Part C of Annex II;

(f) measures amending Annex IV to include the UNECE Regulations that are mandatory under Article 4(4) of Decision 97/836/EC.

2. The measures referred to in paragraph 1, with the exception of those relating to the provisions of Article 10, shall be adopted by 31 December 2010.

The measures relating to the provisions of Article 10 shall be adopted by 31 December 2011.

3. The Commission may adopt the following implementing measures:

(a) measures exempting certain vehicles or classes of vehicles of categories M₂, M₃, N₂ and N₃ from the obligation to install advanced vehicle systems referred to in Article 10 where, following a cost/benefit analysis and taking into account all relevant safety aspects, the application of those systems proves not to be appropriate to the vehicle or class of vehicles concerned;

(b) by 31 December 2010, and on the basis of a cost/benefit analysis, measures shortening the period laid down in Article 13(11), which may be differentiated according to the class or category of tyres concerned.

4. The measures referred to in this Article, designed to amend non-essential elements of this Regulation, inter alia, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 15(2).

Article 15

Committee procedure

1. The Commission shall be assisted by the Technical Committee — Motor Vehicles (TCMV) established by Article 40(1) of Directive 2007/46/EC.

2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

CHAPTER V

FINAL PROVISIONS

Article 16

Penalties for non-compliance

1. Member States shall lay down the rules on penalties applicable to infringement by manufacturers of the provisions of this Regulation and its implementing measures and shall take

all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. By 20 February 2011 or, as appropriate, 18 months from the date of entry into force of the relevant implementing measure, Member States shall notify those provisions to the Commission, and shall notify it without delay of any subsequent amendment affecting them.

2. The types of infringement which are subject to a penalty shall include at least the following:

(a) making false declarations during an approval procedure or a procedure leading to a recall;

(b) falsifying test results for type-approval;

(c) withholding data or technical specifications which could lead to recall or withdrawal of type-approval.

Article 17

Reporting

By 1 December 2012 and every three years thereafter, the Commission shall present a report to the European Parliament and to the Council including, where appropriate, proposals for amendment to this Regulation or other relevant Community legislation regarding the inclusion of further new safety features.

Article 18

Amendments to Directive 2007/46/EC

Annexes IV, VI, XI and XV to Directive 2007/46/EC shall be amended in accordance with Annex III to this Regulation.

Article 19

Repeal

1. Directives 70/221/EEC, 70/222/EEC, 70/311/EEC, 70/387/EEC, 70/388/EEC, 71/320/EEC, 72/245/EEC, 74/60/EEC, 74/61/EEC, 74/297/EEC, 74/408/EEC, 74/483/EEC, 75/443/EEC, 76/114/EEC, 76/115/EEC, 76/756/EEC, 76/757/EEC, 76/758/EEC, 76/759/EEC, 76/760/EEC, 76/761/EEC, 76/762/EEC, 77/389/EEC, 77/538/EEC, 77/539/EEC, 77/540/EEC, 77/541/EEC, 77/649/EEC, 78/316/EEC, 78/317/EEC, 78/318/EEC, 78/549/EEC, 78/932/EEC, 89/297/EEC, 91/226/EEC, 92/21/EEC, 92/22/EEC, 92/24/EEC, 92/114/EEC, 94/20/EC, 95/28/EC, 96/27/EC, 96/79/EC, 97/27/EC, 98/91/EC, 2000/40/EC, 2001/56/EC, 2001/85/EC, 2003/97/EC shall be repealed with effect from 1 November 2014.

2. Directive 92/23/EEC shall be repealed with effect from 1 November 2017.

3. References to the repealed Directives shall be construed as references to this Regulation.

Article 20

Entry into force

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

It shall apply from 1 November 2011.

Article 13(15), Article 14 and points 1(a)(iii), 1(b)(iii) and (iv), 2(c), 3(a)(iii), 3(b)(iii), 3(c)(iii), 3(d)(iii), 3(e)(iii) and 3(f)(i) of Annex III shall apply from 20 August 2009.

Points 1(a)(i), 1(b)(i), 2(a), 3(a)(i), 3(b)(i), 3(c)(i), 3(d)(i), 3(e)(i) and 3(f)(ii) of Annex III shall apply from 1 November 2014.

Points 1(a)(ii), 1(b)(ii), 2(b), 3(a)(ii), 3(b)(ii), 3(c)(ii), 3(d)(ii), 3(e)(ii) and point 4 of Annex III shall apply from 1 November 2017.

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

Done at Brussels, 13 July 2009.

For the European Parliament
The President
H.-G. PÖTTERING

For the Council
The President
E. ERLANDSSON

| Subject | Applicability | | | | | | | | | |
|---|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| | M ₁ | M ₂ | M ₃ | N ₁ | N ₂ | N ₃ | O ₁ | O ₂ | O ₃ | O ₄ |
| Identification of controls, tell-tales and indicators | X | X | X | X | X | X | | | | |
| Defrost/demist | X | (¹) | (¹) | (¹) | (¹) | (¹) | | | | |
| Wash/wipe | X | (²) | (²) | (²) | (²) | (²) | | | | |
| Heating systems | X | X | X | X | X | X | X | X | X | X |
| Wheel guards | X | | | | | | | | | |
| Head restraints | X | | | | | | | | | |
| Lateral protection | | | | | X | X | | | X | X |
| Spray-suppression systems | | | | | X | X | | | X | X |
| Safety glazing | X | X | X | X | X | X | X | X | X | X |
| Tyres | X | X | X | X | X | X | X | X | X | X |
| Speed limitation devices | | X | X | | X | X | | | | |
| Masses and dimensions | X | X | X | X | X | X | X | X | X | X |
| External projections of cabs | | | | X | X | X | | | | |
| Couplings | X (³) | X (³) | X (³) | X (³) | X (³) | X (³) | X | X | X | X |
| Flammability | | | X | | | | | | | |
| Buses and coaches | | X | X | | | | | | | |
| Frontal impact | X (⁴) | | | | | | | | | |
| Side impact | X (⁵) | | | X (⁵) | | | | | | |
| Vehicles intended for the transportation of dangerous goods | | | | X (⁶) | X (⁶) | X (⁶) | X (⁶) | X (⁶) | X (⁶) | X (⁶) |
| Front underrun protection | | | | | X | X | | | | |

(¹) Vehicles of this category shall be fitted with an adequate windscreen defrosting and demisting device.

(²) Vehicles of this category shall be fitted with adequate windscreen washing and wiping devices.

(³) Only if the vehicle is fitted with couplings.

(⁴) Not exceeding 2,5 tonnes technically permissible maximum laden mass.

(⁵) Only applicable to vehicles where the 'Seating reference point ("R" point)' of the lowest seat is not more than 700 mm above ground level. The 'R' point is defined in UNECE Regulation 95.

(⁶) Only when the manufacturer applies for type-approval of a vehicle intended for the transport of dangerous goods.

ANNEX II

Requirements for tyres with regard to wet grip, rolling resistance and rolling noise

PART A — WET GRIP REQUIREMENTS

Class C1 tyres shall meet the following requirements:

| Category of use | Wet grip index (G) |
|--|--------------------|
| snow tyre with a speed symbol ('Q' or below, excluding 'H') indicating a maximum permissible speed not greater than 160 km/h | ≥ 0,9 |
| snow tyre with a speed symbol ('R' and above, including 'H') indicating a maximum permissible speed greater than 160 km/h | ≥ 1,0 |
| normal (road type) tyre | ≥ 1,1 |

PART B — ROLLING RESISTANCE REQUIREMENTS

The maximum values for the rolling resistance coefficient for each tyre type, measured in accordance with ISO 28580, shall not exceed the following:

Table 1

| Tyre class | Max value (kg/tonne) 1st stage |
|------------|-----------------------------------|
| C1 | 12,0 |
| C2 | 10,5 |
| C3 | 8,0 |

Table 2

| Tyre class | Max value (kg/tonne) 2nd stage |
|------------|-----------------------------------|
| C1 | 10,5 |
| C2 | 9,0 |
| C3 | 6,5 |

For snow tyres, the limits in Table 2 shall be increased by 1 kg/tonne.

PART C — ROLLING NOISE REQUIREMENTS

1. The noise levels determined in accordance with the procedure specified in the implementing measures to this Regulation shall not exceed the limits designated in points 1.1 or 1.2. The Tables in points 1.1 and 1.2 represent the measured values corrected for temperature, except in the case of C3 tyres, and instrument tolerance, and are rounded down to the nearest whole value.

- 1.1. Class C1 tyres, with reference to the nominal section width of the tyre that has been tested:

| Tyre class | Nominal section width (mm) | Limit values in dB(A) |
|------------|----------------------------|-----------------------|
| C1A | ≤ 185 | 70 |
| C1B | > 185 ≤ 215 | 71 |
| C1C | > 215 ≤ 245 | 71 |
| C1D | > 245 ≤ 275 | 72 |
| C1E | > 275 | 74 |

For snow tyres, extra load tyres or reinforced tyres, or any combination of these classifications, the above limits shall be increased by 1 dB(A).

- 1.2. Class C2 and C3 tyres, with reference to the category of use of the range of tyres:

| Tyre class | Category of use | Limit values in dB(A) |
|------------|-----------------|-----------------------|
| C2 | Normal tyres | 72 |
| | Traction tyres | 73 |
| C3 | Normal tyres | 73 |
| | Traction tyres | 75 |

For special use tyres, the above limits shall be increased by 2 dB(A). An additional 2 dB(A) shall be allowed for snow tyres in the C2 traction tyre category. For all other categories of C2 and C3 tyres, an additional 1 dB(A) shall be allowed for snow tyres.

ANNEX III

Amendments to Directive 2007/46/EC

Directive 2007/46/EC is hereby amended as follows:

1. Part I of Annex IV shall be amended as follows:

(a) the table shall be amended as follows:

(i) points 3 to 10, 12 to 38, 42 to 45 and 47 to 57 shall be deleted;

(ii) point 46 shall be deleted;

(iii) the following row shall be added:

| Item | Subject | Regulatory act reference | Official Journal reference | Applicability | | | | | | | | | | |
|------|----------------|-----------------------------|----------------------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|---|
| | | | | M ₁ | M ₂ | M ₃ | N ₁ | N ₂ | N ₃ | O ₁ | O ₂ | O ₃ | O ₄ | |
| '63 | General safety | Regulation (EC) No 661/2009 | OJ L 200, 31.7.2009, p. 1. | X | X | X | X | X | X | X | X | X | X | X |

(b) the Appendix shall be amended as follows:

(i) points 3 to 10, 12 to 37, 44, 45 and 50 to 54 of the table shall be deleted;

(ii) point 46 of the table shall be deleted;

(iii) the following row shall be added to the table:

| | Subject | Regulatory act reference | Official Journal reference | M ₁ |
|-----|----------------|-----------------------------|----------------------------|----------------|
| '63 | General safety | Regulation (EC) No 661/2009 | OJ L 200, 31.7.2009, p. 1. | P/A' |

(iv) in the 'Key', the following text shall be added:

'P/A: This Regulation is partially applicable. The precise scope of application is established in the implementing measures to this Regulation.'

2. In the Appendix to Annex VI, the table shall be amended as follows:

(a) points 3 to 10, 12 to 38, 42 to 45 and 47 to 57 shall be deleted;

(b) point 46 shall be deleted;

(c) the following row shall be added:

| | Subject | Regulatory act reference ⁽¹⁾ | As amended by | Applicable to versions |
|-----|----------------|---|---------------|------------------------|
| '63 | General safety | Regulation (EC) No 661/2009' | | |

(e) in Appendix 5, the table shall be amended as follows:

(i) points 3 to 10, 12 to 36, 42 to 45 and 47 to 57 shall be deleted;

(ii) point 46 shall be deleted;

(iii) the following row shall be added:

| Item | Subject | Regulatory act reference | Mobile crane of category N ₃ |
|------|----------------|-----------------------------|---|
| '63 | General safety | Regulation (EC) No 661/2009 | P/A' |

(f) the 'Meaning of letters' shall be amended as follows:

(i) points C, U, W₅, and W₆ shall be deleted;

(ii) the following text shall be added:

'P/A: This regulatory act is partially applicable. The precise scope of application is established in the implementing measures of this Regulation.'

4. In the table in Annex XV, point 46 shall be deleted.

ANNEX IV

List of UNECE Regulations which apply on a compulsory basis

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ANNEX V

Implementation dates of the requirements for electronic stability control systems on vehicles of categories M₂, M₃, N₂, N₃, O₃ and O₄*Table 1 — Implementation dates for new types of vehicle*

| Vehicle category | Implementation date |
|---|---------------------|
| M ₂ | 11 July 2013 |
| M ₃ (Class III) | 1 November 2011 |
| M ₃ < 16 tonnes (pneumatic transmission) | 1 November 2011 |
| M ₃ (Class II and B) (hydraulic transmission) | 11 July 2013 |
| M ₃ (Class III) (hydraulic transmission) | 11 July 2013 |
| M ₃ (Class III) (pneumatic control transmission and hydraulic energy transmission) | 11 July 2014 |
| M ₃ (Class II) (pneumatic control transmission and hydraulic energy transmission) | 11 July 2014 |
| M ₃ (other than above) | 1 November 2011 |
| N ₂ (hydraulic transmission) | 11 July 2013 |
| N ₂ (pneumatic control transmission and hydraulic energy transmission) | 11 July 2014 |
| N ₂ (other than above) | 11 July 2012 |
| N ₃ (2 axle tractors for semi-trailers) | 1 November 2011 |
| N ₃ (2 axle tractors for semi-trailers with pneumatic control transmission (ABS)) | 1 November 2011 |
| N ₃ (3 axles with electric control transmission (EBS)) | 1 November 2011 |
| N ₃ (2 and 3 axles with pneumatic control transmission (ABS)) | 11 July 2012 |
| N ₃ (other than above) | 1 November 2011 |
| O ₃ (combined axle load between 3.5 and 7.5 tonnes) | 11 July 2012 |
| O ₃ (other than above) | 1 November 2011 |
| O ₄ | 1 November 2011 |

Table 2 — Implementation dates for new vehicles

| Vehicle category | Implementation date |
|---|---------------------|
| M ₂ | 11 July 2015 |
| M ₃ (Class III) | 1 November 2014 |
| M ₃ < 16 tonnes (pneumatic transmission) | 1 November 2014 |
| M ₃ (Class II and B) (hydraulic transmission) | 11 July 2015 |
| M ₃ (Class III) (hydraulic transmission) | 11 July 2015 |
| M ₃ (Class III) (pneumatic control transmission and hydraulic energy transmission) | 11 July 2016 |
| M ₃ (Class II) (pneumatic control transmission and hydraulic energy transmission) | 11 July 2016 |
| M ₃ (other than above) | 1 November 2014 |
| N ₂ (hydraulic transmission) | 11 July 2015 |
| N ₂ (pneumatic control transmission and hydraulic energy transmission) | 11 July 2016 |
| N ₂ (other than above) | 1 November 2014 |
| N ₃ (2 axle tractors for semi-trailers) | 1 November 2014 |
| N ₃ (2 axle tractors for semi-trailers with pneumatic control transmission (ABS)) | 1 November 2014 |
| N ₃ (3 axles with electric control transmission (EBS)) | 1 November 2014 |
| N ₃ (2 and 3 axles with pneumatic control transmission (ABS)) | 1 November 2014 |
| N ₃ (other than above) | 1 November 2014 |
| O ₃ (combined axle load between 3.5 and 7.5 tonnes) | 1 November 2014 |
| O ₃ (other than above) | 1 November 2014 |
| O ₄ | 1 November 2014 |

REGULATION (EC) No 662/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 July 2009

establishing a procedure for the negotiation and conclusion of agreements between Member States and third countries on particular matters concerning the law applicable to contractual and non-contractual obligations

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 61(c), 65 and 67(5) thereof,

Having regard to the proposal from the Commission,

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

Whereas:

(1) Title IV of Part Three of the Treaty provides the legal basis for the adoption of Community legislation in the field of judicial cooperation in civil matters.

(2) Judicial cooperation in civil matters between Member States and third countries has traditionally been governed by agreements between Member States and third countries. Such agreements, of which there is a large number, often reflect special ties between a Member State and a third country and are intended to provide an adequate legal framework to meet specific needs of the parties concerned.

(3) Article 307 of the Treaty requires Member States to take all appropriate steps to eliminate any incompatibilities between the Community *acquis* and international agreements concluded between Member States and third countries. This may involve the need for the re-negotiation of such agreements.

(4) In order to provide an adequate legal framework to meet specific needs of a given Member State in its relations with a third country, there may also be a manifest need for the conclusion of new agreements with third countries relating to areas of civil justice that come within the purview of Title IV of Part Three of the Treaty.

(5) In its Opinion 1/03 of 7 February 2006 relating to the conclusion of the new Lugano Convention, the Court of Justice of the European Communities confirmed that the Community has acquired exclusive competence to conclude an international agreement like the Lugano Convention with third countries on matters affecting the rules laid down in Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ⁽²⁾ (Brussels I).

(6) It is for the Community to conclude, pursuant to Article 300 of the Treaty, agreements between the Community and a third country on matters falling within the exclusive competence of the Community.

(7) Article 10 of the Treaty requires Member States to facilitate the achievement of the Community's tasks and to abstain from any measure which could jeopardise the attainment of the objectives of the Treaty. This duty of loyal cooperation is of general application and does not depend on whether or not the Community competence is exclusive.

(8) With regard to agreements with third countries on specific civil justice issues falling within the exclusive competence of the Community, a coherent and transparent procedure should be established to authorise a Member State to amend an existing agreement or to negotiate and conclude a new agreement, in particular where the Community itself has not indicated its intention to exercise its external competence to conclude an agreement by way of an already existing mandate of negotiation or an envisaged mandate of negotiation. This procedure should be without prejudice to the exclusive competence of the Community and the provisions of Articles 300 and 307 of the Treaty. It should be regarded as an exceptional measure and should be limited in scope and in time.

(9) This Regulation should not apply if the Community has already concluded an agreement with the third country concerned on the same subject matter. Two agreements should be regarded as concerning the same subject matter only if, and to the extent that, they regulate in substance the same specific legal issues. Provisions simply stating a general intention to cooperate on such issues should not be regarded as concerning the same subject matter.

⁽¹⁾ Opinion of the European Parliament of 7 May 2009 (not yet published in the Official Journal) and Council Decision of 7 July 2009.

⁽²⁾ OJ L 12, 16.1.2001, p. 1.

- (10) Exceptionally, certain regional agreements between a few Member States and a few third countries, for example two or three, intended to address local situations and not open for accession to other States should also be covered by this Regulation.
- (11) In order to ensure that an agreement envisaged by a Member State does not render Community law ineffective and does not undermine the proper functioning of the system established by that law, or undermine the Community's external relations policy as decided by the Community, the Member State concerned should be required to notify the Commission of its intentions with a view to obtaining an authorisation to open or continue formal negotiations on an agreement as well as to conclude an agreement. Such notification should be given by letter or by electronic means. It should contain all relevant information and documentation enabling the Commission to assess the expected impact on Community law of the outcome of the negotiations.
- (12) It should be assessed whether there is sufficient Community interest in concluding a bilateral agreement between the Community and the third country concerned or, where appropriate, in replacing an existing bilateral agreement between a Member State and a third country with a Community agreement. To that end, all Member States should be informed of any notification received by the Commission concerning an agreement envisaged by a Member State in order to allow them to demonstrate their interest in joining the initiative of the notifying Member State. If, from this exchange of information, a sufficient Community interest were to emerge, the Commission should consider proposing a negotiating mandate with a view to the conclusion of an agreement between the Community and the third country concerned.
- (13) If the Commission requests additional information from a Member State in connection with its assessment as to whether that Member State should be authorised to open negotiations with a third country, such a request should not affect the time limits within which the Commission is to give a reasoned decision on the application of that Member State.
- (14) When authorising the opening of formal negotiations, the Commission should be able, if necessary, to propose negotiating guidelines or request the inclusion of particular clauses in the envisaged agreement. The Commission should be kept fully informed throughout the different stages of the negotiations as far as matters falling within the scope of this Regulation are concerned and should be allowed to participate as an observer in the negotiations as regards those matters.
- (15) When notifying the Commission of their intention to enter into negotiations with a third country, Member States should only be required to inform the Commission of elements which are of relevance for the assessment to be made by the Commission. The authorisation by the Commission and any possible negotiating guidelines or, as the case may be, the refusal by the Commission should concern only matters falling within the scope of this Regulation.
- (16) All Member States should be informed of any notification to the Commission concerning envisaged or negotiated agreements and of any reasoned decision by the Commission under this Regulation. Such information should however fully comply with possible confidentiality requirements.
- (17) The European Parliament, the Council and the Commission should ensure that any information identified as confidential is treated in accordance with Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ⁽¹⁾.
- (18) Where the Commission, on the basis of its assessment, intends not to authorise the opening of formal negotiations or the conclusion of a negotiated agreement, it should, before giving its reasoned decision, give an opinion to the Member State concerned. In the case of refusal to authorise the conclusion of a negotiated agreement the opinion should also be submitted to the European Parliament and to the Council.
- (19) In order to ensure that the negotiated agreement does not constitute an obstacle to the implementation of the Community's external policy on judicial cooperation in civil and commercial matters, the agreement should provide either for its full or partial denunciation in the event of the conclusion of a subsequent agreement between the Community or the Community and its Member States, on the one hand, and the same third country, on the other hand, on the same subject matter, or for a direct replacement of the relevant provisions of the agreement by the provisions of such subsequent agreement.
- (20) Provision should be made for transitional measures to cover situations where, at the time of the entry into force of this Regulation, a Member State has already started the process of negotiating an agreement with a third country, or has completed the negotiations but has not yet expressed its consent to be bound by the agreement.

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

(21) In order to ensure that sufficient experience has been gained concerning the application of this Regulation, the Commission should submit a report on such application no earlier than eight years after the adoption of this Regulation. In that report, the Commission, exercising its prerogatives, should confirm the temporary nature of this Regulation or examine whether this Regulation should be replaced by a new Regulation covering the same subject matter or including also particular matters falling within the exclusive competence of the Community and governed by other Community instruments, as referred to in recital 5.

(22) If the report submitted by the Commission confirms the temporary nature of this Regulation, Member States should still be able, after the submission of the report, to notify the Commission of ongoing or already announced negotiations with a view to obtaining an authorisation to open formal negotiations.

(23) In accordance with the principle of proportionality, as set out in Article 5 of the Treaty, this Regulation does not go beyond what is necessary in order to achieve its objective.

(24) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom and Ireland have given notice of their wish to take part in the adoption and application of this Regulation.

(25) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1. This Regulation establishes a procedure to authorise a Member State to amend an existing agreement or to negotiate and conclude a new agreement with a third country, subject to the conditions laid down in this Regulation.

This procedure is without prejudice to the respective competencies of the Community and of the Member States.

2. This Regulation shall apply to agreements concerning particular matters falling, entirely or partly, within the scope of Regulation (EC) No 593/2008 of the European Parliament

and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) ⁽¹⁾ and Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) ⁽²⁾.

3. This Regulation shall not apply if the Community has already concluded an agreement with the third country concerned on the same subject matter.

Article 2

Definitions

1. For the purposes of this Regulation, the term 'agreement' shall mean:

(a) a bilateral agreement between a Member State and a third country;

(b) a regional agreement between a limited number of Member States and of third countries neighbouring Member States which is intended to address local situations and which is not open for accession to other States.

2. In the context of regional agreements as referred to in paragraph 1(b), any reference in this Regulation to a Member State or a third country shall be read as referring to the Member States or the third countries concerned, respectively.

Article 3

Notification to the Commission

1. Where a Member State intends to enter into negotiations in order to amend an existing agreement or to conclude a new agreement falling within the scope of this Regulation, it shall notify the Commission in writing of its intention at the earliest possible moment before the envisaged opening of formal negotiations.

2. The notification shall include, as appropriate, a copy of the existing agreement, the draft agreement or the draft proposal, and any other relevant documentation. The Member State shall describe the subject matter of the negotiations and specify the issues which are to be addressed in the envisaged agreement, or the provisions of the existing agreement which are to be amended. The Member State may provide any other additional information.

Article 4

Assessment by the Commission

1. Upon receipt of the notification referred to in Article 3, the Commission shall assess whether the Member State may open formal negotiations.

⁽¹⁾ OJ L 177, 4.7.2008, p. 6.

⁽²⁾ OJ L 199, 31.7.2007, p. 40.

2. In making that assessment, the Commission shall first check whether any relevant negotiating mandate with a view to concluding a Community agreement with the third country concerned is specifically envisaged within the next 24 months. If this is not the case, the Commission shall assess whether all of the following conditions are met:

- (a) the Member State concerned has provided information showing that it has a specific interest in concluding the agreement due to economic, geographic, cultural, historical, social or political ties between the Member State and the third country concerned;
 - (b) on the basis of the information provided by the Member State, the envisaged agreement appears not to render Community law ineffective and not to undermine the proper functioning of the system established by that law; and
 - (c) the envisaged agreement would not undermine the object and purpose of the Community's external relations policy as decided by the Community.
3. If the information provided by the Member State is not sufficient for the purposes of the assessment, the Commission may request additional information.

Article 5

Authorisation to open formal negotiations

1. If the envisaged agreement meets the conditions set out in Article 4(2), the Commission shall, within 90 days of receipt of the notification referred to in Article 3, give a reasoned decision on the application of the Member State authorising it to open formal negotiations on that agreement.

If necessary, the Commission may propose negotiating guidelines and may request the inclusion of particular clauses in the envisaged agreement.

2. The envisaged agreement shall contain a clause providing for either:

- (a) full or partial denunciation of the agreement in the event of the conclusion of a subsequent agreement between the Community or the Community and its Member States, on the one hand, and the same third country, on the other hand, on the same subject matter; or
- (b) direct replacement of the relevant provisions of the agreement by the provisions of a subsequent agreement concluded between the Community or the Community and its Member States, on the one hand, and the same third country, on the other hand, on the same subject matter.

The clause referred to in point (a) of the first subparagraph should be worded along the following lines: '(name(s) of the Member State(s)) shall denounce this Agreement, in part or in full, if and when the European Community or the European Community and its Member States conclude an Agreement with (name(s) of the third country(ies)) on the same matters of civil justice as those governed by this Agreement'.

The clause referred to in point (b) of the first subparagraph should be worded along the following lines: 'This Agreement or certain provisions of this Agreement shall cease to be applicable on the day when an Agreement between the European Community or the European Community and its Member States, on the one hand, and (name(s) of the third country(ies)), on the other hand, has entered into force, in respect of the matters governed by the latter Agreement'.

Article 6

Refusal to authorise the opening of formal negotiations

1. If, on the basis of its assessment under Article 4, the Commission intends not to authorise the opening of formal negotiations on the envisaged agreement, it shall give an opinion to the Member State concerned within 90 days of receipt of the notification referred to in Article 3.

2. Within 30 days of receipt of the opinion of the Commission, the Member State concerned may request the Commission to enter into discussions with it with a view to finding a solution.

3. If the Member State concerned does not request the Commission to enter into discussions with it within the time limit provided for in paragraph 2, the Commission shall give a reasoned decision on the application of the Member State within 130 days of receipt of the notification referred to in Article 3.

4. In the event of the discussions referred to in paragraph 2, the Commission shall give a reasoned decision on the application of the Member State within 30 days of the closure of the discussions.

Article 7

Participation of the Commission in the negotiations

The Commission may participate as an observer in the negotiations between the Member State and the third country as far as matters falling within the scope of this Regulation are concerned. If the Commission does not participate as an observer, it shall be kept informed of the progress and results throughout the different stages of the negotiations.

*Article 8***Authorisation to conclude the agreement**

1. Before signing a negotiated agreement, the Member State concerned shall notify the outcome of the negotiations to the Commission and shall transmit to it the text of the agreement.

2. Upon receipt of that notification the Commission shall assess whether the negotiated agreement:

- (a) meets the condition set out in Article 4(2)(b);
- (b) meets the condition set out in Article 4(2)(c), in so far as there are new and exceptional circumstances in relation to that condition; and
- (c) fulfils the requirement under Article 5(2).

3. If the negotiated agreement fulfils the conditions and requirements referred to in paragraph 2, the Commission shall, within 90 days of receipt of the notification referred to in paragraph 1, give a reasoned decision on the application of the Member State authorising it to conclude that agreement.

*Article 9***Refusal to authorise the conclusion of the agreement**

1. If, on the basis of its assessment under Article 8(2), the Commission intends not to authorise the conclusion of the negotiated agreement, it shall give an opinion to the Member State concerned, as well as to the European Parliament and to the Council, within 90 days of receipt of the notification referred to in Article 8(1).

2. Within 30 days of receipt of the opinion of the Commission, the Member State concerned may request the Commission to enter into discussions with it with a view to finding a solution.

3. If the Member State concerned does not request the Commission to enter into discussions with it within the time limit provided for in paragraph 2, the Commission shall give a reasoned decision on the application of the Member State within 130 days of receipt of the notification referred to in Article 8(1).

4. In the event of the discussions referred to in paragraph 2, the Commission shall give a reasoned decision on the application of the Member State within 30 days of the closure of the discussions.

5. The Commission shall notify its decision to the European Parliament and to the Council within 30 days of the decision.

*Article 10***Confidentiality**

When providing information to the Commission under Articles 3, 4(3) and 8, the Member State may indicate whether any of the information is to be regarded as confidential and whether the information provided can be shared with other Member States.

*Article 11***Provision of information to the Member States**

The Commission shall send to the Member States the notifications received under Articles 3 and 8 and, if necessary, the accompanying documents, as well as all its reasoned decisions under Articles 5, 6, 8 and 9, subject to the confidentiality requirements.

*Article 12***Transitional provisions**

1. Where, at the time of entry into force of this Regulation, a Member State has already started the process of negotiating an agreement with a third country, Articles 3 to 11 shall apply.

Where the stage of the negotiations so permits, the Commission may propose negotiating guidelines or request the inclusion of particular clauses, as referred to in the second subparagraph of Article 5(1) and Article 5(2) respectively.

2. Where, at the time of entry into force of this Regulation, a Member State has already completed the negotiations but has not yet concluded the agreement, Article 3, Article 8(2) to (4) and Article 9 shall apply.

*Article 13***Review**

1. No earlier than 13 July 2017 the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation.

2. That report shall either:

- (a) confirm that it is appropriate for this Regulation to expire on the date determined in accordance with Article 14(1); or
- (b) recommend that this Regulation be replaced as of that date by a new Regulation.

3. If the report recommends a replacement of this Regulation as referred to in paragraph 2(b), it shall be accompanied by an appropriate legislative proposal.

*Article 14***Expiry**

1. This Regulation shall expire three years after the submission by the Commission of the report referred to in Article 13.

The period of three years referred to in the first subparagraph shall start to run on the first day of the month following the submission of the report to either the European Parliament or the Council, whichever is the later.

2. Notwithstanding the expiry of this Regulation on the date determined in accordance with paragraph 1, all negotiations ongoing on that date which have been entered into by a Member State under this Regulation shall be allowed to continue and to be completed in accordance with this Regulation.

*Article 15***Entry into force**

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

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 13 July 2009.

For the European Parliament
The President
H.-G. PÖTTERING

For the Council
The President
E. ERLANDSSON

REGULATION (EC) No 663/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 July 2009

establishing a programme to aid economic recovery by granting Community financial assistance to projects in the field of energy

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 156 and Article 175(1) thereof,

Having regard to the proposal from the Commission,

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

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 European economy is facing a sharp downturn resulting from the financial crisis. Extraordinary and immediate efforts are needed to counter this serious and unprecedented economic situation. In order to restore confidence among market players, measures impacting on the economy need to be finalised without delay.

(2) At the same time it is clear that the long-term strength and sustainability of the European economy depend on reshaping it to face the demands of energy security and the need to reduce greenhouse gas emissions. Increasing concerns about securing reliable gas supplies reinforce this conclusion.

(3) In light of these concerns, the European Council of 11 and 12 December 2008 endorsed in its conclusions the European Economic Recovery Plan (Recovery Plan), presented by the Commission on 26 November 2008, which sets out how Member States and the European Union can coordinate their policies and provide new stimulus to the European economy, targeting that stimulus to the Community's long-term objectives.

(4) An important part of the Recovery Plan is the proposal to increase Community spending in defined strategic sectors, so as to address the lack of confidence among investors and to help develop the path to a stronger economy for the future. The European Council asked the Commission to present a list of specific projects, taking into account an adequate geographical balance, to reinforce investment in the development of, in particular, infrastructure projects.

(5) For the Recovery Plan to be effective, it is vital to finance measures that rapidly address both the economic crisis and the Community's urgent energy needs. Nevertheless, the special programme established by this Regulation should in no way set a precedent for future co-financing rates in the field of infrastructure investments.

(6) In order to have a tangible and substantial impact, those measures should be focussed on a few specific sectors in which action would make a clear contribution to the objectives of the security of energy supply and the reduction of greenhouse gas emissions; there exist large, mature projects capable of making efficient and effective use of significant amounts of financial assistance and of catalysing significant amounts of investment from other sources, including from the European Investment Bank; and action at European level would add value. The sectors of gas and electricity infrastructure, offshore wind energy and carbon capture and storage fulfil those criteria. The choice of those sectors reflects the particular circumstances of the Recovery Plan and should not call into question the high priority attached to energy efficiency and the promotion of energy from renewable sources, which were addressed in the Recovery Plan.

(7) In the event that it is not possible to commit all funds by the end of 2010, the Commission has declared its intention, if appropriate, to propose, when reporting in 2010 on the implementation of this Regulation, measures allowing for the financing of projects consistent with the Recovery Plan, such as projects in the areas of energy efficiency and energy from renewable sources.

(8) In the case of gas and electricity infrastructures, certain challenges have developed in recent years. The recent gas crises (winters 2006 and 2009) and the increase of oil prices until mid-2008 demonstrated Europe's vulnerability. Indigenous energy resources — gas and oil — are decreasing to the extent that Europe is increasingly dependent on imports for its energy supply. In this context, energy infrastructure will play a crucial role.

⁽¹⁾ Opinion of 13 May 2009 (not yet published in the Official Journal).

⁽²⁾ Opinion of the European Parliament of 6 May 2009 (not yet published in the Official Journal) and Council Decision of 7 July 2009.

- (9) However, the current economic and financial crisis is affecting the implementation of energy infrastructure projects. Some important projects, including projects of Community interest, may face severe delays in implementation due to scarcity of funds. Urgent action to support investment in energy infrastructure is therefore appropriate. Given the significant time necessary to plan and then execute such projects, it is important that the Community invest in such infrastructure immediately so that it may, in particular, accelerate the development of projects of particular importance to the security of energy supply within the Community. This will be vital to ensure the Community's security of energy supply at competitive prices when the economy rebounds and global energy demand increases.
- (10) Among energy infrastructure projects, it is necessary to select those that are important to the operation of the internal energy market, to the security of energy supply and which also contribute to the recovery of the economy.
- (11) In the cases of carbon capture and storage and offshore wind energy in particular, this Regulation should build on the Strategic Energy Technology Plan for Europe, presented by the Commission on 22 November 2007, which called for a joint and strategic plan for energy research and innovation efforts consistent with EU energy policy goals, and a commitment to the establishment of six European Industrial Initiatives. The European Council of 16 October 2008 called in its conclusions on the Commission to significantly accelerate the implementation of the Strategic Energy Technology Plan for Europe. The programme initiates the funding for carbon capture and storage and offshore wind projects without prejudice to the future creation of the six industrial initiatives on energy demonstration projects as outlined by the Strategic Energy Technology Plan for Europe.
- (12) In order to have an immediate impact on the economic crisis, it is essential for this Regulation to list the projects that may receive immediate financial assistance, subject to conformity with criteria that ensure efficiency and effectiveness and to the limits set by the financial envelope.
- (13) In the case of gas and electricity infrastructure projects, a list should be established according to the project's contribution to the objectives of security and diversification of supply as identified in the Commission's Second Strategic Energy Review of 13 November 2008 and endorsed by the European Parliament in its resolution of 3 February 2009 and by the Council in its conclusions of 19 February 2009. Projects should be selected on the basis that they implement the priorities identified in that Review, have achieved a reasonable degree of maturity, and contribute to security and diversification of sources of energy and supplies; optimisation of the capacity of the network and the integration of the internal energy market, in particular concerning cross-border sections; development of the network to strengthen economic and social cohesion by reducing the isolation of the least favoured regions or islands of the Community; connection of renewable energy resources; safety, reliability and interoperability of interconnected networks; and solidarity among Member States. The implementation of those projects will require a commitment from national, regional and local authorities to accelerate administrative procedures and authorisations. For many projects, support will not be forthcoming within the timeframe set if this acceleration does not take place.
- (14) In the case of offshore wind energy, the list should contain projects that can be considered, on the basis of information gathered from stakeholders in the framework of the European Wind Energy Technology Platform, and from industrial and other sources, to be approved and ready for implementation; to be innovative, while building on well established concepts; to be capable of acceleration in response to a financial stimulus; to have a cross-border significance; to be of a large scale; and to be able to demonstrate how the results of technological advances will be disseminated effectively in the light of the objectives and structures endorsed by the Strategic Energy Technology Plan for Europe. Financial assistance should be directed towards those projects that are in a position to progress substantially with project development in 2009 and 2010.
- (15) In the case of carbon capture and storage, the list should be largely established on the basis of information gathered from stakeholders in the framework of the Fossil Fuel Forum, the Zero Emissions Fossil Fuel Power Plants Technology Platform and other sources. Financial assistance should be directed towards those projects that are in a position to progress substantially with project development in 2009 and 2010. Readiness should be assessed on the basis of the existence of a mature and feasible concept for the industrial installation, including its carbon capture component; the existence of a mature and feasible concept for the transport and storage of CO₂; and a clear commitment on the part of local authorities to support the project. Projects should also demonstrate how the results of technological advances will be disseminated effectively and how they will accelerate the achievement of the objectives laid down in the Strategic Energy Technology Plan for Europe.
- (16) It will be necessary to select among eligible proposals. Such selection should guarantee, inter alia, that no more than one carbon capture and storage proposal is supported in each Member State, in order to ensure the investigation of a wide range of geological storage conditions and to support the objective of encouraging economic recovery across Europe.

- (17) Community funding should not unduly distort competition or the functioning of the internal market, having regard in particular to the rules on third-party access and possible third party access exemptions. Any further national funds in addition to Community funding should take into account State aid rules. Regardless of its form, Community financial assistance should be granted in accordance with the provisions of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾ (the Financial Regulation) and of 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⁾, except where the provisions of this Regulation explicitly depart from those rules.
- (18) Due to the urgent need to address the economic crisis and the Community's pressing energy needs, this Regulation already contains detailed provisions concerning the arrangements for financial assistance, including a list of eligible projects. In addition, due to the urgent need for the stimulus, all legal commitments implementing the budgetary commitments made in 2009 and 2010 should be made before the end of 2010.
- (19) When actions financed under this Regulation are implemented, the financial interests of the Community should be protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and by the recovery of amounts unduly paid and, if irregularities are detected, by effective, proportionate and dissuasive penalties, in accordance with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests ⁽³⁾, Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities ⁽⁴⁾ and with Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) ⁽⁵⁾.
- (20) Taking into account the nature of the issues in the sub-programmes, the Commission should be assisted by different committees for the selection of proposals retained for funding and the determination of the amount of funding to be granted under each sub-programme.
- (21) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽⁶⁾.
- (22) Since the objectives of this Regulation, namely to aid economic recovery within the Community, face the demands of energy security and reduce greenhouse gas emissions by increasing spending in defined strategic sectors, cannot be sufficiently achieved by the Member States, and can therefore, by reason of the scope of this Regulation and the nature of the sectors and projects selected, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (23) Due to the urgent need to address the economic crisis and the Community's pressing energy needs, this Regulation should enter into force immediately after its publication,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

INTRODUCTORY PROVISIONS

Article 1

Subject matter

This Regulation establishes a financing instrument entitled the European Energy Programme for Recovery (the EEPR) for the development of projects in the field of energy in the Community which, by providing a financial stimulus, contribute to economic recovery, the security of energy supply and the reduction of greenhouse gas emissions.

This Regulation establishes sub-programmes to advance those objectives in the fields of:

- (a) gas and electricity infrastructures;
- (b) offshore wind energy; and
- (c) carbon capture and storage.

This Regulation identifies projects to be financed under each sub-programme and lays down criteria for identifying and implementing actions to realise these projects.

⁽¹⁾ OJ L 248, 16.9.2002, p. 1.

⁽²⁾ OJ L 357, 31.12.2002, p. 1.

⁽³⁾ OJ L 312, 23.12.1995, p. 1.

⁽⁴⁾ OJ L 292, 15.11.1996, p. 2.

⁽⁵⁾ OJ L 136, 31.5.1999, p. 1.

⁽⁶⁾ OJ L 184, 17.7.1999, p. 23.

*Article 2***Definitions**

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

- (a) 'carbon capture and storage' means the capture of carbon dioxide (CO₂) from industrial installations, its transport to a storage site and its injection into a suitable underground geological formation for the purposes of permanent storage;
- (b) 'eligible costs' has the same meaning as in Regulation (EC, Euratom) No 2342/2002;
- (c) 'gas and electricity infrastructures' means:
 - (i) all high-voltage lines, excluding those of distribution networks, and submarine links, provided that this infrastructure is used for interregional or international transmission or connection;
 - (ii) high-pressure gas pipelines, excluding those of distribution networks;
 - (iii) underground storage facilities connected to the high-pressure gas pipelines referred to in point (ii);
 - (iv) reception, storage and regasification facilities for liquefied natural gas (LNG); and
 - (v) any equipment or installations essential for the infrastructure referred to in points (i), (ii), (iii) or (iv) to operate properly, including protection, monitoring and control systems;
- (d) 'part of a project' means any activity that is independent financially, technically or over time and which contributes to the completion of a project;
- (e) 'investment phase' means the phase of a project during which construction takes place and capital costs are incurred;
- (f) 'offshore wind energy' means the electric power generated from turbine engines powered by wind and situated in the sea, whether near or far from the shore;
- (g) 'planning phase' means the phase of a project that precedes the investment phase, during which project implementation is prepared, and includes, where appropriate, feasibility assessment, preparatory and technical studies, obtaining licences and authorisations and incurring capital costs.

*Article 3***Budget**

1. The financial envelope for the implementation of the EPR for 2009 and 2010 shall be EUR 3 980 000 000, allocated as follows:

- (a) gas and electricity infrastructure projects: EUR 2 365 000 000;
- (b) offshore wind energy projects: EUR 565 000 000;
- (c) carbon capture and storage projects: EUR 1 050 000 000.

2. Individual legal commitments implementing the budgetary commitments made in 2009 and 2010 shall be made by 31 December 2010.

CHAPTER II

SUB-PROGRAMMES

SECTION 1

Gas and electricity infrastructure projects*Article 4***Objectives**

The Community shall promote gas and electricity infrastructure projects having the highest Community added value and contributing to the following objectives:

- (a) security and diversification of sources of energy, routes and supplies;
- (b) the optimisation of the capacity of the energy network and the integration of the internal energy market, in particular concerning cross-border sections;
- (c) the development of the network to strengthen economic and social cohesion by reducing the isolation of the least favoured regions or islands of the Community;
- (d) the connection and integration of renewable energy resources; and
- (e) the safety, reliability and interoperability of interconnected energy networks, including the ability to use multidirectional gas flows where necessary.

*Article 5***Priorities**

The EEPR shall serve urgently to adapt and develop energy networks of particular importance to the Community in support of the operation of the internal energy market and, in particular, to increase interconnection capacity, security and diversification of supply and to overcome environmental, technical and financial obstacles. Special Community support is necessary to develop energy networks more intensively and to accelerate their construction, notably where the diversity of routes and sources of supply is low.

*Article 6***Granting of Community financial assistance**

1. Financial assistance under the EEPR (EEPR assistance) for gas and electricity infrastructure projects shall be awarded for actions that implement the projects listed in Part A of the Annex or parts of such projects, and which contribute to the objectives laid down in Article 4.

2. The Commission shall call for proposals to identify the actions referred to in paragraph 1 and shall assess the compliance of those proposals with the eligibility criteria laid down in Article 7 and the selection and award criteria laid down in Article 8.

3. The Commission shall inform the beneficiaries of any EEPR assistance to be granted.

*Article 7***Eligibility**

1. Proposals shall be eligible for EEPR assistance only if they implement the projects listed in Part A of the Annex, do not exceed the maximum amount of EERP assistance laid down therein and fulfil the selection and award criteria under Article 8.

2. Proposals may be submitted:

- (a) by one or several Member States, acting jointly;
- (b) with the agreement of all Member States directly concerned by the project in question:
 - (i) by one or several public or private undertakings or bodies acting jointly;
 - (ii) by one or several international organisations acting jointly; or
 - (iii) by a joint undertaking.

3. Proposals submitted by natural persons shall not be eligible.

*Article 8***Selection and award criteria**

1. In assessing the proposals received under the call for proposals referred to in Article 6(2), the Commission shall apply the following selection criteria:

- (a) the soundness and technical adequacy of the approach;
- (b) the soundness of the financial package for the full investment phase of the action.

2. In assessing the proposals received under the call for proposals referred to in Article 6(2), the Commission shall apply the following award criteria:

- (a) maturity, defined as reaching the investment stage, and incurring substantial capital expenditure by the end of 2010;
- (b) the extent to which lack of access to finance is delaying the implementation of the action;
- (c) the extent to which EEPR assistance will stimulate public and private finance;
- (d) socioeconomic impacts;
- (e) environmental impacts;
- (f) the contribution to the continuity and interoperability of the energy network, and to the optimisation of its capacity;
- (g) the contribution to the improvement of service quality, safety and security;
- (h) the contribution to the creation of a well-integrated energy market.

*Article 9***Funding conditions**

1. EEPR assistance shall contribute to project-related expenditure for the implementation of the project, incurred by the beneficiaries or by third parties responsible for the implementation of a project.

2. EEPR assistance shall not exceed 50 % of the eligible costs.

*Article 10***Instruments**

1. Following the call for proposals referred to in Article 6(2), the Commission, acting in accordance with the management procedure referred to in Article 26(2), shall select the proposals to receive EEPR assistance and determine the amount of EEPR assistance to be granted. The Commission shall specify the conditions and methods for the implementation of the proposals.

2. EEPR assistance shall be granted on the basis of Commission decisions.

*Article 11***Member States' financial responsibilities**

1. Member States shall undertake the technical monitoring and financial control of projects in close cooperation with the Commission and shall certify the amount and the conformity with this Regulation of the expenditure incurred in respect of projects or parts of projects. Member States may request the participation of the Commission during on-the-spot checks.

2. Member States shall inform the Commission of the measures taken under paragraph 1 and, in particular, shall supply a description of the control, management and monitoring systems established to ensure that projects are successfully completed.

SECTION 2

Offshore wind projects*Article 12***Granting of EEPR assistance**

1. EEPR assistance for offshore wind projects shall be awarded following a call for proposals limited to the actions that implement the projects listed in Part B of the Annex.

2. The Commission shall call for proposals to identify the actions referred to in paragraph 1 and shall assess the compliance of these proposals with the eligibility criteria laid down in Article 13 and the selection and award criteria laid down in Article 14.

3. The Commission shall inform the beneficiaries of any EEPR assistance to be granted.

*Article 13***Eligibility**

1. Proposals shall be eligible for EEPR assistance only if they implement the projects listed in Part B of the Annex, do not

exceed the maximum amount of EEPR assistance laid down therein and fulfil the selection and award criteria under Article 14. Those projects shall be led by a commercial undertaking.

2. Proposals may be submitted by one or several undertakings, acting jointly.

3. Proposals submitted by natural persons shall not be eligible.

*Article 14***Selection and award criteria**

1. In assessing the proposals received under the call for proposals referred to in Article 12(1), the Commission shall apply the following selection criteria:

- (a) the soundness and technical adequacy of the approach;
- (b) the soundness of the financial package for the full investment phase of the project.

2. In assessing the proposals received under the call for proposals referred to in Article 12(1), the Commission shall apply the following award criteria:

- (a) maturity, defined as reaching the investment stage, and incurring substantial capital expenditure by the end of 2010;
- (b) the extent to which lack of access to finance is delaying the implementation of the action;
- (c) the extent to which the project improves or increases the scale of installations and infrastructures that are already under construction, or are in the planning phase;
- (d) the extent to which the project includes the construction of full-size and industrial-scale installations and infrastructures, and addresses in particular the following matters:
 - (i) the balancing of the variability of wind electricity through integrative systems;
 - (ii) the existence of large-scale storage systems;
 - (iii) the management of wind farms as virtual power plants (more than 1 GW);
 - (iv) the existence of turbines placed further from the shore or in deeper waters (20 to 50 m) than is currently standard;

- (v) novel sub-structure designs; or
 - (vi) processes for assembly, installation, operation and decommissioning and testing of these processes in life-size projects;
- (e) the innovative features of the project and the extent to which it will demonstrate the implementation of such features;
- (f) the impact of the project and its contribution to the Community's offshore wind grid system, including its replication potential;
- (g) the commitment demonstrated by the beneficiaries to disseminate to other European operators the results of technological advances made by the project in a manner compatible with Community law and in particular with the objectives and structures outlined in the Strategic Energy Technology Plan for Europe.

Article 15

Funding conditions

1. EEPR assistance shall contribute to project-related expenditure for the implementation of the project.
2. EEPR assistance shall not exceed 50 % of the eligible costs.

Article 16

Instruments

1. Following the call for proposals referred to in Article 12(1), the Commission, acting in accordance with the management procedure referred to in Article 26(2), shall select the proposals to receive EEPR assistance and determine the amount of funding to be granted. The Commission shall specify the conditions and methods for the implementation of the proposals.
2. EEPR assistance shall be granted on the basis of grant agreements.

SECTION 3

Carbon capture and storage projects

Article 17

Granting of EEPR assistance

1. EEPR assistance for carbon capture and storage projects shall be awarded to actions that implement the projects listed in Part C of the Annex.

2. The Commission shall call for proposals to identify the actions referred to in paragraph 1 of this Article and shall assess the compliance of the proposals with the eligibility criteria laid down in Article 18 and the selection and award criteria laid down in Article 19.

3. If several proposals from projects located in the same Member State comply with the eligibility criteria laid down in Article 18 and the selection criteria laid down in Article 19(1), the Commission shall select for EEPR assistance, on the basis of the award criteria in Article 19(2), no more than one proposal per Member State among those proposals.

4. The Commission shall inform the beneficiaries of any EEPR assistance to be granted.

Article 18

Eligibility

1. Proposals shall be eligible for EEPR assistance only if they implement the projects listed in Part C of the Annex, fulfil the selection and award criteria under Article 19 and the following conditions:

- (a) the projects demonstrate that they have the ability to capture at least 80 % of CO₂ in industrial installations and to transport and geologically store this CO₂ safely underground;
 - (b) in power installations, CO₂ capture is demonstrated on an installation of at least 250 MW electrical output or equivalent;
 - (c) project promoters make a binding declaration that the generic knowledge generated by the demonstration plant will be made available to the wider industry and to the Commission to contribute to the Strategic Energy Technology Plan for Europe.
2. Proposals shall be submitted by one or several undertakings, acting jointly.
 3. Proposals submitted by natural persons shall not be eligible.

Article 19

Selection and award criteria

1. In assessing the proposals received under the call for proposals referred to in Article 17(2), the Commission shall apply the following selection criteria:

- (a) the soundness and technical adequacy of the approach;

- (b) maturity, defined as reaching the investment stage, which includes exploration and development of storage options, and incurring substantial investment-related expenditure for the project by the end of 2010;
- (c) the soundness of the financial package for the full investment phase of the project;
- (d) identification of all necessary permits required for construction and operation of the project at the proposed site(s) and the existence of a strategy to secure those permits.
2. In assessing the proposals received under the call for proposals referred to in Article 17(2), the Commission shall apply the following award criteria:
- (a) the extent to which lack of access to finance is delaying the implementation of the action;
- (b) requested funding per tonne of CO₂ to be abated in the first five years of operation of the project;
- (c) the complexity of the project and level of innovation of the overall installation including other accompanying research activities and the commitment demonstrated by the beneficiaries to disseminate to other European operators the results of the technological advances made by the project in a manner compatible with Community law and in particular with the objectives and structures outlined in the Strategic Energy Technology Plan for Europe;
- (d) the soundness and adequacy of the management plan including, in relation to the scientific, engineering and technical information and data contained therein, demonstration of readiness of the proposed concept to achieve operation of the project by 31 December 2015.

Article 20

Funding conditions

1. EEPR assistance shall contribute only to project-related expenditure for the implementation of the project which is attributable to carbon capture, transport and storage, taking account of possible operating benefits.
2. EEPR assistance shall not exceed 80 % of total eligible investment costs.

Article 21

Instruments

1. Following the call for proposals referred to in Article 17(2), the Commission, acting in accordance with the

management procedure referred to in Article 26(2), shall select the proposals to receive EEPR assistance and determine the amount of EEPR assistance to be granted. The Commission shall specify the conditions and methods for the implementation of the proposals.

2. EEPR assistance shall be granted on the basis of grant agreements.

CHAPTER III

COMMON PROVISIONS

Article 22

Other EEPR assistance and instruments

1. A part of the Community assistance for the projects listed in the Annex may be granted through a contribution to an appropriate instrument under the resources of the European Investment Bank. That contribution shall not exceed EUR 500 000 000.
2. The Community exposure to the loan guarantee instrument or other financing instrument, including management fees and other eligible costs, shall be limited to the amount of the Community contribution to that instrument and there shall be no further liability on the general budget of the European Union.
3. The Commission, acting in accordance with the management procedure referred to in Article 26(2), shall decide on the amount of EEPR assistance to be granted to that instrument. The Commission and the European Investment Bank shall conclude a memorandum of understanding specifying the conditions and the methods for the implementation of that decision.

Article 23

Programming and implementing arrangements

1. Calls for proposals shall be directly launched by the Commission on the basis of budgetary availabilities referred to in Article 3(1) and the eligibility, selection and award criteria set out in Chapter II.
2. EEPR assistance shall cover only project-related expenditure incurred by the beneficiaries and, as regards projects under Article 9, also by third parties responsible for the implementation of a project. Expenditure may be eligible from the date referred to in Article 29.
3. VAT shall not be an eligible cost, except for non-refundable VAT.

4. Projects and actions financed under this Regulation shall be carried out in accordance with Community law and shall take into account any relevant Community policies, in particular those relating to competition including the applicable State aid rules, protection of the environment, health, sustainable development and public procurement.

Article 24

Member States' general responsibilities

Within the sphere of their responsibility, Member States shall make every effort to implement the projects which receive EEPR assistance, notably through efficient administrative authorisation, licensing and certification procedures.

Article 25

Protection of the European Communities' financial interests

1. The Commission shall ensure that, when actions financed under this Regulation are implemented, the financial interests of the Community are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and by the recovery of amounts unduly paid and, if irregularities are detected, by effective, proportionate and dissuasive penalties, in accordance with Regulation (EC, Euratom) No 2988/95, Regulation (Euratom, EC) No 2185/96 and with Regulation (EC) No 1073/1999.

2. For the Community actions financed under this Regulation, the notion of irregularity referred to in Article 1(2) of Regulation (EC, Euratom) No 2988/95 shall mean any infringement of a provision of Community law or any breach of a contractual obligation resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the European Union or budgets managed by it, by an unjustified item of expenditure.

3. All implementing measures resulting from this Regulation shall provide, in particular, for supervision and financial control by the Commission or any representative authorised by it, and by audits by the European Court of Auditors, including, if necessary, on-the-spot audits.

CHAPTER IV

IMPLEMENTING AND FINAL PROVISIONS

Article 26

Committees

1. The Commission shall be assisted by the following committees:

(a) for gas and electricity infrastructure projects, the committee established by Article 15 of Regulation (EC) No 680/2007 of the European Parliament and of the Council of 20 June 2007 laying down general rules for the granting of Community financial aid in the field of the trans-European transport and energy networks ⁽¹⁾;

(b) for offshore wind projects, the committee established by Article 8 of Council Decision 2006/971/EC of 19 December 2006 concerning the Specific Programme Cooperation implementing the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 to 2013) ⁽²⁾;

(c) for carbon capture and storage projects, the committee established by Article 8 of Decision 2006/971/EC.

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

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

Article 27

Evaluation

1. The Commission shall carry out an evaluation of the EEPR by 31 December 2011 in order to assess its contribution to the effective use made of the appropriations.

2. The Commission may request a beneficiary Member State to provide a specific evaluation of projects financed under Section 1 of Chapter II of this Regulation or, where appropriate, to supply it with the information and assistance required to undertake an evaluation of such projects.

3. The Commission shall present to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions an evaluation report on the results achieved by the EEPR.

Article 28

Information to the European Parliament and to the Council

The Commission shall monitor the implementation of this Regulation. It shall, each year, on presentation of the preliminary draft budget, present a report to the European Parliament and to the Council on the implementation of the EEPR.

⁽¹⁾ OJ L 162, 22.6.2007, p. 1.

⁽²⁾ OJ L 400, 30.12.2006, p. 86.

If the report identifies serious risks in implementing the priority projects, the Commission shall recommend measures to offset those risks, and shall, where appropriate and consistent with the Recovery Plan, make additional proposals for such projects.

Article 29

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, 13 July 2009.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

E. ERLANDSSON

ANNEX

ELIGIBLE PROJECTS

A. Gas and Electricity infrastructure projects

1. Gas interconnectors

| Project | Location of projects supported | Envisaged Community contribution (EUR million) |
|--|---|--|
| Southern Gas Corridor | | |
| NABUCCO | Austria, Hungary, Bulgaria, Germany, Romania | 200 |
| ITGI – Poseidon | Italy, Greece | 100 |
| Baltic interconnection | | |
| Skanded/Baltic pipe | Poland, Denmark, Sweden | 150 |
| LNG network | | |
| Liquefied Natural Gas terminal at Polish coast at port of Świnoujście | Poland | 80 |
| Central and South East Europe | | |
| Slovakia-Hungary Interconnector (Veľký Krtíš - Vecsés) | Slovakia, Hungary | 30 |
| Gas transmission system in Slovenia between the Austrian Border to Ljubljana (excluding the section Rogatec-Kidričevo) | Slovenia | 40 |
| Interconnection Bulgaria-Greece (Stara Zagora — Dimitrovgrad-Komotini) | Bulgaria, Greece | 45 |
| Romania-Hungary gas interconnector | Romania, Hungary | 30 |
| Expansion of Gas Storage Capacity in the Czech hub | Czech Republic | 35 |
| Infrastructure and equipment to permit reverse gas flow in the event of short term supply disruption | Austria, Bulgaria, Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia | 80 |
| Slovakia-Poland interconnection | Slovakia, Poland | 20 |
| Hungary-Croatia interconnection | Hungary | 20 |
| Bulgaria-Romania interconnection | Bulgaria, Romania | 10 |
| Mediterranean | | |
| Reinforcement of FR gas network on the Africa-Spain-France axis | France | 200 |
| GALSI (Gazoduc Algérie-Italie) | Italy | 120 |
| Gas Interconnection Western Axis Larrau Branch | Spain | 45 |
| North Sea area | | |
| Germany-Belgium-United Kingdom pipeline | Belgium | 35 |
| France-Belgium connection | France, Belgium | 200 |
| TOTAL | | 1 440 |

2. Electricity interconnectors

| Project | Location of projects supported | Envisaged Community contribution (EUR million) |
|---|--------------------------------|--|
| Baltic interconnection | | |
| Estlink-2 | Estonia, Finland | 100 |
| Interconnection Sweden-Baltic States, and strengthening of the grid in Baltic States | Sweden, Latvia, Lithuania | 175 |
| Central and South East Europe | | |
| Halle/Saale – Schweinfurt | Germany | 100 |
| Wien-Győr | Austria, Hungary | 20 |
| Mediterranean | | |
| Portugal-Spain interconnection reinforcement | Portugal | 50 |
| Interconnection France-Spain (Baixas - Sta Llogaia) | France, Spain | 225 |
| New 380 kV AC submarine cable between Sicily – Continental Italy (Sorgente – Rizziconi) | Italy | 110 |
| North Sea area | | |
| 500 MW Ireland/Wales interconnector (Meath-Deeside) | Ireland, United Kingdom | 110 |
| Electricity interconnection Malta-Italy | Malta/Italy | 20 |
| TOTAL | | 910 |

3. Small island projects

| | | |
|-----------------------------------|--------|----|
| Small isolated island initiatives | Cyprus | 10 |
| | Malta | 5 |
| TOTAL | | 15 |

B. Offshore wind projects

| Project | Capacity | Location of projects supported | Envisaged Community contribution (EUR million) |
|---|----------|---|--|
| 1. Grid integration of offshore wind energy | | | |
| 1.1. Baltic – Kriegers Flak I, II, III Building on projects under development. Financing aimed at ensuring extra cost for securing a joint interconnection solution. | 1,5 GW | Denmark, Sweden, Germany, Poland | 150 |
| 1.2. North sea grid Modular development of offshore grid, demonstration of virtual offshore power plant and integration in the existing onshore grid system. | 1 GW | United Kingdom, Netherlands, Germany, Ireland, Denmark, Belgium, France, Luxembourg | 165 |

| Project | Capacity | Location of projects supported | Envisaged Community contribution (EUR million) |
|---|----------|--------------------------------|--|
| 2. New turbines, structures and components, optimisation of manufacturing capacities | | | |
| 2.1. Borkum West II – Bard 1 – Nordsee Ost – Global Tech I New generation of multi-megawatt size turbines (5-7 MW) and innovative structures, situated far from shore (up to 100 km) in deeper waters (up to 40 m). | 1,6 GW | Germany | 200 |
| 2.2. Aberdeen offshore wind farm (European testing centre) Building on project presently under development – testing of multi-MW turbines. Development of innovative structures and substructures including optimisation of manufacturing capacities of offshore wind energy production equipment. An increase in size of 100 MW can be envisaged. | 0,25 GW | United Kingdom | 40 |
| 2.3. Thornton Bank Building on project presently under development. Learning from the Downwind project (cofinanced through FP6). Upscaling the Downwind installations turbines (5 MW size) in deep waters (up to 30 m) with low visual impact (up to 30 km). | 90 MW | Belgium | 10 |
| TOTAL | | | 565 |

C. Carbon capture and storage projects

| Project Name/Location | | Envisaged Community contribution (EUR million) | Fuel | Capacity | Capture Technique | Storage Concept |
|-----------------------|----------------|--|------|----------|-------------------|-----------------|
| Huerth | Germany | 180 | Coal | 450 MW | IGCC | Saline Aquifer |
| Jaenschwalde | | | Coal | 500 MW | Oxyfuel | Oil/Gas fields |
| Eemshaven | Netherlands | 180 | Coal | 1 200 MW | IGCC | Oil/Gas fields |
| Rotterdam | | | Coal | 1 080 MW | PC | Oil/Gas fields |
| Rotterdam | | | Coal | 800 MW | PC | Oil/Gas fields |
| Bełchatów | Poland | 180 | Coal | 858 MW | PC | Saline Aquifer |
| Compostilla (León) | Spain | 180 | Coal | 500 MW | Oxyfuel | Saline Aquifer |
| Kingsnorth | United Kingdom | 180 | Coal | 800 MW | PC | Oil/Gas fields |
| Longannet | | | Coal | 3 390 MW | PC | Saline Aquifer |
| Tilbury | | | Coal | 1 600 MW | PC | Oil/Gas fields |
| Hatfield (Yorkshire) | | | Coal | 900 MW | IGCC | Oil/Gas fields |

| Project Name/Location | | Envisaged Community contribution (EUR million) | Fuel | Capacity | Capture Technique | Storage Concept |
|-----------------------------------|--------|---|--|----------|----------------------|-----------------|
| Porto Tolle | Italy | 100 | Coal | 660 MW | PC | |
| Industrial carbon capture project | | | | | | |
| Florange | France | 50 | Transport of CO ₂ from industrial installation (steel plant) to underground storage (saline aquifer) | | | |
| TOTAL | | 1 050 | | | | |

COMMISSION DECLARATION

The Commission underlines that energy efficiency and renewable energy sources are key priorities of EU energy policy, both for environmental and for security of supply reasons. In this respect, the Regulation will contribute to these priorities by giving substantial support to offshore wind projects.

The Commission recalls in this context the various other new initiatives supporting energy efficiency and renewable energy sources, suggested by the Commission notably in its European Recovery Plan, which was endorsed by the European Council of December 2008. These include:

A modification to the ERDF Regulation to allow investments up to EUR 8 billion in energy efficiency and renewable energies in housing in all the Member States.

A public-private partnership on a 'European energy-efficient buildings' initiative to promote green technologies and the development of energy-efficient systems and materials in new and renovated buildings. The estimated envelope for this action is EUR 1 billion: EUR 500 million from existing EC FP7 budget over the years 2010 to 2013 and EUR 500 million from industry.

The EC-EIB initiative 'EU Sustainable Energy Financing Initiative'. It aims at enabling investments for energy efficiency and renewable energy projects in urban settings. The Commission finances a technical assistance facility from the Intelligent Energy Europe programme (annual allocation of 15 M EUR for 2009). This facility, managed by the EIB, will facilitate access to EIB loans with substantial leverage effects.

The creation by EU institutional investors — led by the EIB — of a market oriented equity fund, called Marguerite: the 2020 European Fund for Energy, Climate Change and Infrastructure. This Fund would invest in the areas of energy and climate change (TEN-E, sustainable energy production, renewable energy, new technologies, energy efficiency investments, security of supply, as well as environmental infrastructure). The Commission supports this initiative.

Furthermore, the Commission will present before the end of November 2009 the revision of the energy efficiency action plan as demanded by Council (Conclusions of the European Council of March 2009) and Parliament (EP Resolution P6_TA(2009)0064).

There is agreement among experts that energy efficiency is the cheapest available option to reduce greenhouse gas emissions. The Commission will provide by November 2009 a detailed analysis of the obstacles for increased energy efficiency investments. It will in particular examine whether there is a need for increased financial incentives in the form of low-interest loans and/or grants, how the European budget could be used to this end, and, if appropriate, the Commission will include, inter alia, additional funds for financing of energy efficiency in the new EU Energy Security and Infrastructure Instrument, to be presented in 2010.

When reviewing the energy efficiency action plan, the Commission will pay particular attention to the neighbourhood dimension of energy efficiency. It will analyze how it can give financial and regulatory incentives to neighbourhood countries to step up their investments in energy efficiency.

Should the Commission, when reporting in 2010 on the implementation of the Regulation under its Article 28, find that it will not be possible to commit by the end of 2010 a part of the funds foreseen for the projects listed in the annex to the Regulation, the Commission will propose, if appropriate and in a geographically balanced way, an amendment to the Regulation allowing for the financing of projects in the area of energy efficiency and renewable energy sources, in addition to the above initiatives, including eligibility criteria similar to those applying to projects listed in the Annex to this Regulation.

Statement by Portugal

Portugal is voting in favour, although in its view, in a review of the programme under Article 28, consideration should be given to the inclusion of renewable-energy and energy-efficiency projects, particularly for microgeneration and for smart grids and meters, to help achieve the objectives in Article 4(a) and (b) of the Regulation.

COUNCIL REGULATION (EC) No 664/2009**of 7 July 2009****establishing a procedure for the negotiation and conclusion of agreements between Member States and third countries concerning jurisdiction, recognition and enforcement of judgments and decisions in matrimonial matters, matters of parental responsibility and matters relating to maintenance obligations, and the law applicable to matters relating to maintenance obligations**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 61(c), 65, 67(2) and 67(5) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament ⁽¹⁾,

Whereas:

- (1) Title IV of Part Three of the Treaty provides the legal basis for the adoption of Community legislation in the field of judicial cooperation in civil matters.
- (2) Judicial cooperation in civil matters between Member States and third countries has traditionally been governed by agreements between Member States and third countries. Such agreements, of which there is a large number, often reflect special ties between a Member State and a third country and are intended to provide an adequate legal framework to meet specific needs of the parties concerned.
- (3) Article 307 of the Treaty requires Member States to take all appropriate steps to eliminate any incompatibilities between the Community *acquis* and international agreements concluded between Member States and third countries. This may involve the need for the renegotiation of such agreements.
- (4) In order to provide an adequate legal framework to meet specific needs of a given Member State in its relations with a third country, there may also be a manifest need for the conclusion of new agreements with third countries relating to areas of civil justice that come within the purview of Title IV of Part Three of the Treaty.
- (5) In its Opinion 1/03 of 7 February 2006 relating to the conclusion of the new Lugano Convention, the Court of Justice of the European Communities confirmed that the Community has acquired exclusive competence to conclude an international agreement like the Lugano Convention with third countries on matters affecting

the rules laid down in Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ⁽²⁾ (Brussels I).

- (6) It is for the Community to conclude, pursuant to Article 300 of the Treaty, agreements between the Community and a third country on matters falling within the exclusive competence of the Community.
- (7) Article 10 of the Treaty requires Member States to facilitate the achievement of the Community's tasks and to abstain from any measure which could jeopardise the attainment of the objectives of the Treaty. This duty of loyal cooperation is of general application and does not depend on whether or not the Community competence is exclusive.
- (8) With regard to agreements with third countries on specific civil justice issues falling within the exclusive competence of the Community, a coherent and transparent procedure should be established to authorise a Member State to amend an existing agreement or to negotiate and conclude a new agreement, in particular where the Community itself has not indicated its intention to exercise its external competence to conclude an agreement by way of an already existing mandate of negotiation or an envisaged mandate of negotiation. This procedure should be without prejudice to the exclusive competence of the Community and the provisions of Articles 300 and 307 of the Treaty. It should be regarded as an exceptional measure and should be limited in scope and in time.
- (9) This Regulation should not apply if the Community has already concluded an agreement with the third country concerned on the same subject-matter. Two agreements should be regarded as concerning the same subject-matter only if, and to the extent that, they regulate in substance the same specific legal issues. Provisions simply stating a general intention to cooperate on such issues should not be regarded as concerning the same subject-matter.
- (10) Certain regional agreements referred to in existing Community legal acts should also be covered by this Regulation.

⁽¹⁾ Opinion of 7 May 2009 (not yet published in the Official Journal).

⁽²⁾ OJ L 12, 16.1.2001, p. 1.

- (11) In order to ensure that an agreement envisaged by a Member State does not render Community law ineffective and does not undermine the proper functioning of the system established by that law, or undermine the Community's external relations policy as decided by the Community, the Member State concerned should be required to notify the Commission of its intentions with a view to obtaining an authorisation to open or continue formal negotiations on an agreement as well as to conclude an agreement. Such a notification should be given by letter or by electronic means. It should contain all relevant information and documentation enabling the Commission to assess the expected impact on Community law of the outcome of the negotiations.
- (12) It should be assessed whether there is sufficient Community interest in concluding a bilateral agreement between the Community and the third country concerned or, where appropriate, in replacing an existing bilateral agreement between a Member State and a third country with a Community agreement. To that end, all Member States should be informed of any notification received by the Commission concerning an agreement envisaged by a Member State in order to allow them to demonstrate their interest in joining the initiative of the notifying Member State. If, from this exchange of information, a sufficient Community interest were to emerge, the Commission should consider proposing a negotiating mandate with a view to the conclusion of an agreement between the Community and the third country concerned.
- (13) If the Commission requests additional information from a Member State in connection with its assessment as to whether that Member State should be authorised to open negotiations with a third country, such a request should not affect the time-limits within which the Commission is to give a reasoned decision on the application of that Member State.
- (14) When authorising the opening of formal negotiations, the Commission should be able, if necessary, to propose negotiating guidelines or request the inclusion of particular clauses in the envisaged agreement. The Commission should be kept fully informed throughout the different stages of the negotiations as far as matters falling within the scope of this Regulation are concerned and should be allowed to participate as an observer in the negotiations as regards those matters.
- (15) When notifying the Commission of their intention to enter into negotiations with a third country, Member States should only be required to inform the Commission of elements which are of relevance for the assessment to be made by the Commission. The authorisation by the Commission and any possible negotiating guidelines or, as the case may be, the refusal by the Commission should concern only matters falling within the scope of this Regulation.
- (16) All Member States should be informed of any notification to the Commission concerning envisaged or negotiated agreements and of any reasoned decision by the Commission under this Regulation. Such information should however fully comply with possible confidentiality requirements.
- (17) The European Parliament, the Council and the Commission should ensure that any information identified as confidential is treated in accordance with Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents⁽¹⁾.
- (18) Where the Commission, on the basis of its assessment, intends not to authorise the opening of formal negotiations or the conclusion of a negotiated agreement, it should, before giving its reasoned decision, give an opinion to the Member State concerned. In the case of refusal to authorise the conclusion of a negotiated agreement the opinion should also be submitted to the European Parliament and to the Council.
- (19) In order to ensure that the negotiated agreement does not constitute an obstacle to the implementation of the Community's external policy on judicial cooperation in civil and commercial matters, the agreement should provide either for its full or partial denunciation in the event of the conclusion of a subsequent agreement between the Community or the Community and its Member States, on the one hand, and the same third country, on the other hand, on the same subject-matter, or a direct replacement of the relevant provisions of the agreement by the provisions of such subsequent agreement.
- (20) Provision should be made for transitional measures to cover situations where, at the time of the entry into force of this Regulation, a Member State has already started the process of negotiating an agreement with a third country, or has completed the negotiations but has not yet expressed its consent to be bound by the agreement.
- (21) In order to ensure that sufficient experience has been gained concerning the application of this Regulation, the Commission should submit a report on such application no earlier than eight years after the adoption of this Regulation. In that report, the Commission, exercising its prerogatives, should confirm the temporary nature of this Regulation or examine whether this Regulation should be replaced by a new Regulation covering the same subject-matter or including also other matters falling within the exclusive competence of the Community and governed by other Community instruments.

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

- (22) If the report submitted by the Commission confirms the temporary nature of this Regulation, Member States should still be able, after the submission of the report, to notify the Commission of ongoing or already announced negotiations with a view to obtaining an authorisation to open formal negotiations.
- (23) In accordance with the principle of proportionality, as set out in Article 5 of the Treaty, this Regulation does not go beyond what is necessary in order to achieve its objective.
- (24) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom and Ireland have given notice of their wish to take part in the adoption and application of this Regulation.
- (25) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application,

HAS ADOPTED THIS REGULATION:

Article 1

Subject-matter and scope

1. This Regulation establishes a procedure to authorise a Member State to amend an existing agreement or to negotiate and conclude a new agreement with a third country, subject to the conditions laid down in this Regulation.

This procedure is without prejudice to the respective competencies of the Community and of the Member States.

2. This Regulation shall apply to agreements concerning matters falling, entirely or partly, within the scope of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility⁽¹⁾ and Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations⁽²⁾, to the extent that those matters fall within the exclusive competence of the Community.

3. This Regulation shall not apply if the Community has already concluded an agreement with the third country concerned on the same subject-matter.

⁽¹⁾ OJ L 338, 23.12.2003, p. 1.

⁽²⁾ OJ L 7, 10.1.2009, p. 1.

Article 2

Definitions

1. For the purposes of this Regulation, the term 'agreement' shall mean:

(a) a bilateral agreement between a Member State and a third country;

(b) the regional agreements referred to in Article 59(2)(a) of Regulation (EC) No 2201/2003, without prejudice to Article 59(2)(c) and Article 59(3) of that Regulation, and in Article 69(3) of Regulation (EC) No 4/2009.

2. In the context of regional agreements as referred to in paragraph 1(b), any reference in this Regulation to a Member State or a third country shall be read as referring to the Member States or the third countries concerned, respectively.

Article 3

Notification to the Commission

1. Where a Member State intends to enter into negotiations in order to amend an existing agreement or to conclude a new agreement falling within the scope of this Regulation, it shall notify the Commission in writing of its intention at the earliest possible moment before the envisaged opening of formal negotiations.

2. The notification shall include, as appropriate, a copy of the existing agreement, the draft agreement or the draft proposal, and any other relevant documentation. The Member State shall describe the subject-matter of the negotiations and specify the issues which are to be addressed in the envisaged agreement, or the provisions of the existing agreement which are to be amended. The Member State may provide any other additional information.

Article 4

Assessment by the Commission

1. Upon receipt of the notification referred to in Article 3, the Commission shall assess whether the Member State may open formal negotiations.

2. In making that assessment, the Commission shall first check whether any relevant negotiating mandate with a view to concluding a Community agreement with the third country concerned is specifically envisaged within the next 24 months. If this is not the case, the Commission shall assess whether all of the following conditions are met:

- (a) the Member State concerned has provided information showing that it has a specific interest in concluding the agreement due to economic, geographic, cultural, historical, social or political ties between the Member State and the third country concerned;
- (b) on the basis of the information provided by the Member State, the envisaged agreement appears not to render Community law ineffective and not to undermine the proper functioning of the system established by that law; and
- (c) the envisaged agreement would not undermine the object and purpose of the Community's external relations policy as decided by the Community.
3. If the information provided by the Member State is not sufficient for the purposes of the assessment, the Commission may request additional information.

Article 5

Authorisation to open formal negotiations

1. If the envisaged agreement meets the conditions set out in Article 4(2), the Commission shall, within 90 days of receipt of the notification referred to in Article 3, give a reasoned decision on the application of the Member State authorising it to open formal negotiations on that agreement.

If necessary, the Commission may propose negotiating guidelines and may request the inclusion of particular clauses in the envisaged agreement.

2. The envisaged agreement shall contain a clause providing for either:

- (a) full or partial denunciation of the agreement in the event of the conclusion of a subsequent agreement between the Community or the Community and its Member States, on the one hand, and the same third country, on the other hand, on the same subject-matter; or
- (b) direct replacement of the relevant provisions of the agreement by the provisions of a subsequent agreement concluded between the Community or the Community and its Member States, on the one hand, and the same third country, on the other hand, on the same subject-matter.

The clause referred to in point (a) of the first subparagraph should be worded along the following lines: '*(name(s) of the Member State(s))* shall denounce this Agreement, in part or in full, if and when the European Community or the European Community and its Member States conclude an Agreement with

(name(s) of the third country(ies)) on the same matters of civil justice as those governed by this Agreement'.

The clause referred to in point (b) of the first subparagraph should be worded along the following lines: 'This Agreement or certain provisions of this Agreement shall cease to be applicable on the day when an Agreement between the European Community or the European Community and its Member States, on the one hand, and *(name(s) of the third country(ies))*, on the other hand, has entered into force, in respect of the matters governed by the latter Agreement'.

Article 6

Refusal to authorise the opening of formal negotiations

1. If, on the basis of its assessment under Article 4, the Commission intends not to authorise the opening of formal negotiations on the envisaged agreement, it shall give an opinion to the Member State concerned within 90 days of receipt of the notification referred to in Article 3.

2. Within 30 days of receipt of the opinion of the Commission, the Member State concerned may request the Commission to enter into discussions with it with a view to finding a solution.

3. If the Member State concerned does not request the Commission to enter into discussions with it within the time-limit provided for in paragraph 2, the Commission shall give a reasoned decision on the application of the Member State within 130 days of receipt of the notification referred to in Article 3.

4. In the event of the discussions referred to in paragraph 2, the Commission shall give a reasoned decision on the application of the Member State within 30 days of the closure of the discussions.

Article 7

Participation of the Commission in the negotiations

The Commission may participate as an observer in the negotiations between the Member State and the third country as far as matters falling within the scope of this Regulation are concerned. If the Commission does not participate as an observer, it shall be kept informed of the progress and results throughout the different stages of the negotiations.

Article 8

Authorisation to conclude the agreement

1. Before signing a negotiated agreement, the Member State concerned shall notify the outcome of the negotiations to the Commission and shall transmit to it the text of the agreement.

2. Upon receipt of that notification the Commission shall assess whether the negotiated agreement:

- (a) meets the condition set out in Article 4(2)(b);
- (b) meets the condition set out in Article 4(2)(c), in so far as there are new and exceptional circumstances in relation to that condition; and
- (c) fulfils the requirement under Article 5(2).

3. If the negotiated agreement fulfils the conditions and requirements referred to in paragraph 2, the Commission shall, within 90 days of receipt of the notification referred to in paragraph 1, give a reasoned decision on the application of the Member State authorising it to conclude that agreement.

Article 9

Refusal to authorise the conclusion of the agreement

1. If, on the basis of its assessment under Article 8(2), the Commission intends not to authorise the conclusion of the negotiated agreement, it shall give an opinion to the Member State concerned, as well as to the European Parliament and to the Council, within 90 days of receipt of the notification referred to in Article 8(1).

2. Within 30 days of receipt of the opinion of the Commission, the Member State concerned may request the Commission to enter into discussions with it with a view to finding a solution.

3. If the Member State concerned does not request the Commission to enter into discussions with it within the time-limit provided for in paragraph 2, the Commission shall give a reasoned decision on the application of the Member State within 130 days of receipt of the notification referred to in Article 8(1).

4. In the event of the discussions referred to in paragraph 2, the Commission shall give a reasoned decision on the application of the Member State within 30 days of the closure of the discussions.

5. The Commission shall notify its decision to the European Parliament and to the Council within 30 days of the decision.

Article 10

Confidentiality

When providing information to the Commission under Articles 3, 4(3) and 8, the Member State may indicate whether any of

the information is to be regarded as confidential and whether the information provided can be shared with other Member States.

Article 11

Provision of information to the Member States

The Commission shall send to the Member States the notifications received under Articles 3 and 8 and, if necessary, the accompanying documents, as well as all its reasoned decisions under Articles 5, 6, 8 and 9, subject to the confidentiality requirements.

Article 12

Transitional provisions

1. Where, at the time of entry into force of this Regulation, a Member State has already started the process of negotiating an agreement with a third country, Articles 3 to 11 shall apply.

Where the stage of the negotiations so permits, the Commission may propose negotiating guidelines or request the inclusion of particular clauses, as referred to in the second subparagraph of Article 5(1) and Article 5(2) respectively.

2. Where, at the time of entry into force of this Regulation, a Member State has already completed the negotiations but has not yet concluded the agreement, Article 3, Article 8(2) to (4) and Article 9 shall apply.

Article 13

Review

1. No earlier than 7 July 2017 the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation.

2. That report shall either:

- (a) confirm that it is appropriate for this Regulation to expire on the date determined in accordance with Article 14(1); or
- (b) recommend that this Regulation be replaced as of that date by a new Regulation.

3. If the report recommends a replacement of the Regulation as referred to in paragraph 2(b), it shall be accompanied by an appropriate legislative proposal.

*Article 14***Expiry**

1. This Regulation shall expire three years after the submission by the Commission of the report referred to in Article 13.

The period of three years referred to in the first subparagraph shall start to run on the first day of the month following the submission of the report to either the European Parliament or the Council, whichever is the later.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 7 July 2009.

2. Notwithstanding the expiry of this Regulation on the date determined in accordance with paragraph 1, all negotiations ongoing on that date which have been entered into by a Member State under this Regulation shall be allowed to continue and to be completed in accordance with this Regulation.

*Article 15***Entry into force**

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

For the Council

The President

A. BORG

CORRIGENDA

Corrigendum to Regulation (EC) No 595/2009 of the European Parliament and of the Council of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information and amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and repealing Directives 80/1269/EEC, 2005/55/EC and 2005/78/EC

(Official Journal of the European Union L 188 of 18 July 2009)

On page 9, Article 18, second paragraph, first sentence:

for: 'It shall apply from 7 August 2009.'

read: 'It shall apply from 31 December 2012.'

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