European Parliament

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Tuesday, 11 September 2012 - Strasbourg **Provisional edition**

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Mobilisation of the European Globalisation Adjustment Fund: Application EGF/2011/008 DK/Odense Steel Shipyard, Denmark

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European Parliament resolution of 11 September 2012 on the proposal for a decision of the European Parliament and of the Council on mobilisation of the European Globalisation Adjustment Fund, in accordance with point 28 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (application EGF/2011/008 DK/Odense Steel Shipyard from Denmark) (COM(2012)0272 – C7-0131/2012 – 2012/2110(BUD))

P7_TA-PROV(2012)0304 **A7-0232/2012**

The European Parliament ,

– having regard to the Commission proposal to Parliament and the Council (**COM(2012)0272** – C7-0131/2012),

– having regard to the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management[(1)] (IIA of 17 May 2006), and in particular point 28 thereof,

– having regard to Regulation (EC) No 1927/2006 of the European Parliament and of the Council of 20 December 2006 on establishing the European Globalisation Adjustment Fund[(2)] (EGF Regulation),

– having regard to the trilogue procedure provided for in point 28 of the IIA of 17 May 2006,

– having regard to the letter of the Committee on Employment and Social Affairs,

– having regard to the report of the Committee on Budgets (**A7-0232/2012**),

A. whereas the European Union has set up the appropriate legislative and budgetary instruments to provide additional support to workers who are suffering from the consequences of major structural changes in world trade patterns and to assist their reintegration into the labour market;

B. whereas the scope of the EGF was broadened for applications submitted from 1 May 2009 to include support for workers made redundant as a direct result of the global financial and economic crisis;

C. whereas the Union's financial assistance to workers made redundant should be dynamic and made available as quickly and efficiently as possible, in accordance with the Joint Declaration of the European Parliament, the Council and the Commission adopted during the conciliation meeting on 17 July 2008, and having due regard for the IIA of 17 May 2006 in respect of the adoption of decisions to mobilise the EGF;

D. whereas Denmark has requested assistance for 981 redundancies, of which 550 are targeted for assistance, in the Odense Steel Shipyard primary enterprise and in four suppliers and downstream producers in Denmark, within a four-month reference period;

E. whereas the application fulfils the eligibility criteria laid down by the EGF Regulation;

1. Agrees with the Commission that the conditions set out in Article 2(a) of the EGF Regulation are met and that, therefore, Denmark is entitled to a financial contribution under that Regulation;

2. Notes that the Danish authorities submitted the application for EGF financial contribution on 28 October 2011 and that its assessment was made available by the Commission on 6 June 2012; urges the Commission to speed up the evaluation process, in particular in case of applications targeting sectors where EGF has already been deployed on several occasions;

3. Notes that the direct losses at Odense Steel Shipyard covered by the two EGF applications (this one and EGF/2010/025 DK/Odense Steel Shipyard[(3)]) amount to around 2 % of the local workforce, and, together with indirect job losses, the shipyard closure is regarded as a major crisis in the regional economy;

4. Notes that the Danish authorities have indicated that, in their assessment, only 550 of 981 workers dismissed would choose to participate in the measures, while others would either decide to retire or would find new employment themselves; calls on the Danish authorities to use the EGF support to its full potential;

5. Notes that the shipbuilding workforce in Europe, in accordance with the Community of European Shipyards' Associations (CESA) annual report for 2010-2011[(4)] , has declined by 23 % over the past three years, from 148 792 workers in 2007 to 114 491 workers in 2010; and that EGF assistance has already been mobilised in three cases in the shipbuilding sector over the past three years (EGF/2010/001 DK/Nordjylland[(5)] , EGF/2010/006 PL/H. Cegielski-Poznan[(6)] and EGF/2010/025 DK/Odense Steel Shipyard);

6. Welcomes the fact that the municipalities of Odense and Kerteminde, which are heavily affected by the dismissals in the Odense Steel Shipyard, were closely involved in the application, which is a part of a strategy for new growth opportunities in the region formulated by a consortium of local, regional and national stakeholders following the announcement of the closure of the shipyard in 2009;

7. Welcomes the fact that, in order to provide workers with speedy assistance, the Danish authorities decided to start the implementation of the measures ahead of the final decision on granting the EGF support for the proposed coordinated package;

8. Notes that the Danish authorities propose a relatively expensive coordinated package of personalised services (EUR 11 737 of EGF support per worker); welcomes, however, the fact that the package consists of measures that are additional and innovative compared to those offered regularly by the employment agencies and which are adapted to assist highly skilled workers in a difficult employment market;

9. Recalls the importance of improving the employability of all workers by means of tailored training and recognition of skills and competences gained throughout the professional career; expects the training on offer in the coordinated package to be tailored not only to the needs of the dismissed workers but also of the actual business environment;

10. Notes that the target group of workers is already highly skilled, but in a field in which the outlook for future employment looks bleak; therefore, the measures proposed for them will be more costly than would be the case for other workers in mass layoffs, which often concern people with relatively low skills;

11. Welcomes the fact that the coordinated package of personalised services also offers incentives and courses to start a new business which are foreseen for ten workers (including one start-up loan of EUR 26 000);

12. Welcomes the fact that a consortium of local, regional and national stakeholders has discussed and formulated a strategy for new growth opportunities in the Odense region, and that this strategy is guiding the choice of re-training measures in the application;

13. Notes, however, the proposed subsistence allowance of EUR 103 per worker per day of active involvement and that the amount foreseen for those allowances represents more than one-third of the total cost of the package; recalls that that EGF support should primarily be allocated to job search and training programmes rather than contributing directly to financial allowances, which are the responsibility of Member States by virtue of the national law;

14. Welcomes the emphasis on new areas of potential growth and development in the regional economy such as energy technology, robotics and welfare technology, which are in line with both Lisbon goals of strong European competitiveness and Europe 2020 goals of smart, inclusive and sustainable growth;

15. Welcomes the fact that the EGF support in this case is coordinated by a newly set-up EGF Secretariat under the Odense Municipality and that a dedicated website was established and two conferences are planned to promote the outcome of the two EGF applications;

16. Requests the institutions involved to make the necessary efforts to improve procedural and budgetary arrangements to accelerate the mobilisation of the EGF; appreciates the improved procedure put in place by the Commission, following Parliament's request for accelerating the release of grants, aimed at presenting to the budgetary authority the Commission's assessment on the eligibility of an EGF application together with the proposal to mobilise the EGF; hopes that further improvements in the procedure will be integrated in the new Regulation on the European Globalisation Adjustment Fund (2014–2020) and that greater efficiency, transparency and visibility of the EGF will be achieved;

17. Recalls the institutions' commitment to ensuring a smooth and rapid procedure for the adoption of the decisions on the mobilisation of the EGF, providing one-off, time-limited individual support geared to helping workers who have been made redundant as a result of globalisation and the financial and economic crisis; emphasises the role that the EGF can play in the reintegration of workers made redundant into the labour market;

18. Deplores the fact that, despite several successful Danish mobilisations of the EGF under both the trade-related and the crisis-related criteria, Denmark is among those countries undermining the future of the EGF after 2013, blocking the extension of the crisis derogation and decreasing the financial allocation to the Commission for technical assistance for the EGF for 2012;

19. Stresses that, in accordance with Article 6 of the EGF Regulation, it should be ensured that the EGF supports the reintegration of individual redundant workers into employment; further stresses that the EGF assistance can co-finance only active labour market measures which lead to long-term employment; reiterates that assistance from the EGF must not replace actions which are the responsibility of companies by virtue of national law or collective agreements, or measures restructuring companies or sectors; deplores the fact that the EGF might provide an incentive for companies to replace their contractual workforce with a more flexible and short-term one;

20. Notes that the information provided on the coordinated package of personalised services to be funded from the EGF includes information on their complementarity with actions funded by the Structural Funds; reiterates its call to the Commission to present a comparative evaluation of those data in its annual reports in order to ensure full respect of the existing regulations and that no duplication of Union-funded services can occur;

21. Welcomes the fact that following repeated requests from Parliament, the 2012 budget shows payment appropriations of EUR 50 000 000 on the EGF budget line 04 05 01; recalls that the EGF was created as a separate specific instrument with its own objectives and deadlines and therefore deserves a dedicated allocation, which will avoid transfers from other budget lines, as happened in the past, which could be detrimental to the achievement of the policy objectives of the EGF;

22. Regrets the decision of the Council to block the extension of the ‘crisis derogation’, which allows provision of financial assistance to workers made redundant as a result of the current financial and economic crisis in addition to those losing their job because of changes in global trade patterns, and which allows an increase in the rate of Union

co-financing to 65% of the programme costs, for applications submitted after the 31 December 2011 deadline, and calls on the Council to reintroduce this measure without delay;

23. Approves the decision annexed to this resolution;

24. Instructs its President to sign the decision with the President of the Council and to arrange for its publication in the *Official Journal of the European Union* ;

25. Instructs its President to forward this resolution, including its annex, to the Council and the Commission.

ANNEX

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of XXXX

on the mobilisation of the European Globalisation Adjustment Fund in accordance with point 28 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (application EGF/2011/008 DK/Odense Steel Shipyard from Denmark)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management[(7)] , and in particular point 28 thereof,

Having regard to Regulation (EC) No 1927/2006 of the European Parliament and of the Council of 20 December 2006 establishing the European Globalisation Adjustment Fund[(8)] , and in particular Article 12(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The European Globalisation Adjustment Fund (EGF) was established to provide additional support for workers made redundant as a result of major structural changes in world trade patterns due to globalisation and to assist them with their reintegration into the labour market.

(2) The scope of the EGF was broadened, for applications submitted from 1 May 2009 to 30 December 2011, to include support for workers made redundant as a direct result of the global financial and economic crisis.

(3) The Interinstitutional Agreement of 17 May 2006 allows the mobilisation of the EGF within the annual ceiling of EUR 500 million.

(4) Denmark submitted an application on 28 October 2011 to mobilise the EGF in respect of redundancies in the Odense Steel Shipyard enterprise, and supplemented it by additional information up to 8 March 2012. This application complies with the requirements for determining the financial contributions as laid down in Article 10 of Regulation (EC) No 1927/2006. The Commission, therefore, proposes to mobilise an amount of EUR 6 455 104.

(5) The EGF should, therefore, be mobilised in order to provide a financial contribution for the application submitted by Denmark,

HAVE ADOPTED THIS DECISION:

Article 1

For the general budget of the European Union for the financial year 2012, the European Globalisation Adjustment Fund shall be mobilised to provide the sum of EUR 6 455 104 in commitment and payment appropriations.

Article 2

This Decision shall be published in the *Official Journal of the European Union* .

Done at ,

For the European Parliament For the Council

The President The President

(1) OJ C 139, 14.6.2006, p. 1.
(2) OJ L 406, 30.12.2006, p. 1.
(3) OJ L 195, 27.7.2011, p. 52.
(4) http://www.cesa.eu/presentation/publication/CESA_AR_2010_2011/pdf/CESA%20AR%202010- 2011.pdf
(5) OJ L 286, 4.11.2010, p. 18.
(6) OJ L 342, 28.12.2010, p. 19.
(7) OJ C 139, 14.6.2006, p. 1.
(8) OJ L 406, 30.12.2006, p. 1.

Mobilisation of the European Globalisation Adjustment Fund: Application EGF/2011/017 ES/Aragón Construction, Spain

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European Parliament resolution of 11 September 2012 on the proposal for a decision of the European Parliament and of the Council on mobilisation of the European Globalisation Adjustment Fund, in accordance with point 28 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (application EGF/2011/017 ES/Aragón Construction from Spain) (COM(2012)0290 – C7-0150/2012 – 2012/2121(BUD))

P7_TA-PROV(2012)0305 **A7-0233/2012**

The European Parliament ,

– having regard to the Commission proposal to Parliament and the Council (**COM(2012)0290** – C7-0150/2012),

– having regard to the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management[(1)] (IIA of 17 May 2006), and in particular point 28 thereof,

– having regard to Regulation (EC) No 1927/2006 of the European Parliament and of the Council of 20 December 2006 on establishing the European Globalisation Adjustment Fund[(2)] (EGF Regulation),

– having regard to the trilogue procedure provided for in point 28 of the IIA of 17 May 2006,

– having regard to the letter of the Committee on Employment and Social Affairs,

– having regard to the report of the Committee on Budgets (**A7-0233/2012**),

A. whereas the European Union has set up the appropriate legislative and budgetary instruments to provide additional support to workers who are suffering from the consequences of major structural changes in world trade patterns and to assist their reintegration into the labour market;

B. whereas the scope of the EGF was broadened for applications submitted from 1 May 2009 to include support for workers made redundant as a direct result of the global financial and economic crisis;

C. whereas the Union's financial assistance to workers made redundant should be dynamic and made available as quickly and efficiently as possible, in accordance with the Joint Declaration of the European Parliament, the Council and the Commission adopted during the conciliation meeting on 17 July 2008, and having due regard for the IIA of 17 May 2006 in respect of the adoption of decisions to mobilise the EGF;

D. whereas Spain has requested assistance for 836 redundancies, 320 of which are targeted for assistance, in 377 enterprises operating in the NACE Revision 2 Division 41 (‘Construction of buildings’)[(3)] in the NUTS II region of Aragón (ES24) in Spain;

E. whereas the application fulfils the eligibility criteria laid down by the EGF Regulation;

1. Agrees with the Commission that the conditions set out in Article 2(b) of the EGF Regulation are met and that, therefore, Spain is entitled to a financial contribution under that Regulation;

2. Notes that the Spanish authorities submitted the application for EGF financial contribution on 28 December 2011 and that its assessment was made available by the Commission on 18 June 2012; welcomes the fact that the evaluation process and submission of additional information by Spain were speedy and accurate;

3. Notes that unemployment has increased dramatically in Aragón, and that, by the end of 2011, the number of workers registered in the public labour offices was close to 100 000, of which 15 % were workers made redundant in the construction sector;

4. Notes that the region of Aragón has been hard hit in the past by mass dismissals and welcomes the fact that the region has decided to use the EGF support to address those redundancies; Spain has submitted two EGF applications for the Aragón region before: EGF/2008/004 ES Castilla y León & Aragón (1 082 redundancies in the automotive industry of which 594 occurred in Aragón)[(4)] and EGF/2010/016 ES Aragón retail (1 154 redundancies in the retail sector)[(5)] ; welcomes the fact that the region is building on the experience with the EGF and quickly assists workers in several sectors; firmly believes that the anticipated EGF assistance can further contribute to preventing the risk of depopulation in the region of Aragón (currently comprising between 3 and 54 inhabitants per km²) by effectively encouraging the population to remain in this territory;

5. Notes that the Spanish authorities inform that in their assessment based on the experience with previous EGF applications, only 320 of the workers targeted for the EGF support will choose to participate in the measures; calls on the Spanish authorities to use the EGF support to its full potential;

6. Welcomes the fact that, in order to provide workers with speedy assistance, the Spanish authorities decided to start the implementation of the measures ahead of the final decision on granting the EGF support for the proposed coordinated package;

7. Recalls the importance of improving the employability of all workers by means of tailored training and the recognition of skills and competences gained throughout the professional career; expects the training on offer in the coordinated package to be adapted not only to the needs of the dismissed workers but also to those of the actual business environment;

8. Welcomes the fact that the relevant social partners were consulted on the application for the EGF assistance and on the contents of the package of personalised services to be provided to the workers in order to improve the match between the demand and supply in the labour market;

9. Welcomes in particular the training course which had been designed to match the identified needs of local enterprises which will in turn undertake to employ some of the workers participating in this action;

10. Highlights the fact that lessons should be learned from the preparation and implementation of this and other applications addressing mass dismissals in a high number of small and medium enterprises (SMEs) in one sector, in particular, in terms of the eligibility of self-employed and owners of the SMEs for EGF support in the future regulation and the arrangements used by the regions and the Member States to quickly come up with sectoral applications covering a large number of enterprises;

11. Notes that the measures supporting entrepreneurship are foreseen for only 20 workers; hopes that the Spanish authorities will promote entrepreneurship and be able to adapt the coordinated package of services in the event of increased interest in this kind of measures;

12. Requests the institutions involved to make the necessary efforts to improve procedural and budgetary arrangements to accelerate the mobilisation of the EGF; appreciates the improved procedure put in place by the Commission, following Parliament's request for accelerating the release of grants, aimed at presenting to the budgetary authority the Commission's assessment on the eligibility of an EGF application together with the proposal to mobilise the EGF; hopes that further improvements in the procedure will be integrated in the new Regulation on the European Globalisation Adjustment Fund (2014–2020) and that greater efficiency, transparency and visibility of the EGF will be achieved;

13. Notes that the coordinated package foresees several participation incentives to encourage participation in the measures: job search allowance of EUR 300 (lump sum), outplacement allowance of EUR 200 and EUR 400 for self-employed per month for a maximum of three months; recalls that the EGF support should be primarily allocated to training and job search as well as training programs instead of contributing directly to unemployment benefits which are the responsibility of national institutions;

14. Recalls the institutions' commitment to ensuring a smooth and rapid procedure for the adoption of the decisions on the mobilisation of the EGF, providing one-off, time-limited individual support geared to helping workers who have been made redundant as a result of globalisation and the financial and economic crisis; emphasises the role that the EGF can play in the reintegration of workers made redundant into the labour market;

15. Notes that the case at hand reflects the social and economic landscape of the specific region which could in the future be addressed by extending the scope of the EGF to self-employed workers (as proposed by the Commission in the proposal for the EGF 2014-2020);

16. Stresses that, in accordance with Article 6 of the EGF Regulation, it should be ensured that the EGF supports the

reintegration of individual redundant workers into employment; further stresses that the EGF assistance can co-finance only active labour market measures which lead to durable, long-term employment; reiterates that assistance from the EGF must not replace actions which are the responsibility of companies by virtue of national law or collective agreements, or measures restructuring companies or sectors; deplores the fact that the EGF might provide an incentive for companies to replace their contractual workforce with a more flexible and short-term one;

17. Notes that the information provided on the coordinated package of personalised services to be funded from the EGF includes information on their complementarity with actions funded by the Structural Funds; reiterates its call to the Commission to present a comparative evaluation of those data in its annual reports in order to ensure full respect of the existing regulations and that no duplication of Union-funded services can occur;

18. Welcomes the fact that following repeated requests from Parliament, the 2012 budget shows payment appropriations of EUR 50 000 000 on the EGF budget line 04 05 01; recalls that the EGF was created as a separate specific instrument with its own objectives and deadlines and therefore deserves a dedicated allocation, which will avoid transfers from other budget lines, as happened in the past, which could be detrimental to the achievement of the policy objectives of the EGF;

19. Regrets the decision of the Council to block the extension of the 'crisis derogation', allowing to provide financial assistance to workers made redundant as a result of the current financial and economic crisis in addition to those losing their job because of changes in global trade patterns, and allowing the increase in the rate of Union co-financing to 65% of the programme costs, for applications submitted after the 31 December 2011 deadline, and calls on the Council to reintroduce this measure without delay;

20. Approves the decision annexed to this resolution;

21. Instructs its President to sign the decision with the President of the Council and to arrange for its publication in the *Official Journal of the European Union* ;

22. Instructs its President to forward this resolution, including its annex, to the Council and the Commission.

ANNEX

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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on the mobilisation of the European Globalisation Adjustment Fund, in accordance with point 28 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (application EGF/2011/017 ES/Aragón Construction from Spain)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management[(6)] , and in particular point 28 thereof,

Having regard to Regulation (EC) No 1927/2006 of the European Parliament and of the Council of 20 December 2006 establishing the European Globalisation Adjustment Fund[(7)] , and in particular Article 12(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The European Globalisation Adjustment Fund (EGF) was established to provide additional support for workers made redundant as a result of major structural changes in world trade patterns due to globalisation and to assist them with their reintegration into the labour market.

(2) The scope of the EGF was broadened, for applications submitted from 1 May 2009 to 30 December 2011, to include support for workers made redundant as a direct result of the global financial and economic crisis.

(3) The Interinstitutional Agreement of 17 May 2006 allows the mobilisation of the EGF within the annual ceiling of EUR 500 million.

(4) Spain submitted an application on 28 December 2011 to mobilise the EGF in respect of redundancies in 377 enterprises operating in the NACE Revision 2 Division 41 ('Construction of buildings') in the NUTS II region of Aragón (ES24) and supplemented it by additional information up to 23 March 2012. This application complies with the

requirements for determining the financial contributions as laid down in Article 10 of Regulation (EC) No 1927/2006. The Commission, therefore, proposes to mobilise an amount of EUR 1 300 000.

(5) The EGF should, therefore, be mobilised in order to provide a financial contribution for the application submitted by Spain,

HAVE ADOPTED THIS DECISION:

Article 1

For the general budget of the European Union for the financial year 2012, the European Globalisation Adjustment Fund shall be mobilised to provide the sum of EUR 1 300 000 in commitment and payment appropriations.

Article 2

This Decision shall be published in the *Official Journal of the European Union* .

Done at ,

For the European Parliament For the Council

The President The President

(1) OJ C 139, 14.6.2006, p. 1.
(2) OJ L 406, 30.12.2006, p. 1.
(3) Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1).
(4) OJ C 212 E, 5.8.2010, p. 165.
(5) OJ C 169 E, 15.6.2012, p. 157.
(6) OJ C 139, 14.6.2006, p. 1.
(7) OJ L 406, 30.12.2006, p. 1.

Energy efficiency ***I

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European Parliament legislative resolution of 11 September 2012 on the proposal for a directive of the European Parliament and of the Council on energy efficiency and repealing Directives 2004/8/EC and 2006/32/EC (COM(2011)0370 – C7-0168/2011 – 2011/0172(COD))

P7_TA-PROV(2012)0306 **A7-0265/2012**

(Ordinary legislative procedure: first reading)

The European Parliament ,

– having regard to the Commission proposal to Parliament and the Council (**COM(2011)0370**),

– having regard to Article 294(2) and Article 194(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0168/2011),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the reasoned opinion submitted, within the framework of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, by the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,

– having regard to the opinion of the European Economic and Social Committee of 26 October 2011[(1)] ,

– having regard to the opinion of the Committee of the Regions of 14 December 2011[(2)] ,

– having regard to the undertaking given by the Council representative by letter of 27 June 2012 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

– having regard to Rule 55 of its Rules of Procedure,

– having regard to the report of the Committee on Industry, Research and Energy and the opinions of the Committee on the Environment, Public Health and Food Safety and the Committee on Women's Rights and Gender Equality (**A7-0265/2012**),

1. Adopts its position at first reading hereinafter set out;

2. Approves the joint statement by Parliament, the Council and the Commission annexed to this resolution;

3. Takes note of the Commission statements annexed to this resolution;

4. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 11 September 2012 with a view to the adoption of Directive 2012/.../EU of the European Parliament and of the Council on energy efficiency *, amending Directives 2009/125/EC and 2010/30/EU and* repealing Directives 2004/8/EC and 2006/32/EC

P7_TC1-COD(2011)0172

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(3)] ,

Having regard to the opinion of the Committee of the Regions[(4)] ,

Acting in accordance with the ordinary legislative procedure[(5)] ,

Whereas:

(1) The Union is facing unprecedented challenges resulting from increased dependence on energy imports and scarce energy resources, and the need to limit climate change and to overcome the economic crisis. Energy efficiency is a valuable means to address these challenges. It improves the Union's security of supply by reducing primary energy consumption and decreasing energy imports. It helps to reduce greenhouse gas emissions in a cost-effective way and thereby to mitigate climate change. Shifting to a more energy-efficient economy should also accelerate the

spread of innovative technological solutions and improve the competitiveness of industry in the Union, boosting economic growth and creating high quality jobs in several sectors related to energy efficiency.

(2) The ▌Conclusions of the European Council of 8 and 9 March 2007 emphasised the need to increase energy efficiency in the Union to achieve the objective of saving 20 % of the Union's primary energy consumption by 2020 compared to projections. ***The conclusions of the European Council of 4 February 2011 emphasised that the 2020 20 % energy efficiency target as agreed by the June 2010 European Council, which is presently not on track, must be delivered. Projections made in 2007 showed a*** primary energy consumption ***in 2020 of 1842 Mtoe. A 20 % reduction results in 1474 Mtoe in 2020, i.e. a reduction*** of 368 Mtoe ***as compared to projections*** .

(3) The ▌Conclusions of the European Council of 17 June 2010 confirmed the energy efficiency target as one of the headline targets of the Union's new strategy for jobs and smart, sustainable and inclusive growth ('Europe 2020 Strategy'). Under this process and in order to implement this objective at national level, Member States are required to set national targets in close dialogue with the Commission and to indicate, in their National Reform Programmes, how they intend to achieve them.

(4) The Commission Communication of 10 November 2010 on Energy 2020 places energy efficiency at the core of the Union energy strategy for 2020 and outlines the need for a new energy efficiency strategy that will enable all Member States to decouple energy use from economic growth.

(5) In its resolution of 15 December 2010 on the Revision of the Energy Efficiency Action Plan, the European Parliament called on the Commission to include in its revised Energy Efficiency Action Plan measures to close the gap to reach the overall Union energy efficiency objective in 2020.

(6) One of the initiatives of the Europe 2020 Strategy is the flagship resource-efficient Europe adopted by the Commission on 26 January 2011. This identifies energy efficiency as a major element in ensuring the sustainability of the use of energy resources.

(7) The ▌Conclusions of the European Council of 4 February 2011 acknowledged that the Union energy efficiency target is not on track and that determined action is required to tap the considerable potential for higher energy savings in buildings, transport, products and processes. ***Those conclusions also provide that the implementation of the Union energy efficiency target will be reviewed by 2013 and further measures considered if necessary.***

(8) On 8 March 2011, the Commission adopted ***its Communication on an*** Energy Efficiency Plan 2011. The Communication confirmed that the Union is not on track to achieve its energy efficiency target. ***This is despite the progress in national energy efficiency policies outlined in the first National Energy Efficiency Action Plans submitted by Member States in fulfilment of the requirements of Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services*** [(6)] ***. Initial analysis of the second Action Plans confirms that the Union is not on track.*** To remedy that, ***the Energy Efficiency Plan 2011*** spelled out a series of energy efficiency policies and measures covering the full energy chain, including energy generation, transmission and distribution; the leading role of the public sector in energy efficiency; buildings and appliances; industry; and the need to empower final customers to manage their energy consumption. Energy efficiency in the transport sector was considered in parallel in the White Paper on Transport, adopted on 28 March 2011. In particular, Initiative 26 of the White Paper calls for appropriate standards for CO_2 emissions of vehicles in all modes, where necessary supplemented by requirements on energy efficiency to address all types of propulsion systems.

(9) On 8 March 2011, the Commission also adopted a Roadmap for moving to a competitive low carbon economy in 2050, identifying the need from this perspective for more focus on energy efficiency.

(10) In this context it is necessary to update the Union's legal framework for energy efficiency with a Directive pursuing the overall objective of the energy efficiency target of saving 20 % of the Union's primary energy consumption by 2020, and of making further energy efficiency improvements after 2020. To that end, this Directive should establish a common framework to promote energy efficiency within the Union and lay down specific actions to implement some of the proposals included in the Energy Efficiency Plan 2011 and achieve the significant unrealised energy saving potentials it identifies.

(11) ▌Decision No 406/2009/EC ***of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020*** [(7)] requires the Commission to assess and report by 2012 on the progress of the Union and its Member States towards the objective of reducing energy consumption by 20 % by 2020 compared to projections. It also states that, to help Member States meet the Union's greenhouse gas emission reduction commitments, the Commission should propose, by 31 December 2012, strengthened or new measures to accelerate energy efficiency improvements. This Directive responds to this requirement. It also contributes to meeting the goals set out in the Roadmap for moving to a competitive low carbon economy in 2050, in particular by reducing greenhouse gas emissions from the energy sector, and to achieving zero emission electricity production by 2050.

(12) An integrated approach ***has to*** be taken to tap all the existing energy saving potential, encompassing savings in the energy supply and the end-use sectors. At the same time, the provisions of Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on promotion of cogeneration based on a useful heat demand in the internal energy market[(8)] and Directive 2006/32/EC ▌ should be strengthened.

(13) It would be preferable for the 20 % energy efficiency target to be achieved as a result of the cumulative implementation of specific national and European measures promoting energy efficiency in different fields. ▌ Member States should be required to set ***indicative*** national energy efficiency targets, schemes and programmes. ▌ These targets and the individual efforts of each Member State should be evaluated by the Commission, alongside data on the progress made, to assess the likelihood of achieving the overall Union target and the extent to which the individual efforts are sufficient to meet the common goal. The Commission should therefore closely monitor the implementation of national energy efficiency programmes through its revised legislative framework and within the Europe 2020 process. ***When setting the indicative national energy efficiency targets, Member States should be able to take into account national circumstances affecting primary energy consumption such as remaining cost-effective energy-saving potential, changes in energy imports and exports, development of all sources of renewable energies, nuclear energy, carbon capture and storage, and early action. When undertaking modelling exercises, the Commission should consult Member States on model assumptions and draft model results in a timely and transparent manner. Improved modelling of the impact of energy efficiency measures and of the stock and performance of technologies is needed.***

(14) Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources [(9)] states that Cyprus and Malta, due to their insular and peripheral character, rely on aviation as a mode of transport, which is essential for their citizens and their economy. As a result, Cyprus and Malta have a gross final consumption of energy in national air transport which is disproportionately high, i.e. more than three times the Community average in 2005, and are thus disproportionately affected by the current technological and regulatory constraints.

(15) The total volume of public spending is equivalent to 19 % of the Union's gross domestic product. For this reason the public sector constitutes an important driver to stimulate market transformation towards more efficient products, buildings and services, as well as to trigger behavioural changes in energy consumption by citizens and enterprises. Furthermore, decreasing energy consumption through energy efficiency improvement measures can free up public resources for other purposes. Public bodies at national, regional and local level should fulfil an exemplary role as regards energy efficiency.

(16) Bearing in mind that the Council conclusions of 10 June 2011 on the Energy Efficiency Plan 2011 stressed that buildings represent 40 % of the Union's final energy consumption, and in order to capture the growth and employment opportunities in the skilled trades and construction sectors, as well as in the production of construction products and in professional activities such as architecture, consultancy and engineering, Member States should establish a long-term strategy beyond 2020 for mobilising investment in the renovation of residential and commercial buildings with a view to improving the energy performance of the building stock . That strategy should address cost-effective deep renovations which lead to a refurbishment that reduces both the delivered and the final energy consumption of a building by a significant percentage compared with the pre-renovation levels leading to a very high energy performance. Such deep renovations could also be carried out in stages.

(17) The rate of building renovation needs to be increased, as the existing building stock represents the single biggest potential sector for energy savings. Moreover, buildings are crucial to achieving the ***Union*** objective of reducing greenhouse gas emissions by 80-95 % by 2050 compared to 1990. Buildings owned by public bodies account for a considerable share of the building stock and have high visibility in public life. It is therefore appropriate to set an annual rate of renovation of ▌ buildings owned ***and occupied by central government on the territory of a Member State*** to upgrade their energy performance. This renovation rate should be without prejudice to the obligations with regard to nearly-zero energy buildings set in Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings[(10)] . The obligation to renovate ***central government*** buildings in this Directive complements that Directive, which requires Member States to ensure that when existing buildings undergo major renovation their energy performance is upgraded so that they meet minimum energy performance requirements. ***It should be possible for Member States to take alternative cost-efficient measures to achieve an equivalent improvement of the energy performance of the buildings within their central government estate. The obligation to renovate floor area of central government buildings should apply to the administrative departments whose competence extends over the whole territory of a Member State. When in a given Member State and for a given competence no such relevant administrative department exists that covers the whole territory, the obligation should apply to those administrative departments whose competences cover collectively the whole territory.***

(18) A number of municipalities and other public bodies in the Member States have already put into place integrated approaches to energy saving and energy supply, for example via sustainable energy action plans, such as those

developed under the Covenant of Mayors initiative, and integrated urban approaches which go beyond individual interventions in buildings or transport modes. Member States should encourage municipalities and other public bodies to adopt integrated and sustainable energy efficiency plans with clear objectives, to involve citizens in their development and implementation and to adequately inform them about their content and progress in achieving objectives. Such plans can yield considerable energy savings, especially if they are implemented by energy management systems that allow the public bodies concerned to better manage their energy consumption. Exchange of experience between cities, towns and other public bodies should be encouraged with respect to the more innovative experiences.

(19) With regard to the purchase of certain products and services and the purchase and rent of buildings, ***central governments*** which conclude public works, supply or service contracts should lead by example and make energy-efficient purchasing decisions. ***This should apply to the administrative departments whose competence extends over the whole territory of a Member State. When in a given Member State and for a given competence no such relevant administrative department exists that covers the whole territory, the obligation should apply to those administrative departments whose competences cover collectively the whole territory.*** The provisions of the ***Union's*** public procurement directives should not however be affected. ***For products other than those covered by the energy efficiency requirements for purchasing in this Directive, Member States should encourage public bodies to take into account the energy efficiency of purchase.***

(20) An assessment of the possibility of establishing a 'white certificate' scheme at Union level has shown that, in the current situation, such a system would create excessive administrative costs and that there is a risk that energy savings would be concentrated in a number of Member States and not introduced across the Union. The objective of such a Union level scheme ***could*** be better achieved, at least at this stage, by means of national energy efficiency obligation schemes ***for energy utilities*** or other alternative ***policy*** measures that achieve the same amount of energy savings. ▌It is appropriate for the level of ambition of such schemes to be established in a common framework at Union level while providing significant flexibility to Member States to take fully into account the national organisation of market actors, the specific context of the energy sector and final customers' habits. The common framework should give energy utilities the option of offering energy services to all final customers, not only to those to whom they sell energy. This increases competition in the energy market because energy utilities can differentiate their product by providing complementary energy services. The common framework should allow Member States to include requirements in their national scheme that pursue a social aim, in particular in order to ensure that vulnerable customers have access to the benefits of higher energy efficiency. ***Member States should determine, on the basis of objective and non-discriminatory criteria, which energy distributors or retail energy sales companies should be obliged to achieve the end-use energy savings target laid down in this Directive. Member States should in particular be allowed not to impose this obligation on small energy distributors, small retail energy sales companies and small energy sectors to avoid disproportionate administrative burdens.*** The Commission Communication of 25 June 2008 sets out principles that should be taken into account by Member States that decide to abstain from applying this possibility. ***As a means of supporting national energy efficiency initiatives, obligated parties under national energy efficiency obligation schemes could fulfil their obligations by contributing annually to an Energy Efficiency National Fund an amount that is equal to the investments required under the scheme.***

(21) Given the over-arching imperative of restoring sustainability to public finances and of fiscal consolidation, in the implementation of particular measures falling within the scope of this Directive, due regard should be accorded to the cost-effectiveness at Member State level of implementing energy efficiency measures on the basis of an appropriate level of analysis and evaluation.

(22) The requirement to achieve savings of the annual energy sales to final customers relative to what energy sales would have been does not constitute a cap on sales or energy consumption. Member States should be able to exclude all or part of the sales of energy, by volume, used in industrial activities listed in Annex I to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community [(11)] ***for the calculation of the energy sales to final customers, as it is recognised that certain sectors or subsectors within these activities may be exposed to a significant risk of carbon leakage. It is appropriate that Member States are aware of the costs of schemes in order to be able to accurately assess the costs of measures.***

(23) Without prejudice to the requirements in Article 7 and with a view to limiting the administrative burden, each Member State may group all individual policy measures to implement Article 7 into a comprehensive national energy efficiency programme.

(24) To tap the energy savings potential in certain market segments where energy audits are generally not offered commercially (such as ▌small and medium-sized enterprises ***(SMEs)***), Member States should ***develop programmes to encourage SMEs to undergo*** energy audits ▌. Energy audits should be mandatory and regular for large enterprises, as energy savings can be significant. ***Energy audits should take into account relevant European or International Standards, such as EN ISO 50001 (Energy Management Systems), or EN 16247-1 (Energy Audits), or, if including an energy audit, EN ISO 14000 (Environmental Management Systems) and thus be also in line with the provisions of Annex Vb to this Directive as such provisions do not go beyond the requirements of***

these relevant standards. A specific European standard on energy audits is currently under development.

(25) ***Where*** energy audits ***are*** carried out ▌ by in-house experts, ***the necessary independence would require these experts not to be*** directly engaged in the activity audited ▌ .

(26) When designing energy efficiency improvement measures, account should be taken of efficiency gains and savings obtained through the widespread application of cost-effective technological innovations such as smart meters. ***Where smart meters have been installed, they should not be used by companies for unjustified back billing.***

(27) In relation to electricity, and in accordance with Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity [(12)] , where the roll-out of smart meters is assessed positively, at least 80 % of consumers should be equipped with intelligent metering systems by 2020. In relation to gas, and in accordance with Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas [(13)] , where the roll-out of intelligent metering systems is assessed positively, Member States or any competent authority they designate, should prepare a timetable for the implementation of intelligent metering systems.

(28) Use of individual meters or heat cost allocators for measuring individual consumption of heating in multi-apartment buildings supplied by district heating or common central heating is beneficial when final customers have a means to control their own individual consumption. Therefore, their use makes sense only in buildings where radiators are equipped with thermostatic radiator valves.

(29) In some multi-apartment buildings supplied by district heating or common central heating, the use of accurate individual heat meters would be technically complicated and costly due to the fact that the hot water used for heating enters and leaves the apartments at several points. It can be assumed that individual metering of heat consumption in multi-apartment buildings is, nevertheless, technically possible when the installation of individual meters would not require changing the existing in-house piping for hot water heating in the building. In such buildings, measurements of individual heat consumption can then be carried out by means of individual heat cost allocators installed on each radiator.

(30) Directive 2006/32/EC requires Member States to ensure that final customers are provided with competitively priced individual meters that accurately reflect their actual energy consumption and provide information on actual time of use. In most cases, this requirement is subject to the conditions that it should be technically possible, financially reasonable, and proportionate in relation to the potential energy savings. When a connection is made in a new building or a building undergoes major renovations, as defined in Directive 2010/31/EU, such individual meters should, however, always be provided. Directive 2006/32/EC also requires that clear billing based on actual consumption should be provided frequently enough to enable consumers to regulate their own energy use.

(31) Directives 2009/72/EC and 2009/73/EC require Member States to ensure the implementation of intelligent metering systems to assist the active participation of consumers in the electricity and gas supply markets. As regards electricity, where the roll-out of smart meters is found to be cost-effective, at least 80 % of consumers must be equipped with intelligent metering systems by 2020. As regards natural gas, no deadline is given but the preparation of a timetable is required. Those Directives also state that final customers must be properly informed of actual electricity/gas consumption and costs frequently enough to enable them to regulate their own consumption.

(32) The impact of the provisions on metering and billing in Directives 2006/32/EC, 2009/72/EC and 2009/73/EC on energy saving has been limited. In many parts of the Union, these provisions have not led to customers receiving up-to-date information about their energy consumption, or billing based on actual consumption at a frequency which studies show is needed to enable customers to regulate their energy use. In the sectors of space heating and hot water in multi-apartment buildings the insufficient clarity of these provisions has also led to numerous complaints from citizens.

(33) In order to strengthen the empowerment of final customers as regards access to information from the metering and billing of their individual energy consumption, bearing in mind the opportunities associated with the process of the implementation of intelligent metering systems and the roll out of smart meters in the Member States, it is important that the requirements of Union law in this area be made clearer. This should help reduce the costs of the implementation of intelligent metering systems equipped with functions enhancing energy saving and support the development of markets for energy services and demand management. Implementation of intelligent metering systems enables frequent billing based on actual consumption. However, there is also a need to clarify the requirements for access to information and fair and accurate billing based on actual consumption in cases where smart meters will not be available by 2020, including in relation to metering and billing of individual consumption of heating, cooling and hot water in multi-unit buildings supplied by district heating/cooling or own common heating system installed in such buildings.

(34) When designing energy efficiency improvement measures, Member States should take due account of the need to ensure the correct functioning of the internal market and the coherent implementation of the ***acquis*** , in accordance with ▌ the Treaty on the Functioning of the European Union.

(35) High-efficiency cogeneration and district heating and cooling has significant potential for saving primary energy, which is largely untapped in the Union. Member States should ***carry out a comprehensive assessment of the potential for*** high-efficiency cogeneration and district heating and cooling. These ***assessments*** should ***be updated, at the request of the Commission,*** to provide investors with information concerning national development plans and contribute to a stable and supportive investment environment. New electricity generation installations and existing installations which are substantially refurbished or whose permit or licence is updated should***, subject to a cost-benefit analysis showing a cost-benefit surplus,*** be equipped with high-efficiency cogeneration units to recover waste heat stemming from the production of electricity. This waste heat could then be transported where it is needed through district heating networks. ***The events that trigger a requirement for*** authorisation criteria to ***be applied will generally be events that also trigger requirements for permits under Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions*** [(14)] ***and for authorisation under Directive 2009/72/EC*** .

(36) It may be appropriate for nuclear power installations, or electricity generation installations that are intended to make use of geological storage permitted under Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide [(15)] ***, to be located in places where the recovery of waste heat through high-efficiency cogeneration or by supplying a district heating or cooling network is not cost-effective. Member States should therefore be able to exempt those installations from the obligation to carry out a cost-benefit analysis for providing the installation with equipment allowing the recovery of waste heat by means of a high-efficiency cogeneration unit. It should also be possible to exempt peak-load and back-up electricity generation installations which are planned to operate under 1 500 operating hours per year as a rolling average over a period of five years from the requirement to also provide heat.***

(37) It is appropriate for Member States to encourage the introduction of measures and procedures to promote cogeneration installations with a total rated thermal input of less than 20 MW in order to encourage distributed energy generation.

(38) High-efficiency cogeneration should be defined by the energy savings obtained by combined production instead of separate production of heat and electricity. The definitions of cogeneration and high-efficiency cogeneration used in Union legislation should be without prejudice to the use of different definitions in national legislation for purposes other than those of the Union legislation in question. To maximise energy savings and avoid energy saving opportunities being missed, the greatest attention should be paid to the operating conditions of cogeneration units.

(39) To increase transparency for the final customer to be able to choose between electricity from cogeneration and electricity produced by other techniques, the origin of high-efficiency cogeneration should be guaranteed on the basis of harmonised efficiency reference values. Guarantee of origin schemes do not by themselves imply a right to benefit from national support mechanisms. It is important that all forms of electricity produced from high-efficiency cogeneration can be covered by guarantees of origin. Guarantees of origin should be distinguished from exchangeable certificates.

(40) The specific structure of the cogeneration and district heating and cooling sectors, which include many small and medium-sized producers, should be taken into account, especially when reviewing the administrative procedures for obtaining permission to construct cogeneration capacity or associated networks, in application of the 'Think Small First' principle.

(41) Most ***Union*** businesses are ▌ SMEs. They represent an enormous energy saving potential for the ***Union*** . To help them adopt energy efficiency measures, Member States should establish a favourable framework aimed at providing SMEs with technical assistance and targeted information.

(42) Directive 2010/75/EU includes energy efficiency among the criteria for determining the Best Available Techniques that should serve as a reference for setting the permit conditions for installations within its scope, including combustion installations with a total rated thermal input of 50 MW or more. However, that Directive gives Member States the option not to impose requirements relating to energy efficiency on combustion units or other units emitting carbon dioxide on the site, for the activities listed in Annex I to Directive 2003/87/EC. ***Member States could include information on*** energy efficiency levels ***in their reporting under Directive 2010/75/EU*** .

(43) Member States should establish, on the basis of objective, transparent and non-discriminatory criteria, rules governing the bearing and sharing of costs of grid connections and grid reinforcements and for technical adaptations needed to integrate new producers of electricity produced from high-efficiency cogeneration, taking into account guidelines and codes developed in accordance with Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity ▌ [(16)] and Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access

to the natural gas transmission networks ▌ [17] . Producers of electricity generated from high-efficiency cogeneration should be allowed to issue a call for tender for the connection work. Access to the grid system for electricity produced from high-efficiency cogeneration, especially for small scale and micro-cogeneration units, should be facilitated. ***In accordance with Article 3(2) of Directive 2009/72/EC and Article 3(2) of Directive 2009/73/EC, Member States may impose public service obligations, including in relation to energy efficiency, on undertakings operating in the electricity and gas sectors.***

(44) Demand response is an important instrument for improving energy efficiency, since it significantly increases the opportunities for consumers or third parties nominated by them to take action on consumption and billing information and thus provides a mechanism to reduce or shift consumption, resulting in energy savings in both final consumption and, through the more optimal use of networks and generation assets, in energy generation, transmission and distribution.

(45) Demand response can be based on final customers' responses to price signals or on building automation. Conditions for, and access to, demand response should be improved, including for small final consumers. Taking into account the continuing deployment of smart grids, Member States should therefore ensure that national energy regulatory authorities are able to ensure that network tariffs and regulations incentivise improvements in energy efficiency and support dynamic pricing for demand response measures by final customers. Market integration and equal market entry opportunities for demand-side resources (supply and consumer loads) alongside generation should be pursued. In addition, Member States should ensure that national energy regulatory authorities take an integrated approach encompassing potential savings in the energy supply and the end-use sectors.

(46) A sufficient number of reliable professionals competent in the field of energy efficiency should be available to ensure the effective and timely implementation of this Directive, for instance as regards compliance with the requirements on energy audits and implementation of energy efficiency obligation schemes. Member States should therefore put in place certification schemes for the providers of energy services, energy audits and other energy efficiency improvement measures.

(47) It is necessary to continue developing the market for energy services to ensure the availability of both the demand for and the supply of energy services. Transparency, for example by means of lists of energy services providers, can contribute to this. Model contracts***, exchange of best practice*** and guidelines, in particular for energy performance contracting, can also help stimulate demand. As in other forms of third-party financing arrangements, in an energy performance contract the beneficiary of the energy service avoids investment costs by using part of the financial value of energy savings to repay the investment fully or partially carried out by a third party.

(48) There is a need to identify and remove regulatory and non-regulatory barriers to the use of energy performance contracting and other third-party financing arrangements for energy savings. These barriers include accounting rules and practices that prevent capital investments and annual financial savings resulting from energy efficiency improvement measures from being adequately reflected in the accounts for the whole life of the investment. Obstacles to the renovating of the existing building stock based on a split of incentives between the different actors concerned should also be tackled at national level.

(49) Member States and regions should be encouraged to make full use of the Structural Funds and the Cohesion Fund to trigger investments in energy efficiency improvement measures. Investment in energy efficiency has the potential to contribute to economic growth, employment, innovation and a reduction in fuel poverty in households, and therefore makes a positive contribution to economic, social and territorial cohesion. Potential areas for funding include energy efficiency measures in public buildings and housing, and providing new skills to promote employment in the energy efficiency sector.

(50) Member States should encourage the use of financing facilities to further the objectives of this Directive. Such financing facilities could include financial contributions and fines from non-fulfilment of certain provisions of this Directive; resources allocated to energy efficiency under Article 10(3) of Directive 2003/87/EC; resources allocated to energy efficiency in the multiannual financial framework, in particular cohesion, structural and rural development funds, and dedicated European financial instruments, such as the European Energy Efficiency Fund.

(51) Financing facilities could be based, where applicable, on resources allocated to energy efficiency from Union project bonds; resources allocated to energy efficiency from the European Investment Bank and other European financial institutions, in particular the European Bank for Reconstruction and Development and the Council of Europe Development Bank; resources leveraged in financial institutions; national resources, including through the creation of regulatory and fiscal frameworks encouraging the implementation of energy efficiency initiatives and programmes; revenues from annual emission allocations under Decision No 406/2009/EC.

(52) The financing facilities could in particular use those contributions, resources and revenues to enable and encourage private capital investment, in particular drawing on institutional investors, while using criteria

ensuring the achievement of both environmental and social objectives for the granting of funds; make use of innovative financing mechanisms (e.g. loan guarantees for private capital, loan guarantees to foster energy performance contracting, grants, subsidised loans and dedicated credit lines, third party financing systems) that reduce the risks of energy efficiency projects and allow for cost-effective renovations even among low and medium revenue households; be linked to programmes or agencies which will aggregate and assess the quality of energy saving projects, provide technical assistance, promote the energy services market and help to generate consumer demand for energy services.

(53) The financing facilities could also provide appropriate resources to support training and certification programmes which improve and accredit skills for energy efficiency; provide resources for research on and demonstration and acceleration of uptake of small-scale and micro- technologies to generate energy and the optimisation of the connections of those generators to the grid; be linked to programmes undertaking action to promote energy efficiency in all dwellings to prevent energy poverty and stimulate landlords letting dwellings to render their property as energy-efficient as possible; provide appropriate resources to support social dialogue and standard-setting aiming at improving energy efficiency and ensuring good working conditions and health and safety at work.

(54) Available Union financial instruments and innovative financing mechanisms should be used to give practical effect to the objective of improving the energy performance of public bodies' buildings. In that respect, Member States may use their revenues from annual emission allocations under Decision No 406/2009/EC in the development of such mechanisms on a voluntary basis and taking into account national budgetary rules.

(55) In the implementation of the 20 % energy efficiency target, the Commission will have to monitor the impact of new measures on Directive 2003/87/EC establishing the Union's emissions trading scheme (ETS) in order to maintain the incentives in the emissions trading system rewarding low carbon investments and preparing the ETS sectors for the innovations needed in the future. ***It will need to monitor the impact on those industry sectors which are exposed to a significant risk of carbon leakage as determined in Commission Decision 2010/2/EU of 24 December 2009 determining, pursuant to Directive 2003/87/EC of the European Parliament and of the Council, a list of sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage*** [(18)] ***, in order to ensure that this Directive promotes and does not impede the development of these sectors.***

(56) Directive 2006/32/EC requires Member States to adopt, and aim to achieve, an overall national indicative energy savings target of 9 % by 2016, to be reached by deploying energy services and other energy efficiency improvement measures. That Directive states that the second Energy Efficiency Plan adopted by the Member States shall be followed, as appropriate and where necessary, by Commission proposals for additional measures, including extending the period of application of targets. If a report concludes that insufficient progress has been made towards achieving the indicative national targets laid down by that Directive, these proposals are to address the level and nature of the targets. The impact assessment accompanying this Directive finds that the Member States are on track to achieve the 9 % target, which is substantially less ambitious than the subsequently adopted 20 % energy saving target for 2020, and therefore there is no need to address the level of the targets.

(57) The Intelligent Energy Europe Programme established by Decision No 1639/2006/EC of the European Parliament and of the Council of 24 October 2006 establishing a Competitiveness and Innovation Framework Programme (2007 to 2013) [(19)] ***has been instrumental in creating an enabling environment for the proper implementation of the Union's sustainable energy policies, by removing market barriers such as insufficient awareness and capacity of market actors and institutions, national technical or administrative barriers to the proper functioning of the internal energy market or underdeveloped labour markets to match the low-carbon economy challenge. Many of those barriers are still relevant.***

(58) In order to tap the considerable energy-saving potential of energy-related products, the implementation of Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products [(20)] ***and Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products*** [(21)] ***should be accelerated and widened. Priority should be given to products offering the highest energy-saving potential as identified by the Ecodesign Working Plan and the revision, where appropriate, of existing measures.***

(59) In order to clarify the conditions under which Member States can set energy performance requirements under Directive 2010/31/EU whilst respecting Directive 2009/125/EC and its implementing measures, Directive 2009/125/EC should be amended accordingly.

(60) Since the objective of this Directive, ***namely*** to achieve the Union's energy efficiency target of 20 % by 2020 and pave the way towards further energy efficiency improvements beyond 2020, ***cannot*** be ***sufficiently*** achieved by the Member States without taking additional energy efficiency measures, and can be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on

European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(61) In order to permit adaptation to technical progress and changes in the distribution of energy sources, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of ***the review of the harmonised efficiency reference values laid down on the basis of Directive 2004/8/EC and in respect of the values, calculation methods, default primary energy coefficient and requirements in the Annexes to this Directive*** . It ***is*** of particular importance that the Commission carry out ***appropriate*** consultations during its preparatory work, including at expert level. ***The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.***

(62) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers [(22)] ***.***

(63) All substantive provisions of Directives 2004/8/EC and 2006/32/EC should be repealed, except Article 4(1) to (4) ***of*** and Annexes I, III and IV ***to*** Directive 2006/32/EC. ***Those latter provisions should continue to apply until the deadline for the achievement of the 9 % target.*** Article 9(1) and (2) of Directive 2010/30/EU, which ***provides for*** an obligation for Member States only to endeavour to procure products having the highest energy efficiency class, should be deleted.

(64) The obligation to transpose this Directive into national law should be limited to those provisions that represent a substantive change as compared with Directives 2004/8/EC and 2006/32/EC. The obligation to transpose the provisions which are unchanged arises under those Directives.

(65) This Directive should be without prejudice to the obligations of the Member States relating to the time limits for transposition into national law and application of Directives 2004/8/EC and 2006/32/EC.

(66) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

Subject matter, scope, definitions and energy efficiency targets

Article 1

Subject matter and scope

1. This Directive establishes a common framework ***of measures*** for the promotion of energy efficiency within the Union in order to ensure the achievement of the Union's ***2020 20 % headline*** target ***on*** energy ***efficiency*** and to pave the way for further energy efficiency improvements beyond that date.

It lays down rules designed to remove barriers in the energy market and overcome market failures that impede efficiency in the supply and use of energy, and provides for the establishment of ***indicative*** national energy efficiency targets for 2020.

2. The requirements laid down in this Directive are minimum requirements and shall not prevent any Member State from maintaining or introducing more stringent measures. Such measures shall be compatible with Union law. ***Where*** national legislation ***provides for*** more stringent measures***, the Member State*** shall ***notify such legislation*** to the Commission.

Article 2

Definitions

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

(1) 'energy' means all forms of energy products***, combustible fuels, heat, renewable energy, electricity, or any***

other form of energy , as defined in Article 2(d) of Regulation (EC) No 1099/2008 ***of the European Parliament and of the Council of 22 October 2008 on energy statistics*** [(23)] ;

(2) 'primary energy consumption' means gross inland consumption, excluding non-energy uses;

(3) 'final energy consumption' means all energy supplied to industry, transport, households, services and agriculture. It excludes deliveries to the energy transformation sector and the energy industries themselves;

(4) 'energy efficiency' means the ratio of output of performance, service, goods or energy, to input of energy;

(5) 'energy savings' means an amount of saved energy determined by measuring and/or estimating consumption before and after implementation of an energy efficiency improvement measure, whilst ensuring normalisation for external conditions that affect energy consumption;

(6) 'energy efficiency improvement' means an increase in energy efficiency as a result of technological, behavioural and/or economic changes;

(7) 'energy service' means the physical benefit, utility or good derived from a combination of energy with energy-efficient technology or with action, which may include the operations, maintenance and control necessary to deliver the service, which is delivered on the basis of a contract and in normal circumstances has proven to result in verifiable and measurable or estimable energy efficiency improvement or primary energy savings;

(8) 'public bodies' means 'contracting authorities' as defined in Directive 2004/18/EC ***of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts*** [(24)] ;

(9) 'central government' means all administrative departments whose competence extends over the whole territory of a Member State;

(10) 'total useful floor area' means the floor area of a building or part of a building, where energy is used to condition the indoor climate;

(11) 'energy management system' means a set of interrelated or interacting elements of a plan which sets an energy efficiency objective and a strategy to achieve that objective;

(12) 'European standard' means a standard adopted by the European Committee for Standardisation, the European Committee for Electrotechnical Standardisation or the European Telecommunications Standards Institute and made available for public use;

(13) 'international standard' means a standard adopted by the International Standardisation Organisation and made available to the public;

(14) 'obligated ***party*** ' means an energy distributor or retail energy sales ***company*** that **is** bound by the national energy efficiency obligation schemes referred to in Article 7;

(15) 'entrusted party' means a legal entity with delegated power from a government or other public body to develop, manage or operate a financing scheme on behalf of the government or other public body;

(16) 'participating party' means an enterprise or public body that has committed itself to reaching certain objectives under a voluntary agreement, or is covered by a national regulatory policy instrument;

(17) 'implementing public authority' means a body governed by public law which is responsible for the carrying out or monitoring of energy or carbon taxation, financial schemes and instruments, fiscal incentives, standards and norms, energy labelling schemes, training or education;

(18) 'policy measure' means a regulatory, financial, fiscal, voluntary or information provision instrument formally established and implemented in a Member State to create a supportive framework, requirement or incentive for market actors to provide and purchase energy services and to undertake other energy efficiency improvement measures;

(19) 'individual action' means an action that leads to verifiable, and measurable or estimable, energy efficiency improvements and is undertaken as a result of a policy measure;

(20) 'energy distributor' means a natural or legal person, including a distribution system operator, responsible for transporting energy with a view to its delivery to final customers or to distribution stations that sell energy to final customers;

(21) 'distribution system operator' means 'distribution system operator' as defined in Directive 2009/72/EC and Directive 2009/73/EC ***respectively*** ;

(22) 'retail energy sales company' means a natural or legal person who sells energy to final customers;

(23) 'final customer' means a natural or legal person who purchases energy for own end use;

(24) 'energy service provider' means a natural or legal person who delivers energy services or other energy efficiency improvement measures in a final customer's facility or premises;

(25) 'energy audit' means a systematic procedure with the purpose of obtaining adequate knowledge of the existing energy consumption profile of a building or group of buildings, an industrial or commercial operation or installation or a private or public service, identifying and quantifying cost-effective energy savings opportunities, and reporting the findings;

(26) 'small and medium-sized enterprises' or 'SMEs' means enterprises as defined in Title I of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises; [(25)] the category of micro, small and medium-sized enterprises is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million;

(27) 'energy performance contracting' means a contractual arrangement between the beneficiary and the provider of an energy efficiency improvement measure, ***verified and monitored during the whole term of the contract, where investments (work, supply or service) in that measure are paid for*** in relation to a contractually agreed level of energy efficiency improvement or other agreed energy performance criterion, such as financial savings;

(28) 'smart metering system' or 'intelligent metering system' means an electronic system that can measure energy consumption, providing more information than a conventional meter, and can transmit and receive data using a form of electronic communication;

(29) 'transmission system operator' means 'transmission system operator' as defined in Directive 2009/72/EC and Directive 2009/73/EC ***respectively*** ;

(30) 'cogeneration' means the simultaneous generation in one process of thermal energy and electrical or mechanical energy;

(31) 'economically justifiable demand' means demand that does not exceed the needs for ***heating*** or cooling and which would otherwise be satisfied at market conditions by energy generation processes other than cogeneration;

(32) 'useful heat' means heat produced in a cogeneration process to satisfy economically justifiable demand for heating or cooling;

(33) 'electricity from cogeneration' means electricity generated in a process linked to the production of useful heat and calculated in accordance with the methodology laid down in Annex I;

(34) 'high-efficiency cogeneration' means cogeneration meeting the criteria laid down in Annex II;

(35) 'overall efficiency' means the annual sum of electricity and mechanical energy production and useful heat output divided by the fuel input used for heat produced in a cogeneration process and gross electricity and mechanical energy production;

(36) 'power-to-heat ratio' means the ratio of electricity from cogeneration to useful heat when operating in full cogeneration mode using operational data of the specific unit;

(37) 'cogeneration unit' means a unit that is able to operate in cogeneration mode;

(38) 'small-scale cogeneration unit' means a cogeneration unit with installed capacity below 1MW_e ;

(39) 'micro-cogeneration unit' means a cogeneration unit with a maximum capacity below 50 kW_e ;

(40) 'plot ratio' means the ratio of the building floor area to the land area in a given territory;

(41) 'efficient district heating and cooling ' means a district heating or cooling system using at least 50 % renewable ***energy*** , ***50 %*** waste ***heat, 75 %*** cogenerated heat or ***50 % of*** a combination ***of such energy and heat*** ;

(42) 'efficient heating and cooling' means a heating and cooling option that compared to a baseline scenario reflecting a business-as-usual situation, measurably reduces the input of primary energy needed to supply one unit of delivered energy within a relevant system boundary in a cost-effective way, as assessed in the cost-benefit analysis referred to in this Directive, taking into account the energy required for extraction, conversion, transport and distribution;

(43) 'efficient individual heating and cooling' means an individual heating and cooling supply option that, compared to efficient district heating and cooling, measurably reduces the input of non-renewable primary energy needed to supply one unit of delivered energy within a relevant system boundary or requires the same input of non-renewable primary energy but at a lower cost, taking into account the energy required for extraction, conversion, transport and distribution;

(44) 'substantial refurbishment' means a refurbishment whose cost exceeds 50 % of the investment cost for a new comparable unit ▌ ;

(45) ' aggregator' means a demand service provider that combines multiple short-duration consumer loads for sale or auction in organised energy markets.

Article 3

Energy efficiency targets

1. ***Each*** Member State shall set ***an indicative*** national energy efficiency target***, based on either primary or final energy consumption, primary or final energy savings, or energy intensity. Member States shall notify those targets to the Commission in accordance with Article 24(1) and Annex XIV Part 1. When doing so, they shall also***

express those targets in terms of an absolute level of primary energy consumption ***and final energy consumption*** in 2020 ***and shall explain how, and on the basis of which data, this has been calculated*** .

When setting those targets, Member States shall take into account***:***

(a) that the Union's ***2020 energy consumption has to be no more than 1474 Mtoe of primary energy or no more than 1078 Mtoe of final energy;***

(b) the measures provided for in this Directive***;***

(c) the measures adopted to reach the national energy saving targets adopted pursuant to Article 4(1) of Directive 2006/32/EC***;*** and

(d) other measures to promote energy efficiency within Member States and at Union level.

When setting those targets, Member States may also take into account national circumstances affecting primary energy consumption, such as:

(a) remaining cost-effective energy-saving potential;

(b) GDP evolution and forecast;

(c) changes of energy imports and exports;

(d) development of all sources of renewable energies, nuclear energy, carbon capture and storage; and

(e) early action.

2. By 30 June 2014, the Commission shall assess ***progress achieved and*** whether the Union is likely to achieve ***energy consumption of no more than 1474 Mtoe of primary energy and/or no more than 1078 Mtoe of final energy*** in 2020 ▌ .

3. In carrying out the review referred to in paragraph 2, the Commission shall:

(a) sum ▌ the national ***indicative energy efficiency*** targets ***reported by Member States;***

(b) assess whether the sum of those targets can be considered a reliable guide to whether the Union as a whole is on track, taking into account the evaluation of the first annual report in accordance with Article 24(1), and the evaluation of the National Energy Efficiency Action Plans in accordance with Article 24(2);

(c) take into account complementary analysis arising from:

(i) an assessment of progress in energy consumption, and in energy consumption in relation to economic activity, at Union level, including progress in the efficiency of energy supply in Member States that have based their national indicative targets on final energy consumption or final energy savings, including progress due to these Member States' compliance with Chapter III of this Directive;

(ii) results from modelling exercises in relation to future trends in energy consumption at Union level;

(d) compare the results under points (a) to (c) with the quantityof energy consumption that would be needed to achieve energy consumption of no more than 1474 Mtoe of primary energy and/or no more than 1078 Mtoe of final energy in 2020.

CHAPTER II

Efficiency in energy use

Article 4

Building renovation

Member States shall establish a long-term strategy for mobilising investment in the renovation of the national stock of residential and commercial buildings, both public and private. This strategy shall encompass:

(a) an overview of the national building stock based, as appropriate, on statistical sampling;

(b) identification of cost-effective approaches to renovations relevant to the building type and climatic zone;

(c) policies and measures to stimulate cost-effective deep renovations of buildings, including staged deep renovations;

(d) a forward-looking perspective to guide investment decisions of individuals, the construction industry and

financial institutions;

(e) an evidence-based estimate of expected energy savings and wider benefits.

A first version of the strategy shall be published by 30 April 2014 and updated every three years thereafter and submitted to the Commission as part of the National Energy Efficiency Action Plans.

Article 5

Exemplary role of public bodies' ***buildings***

1. Without prejudice to Article 7 of Directive 2010/31/EU, each Member State shall ensure that, as from 1 January 2014, 3 % of the total floor area ***of heated and/or cooled buildings*** owned ***and occupied*** by its ***central government*** is renovated each year to meet at least the minimum energy performance requirements that it has set in application of Article 4 of Directive 2010/31/EU.

The 3 % rate shall be calculated on the total floor area of buildings with a total useful floor area ***over 500 m 2*** owned ***and occupied*** by the ***central government*** of the Member State concerned that, on 1 January of each year, ***do*** not meet the national minimum energy performance requirements set in application of Article 4 of Directive 2010/31/EU. That threshold shall be lowered to 250 m^2 ***as of 9 July 2015.***

Where a Member State requires that the obligation to renovate each year 3 % of the total floor area extends to floor area owned and occupied by administrative departments at a level below central government, the 3 % rate shall be calculated on the total floor area of buildings with a total useful floor area over 500 m 2 and, as of 9 July 2015, over 250 m 2 owned and occupied by central government and by these administrative departments of the Member State concerned that, on 1 January of each year, do not meet the national minimum energy performance requirements set in application of Article 4 of Directive 2010/31/EU.

When implementing measures for the comprehensive renovation of central government buildings in accordance with the first subparagraph, Member States may choose to consider the building as a whole, including the building envelope, equipment, operation and maintenance.

Member States shall require that central government buildings with the poorest energy performance be a priority for energy efficiency measures, where cost-effective and technically feasible.

2. Member States may decide not to set or apply the requirements referred to in paragraph 1 to the following categories of buildings:

(a) buildings officially protected as part of a designated environment, or because of their special architectural or historical merit, in so far as compliance with certain minimum energy performance requirements would unacceptably alter their character or appearance;

(b) buildings owned by the armed forces or central government and serving national defence purposes, apart from single living quarters or office buildings for the armed forces and other staff employed by national defence authorities;

(c) buildings used as places of worship and for religious activities.

3. If a Member State renovates more than 3 % of the total floor area of central government buildings in a given year, it may count the excess towards ***the*** annual renovation rate ***of*** any of the ***three*** previous or following years.

4. Member States may count towards the annual renovation rate of central government buildings new buildings occupied and owned as replacements for specific central government buildings demolished in any of the two previous years, or buildings that have been sold, demolished or taken out of use in any of the two previous years due to more intensive use of other buildings.

5. For the purposes of paragraph 1, by 31 December 2013, Member States shall establish and make publicly available an inventory of ***heated and/or cooled central government buildings with a total useful floor area over 500 m 2 and, as of 9 July 2015, over 250 m 2 , excluding buildings exempted on the basis of paragraph 2. The inventory shall contain the following data:***

(a) the floor area in m^2 ; and

(b) the energy performance of each building ***or relevant energy data*** .

6. Without prejudice to Article 7 of Directive 2010/31/EU, Member States may opt for an alternative approach to paragraphs 1 to 5 of this Article, whereby they take other cost-effective measures, including deep renovations and measures for behavioural change of occupants, to achieve, by 2020, an amount of energy savings in eligible buildings owned and occupied by their central government that is at least equivalent to that required in

paragraph 1, reported on an annual basis.

For the purpose of the alternative approach, Member States may estimate the energy savings that paragraphs 1 to 4 would generate by using appropriate standard values for the energy consumption of reference central government buildings before and after renovation and according to estimates of the surface of their stock. The categories of reference central government buildings shall be representative of the stock of such buildings.

Member States opting for the alternative approach shall notify to the Commission, by 31 December 2013, the alternative measures that they plan to adopt, showing how they would achieve an equivalent improvement in the energy performance of the buildings within the central government estate.

7. Member States shall encourage public bodies***, including at regional and local level, and social-housing bodies governed by public law, with due regard for their respective competences and administrative set-up,*** to:

(a) adopt an energy efficiency plan, freestanding or as part of a broader climate or environmental plan, containing specific energy saving ***and efficiency*** objectives ***and actions*** , with a view to ***following the exemplary role of central government buildings laid down in paragraphs 1, 5 and 6*** ;

(b) put in place an energy management system***, including energy audits,*** as part of the implementation of their plan;

(c) use, where appropriate, energy service companies, and energy performance contracting to finance renovations and implement plans to maintain or improve energy efficiency in the long term.

Article 6

Purchasing by public bodies

1. Member States shall ensure that ***central governments*** purchase only products, services and buildings with high energy-efficiency performance***, insofar as that is consistent with cost-effectiveness, economical feasibility, wider sustainability, technical suitability, as well as sufficient competition,*** as referred to in Annex III.

The obligation set out in the first subparagraph shall apply to contracts for the purchase of products, services and buildings by public bodies in so far as such contracts have a value equal to or greater than the thresholds laid down in Article 7 of Directive 2004/18/EC.

2. The obligation referred to in paragraph 1 shall apply to the contracts of the armed forces only to the extent that its application does not cause any conflict with the nature and primary aim of the activities of the armed forces. The obligation shall not apply to contracts for the supply of military equipment as defined by Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security [(26)] ***.***

3. Member States shall encourage public bodies, including at regional and local levels, with due regard to their respective competences and administrative set-up, to follow the exemplary role of their central governments to purchase only products, services and buildings with high energy-efficiency performance. Member States shall encourage public bodies, when tendering service contracts with significant energy content, to assess the possibility of concluding long- term energy performance contracts that provide long-term energy savings.

4. Without prejudice to paragraph 1, when purchasing a product package covered as a whole by a delegated act adopted under Directive 2010/30/ EU, Member States may require that the aggregate energy efficiency shall take priority over the energy efficiency of individual products within that package, by purchasing the product package that complies with the criterion of belonging to the highest energy efficiency class.

Article 7

Energy efficiency obligation schemes

1. Each Member State shall set up an energy efficiency obligation scheme. ***That*** scheme shall ensure that ***energy distributors and/or retail energy sales companies that are designated as obligated parties under paragraph 4 operating in each Member State's territory achieve a cumulative end-use energy savings target by 31 December 2020, without prejudice to paragraph 2.***

That target shall be at least equivalent to achieving new savings each year from 1 January 2014 to 31 December 2020 of 1,5 % of the annual energy sales to final customers of all energy distributors or all retail energy sales companies ***by volume, averaged over the most recent three-year period prior to 1 January 2013. The sales of energy,*** by volume, ▌ used in transport ***may be partially or fully excluded from this calculation*** .

Member States shall decide how the calculated quantity of new savings referred to in the second subparagraph

is to be phased over the period.

2. Subject to paragraph 3, each Member State may:

(a) carry out the calculation required by the second subparagraph of paragraph 1 using values of 1 % in 2014 and 2015; 1,25 % in 2016 and 2017; and 1,5 % in 2018, 2019 and 2020;

(b) exclude from the calculation all or part of the sales, by volume, of energy used in industrial activities listed in Annex I to Directive 2003/87/EC;

(c) allow energy savings achieved in the energy transformation, distribution and transmission sectors, including efficient district heating and cooling infrastructure, as a result of the implementation of the requirements set out in Article 14(4), Article 14(5)(b) and Article 15(1) to (6) and (9) to be counted towards the amount of energy savings required under paragraph 1; and

(d) count energy savings resulting from individual actions newly implemented since 31 December 2008 that continue to have an impact in 2020 and that can be measured and verified, towards the amount of energy savings referred to in paragraph 1.

3. The application of paragraph 2 shall not lead to a reduction of more than 25 % of the amount of energy savings referred to in paragraph 1. Member States making use of paragraph 2 shall notify that fact to the Commission by … [(27)] , including the elements listed under paragraph 2 to be applied and a calculation showing their impact on the amount of energy savings referred to in paragraph 1.

4. Without prejudice to the calculation of energy savings for the target in accordance with the second subparagraph of paragraph 1, each Member State shall, for the purposes of the first subparagraph of paragraph 1, designate, on the basis of objective and non-discriminatory criteria, obligated parties amongst energy distributors and/or retail energy sales companies operating in its territory and may include transport fuel distributors or transport fuel retailers operating in its territory. The amount of energy savings to fulfil the obligation shall be achieved by the obligated parties among final customers, designated, as appropriate, by the Member State, independently of the calculation made pursuant to paragraph 1, or, if Member States so decide, through certified savings stemming from other parties as described in point (b) of paragraph 7.

5. Member States shall express the amount of energy savings required of each obligated party in terms of either final or primary energy consumption. The method chosen for expressing the required amount of energy savings shall also be used for calculating the savings claimed by obligated parties. The conversion factors set out in Annex IV shall apply.

▌

6. Member States shall ensure that the savings ***stemming from paragraphs 1, 2 and 9 of this Article and Article 20(6)*** are calculated in accordance with ***points (1) and (2) of Annex V*** . They shall put in place ***measurement*** , control ***and verification*** systems under which at least a statistically significant proportion ***and representative sample*** of the energy efficiency improvement measures put in place by the obligated parties is ▌ verified***. That measurement, control and verification shall be conducted independently of the obligated parties.***

7. Within the energy efficiency obligation scheme, Member States may:

(a) include requirements with a social aim in the saving obligations they impose, including by requiring ***a share of energy efficiency*** measures to be implemented ***as a priority*** in households affected by energy poverty or in social housing;

(b) permit obligated parties to count towards their obligation certified energy savings achieved by energy service providers or other third parties***, including when obligated parties promote measures through other State-approved bodies or through public authorities that may or may not involve formal partnerships and may be in combination with other sources of finance.*** Where ***Member States*** so permit, they shall ***ensure that*** an ***approval*** process ***is in place*** which is clear, transparent and open to all market actors, and which aims at minimising the costs of certification;

(c) allow obligated parties to count savings obtained in a given year as if they had instead been obtained in any of the ***four*** previous or ***three*** following years.

8. ***Once a year,*** Member States shall publish the energy savings achieved by each obligated party***, or each sub-category of obligated party, and in total*** under the scheme. ▌

Member States shall ***ensure that obligated parties provide on request*** :

▌

(a) aggregated statistical information on their final customers (identifying significant changes to previously

submitted information); and

(b) current information on final customers' consumption, including, where applicable, load profiles, customer segmentation and geographical location of customers, while preserving the integrity and confidentiality of private or commercially sensitive information in compliance with applicable Union law.

Such a request shall be made not more than once a year.

9. As an alternative to setting up an energy efficiency obligation scheme under paragraph 1, Member States may opt to take other ***policy*** measures to achieve energy savings among final customers***, provided those policy measures meet the criteria set out in paragraphs 10 and 11*** . The annual amount of ***new*** energy savings achieved through this approach shall be equivalent to the amount of ***new*** energy savings required ***by paragraphs 1, 2 and 3 . Provided that equivalence is maintained, Member States may combine obligation schemes with alternative policy measures, including national energy efficiency programmes.***

The policy measures referred to in the first subparagraph may include, but are not restricted to, the following policy measures or combinations thereof:

(a) energy or CO 2 taxes that have the effect of reducing end-use energy consumption;

(b) financing schemes and instruments or fiscal incentives that lead to the application of energy-efficient technology or techniques and have the effect of reducing end-use energy consumption;

(c) regulations or voluntary agreements that lead to the application of energy-efficient technology or techniques and have the effect of reducing end-use energy consumption;

(d) standards and norms that aim at improving the energy efficiency of products and services, including buildings and vehicles, except where these are mandatory and applicable in Member States under Union law;

(e) energy labelling schemes, with the exception of those that are mandatory and applicable in the Member States under Union law;

(f) training and education, including energy advisory programmes, that lead to the application of energy-efficient technology or techniques and have the effect of reducing end-use energy consumption.

Member States shall notify to the Commission, by… [28] , the policy measures that they plan to adopt for the purposes of the first subparagraph and Article 20(6), following the framework provided in point 4 of Annex V, and showing how they would achieve the required amount of savings. In the case of the policy measures referred to in the second subparagraph and in Article 20(6), this notification shall demonstrate how the criteria in paragraph 10 are met. In the case of policy measures other than those referred to in the second subparagraph or in Article 20(6), Member States shall explain how an equivalent level of savings, monitoring and verification is achieved. The Commission may make suggestions for modifications in the three months following notification.

10. Without prejudice to paragraph 11, the criteria for the policy measures taken pursuant to the second subparagraph of paragraph 9 and Article 20(6) shall be as follows:

(a) the policy measures provide for at least two intermediate periods by 31 December 2020 and lead to the achievement of the level of ambition set out in paragraph 1;

(b) the responsibility of each entrusted party, participating party or implementing public authority, whichever is relevant, is defined;

(c) the energy savings that are to be achieved are determined in a transparent manner;

(d) the amount of energy savings required or to be achieved by the policy measure are expressed in either final or primary energy consumption, using the conversion factors set out in Annex IV;

(e) energy savings are calculated using the methods and principles provided in points (1) and (2) of Annex V;

(f) energy savings are calculated using the methods and principles provided in point 3 of Annex V;

(g) an annual report of the energy savings achieved is provided by participating parties unless not feasible and made publicly available;

(h) monitoring of the results is ensured and appropriate measures are envisaged if the progress is not satisfactory;

(i) a control system is put in place that also includes independent verification of a statistically significant proportion of the energy efficiency improvement measures; and

(j) data on the annual trend of energy savings are published annually.

11. Member States shall ensure that the taxes referred to in point (a) of paragraph 9 comply with the criteria listed in points (a), (b), (c), (d), (f), (h) and (j) of paragraph 10.

Member States shall ensure that the regulations and voluntary agreements referred to in point (c) of paragraph 9 comply with the criteria listed in points (a), (b), (c), (d), (e), (g), (h), (i) and (j) of paragraph 10.

Member States shall ensure that the other policy measures referred to in the second subparagraph of paragraph 9 and the Energy Efficiency National Funds referred to in Article 20(6) comply with the criteria listed in points (a), (b), (c), (d). (e), (h), (i) and (j) of paragraph 10.

12. Member States shall ensure that when the impact of policy measures or individual actions overlaps, no double counting of energy savings is made.

Article 8

Energy audits and energy management systems

1. Member States shall promote the availability to all final customers of ***high quality*** energy audits which are ***cost-effective*** and:

(a) carried out in an independent manner by qualified ***and/or*** accredited experts ***according to qualification criteria; or***

(b) implemented and supervised by independent authorities under national legislation .

The energy audits referred to in the first subparagraph may be carried out by in-house experts or energy auditors provided that the Member State concerned has put in place a scheme to assure and check their quality, including, if appropriate, an annual random selection of at least a statistically significant percentage of all the energy audits they carry out.

For the purpose of guaranteeing the high quality of the energy audits and energy management systems, Member States shall establish transparent and non-discriminatory minimum criteria for energy audits based on Annex VI.

Energy audits shall not include clauses preventing the findings of the audit from being transferred to any qualified/accredited energy service provider, on condition that the customer does not object.

2. Member States shall develop programmes to encourage ▌ SMEs to undergo energy audits ***and the subsequent implementation of the recommendations from these audits.***

On the basis of transparent and non-discriminatory criteria and without prejudice to Union State aid law, Member States may set up support schemes for SMEs, including if they have concluded voluntary agreements, to cover costs of an energy audit and of the implementation of highly cost-effective recommendations from the energy audits, if the proposed measures are implemented.

Member States shall bring to the attention of SMEs***, including through their respective representative intermediary organisations,*** concrete examples of how energy management systems could help their businesses. ***The Commission shall assist Member States by supporting the exchange of best practices in this domain.***

3. Member States shall also develop programmes to raise awareness among households about the benefits of such audits through appropriate advice services .

Member States shall encourage training programmes for the qualification of energy auditors in order to facilitate sufficient availability of experts.

4. Member States shall ensure that enterprises that are not SMEs are subject to an energy audit carried out in an independent and cost-effective manner by qualified ***and/or*** accredited experts ***or implemented and supervised by independent authorities under national legislation by …*** [(29)] ▌ and ***at least*** every ***four years*** from the date of the previous energy audit.

5. Energy audits shall be considered as fulfilling the requirements of paragraph 4 when they are carried out in an independent manner***, on the basis of minimum criteria based on Annex VI, and*** implemented under voluntary agreements concluded between organisations of stakeholders and an appointed body and supervised by the Member State concerned***, or other bodies to which the competent authorities have delegated the responsibility concerned,*** or by the Commission.

Access of market participants offering energy services shall be based on transparent and non-discriminatory criteria.

6. Enterprises that are not SMEs and that are implementing an energy or environmental management system -

certified by an independent body according to the relevant European or International Standards - shall be exempted from the requirements of paragraph 4, provided that Member States ensure that the management system concerned includes an energy audit on the basis of the minimum criteria based on Annex VI.

7. Energy audits may stand alone or be part of a broader environmental audit. ***Member States may require that an assessment of the technical and economic feasibility of connection to an existing or planned district heating or cooling network shall be part of the energy audit.***

Without prejudice to Union State aid law, Member States may implement incentive and support schemes for the implementation of recommendations from energy audits and similar measures.

Article 9

Metering ▌

1. Member States shall ensure that, ***in so far as it is technically possible, financially reasonable and proportionate in relation to the potential energy savings,*** final customers for electricity, natural gas, district heating***, district*** cooling and ▌ domestic hot water are provided with ***competitively priced*** individual meters that accurately ***reflect the final customer's*** actual energy consumption and ***that*** provide information on actual time of use ▌ .

Such a competitively priced individual meter shall always be provided when:

(a) an existing meter is replaced, unless this is technically impossible or not cost-effective in relation to the estimated potential savings in the long term;

(b) a new connection is made in a new building or a building undergoes major renovations, as set out in Directive 2010/31/EU.

2. Where, and to the extent that, Member States ***implement intelligent metering systems and roll out smart meters for natural gas and/or electricity in accordance with Directives 2009/72/EC and 2009/73/EC:***

(a) they shall ensure that the metering systems provide to final customers information on actual time of use and that the objectives of energy efficiency and ▌ benefits ***for final customers*** are fully taken into account when establishing the minimum functionalities of the meters and ***the*** obligations imposed on market participants***;***

(b) they shall ensure the security of the smart meters and data communication, and the privacy of final customers, in compliance with relevant Union data protection and privacy legislation;

(c) in the case of electricity and at the request of the final customer, ***they shall require*** meter operators ***to*** ensure that the meter ***or meters*** can account for electricity ***put into the grid from*** the final customer's premises***;***

(d) they shall ensure that if final customers request it, metering data on their ***electricity input and off-take*** is made available ***to them or*** to a third party acting on behalf of the final customer ***in an easily understandable format that they can use to compare deals on a like-for-like basis;***

(e) they shall require that appropriate advice and information be given to customers at the time of installation of smart meters, in particular about their full potential with regard to meter reading management and the monitoring of energy consumption.

3. Where heating and cooling ***or hot water are supplied to*** a building ▌ from a district heating network ***or from a central source servicing multiple buildings*** , a heat ***or hot water*** meter shall be installed at ***the heating exchanger or point of delivery*** .

In multi-apartment ***and multi-purpose buildings with a central heating/cooling source or supplied from a district heating network or from a central source serving multiple*** buildings, individual ▌ consumption meters shall also be installed ***by 31 December 2016*** to measure the consumption of heat or cooling ***or hot water*** for each ***unit where*** technically feasible ***and cost-efficient. Where the use of individual meters is not technically feasible or not cost-efficient, to measure heating,*** individual heat cost allocators ▌ shall be used for measuring heat consumption at each radiator***, unless it is shown by the Member State in question that the installation of such heat cost allocators would not be cost-efficient. In those cases, alternative cost-efficient methods of heat consumption measurement may be considered*** .

Where multi-apartment buildings are supplied from district heating or cooling, or where own common heating or cooling systems for such buildings are prevalent, Member States ***may*** introduce ***transparent*** rules on ***the*** allocation of ***the cost of thermal or hot water consumption in such buildings to ensure transparency and accuracy of accounting for individual consumption*** . ***Where appropriate,*** such rules shall include guidelines on ***the way to allocate costs for heat and/or hot water that is used as follows:***

(a) hot water for domestic needs;

(b) heat radiated from the building installation and for the purpose of heating the common areas (where staircases and corridors are equipped with radiators);

(c) for the purpose of heating apartments.

Article 10

Billing information

1. Where final customers do not have smart meters as referred to in Directives 2009/72/EC and 2009/73/EC ▌, Member States shall ensure, by 31 December 2014, that billing ***information*** is accurate and based on actual consumption, ***in accordance with point 1.1 of Annex VII,*** for all the sectors covered by ***this*** Directive, including energy distributors, distribution system operators and retail energy sales companies, ***where this is technically possible and economically justified.***

This obligation may be fulfilled by a system of regular self-reading by the final customers whereby they communicate readings from their meter to the energy supplier. Only when the final customer has not provided a meter reading for a given billing interval shall billing be based on estimated consumption or a flat rate.

2. Meters installed in accordance with Directives 2009/72/EC and 2009/73/EC shall enable accurate billing information based on actual consumption. Member States shall ensure that final customers have the possibility of easy access to complementary information ***on historical consumption*** allowing detailed self-checks***.***

Complementary information on historical consumption ***shall include:***

(a) cumulative data for at least the three previous years or the period since the start of the supply contract if this is shorter. The data shall correspond to the intervals for which frequent billing information has been produced; and

(b) detailed data according to the time of use for any day, week, month and year. These data shall be made available to the final customer via the internet or the meter interface for the period of at least the previous 24 months or the period since the start of the supply contract if this is shorter.

3. Independently of whether smart meters have been installed or not, Member States:

(a) shall require that, to the extent that information on the energy billing and historical consumption of final customers is available, it be made available, at the request of the final customer, to an energy service provider designated by the final customer***;***

(b) shall ensure that final customers are offered the option of electronic billing information and bills and that they receive, on request, a clear and understandable explanation of how their bill was derived, especially where bills are not based on actual consumption;

(c) shall ensure that appropriate information is made available with the bill to provide final customers with a comprehensive account of current energy costs, in accordance with Annex VII;

(d) may lay down that, at the request of the final customer, the information contained in these bills shall not be considered to constitute a request for payment. In such cases, Member States shall ensure that suppliers of energy sources offer flexible arrangements for actual payments;

(e) shall require that information and estimates for energy costs are provided to consumers on demand in a timely manner and in an easily understandable format enabling consumers to compare deals on a like-for-like basis.

Article 11

Cost of access to metering and billing information

1. Member States shall ensure that final customers receive all their bills and billing information for energy consumption free of charge and that final customers also have access to their consumption data in an appropriate way and free of charge.

2. Notwithstanding paragraph 1, the distribution of costs of billing information for the individual consumption of heating and cooling in multi-apartment and multi-purpose buildings pursuant to Article 9(3) shall be carried out on a non-profit basis. Costs resulting from the assignment of this task to a third party, such as a service provider or the local energy supplier, covering the measuring, allocation and accounting for actual individual consumption in such buildings, may be passed onto the final customers to the extent that such costs are reasonable.

Article 12

Consumer information and empowering programme

1. Member States shall take appropriate measures to promote and facilitate an efficient use of energy by small energy customers, including domestic customers. These measures may be part of a national strategy.

2. For the purposes of paragraph 1, these measures shall include one or more of the elements listed under point (a) or (b):

(a) a range of instruments and policies to promote behavioural change which may include:

(i) fiscal incentives;

(ii) access to finance, grants or subsidies;

(iii) information provision;

(iv) exemplary projects;

(v) workplace activities;

(b) ways and means to engage consumers and consumer organisations during the possible roll-out of smart meters through communication of:

(i) cost-effective and easy-to-achieve changes in energy use;

(ii) information on energy efficiency measures.

Article 13

Penalties

Member States shall lay down the rules on penalties applicable in case of non-compliance with the national provisions adopted pursuant to ***Articles 7 to 11 and Article 18(3)*** and shall take the necessary measures to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by ... [30] and shall notify it without delay of any subsequent amendment affecting them.

CHAPTER III

Efficiency in energy supply

Article 14

Promotion of efficiency in heating and cooling

1. By ***31 December 2015*** , Member States shall ***carry out*** and notify to the Commission a ***comprehensive assessment of*** the potential for the application of high-efficiency cogeneration and efficient district heating and cooling, containing the information set out in Annex VIII. ***If they have already carried out an equivalent assessment, they shall notify it to the Commission.***

The comprehensive assessment shall take full account of the analysis of the national potentials for high-efficiency cogeneration carried out under Directive 2004/8/EC.

At the request of the Commission, the assessment shall be updated and notified to the Commission every five years***. The Commission shall make any such request at least one year before the due date.***

2. Member States shall ***adopt policies which encourage the due taking into account at local and regional levels of the potential of using efficient heating and cooling systems, in particular those using high-efficiency cogeneration. Account shall be taken of the potential for developing local and regional heat markets*** .

3. For the purpose of the assessment referred to in paragraph 1, Member States shall carry out a cost-benefit analysis covering their territory based on climate conditions, economic feasibility and technical suitability in accordance with Part 1 of Annex IX. The cost-benefit analysis shall be capable of facilitating the identification of the most resource-and cost-efficient solutions to meeting heating and cooling needs. That cost-benefit analysis may be part of an environmental assessment under Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment [31] ***.***

4. ***Where the assessment referred to in paragraph 1 and the analysis referred to in paragraph 3 identify a potential for the application of high-efficiency cogeneration and/or efficient district heating and cooling whose benefits exceed the costs,*** Member States shall take ***adequate*** measures ***for*** efficient district heating and cooling infrastructure ***to be developed and/or*** to accommodate the development of high-efficiency cogeneration and the use of heating and cooling from waste heat and renewable energy sources in accordance with ***paragraphs 1, 5, and 7*** .

Where the assessment referred to in paragraph 1 and the analysis referred to in paragraph 3 do not identify a potential whose benefits exceed the costs, including the administrative costs of carrying out the cost-benefit analysis referred to in paragraph 5, the Member State concerned may exempt installations from the requirements laid down in that paragraph.

5. Member States shall ensure that ***a cost-benefit analysis in accordance with Part 2 of Annex IX is carried out when, after ...*** [(32)] ***:***

(a) a new thermal electricity generation installation with a total thermal input exceeding 20 MW ***is planned, in order to assess the cost and benefits of providing for the operation of the installation as a high-efficiency cogeneration installation;***

(b) ***an existing thermal electricity generation installation with a total thermal input exceeding 20 MW is substantially refurbished, in order to assess the cost and benefits of converting it to*** high-efficiency cogeneration ▌ ;

(c) ***an industrial installation with a total thermal input exceeding 20 MW generating waste heat at a useful temperature level is planned or substantially refurbished, in order to assess the cost and benefits of utilising the waste heat to satisfy economically justified demand, including through cogeneration, and of the connection of that installation to a district heating and cooling network;***

(d) a new district heating and cooling network is planned or in an existing district heating or cooling network a new energy production installation with a total thermal input exceeding 20 MW is planned or an existing such installation is to be substantially refurbished, in order to assess the cost and benefits of utilising the waste heat from nearby industrial installations.

The fitting of equipment to capture carbon dioxide produced by a combustion installation with a view to its being geologically stored as provided for in Directive 2009/31/EC shall not be considered as refurbishment for the purpose of points (b), (c) and (d) of this paragraph.

Member States ***may require the cost-benefit analysis referred to in points (c) and (d) to be carried out in cooperation with the companies responsible for the operation of the district heating and cooling networks*** .

6. Member States may ***exempt*** from ▌ paragraph 5 ▌ :

(a) ***those peak load and back-up electricity generating installations which are planned to operate under 1 500 operating hours per year as a rolling average over a period of five years, based on a verification procedure established by the Member States ensuring that this exemption criterion is met;***

(b) ***nuclear power installations;***

(c) ***installations that need to be located close to a geological storage site approved under Directive 2009/31/EC .***

Member States may also lay down thresholds, expressed in terms of the amount of available useful waste heat, the demand for heat or the distances between industrial installations and district heating networks, for exempting individual installations from the provisions of points (c) and (d) of paragraph 5.

Member States shall notify ▌ exemption**s** ***adopted under this paragraph*** to the Commission by 31 December 2013 ***and any subsequent changes to them thereafter*** .

7. Member States shall ***adopt authorisation criteria as referred to in Article 7 of Directive 2009/72/EC, or equivalent permit criteria, to:***

(a) take into account the outcome of the comprehensive assessment referred to in paragraph 1;

(b) ensure that the ***requirements of*** paragraph 5 ***are fulfilled; and***

(c) take into account the outcome of cost-benefit analysis referred to in paragraph 5.

8. Member States ***may exempt individual installations from being required, by the authorisation and permit criteria referred to in paragraph 7, to implement options whose benefits exceed their costs, if there are imperative reasons of law, ownership or finance for so doing. In these cases the Member State concerned shall submit a reasoned notification of its decision to the Commission within three months of the date of taking it.***

▌

9. Paragraphs 5, 6, 7 and 8 of this Article shall apply to installations covered by Directive 2010/75/EU without prejudice to the requirements of that Directive.

▌

10. On the basis of the harmonised efficiency reference values referred to in ***point (f) of*** Annex II, Member States shall ensure that the origin of electricity produced from high-efficiency cogeneration can be guaranteed according to objective, transparent and non-discriminatory criteria laid down by each Member State. They shall ensure that this guarantee of origin complies with the requirements and contains at least the information specified in Annex IX. Member States shall mutually recognise their guarantees of origin, exclusively as proof of the information referred to in this paragraph. Any refusal to recognise a guarantee of origin as such proof, in particular for reasons relating to the prevention of fraud, must be based on objective, transparent and non-discriminatory criteria. Member States shall notify the Commission of such refusal and its justification. In the event of refusal to recognise a guarantee of origin, the Commission may adopt a decision to compel the refusing party to recognise it, in particular with regard to objective, transparent and non-discriminatory criteria on which such recognition is based.

The Commission shall be empowered to review, by means of delegated acts in accordance with Article 23 of this Directive, the harmonised efficiency reference values laid down in Commission Decision 2011/877/EU on the basis of Directive 2004/8/EC ▌ by 31 December 2014 ▌ .

11. Member States shall ensure that any available support for cogeneration is subject to the electricity produced originating from high-efficiency cogeneration and the waste heat being effectively used to achieve primary energy savings. ▌ Public support to cogeneration and district heating generation and networks ***shall be*** subject to State aid rules, where applicable.

▌

Article 15

Energy ***transformation,*** transmission and distribution

1. Member States shall ensure that national energy regulatory authorities pay due regard to energy efficiency in ***carrying out the regulatory tasks specified in Directives 2009/72/EC and 2009/73/EC regarding*** their decisions on the operation of the gas and electricity infrastructure.

Member States shall in particular ensure that ***national energy regulatory authorities through the development of*** network tariffs and regulations***, within the framework of Directive 2009/72/EC and taking into account the costs and benefits of each measure,*** provide incentives for grid operators to ***make available*** system services to network users permitting them to implement energy efficiency improvement measures in the context of the continuing deployment of smart grids.

Such systems services may be determined by the system operator and shall not adversely impact the security of the system.

For electricity, Member States shall ensure that network regulation and network tariffs ▌ fulfil the criteria in Annex XI, taking into account guidelines and codes developed pursuant to Regulation (EC) No 714/2009 ▌ .

2. Member States shall ***ensure*** , by ***30 June 2015, that*** :

(a) ***an assessment is undertaken of*** the energy efficiency potentials of their gas ***and*** electricity ▌ infrastructure, in particular regarding transmission, distribution, load management and interoperability, and connection to energy generating installations***, including access possibilities for micro energy generators*** ;

(b) ▌ concrete measures and investments ***are identified*** for the introduction of cost-effective energy efficiency improvements in the network infrastructure, with a timetable for their introduction.

3. Member States may permit components of schemes and tariff structures with a social aim for net-bound energy transmission and distribution, provided that any disruptive effects on the transmission and distribution system are kept to the minimum necessary and are not disproportionate to the social aim.

4. Member States shall ensure the removal of those incentives in transmission and distribution tariffs that ***are detrimental to the overall efficiency (including energy efficiency) of the generation, transmission, distribution and supply of electricity or those that might hamper participation of demand response, in balancing markets and ancillary services procurement. Member States shall ensure that network operators are incentivised to improve efficiency in infrastructure design and operation, and, within the framework of Directive 2009/72/EC, that tariffs allow suppliers to improve consumer participation in system efficiency, including demand response, depending on national circumstances.***

5. ***Without prejudice to Article 16(2) of Directive 2009/28/EC and taking into account Article 15 of Directive 2009/72/EC and the need to ensure continuity in heat supply,*** Member States shall ensure that, subject to requirements relating to the maintenance of the reliability and safety of the grid, based on transparent and non-discriminatory criteria set by the competent national authorities, transmission system operators and distribution

system operators ***when they are in charge of dispatching the generating installations*** in their territory:

(a) guarantee the transmission and distribution of electricity from high-efficiency cogeneration;

(b) provide priority or guaranteed access to the grid of electricity from high-efficiency cogeneration;

(c) when dispatching electricity generating installations, provide priority dispatch of electricity from high-efficiency cogeneration ***in so far as the secure operation of the national electricity system permits*** .

Member States shall ensure that rules relating to the ranking of the different access and dispatch priorities granted in their electricity systems are clearly explained in detail and published. When providing priority access or dispatch for high-efficiency cogeneration, Member States may set rankings as between, and within different types of, renewable energy and high-efficiency cogeneration and shall in any case ensure that priority access or dispatch for energy from variable renewable energy sources is not hampered.

In addition to the obligations laid down by the first subparagraph, transmission system operators and distribution system operators shall comply with the requirements set out in Annex XII.

Member States may particularly facilitate the connection to the grid system of electricity produced from high-efficiency cogeneration from small-scale and micro-cogeneration units. ***Member States shall, where appropriate, take steps to encourage network operators to adopt a simple notification 'install and inform' process for the installation of micro- cogeneration units to simplify and shorten authorisation procedures for individual citizens and installers.***

6. ***Subject to the requirements relating to the maintenance of the reliability and safety of the grid,*** Member States shall take the appropriate steps to ensure that***, where this is technically and economically feasible with the mode of operation of the high-efficiency cogeneration installation,*** high-efficiency cogeneration operators can offer balancing services and other operational services at the level of transmission system operators or distribution system operators ▌. Transmission system operators and distribution system operators shall ensure that such services are part of a services bidding process which is transparent***, non-discriminatory*** and open to scrutiny.

Where appropriate, Member States may require transmission system operators and distribution system operators to encourage high-efficiency cogeneration to be sited close to areas of demand by reducing the connection and use-of-system charges.

7. Member States may allow producers of electricity from high-efficiency cogeneration wishing to be connected to the grid to issue a call for tender for the connection work.

8. Member States shall ensure that national energy regulatory authorities encourage demand side resources, such as demand response, to participate alongside supply in wholesale and retail markets.

Subject to technical constraints inherent in managing networks, Member States shall ensure that transmission system operators and distribution system operators, in meeting requirements for balancing and ancillary services, treat demand response providers, including aggregators, in a non-discriminatory manner, on the basis of their technical capabilities.

Subject to technical constraints inherent in managing networks, Member States shall promote access to and participation of demand response in balancing, reserve and other system services markets, inter alia by requiring national energy regulatory authorities or, where their national regulatory systems so require, transmission system operators and distribution system operators in close cooperation with demand service providers and consumers, to define technical modalities for participation in these markets on the basis of the technical requirements of these markets and the capabilities of demand response. Such specifications shall include the participation of aggregators.

9. When reporting under Directive 2010/75/EU, and without prejudice to Article 9(2) of that Directive, Member States shall consider including information on energy efficiency levels of installations undertaking the combustion of fuels with total rated thermal input of 50 MW or more in the light of the relevant best available techniques developed in accordance with Directive 2010/75/EU and Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control [(33)] ***.***

Member States may encourage operators of installations referred to in the first subparagraph to improve their annual average net operational rates.

CHAPTER IV

Horizontal provisions

Article 16

Availability of ***qualification, accreditation and*** certification schemes

1. ***Where a Member State considers that the national*** level of technical competence, objectivity and reliability ***is insufficient , it*** shall ensure that, by ***31 December 2014,*** certification ***and/or accreditation*** schemes ***and/or*** equivalent qualification schemes***, including, where necessary, suitable training programmes, become or*** are available for providers of energy services, energy audits, ***energy managers and*** installers of ***energy-related*** building elements as defined in Article 2(9) of Directive 2010/31/EU***.***

2. Member States shall ensure that the schemes referred to in paragraph 1 provide transparency to consumers, are reliable and contribute to national energy efficiency objectives.

3. Member States shall make publicly available the certification ***and/or accreditation*** schemes or equivalent qualification schemes referred to in paragraph 1 and shall cooperate among themselves and with the Commission on comparisons between, and recognition of, the schemes.

Member States shall take appropriate measures to make consumers aware of the availability of qualification and/or certification schemes in accordance with Article 18(1).

Article 17

Information and training

1. Member States shall ensure that information on available energy efficiency mechanisms and financial and legal frameworks is transparent and widely disseminated to all relevant market actors, such as consumers, builders, architects, engineers, environmental and energy auditors, and installers of building elements as defined in Directive 2010/31/EU.

Member States shall encourage the provision of information to banks and other financial institutions on possibilities of participating, including through the creation of public/private partnerships, in the financing of energy efficiency improvement measures.

2. Member States shall establish appropriate conditions for market operators to provide adequate and targeted information and advice to energy consumers on energy efficiency.

3. The Commission shall review the impact of its measures to support the development of platforms, involving, inter alia, the European social dialogue bodies in fostering training programmes for energy efficiency, and shall bring forward further measures if appropriate. The Commission shall encourage European social partners in their discussions on energy efficiency.

4. Member States shall, with the participation of stakeholders, including local and regional authorities, promote suitable information, awareness-raising and training initiatives to inform citizens of the benefits and practicalities of taking energy efficiency improvement measures.

5. The Commission shall encourage the exchange and wide dissemination of information on best energy efficiency practices in Member States.

Article 18

Energy services

1. Member States shall promote the energy services market and access for SMEs to this market by:

▌

(a) disseminating ***clear and easily accessible*** information on:

(i) available energy service contracts and clauses that should be included in such contracts to guarantee energy savings and final customers' rights;

(ii) ***financial instruments, incentives, grants and loans to support energy efficiency service projects;***

(b) encouraging the development of ▌ quality labels***, inter alia, by trade associations;***

▌

(c) making publicly available and regularly updating a list of available energy service providers who are qualified and/or certified and their qualifications and/or certifications in accordance with Article 16, or providing an interface where energy service providers can provide information;

(d) supporting the public sector in taking up energy service offers, in particular for building refurbishment, by:
(i) providing model contracts for energy performance contracting which include at least the items listed in Annex XIII;
(ii) providing information on best practices for energy performance contracting, including, if available,

cost-benefit analysis using a life-cycle approach;

(e) providing a qualitative review in the framework of the National Energy Efficiency Action Plan regarding the current and future development of the energy services market .

2. Member States shall support the proper functioning of the energy services market, where appropriate, by:

(a) identifying and publicising point(s) of contact where final customers can obtain the information referred to in paragraph 1;

(b) taking, if necessary, measures to remove the regulatory and non-regulatory barriers that impede the uptake of energy performance contracting and other energy efficiency service models for the identification and/or implementation of energy saving measures;

(c) considering putting in place or assigning the role of an independent mechanism, such as an ombudsman, to ensure the efficient handling of complaints and out-of-court settlement of disputes arising from energy service contracts;

(d) enabling independent market intermediaries to play a role in stimulating market development on the demand and supply sides.

3. Member States shall ensure that energy distributors, distribution system operators and retail energy sales companies refrain from any activities that may impede the demand for and delivery of energy services or other energy efficiency improvement measures, or hinder the development of markets for such services or measures, including foreclosing the market for competitors or abusing dominant positions.

Article 19

Other measures to promote energy efficiency

1. Member States shall evaluate and ***if necessary*** take appropriate measures to remove regulatory and non-regulatory barriers to energy efficiency***, without prejudice to the basic principles of the property and tenancy law of the Member States*** , in particular as regards:

(a) the split of incentives between the owner and the tenant of a building or among owners, with a view to ensuring that these parties are not deterred from making efficiency-improving investments that they would otherwise have made by the fact that they will not individually obtain the full benefits or by the absence of rules for dividing the costs and benefits between them***, including national rules and measures regulating decision-making processes in multi-owner properties*** ;

(b) legal and regulatory provisions, and administrative practices, regarding public purchasing and annual budgeting and accounting, with a view to ensuring that individual public bodies are not deterred from making investments ***in improving energy efficiency and minimising expected life-cycle costs and from using energy performance contracting and other third-party financing mechanisms on a long-term contractual basis.***

Such measures to remove barriers may include providing incentives, repealing or amending legal or regulatory provisions, or adopting guidelines and interpretative communications, ***or simplifying administrative procedures*** . The measures may be combined with the provision of education, training and specific information and technical assistance on energy efficiency.

2. The evaluation of barriers and measures referred to in paragraph 1 shall be notified to the Commission in the first ***National Energy Efficiency Action Plan*** referred to in Article 24(2). ***The Commission shall encourage the sharing of national best practices in this regard.***

Article 20

Energy Efficiency National Fund, Financing and Technical Support

1. Without prejudice to Articles 107 and 108 of the Treaty on the Functioning of the European Union, Member States shall facilitate the establishment of financing facilities, or use of existing ones, for energy efficiency improvement measures to maximise the benefits of multiple streams of financing.

2. The Commission shall, where appropriate, directly or via the European financial institutions, assist Member States in setting up financing facilities and technical support schemes with the aim of increasing energy efficiency in different sectors.

3. The Commission shall facilitate the exchange of best practice between the competent national or regional authorities or bodies e.g. through annual meetings of the regulatory bodies, public databases with information on

the implementation of measures by Member States, and country comparison.

4. Member States may set up an Energy Efficiency National Fund. The purpose of this fund shall be to support national energy efficiency initiatives.

5. Member States may allow for the obligations set out in Article 5(1) to be fulfilled by annual contributions to the Energy Efficiency National Fund of an amount equal to the investments required to achieve those obligations.

6. Member States may provide that obligated parties can fulfill their obligations set out in Article 7(1) by contributing annually to the Energy Efficiency National Fund an amount equal to the investments required to achieve those obligations.

7. Member States may use their revenues from annual emission allocations under Decision No 406/2009/EC for the development of innovative financing mechanisms to give practical effect to the objective in Article 5 of improving the energy performance of buildings.

Article 21

Conversion factors

For the purpose of comparison of energy savings and conversion to a comparable unit, the conversion factors set out in Annex IV shall apply unless the use of other conversion factors can be justified.

CHAPTER V

Final provisions

Article 22

Delegated acts ▌

1. ▌ The Commission shall be empowered to adopt delegated acts in accordance with Article 23 to review the harmonised efficiency reference values referred to in ***the second subparagraph of Article 14(10)*** .

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 23 to adapt to technical progress the values, calculation methods, default primary energy coefficient and requirements in ***Annexes I, II, III, IV, V, VII, VIII, IX, X and XII*** .

Article 23

Exercise of the delegation

1. The power to adopt delegated acts ***is*** conferred on the Commission subject to the conditions laid down in this Article.

2. The ▌ power ***to adopt delegated acts*** referred to in Article 22 shall be conferred on the Commission for ***a*** period of ***five years*** from ...[(34)] .

3. The delegation of power referred to in Article 22 may be revoked at any time by the European Parliament or by the Council. A decision ***to revoke*** shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 22 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by *two months* at the initiative of the European Parliament or ***of*** the Council.

Article 24

Review and monitoring of implementation

1. By 30 April each year ***as from 2013*** , Member States shall report on the progress achieved towards national energy efficiency targets, in accordance with Part 1 of Annex XIV. ***The report may form part of the National Reform Programmes referred to in Council Recommendation 2010/410/EU of 13 July 2010 on broad guidelines for the***

economic policies of the Member States and of the Union [(35)] ***.***

2. By 30 April 2014, and every three years thereafter, Member States shall submit ***National Energy Efficiency Action Plans. The*** National Energy Efficiency Action ***Plans shall cover significant*** energy efficiency ***improvement*** measures ***and expected and/ or achieved*** energy ***savings, including those in the supply, transmission and distribution of energy as well as energy end-use,*** in view of achieving the national energy efficiency targets referred to in Article 3(1). The National Energy Efficiency Action ***Plans*** shall be complemented with updated estimates of expected overall primary energy consumption in 2020, as well as estimated levels of primary energy consumption in the sectors indicated in Part 1 of Annex XIV.

The Commission shall, ***by 31 December 2012*** , provide a template as guidance for the ***National Energy Efficiency Action Plans*** . That template shall be adopted in accordance with the advisory procedure referred to in Article 26(2). The ***National Energy Efficiency Action Plans*** shall in any case include the information specified in Annex XIV.

▌

3. The Commission shall evaluate the annual reports and the ***National Energy Efficiency Action Plans*** and assess the extent to which Member States have made progress towards the achievement of the national energy efficiency targets required by Article 3(1) and towards the implementation of this Directive. The Commission shall send its assessment to the European Parliament and the Council. Based on its assessment of the reports ***and the National Energy Efficiency Action Plans,*** the Commission may issue recommendations to Member States.

4. ▌The Commission shall monitor the impact of implementing this Directive on Directive**s** 2003/87/EC, 2009/28/EC ***and*** 2010/31/EU ***and Decision No 406/2009/EC, and on industry sectors, in particular those that are exposed to a significant risk of carbon leakage as determined in Decision 2010/2/EU*** .

5. The Commission shall review the continued need for the possibility of exemptions set out in Article 14(6) for the first time in the assessment of the first National Energy Efficiency Action Plan and every three years thereafter. Where the review shows that any of the criteria for these exemptions can no longer be justified taking into account the availability of heat load and the real operating conditions of the exempted installations, the Commission shall propose appropriate measures.

6. Member States shall submit to the Commission before ***30 April*** each year statistics on national electricity and heat production from high and low efficiency cogeneration, in accordance with the methodology shown in Annex I, in relation to total heat and electricity production. They shall also submit annual statistics on cogeneration heat and electricity capacities and fuels for cogeneration, and on district heating and cooling production and capacities, in relation to total heat and electricity production and capacities. Member States shall submit statistics on primary energy savings achieved by application of cogeneration in accordance with the methodology shown in Annex II.

7. By 30 June 2014 the Commission shall submit the assessment referred to in Article 3(2) to the European Parliament and to the Council, ***accompanied*** , if ***necessary*** , by▌proposal**s** ***for further measures*** **.**

8. The Commission shall review the effectiveness of the implementation of Article 6 by … [(36)] ***, taking into account the requirements laid down in Directive 2004/18/EC and shall submit a report to the European Parliament and the Council. That report shall be accompanied, if appropriate, by proposals for further measures.***

9. By ***30 June 2016*** , the Commission shall submit a report to the European Parliament and the Council on the implementation of Article 7. That report shall be ***accompanied*** , if appropriate, by a legislative proposal for one or more of the following purposes:

(a) to change the ***final date*** laid down in Article 7(1);

(b) to review the requirements laid down in Article 7(1), (2) and (3);

(c) to establish additional common requirements, in particular as regards the matters referred to in Article 7(7).

10. By 30 June 2018, the Commission shall assess the progress made by Member States in removing the regulatory and non-regulatory barriers referred to in Article 19(1). This assessment shall be followed, if appropriate, by ***proposals for further measures*** .

11. The Commission shall make the reports referred to in paragraphs 1 and 2 publicly available.

Article 25

Online platform

The Commission shall establish an online platform in order to foster the practical implementation of this Directive at national, regional and local levels. That platform shall support the exchange of experiences on practices, benchmarking, networking activities, as well as innovative practices.

Article 26

Committee procedure

1. The Commission shall be assisted by a committee. ***That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.***

2. Where reference is made to this paragraph, ***Article 4*** of Regulation (EU) No 182/2011 shall apply.

Article 27

Amendments and repeals

1. Directive 2006/32/EC is repealed from…[(37)] , except ***for*** Article 4 (1) to (4) ***thereof*** and Annexes I, III and IV thereto, without prejudice to the obligations of the Member States relating to the time- limit for its transposition into national law. Article 4 (1) to (4) ***of*** and Annexes I, III and IV ***to*** Directive 2006/32/EC shall be repealed with effect from 1 January 2017.

Directive 2004/8/EC is repealed from…[*] , without prejudice to the obligations of the Member States relating to the time- limit for its transposition into national law.

References to Directives 2006/32/EC and 2004/8/EC shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex XV.

2. Article 9(1) and (2) of Directive 2010/30/EU is deleted from…*.

3. Directive 2009/125/EC is amended as follows:

(1) The following recital is inserted: "

(35a) Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings * requires Member States to set energy performance requirements for building elements that form part of the building envelope and system requirements in respect of the overall energy performance, the proper installation, and the appropriate dimensioning, adjustment and control of the technical building systems which are installed in existing buildings. It is consistent with the objectives of this Directive that these requirements may in certain circumstances limit the installation of energy-related products which comply with this Directive and its implementing measures, provided that such requirements do not constitute an unjustifiable market barrier.

_____

****OJ L 153, 18.6.2010, p. 13.***

"

(2) The following sentence is added to the end of Article 6(1): "

'This shall be without prejudice to the energy performance requirements and system requirements set by Member States in accordance with Article 4(1) and Article 8 of Directive 2010/31/EU.“.

"

Article 28

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by **…** [(38)] .

Notwithstanding the first subparagraph, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 4, the first subparagraph of Article 5(1), Article 5(5), Article 5(6), the last subparagraph of Article 7(9), Articles 14(6), [Article 19(2)], [Article 24(1)] and [Article 24(2)] [(39)] **** and point (4) of Annex V by the dates specified therein.***

They shall forthwith communicate to the Commission the text of those provisions ▌ .

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

Article 29

Entry into force

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

Article 30

Addressees

This Directive is addressed to the Member States.

Done at

For the European Parliament For the Council

The President The President

ANNEX I

General principles for the calculation of electricity from cogeneration

PART I. General principles

Values used for calculation of electricity from cogeneration shall be determined on the basis of the expected or actual operation of the unit under normal conditions of use. For micro- cogeneration units the calculation may be based on certified values.

(a) Electricity production from cogeneration shall be considered equal to total annual electricity production of the unit measured at the outlet of the main generators;

(i) in cogeneration units of types (b), (d), (e), (f), (g) and (h) referred to in Part II with an annual overall efficiency set by Member States at a level of at least 75 %, and

(ii) in cogeneration units of types (a) and (c) referred to in Part II with an annual overall efficiency set by Member States at a level of at least 80 %.

(b) In cogeneration units with an annual overall efficiency below the value referred to in point (i) of point (a) (cogeneration units of types (b), (d), (e), (f), (g), and (h) referred to in Part II) or with an annual overall efficiency below the value referred to in point (ii) of point (a) (cogeneration units of types (a) and (c) referred to in Part II) cogeneration is calculated according to the following formula:

$E_{CHP} = H_{CHP} * C$

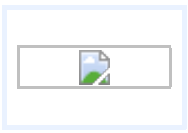
where:

E_{CHP} is the amount of electricity from cogeneration;

C is the power-to-heat ratio;

H_{CHP} is the amount of useful heat from cogeneration (calculated for this purpose as total heat production minus any heat produced in separate boilers or by live steam extraction from the steam generator before the turbine).

The calculation of electricity from cogeneration must be based on the actual power-to-heat ratio. If the actual power-to-heat ratio of a cogeneration unit is not known, the following default values may be used, in particular for statistical purposes, for units of types (a), (b), (c), (d) and (e) referred to in Part II provided that the calculated cogeneration electricity is less or equal to total electricity production of the unit:



If Member States introduce default values for power-to-heat ratios for units of types (f), (g), (h), (i), (j) and (k) referred to in Part II, such default values shall be published and shall be notified to the Commission.

(c) If a share of the energy content of the fuel input to the cogeneration process is recovered in chemicals and recycled this share can be subtracted from the fuel input before calculating the overall efficiency used in points (a) and (b).

(d) Member States may determine the power-to-heat ratio as the ratio of electricity to useful heat when operating in cogeneration mode at a lower capacity using operational data of the specific unit.

(e) Member States may use other reporting periods than one year for the purpose of the calculations according to points (a) and (b).

PART II. Cogeneration technologies covered by this Directive

(a) Combined cycle gas turbine with heat recovery

(b) Steam backpressure turbine

(c) Steam condensing extraction turbine

(d) Gas turbine with heat recovery

(e) Internal combustion engine

(f) Microturbines

(g) Stirling engines

(h) Fuel cells

(i) Steam engines

(j) Organic Rankine cycles

(k) Any other type of technology or combination thereof falling under the definition laid down in Article 2 (30).

When implementing and applying the general principles for the calculation of electricity from cogeneration, Member States shall use the detailed Guidelines established by Commission Decision 2008/952/EC of 19 November 2008 establishing detailed guidelines for the implementation and application of Annex II to Directive 2004/8/EC of the European Parliament and of the Council[(40)] .

ANNEX II

Methodology for determining the efficiency of the cogeneration process

Values used for calculation of efficiency of cogeneration and primary energy savings shall be determined on the basis of the expected or actual operation of the unit under normal conditions of use.

(a) High-efficiency cogeneration

For the purpose of this Directive high-efficiency cogeneration shall fulfil the following criteria:

- cogeneration production from cogeneration units shall provide primary energy savings calculated according to point (b) of at least 10 % compared with the references for separate production of heat and electricity,
- production from small-scale and micro-cogeneration units providing primary energy savings may qualify as high-efficiency cogeneration.

(b) Calculation of primary energy savings

The amount of primary energy savings provided by cogeneration production defined in accordance with Annex I shall be calculated on the basis of the following formula:

Where:

PES is primary energy savings.

CHP Hη is the heat efficiency of the cogeneration production defined as annual useful heat output divided by the fuel input used to produce the sum of useful heat output and electricity from cogeneration.

Ref Hη is the efficiency reference value for separate heat production.

CHP Eη is the electrical efficiency of the cogeneration production defined as annual electricity from cogeneration divided by the fuel input used to produce the sum of useful heat output and electricity from cogeneration. Where a cogeneration unit generates mechanical energy, the annual electricity from cogeneration may be increased by an additional element representing the amount of electricity which is equivalent to that of mechanical energy. This additional element does not create a right to issue guarantees of origin in accordance with Article 14(10).

Ref Eη is the efficiency reference value for separate electricity production.

(c) Calculations of energy savings using alternative calculation

Member States may calculate primary energy savings from a production of heat and electricity and mechanical energy as indicated below without applying Annex I to exclude the non-cogenerated heat and electricity parts of the same process. Such a production can be regarded as high-efficiency cogeneration provided it fulfils the efficiency criteria in point (a) of this Annex and, for cogeneration units with an electrical capacity larger than 25 MW, the overall efficiency is above 70 %. However, specification of the quantity of electricity from cogeneration produced in such a production, for issuing a guarantee of origin and for statistical purposes, shall be determined in accordance with Annex I.

If primary energy savings for a process are calculated using alternative calculation as indicated above the primary energy savings shall be calculated using the formula in point (b) of this Annex replacing:‘CHP Hη’ with'Hη' and'CHP Eη' with ‘Eη’,where:

Hη shall mean the heat efficiency of the process, defined as the annual heat output divided by the fuel input used to produce the sum of heat output and electricity output.

Eη shall mean the electricity efficiency of the process, defined as the annual electricity output divided by the fuel input used to produce the sum of heat output and electricity output. Where a cogeneration unit generates mechanical energy, the annual electricity from cogeneration may be increased by an additional element representing the amount of electricity which is equivalent to that of mechanical energy. This additional element will not create a right to issue guarantees of origin in accordance with Article 14(10).

(d) Member States may use other reporting periods than one year for the purpose of the calculations according to points (b) and (c) of this Annex.

(e) For micro-cogeneration units the calculation of primary energy savings may be based on certified data.

(f) Efficiency reference values for separate production of heat and electricity

The harmonised efficiency reference values shall consist of a matrix of values differentiated by relevant factors, including year of construction and types of fuel, and must be based on a well-documented analysis taking, inter alia, into account data from operational use under realistic conditions, fuel mix and climate conditions as well as applied cogeneration technologies.

The efficiency reference values for separate production of heat and electricity in accordance with the formula set out in point (b) shall establish the operating efficiency of the separate heat and electricity production that cogeneration is intended to substitute.

The efficiency reference values shall be calculated according to the following principles:

1. For cogeneration units the comparison with separate electricity production shall be based on the principle that the same fuel categories are compared.

2. Each cogeneration unit shall be compared with the best available and economically justifiable technology for separate production of heat and electricity on the market in the year of construction of the cogeneration unit.

3. The efficiency reference values for cogeneration units older than 10 years of age shall be fixed on the reference values of units of 10 years of age.

4. The efficiency reference values for separate electricity production and heat production shall reflect the climatic differences between Member States.

ANNEX III

Energy efficiency requirements for purchasing products, services and buildings by *central government*

Central governments that purchase products, services or buildings***, insofar as this is consistent with cost-effectiveness, economical feasibility, wider sustainability, technical suitability, as well as sufficient competition,*** shall:

(a) where a product is covered by a delegated act adopted under Directive 2010/30/EU or by a related Commission implementing directive, purchase only the products that comply with the criterion of belonging to the highest energy efficiency class ***possible in the light of the need to ensure*** sufficient competition;

(b) where a product not covered under point (a) is covered by an implementing measure under Directive 2009/125/EC adopted after the entry into force of this Directive, purchase only products that comply with energy efficiency benchmarks specified in that implementing measure;

(c) purchase office equipment products covered by Council Decision 2006/1005/EC of 18 December 2006 concerning conclusion of the Agreement between the Government of the United States of America and the European Community on the coordination of energy-efficiency labelling programmes for office equipment[41] that comply with energy efficiency requirements not less demanding than those listed in Annex C of the Agreement attached to that Decision;

(d) purchase only tyres that comply with the criterion of having the highest fuel energy efficiency class, as defined by Regulation (EC) No 1222/2009 of the European Parliament and of the Council of 25 November 2009 on the labelling of tyres with respect to fuel efficiency and other essential parameters[42] . This requirement shall not prevent public bodies from purchasing tyres with the highest wet grip class or external rolling noise class where justified by safety or public health reasons;

(e) require in their tenders for service contracts that service providers use, for the purposes of providing the services in question, only products that comply with the requirements referred to in points (a) to (d), when providing the services in question***. This requirement shall apply only to new products purchased by service providers partially or wholly for the purpose of providing the service in question*** *;*

(f) purchase***,*** or ***make new rental agreements for,*** only buildings that comply at least with the minimum energy performance requirements referred to in Article 5(1) ***unless the purpose of the purchase is:***

(i) to undertake deep renovation or demolition;

(ii) in the case of public bodies, to re-sell the building without using it for public body's own purposes, or

(iii) to preserve it as a building officially protected as part of a designated environment, or because of its special architectural or historical merit .

Compliance with these requirements shall be verified by means of the energy performance certificates referred to in Article 11 of Directive 2010/31/EU.

ANNEX IV

Energy content of selected fuels for end use – conversion table[43]

Energy commodity	kJ (NCV)	kgoe (NCV)	kWh (NCV)
1 kg coke	28500	0,676	7,917
1 kg hard coal	17200 - 30700	0,411 - 0,733	4,778 - 8,528
1 kg brown coal briquettes	20000	0,478	5,556
1 kg black lignite	10500 - 21000	0,251 - 0,502	2,917 - 5,833
1 kg brown coal	5600 - 10500	0,134 - 0,251	1,556 - 2,917
1 kg oil shale	8000 - 9000	0,191 - 0,215	2,222 - 2,500

1 kg peat	7800 - 13800	0,186 - 0,330	2,167 - 3,833
1 kg peat briquettes	16000 - 16800	0,382 - 0,401	4,444 - 4,667
1 kg residual fuel oil (heavy oil)	40000	0,955	11,111
1 kg light fuel oil	42300	1,010	11,750
1 kg motor spirit (petrol)	44000	1,051	12,222
1 kg paraffin	40000	0,955	11,111
1 kg liquefied petroleum gas	46000	1,099	12,778
1 kg natural gas [1]	47200	1,126	13,10
1 kg liquefied natural gas	45190	1,079	12,553
1 kg wood (25 % humidity) [2]	13800	0,330	3,833
1 kg pellets/wood bricks	16800	0,401	4,667
1 kg waste	7400 - 10700	0,177 - 0,256	2,056 - 2,972
1 MJ derived heat	1000	0,024	0,278
1 kWh electrical energy	3600	0,086	1 [3]

Source: Eurostat.

[1] 93 % methane.

[2] Member States may apply other values depending on the type of wood most used in the respective Member State.

[3] Applicable when energy savings are calculated in primary energy terms using a bottom-up approach based on final energy consumption. For savings in kWh electricity Member States may apply a default coefficient of 2,5. Member States may apply a different coefficient provided they can justify it.

ANNEX V

Common methods and principles for calculating the impact of energy efficiency obligations schemes or other policy measures under Article 7(1), (2) and (9) and Article 20(6)

1. Methods for calculating energy savings for the purposes of Article 7(1) and (2), and points (b), (c), (d), (e) and (f) of Article 7(9), and Article 20(6).

Obligated, participating or entrusted parties, or implementing public authorities may use one or more of the following methods for calculating energy savings:

(a) deemed savings, by reference to the results of previous independently monitored energy improvements in similar installations. The generic approach is termed 'ex-ante';

(b) metered savings, whereby the savings from the installation of a measure, or package of measures, is determined by recording the actual reduction in energy use, taking due account of factors such as additionality, occupancy, production levels and the weather which may affect consumption. The generic approach is termed 'ex-post';

(c) scaled savings, whereby engineering estimates of savings are used. This approach may only be used where establishing robust measured data for a specific installation is difficult or disproportionately expensive e.g. replacing a compressor or electric motor with a different kWh rating than that for which independent information on savings has been measured, or where they are carried out on the basis of nationally established methodologies and benchmarks by qualified or accredited experts that are independent of the obligated, participating or entrusted parties involved;

(d) surveyed savings, where consumers' response to advice, information campaigns, labelling or certification schemes, or smart metering is determined. This approach may only be used for savings resulting from changes in consumer behaviour. It may not be used for savings resulting from the installation of physical measures.

2. In determining the energy saving for an energy efficiency measure for the purposes of Article 7(1) and (2), and points (b), (c), (d), (e) and (f) of Article 7(9), and Article 20(6) the following principles shall apply:

(a) credit may only be given for savings exceeding the following levels:

(i) Union emission performance standards for new passenger cars and new light commercial vehicles following the implementation of 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 CO 2 emissions from light-duty vehicles [(44)] and Regulation (EU) No 510/2011 of the European Parliament and of the Council of 11 May 2011 setting emission performance standards for new light commercial vehicles as part of the Union's integrated approach to reduce CO 2 emissions from light-duty vehicles [(45)] , respectively;

(ii) Union requirements relating to the removal from the market of certain energy related products following the implementation of implementing measures under Directive 2009/125/EC; and

(b) to account for climatic variations between regions, Member States may choose to adjust the savings to a standard value or to accord different energy savings in accordance with the temperature variations between regions;

(c) the activities of the obligated, participating or entrusted party must be demonstrably material to the achievement of the claimed savings;

(d) savings from an individual action may not be claimed by more than one party;

(e) calculation of energy savings shall take into account the lifetime of savings. This may be done by counting the savings each individual action will achieve between its implementation date and 31 December 2020. Alternatively, Member States may adopt another method that is estimated to achieve at least the same total quantity of savings. When using other methods, Member States shall ensure that the total amount of energy savings calculated with these other methods does not exceed the amount of energy savings that would have been the result of their calculation when counting the savings each individual action will achieve between its implementation date and 31 December 2020. Member States shall describe in detail in their first National Energy Efficiency Action Plan according to Annex XIV of this Directive, which other methods they have used and which provisions have been made to ensure this binding calculation requirement; and

(f) actions by obligated, participating or entrusted parties, either individually or together, which aim to result in lasting transformation of products, equipment, or markets to a higher level of energy efficiency are permitted; and

(g) in promoting the uptake of energy efficiency measures, Member States shall ensure that quality standards for products, services and installation of measures are maintained. Where such standards do not exist, Member States shall work with obligated, participating or entrusted parties to introduce them.

3. In determining the energy saving from policy measures applied under point (a) of Article 7(9), the following

principles shall apply:

(a) credit shall only be given for energy savings from taxation measures exceeding the minimum levels of taxation applicable to fuels as required in Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity [46] or in Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [47] ;

(b) recent and representative official data on price elasticities shall be used for calculation of the impact; and

(c) the energy savings from accompanying taxation policy instruments, including fiscal incentives or payment to a fund, shall be accounted separately.

4. Notification of methodology

Member States shall by ... [48] notify the Commission of their proposed detailed methodology for operation of the energy efficiency obligation schemes and for the purposes of Article 7(9) and Article 20(6). Except in the case of taxes, such notification shall include details of:

(a) obligated, participating or entrusted parties, or implementing public authorities;

(b) target sectors;

(c) the level of the energy saving target or expected savings to be achieved over the whole and intermediate periods;

(d) the duration of the obligation period and intermediate periods;

(e) eligible measure categories;

(f) calculation methodology, including how additionality and materiality are to be determined and which methodologies and benchmarks are used for engineering estimates;

(g) lifetimes of measures;

(h) approach taken to address climatic variations within the Member State;

(i) quality standards;

(j) monitoring and verification protocols and how the independence of these from the obligated, participating or entrusted parties is ensured;

(k) audit protocols and

(l) how the need to fulfil the requirement in the third sentence of Article 7(1) is taken into account.

In the case of taxes, the notification shall include details of:

(a) target sectors and segment of taxpayers;

(b) implementing public authority;

(c) expected savings to be achieved;

(d) duration of the taxation measure and intermediate periods; and

(e) calculation methodology, including which price elasticities are used.

Annex VI

Minimum criteria for energy audits including those carried out as part of energy management systems

The energy audits referred to in Article 8 shall be based on the following guidelines:

(a) be based on up-to-date, measured, traceable operational data on energy consumption and (for electricity) load profiles;

(b) comprise a detailed review of the energy consumption profile of buildings or groups of buildings, industrial operations or installations, including transportation;

(c) build, whenever possible, on life-cycle cost analysis (LCCA) instead of Simple Payback Periods (SPP) in order to take account of long-term savings, residual values of long-term investments and discount rates;

(d) be proportionate, and sufficiently representative to permit the drawing of a reliable picture of overall energy performance and the reliable identification of the most significant opportunities for improvement.

Energy audits shall allow detailed and validated calculations for the proposed measures so as to provide clear

information on potential savings.

The data used in energy audits shall be storable for historical analysis and tracking performance.

ANNEX VII

Minimum requirements for ▌ billing *and billing information* based on actual consumption

▌

1. Minimum requirements for billing

1.1 ▌ Billing based on actual consumption

In order to enable final customers to regulate their own energy consumption, billing ***should take place on the basis of actual consumption at least once a year, and billing information should be made available at least quarterly, on request or where the consumers have opted to receive electronic billing or else twice yearly. Gas used only for cooking purposes may be exempted from this requirement*** .

1.2. Minimum information contained in the bill

Member States shall ensure that***, where appropriate,*** the following information is made available to final customers in clear and understandable terms in or with their bills, contracts, transactions, and receipts at distribution stations:

(a) current actual prices and actual consumption of energy;

(b) comparisons of the final customer's current energy consumption with consumption for the same period in the previous year, preferably in graphic form;

▌

(c) contact information for final customers' organisations, energy agencies or similar bodies, including website addresses, from which information may be obtained on available energy efficiency improvement measures, comparative end-user profiles and objective technical specifications for energy-using equipment;

In addition, wherever possible and useful, Member States shall ensure that comparisons with an average normalised or benchmarked final customer in the same user category are made available to final customers in clear and understandable terms, in, with or signposted to within, their bills, contracts, transactions, and receipts at distribution stations.

1.3 Advice on energy efficiency accompanying bills and other feedback to final customers

When sending contracts and contract changes, and in the bills customers receive or through websites addressing individual customers, energy distributors, distribution system operators and retail energy sales companies shall inform their customers in a clear and understandable manner of contact information for independent consumer advice centres, energy agencies or similar institutions, including their internet addresses, where they can obtain advice on available energy efficiency measures, benchmark profiles for their energy consumption and technical specifications of energy using appliances that can serve to reduce the consumption of these appliances.

ANNEX VIII

***Potential* for efficiency in heating and cooling**

1. The ***comprehensive assessment of*** national heating and cooling ***potentials*** referred to in Article 14(1) shall include:

(a) a description of heating and cooling demand;

(b) a forecast of how this demand will change in the next 10 years, taking into account in particular the evolution of demand in buildings and the different sectors of industry;

(c) a map of the national territory, identifying, ***while preserving commercially sensitive information*** :

(i) heating and cooling demand points, including:

- municipalities and conurbations with a plot ratio of at least 0,3; and

- industrial zones with a total annual heating and cooling consumption of more than 20 GWh;

(ii) existing and planned district heating and cooling infrastructure;

(iii) potential heating and cooling supply points, including:

- electricity generation installations with a total annual electricity production of more than 20 GWh; and

- waste incineration plants;

- existing and planned cogeneration installations using technologies referred to in Part II of Annex I, and district heating installations.

(d) identification of the heating and cooling demand that could be satisfied by high-efficiency cogeneration, including residential micro-cogeneration, and by district heating and cooling;

(e) identification of the potential for additional high-efficiency cogeneration, including from the refurbishment of existing and the construction of new generation and industrial installations or other facilities generating waste heat;

(f) identification of energy efficiency potentials of district heating and cooling infrastructure;

(g) ***strategies, policies and*** measures ***that may*** be adopted up to 2020 and up to 2030 to realise the potential in point (e) in order to meet the demand in point (d), including***, where appropriate, proposals to*** :

(i) ▌increase the share of cogeneration in heating and cooling production and in electricity production;▌

(ii) ▌develop efficient district heating and cooling infrastructure to accommodate the development of high-efficiency cogeneration and the use of heating and cooling from waste heat and renewable energy sources;

(iii) encourage new thermal electricity generation installations and industrial plants producing waste heat to be located in sites where a maximum amount of the available waste heat will be recovered to meet existing or forecasted heat and cooling demand;

(iv) encourage new residential zones or new industrial plants which consume heat in their production processes to be located where available waste heat, as identified in the comprehensive assessment, can contribute to meeting their heat and cooling demands. This could include proposals that support the clustering of a number of individual installations in the same location with a view to ensuring an optimal matching between demand and supply for heat and cooling;

(v) encourage thermal electricity generating installations, industrial plants producing waste heat, waste incineration plants and other waste-to-energy plants to be connected to the local district heating or cooling network;

(vi) encourage residential zones and industrial plants which consume heat in their production processes to be connected to the local district heating or cooling network;

(h) the share of high-efficiency cogeneration and the potential established and progress achieved under Directive 2004/8/EC;

(i) an estimate of the primary energy to be saved;

(j) an estimate of public support measures to heating and cooling, if any, with the annual budget and identification of the potential aid element. This does not prejudge a separate notification of the public support schemes for a State aid assessment.

2. To the extent appropriate, the ***comprehensive assessment*** may be made up of an assembly of regional or local plans ***and strategies*** .

▌

ANNEX IX

Cost-benefit analysis

Part 1: General principles of the cost-benefit analysis

The purpose of preparing cost-benefit analyses in relation to measures for promoting efficiency in heating and cooling as referred to in Article 14(3) is to provide a decision base for qualified prioritisation of limited resources at society level.

The cost-benefit analysis may either cover a project assessment or a group of projects for a broader local, regional or national assessment in order to establish the most cost-effective and beneficial heating or cooling option for a given geographical area for the purpose of heat planning.

Cost-benefit analyses for the purposes of Article 14(3) shall include an economic analysis covering socio-economic and environmental factors.

The cost-benefit analyses shall include the following steps and considerations:

(a) Establishing a system boundary and geographical boundary

The scope of the cost-benefit analyses in question determines the relevant energy system. The geographical boundary shall cover a suitable well-defined geographical area, e.g. a given region or metropolitan area, to avoid selecting sub-optimized solutions on a project by project basis.

(b) Integrated approach to demand and supply options

The cost-benefit analysis shall take into account all relevant supply resources available within the system and geographical boundary, using the data available, including waste heat from electricity generation and industrial installations and renewable energy, and the characteristics of and trends in heat and cooling demand.

(c) Constructing a baseline

The purpose of the baseline is to serve as a reference point, to which the alternative scenarios are evaluated.

(d) Identifying alternative scenarios

All relevant alternatives to the baseline shall be considered. Scenarios that are not feasible due to technical reasons, financial reasons, national regulation or time constraints may be excluded at an early stage of the cost-benefit analysis if justified based on careful, explicit and well-documented considerations.

Only high-efficiency cogeneration, efficient district heating and cooling or efficient individual heating and cooling supply options should be taken into account in the cost-benefit analysis as alternative scenarios compared to the baseline.

(e) Method for the calculation of cost-benefit surplus

(i) The total long-term costs and benefits of heat or cooling supply options shall be assessed and compared.

(ii) The criterion for evaluation shall be the net present value (NPV) criterion.

(iii) The time horizon shall be chosen such that all relevant costs and benefits of the scenarios are included. For example, for a gas-fired power plant an appropriate time horizon could be 25 years, for a district heating system, 30 years, or for heating equipment such as boilers 20 years.

(f) Calculation and forecast of prices and other assumptions for the economic analysis

(i) Member States shall provide assumptions, for the purpose of the cost-benefit analyses, on the prices of major input and output factors and the discount rate.

(ii) The discount rate used in the economic analysis for the calculation of net present value shall be chosen according to European or national guidelines [(49)] *.*

(iii) Member States shall use national, European or international energy price development forecasts if appropriate in their national and/or regional/local context.

(iv) The prices used in the economic analysis shall reflect the true socio economic costs and benefits and should include external costs, such as environmental and health effects, to the extent possible, i.e. when a market price exists or when it is already included in European or national regulation.

(g) Economic analysis: Inventory of effects

The economic analyses shall take into account all relevant economic effects.

Member States may assess and take into account in decision making costs and energy savings from the increased flexibility in energy supply and from a more optimal operation of the electricity networks, including avoided costs and savings from reduced infrastructure investment, in the analysed scenarios.

The costs and benefits taken into account shall include at least the following:

(i) Benefits

- *Value of output to the consumer (heat and electricity)*
- *External benefits such as environmental and health benefits, to the extent possible*

(ii) Costs

- *Capital costs of plants and equipments*
- *Capital costs of the associated energy networks*

- *Variable and fixed operating costs*
- *Energy costs*
- *Environmental and health cost, to the extent possible*

(h) Sensitivity analysis:

A sensitivity analysis shall be included to assess the costs and benefits of a project or group of projects based on different energy prices, discount rates and other variable factors having a significant impact on the outcome of the calculations.

The Member States shall designate the competent authorities responsible for carrying out the cost-benefit analyses under Article 14. Member States may require competent local, regional and national authorities or operators of individual installations to carry out the economic and financial analysis. They shall provide the detailed methodologies and assumptions in accordance with this Annex and establish and make public the procedures for the economic analysis.

Part 2: Principles for the purpose of Article 14(5) and (7)

The cost-benefit analyses shall provide information for the purpose of the measures in Article 14(5) and (7):

If an electricity-only installation or an installation without heat recovery is planned, a comparison shall be made between the planned installations or the planned refurbishment and an equivalent installation producing the same amount of electricity or process heat, but recovering the waste heat and supplying heat through high-efficiency cogeneration and/or district heating and cooling networks.

Within a given geographical boundary the assessment shall take into account the planned installation and any appropriate existing or potential heat demand points that could be supplied from it, taking into account rational possibilities (for example, technical feasibility and distance).

The system boundary shall be set to include the planned installation and the heat loads, such as building(s) and industrial process. Within this system boundary the total cost of providing heat and power shall be determined for both cases and compared.

Heat loads shall include existing heat loads, such as an industrial installation or an existing district heating system, and also, in urban areas, the heat load and costs that would exist if a group of buildings or part of a city were provided with and/or connected into a new district heating network.

The cost-benefit analysis shall be based on a description of the planned installation and the comparison installation(s), covering electrical and thermal capacity, as applicable, fuel type, planned usage and the number of planned operating hours annually, location and electricity and thermal demand.

For the purpose of the comparison, the thermal energy demand and the types of heating and cooling used by the nearby heat demand points shall be taken into account. The comparison shall cover infrastructure related costs for the planned and comparison installation.

Cost-benefit analyses for the purposes of Article 14(5) shall include an economic analysis covering a financial analysis reflecting actual cash flow transactions from investing in and operating individual installations.

Projects with positive cost-benefit outcome are those where the sum of discounted benefits in the economic and financial analysis exceeds the sum of discounted costs (cost-benefit surplus).

Member States shall set guiding principles for the methodology, assumptions and time horizon for the economic analysis.

Member States may require that the companies responsible for the operation of thermal electric generation installations, industrial companies, district heating and cooling networks, or other parties influenced by the defined system boundary and geographical boundary, contribute data for use in assessing the costs and benefits of an individual installation.

ANNEX X

Guarantee of origin for electricity produced from high-efficiency cogeneration

(a) Member States shall take measures to ensure that:

(i) the guarantee of origin of the electricity produced from high-efficiency cogeneration:

- enable producers to demonstrate that the electricity they sell is produced from high-efficiency cogeneration and is issued to this effect in response to a request from the producer;

- is accurate, reliable and fraud-resistant;
- is issued, transferred and cancelled electronically;

(ii) the same unit of energy from high-efficiency cogeneration is taken into account only once.

(b) The guarantee of origin referred to in Article 14(10) shall contain at least the following information:

(i) the identity, location, type and capacity (thermal and electrical) of the installation where the energy was produced;
(ii) the dates and places of production;
(iii) the lower calorific value of the fuel source from which the electricity was produced;
(iv) the quantity and the use of the heat generated together with the electricity;
(v) the quantity of electricity from high-efficiency cogeneration in accordance with Annex II that the guarantee represents;
(vi) the primary energy savings calculated in accordance with Annex II based on the harmonised efficiency reference values indicated in point (f) of Annex II;
(vii) the nominal electric and thermal efficiency of the plant;
(viii) whether and to what extent the installation has benefited from investment support;
(ix) whether and to what extent the unit of energy has benefited in any other way from a national support scheme, and the type of support scheme;
(x) the date on which the installation became operational; and
(xi) the date and country of issue and a unique identification number.

The guarantee of origin shall be of the standard size of 1 MWh. It shall relate to the net electricity output measured at the station boundary and exported to the grid.

ANNEX XI

Energy efficiency criteria for energy network regulation and for electricity network tariffs

1. Network tariffs shall ***be cost-reflective of*** cost-savings in networks achieved from demand-side and demand-response measures and distributed generation, including savings from lowering the cost of delivery or of network investment and a more optimal operation of the network.

2. Network regulation and tariffs shall ***not prevent*** network operators ***or energy retailers making available*** system services for demand response measures, demand management and distributed generation on organised electricity markets, in particular:

(a) the shifting of the load from peak to off-peak times by final customers taking into account the availability of renewable energy, energy from cogeneration and distributed generation;
(b) energy savings from demand response of distributed consumers by energy aggregators;
(c) demand reduction from energy efficiency measures undertaken by energy service providers, including energy service companies;
(d) the connection and dispatch of generation sources at lower voltage levels;
(e) the connection of generation sources from closer location to the consumption; and
(f) the storage of energy.

For the purposes of this provision the term ‘organised electricity markets’ shall include over-the-counter markets and electricity exchanges for trading energy, capacity, balancing and ancillary services in all timeframes, including forward, day-ahead and intra-day markets.

3. Network ***or retail*** tariffs ***may*** support dynamic pricing for demand response measures by final customers, ***such as*** :

(a) time-of-use tariffs;
(b) critical peak pricing;
(c) real time pricing; and
(d) peak time rebates.

ANNEX XII

Energy efficiency requirements for transmission system operators and distribution system operators

Transmission system operators and distribution system operators shall:

(a) set up and make public their standard rules relating to the bearing and sharing of costs of technical adaptations, such as grid connections and grid reinforcements, improved operation of the grid and rules on the non-discriminatory implementation of the grid codes, which are necessary in order to integrate new producers feeding electricity produced from high-efficiency cogeneration into the interconnected grid;

(b) provide any new producer of electricity produced from high-efficiency cogeneration wishing to be connected to the system with the comprehensive and necessary information required, including:

  (i) a comprehensive and detailed estimate of the costs associated with the connection;

  (ii) a reasonable and precise timetable for receiving and processing the request for grid connection;

  (iii) a reasonable indicative timetable for any proposed grid connection. The overall process to become connected to the grid should be no longer than ***24 months, bearing in mind what is reasonably practicable and non-discriminatory*** ;

(c) provide standardised and simplified procedures for the connection of distributed high-efficiency cogeneration producers to facilitate their connection to the grid.

The standard rules referred to in point (a) shall be based on objective, transparent and non-discriminatory criteria taking particular account of all the costs and benefits associated with the connection of those producers to the grid. They may provide for different types of connection.

ANNEX XIII

Mimimum items to be included in energy performance contracts with the public sector or in the associated tender specifications

- Clear and transparent list of the efficiency measures to be implemented ***or the efficiency results to be obtained*** **.**
- Guaranteed savings to be achieved by implementing the measures of the contract.
- Duration and milestones of the contract, terms and period of notice.
- Clear and transparent list of the obligations of each contracting party.
- Reference date(s) to establish achieved savings.
- Clear and transparent list of steps to be performed to implement a measure ***or package of measures*** and***, where relevant,*** associated costs.
- Obligation to fully implement the measures in the contract and documentation of all changes made during the project.
- Regulations specifying the inclusion of ***equivalent requirements in any subcontracting with*** third parties ▌ .
- Clear and transparent display of financial implications of the project and distribution of the share of both parties in the monetary savings achieved (i.e. remuneration of the service provider).
- Clear and transparent provisions on measurement and verification of the guaranteed savings achieved, quality checks and guarantees.
- Provisions clarifying the procedure to deal with changing framework conditions that affect the content and the outcome of the contract (i.e. changing energy prices, use intensity of an installation).
- Detailed information on the obligations of each of the contracting party ***and of the penalties for their breach*** .

ANNEX XIV

General framework for reporting

PART 1. General framework for annual reports

The annual reports referred to in Article 24(1) provide a basis for the monitoring of the progress towards national 2020 targets. Member States shall ensure that the reports include the following minimum information:

(a) an estimate of following indicators in the year ***before last (year X*** [(50)] ***-2)*** :

  (i) primary energy consumption;

(ii) total final energy consumption;

(iii) final energy consumption by sector

- industry
- transport (split between passenger and freight transport***, if available***)
- households
- services;

(iv) gross value added by sector

- industry
- services;

(v) disposable income of households;

(vi) gross domestic product (GDP);

(vii) electricity generation from thermal power generation;

(viii) electricity generation from combined heat and power;

(ix) heat generation from thermal power generation;

(x) heat generation from combined heat and power plants, including industrial waste heat;

(xi) fuel input for thermal power generation;

(xii) passenger kilometers (pkm)***, if available;***

(xiii) tonne kilometers (tkm)***, if available;***

(xiv) combined transport kilometres (pkm + tkm), in case (xii) and (xiii) are not available;

(xv) population.

In sectors where energy consumption remains stable or is growing, Member States shall analyse the reasons for it and attach their appraisal to the estimates.

The second and subsequent reports shall also include points (b) to (e):

(b) updates on major legislative and non-legislative measures implemented in the previous year which contribute towards the overall national energy efficiency targets for 2020;

(c) the total building floor area of the buildings with a total useful floor area ***over 500 m 2 and as of 9 July 2015*** over 250 m^2 owned ***and occupied*** by the Member States' ***central government*** that, on 1 January of the year in which the report is due, did not meet the energy performance requirements referred to in Article 5(1);

(d) the total building floor area ***of heated and/or cooled buildings*** owned ***and occupied*** by the Member States' ***central government*** that was renovated in the previous year ***referred to in Article 5(1) or the amount of energy savings in eligible buildings owned and occupied by their central government as referred to in Article 5(6)*** ;

(e) energy savings achieved through the national energy efficiency obligation schemes referred to in Article 7(1) or the alternative measures adopted in application of Article 7(9).

The first report shall also include the national target referred to in Article 3(1).

In the annual reports referred to in Article 24(1) Member States may also include additional national targets. These may be related in particular to the statistical indicators enumerated in Part 1(a) of Annex XIV or combinations thereof, such as primary or final energy intensity or sectoral energy intensities.

PART 2. General framework for ***National Energy Efficiency Action Plans***

National Energy Efficiency Action Plans referred to in Article 24(2) shall provide a framework for the development of national energy efficiency strategies.

The National Energy Efficiency Action ***Plans*** shall cover significant energy efficiency improvement measures and expected/achieved energy savings, including those in the supply, transmission and distribution of energy as well as energy end-use. Member States shall ensure that the National Energy Efficiency Action ***Plans*** include the following minimum information:

1. Targets and strategies

– the ***indicative*** national energy efficiency target for 2020 as required by Article 3(1);
– the national indicative energy savings target set in Article 4(1) of Directive 2006/32/EC;

– other existing energy efficiency targets addressing the whole economy or specific sectors.

2. Measures and energy savings

The National Energy Efficiency Action ***Plans*** shall provide information on measures adopted or planned to be adopted in view of implementing the main elements of this Directive and on their related savings.

a) Primary energy savings

The National Energy Efficiency Action ***Plans*** shall list significant measures and actions taken towards primary energy saving in all sectors of the economy. For every measure or package of measures/actions estimations of expected savings for 2020 and savings achieved by the time of the reporting shall be provided.

Where available, information on other impacts/benefits of the measures (greenhouse gas emissions reduction, improved air quality, job creation, etc.) and the budget for the implementation should be provided.

b) Final energy savings

The first and second ***National Energy Efficiency Action Plans*** shall include the results with regard to the fulfilment of the final energy savings target set out in Article 4(1) and (2) of the Directive 2006/32/EC. If calculation/estimation of savings per measure is not available, sector level energy reduction shall be shown due to (the combination) of measures.

The first and second ***National Energy Efficiency Action Plans*** shall also include the measurement and/or calculation methodology used for calculating the energy savings. If the 'recommended methodology[(51)] ' is applied, the National Energy Efficiency Action ***Plan*** should provide references to this.

3. Specific information related to this Directive

3.1. Public bodies (Article 5)

National Energy Efficiency Action Plans shall include the list of public bodies having developed an energy efficiency plan in accordance with ***Article 5(7)*** .

3.2. Energy efficiency obligations (Article 7)

National Energy Efficiency Action Plans shall include the national coefficients chosen in accordance with Annex IV.

The first ***National Energy Efficiency Action Plan*** shall include a short description of the national scheme referred to in Article 7(1) or the alternative measures adopted in application of Article 7(9).

3.3. Energy audits and management systems (Article 8)

National Energy Efficiency Action Plans shall include:

(a) the number of energy audits carried out in the previous period;
(b) the number of energy audits carried out in large enterprises in the previous period;
(c) the number of large companies in their territory, with an indication of the number of those to which Article 8(5) is applicable.

3.4. Promotion of efficient heating and cooling (Article 14)

National Energy Efficiency Action Plans shall include an assessment of the progress achieved in implementing the ***comprehensive assessment*** referred to in Article 14(1).

3.5. Energy transmission and distribution (Article 15)

The first ***National Energy Efficiency Action Plan*** and the subsequent reports due every 10 years thereafter shall include ***the assessment made, the measures and investments identified to utilise*** the energy efficiency potentials of gas and electricity infrastructure referred to in Article 15(2).

3.6. Member States shall report, as part of their National Energy Efficiency Action Plans, on the measures undertaken to enable and develop demand response as referred to in Article 15.

3.7. Availability of ***qualification, accreditation and*** certification schemes (Article 16)

National Energy Efficiency Action Plans shall include information on the available ***qualification, accreditation and*** certification schemes or equivalent qualification schemes for the providers of energy services, energy audits and energy efficiency improvement measures.

3.8. Energy Services (Article 18)

National Energy Efficiency Action Plans shall include an internet link to the website where the ***list or the interface*** of energy services providers referred to in point (c) of Article 18(1) can be accessible.

3.9. Other measures to promote energy efficiency (Article 19)

The first ***National Energy Efficiency Action Plan*** shall include a list of the measures referred to in Article 19(1).

ANNEX XV

Correlation table

Directive 2004/8/EC	This Directive
Article 1	Article 1 (1)
Article 2	Article 1(1)
Article 3, point (a)	Article 2, point (30)
Article 3, point (b)	Article 2, point (32)
Article 3, point (c)	Article 2, point (31)
Article 3, point (d)	Article 2, point (33)
Article 3, points (e) and (f)	--
Article 3, point (g)	Article 2, point (35)
Article 3, point (h)	--
Article 3, point (i)	Article 2, point (34)
Article 3, point (j)	--
Article 3, point (k)	Article 2, point (36)
Article 3, point (l)	Article 2, point (37)

Article 3, point (m)	Article 2, point (39)
Article 3, point (n)	Article 2, point (38)
Article 3, point (o)	--
--	Article 2, points (40), (41), (42), (43), and (44)
Article 4(1)	Annex II, point (f), first subpoint
Article 4(2)	Article 14(10), second subparagraph
Article 4(3)	--
Article 5	Article 14(10), first subparagraph and Annex X
Article 6	Article 14(1) and (3), Annex VIII and IX
Article 7(1)	Article 14(11)
Article 7(2) and (3)	--
Article 8	Article 15(5)
--	Article 15(6), (7), (8) and (9)
Article 9	--
Article 10(1) and (2)	Article 14(1) and 24(2), Annex XIV, Part 2
Article 10(3)	Article 24(6)
Article 11	Article 24(3)
Article 12(1) and (3)	--

Article 12(2)	Annex II, point (c)
Article 13	Article 22(2)
Article 14	--
Article 15	Article 28
Article 16	--
Article 17	Article 29
Article 18	Article 30
Annex I	Annex I, Part II
Annex II	Annex I, Part I and Part II, last subparagraph
Annex III	Annex II
Annex IV	Annex VIII
--	Annex IX

Directive 2006/32/EC	This Directive
Article 1	Article 1(1)
Article 2	Article 1(1)
Article 3, point (a)	Article 2, point (1)
Article 3, point (b)	Article 2, point (4)
Article 3, point (c)	Article 2, point (6)
Article 3, point (d)	Article 2, point (5)

--	Article 2, points (2) and (3)
Article 3, point (e)	Article 2, point (7)
Article 3, points (f), (g), (h) and (i)	--
--	Article 2, points (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18) and (19)
Article 3, point (j)	Article 2, point (27)
--	Article 2, point (28)
Article 3, point (k)	--
Article 3, point (l)	Article 2, point (25)
--	Article 2, point (26)
Article 3, point (m)	--
Article 3, point (n)	Article 2, point (23)
Article 3, point (o)	Article 2, point (20)
Article 3, point (p)	Article 2, point (21)
Article 3, point (q)	Article 2, point (22)
Article 3, points (r) and (s)	--
--	Article 2, points (24), (29), (44) and (45)

--	Article 3
--	Article 4
Article 4	--
Article 5	Articles 5 and 6
Article 6(1)(a)	Article 7 (8), points (a) and (b)
Article 6 (1)(b)	Article 18 (3)
Article 6 (2)	Article 7(1), (5), (6), (7), (9), (10), (11) and (12)
--	Article 7(2) and (3)
Article 6 (3)	Article 18(2), points (b) and (c)
Article 6 (5)	--
Article 7	Article 17
Article 8	Article 16(1)
--	Article 16(2) and (3)
Article 9(1)	Article 19
Article 9(2)	Article 18(1), point (d), subpoint (i)
--	Article 18(1), points (a), (b), (c), (d), subpoint (ii), and (e)
Article 10(1)	Article 15(4)
Article 10(2)	Article 15(3)
-	Article 15(7), (8) and (9)

Article 11	Article 20
Article 12(1)	Article 8(1)
Article 12(2)	--
--	Article 8(2), (3), (4), (5), (6) and (7)
Article 12(3)	--
Article 13(1)	Article 9
Article 13(2)	Article 10 and Annex VII, point 1.1
Article 13(3)	Annex VII, points 1.2 and 1.3
--	Article 11
--	Article 12
--	Article 13
--	Article 15(1) and (2)
--	Article 18(2), points (a) and (d)
--	Article 21
Article 14(1) and (2)	Article 24(1) and (2)
Article 14(3)	--
Article 14(4) and (5)	Article 24(3) and (5)
--	Article 24(4), (7), (8), (9), (10) and (11)
--	Article 22(1)

Article 15(1)	Article 22(2)
Article 15(2), (3) and (4)	--
--	Article 23
--	Article 24(4), (7), (8), (9), (10) and (11)
	Article 25
Article 16	Article 26
Article 17	Article 27
Article 18	Article 28
Article 19	Article 29
Article 20	Article 30
Annex I	--
Annex II	Annex IV
Annex III	--
Annex IV	--
Annex V	--
Annex VI	Annex III
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--	Annex XI
--	Annex XII
--	Annex XIII
--	Annex XIV
--	Annex XV

ANNEX

Draft Statement by the European Parliament, the Council and the Commission on the exemplary role of their buildings in the context of the Energy Efficiency Directive

The European Parliament, the Council and the Commission declare that, due to the high visibility of their buildings and the leading role they should play with regard to their buildings' energy performance, they will, without prejudice to applicable budgetary and procurement rules, undertake to apply the same requirements to the buildings they own and occupy as those applicable to the buildings of Member States' central government under Articles 5 and 6 of Directive 2012/XX/EU of the European Parliament and of the Council on energy efficiency and repealing Directives 2004/8/EC and 2006/32/EC.

Draft Commission statement in relation to energy audits

As explained in its Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of Regions on EU State Aid Modernisation (COM(2012) 2009 final of 8.5.2012), the Commission has identified the EU Guidelines on State Aid for Environmental Protection as one of the instruments which can contribute to the Europe 2020 Growth Strategy and objectives and which may be revised by the end of 2013. In such context, the Commission may verify that the future rules on State Aid for Environmental Protection continue to promote in an optimal way sustainable growth, inter alia through promotion of energy efficiency in line with the objectives of the present Directive.

Draft Commission statement in relation to EU ETS

In the light of the need to maintain the incentives in the EU's Emissions Trading System the Commission undertakes:

– to urgently present the first report pursuant to Article 10(5) of Directive 2003/87/EC on the carbon market accompanied by a review of the auction time profile of phase 3

– to examine in this report options, including among others permanent withholding of the necessary amount of allowances, for action with a view to adopting as soon as possible further appropriate structural measures to strengthen the ETS during phase 3, and make it more effective.

(1) OJ C 24, 28.1.2012, p. 134.
(2) OJ C 54, 23.2.2012, p. 49.
(3) OJ C 24, 28.1.2012, p. 134.
(4) OJ C 54, 23.2.2012, p.49.
(5) Position of the European Parliament of 11 September 2012.
(6) ***OJ L 114, 27.4.2006, p. 64.***
(7) OJ L 140, 5.6.2009, p. 136.
(8) OJ L 52, 21.2.2004, p. 50.
(9) ***OJ L 140, 5.6.2009, p. 16.***
(10) OJ L 153, 18.6.2010, p. 13.
(11) ***OJ L 275, 25.10.2003, p. 32.***
(12) ***OJ L 211, 14.8.2009, p.55.***
(13) ***OJ L 211, 14.8.2009, p.94.***
(14) ***OJ L 334, 17.12.2010, p.17.***
(15) ***OJ L 140, 5.6.2009, p. 114.***
(16) OJ L 211, 14.8.2009, p. 15.
(17) OJ L 211, 14.8.2009, p. 36.

(18) *OJ L 1, 5.1.2010, p. 10.*
(19) *OJ L 310, 9.11.2006, p. 15.*
(20) *OJ L 285, 31.10.2009, p. 10.*
(21) *OJ L 153, 18.6.2010, p. 1.*
(22) *OJ L 55, 28.2.2011, p. 13.*
(23) OJ L 304, 14.11.2008, p. 1.
(24) *OJ L 134, 30.4.2004, p.114.*
(25) *OJ L 124, 20.5.2003, p. 36.*
(26) *OJ L 216, 20.8.2009, p. 76.*
(27) * *OJ: Please insert the date - 18 months after entry into force of this Directive.*
(28) * *OJ: Please insert the date - 12 months after entry into force of this Directive.*
(29) * *OJ:Please insert the date - three years after entry into force of this Directive.*
(30) * OJ: Please insert the date - *18 months* after entry into force of this Directive.
(31) *OJ L 197, 21.7.2001, p.30.*
(32) * OJ: Please insert the date - *18 months* after entry into force of this Directive.
(33) *OJ L 24, 29.1.2008, p.8.*
(34) * OJ: Please insert the date of entry into force of this Directive.
(35) *OJ L 191, 23.7.2010, p. 28.*
(36) * *OJ: Please insert the date - three years after entry into force of this Directive.*
(37) * OJ: Please insert the date - *18 months* after entry into force of this Directive.
(38) * OJ: Please insert the date - *18 months* after the entry into force of this Directive.
(39) ** OJ - instructions will be given to the OJ on whether to delete the square brackets (and keep the references) or else to delete the brackets and the references contained therein. It will depend on when the actual transposition date will be.
(40) OJ L 338, 17.12.2008, p. 55.
(41) OJ L 381, 28.12.2006, p. 24.
(42) OJ L 342, 22.12.2009, p. 46.
(43) Member States may apply different conversion factors if these can be justified.
(44) *OJ L 140, 5.6.2009, p. 1.*
(45) *OJ L 145, 31.5.2011, p. 1.*
(46) *OJ L 283, 31.10.2003, p.51.*
(47) *OJ L 347, 11.12.2006, p.1.*
(48) * *OJ: Please insert the date: 12 months after the entry into force of this Directive.*
(49) *The national discount rate chosen for the purpose of economic analysis should take into account data provided by the European Central Bank.*
(50) *X=current year.*
(51) Recommendations on Measurement and Verification Methods in the framework of the Directive 2006/32/EC on Energy End-Use Efficiency and Energy Services.

Waiver of the parliamentary immunity of Jaroslaw Leszek Walesa

European Parliament decision of 11 September 2012 on the request for waiver of the immunity of Jarosław Leszek Wałęsa (2012/2112(IMM))

P7_TA-PROV(2012)0307 **A7-0230/2012**

The European Parliament ,

– having regard to the request for waiver of the immunity of Jarosław Leszek Wałęsa, forwarded on 20 April 2012 by the Public Prosecutor of the Polish Republic in connection with legal action concerning an alleged offence and announced in plenary on 23 May 2012,

– having given Jarosław Leszek Wałęsa the opportunity to be heard in accordance with Rule 7(3) of its Rules of Procedure,

– having regard to Articles 8 and 9 of Protocol No 7 on the Privileges and Immunities of the European Union and Article 6(2) of the Act of 20 September 1976 concerning the election of the members of the European Parliament by direct universal suffrage,

– having regard to the judgments of the Court of Justice of the European Union of 12 May 1964, 10 July 1986, 15 and 21 October 2008, 19 March 2010 and 6 September 2011[(1)] ,

– having regard to Article 105 of the Constitution of the Republic of Poland, and Articles 7b(1) and 7c, in conjunction with Article 10b, of the Polish Act of 9 May 1996 on the performance of the mandate of deputy or senator,

– having regard to Rules 6(2) and 7 of its Rules of Procedure,

– having regard to the report of the Committee on Legal Affairs (**A7-0230/2012**),

A. whereas the Public Prosecutor of the Polish Republic has requested the waiver of the parliamentary immunity of a Member of the European Parliament, Jarosław Leszek Wałęsa, in connection with legal action concerning an alleged offence;

B. whereas the request by the Public Prosecutor relates to proceedings concerning an alleged offence under the Polish Act of 20 May 1971 establishing a Code of Offences and the Road Traffic Act of 20 June 1997 in relation to a traffic accident on 2 September 2011 in Poland in which Jarosław Leszek Wałęsa was involved and in which he was severely injured;

C. whereas, according to Article 9 of the Protocol on the Privileges and Immunities of the European Union, Members shall enjoy, in the territory of their own State, the immunities accorded to members of their Parliament;

D. whereas Jarosław Leszek Wałęsa declined to be heard by the Committee on Legal Affairs, but has indicated that he prefers a quick conclusion of this issue and is of the opinion that his immunity should be waived;

E. whereas whether immunity is or is not to be waived in a given case is for Parliament alone to decide; whereas Parliament may reasonably take account of the Member's position in reaching its decision to waive or not to waive his immunity[(2)] ;

F. whereas the facts of the case, as manifested in the submissions to the Committee on Legal Affairs, indicate that the alleged activities do not have a direct, obvious connection with Jarosław Leszek Wałęsa's performance of his duties as a Member of the European Parliament;

G. whereas Jarosław Leszek Wałęsa was therefore not acting in the performance of his duties as a Member of the European Parliament;

1. Decides to waive the immunity of Jarosław Leszek Wałęsa;

2. Instructs its President to forward this decision and the report of its competent committee immediately to the competent authority of Poland and to Jarosław Leszek Wałęsa.

(1) Case 101/63 *Wagner v Fohrmann and Krier* [1964] ECR 195, Case 149/85 *Wybot v Faure and Others* [1986] ECR 2391, Case T-345/05 *Mote v Parliament* [2008] ECR II-2849, Joined Cases C-200/07 and C-201/07 *Marra v De Gregorio and Clemente* [2008] ECR I-7929, Case T-42/06 *Gollnisch v Parliament* (not yet published in the ECR) and Case C-163/10 *Patriciello* (not yet published in the ECR).

(2) Case T-345/05 *Mote v Parliament* [2008] ECR II-2849, para. 28.

Waiver of the parliamentary immunity of Birgit Collin-Langen

European Parliament decision of 11 September 2012 on the request for waiver of the immunity of Birgit Collin-Langen (2012/2128(IMM))

P7_TA-PROV(2012)0308 **A7-0229/2012**

The European Parliament ,

– having regard to the request for waiver of the immunity of Birgit Collin-Langen, forwarded on 27 April 2012 by the Senior Prosecutor in Koblenz (Germany), in connection with legal action concerning an alleged offence and announced in plenary on 14 June 2012,

– having heard Birgit Collin-Langen in accordance with Rule 7(3) of its Rules of Procedure,

– having regard to Articles 8 and 9 of Protocol No 7 on the Privileges and Immunities of the European Union, and Article 6(2) of the Act of 20 September 1976 concerning the election of the members of the European Parliament by direct universal suffrage,

– having regard to the judgments of the Court of Justice of the European Union of 12 May 1964, 10 July 1986, 15 and 21 October 2008, 19 March 2010 and 6 September 2011[(1)] ,

– having regard to Article 46 of the German Basic Law (*Grundgesetz*),

– having regard to Rules 6(2) and 7 of its Rules of Procedure,

– having regard to the report of the Committee on Legal Affairs (**A7-0229/2012**),

A. whereas the Senior Prosecutor has requested the waiver of the parliamentary immunity of a Member of the European Parliament, Birgit Collin-Langen, in connection with legal action concerning an alleged offence;

B. whereas the request by the Senior Prosecutor relates to proceedings concerning an alleged offence under Section 331 of the German Criminal Code which states that ‘A public official or a person entrusted with special public service functions who demands, allows himself to be promised or accepts a benefit for himself or for a third person for the discharge of an official duty shall be liable to imprisonment not exceeding three years or a fine’;

C. whereas, according to Article 9 of the Protocol on the Privileges and Immunities of the European Union, Members shall enjoy, in the territory of their own State, the immunities accorded to members of their Parliament;

D. whereas, under Article 46(2) of the German Basic Law (*Grundgesetz*), a Member may not be called to account for a punishable offence without the permission of Parliament unless apprehended while committing the offence or in the course of the following day;

E. whereas, consequently, Parliament must thus waive the parliamentary immunity of Birgit Collin-Langen if the proceedings against her are to go ahead;

F. whereas Birgit Collin-Langen has been heard by the Committee on Legal Affairs, where she asked for a quick conclusion of this issue and declared that her immunity should be waived;

G. whereas whether immunity is or is not to be waived in a given case is for Parliament alone to decide; whereas Parliament may reasonably take account of the Member's position in reaching its decision to waive or not to waive his/her immunity[(2)] ;

H. whereas Birgit Collin-Langen has been a Member of the European Parliament since 17 March 2012;

I. whereas the facts of the case date back to 2006-2008 and, as shown by the submissions to the Committee on Legal Affairs, the alleged activities do not have a direct, obvious connection with Birgit Collin-Langen's performance of her duties as a Member of the European Parliament;

J. whereas Birgit Collin-Langen was therefore not acting in the performance of her duties as a Member of the European Parliament;

K. whereas the facts set out in the explanatory statement do not constitute a case of *fumus persecutionis* ;

1. Decides to waive the immunity of Birgit Collin-Langen;

2. Instructs its President to forward this decision and the report of its competent committee immediately to the appropriate authorities of the Federal Republic of Germany and to Birgit Collin-Langen.

(1) Case 101/63 *Wagner v Fohrmann and Krier* [1964] ECR 195, Case 149/85 *Wybot v Faure and Others* [1986] ECR 2391, Case T-345/05 *Mote v Parliament* [2008] ECR II-2849, Joined Cases C-200/07 and C-201/07 *Marra v De Gregorio and Clemente* [2008] ECR I-7929, Case T-42/06 *Gollnisch v Parliament* (not yet published in the ECR) and Case C-163/10 *Patriciello* (not yet published in the ECR).
(2) Case T-345/05 *Mote v Parliament* [2008] ECR II-2849, para. 28.

Alleged transportation and illegal detention of prisoners in European countries by the CIA

European Parliament resolution of 11 September 2012 on alleged transportation and illegal detention of prisoners in European countries by the CIA: follow-up of the European Parliament TDIP Committee report (2012/2033(INI))

P7_TA-PROV(2012)0309 A7-0266/2012

The European Parliament ,

– having regard to the Treaty on European Union (TEU), in particular Articles 2, 3, 4, 6, 7 and 21 thereof,

– having regard to the Charter of Fundamental Rights of the European Union, in particular Articles 1, 2, 3, 4, 18 and 19 thereof,

– having regard to the European Convention on Human Rights and the protocols thereto,

– having regard to the relevant UN human rights instruments, in particular the International Covenant on Civil and Political Rights of 16 December 1966, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 and the relevant protocols thereto, and the International Convention for the Protection of All Persons from Enforced Disappearance of 20 December 2006,

– having regard to Article 5 of the North Atlantic Treaty of 1949,

– having regard to Council Regulation (EC) No 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment[(1)] ,

– having regard to the ‘Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens’[(2)] and

to the Commission communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 20 April 2010 on 'Delivering an area of freedom, security and justice for Europe's citizens: Action Plan Implementing the Stockholm Programme' (**COM(2010)0171**),

– having regard to the Guidelines to EU Policy Towards Third countries on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to the EU Guidelines on the Death Penalty,

– having regard to the Declaration of Brussels of 1 October 2010, adopted at the 6th Conference of the Parliamentary Committees for the Oversight of Intelligence and Security Services of the European Union Member States,

– having regard to the UN Joint study on global practices in relation to secret detention in the context of countering terrorism, prepared by: the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak; the Working Group on Arbitrary Detention, represented by its Vice-Chair, Shaheen Sardar Ali; and the Working Group on Enforced and Involuntary Disappearances, represented by its Chair, Jeremy Sarkin[(3)] ,

– having regard to the UN Human Rights Council Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, focusing on commissions of inquiry in response to patterns or practices of torture or other forms of ill-treatment[(4)] ,

– having regard to the Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, entitled 'Compilation of good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism, including on their oversight'[(5)] ,

– having regard to the contributions from the Council of Europe, in particular the work of the former Commissioner for Human Rights, Thomas Hammarberg, and of the European Committee for the Prevention of Torture (CPT), as well as to the relevant resolutions of the Parliamentary Assembly of the Council of Europe, in particular those entitled 'Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states'[(6)] , and 'Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report'[(7)] , and to the report of the Parliamentary Assembly's Committee on Legal Affairs and Human Rights entitled 'Abuse of state secrecy and national security: obstacles to parliamentary and judicial scrutiny of human rights violations'[(8)] ,

– having regard to the European Court of Human Rights cases al-Nashiri v. Poland, Abu Zubaydah v. Lithuania, Abu Zubaydah v. Poland and el-Masri v. 'the former Yugoslav Republic of Macedonia', which was heard by the Grand Chamber on 16 May 2012,

– having regard to its resolution of 25 November 2009 on the Commission communication to Parliament and the Council entitled 'An area of freedom, security and justice serving the citizen – Stockholm programme'[(9)] ,

– having regard to its resolutions of 14 February 2007[(10)] and 19 February 2009[(11)] on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners,

– having regard to its resolutions on Guantánamo, in particular those of 9 June 2011 on 'Guantánamo: imminent death penalty decision'[(12)] , of 4 February 2009 on the return and resettlement of the Guantánamo detention facility inmates[(13)] and of 13 June 2006 on the situation of prisoners at Guantánamo[(14)] , and to its recommendation to the Council of 10 March 2004 on the Guantánamo detainees' right to a fair trial[(15)] ,

– having regard to its resolution of 15 December 2010 on 'the situation of fundamental rights in the European Union (2009) – effective implementation after the entry into force of the Treaty of Lisbon'[(16)] ,

– having regard to its resolution of 14 December 2011 on 'the EU counter-terrorism policy: main achievement and future challenges'[(17)] ,

– having regard to the speech given by Jacques Barrot, Vice-President of the Commission, in Strasbourg on 17 September 2008[(18)] ,

– having regard to the statements made by the Commission on the need for the Member States concerned to conduct investigations into allegations of involvement in the CIA rendition and secret detention programme, and to the documents communicated to the rapporteur by the Commission, including four letters sent to Poland, four to Romania and two to Lithuania between 2007 and 2010,

– having regard to the Commission communication to the Council and Parliament of 15 October 2003 on 'Article 7 of the Treaty on European Union: Respect for and promotion of values on which the Union is based' (**COM(2003)0606**),

– having regard to the letter of 29 November 2005 from the EU Presidency to US Secretary of State Condoleezza Rice, requesting any 'clarification the US can give about these reports [on the alleged detention or transportation of terrorists suspects in or through some EU Member States] in the hope that this will allay parliamentary and public concerns',

– having regard to the 2748th/2749th meeting of the General Affairs and External Relations Council of 15 September 2006, which debated the item 'Fight against terrorism – Secret detention facilities',

– having regard to the EU statement made on 7 March 2011 at the 16th session of the Human Rights Council regarding the aforementioned UN joint study on secret detention,

– having regard to the article entitled 'Counter-terrorism and human rights' by Villy Sovndal, Gilles de Kerchove and Ben Emmerson, published in the 19 March 2012 issue of *European Voice* ,

– having regard to US Secretary of State Condoleezza Rice's reply of 5 December 2005 to the EU Presidency's letter of 29 November 2005, stating that '[...] rendition is a vital tool in combating terrorism. Its use is not unique to the United States, or to the current administration', denying allegations of direct US involvement in torture and emphasising that the 'purpose' of rendition was not that the person rendered be tortured, and to US Secretary of State Condoleezza Rice's statements confirming that 'we [the United States] are respecting the sovereignty of our partners'[(19)] ,

– having regard to former US President George W. Bush's acknowledgement, in his speech from the East Room of the White House of 6 September 2006, of the existence of a CIA-led programme of rendition and secret detention, including overseas operations,

– having regard to George W. Bush's memoirs, which were published on 9 November 2010,

– having regard to the unclassified version, released in August 2009, of CIA Inspector General John Helgerson's 2004 report on the CIA's Bush-era interrogation operations,

– having regard to the 2007 report of the International Committee of the Red Cross on the treatment of 14 high-value detainees in CIA custody, which became publicly accessible in 2009,

– having regard to the various initiatives at national level to account for Member States' involvement in the CIA rendition and secret detention programme, including the ongoing inquiry in Denmark and past inquiries in Sweden, the ongoing criminal investigations in Poland and the United Kingdom, past criminal proceedings in Italy, Germany, Lithuania, Portugal and Spain, the all-party group parliamentary investigation in the United Kingdom and past parliamentary investigations in Germany, Lithuania, Poland and Romania,

– having regard to the two-year Portuguese judicial inquiry, which was suddenly closed in 2009,

– having regard to the conclusions of the national inquiries already conducted in some Member States,

– having regard to the numerous media reports and acts of investigative journalism, in particular – but not limited to – the 2005[(20)] and 2009[(21)] ABC News reports and the 2005[(22)] *Washington Post* reports, without which the acts of rendition and detention would have remained truly secret,

– having regard to the research and investigations carried out, and the reports produced, by independent researchers, civil society organisations and national and international non-governmental organisations since 2005, most notably by Human Rights Watch[(23)] , Amnesty International and Reprieve,

– having regard to the hearings of its Committee on Civil Liberties, Justice and Home Affairs (LIBE) held on 27 March 2012 and of its Subcommittee on Human Rights held on 12 April 2012, the LIBE delegation's visit to Lithuania of 25-27 April 2012, the rapporteur's visit to Poland of 16 May 2012 and all the written and oral contributions received by the rapporteur,

– having regard to the joint request for flight data submitted to the Director of Eurocontrol by the Chair of the Committee on Civil Liberties, Justice and Home Affairs and the rapporteur on 16 April 2012 and to the comprehensive response received from Eurocontrol on 26 April 2012,

– having regard to the DG IPOL note entitled 'The results of the inquiries into the CIA's programme of extraordinary rendition and secret prisons in European states in light of the new legal framework following the Lisbon Treaty',

– having regard to Rules 48 and 50 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Foreign Affairs (**A7-0266/2012**),

A. whereas Parliament has condemned the US-led CIA rendition and secret detention programme involving multiple human rights violations, including unlawful and arbitrary detention, torture and other ill-treatment, violations of the non-refoulement principle, and enforced disappearance; whereas its Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (hereinafter the 'Temporary Committee') has documented the use of European airspace and territory by the CIA, and whereas Parliament has since repeated its demand for full investigations into the collaboration of national governments and agencies with the CIA programme;

B. whereas Parliament has repeatedly called for the fight against terrorism fully to respect human dignity, human rights and fundamental freedoms, including in the context of international cooperation in the field, on the basis of the European Convention of Human Rights, the EU Charter of Fundamental Rights and national constitutions and fundamental rights legislation, and whereas it reiterated this call most recently in its report on EU counter-terrorism policy, in which it also stated that respect for human rights is a precondition for ensuring the policy's effectiveness;

C. whereas Parliament has repeatedly and strongly condemned illegal practices including 'extraordinary rendition', abduction, detention without trial, disappearance, secret prisons and torture, and has demanded full investigations into the alleged degree of involvement of some Member States in collaboration with US authorities, notably the CIA, including involvement on EU territory;

D. whereas the purpose of this resolution is to 'follow up politically the proceedings of the Temporary Committee and to monitor the developments, and in particular, in the event that no appropriate action has been taken by the Council and/or the Commission, to determine whether there is a clear risk of a serious breach of the principles and values on which the European Union is based, and to recommend to it any resolution, taking as a basis Articles 6 and 7 of the Treaty on European Union, which may prove necessary in this context'[(24)] ;

E. whereas the EU is founded on a commitment to democracy, the rule of law, human rights and fundamental freedoms, respect for human dignity and international law, not only in its internal policies, but also in its external dimension; whereas the EU's commitment to human rights, reinforced by the entry into force of the EU Charter of Fundamental Rights and the process of accession to the European Convention on Human Rights, must be reflected in all policy areas in order to make EU human rights policy effective and credible;

F. whereas a proper accountability process is essential in order to preserve citizens' trust in the democratic institutions of the EU, to protect and promote human rights effectively in the EU's internal and external policies, and to ensure legitimate and effective security policies based on the rule of law;

G. whereas no Member State has so far wholly fulfilled its obligations to protect, preserve and respect international human rights and prevent violations thereof;

H. whereas the instruments governing the EU's Common Foreign and Security Policy (CFSP) include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and the two Optional Protocols thereto, the Convention Against Torture (CAT) and the Optional Protocol thereto, the European Convention on Human Rights, the EU Charter of Fundamental Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which together not only mandate an absolute ban on torture but also entail a positive obligation to investigate allegations of torture and provide remedies and reparation; whereas the guidelines to EU policy on torture provide the framework for the EU's efforts 'to prevent and eradicate torture and ill-treatment in all parts of the world';

I. whereas, in order to ensure the promotion of international law and respect for human rights, all association, trade and cooperation agreements contain human rights clauses, and whereas the EU also engages in political dialogues with third countries on the basis of human rights guidelines, which include combating the death penalty and torture; whereas, in the framework of the European Instrument for Democracy and Human Rights (EIDHR), the EU supports civil society organisations that fight torture and provide support for the rehabilitation of victims of torture;

J. whereas secret detention, which is a form of enforced disappearance, may amount, if widely or systematically practised, to a crime against humanity; whereas states of emergency and the fight against terrorism constitute an enabling environment for secret detention;

K. whereas, although the EU has demonstrated its commitment to avoiding collusion in torture through Council Regulation (EC) No 1236/2005[(25)] , most recently amended in December 2011[(26)] , which prohibits any export or import of goods that have no practical use other than for the purpose of capital punishment, torture and other cruel, inhuman or degrading treatment or punishment, more work still needs to be done to ensure comprehensive coverage;

L. whereas relying on diplomatic assurances alone to authorise the extradition or deportation of a person to a country where there are substantial grounds for believing that individuals would be in danger of being subjected to torture or ill-treatment is incompatible with the absolute prohibition of torture in international law, EU law and the

national constitutions and laws of the Member States[(27)] ;

M. whereas the Council admitted on 15 September 2006 that 'the existence of secret detention facilities where detained persons are kept in a legal vacuum is not in conformity with international humanitarian law and international criminal law', but has so far failed to recognise and condemn the involvement of Member States in the CIA programme, even though the use of European airspace and territory by the CIA has been acknowledged by the political and judicial authorities of Member States;

N. whereas there are enduring human rights violations due to the CIA programme, as evidenced in particular by the ongoing administrative detention in Guantánamo Bay of Abu Zubaydah and Abd al-Rahim al-Nashiri, who have been granted victim status in the Polish criminal investigation into CIA secret prisons;

O. whereas research by the UN, the Council of Europe, national and international media, investigative journalists and civil society has brought to light new, concrete information on the location of secret CIA detention sites in Europe, rendition flights through European airspace and the persons transported or detained;

P. whereas the commission of illegal acts on EU territory may have developed in the context of NATO multilateral or bilateral agreements;

Q. whereas national inquiries and international research prove that members of the North Atlantic Treaty Organisation (NATO) agreed to commit themselves to measures in the campaign against terrorism which enabled secret airline traffic and use of EU Member States' territory in the CIA-led programme of rendition, indicating collective knowledge of the programme by Member States which are also members of NATO;

R. whereas the UN Joint study on global practices in relation to secret detention in the context of countering terrorism (A/HRC/13/42), prepared by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances, detailed the use of secret detention sites on EU Member States' territory as part of the CIA programme, and whereas follow-up letters were sent to Member States requesting additional information as detailed in the communications reports of the Special Procedures, including that of 23 February 2012[(28)] ;

S. whereas the 2011 Council of Europe report states that the data obtained from the Polish agencies in 2009 and 2010 'provide definite proof' that seven CIA-associated aircraft landed in Poland, and whereas Polish media reported that charges had been brought against former Polish intelligence chiefs, and revealed possible contacts between intelligence officers and the Polish Government concerning the use of a CIA detention facility on Polish territory; whereas in 2011 Romanian investigative journalists sought to demonstrate the existence of a 'black site' in the Romanian national registry office for classified information[(29)] , on the basis of information provided by former CIA employees; whereas the existence of this 'black site' has been denied by the Romanian authorities and was not demonstrated by the inquiry conducted by the Romanian parliament; whereas former Libyan dissidents have started legal proceedings against the UK for the direct involvement of MI6 in their own and their family members' rendition, secret detention and torture;

T. whereas the Lithuanian authorities have endeavoured to shed light on Lithuania's involvement in the CIA programme by carrying out parliamentary and judicial inquiries; whereas the parliamentary investigation by the Seimas Committee on National Security and Defence concerning the alleged transportation and confinement of persons detained by the CIA on Lithuanian territory established that five CIA-related aircraft landed in Lithuania between 2003 and 2005 and that two tailored facilities suitable for holding detainees in Lithuania (Projects Nos 1 and 2) were prepared at the request of the CIA; whereas the LIBE delegation thanks the Lithuanian authorities for welcoming Members of the European Parliament to Vilnius in April 2012 and allowing the LIBE delegation access to Project No 2; whereas the layout of the buildings and installations inside appears to be compatible with the detention of prisoners; whereas many questions relating to CIA operations in Lithuania remain open despite the subsequent judicial investigation conducted in 2010 and closed in January 2011; whereas the Lithuanian authorities have expressed their readiness to re-launch investigations if other new information were to come to light, and whereas the Prosecutor's Office has offered to provide further information on the criminal investigation in response to a written request from Parliament;

U. whereas the Portuguese authorities have yet to provide clarification of the substantial number of elements indicating that many flights, identified inter alia by the Temporary Committee, served to carry out transfers between Bagram, Diego Garcia, secret prisons and Guantánamo;

V. whereas research and court findings on the logistics involved in covering up these illegal operations, including dummy flight plans, civil and military aircraft classified as state flights and the use of private aviation companies to conduct CIA renditions, have further revealed the systematic nature and the extent of European involvement in the CIA programme; whereas an analysis of the new data provided by Eurocontrol supports in particular the argument that, in order to conceal the origin and destination of transfers of prisoners, contractors operating renditions missions

switched from one plane to another mid-route;

W. whereas the EU has developed internal security and counter-terrorism policies based on police and judicial cooperation and the promotion of intelligence-sharing; whereas these policies should be grounded in respect for fundamental rights and the rule of law and effective democratic parliamentary oversight of intelligence services;

X. whereas, according to the CPT, 'the interrogation techniques applied in the CIA-run overseas detention facilities have certainly led to violations of the prohibition of torture and inhuman and degrading treatment'(30) ;

Y. whereas EU-US relations are based on a strong partnership and cooperation in many fields, on the basis of common shared values of democracy, the rule of law and fundamental rights; whereas the EU and the US have strengthened their engagement in the fight against terrorism since the terrorist attacks of 11 September 2001, notably through the Joint Declaration on Counter-terrorism of 3 June 2010, but whereas it is necessary to ensure compliance in practice with declared commitments and to overcome divergences between EU and US policies in the fight against terrorism;

Z. whereas in December 2011 the US authorities passed the National Defence Authorisation Act (NDAA), which codifies in law the indefinite detention of persons suspected of engaging in terrorist actions within the US and undermines the right to due process and a fair trial; whereas the scope of the NDAA is the subject of a legal challenge;

AA. whereas, on 22 January 2009, President Obama signed three executive orders banning torture during interrogations, establishing an inter-agency task force to conduct a systematic review of detention policies and procedures and review all individual cases and ordering the closure of the Guantánamo Bay detention facility;

AB. whereas, however, the Guantánamo Bay detention facility has yet to be closed on account of strong opposition from the US Congress; whereas, in order to hasten its closure, the US has called on EU Member States to host Guantánamo detainees; whereas the UN High Commissioner for Human Rights has expressed deep disappointment at the failure to close the Guantánamo Bay detention facility and at the entrenchment of a system of arbitrary detention;

AC. whereas Guantánamo detainees are still subjected to trials by military tribunals, notably following the US President's decision of 7 March 2011 to sign the executive order lifting a two-year freeze on new military trials and the law of 7 January 2012 barring transfers of Guantánamo detainees to the US for trial;

General

1. Recalls that counter-terrorism strategies can be effective only if they are conducted in strict compliance with human rights obligations, in particular the right to due process;

2. Reiterates that effective counter-terrorism measures and respect for human rights are not contradictory, but are complementary and mutually reinforcing aims; points out that respect for fundamental rights is an essential element in successful counter-terrorism policies;

3. Highlights the extremely sensitive nature of anti-terrorism policies; believes that only genuine grounds of national security can justify secrecy; recalls, however, that in no circumstance does state secrecy take priority over inalienable fundamental rights and that therefore arguments based on state secrecy can never be employed to limit states' legal obligations to investigate serious human rights violations; considers that definitions of classified information and state secrecy should not be overly broad and that abuses of state secrecy and national security constitute a serious obstacle to democratic scrutiny;

4. Stresses that special procedures ought not to be applied to persons suspected of terrorism; points out that everyone must be able to benefit from all the guarantees included in the principle of a fair trial as laid down in Article 6 of the European Convention on Human Rights;

5. Reiterates its condemnation of the practices of extraordinary rendition, secret prisons and torture, which are prohibited under domestic and international legislation stipulating respect for human rights and which breach *inter alia* the rights to liberty, security, humane treatment, freedom from torture, non-refoulement, presumption of innocence, a fair trial, legal counsel and equal protection under the law;

6. Stresses the need to provide guarantees in order to avoid, in the future, any infringement of fundamental rights when anti-terrorism policies are implemented;

7. Considers that Member States have stated their willingness to abide by international law, but until now have not properly fulfilled the positive obligation incumbent upon all Member States to investigate serious human rights violations connected with the CIA programme, and regrets the delays in shedding full light on this case in order to afford full redress to victims as quickly as possible, including apologies and compensation where appropriate;

8. Believes that the difficulties encountered by Member States in conducting inquiries result in a failure to comply fully with their international obligations, which undermines mutual trust in fundamental rights protection and thus becomes the responsibility of the EU as a whole;

9. Reiterates that the commitment of Member States and of the EU to investigate European involvement in the CIA programme is in line with the principle of sincere and loyal cooperation enshrined in Article 4(3) of the TEU;

Accountability process in the Member States

10. Expresses concerns regarding the obstacles encountered by national parliamentary and judicial investigations into some Member States' involvement in the CIA programme, as documented in detail by the 2011 Council of Europe report on abuse of state secrecy and national security, including lack of transparency, classification of documents, prevalence of national and political interests, narrow remits for investigations, restriction of victims' right to effective participation and defence, and lack of rigorous investigative techniques and of cooperation between investigative authorities across the EU; calls on the Member States to avoid basing their national criminal proceedings on such legal grounds, which enable and lead to the termination of criminal proceedings by invoking clauses of the statute of limitations and lead to impunity, and to respect the principle of international customary law, which recognises that the statute of limitations cannot and should not be applied to cases of serious human rights violations;

11. Urges those Member States which have not fulfilled their positive obligation to conduct independent and effective inquiries to investigate human rights violations, taking into account all the new evidence that has come to light; calls in particular on Member States to investigate whether there are secret prisons on their territory or whether operations have taken place whereby people have been held under the CIA programme in facilities on their territory;

12. Notes that the parliamentary inquiry carried out in Romania concluded that no evidence could be found to demonstrate the existence of a secret CIA detention site on Romanian territory; calls on the judicial authorities to open an independent inquiry into alleged CIA secret detention sites in Romania, in particular in the light of the new evidence on flight connections between Romania and Lithuania;

13. Encourages Poland to persevere in its ongoing criminal investigation into secret detention, but deplores the lack of official communication on the scope, conduct and state of play of the investigation; calls on the Polish authorities to conduct a rigorous inquiry with due transparency, allowing for the effective participation of victims and their lawyers;

14. Notes that the parliamentary and judicial inquiries that took place in Lithuania between 2009 and 2011 were not able to demonstrate that detainees had been secretly held in Lithuania; calls on the Lithuanian authorities to honour their commitment to reopen the criminal investigation into Lithuania's involvement in the CIA programme if new information should come to light, in view of new evidence provided by the Eurocontrol data showing that plane N787WH, alleged to have transported Abu Zubaydah, did stop in Morocco on 18 February 2005 on its way to Romania and Lithuania; notes that analysis of the Eurocontrol data also reveals new information through flight plans connecting Romania to Lithuania, via a plane switch in Tirana, Albania, on 5 October 2005, and Lithuania to Afghanistan, via Cairo, Egypt, on 26 March 2006; considers it essential that the scope of new investigations cover, beyond abuses of power by state officials, possible unlawful detention and ill-treatment of persons on Lithuanian territory; encourages the Prosecutor-General's Office to substantiate with documentation the affirmations made during the LIBE delegation's visit that the ‘categorical’ conclusions of the judicial inquiry are that ‘no detainees have been detained in the facilities of Projects No 1 and No 2 in Lithuania’;

15. Notes the criminal investigation launched in the UK on renditions to Libya, and welcomes the decision to continue the wider inquiry into the UK's responsibility in the CIA programme once the investigation has been concluded; calls on the UK to conduct this inquiry with due transparency, allowing the effective participation of victims and civil society;

16. Acknowledges that Member States' investigations have to be based on solid judicial evidence and on respect for national judicial systems and EU law, not just on media and public speculation;

17. Calls on Member States such as Finland, Denmark, Portugal, Italy, the United Kingdom, Germany, Spain, Ireland, Greece, Cyprus, Romania and Poland, which were mentioned in the Temporary Committee's report, to disclose all necessary information on all suspect planes associated with the CIA and their territory; calls on all Member States to respect the right to freedom of information and to respond appropriately to requests for access to information; expresses concern, in the light of this, that most Member States, with the exception of Denmark, Finland, Germany, Ireland and Lithuania, have failed to respond appropriately to requests from Reprieve and from Access Info Europe for access to information for the purposes of their investigations into extraordinary rendition cases;

18. Urges the Member States to revise any provisions or interpretations that are sympathetic to torture, such as Michael Wood's legal opinion (referred to in Parliament's aforementioned resolution of 14 February 2007), which, in defiance of international case law, argues that it is legitimate to receive and use information obtained by torture as long as there is no direct responsibility for it (thereby motivating and justifying the outsourcing of torture);

19. Calls on all Member States to sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance;

20. Calls on the Member States, in the light of the increased cooperation and exchange of information between their secret intelligence and security agencies, to ensure full democratic scrutiny of those agencies and their activities through appropriate internal, executive, judicial and independent parliamentary oversight, preferably through specialised parliamentary committees with extensive remits and powers, including the power to require information, and with sufficient investigative and research resources to be able to examine not only issues such as policy, administration and finances, but also the operational work of the agencies;

Response of the EU institutions

21. Regards it as essential that the EU condemn all abusive practices in the fight against terrorism, including any such acts committed on its territory, so that it can not only live up to its values but also advocate them credibly in its external partnerships;

22. Recalls that the Council has never formally apologised for having violated the principle enshrined in the Treaties of loyal cooperation between the Union institutions when it incorrectly attempted to persuade Parliament to provide deliberately shortened versions of the minutes of the meetings of COJUR (the Council Working Group on Public International Law) and COTRA (the Council Working Party on Transatlantic Relations) with senior North American officials; expects apologies from the Council;

23. Expects the Council finally to issue a declaration acknowledging Member States' involvement in the CIA programme and the difficulties encountered by Member States in the context of inquiries;

24. Calls on the Council to give its full support to the truth-finding and accountability processes in the Member States by formally addressing the issue at JHA meetings, sharing all information, providing assistance to inquiries and, in particular, acceding to requests for access to documents;

25. Calls on the Council to hold hearings with relevant EU security agencies, in particular Europol, Eurojust and the EU Counter-terrorism Coordinator, to clarify their knowledge of Member States' involvement in the CIA programme and the EU's response; also calls on the Council to propose safeguards so as to guarantee respect for human rights in intelligence-sharing, and a strict delimitation of roles between intelligence and law-enforcement activities so that intelligence agencies are not permitted to assume powers of arrest and detention, and to report to Parliament within a year;

26. Calls on the Council to encourage Member States to share best practice with regard to parliamentary and judicial supervision of intelligence services, involving national parliaments and the European Parliament in this effort;

27. Reiterates its call on the Council and Member States to exclude, as a basis for the extradition or deportation of persons deemed to threaten national security, reliance on unenforceable diplomatic assurances where there is a real risk of subjection to torture or ill-treatment or of a trial using evidence thus extracted;

28. Calls on the relevant authorities not to invoke state secrecy in relation to international intelligence cooperation in order to block accountability and redress, and insists that only genuine national security reasons can justify secrecy, which is in any case overridden by non-derogable fundamental rights obligations such as the absolute prohibition on torture;

29. Urges the relevant authorities to ensure that a strict distinction is made between the activities of intelligence and security services, on the one hand, and law enforcement agencies, on the other, so as to ensure that the general principle of *nemo iudex in sua causa* is upheld;

30. Stresses that the Temporary Committee which conducted the investigation underpinning Parliament's resolutions of 14 February 2007 and 19 February 2009 exposed the ways in which the procedures for authorisation and control of civilian aircraft overflying the Member States' airspace or landing in their territory were extremely flawed, thus not only lending themselves to being abused in the CIA's ‘extraordinary renditions’, but also to being easily evaded by operators of organised crime, including terrorist networks; also recalls the Union's competence in the field of transport security and safety and Parliament's recommendation to the Commission that it regulate and monitor the management of EU airspace, airports and non-commercial aviation; calls on the EU and its Member States, therefore, to delay no longer a thorough review of their implementation of the Convention on International Civil Aviation (the Chicago Convention) as regards authorisation and inspections of civilian aircraft overflying the Member States' airspace or landing in their territory, in order to make sure that security is enhanced and checks systematically exercised, requiring anticipated identification of passengers and crews and ensuring that any flights classified as ‘state flights’ (which are excluded from the scope of the Chicago Convention) are given prior and proper authorisation; also recalls Parliament's recommendation that the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft be effectively enforced by Member States;

31. Notes the Commission's initiatives in response to Parliament's recommendations; considers it regrettable, however, that they have not been part of a wider agenda and strategy to ensure accountability for human rights violations committed in the context of the CIA programme and the necessary redress and compensation for victims;

32. Calls on the Commission to investigate whether EU provisions, in particular those on asylum and judicial cooperation, have been breached by collaboration with the CIA programme;

33. Calls on the Commission to facilitate and support human-rights-compliant mutual legal assistance and judicial cooperation between investigating authorities and cooperation between lawyers involved in accountability work in Member States, and in particular to ensure that important information is exchanged and to promote the effective use of all available EU instruments and resources;

34. Calls on the Commission to adopt within a year a framework, including reporting requirements for Member States, for monitoring and supporting national accountability processes, including guidelines on human-rights-compliant inquiries, to be based on the standards developed by the Council of Europe and the UN;

35. Calls on the Commission, in the light of the institutional deficiencies revealed in the context of the CIA programme, to adopt measures aimed at strengthening the EU's capacity to prevent and redress human rights violations at EU level and to provide for the strengthening of Parliament's role;

36. Calls on the Commission to consider proposing measures for permanent cooperation and exchange of information between the European Parliament and parliamentary committees for the oversight of intelligence and security services of the Member States in cases which indicate that joint actions by Member States' intelligence and security services have been undertaken on EU territory;

37. Calls on the Commission to put forward proposals for developing arrangements for democratic oversight of cross-border intelligence activities in the context of EU counter-terrorism policies; intends to make full use of its own parliamentary powers to scrutinise counter-terrorism policies, in line with the recommendations drawn up by Parliament's study department (PE453.207);

38. Calls on the European Ombudsman to investigate the failures of the Commission, the Council and the EU security agencies, notably Europol and Eurojust, to respect fundamental rights and the principles of good administration and loyal cooperation in their response to the TDIP recommendations;

39. Calls on the EU to ensure that its own international obligations are wholly honoured and that EU policies and foreign policy instruments, such as the guidelines on torture and the human rights dialogues, are implemented fully, so that it is in a stronger position to call for the rigorous implementation of human rights clauses in all the international agreements it signs and to urge its major allies, including the US, to comply with their own domestic and international law;

40. Reaffirms that the international fight against terrorism and bilateral or multilateral international cooperation in this area, including as part of NATO or between intelligence and security services, must be conducted only with full respect for human rights and fundamental freedoms and with appropriate democratic and judicial oversight; calls on the Member States, the Commission, the European External Action Service (EEAS) and the Council to ensure that these principles are applied in their foreign relations, and insists that they should make a thorough assessment of their counterparts' human rights records before entering into any new agreement, notably on intelligence cooperation and information-sharing, review existing agreements where those counterparts fail to respect human rights, and inform Parliament of the conclusions of such assessments and reviews;

41. Urges that foreign special services' interference in the affairs of sovereign EU Member States must not recur in the future and that the fight against terrorism must be conducted with full respect for human rights, fundamental freedoms, democracy and the rule of law;

42. Recalls that the Optional Protocol to the CAT requires the setting-up of monitoring systems covering all situations of deprivation of liberty, and stresses that adhering to this international instrument adds a layer of protection; strongly encourages EU partner countries to ratify the Optional Protocol, to create independent national preventive mechanisms that comply with the Paris Principles and to ratify the International Convention for the Protection of All Persons from Enforced Disappearance;

43. Reiterates its call, in accordance with international law, in particular Article 12 of the CAT, for all states faced with credible allegations to make every effort to provide the necessary clarification and, if the indications persist, to conduct thorough investigations and inquiries into all alleged acts of extraordinary rendition, secret prisons, torture and other serious human rights violations, so as to establish the truth and, if necessary, determine responsibility, ensure accountability and avoid impunity, including by bringing individuals to justice where there is evidence of criminal liability; calls on the VP/HR and the Member States, in this connection, to take all the necessary measures to ensure proper follow-up to the UN Joint study on global practices in relation to secret detention in the context of countering terrorism, in particular with regard to the follow-up letter sent to 59 states by the Special Procedures mandate-holders

on 21 October 2011, asking their respective governments to provide an update on the implementation of the recommendations contained in that study;

44. Calls on the EU to ensure that its Member States, associates and partners (in particular those covered by the Cotonou Agreement) which have agreed to host former Guantánamo detainees actually afford them full support as regards living conditions, efforts to facilitate their integration into society, medical treatment including psychological recovery, access to identification and travel documents, the exercise of the right to family reunification and all other fundamental rights granted to people holding political asylum status;

45. Is particularly concerned by the procedure conducted by a US military commission in respect of Abd al-Rahim al-Nashiri, who could be sentenced to death if convicted; calls on the US authorities to rule out the possibility of imposing the death penalty on Mr al-Nashiri and reiterates its long-standing opposition to the death penalty in all cases and under all circumstances; notes that Mr al-Nashiri's case has been before the European Court of Human Rights since 6 May 2011; calls on the authorities of any country in which Mr al-Nashiri was held to use all available means to ensure that he is not subjected to the death penalty; urges the VP/HR to raise the case of Mr al-Nashiri with the US as a matter of priority, in application of the EU Guidelines on the Death Penalty;

46. Reiterates that full application of the human rights clause of agreements with third countries is fundamental in relations between the EU and its Member States and those countries, and considers that there is real momentum to revisit the way European governments have cooperated with dictatorships' apparatus of repression in the name of countering terrorism; considers, in this connection, that the newly revised European Neighbourhood Policy must provide strong support for security sector reform, which must, in particular, ensure a clear separation between intelligence and law enforcement functions; calls on the EEAS, the Council and the Commission to step up their cooperation with the CPT and other relevant Council of Europe mechanisms in the planning and implementation of counter-terrorism assistance projects with third countries and in all forms of counter-terrorism dialogue with third countries;

47. Calls on the Government of the former Yugoslav Republic of Macedonia (FYROM) to ascertain responsibility and ensure accountability for the abduction, apparently through mistaken identity, of Khaled el-Masri, which led to his illegal detention and alleged torture; deplores the lack of action by the Skopje Prosecutor's Office with a view to conducting a criminal investigation into Mr el-Masri's complaint; notes that the European Court of Human Rights has taken up this case and that the Grand Chamber held its first hearing on 16 May 2012; considers that the FYROM Government's alleged conduct in this case is inconsistent with the EU's founding principles of fundamental rights and the rule of law and must be duly raised by the Commission in connection with the FYROM's candidacy for EU accession;

48. Calls on NATO and the US authorities to conduct their own investigations, to cooperate closely with EU and Member State parliamentary or judicial inquiries on these issues[(31)] , including, where relevant, by responding promptly to requests for mutual legal assistance, to disclose information on extraordinary rendition programmes and other practices that violate human rights and fundamental freedoms and to provide suspects' legal representatives with all the necessary information to defend their clients; calls for confirmation that all NATO agreements and NATO-EU and other transatlantic arrangements respect fundamental rights;

49. Pays tribute to US civil society initiatives to set up an independent bipartisan taskforce in 2010 to examine the US Government's policy and actions relating to the capture, detention and prosecution of ‘suspected terrorists’ and US custody during the Clinton, Bush and Obama administrations;

50. Calls on the US, given the cardinal role of the transatlantic partnership and of the United States' leadership in this area, to investigate fully, and secure accountability for, any abuses it has practised, to ensure that relevant domestic and international law is applied fully with a view to ending legal black holes, to end military trials, to apply criminal law fully to terrorist suspects and to restore review of detention, habeas corpus, due process, freedom from torture and non-discrimination between foreign and US citizens;

51. Calls on President Obama to honour the pledge he made in January 2009 to close the Guantánamo Bay detention facility, to allow any detainee who is not to be charged to return to his or her home country or to go to another safe country as quickly as possible, to try Guantánamo detainees against whom sufficient admissible evidence exists without delay in a fair and public hearing by an independent, impartial tribunal and to ensure that, if convicted, they are imprisoned in the US in accordance with the applicable international standards and principles; calls, similarly, for an investigation into human rights violations in Guantánamo and for clarification of responsibility;

52. Calls for any detainees who are not to be charged but cannot be repatriated owing to a real risk of torture or persecution in their home country to be given the opportunity of resettlement in the US under humanitarian protection and afforded redress[(32)] , and urges the Member States also to be willing to host such former Guantánamo detainees;

53. Calls on the US authorities to repeal the power of indefinite detention without charge or trial under the NDAA;

54. Calls on the Conference of Delegation Chairs to ensure the initiation of parliamentary dialogues on the protection of fundamental rights while countering terrorism, on the basis of the findings of the UN Joint study on global practices in relation to secret detention in the context of countering terrorism and the follow-up thereto, and of the UN Compilation of good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism, including on their oversight;

55. Undertakes to devote its next joint parliamentary meeting with national parliaments to reviewing the role of parliaments in ensuring accountability for human rights violations in the context of the CIA programme, and to promoting stronger cooperation and regular exchange between national oversight bodies in charge of scrutinising intelligence services, in the presence of the relevant national authorities, EU institutions and agencies;

56. Is determined to continue fulfilling the mandate given to it by the Temporary Committee, pursuant to Articles 2, 6 and 7 TEU; instructs its Committee on Civil Liberties, Justice and Home Affairs, together with the Subcommittee on Human Rights, to address Parliament in plenary on the matter a year after the adoption of this resolution; considers it essential now to assess the extent to which the recommendations adopted by Parliament have been followed and, where they have not been followed, to analyse why this is the case;

57. Requests the Council, the Commission, the European Ombudsman, the governments and parliaments of the Member States, of the candidate states and of the associated countries, the Council of Europe, NATO, the United Nations and the Government and two Houses of Congress of the United States to keep Parliament informed of any development that may take place in the fields falling within the remit of this report;

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58. Instructs its President to forward this resolution to the Council, the Commission, the European Ombudsman, the governments and parliaments of the Member States, of the candidate states and of the associated countries, and to the Council of Europe, NATO, the United Nations and the Government and two Houses of Congress of the United States.

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(1) OJ L 200, 30.7.2005, p. 1.
(2) OJ C 115, 4.5.2010, p. 1.
(3) A/HRC/13/42, 19.2.2010.
(4) A/HRC/19/61, 18.1.2012.
(5) A/HRC/14/46, 17.5.2010.
(6) Resolution 1507 (2006).
(7) Resolution 1562 (2007).
(8) Doc. 12714, 16.9.2011.
(9) OJ C 285 E, 21.10.2010, p. 12.
(10) OJ C 287 E, 29.11.2007, p. 309.
(11) OJ C 76 E, 25.3.2010, p. 51.
(12) Texts adopted, **P7_TA(2011)0271** .
(13) OJ C 67 E, 18.3.2010, p. 91.
(14) OJ C 300 E, 9.12.2006. p. 136.
(15) OJ C 102 E, 28.4.2004, p. 640.
(16) OJ C 169 E, 15.6.2012, p. 49.
(17) Texts adopted, **P7_TA(2011)0577** .
(18) SPEECH/08/716, 'Une politique visant à assurer l'effectivité des droits fondamentaux sur le terrain'.
(19) 'Remarks en route to Germany', Press Q&A with Condoleezza Rice, Berlin, 5 December 2005, and 'Press Availability at the Meeting of the North Atlantic Council', Brussels, 8 December 2005.
(20) 'Sources Tell ABC News Top Al Qaeda Figures Held in Secret CIA Prisons', ABC News, 5.12.2005.
(21) 'Lithuania Hosted Secret CIA Prison to Get 'Our Ear'', ABC News, 20.8.2009.
(22) 'CIA Holds Terror Suspects in Secret Prisons', 2.11. 2005, and 'Europeans Probe Secret CIA Flights', *Washington Post* , 17.11.2005.
(23) Among others: Human Rights Watch Statement on U.S. Secret Detention Facilities in Europe, 6.11.2005; Amnesty International Europe report entitled 'Open secret: Mounting evidence of Europe's complicity in rendition and secret detention', 15.11.2010; Reprieve report entitled 'Rendition on Record: Using the Right of Access to Information to Unveil the Paths of Illegal Prisoner Transfer Flights', 15.12.2011.
(24) Paragraph 232 of Parliament's aforementioned resolution of 14 February 2007.
(25) OJ L 200, 30.7.2005, p. 1.
(26) OJ L 338, 21.12.2011, p. 31.
(27) Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights, Article 3 of the European Convention on Human Rights (ECHR) and the related case law, and Article 4 of the Charter of Fundamental Rights of the European Union.
(28) A/HRC/19/44.
(29) 'Inside Romania's secret CIA prison', *The Independent* , 9.12.2011.
(30) Report of the CPT of 19 May 2011 on its visit to Lithuania from 14 to 18 June 2010.
(31) See inter alia Parliament's aforementioned resolution of 9 June 2011.
(32) See paragraph 3 of Parliament's aforementioned resolution of 4 February 2009.

Enhanced intra-EU solidarity in the field of asylum

European Parliament resolution of 11 September 2012 on enhanced intra-EU solidarity in the field of asylum (2012/2032(INI))

P7_TA-PROV(2012)0310 **A7-0248/2012**

The European Parliament ,

– having regard to Articles 67(2), 78 and 80 of the Treaty on the Functioning of the European Union,

– having regard to the communication of 2 December 2011 from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on enhanced intra-EU solidarity in the field of asylum - An EU agenda for better responsibility-sharing and more mutual trust (**COM(2011)0835**),

– having regard to its resolution of 25 November 2009 on the communication from the Commission to the European Parliament and the Council – An area of freedom, security and justice serving the citizen – Stockholm programme[(1)] ,

– having regard to the communication of 6 April 2005 from the Commission to the Council and the European Parliament establishing a framework programme on solidarity and management of migration flows for the period 2007-2013 (**COM(2005)0123**),

– having regard to the conclusions of the Justice and Home Affairs Council of 8 March 2012 on a Common Framework for genuine and practical solidarity towards Member States facing particular pressures on their asylum systems, including through mixed migration flows, during the 3151st Justice and Home Affairs Council meeting,

– having regard to international and European human rights instruments including in particular the UN Convention relating to the Status of Refugees, the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR), and the Charter of Fundamental Rights of the European Union (the Charter),

– having regard to the Commission's Green Paper of 6 June 2007 on the future Common European Asylum System (**COM(2007)0301**),

– having regard to the Commission Policy Plan on Asylum of 17 June 2008: An integrated approach to protection across the EU (**COM(2008)0360**),

– having regard to Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof[(2)] ,

– having regard to the 18-month programme of the Council of 17 June 2011, prepared by the Polish, Danish and Cypriot Presidencies,

– having regard to the Commission proposal for a regulation of 15 November 2011 establishing the Asylum and Migration Fund (**COM(2011)0751**),

– having regard to Rule 48 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (**A7-0248/2012**),

A. whereas the European Union has committed itself to completing the establishment of a Common European Asylum System (CEAS) in 2012;

B. whereas solidarity has been recognised as an essential component and a guiding principle of the CEAS from the outset, as well as constituting a core principle in EU law according to which Member States should share both advantages and burdens in an equal and fair manner;

C. whereas solidarity must go hand in hand with responsibility, and Member States must ensure that their asylum systems are able to meet the standards laid down in international and European law, in particular those of the Geneva Convention on Refugees of 1951 and its additional protocol of 1967, the European Convention on Human Rights, and the Charter of Fundamental Rights of the European Union;

D. whereas providing support in carrying out asylum procedures in the sense of efficient solidarity and fairly shared responsibility must be perceived as a means to assist Member States so that they comply with their obligation to provide protection to those in need of international protection and assistance to third countries hosting the largest numbers of refugees, with the aim of strengthening the common area of protection as a whole;

E. whereas, notwithstanding the obligation to examine individual asylum applications on a case-by-case basis, if joint processing is to lead to common decisions it is necessary that due respect be accorded to the common EU

concepts of safe country of origin and safe third countries, respecting the conditions and safeguards included in Parliament's first reading position of 6 April 2011 on the Commission's proposal for a revised Asylum Procedures Directive;

Introduction

1. Welcomes the Commission communication on enhanced intra-EU solidarity in the field of asylum, which calls for the translation of solidarity and responsibility-sharing into concrete measures, and for Member States to fulfil their responsibility for ensuring their own asylum systems meet both international and European standards;

2. Emphasises the central role and horizontal effect of solidarity and responsibility-sharing in the establishment of a CEAS; reiterates the need to ensure the efficient and uniform application of the Union's asylum acquis and implementation of legislation in order to ensure high levels of protection;

3. Recalls that the right to international protection is a fundamental right enshrined in international and Union law which is complemented by a series of additional rights and principles, such as the principle of non-refoulement, the right to dignity, the prohibition of torture, inhuman or degrading treatment, the protection of women from violence and all forms of discrimination, the right to an effective remedy and the right to private and family life;

4. Underlines that the principle of solidarity and responsibility-sharing is enshrined in the Treaties, and that an effective solidarity framework includes, at the least, the duty on the part of the EU institutions and agencies and the Member States to cooperate in order to find ways to give effect to this principle; asserts that solidarity is not limited to Member States' relations with each other, but is also aimed at asylum seekers and beneficiaries of international protection;

5. Underlines the fact that while the number of asylum seekers increased during 2011, the last decade has seen a significant overall decrease in the number of asylum applications in the EU; stresses that certain Member States face a disproportionate number of asylum requests compared to others, owing to various factors including their geographical characteristics, and that asylum applications are unevenly spread across the EU; recalls that in 2011, ten Member States accounted for more than 90 % of asylum applications, that up to the summer of 2011 only 227 beneficiaries of international protection were relocated within the EU from Malta, to six other Member States, and that in 2011 in the whole EU, only 4 125 refugees were resettled to just ten Member States, representing approximately 6,6 % of all persons resettled during that year; stresses that it is crucial to identify these inequalities by, inter alia, comparing absolute numbers with capacity indicators, and that the Member States most affected by asylum applications must have greater assistance from the EU, both administratively and financially;

6. Stresses that a high level of protection for asylum applicants and beneficiaries of international protection cannot be achieved, and solid asylum decisions cannot be made, if the discrepancies between the proportion of asylum applications and individual Member States' absorption capacity in technical and administrative terms are not redressed and if the support measures in place in Member States are ill-adapted to respond to varying asylum flows;

7. Reiterates that Member States should ensure that fair and efficient asylum systems are put in place in order to respond to varying asylum flows; takes the view that although the number of asylum applications is not constant, there is evidence of specific entry points at the EU's external borders which constitute ‘hot spots’, and where it is reasonably predictable that a large number of asylum applications may be lodged; calls for measures to boost the preparedness of the asylum systems of those Member States located at the main EU entry points, as a sign of practical solidarity;

8. Emphasises that all Member States have the obligation to fully implement and apply both EU law and their international obligations on asylum; notes that Member States at the external borders of the Union face different challenges under the CEAS than do those without external borders, hence also needing different forms of support in order to carry out their respective tasks adequately; points out that Article 80 TFEU requires the activation of existing measures as well as the development of new measures so as to assist those Member States when necessary;

9. Calls for the optimisation of the use of existing measures, as well as for the development of new targeted measures and tools in order to respond to ever-changing challenges in a flexible yet effective manner; such optimisation is particularly timely given the acute financial crisis afflicting the EU, which is putting additional strain on Member States' efforts to cope efficiently with asylum procedures, particularly in the case of those receiving disproportionate numbers of asylum seekers;

10. Notes that in the light of growing needs with respect to refugees at a global level, cooperation with third countries in the context of environmental and development policies can play a vital role in the construction of relationships guided by solidarity;

11. Underlines the importance of collecting, analysing and putting in perspective reliable, accurate, comprehensive, comparable and up-to-date quantitative and qualitative data, in order to monitor and evaluate measures and acquire a sound understanding of asylum-related issues; encourages Member States, therefore, to provide EASO and the Commission with relevant data on asylum issues, in addition to the data provided under the Migration Statistics

Regulation and the EASO Regulation; all statistical data where possible should be broken down by gender;

12. Regrets the rise of xenophobia and racism and of negative and misinformed assumptions about asylum seekers and refugees accompanying socio-economic insecurity in the EU; recommends that Member States undertake awareness-raising campaigns on the actual situation of asylum seekers and beneficiaries of international protection;

Practical cooperation and technical assistance

13. Stresses that the establishment of the European Asylum Support Office (EASO) has the potential to promote closer practical cooperation among Member States in order to help reduce significant divergences in asylum practices, with a view to creating better and fairer asylum systems in the EU; believes that such active and practical cooperation must go hand in hand with the legislative harmonisation of European asylum policies;

14. Recalls the need for EASO to provide technical support and specific expertise to Member States in their implementation of the asylum legislation, in cooperation with civil society and the UNHCR; stresses that it is important that the Commission should use the information gathered by EASO to identify potential shortcomings in Member States' asylum systems; such information collected by EASO pursuant to Regulation (EU) No 439/2010 is also pertinent in the framework of the mechanism for early warning, preparedness and crisis management which will form part of the amended Dublin Regulation; underlines the importance of presenting regular reports and drawing up action plans in order to promote targeted solutions and recommendations for improving the CEAS and remedying potential deficiencies; notes, in particular, the agency's role in coordinating and supporting common action in order to assist Member States whose asylum systems and reception facilities are subject to particular pressure, by means of measures including the secondment of officials to the Member States in question and the deployment of asylum expert teams and of social workers and interpreters who can be mobilised quickly in crisis situations; recalls that the impact of EASO will depend on the willingness of Member States to make full use of its potential;

15. Calls on EASO, taking into account its duties as well as its limited budget, resources and experience, to optimise its available resources by engaging in close dialogue and cooperation with international organisations and civil society with a view to exchanging information and pooling knowledge in the field of asylum, collecting data, exchanging best practice, developing comprehensive guidelines on gender-related asylum issues, developing training, and creating pools of experts, case workers and interpreters who could be mobilised at short notice to provide assistance; further recommends that EASO ensure a broad representation of organisations participating in the consultative forum;

16. Stresses that EASO's activities should focus on both long-term preventive objectives and short-term reactive measures, in order to respond adequately to different situations; considers, therefore, that while EASO should support capacity-building measures for underdeveloped or dysfunctional asylum systems, it should give priority to emergency situations and to Member States facing particular or disproportionate pressures; emphasises, in this respect, the crucial role of Asylum Expert Teams in assisting with heavy caseloads and backlogs, providing training, undertaking project management, advising and recommending concrete measures, and monitoring and implementing follow-up measures;

17. Takes note of the operational plan in place to support the Greek asylum system and improve the situation of asylum seekers and beneficiaries of international protection in Greece; underlines that despite some progress achieved, additional efforts are needed from both the EU and the Greek authorities to improve the asylum system and ensure that asylum seekers' rights are respected in full; recalls that measures to reduce the budget deficit preclude allocating national funds to hire more officials, and recommends that this problem be addressed, since a well-functioning asylum authority is necessary to enable Greece to fulfil its obligations under international and EU law;

18. Takes note of the recommendation of the Commission and Council regarding inter-agency cooperation between EASO and Frontex, and stresses that the full and swift implementation of Frontex's Fundamental Rights Strategy is a sine qua non for any such cooperation in the context of international protection, including the appointment of a Human Rights Officer, setting up the consultative forum with civil society, and inviting international organisations to participate in its activities as human rights observers; emphasises that any cooperation must be viewed in the context of upholding the standards set by European and international norms thus increasing in practice the quality of protection provided to asylum seekers; calls, therefore, on the EASO to support Frontex with respect to its obligations related to access to international protection, in particular the principle of non-refoulement; stresses that border measures should be applied in a protection-sensitive manner;

19. Recognises the need to review EASO's mandate regularly, in order to ensure adequate responsiveness to the different challenges faced by asylum systems; bearing in mind that all action undertaken by EASO depends on Member States' goodwill, suggests considering the possibility of introducing structural safeguards within EASO's mandate so as to ensure that practical cooperation and technical assistance are provided where necessary;

Financial solidarity

20. Encourages Member States to make full use of the possibilities available under the European Refugee Fund (ERF) in terms of undertaking targeted actions for the improvement of asylum systems; recommends that Member States take action to address issues such as cumbersome bureaucratic procedures, absorption delays and liquidity problems, in order to ensure an effective and swift distribution of funds;

21. Notes that Member States must ensure that full use is made of the opportunities afforded by the European Refugee Fund, and that all appropriations allocated can be disbursed so that project leaders do not face problems when implementing funded projects;

22. Welcomes the creation as from 2014 of a simpler and more flexible Asylum and Migration Fund (AMF), which will replace the European Refugee Fund, the European Fund for the Integration of Third-Country Nationals and the European Return Fund, and underlines the need to allocate sufficient resources to support the protection of beneficiaries of international protection and asylum seekers; stresses, in this respect, the importance of including safeguards within the AMF, in order to prevent excessive allocation of funds to only one policy area at the expense of the CEAS as a whole; considers it necessary, in the context of the reform of allocation of funds in the home affairs area for the MFF 2014-2020, to also allocate sufficient resources for border protection in order to achieve greater solidarity in this area too; recalls that there should always be sufficient resources to fund international protection and solidarity measures for Member States;

23. Emphasises the need for the Asylum and Migration Fund to be sufficiently flexible and easy to mobilise as well as offering rapid access, in order to be able to respond rapidly and appropriately to unforeseen pressures or emergency situations affecting one or several Member States; proposes in this respect to reserve, where necessary, a certain percentage of the AMF's amount earmarked in the framework of the mid-term review for measures aimed at helping Member States to fully implement and apply the existing EU asylum acquis and to adhere to all international obligations in this field;

24. Welcomes the home affairs policy dialogues with individual Member States on their use of the funds preceding multiannual programming; stresses the importance of participatory action to achieve optimal results, and recommends reinforcing the partnership principle by including civil society, international organisations and local and regional authorities, as well as relevant stakeholders, as their experience on the ground is essential for setting realistic priorities and developing sustainable programmes; their input in terms of the development, implementation, monitoring and evaluation of the objectives and programmes is therefore important and should be taken into account by the Member States;

25. Underlines the importance of financial responsibility-sharing in the field of asylum, and recommends creating a well-resourced mechanism for receiving larger numbers of asylum seekers and beneficiaries of international protection, in either absolute or proportional terms, and for helping those with less developed asylum systems; considers that further research is required to identify and quantify the real costs of hosting and processing asylum claims; calls, therefore, on the Commission to undertake a study in order to assess the funds that should be allocated according to the responsibility borne by each Member State, on the basis of indicators such as: the number of first asylum applications, the number of positive decisions granting refugee status or subsidiary protection, the number of resettled and relocated refugees, the number of return decisions and operations, and the number of apprehended irregular migrants;

26. Recommends that Member States make use of the financial incentives available through the AMF for relocation activities, acknowledging that financial assistance through the fund and technical assistance through the EASO are important; suggests introducing priority areas to address urgent situations and provide more substantial financial assistance to Member States wishing to participate in relocation initiatives, in order to alleviate the related financial costs;

27. Believes that the establishment of a clearer and more effective system of financial incentives for Member States participating in relocation activities and proactive strategies aimed at improving the infrastructures of national asylum systems will have a long-term positive effect on the convergence of standards in the EU and the quality of the CEAS;

28. Welcomes the possibility of increasing the Commission's contribution to up to 90 % of the total eligible expenditure for projects that could otherwise not have been implemented; considers that a clear added value should emerge from projects funded by the Commission; stresses that EU funding should under no circumstances be a substitute for national budgets allocated to asylum policies;

29. Underlines the problems currently linked to the funding of activities in terms of obstacles to access to accurate information and funding, the setting-up of realistic and tailored objectives, and the implementation of effective follow-up measures; suggests introducing safeguards to avoid duplication, clear allocation of funding, and thorough examination of activities' added value and the results achieved;

30. Stresses the importance of strict oversight with regard to the funds' use and management, on the basis of quantitative and qualitative indicators and specific criteria, in order to avoid the misallocation of human and financial resources and guarantee compliance with the objectives established; welcomes, in this respect, the setting-up of a

common evaluation and monitoring system;

31. Urges the Member States, with the assistance of the Commission, to ensure the full exploitation of existing complementarities between other available financial instruments such as the European Social Fund and other Structural Funds, in order to achieve a holistic funding approach for asylum-related policies;

Allocation of responsibilities

32. Welcomes the Commission's commitment to performing a comprehensive evaluation of the Dublin system in 2014, reviewing its legal, economic, social and human rights effects, including the effect on the situation of women asylum seekers; considers that further reflection is needed on the development of an equitable responsibility-sharing mechanism for determining which Member State should be responsible for processing asylum applications, which would allow for quick and effective practical support for Member States in emergency situations and facing disproportionate burdens;

33. Considers that the Dublin Regulation, which governs the allocation of responsibility for asylum applications, places a disproportionate burden on Member States constituting entry points into the EU, and does not foresee for a fair distribution of asylum responsibility among Member States; notes that the Dublin system as it has been applied so far, in a context characterised by very different asylum systems and insufficient levels of asylum acquis implementation, has led to the unequal treatment of asylum seekers while also having an adverse impact on family reunification and integration; stresses, moreover, its shortcomings in terms of efficiency and cost-effectiveness, since more than half of agreed transfers never take place and there are still significant numbers of multiple applications; calls on the Commission and the Member States to ensure that asylum-seekers who are returned to a Member State on the basis of the Dublin II Regulation are not discriminated against for the sole reason of being Dublin II transferees;

34. Stresses that the relevant case-law is already in the process of undermining the rationale behind the Dublin system; considers that while providing an answer to individual cases, the case-law fails to overcome the deficiencies that exist in the implementation of the asylum acquis; while recognising the need for Member States to ensure that their asylum systems comply with EU and international norms, welcomes, therefore, the efforts to include additional criteria in Dublin II in order to mitigate the system's unwanted adverse effects; believes that discussions for the determination of the Member State responsible must take account of the fact that some Member States are already facing disproportionate pressures and some asylum systems are partially or fully dysfunctional;

Joint processing of asylum applications

35. Deems it essential to engage in further dialogue with regard to responsibility-sharing towards asylum seekers and beneficiaries of international protection, including on the use of tools such as the joint processing of asylum applications (hereinafter ‘joint processing’) and relocation schemes;

36. Considers that joint processing could constitute a valuable tool for solidarity and responsibility-sharing in various cases, in particular where Member States face significant or sudden influxes of asylum seekers or there is a substantial backlog of applications which delays and undermines the asylum procedure at the expense of asylum applicants; joint processing could prevent or rectify capacity problems, reduce the burdens and costs related to asylum processing, expedite the processing time of claims and ensure a more equitable sharing of responsibility for the processing of asylum applications; emphasises that joint processing requires a clear allocation of responsibilities between the Member States involved in order to avoid responsibility-shifting, and that decision-making remains the responsibility of the Member State; notes that this would need to be complemented by a system to ensure a more equitable sharing of responsibility once applications are processed;

37. Welcomes the feasibility study launched by the Commission to investigate the legal and practical implications of joint processing on Union territory, since clarification is needed with respect to a series of issues;

38. Notes that joint processing does not necessarily entail a common decision, but could involve support and common processing with respect to other aspects of the asylum procedure, such as identification, preparation of first-instance procedures, interviews, or assessment of the political situation in the country of origin;

39. Emphasises that joint processing should offer added value with respect to the quality of the decision-making process, ensuring and facilitating fair, efficient and rapid procedures; underlines the fact that improving asylum procedures from the outset (frontloading) can reduce the length and cost of the procedure, therefore benefiting both asylum seekers and Member States;

40. Stresses that a joint processing scheme should fully respect the rights of applicants and contain strong guarantees to that end; insists that joint processing must in no circumstances be used to accelerate the asylum procedure at the expense of its quality; takes the view that joint processing could lead to more efficient asylum procedures, also benefiting individual asylum seekers since with increased administrative capacities their protection needs could be recognised faster;

41. Considers that EASO's role could be valuable in putting together, training and coordinating asylum support teams which would provide assistance, advice, and recommendations for first-instance procedures;

42. Recommends that the envisaged schemes with regard to joint processing should prioritise options involving the deployment and cooperation of the relevant authorities, rather than the transfer of asylum seekers;

43. Calls for EASO to encourage, facilitate and coordinate exchanges of information and other activities in connection with joint processing;

Relocation of beneficiaries of international protection and asylum seekers

44. Underlines that EU resettlement and intra-EU relocation schemes are complementary measures aimed at reinforcing the protection of asylum seekers and beneficiaries of international protection while showing both intra- and extra-EU solidarity;

45. Stresses that, under certain conditions, the physical relocation of beneficiaries of international protection and asylum seekers is one of the most concrete forms of solidarity and can make a significant contribution to a more equitable CEAS; emphasises that while it also represents a solid expression of commitment to international protection and the promotion of human rights, so far few Member States have engaged in relocation initiatives;

46. Stresses the importance of projects such as the European Union's Relocation Project for Malta (Eurema) and its extension, under which beneficiaries of international protection have been, and are being, relocated from Malta to other Member States, and advocates developing more initiatives of this kind; regrets that this project has not been as successful as expected because Member States were reluctant to participate; calls on Member States to participate more actively in the Eurema project in a spirit of solidarity and responsibility-sharing; welcomes the Commission's commitment to undertake a thorough evaluation of the Eurema project and submit a proposal for a permanent EU Relocation Mechanism;

47. Calls on the Commission to take into consideration, in its legislative proposal for a permanent and effective intra-EU Relocation Mechanism, the use of an EU Distribution Key for the relocation of beneficiaries of international protection, based on appropriate indicators relating to Member States' reception and integration capacities, such as Member States' GDP, population and surface area and beneficiaries' best interest and integration prospects; this EU Distribution Key could be taken into account for Member States which are facing specific and disproportionate pressures on their national asylum systems or during emergency situations; underlines that relocation will always depend on the consent of beneficiaries of international protection and that the introduction of an EU Distribution Key would be without prejudice to each Member State's obligation to implement and apply the existing EU asylum acquis in terms of qualification for protection, reception conditions and procedural guarantees, and to adhere to all international obligations in this field;

48. Calls on the Commission to include strong procedural safeguards and clear criteria in its proposal for a permanent EU relocation scheme, in order to guarantee potential beneficiaries' best interests and relieve migratory pressure in the Member States particularly exposed to migration flows; recommends involving the host community, civil society and local authorities from the outset in relocation initiatives;

49. Underlines that while relocation can both offer lasting solutions for beneficiaries of international protection and alleviate Member States' asylum systems, it must not result in responsibility-shifting; insists that relocation should include strong commitments from Member States benefiting from it to effectively address protection gaps in their asylum systems and to guarantee high levels of protection for those remaining in the sender Member States in terms of reception conditions, asylum procedures and integration;

50. Welcomes the funding possibilities provided under the AMF for relocating asylum seekers, and encourages Member States to engage in voluntary initiatives, while fully respecting asylum seekers' rights and the need for their consent; calls on the Commission to investigate the feasibility of developing an EU system for relocating asylum seekers, examining, inter alia, the feasibility of basing it on an EU distribution key which would take into consideration objectively verifiable criteria such as Member States' GDP, population and surface area and asylum seekers' best interest and integration prospects; such a programme could be applied as a solidarity measure in situations where the number of asylum seekers is disproportionally high in relation to the capacity of a Member State's asylum system, or in emergencies;

51. Recalls EASO's mandate with regard to promoting the relocation of beneficiaries of international protection amongst Member States, and calls on the Agency to build its capacity in order to actively support relocation programmes and activities in close cooperation with the UNHCR, through exchange of information and best practice and coordination and cooperation activities;

52. Notes that the Commission has indicated that it will always consider activating the mechanism of the Temporary Protection Directive when the appropriate conditions are met, in particular in the event of a mass influx or imminent mass influx of displaced persons unable to return to their country of origin in safe and durable conditions; calls on the

Commission to make it possible for this Directive to be activated even in cases where the relevant influx constitutes a mass influx for at least one Member State and not only when it constitutes such an influx for the EU as a whole;

Mutual trust at the heart of a renewed governance system

53. Insists that mutual trust is based on a shared understanding of responsibilities; stresses that compliance with EU law is an indispensable element for trust among Member States;

54. Stresses that if Member States fulfil their obligations regarding legal and fundamental rights, this will strengthen both trust and solidarity;

55. Stresses the importance of laying solid foundations for mutual trust among Member States, since this is quintessentially linked to the development of the CEAS and to genuine and practical solidarity;

56. Acknowledges that while compliance with international protection obligations enhances mutual trust, this does not necessarily result in a uniform application of rules, given that the interpretation and application of international and EU asylum law still varies widely among Member States, as is clear from the recent ECHR and CJEU case-law relating to the Dublin Regulation; emphasises that it is the responsibility of the Commission and the courts to monitor and evaluate the application of asylum rules in accordance with international and EU law;

57. Believes that early warning mechanisms introduced to detect and address emerging problems before they lead to crises can constitute a valuable tool; considers, nevertheless, that complementary solutions should also be envisaged, so as to avoid infringing fundamental rights and ensure the proper functioning of asylum systems;

58. Stresses that while infringement proceedings should be more readily used to draw attention to Member States' responsibilities and their failure to adhere to the existing asylum acquis, they should be accompanied by preventive measures, operational plans and oversight mechanisms in order to yield results; underlines the importance of regular evaluations, constructive dialogue, and exchange of best practice, as crucial elements that are more likely to produce positive developments in asylum systems where deficiencies are identified; different forms of financial and practical assistance can thus be provided in order to achieve the full and correct implementation of European asylum legislation;

59. Notes that the Dublin system is based on mutual trust and that its implementation amounts to a mutual recognition of rejection decisions among Member States, given that an asylum claim can only be considered in the EU once; calls on the Commission to submit a communication on a framework for the transfer of protection of beneficiaries of international protection and mutual recognition of asylum decisions by 2014, in line with the Action Plan Implementing the Stockholm Programme;

60. Underlines that migration management can increase mutual trust and solidarity measures only if coupled with a protection-sensitive approach under which border measures are carried out without prejudice to the rights of refugees and persons requesting international protection;

61. Stresses that visa regimes govern a multitude of entry and exit authorisations and that those entry and exit rules do not place any restrictions on the legal obligation to provide access to asylum;

62. Recalls the Commission's commitment to facilitate the orderly arrival in the EU of persons in need of protection, and calls on it to explore new approaches to access to asylum procedures; welcomes, in this respect, the Commission's commitment to adopt a ‘Communication on new approaches concerning access to asylum procedures targeting main transit countries’ by 2013;

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63. Instructs its President to forward this resolution to the Council, the Commission, the Parliaments of the Member States, and the Council of Europe.

(1) OJ C 285 E, 21.10.2010, p. 12.
(2) OJ L 212, 7.8.2001, p. 12.

European standardisation ***I

- Resolution
- Consolidated text
- Annex

- Annex
- Annex
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European Parliament legislative resolution of 11 September 2012 on the proposal for a regulation of the European Parliament and of the Council on European Standardisation and amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/105/EC and 2009/23/EC of the European Parliament and of the Council (COM(2011)0315 – C7-0150/2011 – 2011/0150(COD))

P7_TA-PROV(2012)0311 **A7-0069/2012**

(Ordinary legislative procedure: first reading)

The European Parliament ,

– having regard to the Commission proposal to Parliament and the Council (**COM(2011)0315**),

– having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0150/2011),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Economic and Social Committee of 21 September 2011[(1)] ,

– having regard to the undertaking given by the Council representative by letter of 6 June 2012 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

– having regard to Rule 55 of its Rules of Procedure,

– having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinions of the Committee on International Trade and of the Committee on Industry, Research and Energy (**A7-0069/2012**),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 11 September 2012 with a view to the adoption of Regulation (EU) No .../2012 of the European Parliament and of the Council on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, *2009/23/EC and* 2009/105/EC ▌ of the European Parliament and of the Council and repealing Decision 87/95/EEC and Decision No 1673/2006/EC

P7_TC1-COD(2011)0150

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

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

Acting in accordance with the ordinary legislative procedure[(3)] ,

Whereas:

(1) The primary objective of standardisation is the definition of voluntary technical or quality specifications with which current or future products, production processes or services may comply. Standardisation can cover various issues, such as standardisation of different grades or sizes of a particular product or technical specifications in product or

services markets where compatibility and interoperability with other products or systems are essential.

(2) European standardisation is organised by and for the stakeholders concerned based on national representation (the European Committee for Standardisation (CEN) and the European Committee for Electrotechnical Standardisation (Cenelec)) and direct participation (the European Telecommunications Standards Institute (ETSI)), and is founded on the principles recognised by the World Trade Organisation (WTO) in the field of standardisation, namely coherence, transparency, openness, consensus, voluntary application, independence from special interests and efficiency ('the founding principles'). In accordance with the founding principles, it is important that all relevant interested parties, including public authorities and small and medium-sized enterprises (SMEs), are appropriately involved in the national and European standardisation process. National standardisation bodies should also encourage and facilitate the participation of stakeholders.

(3) European standardisation also helps to boost the competitiveness of enterprises by facilitating in particular the free movement of goods and services, network interoperability, means of communication, technological development and innovation. ***European standardisation reinforces the global competitiveness of European industry especially when established in coordination with the international standardisation bodies, namely the International Organisation for Standardisation (ISO), the International Electrotechnical Commission (IEC) and the International Telecommunication Union (ITU).*** Standards produce significant positive economic effects, for example by promoting economic interpenetration on the internal market and encouraging the development of new and improved products or markets and improved supply conditions. Standards thus normally increase competition and lower output and sales costs, benefiting economies as a whole ***and consumers in particula*** *r* . Standards may maintain and enhance quality, provide information and ensure interoperability and compatibility, thereby increasing ***safety and*** value for consumers.

(4) European standards ***are*** adopted by the European standardisation ***organisations*** , namely CEN, Cenelec and ETSI.

(5) European standards play a very important role within the internal market, ***for instance*** through ***the use of harmonised standards in*** the presumption of conformity of products to be made available on the market with the essential requirements relating to those products laid down in ***the relevant*** Union harmonisation legislation. ***Those requirements should be precisely defined in order to avoid misinterpretation on the part of the European standardisation organisations.***

(6) Standardisation plays an increasingly important role in international trade and the opening-up of markets. The Union should seek to promote cooperation between European standardisation organisations and international standardisation bodies. The Union should also promote bilateral approaches with third countries to coordinate standardisation efforts and promote European standards, for instance when negotiating agreements or by seconding standardisation experts to third countries. Furthermore the Union should encourage contact between European standardisation organisations and private fora and consortia, while maintaining the primacy of European standardisation.

(7) European standardisation is governed by a specific legal framework consisting of three different legal acts, namely Directive 98/34/EC of the European Parliament and the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services[(4)] , Decision No 1673/2006/EC of the European Parliament and of the Council of 24 October 2006 on the financing of European standardisation[(5)] and Council Decision 87/95/EEC of 22 December 1986 on standardisation in the field of information technology and telecommunications[(6)] . However, the current ***legal*** framework is no longer up to date with developments in European standardisation over recent decades. Therefore, the ***current legal*** framework should be simplified and adapted in order to cover new aspects of standardisation to reflect ***those*** latest developments and future challenges in European standardisation. That relates in particular to the increased development of standards for services and the evolution of standardisation deliverables other than formal standards.

(8) The European Parliament's Resolution of 21 October 2010 on the future of European standardisation [(7)] , as well as the report of the Expert Panel for the Review of the European Standardization System (Express) of February 2010 entitled 'Standardization for a competitive and innovative Europe: a vision for 2020', have set out an important number of strategic recommendations regarding the review of the European standardisation system.

(9) In order to ensure the effectiveness of standards and standardisation as policy tools for the Union, it is necessary to have an effective and efficient standardisation system which provides a flexible and transparent platform for consensus building between all participants and which is financially viable.

(10) Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market[(8)] establishes general provisions facilitating the exercise of the freedom of establishment for service providers and the free movement of services, while maintaining a high quality of services. It obliges the Member States ***to encourage*** , in cooperation with the Commission, ▌ the development of voluntary European standards with

the aim of facilitating compatibility between services supplied by providers in different Member States, the provision of information to the recipient and the quality of service provision. However, Directive 98/34/EC only applies to standards for products while standards for services are not expressly covered by it. Furthermore, the delineation between services and goods is becoming less relevant in the reality of the internal market. In practice, it is not always possible to clearly distinguish standards for products from standards for services. Many standards for products have a service component while standards for services often also partly relate to products. Thus, it is necessary to adapt the ***current*** legal framework to these new circumstances by extending its scope to standards for services.

(11) ***Like other standards,*** standards for services ***are voluntary and*** should be market-driven, whereby the needs of the economic operators and stakeholders directly or indirectly affected by such standards prevail, and should take into account the public interest and be based on ***the founding principles, including*** consensus. They should primarily focus on services linked to products and processes.

(12) The legal framework allowing the Commission to request one or several European standardisation organisations to draft a European standard or European standardisation deliverable for services should be applied while fully respecting the distribution of competences between the Union and the Member States as laid down in the Treaties. This concerns in particular Articles 14, 151, 152, 153, 165, 166 and 168 Treaty on the Functioning of the European Union (TFEU) and Protocol (No 26) on Services of General Interest annexed to the Treaty on European Union (TEU) and to the TFEU in accordance with which it remains the exclusive competence of the Member States to define the fundamental principles of their social security, vocational training and health systems and to shape the framework conditions for the management, financing, organisation and delivery of the services supplied within those systems, including - without prejudice to Article 168(4) TFEU and to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications [(9)] - the definition of requirements, quality and safety standards applicable to them. The Commission should not, by means of such a request, affect the right to negotiate, conclude and enforce collective agreements and to take industrial action in accordance with national law and practices which respect Union law.

(13) The European standardisation ***organisations*** are subject to competition law to the extent that they can be considered to be an undertaking or an association of undertakings within the meaning of Articles 101 and 102 ***TFEU*** .

(14) Within the Union, national standards are adopted by national standardisation bodies which could lead to conflicting standards and technical impediments in the internal market. Therefore, it is necessary for the internal market and for the effectiveness of standardisation within the Union to confirm the existing regular exchange of information between the national standardisation bodies, the European standardisation ***organisations*** and the Commission, about ***their*** current and future standardisation activities ***as well as the standstill principle applicable to the national standardisation bodies within the framework of the European standardisation organisations which provides for the withdrawal of national standards after the publication of a new European standard. The national standardisation bodies and European standardisation organisations should also observe the provisions on exchange of information in*** Annex 3 to the Agreement on Technical Barriers to Trade[(10)] .

(15) The Member States' obligation to notify the Commission of their national standardisation bodies should not require the adoption of a specific national legislation for the purposes of recognition of those bodies.

(16) The regular exchange of information between the national standardisation bodies, the European standardisation ***organisations*** and the Commission should not prevent national standardisation bodies from complying with other obligations and commitments, and in particular with Annex 3 to the Agreement on Technical Barriers to Trade.

(17) The representation of societal interests and societal stakeholders in European standardisation activities refers to the activities of organisations and parties representing interests of greater societal relevance, for instance environmental, consumer interests or employee interests. However, the representation of social interests and social stakeholders in European standardisation activities refers particularly to the activities of organisations and parties representing employees and workers' basic rights, for instance trade unions.

(18) In order to speed up the decision-making process, national standardisation bodies and European standardisation organisations should facilitate accessible information on their activities through the promotion of the use of information and communication technologies (ICT) in their respective standardisation systems, for example by providing to all relevant stakeholders an easy-to-use online consultation mechanism for the submission of comments on draft standards and by organising virtual meetings, including by means of web conferencing or video conferencing, of technical committees.

(19) Standards can contribute to helping ***Union*** policy address the major societal challenges such as climate change, sustainable resource use, ▌ innovation***, ageing population, integration of people with disabilities, consumer protection, workers' safety and working conditions*** . By driving the development of European or international standards for goods and technologies in the expanding markets in those areas, ***the Union*** could create

a competitive advantage for its enterprises and facilitate trade, ***in particular for SMEs, which account for a large part of European enterprises*** .

(20) Standards are important tools for ***the competitiveness of undertakings and especially SMEs, whose participation in the standardisation process is important for technological progress in the Union. Therefore it is necessary that the standardisation framework encourage SMEs to actively participate in and provide their innovative technology solutions to standardisation efforts. This includes improving their participation at national level where they can be more effective due to lower costs and lack of linguistic barriers.*** Consequently ***this Regulation should improve*** representation and participation of SMEs in ***both national and European*** technical committees ***and should facilitate their effective access to and awareness of standards*** .

(21) European standards are of vital interest for the competitiveness of SMEs which, however, are in ***some cases*** under-represented in ***European*** standardisation activities ▌. Thus, this Regulation should ***encourage and facilitate*** appropriate representation ***and participation*** of SMEs in the European standardisation process by an entity ***that is effectively in contact with, and duly representative of, SMEs and organisations representing SMEs at national level*** .

(22) Standards can have a broad impact on society, in particular on the safety and well-being of citizens, the efficiency of networks, the environment, ***workers' safety and working conditions,*** accessibility and other public policy fields. Therefore, it is necessary to ensure that the role and the input of societal stakeholders in the development of standards are strengthened, through the ***reinforced*** support of organisations representing consumers and environmental and social interests.

(23) The obligation of the European standardisation organisations to encourage and facilitate representation and effective participation of all relevant stakeholders does not entail any voting rights for these stakeholders unless such voting rights are prescribed by the internal rules of procedure of the European standardisation organisations.

(24) The European standardisation system should also fully take into account the United Nations Convention on the Rights of Persons with Disabilities [(11)] ***. It is therefore important that organisations representing the interests of consumers sufficiently represent and include the interests of people with disabilities. In addition, the participation of people with disabilities in the standardisation process should be facilitated by all available means.***

(25) Due to the importance of standardisation as a tool to support Union legislation and policies and in order to avoid ex-post objections to and modifications of harmonised standards, it is important that public authorities participate in standardisation at all stages of the development of those standards where they may be involved and especially in the areas covered by Union harmonisation legislation for products.

(26) Standards should ▌ take into account environmental impacts throughout the life cycle of products and services. Important and publicly available tools for evaluating such impacts throughout the life cycle have been developed by the Commission's Joint Research Centre ***(JRC)*** . ***Thus, this Regulation should ensure that the JRC can play an active role in the European standardisation system*** .

(27) The viability of the cooperation between the Commission and the European standardisation system depends on careful planning of future requests for the development of standards. This planning could be improved, in particular through the input of interested parties***, including national market surveillance authorities, by introducing mechanisms for collecting opinions and facilitating the exchange of information among all interested parties*** . Since Directive 98/34/EC already provides for the possibility to request the European ***standardisation organisations*** to develop European standards, it is appropriate to put in place a better and more transparent planning in an annual work programme which should contain an overview of all requests for standards which the Commission intends to submit to European ***standardisation organisations*** . ***It is necessary to ensure a high level of cooperation between the European standardisation organisations and the European stakeholder organisations receiving Union financing in accordance with this Regulation and the Commission in the establishment of its annual Union work programme for standardisation and in the preparation of requests for standards in order to analyse the market relevance of the proposed subject matter and the policy objectives set by the legislator, and to allow the European standardisation organisations to respond more quickly to the requested standardisation activities*** .

(28) Before bringing a matter regarding requests for European standards or European standardisation deliverables, or objections to a harmonised standard before the committee set up by this Regulation, the Commission should consult experts of the Member States, for instance through the involvement of committees set up by the corresponding Union legislation or by other forms of consultation of sectoral experts, where such committees do not exist.

(29) Several directives harmonising the conditions for the marketing of products specify that the Commission may request the adoption, by the European ***standardisation organisations*** , of harmonised standards on the basis of which conformity with the applicable essential requirements is presumed. However, many of those directives contain

a wide variety of provisions on objections to these standards when the latter do not, or do not entirely, cover all applicable requirements. Diverging provisions which lead to uncertainty for economic operators and European standardisation organisations are in particular contained in Council Directive 89/686/EEC of 21 December 1989 on the approximation of the laws of the Member States relating to personal protective equipment[(12)] , Council Directive 93/15/EEC of 5 April 1993 on the harmonisation of the provisions relating to the placing on the market and supervision of explosives for civil uses[(13)] , Directive 94/9/EC of the European Parliament and the Council of 23 March 1994 on the approximation of the laws of the Member States concerning equipment and protective systems intended for use in potentially explosive atmospheres[(14)] , Directive 94/25/EC of the European Parliament and of the Council of 16 June 1994 on the approximation of the laws, regulations and administrative provisions of the Member States relating to recreational craft[(15)] , Directive 95/16/EC of the European Parliament and of the Council of 29 June 1995 on the approximation of the laws of the Member States relating to lifts[(16)] , Directive 97/23/EC of the European Parliament and of the Council of 29 May 1997 on the approximation of the laws of the Member States concerning pressure equipment[(17)] , Directive 2004/22/EC of the European Parliament and of the Council of 31 March 2004 on measuring instruments[(18)] , Directive 2007/23/EC of the European Parliament and of the Council of 23 May 2007 on the placing on the market of pyrotechnic articles[(19)] , Directive 2009/23/EC of the European Parliament and of the Council of 23 April 2009 on non-automatic weighing instruments[(20)] and Directive 2009/105/EC of the European Parliament and of the Council of 16 September 2009 relating to simple pressure vessels[(21)] . Therefore, it is necessary to include in this Regulation the uniform procedure provided for in Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products[(22)] , delete the relevant provisions in those Directives ***and extend to the European Parliament the right to object to a harmonised standard in accordance with this Regulation*** .

(30) Public authorities should make best use of the full range of relevant ***technical specifications*** when procuring hardware, software and information technology services, for example by selecting ***technical specifications*** which can be implemented by all interested suppliers, allowing for more competition and reduced risk of lock-in. Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors[(23)] , Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts[(24)] ***, Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security*** [(25)] ***and 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*** [(26)] specify that technical specifications in public procurement should be formulated by reference to national standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference systems established by the European standardisation ***organisations*** or - when these do not exist - to national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the products, or equivalent. ***ICT technical specifications*** , however, are often developed by other standard developing organisations and do not fall in any of the categories of standards and approvals laid down in Directives 2004/17/EC***,*** 2004/18/EC ***or 2009/81/EC or Regulation (EC, Euratom) No 2342/2002*** . Therefore, it is necessary to provide for the possibility that technical specifications for public procurement could refer to ***ICT technical specifications*** , in order to respond to the fast evolution in the field of ***ICT*** , facilitate the provision of cross-border services, encourage competition and promote interoperability and innovation.

(31) ***Technical specifications not adopted by European standardisation organisations do not hold an equivalent status to European standards.*** Some ***ICT technical specifications*** are not developed in accordance with the ***founding principles*** . Therefore, this Regulation should lay down a procedure for the ***identification of ICT technical specifications*** that could be ***referenced*** in public procurement, involving a broad consultation of a large spectrum of stakeholders, including the European standardisation ***organisations*** , enterprises and public authorities. This Regulation should also lay down requirements, in the form of a list of ***criteria*** , for such ***technical specifications*** and their associated ***development*** processes. ***The requirements for the identification of ICT technical specifications*** should ensure that public policy objectives and societal needs are respected, and should be based on the ***founding principles*** .

(32) In order to further innovation and competition***, the identification*** of a particular technical specification should not disqualify a competing technical specification from being ***identified*** in accordance with the provisions of this Regulation. Any ***identification*** should be subject to the ***criteria*** being fulfilled and to the technical specification having achieved a ***significant*** level of market acceptance. ▌

(33) The ***identified ICT technical specifications*** could contribute to the implementation of Decision No 922/2009/EC of the European Parliament and of the Council of 16 September 2009 on interoperability solutions for European public

administrations (ISA)[27] which establishes, for the period 2010-2015, a programme on interoperability solutions for European public administrations and institutions and bodies of the Union, providing common and shared solutions facilitating interoperability.

(34) Situations may arise in the field of ***ICT*** where it is appropriate to encourage the use of, or require compliance, with ***relevant*** standards at Union level in order to ensure interoperability in the single market and to improve freedom of choice for users. In other circumstances, it may also happen that specified European standards no longer meet consumers' needs or are hampering technological development. For these reasons, Directive 2002/21/EC of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services[28] enables the Commission, where necessary, to request European standardisation ***organisations*** to draw up standards, to establish and publish in the *Official Journal of the European Union* a list of standards or specifications with the view to encourage their use, or to make their implementation compulsory, or to remove standards or specifications from that list.

(35) This Regulation should not prevent European standardisation ***organisations*** from continuing to develop standards in the field of ***ICT*** and to increase their cooperation with other standard developing bodies, especially in the field of ***ICT*** , in order to ensure coherence and avoid fragmentation or duplication during implementation of standards and specifications.

(36) The procedure for identification of ICT technical specifications provided for in this Regulation should not undermine the coherence of the European standardisation system. Therefore, this Regulation should also lay down the conditions under which it can be considered that a technical specification does not conflict with other European standards.

(37) Before identifying ICT technical specifications which may be eligible for referencing in public procurement, the Multi Stakeholder Platform established by the Commission Decision of 28 November 2011 [29] ***should be used as a forum for consultation of European and national stakeholders, European standardisation organisations and Member States in order to ensure legitimacy of the process.***

(38) Decision No 1673/2006/EC establishes the rules concerning the contribution of the Union to the financing of European standardisation in order to ensure that European standards and other European standardisation deliverables are developed and revised in support of the objectives, legislation and policies of the Union. It is appropriate, for the purpose of administrative and budgetary simplification, to incorporate the provisions of that Decision into this Regulation ***and to use wherever possible the least burdensome procedures*** .

(39) In view of the very broad field of involvement of European standardisation in support of Union legislation and policies and the different types of standardisation activity, it is necessary to provide for different financing arrangements. This mainly concerns grants without calls for proposals to the European standardisation organisations and national standardisation bodies in accordance with the second subparagraph of Article 110(1) 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[30] and Article 168(1)(d) of Regulation (EC, Euratom) No 2342/2002. Furthermore, the same provisions should apply to those bodies which, whilst not recognised as European standardisation organisations in this Regulation, have been mandated in a basic act and have been entrusted with carrying out preliminary work in support of European standardisation in cooperation with the European standardisation organisations.

(40) Inasmuch as European standardisation organisations provide ongoing support for Union activities, they should have effective and efficient central secretariats. The Commission should therefore be allowed to provide grants to those organisations that are pursuing an objective of general European interest without applying, in the case of operating grants, the principle of annual reduction provided for in Article 113(2) of Regulation (EC, Euratom) No 1605/2002.

(41) Decision No 1639/2006/EC of the European Parliament and of the Council of 24 October 2006 establishing a Competitiveness and Innovation Framework Programme (2007 to 2013)[31] , Decision No 1926/2006/EC of the European Parliament and of the Council of 18 December 2006 establishing a programme of Community action in the field of consumer policy (2007-2013)[32] and Regulation (EC) No 614/2007 of the European Parliament and of the Council of 23 May 2007 concerning the Financial Instrument for the Environment (LIFE+)[33] already provide for the possibility of financial support of European organisations representing SMEs, consumers and environmental interests in standardisation, while specific grants are paid to European organisations representing social interests in standardisation. The financing under Decision No 1639/2006/EC, Decision No 1926/2006/EC and Regulation (EC) No 614/2007 will end on 31 December 2013. It is essential for the development of European standardisation to continue fostering and encouraging the active participation of European organisations representing SMEs, consumers and environmental and social interests. Such organisations pursue an aim of general European interest and constitute, by virtue of the specific mandate that national non-profit organisations have given them, a European network representing non-profit organisations active in the Member States and promoting principles and policies

consistent with the objectives of the Treaties. Because of the context in which they operate and their statutory objectives, European organisations representing SMEs, consumers and environmental and social interests in European standardisation have a permanent role which is essential for Union ***objectives*** and policies. Therefore, the Commission should be in a position to continue providing grants to those organisations without applying, in the case of operating grants, the principle of annual reduction provided for in Article 113(2) of Regulation (EC, Euratom) No 1605/2002.

(42) The financing of standardisation activities should also be capable of covering preliminary or ancillary activities in connection with the establishment of European standards or ***European standardisation deliverables for products and for services.*** This is necessary primarily for work involving research, the preparation of preliminary documents for legislation, inter-laboratory tests and the validation or evaluation of standards. The promotion of standardisation at European and international level should also continue through programmes relating to the technical assistance to, and cooperation with, third countries. With a view to improving market access and boosting the competitiveness of enterprises in the Union, it should be possible to give grants to other bodies through calls for proposals or, where necessary, by awarding contracts.

(43) Union financing should seek to establish European standards or ***European standardisation deliverables for products and for services*** , to facilitate their use by enterprises through ***the enhanced support for*** their translation into the various official Union languages, ***in order to allow SMEs to fully benefit from the understanding and application of the European standards,*** to strengthen the cohesion of the European standardisation system and to ensure fair and transparent access to European standards for all market players throughout the Union. This is especially important in cases where the use of standards enables compliance with ***relevant*** Union ***legislation*** .

(44) In order to ensure the effective application of this Regulation, there should be the possibility of using the requisite expertise, particularly with regard to auditing and financial management, as well as administrative support resources capable of facilitating implementation, and of evaluating on a regular basis the relevance of the activities receiving Union financing in order to ensure their usefulness and impact.

(45) Appropriate measures should also be taken to avoid fraud and irregularities and to recover funds unduly paid in accordance with Council Regulations (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests[(34)] and (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[(35)] and 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)[(36)] .

(46) In order to update the list of European standardisation ***organisations*** and to adapt the criteria for organisations representing SMEs and societal stakeholders to further developments as regards their non-profit making nature and representativity, the power to adopt acts in accordance with Article 290 ***TFEU*** should be delegated to the Commission in respect of amendments to the Annexes to this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. ***The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.***

(47) The committee set up by this Regulation should assist the Commission in all matters related to the implementation of this Regulation, having due regard for the views of sectoral experts.

(48) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers[(37)] .

(49) The advisory procedure should be used for the ***adoption of*** implementing ***acts*** with respect to the objections to harmonised standards and where the references to the harmonised standard concerned have not yet been published in the *Official Journal of the European Union* , given that the relevant standard has not yet led to the presumption of conformity with the essential requirements set out in the applicable Union harmonisation legislation.

(50) The examination procedure should be used for ***each standardisation request submitted to European standardisation organisations and the adoption of*** implementing acts with respect to the objections to harmonised standards and where the references to the harmonised standard concerned have already been published in the *Official Journal of the European Union* , given that such decision could have consequences on the presumption of conformity with the applicable essential requirements.

(51) In order to achieve the main objectives of this Regulation and to facilitate speedy decision-making

procedures as well as reducing the overall development time for standards, use should be made as far as possible of the procedural measures provided for in Regulation (EU) No 182/2011, which enables the chair of the relevant committee to lay down a time limit within which the committee should deliver its opinion, according to the urgency of the matter. Moreover, where justified, it should be possible for the opinion of the committee to be obtained by written procedure, and silence on the part of the committee member should be regarded as tacit agreement.

(52) Since ***the objectives of this Regulation, namely to ensure the effectiveness and efficiency of standards and*** standardisation ***as policy tools for the Union through cooperation between*** European ***standardisation organisations, national standardisation bodies, Member States and the Commission, the establishment of European standards and European standardisation deliverables for products and for services in support of Union legislation and policies, the identification of ICT technical specifications eligible for referencing, the financing of European standardisation and stakeholder participation in European standardisation*** cannot be sufficiently achieved by the Member States and can, therefore, by reason of ***their*** effect, be better achieved at the Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. 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*** .

(53) Directives ▌ 89/686/EEC, 93/15/EEC, 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, ***2009/23/EC and*** 2009/105/EC ▌ should therefore be amended accordingly.

(54) Decision No 1673/2006/EC and ▌ Decision 87/95/EEC should ▌ be repealed,

HAVE ADOPTED THIS REGULATION:

Chapter I

General Provisions

Article 1

Subject matter

This Regulation establishes rules with regard to the cooperation between European standardisation ***organisations*** , national standardisation bodies***, Member States*** and the Commission, the establishment of European standards and European standardisation deliverables for products and for services in support of Union legislation and policies, the ***identification*** of ICT technical specifications ***eligible for referencing, the*** financing of European standardisation ***and stakeholder participation in European standardisation*** .

Article 2

Definitions

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

(1) ‘standard’ means a technical specification, ***adopted by a recognised standardisation body,*** for repeated or continuous application, with which compliance is not compulsory, and which is one of the following:
   (a) ‘international standard’ means a standard adopted by an international standardisation body;
   (b) ‘European standard’ means a standard adopted by a European standardisation organisation;
   (c) ‘harmonised standard’ means a European standard adopted on the basis of a request made by the Commission for the application of Union harmonisation legislation;
   (d) ‘national standard’ means a standard adopted by a national standardisation body;
   ▌

(2) ‘European standardisation deliverable’ means any other technical specification than a European standard, adopted by a European standardisation ***organisation*** for repeated or continuous application and with which compliance is not compulsory;

(3) ‘draft standard’ means a document containing the text of the technical specifications concerning a given subject, which is being considered for adoption in accordance with the relevant standards procedure, as that document stands after the preparatory work and as circulated for public comment or scrutiny;

(4) ‘technical specification’ means ▌ a document ***that prescribes technical requirements to be fulfilled by a product, process, service or system and*** which lays down ***one or more of*** the following:
   (a) the characteristics required of a product including levels of quality, performance, interoperability, ***environmental protection, health,*** safety or dimensions, and including the requirements applicable to the product as regards the name under which the product is sold, terminology, symbols, testing and

test methods, packaging, marking or labelling and conformity assessment procedures;

(b) production methods and processes used in respect of agricultural products as ***defined in*** Article 38(1) ***TFEU*** , products intended for human and animal consumption, and medicinal products, as well as production methods and processes relating to other products, where these have an effect on their characteristics;

(c) the characteristics required of a service including levels of quality, performance, interoperability, ***environmental protection, health or*** safety, and including the requirements applicable to the provider as regards the information to be made available to the recipient, as ***specified*** in Article 22(1) to (3) of Directive 2006/123/EC;

(d) the methods and the criteria for assessing the performance of construction products, as defined in point 1 of Article 2 of Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products[38] , in relation to their essential characteristics.

(5) 'ICT technical specification' means a technical specification in the field of information and communication technologies;

(6) 'product' means any industrially manufactured product and any agricultural product, including fish products;

(7) 'service' means any self-employed economic activity normally provided for remuneration, as ***defined*** in Article 57 ***TFEU*** ;

(8) 'European standardisation ***organisation*** ' means ***an organisation listed*** in Annex I;

(9) 'international standardisation body' means the International Organisation for Standardisation (ISO), the International Electrotechnical Commission (IEC) and the International Telecommunication Union (ITU);

(10) 'national standardisation body' means a body notified to the Commission by a Member State in accordance with Article 27 of this Regulation.

Chapter II

Transparency and stakeholder participation

Article 3

Transparency of work programmes of standardisation bodies

1. At least once a year, each European ***standardisation organisation*** and national standardisation body shall establish its work programme. That work programme shall contain information on the standards and European standardisation deliverables which ***a European standardisation organisation or national standardisation body*** intends to prepare or amend, which it is preparing or amending and which it has adopted in the period of the preceding work programme, unless these are identical or equivalent transpositions of international or European standards.

2. The work programme shall ***indicate, in respect of*** each standard and European standardisation deliverable ▌:

(a) the subject matter;

(b) the stage attained in the development of the standards and European standardisation deliverables;

(c) the references of any international standards taken as a basis.

3. Each European ***standardisation organisation*** and national standardisation body shall make its work programme available on its website or any other publicly available website, ***as well as make*** a notice of the existence of the work programme ***available*** in a national or, where appropriate, European publication of standardisation activities.

4. No later than at the time of publication of its work programme, each European standardisation organisation and national standardisation body shall notify the existence thereof to the other European standardisation organisations and national standardisation bodies and to the Commission. ***The Commission shall make that information available to the Member States via the committee referred to in Article 22.***

5. National standardisation bodies may not object to a subject for standardisation in ***their*** work programme ***being considered at European level in accordance with the rules laid down by the*** European standardisation ***organisations and may not undertake any action which could prejudice a decision in this regard*** .

6. During the preparation of a harmonised standard or after its approval, national standardisation bodies shall not take any action which could prejudice the harmonisation intended and, in particular, shall not publish in the field in question a new or revised national standard which is not completely in line with an existing harmonised standard. After publication of a new harmonised standard, all conflicting national standards shall be withdrawn within a reasonable deadline.

Article 4

Transparency of standards

1. Each European ***standardisation organisation*** and national standardisation body shall send ***at least in electronic form*** any draft national standard, European standard or European standardisation deliverable to other European standardisation organisations, national standardisation bodies or the Commission, upon their request.

2. Each European ***standardisation organisation*** and national standardisation body shall ***within three months*** reply to, and take due account of, any comments received from any other European standardisation organisation, national standardisation body or the Commission with respect to any draft ***referred to in paragraph 1*** .

3. When a national standardisation body receives comments indicating that the draft standard would have a negative impact on the internal market, it shall consult the European standardisation organisations and the Commission before adopting it.

4. National standardisation bodies shall:

(a) ***ensure access to*** draft ***national*** standards in such a way that ***all relevant*** parties ***in particular those*** established in other Member States have the opportunity to submit comments;

(b) allow other national standardisation bodies to be involved passively or actively, ***by sending an observer,*** in the planned activities ▌ .

Article 5

Stakeholder participation in European standardisation

1. European standardisation ***organisations*** shall ***encourage and facilitate*** an appropriate representation ***and effective participation of all relevant stakeholders, including SMEs*** , consumer organisations and environmental and social stakeholders ***in their standardisation activities. They shall*** in particular ***encourage and facilitate such representation and participation*** through the European stakeholder organisations ***receiving Union financing in accordance with this Regulation*** at the policy development level and ▌ at the following stages of the development of European standards or European standardisation deliverables:

(a) the proposal and acceptance of new work items;

(b) the technical discussion on proposals;

(c) the submission of comments on drafts;

(d) the revision of existing European standards or European standardisation deliverables;

(e) the dissemination of ***information of*** , and awareness-building about, adopted European standards or European standardisation deliverables.

2. ***In addition to the collaboration with market surveillance authorities in the Member States, research facilities of the Commission and the European stakeholder organisations receiving Union financing in accordance with this Regulation,*** European ***standardisation organisations*** shall ***encourage and facilitate*** appropriate representation, at technical level, of undertakings, research centres***,*** universities and other legal entities, in standardisation activities concerning an emerging area with significant policy or technical innovation implications, if the legal entities concerned participated in a project that is related to that area and that is funded by the Union under a multiannual framework programme for activities in the area of research, ***innovation*** and technological development, adopted pursuant to Article 182 TFEU.

Article 6

Access of SMEs to standards

1. National standardisation bodies shall encourage and facilitate the access of SMEs to standards and standards development processes in order to reach a higher level of participation in the standardisation system, for instance by:

(a) identifying, in their annual work programmes, the standardisation projects, which are of particular interests to SMEs;

(b) giving access to standardisation activities without obliging SMEs to become a member of a national standardisation body;

(c) providing free access or special rates to participate in standardisation activities;

(d) providing free access to draft standards;

(e) making available free of charge on their website abstracts of standards;

(f) applying special rates for the provision of standards or providing bundles of standards at a reduced price.

2. National standardisation bodies shall exchange best practices aiming to enhance the participation of SMEs in standardisation activities and to increase and facilitate the use of standards by SMEs.

3. National standardisation bodies shall send annual reports to the European standardisation organisations with regards to their activities in paragraph 1 and 2 and all other measures to improve conditions for SMEs to use standards and to participate in the standards development process. The national standardisation bodies shall publish those reports on their websites.

Article 7

Participation of public authorities in European standardisation

Member States shall, where appropriate, encourage participation of public authorities, including market surveillance authorities, in national standardisation activities aimed at the development or revision of standards requested by the Commission in accordance with Article 10.

Chapter III

European standards and European standardisation deliverables in support of Union legislation and policies

Article 8

The annual Union work programme for *European standardisation* ▌

1. The Commission shall adopt an annual ***Union work programme for*** European standardisation ▌ which ***shall identify strategic priorities for European standardisation, taking into account Union long-term strategies for growth. It*** shall indicate the European standards and European standardisation deliverables that ***the Commission*** intends to request from the European standardisation organisations in accordance with Article 10.

2. The annual ***Union work programme for*** European standardisation ▌ shall define the specific objectives and policies for the European standards and ▌ European standardisation deliverables that the Commission intends to request from the European standardisation ***organisations in accordance with Article 10*** . In cases of urgency the Commission can issue requests without prior indication.

3. The annual Union work programme for European standardisation shall also include objectives for the international dimension of European standardisation, in support of Union legislation and policies.

4. The annual Union work programme for European standardisation shall be adopted after having conducted a broad consultation of relevant stakeholders, including European standardisation organisations and European stakeholder organisations receiving Union financing in accordance with this Regulation, and Member States via the committee referred to in Article 22 of this Regulation.

5. After its adoption, the Commission shall make the annual Union work programme for European standardisation available on its website.

Article 9

Cooperation with research facilities

The Commission's research facilities shall contribute to the preparation of the annual Union work programme for European standardisation referred to in Article 8 and provide European standardisation organisations with scientific input, in their areas of expertise, to ensure that European standards take into account economic competitiveness and societal needs such as environmental sustainability and safety and security concerns.

Article 10

Standardisation requests to European standardisation organisations

1. The Commission may ***within the limitations of the competences laid down in the Treaties,*** request one or several European standardisation organisations to draft a European standard or European standardisation deliverable within a set deadline. ***European standards and European standardisation deliverables*** shall be market-driven, take into account the public interest ***as well as the policy objectives clearly stated in the Commission's request*** and based on consensus. ***The Commission shall determine the requirements as to the content to be met by the requested document and a deadline for its adoption.***

2. The decisions referred to in paragraph 1 shall be adopted in accordance with the procedure laid down in

Article 22(3) after consultation of the European standardisation organisations and the European stakeholder organisations receiving Union financing in accordance with this Regulation as well as the committee set up by the corresponding Union legislation, when such a committee exists, or after other forms of consultation of sectoral experts.

3. The relevant European standardisation ***organisation*** shall indicate, within one month following its receipt, if it accepts the request referred to in paragraph 1.

4. ***Where a request for funding is made,*** the Commission shall inform the relevant European standardisation organisations, within ***two*** months following the receipt of the acceptance referred to in paragraph 3, about the award of a grant for drafting a European standard or a European standardisation deliverable.

5. The European standardisation organisations shall inform the Commission about the activities undertaken for the development of the documents referred to in paragraph 1. ***The Commission together with the European standardisation organisations shall assess the compliance of the documents drafted by the European standardisation organisations with its initial request.***

6. Where a harmonised standard satisfies the requirements which it aims to cover and which are set out in the corresponding Union harmonisation legislation, the Commission shall publish a reference of such harmonised standard without delay in the Official Journal of the European Union or by other means in accordance with the conditions laid down in the corresponding act of Union harmonisation legislation.

Article 11

Formal *objections to harmonised standards*

1. When a Member State ***or the European Parliament*** considers that a harmonised standard does not entirely satisfy the requirements which it aims to cover and which are set out in the relevant Union ***harmonisation*** legislation, ***it*** shall inform the Commission thereof ***with a detailed explanation and the Commission shall, after consulting the committee set up by the corresponding Union harmonisation legislation, if it exists, or after other forms of consultation of sectoral experts, decide:***

(a) ***to publish,*** not to publish or to publish with restriction the references to the harmonised standard concerned in the *Official Journal of the European Union* ;

(b) ***to maintain,*** to maintain with restriction or to withdraw the references to the harmonised standard concerned in or from the *Official Journal of the European Union* .

2. The Commission shall publish information on its website on the harmonised standards that have been subject to the decision referred to in paragraph 1.

3. The Commission shall inform the European standardisation ***organisation*** concerned of the decision referred to in paragraph 1 and, if necessary, request the revision of the harmonised standards concerned.

4. The decision referred to in point (a) of paragraph ***1*** of this Article shall be adopted in accordance with the advisory procedure referred to in Article 22(2).

5. The decision referred to in point (b) of paragraph ***1*** of this Article shall be adopted in accordance with the examination procedure referred to in Article 22(3).

Article 12

Notification of stakeholder organisations

The Commission shall establish a notification system for all stakeholders, including European standardisation organisations and European stakeholder organisations receiving Union financing in accordance with this Regulation in order to ensure proper consultation and market relevance prior to:

(a) adopting the annual Union work programme for European standardisation referred to in Article 8(1);

(b) adopting standardisation requests referred to in Article 10;

(c) taking a decision on formal objections to harmonised standards, as referred to in Article 11(1);

(d) taking a decision on identifications of ICT technical specifications referred to in Article 13;

(e) adopting delegated acts referred to in Article 20.

Chapter IV

ICT technical specifications

Article 13

Identification** of ICT technical specifications **eligible for referencing

1. Either on proposal from a ***Member State*** or on its own initiative the Commission may decide to ***identify ICT*** technical specifications ***that*** are not national, European or international standards, ***but*** meet the requirements set out in Annex II, ***which may be referenced, primarily to enable interoperability, in public procurement*** .

2. Either on proposal from a Member State or on its own initiative, when an ICT technical specification identified in accordance with paragraph 1 is modified, withdrawn or no longer meets the requirements set out in Annex II, the Commission may decide to identify the modified ICT technical specification or to withdraw the identification.

3. The decisions provided for in paragraphs 1 and 2 shall be adopted after consultation of the European multi-stakeholder platform on ICT standardisation, which includes European standardisation organisations, Member States and relevant stakeholders, and after consultation of the committee set up by the corresponding Union legislation, if it exists, or after other forms of consultation of sectoral experts, if such a committee does not exist.

Article 14

*Use of ICT **technical specifications** in public procurement*

The ICT technical specifications referred to in Article 13 ***of this Regulation*** shall constitute common technical specifications referred to in Directives 2004/17/EC, 2004/18/EC and 2009/81/EC, and Regulation (EC, Euratom) No 2342/2002.

Chapter V

Financing of European standardisation

Article 15

*Financing of standardisation **organisations** by the Union*

1. The financing by the Union may be granted to the European standardisation ***organisations*** for the following standardisation activities:

(a) the development and revision of European standards or European standardisation deliverables which is necessary and suitable for the support of Union legislation and policies;

(b) the verification of the quality, and conformity to the corresponding Union legislation and policies, of European standards or European standardisation deliverables;

(c) the performance of preliminary or ancillary work in connection with European standardisation, including studies, cooperation activities, ***including international cooperation,*** seminars, evaluations, comparative analyses, research work, laboratory work, inter-laboratory tests, conformity evaluation work and measures to ensure that the periods for the development and the revision of European standards or European standardisation deliverables are shortened ***without prejudice to the founding principles, especially the principles of openness, quality, transparency and consensus among all stakeholders*** ;

(d) the activities of the central secretariats of the European standardisation organisations, including policy development, the coordination of standardisation activities, the processing of technical work and the provision of information to interested parties;

(e) the translation ▌ of European standards or European standardisation deliverables used in support of Union legislation and policies into the official Union languages other than the working languages of the European standardisation ***organisations*** or, in duly justified cases into languages other than the official Union languages;

(f) the drawing up of information to explain, interpret and simplify European standards or European standardisation deliverables, including the drawing up of user guides, ***abstracts of standards,*** best practice information and awareness-building actions***, strategies and training programmes*** ;

(g) activities seeking to carry out programmes of technical assistance, cooperation with third countries and the promotion and enhancement of the European standardisation system and of European standards and European standardisation deliverables among interested parties in the Union and at international level.

2. The financing by the Union may also be granted to:

(a) national standardisation bodies for the standardisation activities referred to in paragraph 1, which they jointly undertake with the European standardisation ***organisations;***

(b) other bodies which have been entrusted with ***contributing to the activities referred to in point (a) of paragraph 1, or*** carrying out the activities referred to in points ▌(c) and (g) of paragraph 1, in cooperation with the European standardisation organisations.

Article 16

Financing of other European organisations by the Union

The financing by the Union may be granted to the ***European stakeholder organisations meeting the criteria set out in Annex III to this Regulation*** for the following activities:

(a) the functioning of these organisations and of their activities relating to European and international standardisation, including the processing of technical work and the provision of information to members and other interested parties;

(b) ***the provision of*** legal and technical expertise, including studies, in relation to assessment of the need for, and the development of, European standards and European standardisation deliverables ***and training of experts*** ;

(c) the participation in the technical work with respect to the development and revision of European standards and European standardisation deliverables which is necessary and suitable for the support of Union legislation and policies;
▌

(d) the promotion of European standards and European standardisation deliverables, and the information on, and use of, standards among interested parties, ***including*** SMEs ***and consumers*** .

Article 17

Financing arrangements

1. Financing by the Union shall be provided in the form of:

(a) grants without a call for proposals, or contracts after public procurement procedures, to:
  (i) European ***standardisation organisations*** and national standardisation bodies to carry out the activities referred to in Article 15(1);
  (ii) bodies identified by a basic act, within the meaning of Article 49 of Regulation (EC, Euratom) No 1605/2002, to carry out, in collaboration with the European standardisation ***organisations the activities*** referred to in point (c) of Article 15(1) of this Regulation;

(b) grants after a call for proposals, or contracts after public procurement procedures, to other bodies referred to in point (b) of Article 15(2) ▌:
  (i) ***for contributing to*** the development and revision of European standards or European standardisation deliverables referred to in point (a) of Article 15(1);
  (ii) ***for carrying out*** the preliminary or ancillary work referred to in point (c) of Article 15(1);
  (iii) ***for carrying out*** the activities referred to in point (g) of Article 15(1);

(c) grants after a call for proposals to the ***European stakeholder organisations meeting the criteria set out in Annex III to this Regulation*** to carry out the activities referred to in Article 16.

2. The activities of the bodies referred to in paragraph 1 may be financed by:

(a) grants for actions;

(b) operating grants for the European standardisation ***organisations*** and the ***European stakeholder organisations meeting the criteria set out in Annex III to this Regulation*** in accordance with the rules set out in Regulation (EC, Euratom) No 1605/2002. In the event of renewal, operating grants shall not be automatically decreased.

3. The Commission shall decide on the financing arrangements referred to in paragraphs 1 and 2, on the amounts of the grants and, where necessary, on the maximum percentage of financing by type of activity.

4. Except in duly justified cases, grants awarded for the standardisation activities referred to in points (a) and (b) of Article 15(1) shall take the form of lump sums ***and for the standardisation activities referred to point (a) of Article 15(1)*** shall be paid upon fulfilment of the following conditions:

(a) European standards or European standardisation deliverables requested by the Commission in accordance with Article 10 are adopted or revised within a period not exceeding the period specified in the request referred to in that Article;

(b) SMEs, consumer organisations and environmental and social stakeholders are appropriately represented ***and can participate*** in European standardisation activities, as referred to in Article 5(1).

5. The common cooperation objectives and the administrative and financial conditions relating to the grants awarded to European standardisation ***organisations*** and the ***European stakeholder organisations meeting the criteria set out in Annex III to this Regulation*** shall be defined in the framework partnership agreements ***between*** the Commission and those ***standardisation and stakeholder*** organisations, in accordance with Regulations (EC, Euratom) No 1605/2002 and (EC, Euratom) No 2342/2002. The Commission shall inform the European Parliament and the Council of the conclusion of those agreements.

Article 18

Management

The appropriations determined by the budgetary authority for the financing of standardisation activities may also cover the administrative expenses relating to the preparation, monitoring, inspection, auditing and evaluation which are directly necessary for the purposes of implementing Articles 15, 16 and 17, including studies, meetings, information and publication activities, expenses relating to informatics networks for the exchange of information and any other expenditure on administrative and technical assistance which the Commission may use for standardisation activities.

Article 19

Protection of the financial interests of the Union

1. The Commission shall ensure that, when the activities financed under this Regulation are implemented, the financial interests of the Union are protected by the application of preventive measures against fraud, corruption and 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 Regulations (EC, Euratom) No 2988/95, (Euratom, EC) No 2185/96 and (EC) No 1073/1999.

2. For the Union activities financed pursuant to this Regulation, the notion of irregularity defined in Article 1(2) of Regulation (EC, Euratom) No 2988/95 shall mean any infringement of a provision of Union 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 Union or budgets managed by it by an unjustified item of expenditure.

3. Any agreements and contracts resulting from this Regulation shall provide for monitoring and financial control by the Commission or any representative which it authorises and for audits by the ***European*** Court of Auditors, which if necessary may be conducted on the spot.

Chapter VI

Delegated acts, committee and reporting

Article 20

Delegated acts

The Commission shall be empowered to adopt delegated acts in accordance with Article 21 concerning amendments to the Annexes, in order to:

(a) update the list of European standardisation ***organisations*** set out in Annex I ***to take into account changes in their name or structure*** ;

(b) adapt the criteria for ***European stakeholder organisations set out in Annex III to this Regulation*** to further developments as regards their non-profit making nature and representativity. ***Such adaptations shall not have the effect of creating any new criteria or abolishing any existing criteria or category of organisation.***

Article 21

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to ***the*** conditions laid down in this Article.

2. The ▌ power ***to adopt delegated acts*** referred to in Article 20 shall be conferred on the Commission for ***a*** period of ***five years*** from 1 January 2013. ***The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.***

3. The delegation of ***power*** referred to in Article 20 may be revoked at any time by the European Parliament or by the Council. A decision ***to revoke*** shall put an end to the delegation of the ***power*** specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of ***any*** delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 20 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before ***the*** expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or ***of*** the Council.

Article 22

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

4. Where the opinion of the committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time-limit for delivery of the opinion, the chair of the committee so decides or a simple majority of committee members so request.

Article 23

Committee cooperation with standardisation organisations and stakeholders

The committee referred to in Article 22(1) shall work in cooperation with the European standardisation organisations and the European stakeholder organisations receiving Union financing in accordance with this Regulation.

Article 24

Reports

1. The European standardisation ***organisations*** shall send an annual report on the implementation of this Regulation to the Commission. It shall contain detailed information on the following:

(a) the application of Articles 4, 5, ***10*** , 15 and 17;

(b) the representation of SMEs, consumer organisations and environmental and social stakeholders in national standardisation bodies;

(c) the representation of SMEs on the basis of the annual reports referred to in Article 6(3);

(d) the use of ICT in the standardisation system;

(e) cooperation between the national standardisation bodies and European standardisation organisations.

2. The ***European stakeholder organisations*** that received Union financing in accordance with this Regulation shall send an annual report on their activities to the Commission. This report shall contain in particular detailed information about the membership of these organisations and the activities referred to in Article 16.

3. By 31 December 2015 and every five years thereafter, the Commission shall present a report to the European Parliament and ***to*** the Council on the implementation of this Regulation. This report shall contain ***an analysis of the annual reports referred to in paragraphs 1 and 2,*** an evaluation of the relevance of the standardisation activities receiving Union financing in the light of the requirements of ***Union*** legislation and policies ***as well as an assessment of potential new measures to simplify the financing of European standardisation and to reduce the administrative burden for the European standardisation organisations*** .

Article 25

Review

By ... [39] , the Commission shall evaluate the impact of the procedure established by Article 10 of this Regulation on the timeframe for issuing standardisation requests. The Commission shall present its conclusions in a report to the European Parliament and to the Council. Where appropriate, that report shall be accompanied by a legislative proposal to amend this Regulation.

Chapter VII

Final provisions

Article 26

Amendments

1. The following provisions are deleted:

(a) Article 6(1) of Directive 89/686/EEC;
(b) Article 5 of Directive 93/15/EEC;
(c) Article 6(1) of Directive 94/9/EC;
(d) Article 6(1) of Directive 94/25/EC;
(e) Article 6(1) of Directive 95/16/EC;
(f) Article 6 of Directive 97/23/EC;
(g) Article 14 of Directive 2004/22/EC;
(h) Article 8(4) of Directive 2007/23/EC;
(i) Article 7 of Directive 2009/23/EC;
(j) Article 6 of Directive 2009/105/EC.

References to those deleted provisions shall be construed as references to Article 11 of this Regulation.

2. Directive 98/34/EC is ***hereby*** amended as follows:

(a) ***in Article 1,*** paragraphs 6 to 10 ▌ are deleted;
(b) Articles 2, 3 and 4 are deleted;
(c) in Article 6(1), the words 'with the representatives of the standards institutions referred to in Annexes I and II' are deleted;
(d) in Article 6(3), the first indent is deleted;
(e) in Article 6(4), points (a), (b) and (e) are deleted;
(f) Article 7 is replaced by the following: "
Article 7
Member States shall communicate to the Commission, in accordance with Article 8(1), all requests made to standards institutions to draw up technical specifications or a standard for specific products for the purpose of enacting a technical regulation for such products as draft technical regulations, and shall state the grounds for their enactment. "
(g) in Article 11, the second sentence is replaced by the following sentence:"
The Commission shall publish annual statistics on the notifications received in the *Official Journal of the European Union* . "
(h) Annexes I and II are deleted.

References to those deleted provisions shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex IV to this Regulation.

Article 27

National standardisation bodies

Member States shall inform the Commission of their standardisation bodies.

The Commission shall publish a list of national standardisation bodies and any updates to that list in the *Official Journal of the European Union* .

Article 28

Transitional provisions

In Union acts that provide for a presumption of conformity with essential requirements through the application of harmonised standards adopted in accordance with Directive 98/34/EC, references to Directive 98/34/EC shall be construed as references to this Regulation, except references to the committee set up by Article 5 of Directive 98/34/EC ***regarding technical regulations*** .

Where ***a*** Union act provides for a procedure for objection to harmonised standards, Article 11 of this Regulation shall not apply to that act.

Article 29

Repeal

Decision No 1673/2006/EC and Decision 87/95/EEC are ***hereby*** repealed.

References to the repealed Decisions shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex IV to this Regulation.

Article 30

Entry into force

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

It shall apply from 1 January 2013.

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

Done at ....,

For the European Parliament For the Council

The President The President

ANNEX I

EUROPEAN STANDARDISATION *ORGANISATIONS*

1. CEN - European Committee for Standardisation

2. Cenelec - European Committee for Electrotechnical Standardisation

3. ETSI - European Telecommunications Standards Institute

ANNEX II

REQUIREMENTS FOR THE *IDENTIFICATION* OF ICT TECHNICAL SPECIFICATIONS

1. The technical specifications have market acceptance and their implementations do not hamper interoperability with the implementations of existing European or international standards. Market acceptance can be demonstrated by operational examples of compliant implementations from different vendors.

2. The technical specifications are coherent as they do not conflict with European standards, that is to say they cover domains where the adoption of new European standards is not foreseen within a reasonable period, where existing standards have not gained market uptake or where these standards have become obsolete, and where the transposition of the technical specifications into European standardisation deliverables is not foreseen within a reasonable period.

3. The technical specifications were developed by a non-profit making organisation which is a professional society, industry or trade association or any other membership organisation that within its area of expertise develops ***ICT technical specifications*** and which is not a European ***standardisation organisation*** , national or international standardisation body, through processes which fulfil the following criteria:

(a) openness:
the technical specifications were developed on the basis of open decision-making accessible to all interested ***parties*** in the market or markets affected by ***those technical specifications;***

(b) consensus:
the ***decision-making*** process was collaborative and consensus based and did not favour any particular stakeholder. Consensus means a general agreement, characterised by the absence of sustained opposition to substantial issues by any important part of the concerned interests and by a process that involves seeking to take into account the views of all parties concerned and to reconcile any conflicting arguments. Consensus does not imply unanimity;

(c) transparency:

(i) all information concerning technical discussions and decision making was archived and identified;

(ii) information on new standardisation activities was ***publicly and*** widely announced through suitable and accessible means;

(iii) participation of all relevant categories of interested ***parties*** was sought with a view to achieving balance;

(iv) consideration and response were given to comments by interested parties.

4. the technical specifications ***meet*** the following requirements:

(a) maintenance: ongoing support and maintenance of published specifications are guaranteed over a long period;

(b) availability: specifications are publicly available for implementation and use on reasonable terms (including for a reasonable fee or free of charge);

(c) intellectual property rights essential to the implementation of specifications are licensed to applicants on a (fair) reasonable and non-discriminatory basis ((F)RAND), which includes, at the discretion of the intellectual property right-holder, licensing essential intellectual property without compensation;

(d) relevance:

(i) the specifications are effective and relevant;

(ii) specifications need to respond to market needs and regulatory requirements;

(e) neutrality and stability:

(i) specifications whenever possible are performance oriented rather than based on design or descriptive characteristics;

(ii) specifications do not distort the market or limit the possibilities for implementers to develop competition and innovation based upon them;

(iii) specifications are based on advanced scientific and technological developments;

(f) quality:

(i) the quality and level of detail are sufficient to permit the development of a variety of competing implementations of interoperable products and services;

(ii) standardised interfaces are not hidden or controlled by anyone other than the organisations that adopted the technical specifications.

ANNEX III

EUROPEAN STAKEHOLDER ORGANISATIONS *ELIGIBLE FOR UNION FINANCING*

1. A European organisation representing SMEs in European standardisation activities which:

(a) is non-governmental and non-profit-making;

(b) has as its statutory objectives and activities to represent the interests of SMEs in the standardisation process at European level, ***to raise their awareness for standardisation and to motivate them to become involved in the standardisation process*** ;

(c) has been mandated by non-profit organisations representing SMEs in at least two thirds of the Member States, to represent the interests of SMEs in the standardisation process at European level.

2. A European organisation representing consumers in European standardisation activities which:

(a) is non-governmental, non-profit-making, and independent of industry, commercial and business or other conflicting interests;

(b) has as its statutory objectives and activities to represent consumer interests in the standardisation process at European level;

(c) has been mandated by national non-profit consumer organisations in at least two thirds of the Member States, to represent the interests of consumers in the standardisation process at European level.

3. A European organisation representing environmental interests in European standardisation activities which:

(a) is non-governmental, non-profit-making, and independent of industry, commercial and business or other conflicting interests;

(b) has as its statutory objectives and activities to represent environmental interests in the standardisation process at European level;

(c) has been mandated by national non-profit environmental organisations in at least two thirds of the Member States, to represent environmental interests in the standardisation process at European level.

4. A European organisation representing social interests in European standardisation activities which:

(a) is non-governmental, non-profit-making, and independent of industry, commercial and business or other conflicting interests;

(b) has as its statutory objectives and activities to represent social interests in the standardisation process at European level;

(c) has been mandated by national non-profit social organisations in at least two thirds of the Member States, to represent social interests in the standardisation process at European level.

ANNEX IV

CORRELATION TABLE

Directive 98/34/EC	This Regulation
Article 1, first paragraph, point (6)	Article 2(1)
Article 1, first paragraph, point (7)	--
Article 1, first paragraph, point (8)	Article 2(3)
Article 1, first paragraph, point (9)	Article 2(8)
Article 1, first paragraph, point (10)	Article 2(10)
Article 2(1)	Article 3(1)
Article 2(2)	Article 3(2)
Article 2(3)	Article 3(3) and (4)
Article 2(4)	Article 27
Article 2(5)	Article 20(a)
Article 3	Article 4(1)

Article 4(1)	Article 3(3) and (5) and Article 4(4)
Article 4(2)	--
Article 6(3), first indent	--
Article 6(4)(a)	Article 20(a)
Article 6(4)(b)	--
Article 6(4)(e)	Article 10(2)
Annex I	Annex I
Annex II	Article 27

Decision No 1673/2006	**This Regulation**
Article 1	Article 1
Articles 2 and 3	Article 15
Article 4	--
Article 5	Article 17
Article 6(1)	Article 18
Article 6(2)	Article 24(3)
Article 7	Article 19

Decision 87/95/EEC	**This Regulation**
Article 1	Article 2
Article 2	Article 3

Article 3	Article 13
Article 4	Article 8
Article 5	Article 14
Article 6	--
Article 7	--
Article 8	Article 24(3)
Article 9	--

(1) OJ C 376, 22.12.2011, p. 69.
(2) OJ C 376, 22.12.2011, p. 44.
(3) Position of the European Parliament of 11 September 2012.
(4) OJ L 204, 21.7.1998, p. 37.
(5) OJ L 315, 15.11.2006, p. 9.
(6) OJ L 36, 7.2.1987, p. 31.
(7) ***OJ C 70 E, 8.3.2012, p. 56.***
(8) OJ L 376, 27.12.2006, p. 36.
(9) ***OJ L 255, 30.9.2005, p. 22.***
(10) ***Approved by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ L 336, 23.12.1994, p. 1).***
(11) ***Approved by Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities (OJ L 23, 27.1.2010, p. 35).***
(12) OJ L 399, 30.12.1989, p.18.
(13) OJ L 121, 15.5.1993, p. 20.
(14) OJ L 100, 19.4.1994, p. 1.
(15) OJ L 164, 30.6.1994, p.15.
(16) OJ L 213, 7.9.1995, p. 1.
(17) OJ L 181, 9.7.1997, p. 1.
(18) OJ L 135, 30.4.2004, p. 1.
(19) OJ L 154, 14.6.2007, p. 1.
(20) OJ L 122, 16.5.2009, p. 6.
(21) OJ L 264, 8.10.2009, p. 12.
(22) OJ L 218, 13.8.2008, p. 82.
(23) OJ L 134, 30.4.2004, p. 1.
(24) OJ L 134, 30.4.2004, p. 114.
(25) ***OJ L 216, 20.8.2009, p. 76.***
(26) ***OJ L 357, 31.12.2002, p. 1.***
(27) OJ L 260, 3.10.2009, p. 20.
(28) OJ L 108, 24.4.2002, p. 33.
(29) ***OJ C 349, 30.11.2011, p. 4.***
(30) OJ L 248, 16.9.2002, p. 1.
(31) OJ L 310, 9.11.2006, p. 15.
(32) OJ L 404, 30.12.2006, p. 39.
(33) OJ L 149, 9.6.2007, p. 1.
(34) OJ L 312, 23.12.1995, p. 1.
(35) OJ L 292, 15.11.1996, p. 2.
(36) OJ L 136, 31.5.1999, p. 1.
(37) OJ L 55, 28.2.2011, p. 13.
(38) OJ L 88, 4.4.2011, p. 5.
(39) * ***OJ: please insert the date: two years after the date of application of this Regulation.***

Electronic identification of bovine animals ***I

Amendments adopted by the European Parliament on 11 September 2012 on the amended proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1760/2000 as regards electronic identification of bovine animals and deleting the provisions on voluntary beef labelling (COM(2012)0162 – C7-0114/2012 – 2011/0229(COD)) [(1)]

P7_TA-PROV(2012)0312 A7-0199/2012

(Ordinary legislative procedure: first reading)

Text proposed by the Commission	*Amendment*
Amendment 43 **Proposal for a regulation** **Title 1**	
Amended proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 1760/2000 as regards electronic identification of bovine animals and ***deleting the provisions on voluntary beef labelling***	Amended proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 1760/2000 as regards electronic identification of bovine animals and ***the labelling of beef***
Amendment 2 **Proposal for a regulation** **Recital 4**	
(4) Tracing of beef to source via identification and registration is a prerequisite for origin labelling throughout the food chain ***ensuring*** consumer protection and public health.	(4) Tracing of beef to source via identification and registration is a prerequisite for origin labelling throughout the food chain. ***Those measures ensure*** consumer protection and public health ***and promote consumer confidence.***
Amendment 4 **Proposal for a regulation** **Recital 6**	
(6) The use of electronic identification systems would potentially streamline traceability processes through automated and more accurate reading and recording into the holding register. It would enable also automated reporting of animal movements into the computerised data base and thus improve speed, reliability and accuracy of the system.	(6) The use of electronic identification systems would potentially streamline traceability processes through automated and more accurate reading and recording into the holding register. It would enable also automated reporting of animal movements into the computerised data base and thus improve speed, reliability and accuracy of the system. ***It would improve the management of direct payments paid to farmers per animal head through better controls and reduced risk of payment errors.***
Amendment 5 **Proposal for a regulation** **Recital 7**	
(7) Electronic identification systems based on radio frequency identification have considerably	(7) Electronic identification systems based on radio frequency identification have considerably

improved in the last *ten* years. That technology allows a faster and more accurate reading of individual animal identity codes directly into data processing systems resulting *on* a reduction of time needed to trace potential infected animals or infected food, saving labour costs but at the same time increasing equipment costs.	improved in the last *10* years***, even though International Organisation for Standardisation (ISO) standards still need to be applied, and they need to be tested for bovines*** . That technology allows a faster and more accurate reading of individual animal identity codes directly into data processing systems resulting *in* a reduction of time needed to trace potential infected animals or infected food, ***leading to improved databases and an increased capacity to react promptly in the event of disease outbreaks,*** saving labour costs but at the same time increasing equipment costs. ***If the electronic identification is faulty, the failure of the technology must not result in penalty payments being imposed on farmers.***

Amendment 6
Proposal for a regulation
Recital 9

(9) Given the technological advances in EID, several Member States have decided to start to implement bovine EID on a voluntary basis. Those initiatives are likely to lead to different systems to be developed in individual Member States or by stakeholders. Such a development would impede later harmonisation of technical standards within the Union.	(9) Given the technological advances in EID, several Member States have decided to start to implement bovine EID on a voluntary basis. Those initiatives are likely to lead to different systems to be developed in individual Member States or by stakeholders. Such a development would impede later harmonisation of technical standards within the Union. ***It should be ensured that the systems introduced in the Member States are interoperable and consistent with ISO standards.***

Amendment 7
Proposal for a regulation
Recital 16

(16) Making EID mandatory throughout the Union may have economically adverse effects on certain operators. It is therefore appropriate that a voluntary regime ***for the introduction of EID*** is established. ***Under*** such a regime, EID ***would*** be chosen by keepers that are likely to have ***immediate*** economic benefits.	(16) Making EID mandatory throughout the Union may have economically adverse effects on certain operators. ***Furthermore, there are practical problems which continue to hinder the effective operation of EID, especially with regard to the accuracy of the technology*** . ***Experience of implementing mandatory electronic identification for small ruminants demonstrates that due to faulty technology and practical difficulties it is frequently impossible to achieve 100 % accuracy*** . It is therefore appropriate that a voluntary regime is established. Such a regime ***would enable*** EID ***to*** be chosen ***only*** by keepers that are likely to have ***rapid*** economic benefits.

Amendment 8
Proposal for a regulation
Recital 17

(17) Member States have very different husbandry systems, farming practices and sector organisations. Member States should therefore be allowed to make EID compulsory on their territory only when they deem it appropriate, after considering all those factors.	(17) Member States have very different husbandry systems, farming practices and sector organisations. Member States should therefore be allowed to make EID compulsory on their territory only when they deem it appropriate, after considering all those factors***, including any negative impact on small farmers, and following consultation with organisations representing the***

	beef industry .

Amendment 9
Proposal for a regulation
Recital 18

(18) Animals entering the Union from third countries should be subject to the same identification requirements that apply to animals born in the Union.	(18) Animals ***and meat*** entering the Union from third countries should be subject to the same identification ***and traceability*** requirements that apply to animals born in the Union.

Amendment 10
Proposal for a regulation
Recital 19

(19) Regulation (EC) No 1760/2000 provides that the competent authority is to issue a passport for each animal which has to be identified in accordance with that Regulation. This causes a considerable administrative burden for the Member States. The computerised databases established by Member States sufficiently ensure traceability of domestic movements of bovine animals. Passports should therefore be issued only for animals intended for intra-Union trade. Once the data exchange between national computerised databases is operational, the requirement of issuing such passports should no longer apply for animals intended for intra-Union trade.	(19) Regulation (EC) No 1760/2000 provides that the competent authority is to issue a passport for each animal which has to be identified in accordance with that Regulation. This causes a considerable administrative burden for the Member States. The computerised databases established by Member States ***should*** sufficiently ensure traceability of domestic movements of bovine animals. Passports should therefore be issued only for animals intended for intra-Union trade. Once the data exchange between national computerised databases is operational, the requirement of issuing such passports should no longer apply for animals intended for intra-Union trade.

Amendment 11
Proposal for a regulation
Recital 19 a (new)

	(19a) So far, there is no specific legislation on cloning. However, opinion polls show that this issue is of great interest to the European public. It is therefore appropriate to ensure that beef derived from cloned animals or their descendants is labelled as such.

Amendment 12
Proposal for a regulation
Recital 20

(20) Section II of Title II of Regulation (EC) No 1760/2000 lays down rules for a voluntary beef labelling system which provide for the approval of certain labelling specifications by the competent authority of the Member State. ***The administrative burden and the costs incurred by Member States and economic operators in applying this system are not proportionate to the benefits of the system. That Section*** should ***therefore*** be deleted.	(20) Section II of Title II of Regulation (EC) No 1760/2000 lays down rules for a voluntary beef labelling system which provide for the approval of certain labelling specifications by the competent authority of the Member State. ***In view of developments in the beef sector since the above Regulation was adopted, the beef labelling system needs to be revised. Since the system of voluntary beef labelling is neither effective nor useful, it*** should be deleted***, without compromising the right of operators to inform consumers through voluntary labelling . Consequently, as for any other sort of meat, information which goes beyond mandatory labelling, this means in this particular case what***

	is required by Articles 13 and 15 of Regulation (EC) No 1760/2000, and is extremely important to consumers and farmers, for example breed, feed and husbandry, will have to respect the current horizontal legislation, including Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers 1 . Beyond this, the deletion is also balanced by the formulation, in this Regulation, of general rules ensuring consumer protection.
	_____
	1 OJ L 304, 22.11.2011, p. 18.

Amendments 14 and 45
Proposal for a regulation
Recital 22

(22) In order to ensure that the necessary rules for the proper functioning of the identification, registration and traceability of bovine animals and beef are applied, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of requirements for alternative means of identification of bovine animals, special circumstances in which Member States may extend the maximum periods for the application of the means of identification, data to be exchanged between the computerised databases of the Member States, the maximum period for certain reporting obligations, the requirements for means of identification, the information to be included in the passports and in the individual registers to be kept on each holding, the minimum level of official controls, the identification and registration of movements of bovine animals ***when put out to summer grazing in*** different ***mountain areas*** , rules for labelling certain products which should be equivalent to the rules laid down in Regulation (EC) No 1760/2000, the definitions of minced beef, beef trimmings or cut beef, ***the specific indications that may be put on labels, the labelling provisions related to the simplification of the indication of origin,*** the maximum size and composition of certain groups of animals, the approval procedures related to labelling conditions on packaging of cut meat and the administrative sanctions to be applied by the Member States in cases of non-compliance with Regulation (EC) No 1760/2000. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up such delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.	(22) In order to ensure that the necessary rules for the proper functioning of the identification, registration and traceability of bovine animals and beef are applied, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of requirements for alternative means of identification of bovine animals, special circumstances in which Member States may extend the maximum periods for the application of the means of identification, data to be exchanged between the computerised databases of the Member States, the maximum period for certain reporting obligations, the requirements for means of identification, the information to be included in the passports and in the individual registers to be kept on each holding, the minimum level of official controls, the identification and registration of movements of bovine animals ***during*** different ***types of seasonal transhumance*** , rules for labelling certain products which should be equivalent to the rules laid down in Regulation (EC) No 1760/2000, the definitions of minced beef, beef trimmings or cut beef, the maximum size and composition of certain groups of animals, the approval procedures related to labelling conditions on packaging of cut meat and the administrative sanctions to be applied by the Member States in cases of non-compliance with Regulation (EC) No 1760/2000. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up such delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

Amendment 15
Proposal for a regulation

Recital 23

(23) In order to ensure uniform conditions for the implementation of Regulation (EC) No 1760/2000 with respect to the registration of holdings making use of alternative means of identification, technical characteristics and modalities for the exchange of data between the computerised databases of Member States, the format and design of the means of identification, technical procedures and standards for the implementation of EID, the format of the passports and of the register to be kept on each holding, rules concerning the modalities for the application of the sanctions imposed by the Member States on holders pursuant to Regulation (EC) No 1760/2000, corrective actions to be taken by the Member States to ensure proper compliance with Regulation (EC) No 1760/2000, in cases where on-the-spot checks so justify, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.	(23) In order to ensure uniform conditions for the implementation of Regulation (EC) No 1760/2000 with respect to the registration of holdings making use of alternative means of identification, technical characteristics and modalities for the exchange of data between the computerised databases of Member States, ***the declaration that the data exchange system between Member States is fully operational,*** the format and design of the means of identification, technical procedures and standards for the implementation of EID, the format of the passports and of the register to be kept on each holding, rules concerning the modalities for the application of the sanctions imposed by the Member States on holders pursuant to Regulation (EC) No 1760/2000, corrective actions to be taken by the Member States to ensure proper compliance with Regulation (EC) No 1760/2000, in cases where on-the-spot checks so justify, ***and the necessary rules to ensure proper compliance in particular as regards controls, administrative sanctions, and various maximum periods laid down in this Regulation,*** implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

Amendment 16
Proposal for a regulation
Recital 23 a (new)

	(23a) The implementation of this Regulation should be monitored. Consequently, no later than five years after the entry into force of this Regulation, the Commission should submit to the European Parliament and to the Council a report dealing both with the implementation of this Regulation and with the technical and economic feasibility of introducing mandatory electronic identification everywhere in the Union. If this report concludes that electronic identification should become mandatory, it should, if appropriate, be accompanied by an appropriate legislative proposal. That legislation would remove risks of distortion of competition within the internal market.

Amendment 17
Proposal for a regulation
Article 1 – point 1 a (new)
Regulation (EC) No 1760/2000
Article 2

	(1a) In Article 2, the following definition is

	added:
	' 'cloned animals' means animals produced by means of a method of asexual, artificial reproduction with the aim of producing a genetically identical or nearly identical copy of an individual animal,'.

Amendment 18
Proposal for a regulation
Article 1 – point 1 b (new)
Regulation (EC) No 1760/2000
Article 2

	(1b) In Article 2, the following definition is added:
	' 'descendants of cloned animals' means animals produced by means of sexual reproduction, in cases in which at least one of the progenitors is a cloned animal,'.

Amendment 19
Proposal for a regulation
Article 1 – point 3
Regulation (EC) No 1760/2000
Article 4 – paragraph 1 – subparagraph 1

1. All animals on a holding shall be identified by at least two individual means of identification authorised in accordance with Articles 10 and 10a and approved by the competent authority.	1. All animals on a holding shall be identified by at least two individual means of identification authorised in accordance with Articles 10 and 10a and approved by the competent authority. ***The Commission shall ensure that identifiers used in the Union are interoperable and consistent with ISO standards.***

Amendment 20
Proposal for a regulation
Article 1 – point 3
Regulation (EC) No 1760/2000
Article 4 – paragraph 1 – subparagraph 2

The means of identification shall be allocated to the holding, distributed and applied to the animals in a manner determined by the competent authority.	The means of identification shall be allocated to the holding, distributed and applied to the animals in a manner determined by the competent authority. ***This shall not apply to animals born before 1 January 1998 and not intended for intra-Union trade.***

Amendment 21
Proposal for a regulation
Article 1 – point 3
Regulation (EC) No 1760/2000
Article 4 – paragraph 1 – subparagraph 3

All means of identification applied to one animal shall bear the same unique identification code, which makes it possible to identify the animal individually together with the holding on which it was born.	All means of identification applied to one animal shall bear the same unique identification code, which makes it possible to identify the animal individually together with the holding on which it was born. ***By way of derogation, in cases where***

	it is not possible for the two individual means of identification to bear the same unique identification code, the competent authority may, under its supervision, allow for the second means of identification to bear a different code provided that full traceability is ensured and individual identification of the animal, including the holding on which it was born, is possible.

Amendment 22
Proposal for a regulation
Article 1 – point 3
Regulation (EC) No 1760/2000
Article 4 – paragraph 2 – subparagraph 2

The Member States that make use of this option shall provide the Commission with the text of such national provisions.	The Member States that make use of this option shall provide the Commission with the text of such national provisions. ***The Commission shall then supply the other Member States, in a language which is readily understandable by those Member States, with a summary of the national rules governing the movement of animals to Member States that have opted for compulsory EID and shall make them publicly available.***

Amendment 23
Proposal for a regulation
Article 1 – point 4
Regulation (EC) No 1760/2000
Article 4a – paragraph 1 – subparagraph 1 – point b

(b) 60 days for the second means of identification.	(b) 60 days for the second means of identification***, for reasons related to the physiological development of the animals*** .

Amendment 24
Proposal for a regulation
Article 1 – point 4
Regulation (EC) No 1760/2000
Article 4a – paragraph 1 – subparagraph 2

No animal may leave the holding where it was born before the two means of identification have been applied.	No animal may leave the holding where it was born before the two means of identification have been applied ***except in case of force majeure.***

Amendment 25
Proposal for a regulation
Article 1 – point 4
Regulation (EC) No 1760/2000
Article 4a – paragraph 2 – subparagraph 1 a (new)

	The first subparagraph shall not apply to animals born before 1 January 1998 and not intended for intra-Union trade.

Amendment 26
Proposal for a regulation
Article 1 – point 4
Regulation (EC) No 1760/2000
Article 4b – paragraph 2 – subparagraph 2

That period shall not exceed 20 days following the veterinary checks referred in paragraph 1. In any event, the means of identification shall be applied to the animals before they leave the holding of destination.	That period shall not exceed 20 days following the veterinary checks referred in paragraph 1. ***By way of derogation, for reasons related to the physiological development of the animals, that period may be extended by up to 60 days for the second means of identification.*** In any event, the means of identification shall be applied to the animals before they leave the holding of destination.

Amendment 27
Proposal for a regulation
Article 1 – point 4
Regulation (EC) No 1760/2000
Article 4c – paragraph 2 – subparagraph 2

The maximum period referred to in point (b) shall not exceed 20 days from the date of arrival of the animals on the holding of destination. In any event, the means of identification shall be applied to the animals before they leave the holding of destination.	The maximum period referred to in point (b) shall not exceed 20 days from the date of arrival of the animals on the holding of destination***. By way of derogation, for reasons related to the physiological development of the animals, that period may be extended by up to 60 days for the second means of identification.*** In any event, the means of identification shall be applied to the animals before they leave the holding of destination.

Amendment 28
Proposal for a regulation
Article 1 – point 4
Regulation (EC) No 1760/2000
Article 4c – paragraph 2 – subparagraph 2 a (new)

	Notwithstanding the third subparagraph of Article 4(1), in cases where it is not possible to apply an electronic identifier with the same unique identification code to the animal, the competent authority may, under its supervision, allow for the second means of identification to bear a different code provided that full traceability is ensured and that individual identification of the animal, including the holding on which it was born, is possible.

Amendment 29
Proposal for a regulation
Article 1 – point 4
Regulation (EC) No 1760/2000
Article 4d

No means of identification ***may*** be removed or replaced without the permission and without the control of the competent authority. Such permission may only be granted where the removal or replacement do not compromise the traceability of the animal.	No means of identification ***shall*** be ***modified,*** removed or replaced without the permission and without the control of the competent authority. Such permission may only be granted where the ***modification, the*** removal or replacement do not compromise the traceability of the animal.

Amendment 30
Proposal for a regulation
Article 1 – point 5
Regulation (EC) No 1760/2000
Article 5 – paragraph 2 – subparagraph 1

Member States may exchange electronic data between their computerised databases from the date when the Commission recognises the full operability of the data exchange system.	Member States may exchange electronic data between their computerised databases from the date when the Commission recognises the full operability of the data exchange system. ***This must be done in such a way that data protection is guaranteed and any abuse prevented in order to protect the interests of the holding.***

Amendment 31
Proposal for a regulation
Article 1 – point 6
Regulation (EC) No 1760/2000
Article 6 – point c a (new)

	(ca) in the case of animals exported to third countries, the passport shall be surrendered by the last keeper to the competent authority at the place where the animal is exported.

Amendment 32
Proposal for a regulation
Article 1 – point 7 – point b
Regulation (EC) No 1760/2000
Article 7 – paragraph 5 – point b

(b) enters up-to-date information directly into the computerised database within ***twenty-four hours*** of the occurrence of the event.	(b) enters up-to-date information directly into the computerised database within ***72 hours*** of the occurrence of the event.

Amendment 33
Proposal for a regulation
Article 1 – point 8
Regulation (EC) No 1760/2000
Article 9a

Member States shall ensure that any person responsible for the identification and registration of animals receives instructions and guidance on the relevant provisions of this Regulation and of any delegated and implementing acts adopted by the Commission on the basis of Articles 10 and 10a, and that appropriate training courses are available.	Member States shall ensure that any person responsible for the identification and registration of animals receives instructions and guidance on the relevant provisions of this Regulation and of any delegated and implementing acts adopted by the Commission on the basis of Articles 10 and 10a, and that appropriate training courses are available. ***This information shall be supplied, at no cost to the recipient, every time a change is made to the relevant provisions and as often as necessary. Member States shall share best practices in order to ensure good quality of training and information sharing across the Union.***

Amendment 34
Proposal for a regulation
Article 1 – point 9
Regulation (EC) No 1760/2000
Article 10 – paragraph 1 – point e

(e) the identification and registration of movements of bovine animals ***when put out to summer grazing in different mountain areas*** .	(e) the identification and registration of movements of bovine animals ***during different types of seasonal transhumance.***

Amendment 35
Proposal for a regulation
Article 1 – point 11 – point b a (new)
Regulation (EC) No 1760/2000
Article 13 – paragraph 5 a (new)

	(ba) The following paragraph is added:
	'5a. As from *, operators and organisations shall also indicate on their labels where the beef is derived from cloned animals or descendants of cloned animals.'
	**** OJ: please insert the date: six months from the date of entry into force of this Regulation.***

Amendment 46
Proposal for a regulation
Article 1 –point 14
Regulation (EC) No 1760/2000
Title II – section II

14) Articles 16, 17 and 18 are deleted.	14) ***Starting from 1 January 2014, the heading of section II of title II shall be replaced by the words 'Voluntary labelling',*** Articles 16, 17 and 18 are deleted***, and Article 15a shall be inserted into section II of title II:***
	'Article 15a
	General rules
	Information other than that specified in part I of this Title which is added to labels by operators or organisations marketing beef must be objective, verifiable by the relevant authorities and comprehensible to consumers.
	Moreover, voluntary beef labelling has to respect the current horizontal legislation on labelling and Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers.
	The competent authority shall verify the truthfulness of the voluntary information. In the event of a failure on the part of operators or organisations marketing beef to comply with these obligations, the sanctions laid down in accordance with Article 22(4a) will be applied.'

Amendment 51
Proposal for a regulation
Article 1 – point 15
Regulation (EC) No 1760/2000
Article 19 – point b

(b) the specific indications that may be put on labels;	(b) ***definition of and requirements for*** the specific indications that may be put on labels;

Amendment 40
Proposal for a regulation
Article 1 – point 17 – point a
Regulation (EC) No 1760/2000
Article 22 – paragraph 1 – subparagraph 3

The Commission shall, ***by means of implementing*** acts**,** ***lay down*** the necessary rules, including transitional measures required for their introduction, concerning the procedures for the application of the sanctions referred to in the second subparagraph. ***Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 23(2).***	The Commission shall ***be empowered to adopt delegated*** acts***, in accordance with Article 22b, laying down*** the necessary rules, including transitional measures required for their introduction, concerning the procedures for the application of the sanctions referred to in the second subparagraph.

Amendment 47
Proposal for a regulation
Article 1 –point 18
Regulation (EC) No 1760/2000
Article 22 b

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The ***delegation of*** power referred to in Articles 4(5) and 4a(2), ***and*** in Articles 5, 7, 10, 14 and 19 and in Article 22(4a) shall be conferred on the Commission for ***an indeterminate*** period of ***time*** from*.	2. The power ***to adopt delegated acts*** referred to in Articles 4(5) and 4a(2), in Articles 5, 7, 10, 14 and 19***, in Article 22(1) third subparagraph*** and in Article 22(4a) shall be conferred on the Commission for a period of ***five years*** from*.
3. The delegation of power referred to in Articles 4(5) and 4a(2), ***and*** in Articles 5, 7, 10, 14 and 19 and in Article 22(4a) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.	3. The delegation of power referred to in Articles 4(5) and 4a(2), in Articles 5, 7, 10, 14 and 19***, in Article 22(1) third subparagraph*** and in Article 22(4a) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.	4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Articles 4(5) and 4a(2), ***and*** Articles 5, 7, 10, 14, and 19 and in Article 22(4a) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the	5. A delegated act adopted pursuant to Articles 4(5) and 4a(2), Articles 5, 7, 10, 14, and 19***, Article 22(1) third subparagraph*** and in Article 22(4a) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament

Council.‘	or the Council.‘
**[date of entry into force of this Regulation or from any other date set by the legislator].*	**OJ: please insert date of entry into force of this Regulation.*
Amendment 42 **Proposal for a regulation** **Article 1 – point 19 a (new)** **Regulation (EC) No 1760/2000** **Article 23 a (new)**	
	(19a) The following Article is inserted: *'Article 23a* *Report and legislative developments* *No later than five years after the entry into force of this Regulation, the Commission shall submit to Parliament and the Council a report dealing both with implementation of this Regulation and with the technical and economic feasibility of introducing mandatory electronic identification everywhere in the Union. If this report concludes that electronic identification should become mandatory, it shall be accompanied by an appropriate legislative proposal.‘.*

(1) The matter was referred back to the committee responsible for reconsideration pursuant to Rule 57(2), second subparagraph (A7-0199/2012).

Pharmacovigilance (amendment of Directive 2001/83/EC) ***I

- Resolution
- Consolidated text

European Parliament legislative resolution of 11 September 2012 on the proposal for a directive of the European Parliament and of the Council amending Directive 2001/83/EC as regards pharmacovigilance (COM(2012)0052 – C7-0033/2012 – 2012/0025(COD))

P7_TA-PROV(2012)0313 **A7-0165/2012**

(Ordinary legislative procedure: first reading)

The European Parliament ,

– having regard to the Commission proposal to Parliament and the Council (**COM(2012)0052**),

– having regard to Article 294(2), Article 114 and Article 168(4)(c) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0034/2012),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Economic and Social Committee of 28 March 2012(1) ,

– after consulting the Committee of the Regions,

– having regard to the undertaking given by the Council representative by letter of 27 June 2012 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

– having regard to Rule 55 of its Rules of Procedure,

– having regard to the report of the Committee on the Environment, Public Health and Food Safety (**A7-0165/2012**),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 11 September 2012 with a view to the adoption of Directive 2012/.../EU of the European Parliament and of the Council amending Directive 2001/83/EC as regards pharmacovigilance

P7_TC1-COD(2012)0025

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 and Article 168(4) (c) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

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

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(3)] ,

Whereas:

(1) Recent pharmacovigilance ***incidents*** in the Union have shown the need for an automatic procedure at Union level in ▌ cases of specific safety issues to ensure that a matter is assessed and addressed in all Member States where the medicinal product is authorised. The scope of different Union procedures concerning ▌ products ***authorised at national level, as laid down in Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use*** [(4)] ***,*** should be clarified.

(2) In addition, voluntary action by the marketing authorisation holder should not lead to a situation where concerns relating to the risks or benefits of a medicinal product authorised in the Union are not properly addressed in all Member States. Therefore, ▌ the marketing authorisation holder ***should be obliged*** to inform **the relevant** competent authorities ***and the European Medicines Agency*** of ***the*** reasons for ***withdrawing or*** interrupting the placing on the market of a medicinal product, for ***requesting that*** a marketing authorisation ***be revoked*** , or for not renewing a marketing authorisation.

▌

(3) It is appropriate to further clarify and strengthen the Normal Procedure and the Urgent Union Procedure in order to ensure coordination, swift assessment in case of urgency and the possibility to take immediate action, where necessary to protect public health, before a decision is taken at Union level. The Normal Procedure should be initiated for matters concerning quality, safety or efficacy of medicinal products where the interests of the Union are involved. The Urgent Union Procedure should be initiated when there is a need to swiftly assess concerns resulting from the evaluation of data from pharmacovigilance activities. Regardless of whether the Urgent Union Procedure or the Normal Procedure is applied, and regardless of the procedure by means of which the medicinal product was authorised, be it centralised or otherwise, the Pharmacovigilance Risk Assessment Committee should always give its recommendation when the reason for taking action is based on pharmacovigilance data. It is appropriate that the coordination group and the Committee for Medicinal Products for Human Use rely on that recommendation when carrying out the assessment of the issue.

(4) It is appropriate that Member States bring cases concerning new contraindications, reductions in the recommended dose or restrictions to the indication for medicinal products authorised in accordance with the decentralised procedure and the mutual recognition procedure to the attention of the coordination group when the Urgent Union Procedure is not initiated. In order to ensure harmonisation for those products, the coordination

group may discuss whether any action is necessary in the event that no Member State has triggered the Normal Procedure.

(5) Since the objective of this Directive***, namely*** to harmonise the rules on pharmacovigilance across the Union, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty ***on European Union*** . In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(6) Directive 2001/83/EC should therefore be amended accordingly ,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2001/83/EC is hereby amended as follows:

(1) In Article 23a, the second paragraph is replaced by the following:"

If the product ceases to be placed on the market of ***a*** Member State, either temporarily or permanently, the ***marketing authorisation*** holder shall notify the competent authority of that Member State. Such notification shall, otherwise than in exceptional circumstances, be made no less than two months before the interruption in the placing on the market of the product. The ***marketing authorisation*** holder shall inform the competent authority of the reasons for such action in accordance with ***Article 123(2)*** .

"

(2) Article 31 is amended as follows:

(a) In paragraph 1, the third subparagraph is replaced by the following:"
However, where one of the criteria listed in Article 107i(1) is met, the procedure laid down in Articles 107i to 107k shall apply. "

(b) Paragraph 2 is replaced by the following : "
2. Where the referral to the Committee concerns a range of medicinal products or a therapeutic class, the Agency may limit the procedure to certain specific parts of the authorisation.
In that event, Article 35 shall apply to those medicinal products only if they were covered by the authorisation procedures referred to in this Chapter.
Where the scope of the procedure initiated under this Article concerns a range of medicinal products or a therapeutic class, medicinal products authorised in accordance with Regulation (EC) No 726/2004 which belong to that range or class shall also be included in the procedure**.**
3. Without prejudice to paragraph 1, a Member State may, where urgent action is necessary to protect public health at any stage of the procedure, suspend the marketing authorisation and prohibit the use of the medicinal product concerned on its territory until a definitive decision is adopted. It shall inform the Commission, the Agency and the other Member States no later than the following working day of the reasons for its action.
4. Where the scope of the **procedure** ***initiated under this Article , as determined in accordance with paragraph 2, includes medicinal products authorised in accordance with Regulation (EC) No 726/2004, the Commission may, where urgent action is necessary to protect public health at any stage of the procedure, suspend the marketing authorisations and prohibit the use of the medicinal products concerned until a definitive decision is adopted. The Commission shall inform the Agency and the Member States no later than the following working day of the reasons for its action.*** "

(3) In Article 34(3), the following subparagraph is added:"

Where the scope of the procedure initiated under Article 31 includes medicinal products authorised in accordance with Regulation (EC) No 726/2004 pursuant to the third subparagraph of Article 31(2) of this Directive, the Commission shall***,*** where necessary, adopt decisions to vary, suspend ***or*** revoke ***the marketing authorisations*** or ***to*** refuse ***the*** renewal of the marketing authorisations concerned.

"

(4) In Article 37, the words 'Articles 35 and 36 shall apply' are replaced by the words 'Article 35 shall apply'.

(5) Article 63 is amended as follows:

(a) In paragraph 1, the first subparagraph is replaced by the following: "
The particulars for labelling listed in Articles 54, 59 and 62 shall appear in an official language or official

languages of the Member State where the medicinal product is placed on the market, as specified, for the purposes of this Directive, by that Member State. "

(b) In paragraph 2, the first subparagraph is replaced by the following: "
The package leaflet must be written and designed in such a way as to be clear and understandable, enabling users to act appropriately, when necessary with the help of health professionals. The package leaflet must be clearly legible in an official language or official languages of the Member State where the medicinal product is placed on the market, as specified, for the purposes of this Directive, by that Member State. "

(c) Paragraph 3 is replaced by the following: "
Where the medicinal product is not intended to be delivered directly to the patient, or where there are severe problems in respect of the availability of the medicinal product, the competent authorities may, subject to measures they consider necessary to safeguard human health, grant an exemption to the obligation that certain particulars should appear on the labelling and in the package leaflet. They may also grant a full or partial exemption to the obligation that the labelling and the package leaflet must be in an official language or official languages of the Member State where the medicinal product is placed on the market, as specified, for the purposes of this Directive, by that Member State. "

(6) Article 85a is replaced by the following: "

Article 85a

In the case of wholesale distribution of medicinal products to third countries, Article 76 and point (c) of Article 80 shall not apply. ***However, in this case wholesale distributors shall ensure that the medicinal products are obtained only from persons who are authorised or entitled to supply medicinal products in accordance with the applicable legal and administrative provisions of the third country concerned . Where wholesale distributors supply medicinal products to persons in third countries, they shall ensure that such supplies are only made to persons who are authorised or entitled to receive medicinal products for wholesale distribution or supply to the public in accordance with the applicable legal and administrative provisions of the third country concerned.*** Moreover, points (b) and (ca) of Article 80 shall not apply where a product is directly received from a third country but not imported. The requirements set out in Article 82 shall apply to the supply of medicinal products to persons in third countries authorised or entitled to supply medicinal products to the public.

"

(7) In Article 107i, paragraph 1 is replaced by the following:"

1. A Member State or the Commission, as appropriate, shall, ***on the basis of concerns resulting from the evaluation of data from pharmacovigilance activities,*** initiate the procedure provided for in this section by informing the other Member States, the Agency and the Commission where:

(a) it considers suspending or revoking a marketing authorisation;

(b) it considers prohibiting the supply of a medicinal product;

(c) it considers refusing the renewal of a marketing authorisation; or

(d) it is informed by the marketing authorisation holder that, on the basis of safety concerns, the holder has interrupted the placing on the market of a medicinal product or has taken action to have a marketing authorisation withdrawn, or intends to take such action or has not applied for the renewal of a marketing authorisation.

1a. A Member State or the Commission, as appropriate, shall, on the basis of concerns resulting from the evaluation of data from pharmacovigilance activities, inform the other Member States, the Agency and the Commission where it considers that a new contraindication, a reduction in the recommended dose or a restriction to the indications of a medicinal product is necessary. ***The information shall outline the action considered and the reasons therefor.***

Any Member State or the Commission, as appropriate, shall, when urgent action is considered necessary, initiate the procedure provided for in this section in any of the cases referred to in this paragraph.

Where the procedure provided for in this section is not initiated, for medicinal products authorised in accordance with the procedures laid down in Chapter 4 of Title III, the case shall be brought to the attention of the coordination group.

Article 31 is applicable where the interests of the Union are involved.

1b. Where the procedure provided for in this section is initiated, the Agency shall verify whether the safety concern relates to medicinal products other than the one covered by the information, or whether it is common to all products

belonging to the same range or therapeutic class.

Where the medicinal product involved is authorised in more than one Member State, the Agency shall without undue delay inform the initiator of the procedure of the outcome of this verification, and the procedures laid down in Articles 107j and 107k shall apply. Otherwise, the safety concern shall be addressed by the Member State concerned. The Agency or the Member State, as applicable, shall make information that the procedure has been initiated available to marketing authorisation holders.

"

(8) In Article 107i(2) the words 'paragraph 1 of this Article' are replaced by the words 'paragraphs 1 and 1a of this Article'.

(9) In the second subparagraph of Article 107i(3) the words 'in accordance with paragraph 1' are replaced by the words 'in accordance with paragraphs 1 and 1a'.

(10) In Article 107i(5) the words 'in paragraph 1' are replaced by the words 'in paragraphs 1 and 1a'.

(11) In Article 107j(1) the words 'in Article 107i(1)' are replaced by the words 'in paragraphs 1 and 1a of Article 107i'.

(12) Article 123 is amended as follows:

(a) paragraph 2 is replaced by the following:"
2. The marketing authorisation holder shall be obliged to notify ***the*** Member States ***concerned*** forthwith of any action taken by the holder to suspend the marketing of a medicinal product, to withdraw a medicinal product from the market, to request the withdrawal of a marketing authorisation or not to apply for the renewal of a marketing authorisation, together with the reasons for such action. The marketing authorisation holder shall in particular declare if such action is ***based on*** any of the grounds set out in Article 116 and Article 117***(1)*** .
2a. The marketing authorisation holder shall also make the notification pursuant to paragraph 2 of this Article in cases where the action is taken in a third country and where such action is based on any of the grounds set out in Article 116 and Article 117(1).
2b. The marketing authorisation holder shall furthermore notify the Agency where the action referred to in paragraph 2 or 2a of this Article is based on any of the grounds referred to in Article 116 or Article 117(1).
2c. The Agency shall forward notifications received in accordance with paragraph 2b to all Member States without undue delay. "

(b) paragraph 4 is replaced by the following: "
4. Each year, the Agency shall make public a list of the medicinal products for which marketing authorisations have been refused, revoked or suspended in the Union, whose supply has been prohibited or which have been withdrawn from the market, including the reasons for such action. "

Article 2

1. Member States shall ***adopt and publish*** the laws, regulations and administrative provisions necessary to comply with this Directive by ...[(5)] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from ... * .

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at ...

For the European Parliament For the Council

The President The President

(1) OJ C 181, 21.6.2012, p. 201.
(2) OJ C 181, 21.6.2012, p. 201
(3) Position of the European Parliament of 11 September 2012.
(4) ***OJ L 311, 28.11.2001, p. 67.***
(5) * OJ: please, insert the date: 12 months after the date of publication of this Directive in the Official Journal.

Pharmacovigilance (amendment of Regulation (EC) No 726/2004) ***I

- Resolution
- Consolidated text

European Parliament legislative resolution of 11 September 2012 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 726/2004 as regards pharmacovigilance (COM(2012)0051 – C7-0034/2012 – 2012/0023(COD))

P7_TA-PROV(2012)0314 **A7-0164/2012**

(Ordinary legislative procedure: first reading)

The European Parliament ,

– having regard to the Commission proposal to Parliament and the Council (**COM(2012)0051**),

– having regard to Article 294(2) and Article 114 and Article 168(4)(c) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0034/2012),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Economic and Social Committee of 28 March 2012[(1)] ,

– after consulting the Committee of the Regions,

– having regard to the undertaking given by the Council representative by letter of 27 June 2012 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

– having regard to Rule 55 of its Rules of Procedure,

– having regard to the report of the Committee on the Environment, Public Health and Food Safety (**A7-0164/2012**),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 11 September 2012 with a view to the adoption of Regulation (EU) No .../2012 of the European Parliament and of the Council amending Regulation (EC) No 726/2004, as regards pharmacovigilance

P7_TC1-COD(2012)0023

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 and Article 168(4)(c) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[2] ,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[3] ,

Whereas:

(1) In order to ensure transparency on the surveillance of authorised medicinal products, the list of medicinal products subject to additional monitoring established by Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency[4] **,** should systematically include medicinal products that are subject to ***certain*** post-authorisation safety conditions.

(2) In addition, voluntary action by the marketing authorisation holder should not lead to a situation where concerns relating to the risks or benefits of a medicinal product authorised in the Union are not properly addressed in all Member States. Therefore, the marketing authorisation holder ***should be obliged*** to inform the European Medicines Agency of the reasons for ***withdrawing or*** interrupting the placing on the market of a medicinal product, for ***requesting that*** a marketing authorisation ***be revoked*** , or for not renewing a marketing authorisation.

(3) Since the objective of this Regulation, namely to provide for specific rules on pharmacovigilance and improve the safety of medicinal products for human use authorised pursuant to Regulation (EC) No 726/2004 cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty ***on European Union*** . 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.

(4) Regulation (EC) No 726/2004 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 726/2004 is hereby amended as follows:

(1) In Article 13(4), the second subparagraph is replaced by the following:"

The ***marketing authorisation*** holder shall notify the Agency if the product ceases to be placed on the market of a Member State, either temporarily or permanently. Such notification shall, otherwise than in exceptional circumstances, be made no less than two months before the interruption in the placing on the market of the product. The ***marketing authorisation*** holder shall inform the Agency of the reasons for such action in accordance with Article 14b.

"

(2) The following Article is inserted:"

Article 14b

1. The marketing authorisation holder shall notify the Agency ***forthwith*** of any action the holder takes to suspend the marketing of a medicinal product, to withdraw a medicinal product from the market, to request the withdrawal of a marketing authorisation or not to apply for the renewal of a marketing authorisation, together with the reasons for such action. The marketing authorisation holder shall in particular declare if such action is ***based on*** any of the grounds set out in Article 116 and Article 117***(1)*** of Directive 2001/83/EC.

2. The marketing authorisation holder shall also make the notification pursuant to paragraph 1 of this Article if the action is taken in a third country and such action is based on any of the grounds set out in Article 116 and Article 117(1) of Directive 2001/83/EC.

3. In ***the*** cases ***referred to in paragraphs 1 and 2*** , the Agency shall ***forward the*** information to the ***competent authorities*** of the Member States ***without undue delay*** .

"

(3) In Article 20, paragraph 8 is replaced by the following:"

8. Where the procedure is initiated as a result of the evaluation of data relating to pharmacovigilance, the opinion of the Agency, in accordance with paragraph 2 of this Article, shall be adopted by the Committee for Medicinal Products

for Human Use on the basis of a recommendation from the Pharmacovigilance Risk Assessment Committee and Article 107j(2) of Directive 2001/83/EC shall apply.

"

(4) Article 23 is replaced by the following:"

Article 23

1. The Agency shall, in collaboration with the Member States, set up, maintain and make public a list of medicinal products that are subject to additional monitoring.

That list shall include the names and active substances of:

(a) medicinal products authorised in the Union that contain a new active substance which, on 1 January 2011, was not contained in any medicinal product authorised in the Union;

(b) any biological medicinal product not covered by point (a) that was authorised after 1 January 2011;

(c) medicinal products that are authorised pursuant to this Regulation, subject to the conditions referred to in point ▌(cb)▌ of Article 9(4), ***point (a) of*** Article 10a***(1)*** , Article 14(7) ***or Article 14*** (8)▌ ;

(d) medicinal products that are authorised pursuant to Directive 2001/83/EC, subject to the conditions referred to in ***points (b) and (c) of*** Article 21a, ***Article*** 22, ***or point (a) of Article*** 22a***(1)*** thereof.

1a. At the request of the Commission, following consultation with the Pharmacovigilance Risk Assessment Committee, medicinal products that are authorised pursuant to this Regulation, subject to the conditions referred to in points (c), (ca) or (cc) of Article 9(4), point (b) of Article 10a(1) or Article 21(2), may also be included in the list referred to in paragraph 1 of this Article.

At the request of a national competent authority, following consultation with the Pharmacovigilance Risk Assessment Committee, medicinal products that are authorised pursuant to Directive 2001/83/EC, subject to the conditions referred to in points (a), (d), (e) or (f) of Article 21a, point (b) of Article 22a(1) or Article 104a(2) thereof, may also be included in the list referred to in paragraph 1 of this Article.

2. The list referred to in paragraph 1 shall include an electronic link to the product information and to the summary of the risk management plan.

3. In the cases referred to in points (a) and (b) of paragraph 1 of this Article, the Agency shall remove a medicinal product from the list five years after the Union reference date referred to in Article 107c(5) of Directive 2001/83/EC.

In the cases referred to in points (c) and (d) of paragraph 1 ***and in paragraph 1a*** of this Article, the Agency shall remove a medicinal product from the list once the conditions have been fulfilled.

4. For medicinal products included in the list referred to in paragraph 1, the summary of product characteristics and the package leaflet shall include the statement “This medicinal product is subject to additional monitoring”. That statement shall be preceded by a black symbol which shall be selected by the Commission by ***2 July 2013,*** following a recommendation of the Pharmacovigilance Risk Assessment Committee, and shall be followed by an appropriate standardised explanatory sentence.

4a. By … [(5)] , the Commission shall present to the European Parliament and the Council a report on the use of the list referred to in paragraph 1 based on the experience and data provided by the Member States and the Agency.

The Commission shall, if appropriate, on the basis of that report, and after consultation with the Member States and other appropriate stakeholders, present a proposal in order to adjust the provisions relating to the list referred to in paragraph 1.

"

(5) Article 57 is amended as follows:

(a) In the second subparagraph of paragraph 1, points (c) and (d) are replaced by the following: "

(c) coordinating the monitoring of medicinal products which have been authorised within the Union and providing advice on the measures necessary to ensure the safe and effective use of those medicinal products, in particular by coordinating the evaluation and implementation of pharmacovigilance obligations and systems and the monitoring of such implementation;

(d) ensuring the collation and dissemination of information on suspected adverse reactions to medicinal

products authorised in the Union by means of a database which is permanently accessible to all Member States;

"

(b) In the second subparagraph of paragraph 2, point (b) is replaced by the following: "

(b) marketing authorisation holders shall, by 2 July 2012 at the latest, electronically submit to the Agency information on all medicinal products for human use authorised in the Union, using the format referred to in point (a);

"

Article 2

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

It shall apply from ... [6] ***with the exception of Article 23(4), points (c) and (d) of Article 57(1) and point (b) of Article 57(2) of Regulation (EC) No 726/2004, as amended by this Regulation, which shall apply from ...*** [7] **** .***

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

Done at ...

For the European Parliament For the Council

The President The President

(1) OJ C 181, 21.6.2012, p. 202.
(2) OJ C 181, 21.6.2012, p. 202.
(3) Position of the European Parliament of 11 September 2012.
(4) OJ L 136, 30.4.2004, p. 1.
(5) * OJ: please insert the date: 5 years and 6 months after the date of entry into force of this Regulation.
(6) * OJ: please, insert the date: 6 months after the entry into force of this Regulation.
(7) * * OJ: please, insert the date of the entry into force of this Regulation.

Sulphur content of marine fuels ***I

- Resolution
- Consolidated text
- Annex
- Annex

European Parliament legislative resolution of 11 September 2012 on the proposal for a directive of the European Parliament and of the Council amending Directive 1999/32/EC as regards the sulphur content of marine fuels (COM(2011)0439 – C7-0199/2011 – 2011/0190(COD))

P7_TA-PROV(2012)0315 **A7-0038/2012**

(Ordinary legislative procedure: first reading)

The European Parliament ,

– having regard to the Commission proposal to Parliament and the Council (**COM(2011)0439**),

– having regard to Article 294(2) and Article 192(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0199/2011),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Economic and Social Committee of 18 January 2012[1] ,

– after consulting the Committee of the Regions,

– having regard to the undertaking given by the Council representative by letter of 31 May 2012 to approve

Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

– having regard to Rule 55 of its Rules of Procedure,

– having regard to the report of the Committee on the Environment, Public Health and Food Safety and the opinion of the Committee on Transport and Tourism (**A7-0038/2012**),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 11 September 2012 with a view to the adoption of Directive 2012/.../EU of the European Parliament and of the Council amending Council Directive 1999/32/EC as regards the sulphur content of marine fuels

P7_TC1-COD(2011)0190

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

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

After consulting the Committee of the Regions ,

Acting in accordance with the ordinary legislative procedure[(3)] ,

Whereas:

(1) The environmental policy of the Union, as set out in the action programmes on the environment, and in particular in the Sixth Environmental Action Programme adopted by Decision No 1600/2002/EC of the European Parliament and the Council[(4)] , has as one of its objectives to achieve levels of air quality that do not give rise to significant negative impacts on and risks to human health and the environment.

(2) Article 191(2) of the Treaty on the Functioning of the European Union (TFEU) provides that Union policy on the environment is to aim at a high level of protection, taking into account the diversity of situations in the various regions of the Union.

(3) Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels[(5)] lays down the maximum permitted sulphur content of heavy fuel oil, gas oil, marine gas oil and marine diesel oil used in the Union.

(4) Emissions from shipping due to the combustion of marine fuels with a high sulphur content contribute to air pollution in the form of sulphur dioxide and particulate matter, which harm human health and ***the environment and*** contribute to ***acid deposition*** . ***Without the measures set out in this Directive, emissions from shipping would soon have been higher than emissions from all land-based sources.***

(5) Air pollution caused by ships at berth is a major concern for many harbour cities when it comes to their efforts to meet the Union's air quality limit values.

(6) Member States should encourage the use of shore-side electricity, as the electricity for present-day ships is usually provided by auxiliary engines.

(7) ***Under*** Directive 1999/32/EC***,*** the Commission is to report to the European Parliament and the Council on the implementation of ***that*** Directive and may submit with its report proposals for amending it, in particular as regards the reduction of sulphur limits for marine fuel in SOx Emission Control Areas (SECAs), ***in accordance with the*** work ***of*** the International Maritime Organisation (IMO).

(8) In 2008, the IMO adopted a resolution to amend Annex VI of the Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL), containing regulations for the prevention of air pollution from ships. The revised Annex VI to MARPOL

entered into force on 1 July 2010.

(9) The revised Annex VI to MARPOL introduces, inter alia, stricter sulphur limits for marine fuel in SECAs (1,00 % as of 1 July 2010 and 0,10 % as of 1 January 2015) as well as in sea areas outside SECAs (3,50 % as of 1 January 2012 and, in principle, 0,50 % as of 1 January 2020). Most Member States are obliged, in accordance with their international commitments, to require ships to use fuel with a maximum sulphur content of 1,00 % in SECAs as of 1 July 2010. In order to ensure coherence with international law as well as to secure proper enforcement of new globally established sulphur standards in the Union, Directive 1999/32/EC should be aligned with the revised Annex VI to MARPOL. In order to ensure a minimum quality of fuel used by ships either for fuel-based or technology-based compliance, marine fuel the sulphur content of which exceeds the general standard of 3,50 % by mass should not be allowed for use in the Union***, except for fuels supplied to ships using emission abatement methods operating in closed mode.***

(10) Amendments to Annex VI to MARPOL regarding SECAs are possible under IMO procedures. In the event that further changes, including exemptions, are introduced with regard to the application of SECA limits in Annex VI to MARPOL, the Commission should consider any such changes and, where appropriate, without delay make the necessary proposal in accordance with the TFEU to fully align Directive 1999/32/EC with the IMO rules regarding SECAs.

(11) The introduction of any new emission control areas should be subject to the IMO process under Annex VI to MARPOL and should be underpinned by a well-founded case based on environmental and economic grounds and supported by scientific data.

(12) In accordance with regulation 18 of the revised Annex VI to MARPOL, Member States should endeavour to ensure the availability of marine fuels which comply with this Directive.

(13) In view of the global dimension of environmental politics and shipping emissions, ambitious emission standards should be set at a global level.

(14) Passenger ships operate mostly in ports or close to coastal areas and their impacts on human health and the environment are significant. ***In order to improve air quality around ports and coasts, those*** ships are required to use marine fuel with ***a*** maximum sulphur content ***of*** 1,50 % ***until*** stricter sulphur standards apply ***to all ships in territorial seas, exclusive economic zones and pollution control zones of Member States.***

(15) In accordance with Article 193 TFEU, this Directive should not prevent any Member State from maintaining or introducing more stringent protective measures in order to encourage early implementation with respect to the maximum sulphur content of marine fuels, for instance using emission abatement methods outside SECAs.

(16) In order to facilitate the transition to new engine technologies with the potential for significant further emission reductions in the maritime sector, the Commission should further explore opportunities to enable and encourage the uptake of gas-powered engines in ships.

(17) Proper enforcement of the obligations with regard to the sulphur content of marine fuels is necessary in order to achieve the aims of Directive 1999/32/EC. The experience from the implementation of Directive 1999/32/EC has shown that there is a need for a stronger monitoring and enforcement regime in order to ensure the proper implementation of that Directive. To that end, it is necessary that Member States ensure sufficiently frequent and accurate sampling of marine fuel placed on the market or used on board ship as well as regular verification of ships' log books and bunker delivery notes. It is also necessary for Member States to establish a system of effective, proportionate and dissuasive penalties for non-compliance with the provisions of Directive 1999/32/EC. In order to ensure more transparency of information, it is also appropriate to provide that the register of local suppliers of marine fuel be made publicly available.

(18) Reporting by Member States under Directive 1999/32/EC has proved insufficient for the purpose of verification of compliance with ***that*** Directive due to the lack of harmonised and sufficiently precise provisions on the content and the format of the Member States' reports. Therefore, more detailed indications as regards the content and the format of the report are necessary to ensure more harmonised reporting.

(19) Following the adoption of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control)[(6)] , which recasts the Union legislation on industrial emissions, it is necessary to amend the provisions of Directive 1999/32/EC relating to maximum sulphur content of heavy fuel oil accordingly.

(20) Complying with the low sulphur limits for marine fuels, particularly in SECAs, can result in a significant increase in the price of such fuels, at least in the short term, and can have a negative effect on the competitiveness of short sea shipping in comparison with other transport modes, as well as on the competitiveness of the industries in the countries bordering SECAs. Suitable solutions are necessary in order to reduce compliance costs for the affected industries, such as allowing for alternative, more cost-effective methods of compliance than fuel-based compliance

and providing support, where necessary. The Commission will, based inter alia on reports from Member States, closely monitor the impacts of the shipping sector's compliance with the new fuel quality standards, particularly with respect to possible modal shift from sea to land-based transport ***and will, if appropriate, propose proper measures to counteract such a trend*** .

(21) Limiting modal shift from sea to land-based transport is important given that an increasing share of goods being transported by road would in many cases run counter to the Union's climate change objectives and increase congestion.

(22) The costs of the new requirements to reduce sulphur dioxide emissions could result in modal shift from sea to land-based transport and could have negative effects on the competitiveness of the industries. The Commission should make full use of instruments such as Marco Polo and the trans-European transport network to provide targeted assistance so as to minimise the risk of modal shift. Member States may consider it necessary to provide support to operators affected by this Directive in accordance with the applicable State aid rules.

(23) In accordance with existing guidelines on State aid for environmental protection, and without prejudice to future changes thereto, Member States may provide State aid in favour of operators affected by this Directive, including aid for retrofitting operations of existing vessels, if such aid measures are deemed to be compatible with the internal market in accordance with Articles 107 and 108 TFEU, in particular in light of the applicable guidelines on State aid for environmental protection. In this context, the Commission may take into account that the use of some emission abatement methods go beyond the requirements of this Directive by reducing not only the sulphur dioxide emissions but also other emissions.

(24) Access to emission abatement methods should be facilitated. Those methods can provide emission reductions at least equivalent to, or even greater than, those achievable using low sulphur fuel, provided that they have no significant negative impacts on the environment, such as marine ecosystems, and that they are developed subject to appropriate approval and control mechanisms. ▌ The already known alternative methods, such as the use of on-board exhaust gas cleaning systems, the mixture of fuel and liquefied natural gas (LNG) ***or the use of biofuels*** should be recognised in the Union. It is important to promote the testing and development of new emission abatement methods ***in order, among other reasons, to limit modal shift from sea to land-based transport*** .

(25) Emission abatement methods hold the potential for significant emission reductions. The Commission should therefore promote the testing and development of these technologies, inter alia by considering the establishment of a co-financed joint programme with industry, based on principles from similar programmes, such as the Clean Sky Programme.

(26) The Commission, in cooperation with Member States and stakeholders, should further develop measures identified in the Commission's staff working paper of 16 September 2011 entitled 'Pollutant emission reduction from maritime transport and the sustainable waterborne transport toolbox'.

(27) Alternative emission abatement methods such as some types of scrubbers could generate waste that should be handled properly and not be discharged into the sea. Pending the revision of Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues [(7)] ***, Member States should ensure, in accordance with their international commitments, the availability of port reception facilities adequate to meet the needs of ships using exhaust gas cleaning systems. In the revision of Directive 2000/59/EC, the Commission should consider the inclusion of waste from exhaust gas cleaning systems under the principle of no special fee applying to port fees for ship-generated waste provided for in that Directive.***

(28) The Commission should, as part of its air quality policy review in 2013, consider the possibility of reducing air pollution, including in the territorial seas of Member States.

(29) Effective, proportionate and dissuasive penalties are important for the implementation of Directive 1999/32/EC. Member States should include in those penalties fines calculated in such a way as to ensure that the fines at least deprive those responsible of the economic benefits derived from their infringement and that those fines gradually increase for repeated infringements. Member States should notify the provisions on penalties to the Commission.

(30) The power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of ***the*** amendment of ***the equivalent emission values for and the criteria*** for ***the*** use ***of emission abatement methods*** in order to adapt the provisions of Directive 1999/32/EC to scientific and technical progress ***and in such a way as to ensure strict consistency with the relevant instruments of the IMO*** and in respect of the amendment of ***points 1, 2, 3, 3a, 3b and 4 of*** Article 2, point (b) of Article 6(1a) and Article 6(2) ***of Directive 1999/32/EC in order to adapt the provisions of that Directive to scientific and technical progress*** . It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate

transmission of relevant documents to the European Parliament and to the Council.

(31) In order to ensure uniform conditions for the implementation of Directive 1999/32/EC, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers [(8)] .

(32) It is appropriate for the Committee on Safe Seas and the Prevention of Pollution from Ships established by Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS)[(9)] to assist the Commission in the approval of the emission abatement methods which are not covered by Council Directive 96/98/EC of 20 December 1996 on marine equipment[(10)] .

(33) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011 [(11)] , Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(34) Directive 1999/32/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 1999/32/EC

Directive 1999/32/EC is amended as follows:

(1) In Article 1(2), point (h) is replaced by the following:"

(h) ***without prejudice to Article 3a,*** fuels used on board vessels employing emission abatement methods in accordance with Articles 4c and 4e.“***.***

"

(2) Article 2 is amended as follows:

(a) points 1 and 2 are replaced by the following: "

“(1) heavy fuel oil means:

- ***any petroleum-derived liquid fuel, excluding marine fuel, falling within CN code 2710 19 51 to 2710 19 68, 2710 20 31, 2710 20 35, 2710 20 39, or***
- ***any petroleum-derived liquid fuel, other than gas oil as defined in points 2 and 3, which, by reason of its distillation limits, falls within the category of heavy oils intended for use as fuel and of which less than 65 % by volume (including losses) distils at 250 o C by the ASTM D86 method. If the distillation cannot be determined by the ASTM D86 method, the petroleum product is likewise categorised as a heavy fuel oil;***

(2) gas oil means:

- ***any petroleum-derived liquid fuel, excluding marine fuel, falling within CN code 2710 19 25, 2710 19 29, 2710 19 47, 2710 19 48, 2710 20 17 or 2710 20 19, or***
- ***any petroleum-derived liquid fuel, excluding marine fuel, of which less than 65 % by volume (including losses) distils at 250 o C and of which at least 85 % by volume (including losses) distils at 350 o C by the ASTM D86 method.***

Diesel fuels as defined in point 2 of Article 2 of Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels * are excluded from this definition. Fuels used in non-road mobile machinery and agricultural tractors are also excluded from this definition;

_____

**** OJ L 350, 28.12.1998, p. 58.*** "

(b) points 3a and 3b are replaced by the following:"

(3a) *marine diesel oil* means any marine fuel as defined for DMB grade in Table I of ISO 8217 with the exception of the

reference to the sulphur content;

(3b) *marine gas oil* means any marine fuel as defined for DMX, DMA and DMZ grades in Table I of ISO 8217 with the exception of the reference to the sulphur content;“***;***

"

(c) point 3m is replaced by the following:"

“(3m) *emission abatement method* means any fitting, material, appliance or apparatus to be fitted in a ship or other procedure, alternative fuel, or compliance method, used as an alternative to low sulphur marine fuel meeting the requirements set out in this Directive, that is verifiable, quantifiable and enforceable;

"

(3) Article 3 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:"

1. Member States shall ensure that heavy fuel oils are not used within their territory if their sulphur content exceeds 1 % by mass.

2. Until 31 December 2015, subject to appropriate monitoring of emissions by competent authorities, paragraph 1 shall not apply to heavy fuel oils used:

(a) in combustion plants which fall within the scope of Directive 2001/80/EC of the European Parliament and of the Council ***of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants**** , which are subject to Article 4(1) or (2) or Article 4(3)(a) of that Directive and which comply with the emission limits for sulphur dioxide for such plants as set out in that Directive;

(b) in combustion plants which fall within the scope of Directive 2001/80/EC, which are subject to Article 4(3)(b) and Article 4(6) of that Directive and the monthly average sulphur dioxide emissions of which do not exceed 1 700 mg/Nm3 at an oxygen content in the flue gas of 3 % by volume on a dry basis;

(c) in combustion plants which do not fall under points (a) or (b), and the monthly average sulphur dioxide emissions of which do not exceed 1 700 mg/Nm3 at an oxygen content in the flue gas of 3 % by volume on a dry basis;

(d) for combustion in refineries, where the monthly average of emissions of sulphur dioxide averaged over all combustion plants in the refinery, irrespective of the type of fuel or fuel combination used, but excluding plants which fall under points (a) and (b), gas turbines and gas engines, do not exceed 1 700 mg/Nm3 at an oxygen content in the flue gas of 3 % by volume on a dry basis.

3. As from 1 January 2016, subject to appropriate monitoring of emissions by competent authorities, paragraph 1 shall not apply to heavy fuel oils used:

(a) in combustion plants which fall within the scope of Chapter III of Directive 2010/75/EU of the European Parliament and of the Council**, and which comply with the emission limits for sulphur dioxide for such plants as set out in Annex V of that Directive or, where those emission limit values are not applicable according to that Directive, for which the monthly average sulphur dioxide emissions do not exceed 1 700 mg/Nm3 at an oxygen content in the flue gas of 3 % by volume on a dry basis;

(b) in combustion plants which do not fall under point (a), and the monthly average sulphur dioxide emissions of which do not exceed 1 700 mg/Nm3 at an oxygen content in the flue gas of 3 % by volume on a dry basis;

(c) for combustion in refineries, where the monthly average of emissions of sulphur dioxide averaged over all combustion plants in the refinery, irrespective of the type of fuel or fuel combination used, but excluding plants falling under point (a), gas turbines and gas engines, do not exceed 1 700 mg/Nm3 at an oxygen content in the flue gas of 3 % by volume on a dry basis.

Member States shall take the necessary measures to ensure that ***no*** combustion plant using heavy fuel oil with a sulphur concentration greater than that referred to in paragraph 1 is ▌ operated without a permit issued by a competent authority, which specifies the emission limits.

_____

* OJ L 309, 27.11.2001, p. 1.

** OJ L 334, 17.12.2010, p. 17.

"

(b) paragraph 3 is deleted.

(4) The following Article is inserted:"

Article 3a

Maximum sulphur content in marine fuel

Member States shall ensure that marine fuels are not used within their territory if their sulphur content exceeds 3,50 % by mass***, except for fuels supplied to ships using emission abatement methods subject to Article 4c operating in closed mode*** .“***.***

"

(5) In Article 4, paragraph 1 is replaced by the following:"

“1. Member States shall ensure that gas oils are not used within their territory if their sulphur content exceeds 0,10 % by mass.“***.***

"

(6) Article 4a is amended as follows:

(a) the title is replaced by the following :"

“Maximum sulphur content of marine fuels used in territorial seas, exclusive economic zones and pollution control zones of Member States, including SOx Emission Control Areas and by passenger ships operating on regular services to or from Union ports”***;***

"

(b) paragraph 1 is replaced by the following:"

“1. Member States shall take all necessary measures to ensure that marine fuels are not used in the areas of their territorial seas, exclusive economic zones and pollution control zones falling within SOx Emission Control Areas if the sulphur content of those fuels by mass exceeds:

(a) 1,00 % until 31 December 2014;
(b) 0,10 % as from 1 January 2015.

This paragraph shall apply to all vessels of all flags, including vessels whose journey began outside the Union. ***The Commission shall have due regard to any future changes to the requirements pursuant to Annex VI to MARPOL applicable within SOx Emission Control Areas, and, where appropriate, without undue delay make any relevant proposals with a view to amending this Directive accordingly.***

"

(c) the following paragraph is inserted:"

Member States shall take all necessary measures to ensure that marine fuels are not used in the areas of their territorial seas, exclusive economic zones and pollution control zones if the sulphur content of those fuels by mass exceeds:

(a) 3,50 % as ***from ...*** [(12)] ;
(b) 0,50 % as from 1 January 2020.

This paragraph shall apply to all vessels of all flags, including vessels whose journey began outside of the Union, without prejudice to paragraphs 1 and 4 of this Article and Article 4b.“;

"

(d) paragraphs 4, 5***,*** 6 ***and 7*** are replaced by the following:"

"4. Member States shall take all necessary measures to ensure that marine fuels are not used in their territorial seas, exclusive economic zones and pollution control zones falling outside SOx Emission Control Areas by passenger ships operating on regular services to or from any Union port if the sulphur content of those fuels exceeds 1,50 % ***by mass until 1 January 2020.***

Member States shall be responsible for the enforcement of this requirement at least in respect of vessels flying their flag and vessels of all flags while in their ports.

5. Member States shall require the correct completion of ships' logbooks, including fuel-changeover operations .

5a. Member States shall endeavour to ensure the availability of marine fuels which comply with this Directive and inform the Commission of the availability of such marine fuels in its ports and terminals.

5b. If a ship is found by a Member State not to be in compliance with the standards for marine fuels which comply with this Directive, the competent authority of the Member State is entitled to require the ship to:

(a) present a record of the actions taken to attempt to achieve compliance; and

(b) provide evidence that it attempted to purchase marine fuel which complies with this Directive in accordance with its voyage plan and, if it was not made available where planned, that attempts were made to locate alternative sources for such marine fuel and that, despite best efforts to obtain marine fuel which complies with this Directive, no such marine fuel was made available for purchase.

The ship shall not be required to deviate from its intended voyage or to delay unduly the voyage in order to achieve compliance.

If a ship provides the information referred to in the first subparagraph, the Member State concerned shall take into account all relevant circumstances and the evidence presented to determine the appropriate action to take, including not taking control measures.

A ship shall notify its flag State, and the competent authority of the relevant port of destination, when it cannot purchase marine fuel which complies with this Directive.

A port State shall notify the Commission when a ship has presented evidence of the non-availability of marine fuels which comply with this Directive.

6. Member States shall, in accordance with regulation 18 of Annex VI to MARPOL:

(a) maintain a publicly available register of local suppliers of marine fuel;

(b) ensure that the sulphur content of all marine fuels sold in their territory is documented by the supplier on a bunker delivery note, accompanied by a sealed sample signed by the representative of the receiving ship;

(c) take action against marine fuel suppliers that have been found to deliver fuel that does not comply with the specification stated on the bunker delivery note;

(d) ensure that remedial action is taken to bring any non-compliant marine fuel discovered into compliance.

7. Member States shall ensure that marine diesel oils are not placed on the market in their territory if the sulphur content of those marine diesel oils exceeds 1,50 % by mass.

"

(e) paragraph 8 is deleted.

(7) Articles 4b and 4c are replaced by the following:"

Article 4b

Maximum sulphur content of marine fuels used by ships at berth in Union ports

1. Member States shall take all necessary measures to ensure that ships at berth in Union ports do not use marine fuels with a sulphur content exceeding 0,10 % by mass, allowing sufficient time for the crew to complete any necessary fuel-changeover operation as soon as possible after arrival at berth and as late as possible before departure.

Member States shall require the time of any fuel-changeover operation to be recorded in ships' logbooks.

2. Paragraph 1 shall not apply:

(a) whenever, according to published timetables, ships are due to be at berth for less than two hours;

(b) to ships which switch off all engines and use shore-side electricity while at berth in ports.

3. Member States shall ensure that marine gas oils are not placed on the market in their territory if the sulphur content of those marine gas oils exceeds 0,10 % by mass.

Article 4c

Emission abatement methods

1. Member States shall allow the use of emission abatement methods by ships of all flags in their ports, territorial seas, exclusive economic zones and pollution control zones, as an alternative to using marine fuels that meet the requirements of Articles 4a and 4b, subject to paragraphs 2 and 3 of this Article.

2. Ships using the emission abatement methods referred to in paragraph 1 shall continuously achieve reductions of sulphur dioxide emissions that are at least equivalent to the reductions that would be achieved by using marine fuels that meet the requirements of Articles 4a and 4b. ***Equivalent emission values shall be determined in accordance with*** Annex I.

2a. Member States shall, as an alternative solution for reducing emissions, encourage the use of onshore power supply systems by docked vessels.

3. The emission abatement methods referred to in paragraph 1 shall comply with the criteria specified in the instruments referred to in Annex II ▌.

4. ***Where justified in the light of scientific and technical progress regarding alternative emission abatement methods and in such a way as to ensure strict consistency with the relevant instruments and standards adopted by the IMO, the*** Commission shall:

(a) be empowered to adopt delegated acts in accordance with Article 9a ***amending*** Annexes I ***and II*** ;
▌

(b) ***adopt implementing acts laying down the*** detailed requirements for monitoring of emissions, where ***appropriate*** . ***Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 9(2).***
▌

"

(8) The following Articles are inserted:"

Article 4d

Approval of emission abatement methods for use on board ships flying the flag of a Member State

1. Emission abatement methods falling within the scope of Council Directive 96/98/EC* shall be approved in accordance with that Directive.

2. Emission abatement methods not covered by paragraph 1 of this Article shall be approved in accordance with the procedure referred to in Article 3(2) of Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS)**, taking into account:

(a) guidelines developed by the IMO;
(b) the results of any trials conducted under Article 4e;
(c) effects on the environment, including achievable emission reductions, and impacts on ecosystems in enclosed ports, harbours and estuaries; and
(d) the feasibility of monitoring and verification.

Article 4e

Trials of new emission abatement methods

Member States may, in cooperation with other Member States, as appropriate, approve trials of ship emission abatement methods on vessels flying their flag, or in sea areas within their jurisdiction. During those trials, the use of marine fuels meeting the requirements of Articles 4a and 4b shall not be mandatory, provided that all of the following conditions are fulfilled:

(a) the Commission and any port State concerned are notified in writing at least six months before trials begin;

(b) permits for trials do not exceed 18 months in duration;

(c) all ships involved install tamper-proof equipment for the continuous monitoring of funnel gas emissions and use it throughout the trial period;

(d) all ships involved achieve emission reductions which are at least equivalent to those which would be achieved through the sulphur limits for fuels specified in this Directive;

(e) there are proper waste management systems in place for any waste generated by the emission abatement methods throughout the trial period;

(f) there is an assessment of impacts on the marine environment, particularly ecosystems in enclosed ports, harbours and estuaries throughout the trial period; and

(g) full results are provided to the Commission, and made publicly available, within six months of the end of the trials.

Article 4f

Financial measures

Member States may adopt financial measures in favour of operators affected by this Directive where such financial measures are in accordance with State aid rules applicable and to be adopted in this area.

_____

* OJ L 46, 17.2.1997, p. 25.

** OJ L 324, 29.11.2002, p. 1.

"

(9) Article 6 is replaced by the following:"

Article 6

Sampling and analysis

1. Member States shall take all necessary measures to check by sampling that the sulphur content of fuels used complies with Articles 3, 3a, 4, 4a and 4b. The sampling shall commence on the date on which the relevant limit for maximum sulphur content in the fuel comes into force. It shall be carried out ***periodically*** with sufficient frequency and ***quantities*** in such a way that the samples are representative of the fuel examined, and in the case of marine fuel, of the fuel being used by vessels while in relevant sea areas and ports. ***The samples shall be analysed without undue delay.***

1a. The following means of sampling, analysis and inspection of marine fuel shall be used:

(a) inspection of ships' log books and bunker delivery notes;
and, as appropriate, the following means of sampling and analysis:

(b) sampling of the marine fuel for on-board combustion while being delivered to ships, in accordance with the Guidelines for the sampling of fuel oil for determination of compliance with the revised MARPOL Annex VI adopted on 17 July 2009 by Resolution 182(59) of the Marine Environment Protection Committee (MEPC) of the IMO, and analysis of its sulphur content; ***or***

(c) sampling and analysis of the sulphur content of marine fuel for on-board combustion contained in tanks***, where technically and economically feasible,*** and in sealed bunker samples on board ships.

1b. The Commission shall be empowered to adopt ***implementing*** acts concerning:

(a) the frequency of sampling;

(b) the sampling methods;

(c) the definition of a sample representative of the fuel examined.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 9(2) .

2. The reference method adopted for determining the sulphur content shall be ISO method 8754 (2003) ***or PrEN ISO***

14596 (2007) .

In order to determine whether marine fuel delivered to and used on board ships is compliant with the sulphur limits required by Articles ▌ 3a, 4, 4a and 4b the fuel verification procedure set out in Appendix VI of Annex VI to MARPOL shall be used.

"

(10) Article 7 is amended as follows:

(a) paragraph 1 is replaced by the following:"
1. Each year by 30 June, Member States shall, on the basis of the results of the sampling, analysis and inspections carried out in accordance with Article 6, submit a report to the Commission on the compliance with the sulphur standards set out in this Directive for the preceding year.
On the basis of the reports received in accordance with the first subparagraph of this paragraph and the notifications regarding the non-availability of marine fuel which complies with this Directive submitted by Member States in accordance with the fifth subparagraph of Article 4a(5b), the Commission shall, within 12 months from the date referred to in the first subparagraph of this paragraph, draw up and publish a report on the implementation of this Directive. The Commission shall evaluate the need for further strengthening the relevant provisions of this Directive and make any appropriate legislative proposals to that effect. "

(b) the following paragraph is inserted:"
1a. The Commission may adopt ***implementing*** acts concerning the information to be included in the report and the format of the report. ***Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 9(2)*** .

(c) paragraphs 2 and 3 ***are replaced by the following*** :

2. By 31 December 2013 the Commission shall submit a report to the European Parliament and to the Council which shall be accompanied, if appropriate, by legislative proposals. The Commission shall consider in its report the potential for reducing air pollution taking into account, inter alia: annual reports submitted in accordance with paragraph 1 and 1a; observed air quality and acidification; fuel costs; potential economic impact and observed modal shift; and progress in reducing emissions from ships.
3. The Commission shall, in cooperation with Member States and stakeholders, by 31 December 2012, develop appropriate measures, including those identified in the Commission's staff working paper of 16 September 2011 entitled "Pollutant emission reduction from maritime transport and the sustainable waterborne transport toolbox" promoting compliance with the environmental standards of this Directive, and minimising the possible negative impacts. "

(d) paragraph 4 is replaced by the following:"
4. The Commission shall be empowered to adopt delegated acts in accordance with Article 9a concerning the adaptations of Article 2, points 1, 2, 3, 3a, 3b and 4, point (b) of Article 6(1a) and Article 6(2) to scientific and technical progress. ***Such adaptations shall not result in any direct changes to the scope of this Directive or to sulphur limits for fuels specified in this Directive.*** "

(11) Article 8 is deleted.

(12) Article 9 is ***replaced by the following:*** "

Article 9

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers*.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

_____

**** OJ L 55, 28.2.2011, p. 13.***

"

(13) The following Article is inserted:"

Article 9a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article ▌4c(4)▌ and Article 7(4) shall be conferred on the Commission for ***a*** period of ***five years*** from ... [(13)] . ***The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.***

3. The delegation of power referred to in Article ▌4c(4)▌ and Article 7(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the powers specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article ▌4c(4)▌ and Article 7(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of ***three months*** of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by ***three months*** at the initiative of the European Parliament or of the Council.

"

(14) Article 11 is replaced by the following: "

Article 11

Penalties

1. Member States shall determine the penalties applicable to breaches of the national provisions adopted pursuant to this Directive.

2. The penalties determined must be effective, proportionate and dissuasive and may include fines calculated in such a way as to ensure that the fines at least deprive those responsible of the economic benefits derived from their infringement and that those fines gradually increase for repeated infringements.

"

(15) The Annex to Directive 1999/32/EC is replaced by the Annex to this Directive.

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ...[(14)] . They shall forthwith communicate to the Commission the text of those provisions ▌.

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

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

Article 3

Entry into force

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

Article 4

Addressees

This Directive is addressed to the Member States.

Done at …,

For the European Parliament For the Council

The President The President

ANNEX

'ANNEX I

***Equivalent* emission values for emission abatement methods as referred to in Article 4c(2)**

Marine fuel sulphur limits referred to in Articles 4a and 4b and regulations 14.1 and 14.4 of Annex VI to MARPOL and corresponding emission ▌ values referred to in Article 4c(2)

Marine fuel Sulphur Content (% m/m)	Ratio Emission SO_2 (ppm)/CO_2 (% v/v)
▌	▌
3,50	151,7
1,50	65,0
1,00	43,3
0,50	21,7
0,10	4,3

Note:

– The use of the Ratio Emissions limits is only applicable when using petroleum based Distillate or Residual Fuel Oils.

– In justified cases where the CO 2 concentration is reduced by the exhaust gas cleaning (EGC) unit, the CO 2 concentration may be measured at the EGC unit inlet, provided that the correctness of such a methodology can be clearly demonstrated.

ANNEX II

Criteria for the use of emission abatement methods referred to in Article 4c(3)

▌ The emission abatement methods referred to in Article 4c shall comply at least with the criteria specified in the following instruments, as applicable:

Emission abatement method	***Criteria for use***

Mixture of marine fuel and boil-off gas	Commission Decision 2010/769/EU of 13 December 2010 on the establishment of criteria for the use by liquefied natural gas carriers of technological methods as an alternative to using low sulphur marine fuels meeting the requirements of Article 4b of Council Directive 1999/32/EC relating to a reduction in the sulphur content of certain liquid fuels as amended by Directive 2005/33/EC of the European Parliament and of the Council on the sulphur content of marine fuels[1] .
Exhaust gas cleaning systems	Resolution MEPC.184(59) adopted on 17 July 2009 ***Wash water resulting from exhaust gas cleaning systems which make use of chemicals, additives, preparations and relevant chemical created in situ, referred to in point 10.1.6.1 of Resolution MEPC.184(59), shall not be discharged into the sea, including enclosed ports, harbours and estuaries, unless it is demonstrated by the ship operator that such wash water discharge has no significant negative impacts on and do not pose risks to human health and the environment. If the chemical used is caustic soda it is sufficient that the washwater meets the criteria set out in Resolution MEPC.184(59) and its pH does not exceed 8,0.***
Bio-fuels	***Use of bio-fuels as defined in Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources 2 that comply with the relevant CEN and ISO standards.*** ***The mixtures of bio-fuels and marine fuels shall comply with the sulphur standards set out in Article 3a, Article 4a(1), (1a) and (4) and Article 4b of this Directive.***
[1] OJ L 328, 14.12.2010, p. 15. ***2 OJ L 140, 5.6.2009, p. 16.***	

‘

(1) OJ C 68, 6.3.2012, p. 70.
(2) OJ C 68, 6.3.2012, p. 70.
(3) ***Position of the European Parliament of 11.9.2012. (not yet published in the Official Journal) and decision of the Council of ...***
(4) OJ L 242, 10.9.2002, p. 1.
(5) OJ L 121, 11.5.1999, p. 13.
(6) OJ L 334, 17.12.2010, p. 17.
(7) ***OJ L 332, 28.12.2000, p. 81.***
(8) ***OJ L 55, 28.2.2011, p. 13.***
(9) OJ L 324, 29.11.2002, p. 1.
(10) OJ L 46, 17.2.1997, p. 25.
(11) OJ C 369, 17.12.2011, p. 14.
(12) ***+ OJ: Please insert the date: 18 months after the entry into force of this Directive.***
(13) + OJ: Please insert the date of entry into force of this Directive.
(14) * OJ: Please insert the date: ***18 months*** after the entry into force of this Directive.

Single payment scheme and support to vine-growers ***I

- Resolution
- Consolidated text

European Parliament legislative resolution of 11 September 2012 on the proposal for a regulation of the European Parliament and of the Council amending Council regulation (EC) N° 1234/2007 as regards the regime of the single payment scheme and support to vine-growers (COM(2011)0631 – C7-0338/2011 – 2011/0285(COD))

P7_TA-PROV(2012)0316 **A7-0203/2012**

(Ordinary legislative procedure: first reading)

The European Parliament ,

– having regard to the Commission proposal to Parliament and the Council (COM(2011) 0631),

– having regard to Article 294(2) and Article 43(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0338/2011),

– having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,

– having regard to Article 294(3) and the first paragraph of Article 42 of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Economic and Social Committee of 25 April 2012[(1)] ,

– having regard to the opinion of the Committee of the Regions of 4 May 2012[(2)] ,

– having regard to the undertaking given by the Council representative by letter of 9 July 2012 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

– having regard to Rules 55 and 37 of its Rules of Procedure,

– having regard to the report of the Committee on Agriculture and Rural Development (**A7-0203/2012**),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 11 September 2012 with a view to the adoption of Regulation (EU) No .../2012 of the European Parliament and of the Council, amending Council Regulation (EC) No 1234/2007 as regards the regime of the single payment scheme and support to vine-growers

P7_TC1-COD(2011)0285

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular ***the first paragraph of Article 42 and*** Article 43(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(3)] ,

Having regard to the opinion of the Committee of the Regions[(4)] ,

Acting in accordance with the ordinary legislative procedure[(5)] ,

Whereas:

(1) Article 103o of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)[(6)] provides for a possibility for Member States to grant decoupled aid under the single payment scheme to vine-growers. Several Member States have used this specific support measure ▌ .

(2) However, the fact that Member States may modify ***transfers to the single payment scheme from the*** support programmes once a year ▌ and the fact that support programmes have a five-year duration whilst payment entitlements ***giving rise to direct payments*** are granted for an indeterminate period of time, has resulted in administrative and budgetary burdens ▌ .

(3) In order to simplify the management of this specific support measure ***and to ensure its consistency with the objectives of the rules for direct support schemes for farmers, it is appropriate to convert it into the possibility***

for Member States to definitively decrease the funds allocated to the support programmes in the wine sector and thereby increase the national ceilings for direct payments.

(4) It is appropriate to allow Member States to continue applying the support provided for in Article 103o of Regulation (EC) No 1234/2007 for 2014.

(5) Regulation (EC) No 1234/2007 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

▌Regulation (EC) No 1234/2007 is ***amended as follows:***

(1) In Article 103n, the following paragraph is inserted: "

1a. By 1 August 2013, Member States may decide to reduce, from 2015, the amount available for the support programmes referred to in Annex Xb, in order to increase their national ceilings for direct payments referred to in Article 40 of Regulation (EC) No 73/2009.

The amount resulting from the decrease referred to in the first subparagraph shall definitively remain in the national ceilings for direct payments referred to in Article 40 of Regulation (EC) No 73/2009 and shall no longer be available for the measures listed in Articles 103p to 103y.

"

(2) Article 103o is replaced by the following:"

Article 103o

Single payment scheme and support to vine-growers

1. Member States may decide, by 1 December 2012, to provide support to vine-growers ***for*** 2014 by allocating payment entitlements within the meaning of Chapter 1 of Title III of Regulation (EC) No 73/2009.

If the amount of the support referred to in the first subparagraph is greater than the amount of support that was provided for in 2013, the Member State concerned shall use the difference to allocate payment entitlements ▌within the meaning of Chapter 1 of Title III of Regulation (EC) No 73/2009 ***to vine-growers*** in accordance with point C of Annex IX to that Regulation.

2. Member States intending to provide support referred to in paragraph 1 shall make provision for such support in their support programmes in accordance with Article 103k(3).

3. ***The*** support ***for 2014*** referred to in paragraph 1 shall:

(a) ▌remain in the single payment scheme and no longer be available under Article 103k(3) for the measures listed in Articles 103p to 103y;

(b) reduce proportionately the amount of funds available for measures listed in Articles 103p to 103y in the support programmes.

"

Article 2

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

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

Done at …,

For the European Parliament For the Council

The President The President

(1) OJ C 191, 29.6.2012, p. 116.
(2) OJ C 225, 27.7.2012, p. 174.
(3) OJ C 191, 29.6.2012, p. 116.
(4) OJ C 225, 27.7.2012, p. 174.
(5) Position of the European Parliament of 11 September 2012.

(6) OJ L 299, 16.11.2007, p. 1.

Administrative cooperation through the Internal Market Information System ***I

- Resolution
- Consolidated text
- Annex

European Parliament legislative resolution of 11 September 2012 on the proposal for a regulation of the European Parliament and of the Council on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (COM(2011)0522 – C7-0225/2011 – 2011/0226(COD))
(Ordinary legislative procedure: first reading)

P7_TA-PROV(2012)0317 A7-0068/2012

The European Parliament ,

– having regard to the Commission proposal to Parliament and the Council (**COM(2011)0522**),

– having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0225/2011),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Economic and Social Committee of 7 December 2011[(1)] ,

– having regard to the undertaking given by the Council representative by letter of 23 May 2012 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

– having regard to Rule 55 of its Rules of Procedure,

– having regard to the report of the Committee on the Internal Market and Consumer Protection (**A7-0068/2012**),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on XX September 2012 with a view to the adoption of Regulation (EU) No .../2012 of the European Parliament and of the Council on administrative cooperation through the Internal Market Information System *and repealing Commission Decision 2008/49/EC* ('the IMI Regulation')

P7_TC1-COD(2011)0226

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national ***parliaments*** ,

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

▌

Acting in accordance with the ordinary legislative procedure[(3)] ,

Whereas:

(1) The application of certain Union acts governing the free movement of goods, persons, services and capital in the

internal market requires Member States to cooperate ***more effectively*** and exchange information with one another and with the Commission. As practical means to implement such information exchange are often not specified in those acts, appropriate practical arrangements need to be made.

(2) The Internal Market Information System ('IMI') is a software application accessible via the Internet, developed by the ▌Commission in cooperation with the Member States, in order to assist Member States with the practical implementation of information exchange requirements laid down in Union acts by providing a centralised communication mechanism to facilitate cross-border exchange of information and mutual assistance. In particular, IMI helps competent authorities to identify their counterpart in another Member State, to manage the exchange of information, including personal data, on the basis of simple and unified procedures and to overcome language barriers on the basis of pre-defined and pre-translated workflows. ***Where available, the Commission should provide IMI users with any existing additional translation functionality that meets their needs, is compatible with the security and confidentiality requirements for the exchange of information in IMI and can be offered at a reasonable cost.***

(3) In order to overcome language barriers, IMI should in principle be available in all official Union languages.

(4) The purpose of IMI should be to improve the functioning of the internal market by providing an effective, user-friendly tool for the implementation of administrative cooperation between Member States and between Member States and the Commission, thus facilitating the application of Union acts ***listed*** in the ***Annex*** to this Regulation.

(5) The Commission Communication of 21 February 2011 entitled 'Better governance of the Single Market through greater administrative cooperation: A strategy for expansion and further development of the Internal Market Information System ('IMI')' sets out plans for the possible expansion of IMI to other Union acts. The Commission Communication of 13 April 2011 entitled 'Single Market Act: Twelve Levers to boost growth and strengthen confidence - 'Working together to create new growth" stresses the importance of IMI for strengthening cooperation among the actors involved, including at local level, thus contributing to better governance of the single market. It is therefore necessary to establish a sound legal framework for IMI and a set of common rules to ensure that IMI functions efficiently.

(6) Where the application of a provision of a Union act requires Member States to exchange personal data and provides for the purpose of this processing, such a provision should be considered an adequate legal basis for the processing of personal data, subject to the conditions set out in Articles 8 and 52 of the Charter of Fundamental Rights of the European Union. IMI should be seen primarily as a tool used for the exchange of information, including personal data, which would otherwise take place via other means, including regular mail, fax or electronic mail on the basis of a legal obligation imposed on Member States' authorities and bodies in Union acts***. Personal data exchanged via IMI should only be collected, processed and used for purposes in line with those for which it was originally collected and should be subject to all relevant safeguards*** .

(7) Following the privacy-by-design principle, IMI has been developed with the requirements of data protection legislation in mind and has been data protection-friendly from its inception, in particular because of the restrictions imposed on access to personal data exchanged in IMI. Therefore, IMI offers a considerably higher level of protection and security than other methods of information exchange such as regular mail, telephone, fax or electronic mail.

(8) Administrative cooperation by electronic means between Member States and between Member States and the Commission should comply with the rules on the protection of personal data laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[(4)] and in Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[(5)] ***. The definitions used in Directive 95/46/EC and Regulation (EC) No 45/2001 should also apply for the purposes of this Regulation.***

(9) The Commission supplies and manages the software and IT infrastructure for IMI, ensures the security of IMI, manages the network of national IMI coordinators and is involved in the training of and technical assistance to the IMI users. To that end, the Commission should only have access to such personal data that are strictly necessary to carry out its tasks within the responsibilities set out in this Regulation, such as the registration of national IMI coordinators. The Commission should also have access to personal data when retrieving, upon a request by another IMI actor, such data that have been blocked in IMI and to which the data subject has requested access. The Commission should not have access to personal data exchanged as part of administrative cooperation within IMI, unless a Union act provides for a role for the Commission in such cooperation .

(10) In order to ensure transparency, in particular for data subjects, the ***provisions of*** Union acts for which IMI is to be used should be listed in ***the*** Annex to this Regulation***.***

(11) IMI may be expanded in the future to new areas, where it can help to ensure effective implementation of a

Union act in a cost-efficient, user-friendly way, taking account of technical feasibility and overall impact on IMI. The Commission should conduct the necessary tests to verify the technical readiness of IMI for any envisaged expansion. Decisions to expand IMI to further Union acts should be taken by means of the ordinary legislative procedure.

(12) Pilot projects are a useful tool for testing whether the expansion of IMI is justified and for adapting technical functionality and procedural arrangements to the requirements of IMI users before a decision on the expansion of IMI is taken. Member States should be fully involved in deciding which Union acts should be subject to a pilot project and on the modalities of that pilot project, in order to ensure that the pilot project reflects the needs of IMI users and that the provisions on processing of personal data are fully complied with. Such modalities should be defined separately for each pilot project.

(13) Nothing in this Regulation should preclude Member States and the Commission from deciding to use IMI for the exchange of information which does not involve the processing of personal data.

(14) This Regulation should set out the rules for using IMI for the purposes of administrative cooperation, which may cover inter alia the one-to-one exchange of information, notification procedures, alert mechanisms, mutual assistance arrangements and problem-solving.

(15) ***The right of the Member States to decide which national authorities carry out the obligations resulting from this Regulation should remain unaffected by this Regulation.*** Member States should be able to adapt functions and responsibilities in relation to IMI to their internal administrative structures***, as well as to implement the needs of a specific IMI workflow. Member States should be able to appoint additional*** IMI coordinators ***to carry out the*** tasks of ***national*** IMI coordinators, alone or jointly with others, for a particular area of the internal market, a division of the administration, a geographic region, or according to another criterion. ***Member States should inform the Commission of the IMI coordinators they have appointed, but they should not be obliged to indicate additional IMI coordinators in IMI, where this is not required for its proper functioning.***

(16) In order to achieve efficient administrative cooperation through IMI, Member States and the Commission should ensure that their IMI actors have the necessary resources to carry out their obligations in accordance with this Regulation.

(17) While IMI is in essence a communication tool for ***administrative cooperation between competent authorities*** , which is not open to the general public, technical means may need to be developed to allow external actors such as citizens, enterprises and organisations to interact with the competent authorities in order to supply information or retrieve data, or to exercise their rights as data subjects. Such technical means should include appropriate safeguards for data protection. ***In order to ensure a high level of security, any such public interface should be developed in such a way as to be technically fully separate from IMI, to which only IMI users should have access.***

(18) The use of IMI for the technical support of the SOLVIT network should be without prejudice to the informal character of the SOLVIT procedure which is based on a voluntary commitment of the Member States, in accordance with the Commission Recommendation of 7 December 2001 on principles for using 'SOLVIT' - the Internal Market Problem Solving Network [(6)] ***('the SOLVIT Recommendation'). To continue the functioning of the SOLVIT network on the basis of existing work arrangements, one or more tasks of the national IMI coordinator may be assigned to SOLVIT centres within the remit of their work, so that they can function independently from the national IMI coordinator. The processing of personal data and of confidential information as part of SOLVIT procedures should benefit from all guarantees set out in this Regulation, without prejudice to the non-binding character of the SOLVIT Recommendation.***

(19) While IMI includes an internet-based interface for its users, in certain cases and at the request of the Member State concerned, it may be appropriate to consider technical solutions for the direct transfer of data from national systems to IMI, where such national systems have already been developed, notably for notification procedures. The implementation of such technical solutions should depend on the outcome of an assessment of their feasibility, costs and expected benefits. Those solutions should not affect the existing structures and the national order of competencies.

(20) Where Member States have fulfilled the obligation to notify under Article 15(7) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market [(7)] ***by using the procedure in accordance with Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services*** [(8)] ***, they should not also be required to make the same notification through IMI.***

(21) The exchange of information through IMI follows from the legal obligation on Member States' authorities to give mutual assistance. To ensure that the internal market functions properly, information received by a competent authority through IMI from another Member State should not be deprived of its value as evidence in administrative

proceedings solely on the ground that it originated in another Member State or was received by electronic means, and it should be treated by that competent authority in the same way as similar documents originating in its Member State.

(22) In order to guarantee a high level of data protection, maximum retention periods for personal data in IMI need to be established. However, those periods ***should be well-balanced taking into due consideration the need for IMI to function properly, as well as the rights of the*** data subjects to fully exercise their rights, for instance by obtaining evidence that an information exchange took place in order to appeal against a decision. ***In particular, retention periods should not go beyond what is necessary to achieve the objectives of this Regulation.***

(23) It should be possible to process the name and contact details of IMI users for purposes compatible with the objectives of this Regulation, including monitoring of the use of the system by IMI coordinators and the Commission, communication, training and awareness-raising initiatives, and gathering information on administrative cooperation or mutual assistance in the internal market.

(24) The European Data Protection Supervisor should monitor and ***seek to*** ensure the application of this Regulation***, inter alia by maintaining contacts with national data protection authorities*** , including the relevant provisions on data security.

(25) In order to ensure the effective monitoring of, and reporting on, the functioning of IMI and the application of this Regulation, Member States should make relevant information available to the Commission.

(26) Data subjects should be informed about the processing of their personal data in IMI and of the fact that they have the right of access to the data relating to them and the right to have inaccurate data corrected and illegally processed data erased, in accordance with ***this Regulation and*** national legislation implementing Directive 95/46/EC.

(27) In order to make it possible for the competent authorities of the Member States to implement legal provisions for administrative cooperation ***and efficiently exchange information by means of IMI, it may be necessary to lay down practical arrangements for such an exchange. Those arrangements should be adopted by the Commission in the form of a separate implementing act for each Union act listed in the Annex or for each type of administrative cooperation procedure and should cover the essential technical functionality and procedural arrangements required to implement the relevant administrative cooperation procedures via IMI. The Commission should ensure the maintenance and development of the software and IT infrastructure for IMI.***

(28) In order to ensure sufficient transparency for data subjects, the predefined workflows***, question and answer sets,*** forms and other arrangements relating to administrative cooperation procedures in IMI should be made public.

(29) Where Member States apply, in accordance with Article 13 of Directive 95/46/EC, any limitations on or exceptions to the rights of data subjects, information about such limitations or exceptions should be made public in order to ensure full transparency for data subjects. Such exceptions or limitations should be necessary and proportionate to the intended purpose and subject to adequate safeguards.

(30) Where international agreements are concluded between the Union and third countries that also cover the application of provisions of Union acts listed in the Annex to this Regulation, it should be possible to include the counterparts of IMI actors in such third countries in the administrative cooperation procedures supported by IMI, provided that it has been established that the third country concerned offers an adequate level of protection of personal data in accordance with Directive 95/46/EC.

(31) Commission Decision 2008/49/EC of 12 December 2007 concerning the implementation of the Internal Market Information System (IMI) as regards the protection of personal data[(9)] should be repealed. Commission Decision 2009/739/EC of 2 October 2009 setting out the practical arrangements for the exchange of information by electronic means between the Member States under Chapter VI of Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market[(10)] should continue to apply to issues relating to the exchange of information under Directive 2006/123/EC.

(32) ***In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers*** [(11)] ***.***

(33) The performance of the Member States regarding the effective application of this Regulation should be monitored in the annual report on the functioning of IMI based on statistical data from IMI and any other relevant data. The performance of Member States should be evaluated, inter alia, based on average reply times with the aim of ensuring rapid replies of good quality.

(34) Since the objective of this Regulation, namely laying down the rules for the use of IMI for administrative cooperation, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and

effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. 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.

(35) The European Data Protection Supervisor has been consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on 22 November 2011 [(12)] ***,***

HAVE ADOPTED THIS REGULATION:

Chapter I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation lays down rules for the use of an Internal Market Information System ('IMI') for administrative cooperation, including processing of personal data, between competent authorities ***of*** the Member States ***and between competent authorities of the Member States*** and the Commission.

Article 2

Establishment of IMI

IMI is hereby ***formally*** established.

Article 3

Scope

1. IMI shall be used for ***administrative cooperation between competent authorities of the Member States and*** between competent authorities ***of*** the Member States and the Commission necessary for the implementation of ***Union*** acts ***in the field of the internal market, within the meaning of Article 26(2) of the Treaty on the Functioning of the European Union (TFEU),*** which provide for administrative cooperation, including the exchange of personal data, between Member States or between Member States and the Commission. ***Those Union*** acts are ***listed*** in ***the*** Annex .

2. Nothing in this Regulation shall have the effect of rendering mandatory the provisions of Union acts which have no binding force.

Article 4

Expansion of IMI

1. The Commission may carry out pilot projects in order to assess whether IMI would be an effective tool to implement provisions for administrative cooperation of Union acts not listed in the Annex. The Commission shall adopt an implementing act to determine which provisions of Union acts shall be subject to a pilot project and to set out the modalities of each project, in particular the basic technical functionality and procedural arrangements required to implement the relevant administrative cooperation provisions. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 24(3).

2. The Commission shall submit an evaluation of the outcome of the pilot project, including data protection issues and effective translation functionalities, to the European Parliament and the Council. Where appropriate, that evaluation may be accompanied by a legislative proposal to amend the Annex to expand the use of IMI to the relevant provisions of Union acts.

Article 5

Definitions

For the purposes of this Regulation, the definitions ***laid down*** in Directive 95/46/EC and Regulation (EC) No 45/2001 shall apply.

In addition, the following definitions shall also apply:

(a) 'IMI' means the electronic tool provided by the Commission to facilitate administrative cooperation ***between competent authorities of the Member States and*** between ***competent authorities of the Member States*** and the Commission;

(b) 'administrative cooperation' means the working in collaboration of competent authorities ***of the Member States or competent authorities*** of ***the*** Member States and the Commission, by exchanging ***and processing*** information, including through notifications ***and alerts*** , or by providing mutual assistance, including for the resolution of problems, for the purpose of better application of Union law;

(c) 'internal market area' means a legislative or functional field of the internal market, within the meaning of Article 26(2) ***TFEU,*** in which IMI is used in accordance with Article 3 ***of this Regulation*** ;

(d) 'administrative cooperation procedure' means a pre-defined workflow provided for in IMI allowing IMI actors to communicate and interact with each other in a structured manner;

(e) 'IMI coordinator' means a body appointed by a Member State to perform support tasks necessary for the efficient functioning of IMI in accordance with this Regulation;

(f) 'competent authority' means any body established at either national, regional or local level ***and registered in IMI*** with specific responsibilities relating to the application of national ***law*** or Union ***acts listed in the Annex*** in one or more internal market areas ▌ ;

(g) 'IMI actors' means the competent authorities, IMI coordinators and the Commission;

(h) 'IMI user' means a natural person working under the ***authority*** of ***an IMI actor*** and registered in IMI on behalf of ***that IMI actor*** ;

(i) 'external actors' means natural or legal persons other than IMI users that may ***interact with*** IMI ***only*** through ***separate*** technical means and in accordance with a specific pre-defined workflow provided for that purpose;

(j) 'blocking' means applying technical means by which personal data become inaccessible to IMI users via the normal interface of IMI ▌ ***;***

(k) '***formal closure*** ' ***means applying the technical facility provided by IMI to close an administrative cooperation procedure.***

Chapter II

FUNCTIONS AND RESPONSIBILITIES IN RELATION TO IMI

▌

Article 6

IMI coordinators

1. Each Member State shall appoint one national IMI coordinator whose ***responsibilities*** shall include:

(a) registering or validating registration of IMI coordinators and competent authorities;

(b) acting as the main contact point for ***IMI actors of the Member States*** for issues relating to IMI, including ***providing information on*** aspects relating to the protection of personal data in ***accordance with this Regulation;***

(c) acting as interlocutor of the Commission for issues relating to IMI including providing information on aspects relating to the protection of personal data in accordance with this Regulation;

(d) providing knowledge, training and support, including ***basic*** technical ***assistance*** , to ***IMI actors of the Member States*** ;

(e) ensuring the efficient functioning of IMI ***as far as it is within their control*** , including the provision of timely and adequate responses by ***IMI actors of the Member States*** to requests for administrative cooperation.

2. Each Member State may, in addition, appoint one or more IMI coordinators in order to carry out any of the tasks listed in paragraph 1, in accordance with its internal administrative structure.

3. Member States shall inform the Commission of the IMI coordinators appointed in accordance with paragraphs 1 and 2 and of the tasks for which they are responsible. The Commission shall share that information with ***the*** other Member States.

4. All IMI coordinators may act as competent authorities. In such cases an IMI coordinator shall have the same access rights as a competent authority. Each IMI coordinator shall be a controller with respect to its own data processing activities as ***an IMI actor*** .

Article 7

Competent authorities

1. When cooperating by means of IMI, competent authorities, acting through IMI users in accordance with administrative cooperation procedures, shall ensure that, ***in accordance with the applicable Union act,*** an adequate response is provided within the shortest possible period of time, ***and in any event*** within the deadline set by ***that*** act.

2. ***A*** competent authorit***y*** may invoke as evidence any information, document, finding, statement ***or*** certified true copy ***which it has received electronically*** by means of IMI, on the same basis as similar ***information*** obtained in its own country, for purposes compatible with the purposes for which the data were originally collected.

3. Each competent authority shall be a controller with respect to its own data processing activities performed by an IMI user under its authority and shall ensure that data subjects can exercise their rights in accordance with Chapters III and IV, where ***necessary, in cooperation with the Commission.***

▌

Article 8

Commission

1. The Commission shall ***be responsible for carrying out the following tasks:***

(a) ensuring the security, availability, maintenance and development of the software and IT infrastructure for IMI ▌***;***

(b) providing a multilingual system, ***including existing translation functionalities,*** training in cooperation with the Member States, and a helpdesk to assist Member States in the use of IMI***;***

(c) registering the national IMI coordinators and granting them access to IMI***;***

(d) performing processing operations on personal data in IMI, where provided for in this Regulation, ***in accordance with the purposes determined by the applicable Union acts listed in the Annex;***

(e) monitoring the application of this Regulation and reporting back to the European Parliament, the Council and the European Data Protection Supervisor in accordance with Article 25 .

▌

2. For the purposes of performing the tasks ***listed in paragraph 1*** and producing ***statistical*** reports ▌, the Commission shall have access to the necessary information relating to the processing operations performed in IMI.

3. The Commission shall not participate in administrative cooperation procedures involving the processing of personal data except where required by a provision of a Union act listed in the Annex.

Article 9

Access rights of IMI actors and users

1. Only IMI users ▌shall have access to IMI.

2. Member States ▌ shall designate the IMI coordinators and competent authorities and the internal market areas in which they have competence. ***The Commission may play a consultative role in that process.***

3. Each IMI actor shall grant and revoke, as necessary, appropriate access rights to its IMI users in the internal market area for which it is competent.

4. Appropriate ▌means shall be put in place ***by the Commission and the Member States*** to ensure that IMI users are ***allowed*** to access personal data processed in IMI only on a need-to-know basis and within the internal market area or areas for which they were granted access rights in accordance with paragraph 3.

5. The use of personal data processed ***in*** IMI for a specific purpose in a way that is incompatible with that original purpose shall be prohibited, unless explicitly provided for by ***national*** law ***in accordance with Union law*** .

6. Where an administrative cooperation procedure involves the processing of personal data, only the IMI ***actors*** participating in that procedure shall have access to such personal data.

Article 10

Confidentiality

1. Each Member State shall apply its rules of professional secrecy or other equivalent duties of confidentiality to its IMI actors and IMI users, in accordance with national ***or Union*** legislation.

2. IMI actors shall ensure that requests of other IMI actors for confidential treatment of information exchanged by means of IMI are ***respected*** by IMI users working under their authority.

Article 11

Administrative cooperation procedures

IMI shall be based on administrative cooperation procedures ***implementing the provisions of the relevant Union acts listed in the Annex. Where appropriate, the Commission may adopt implementing acts for a specific Union act listed in the Annex or for a type of administrative cooperation procedure, setting out the essential technical functionality and the procedural arrangements required to enable the operation of the relevant administrative cooperation procedures, including where applicable the interaction between external actors and IMI as referred to in Article 12. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 24(2).***

Article 12

External actors

Technical means may be provided to allow external actors to interact with IMI where such interaction is:

(a) provided for by a Union act;

(b) provided for in an implementing act referred to in Article 11 in order to facilitate administrative cooperation between competent authorities in Member States for the application of the provisions of Union acts listed in the Annex; or

(c) necessary for submitting requests in order to exercise their rights as data subjects in accordance with Article 19.

Any such technical means shall be separate from IMI and shall not enable external actors to access IMI .

Chapter III

▌PROCESSING *OF PERSONAL DATA* AND SECURITY

Article 13

Purpose limitation

IMI actors shall exchange and process personal data only for the purposes defined in the relevant provisions of the Union acts listed in the Annex.

Data submitted to IMI by data subjects shall only be used for the purposes for which the data were submitted.

Article 14

Retention of personal data

1. Personal data processed in IMI shall be blocked ***in IMI as soon as they are no longer necessary for the purpose for which they were collected, depending on the specificities of each type of administrative cooperation and, as a general rule, no later than six months after the formal closure of the administrative cooperation procedure.***

However, if a longer period is provided for in an applicable Union act listed in the Annex, personal data processed in IMI may be retained for a maximum of 18 months after the formal closure of an administrative cooperation procedure ▌.

2. Where ▌a repository of information for future reference by IMI actors ***is required pursuant to a binding Union act listed in the Annex*** , the personal data included in such a repository may be processed for as long as they are needed for this purpose either with the data subject's consent or where this is ***provided for in that*** Union act.

3. Personal data blocked pursuant to this Article shall, with the exception of their storage, only be processed for purposes of proof of an information exchange by means of IMI ▌ with the data subject's consent***, unless processing is requested for overriding reasons in the public interest*** .

4. The blocked data shall be automatically deleted ***in IMI three*** years after the ***formal*** closure of the administrative cooperation procedure.

5. At the express request of a competent authority in a specific case and with the data subject's consent, personal data may be deleted before the expiry of the applicable retention period .

6. The Commission shall ensure by technical means the blocking and deletion of personal data and their retrieval in accordance with paragraph 3.

7. Technical means shall be put in place to encourage IMI actors to formally close administrative cooperation procedures as soon as possible after the exchange of information has been completed and to enable IMI actors

to involve IMI coordinators responsible in any procedure which has been inactive without justification for longer than two months.

Article 15

Retention of personal data of IMI users

1. By ***way of*** derogation from Article 14, paragraphs 2 and 3 ***of this Article*** shall apply to the retention of personal data of IMI users. ***Those personal data shall include the full name and all electronic and other means of contact necessary for the purposes of this Regulation.***

2. Personal data relating to IMI users shall be stored in IMI as long as they continue to be users of IMI and may be processed for purposes compatible with the objectives of this Regulation.

3. When a natural person ceases to be an IMI user, the personal data relating to that person shall be blocked by technical means for a period of ***three*** years. Those data shall, with the exception of their storage, only be processed for purposes of proof of an information exchange by means of IMI and shall be deleted at the end of the ***three*** -year period.

Article 16

Processing of special categories of data

1. The processing of special categories of data referred to in Article 8(1) of Directive 95/46/EC and Article 10(1) of Regulation (EC) No 45/2001 by means of IMI shall be allowed only on the basis of a specific ground mentioned in ***Article*** 8(2) ***and (4)*** of ***that*** Directive and Article 10(2) of ***that*** Regulation and ***subject to appropriate safeguards provided for in those Articles*** to ensure the rights of individuals whose personal data are processed.

2. IMI may be used for the processing of data relating to offences, criminal convictions or security measures referred to in Article 8(5) of Directive 95/46/EC and Article 10(5) of Regulation (EC) No 45/2001, ***subject to safeguards provided for in those Articles,*** including information on disciplinary, administrative or criminal sanctions or other information necessary to establish the good repute of an individual or a legal person, where the processing of such data is provided for in a Union act constituting the basis for the processing or with the explicit consent of the data subject, subject to ▌ specific safeguards ***referred to in Article 8(5) of Directive 95/46/EC*** .

Article 17

Security

1. ***The Commission shall ensure that IMI complies*** with the rules on data security adopted by the Commission pursuant to Article 22 of Regulation (EC) No 45/2001.

2. The Commission shall put in place the necessary measures to ensure security of personal data processed in IMI, including appropriate data access control and a security plan which shall be kept up-to-date.

3. The Commission shall ensure that, in the event of a security incident, it is possible to verify what personal data have been processed in IMI, when, by whom and for what purpose.

4. IMI actors shall take all procedural and organisational measures necessary to ensure the security of personal data processed by them in IMI in accordance with Article 17 of Directive 95/46/EC.

Chapter IV

RIGHTS OF DATA SUBJECTS AND SUPERVISION

Article 18

Information to data subjects and transparency

1. IMI actors shall ensure that data subjects are informed about processing of their personal data in IMI ***as soon as possible*** and that they have access to ***information*** on their rights and how to exercise them, ***including the identity and contact details of the controller and of the controller's representative, if any,*** in accordance with Articles 10 or 11 of Directive ***95*** /46/EC and national legislation which is in accordance with that Directive.

2. The Commission shall make publicly available ***in a way which is easily accessible*** :

(a) ***information*** concerning IMI in accordance with Articles ***11*** and ***12*** of Regulation (EC) No 45/2001, in a clear and understandable form;

(b) information on the data protection aspects of administrative cooperation procedures in IMI as referred to in Article 11 of this Regulation;

(c) information on exceptions to or limitations of the rights of data subjects as referred to in Article 20 of this Regulation;

(d) types of administrative cooperation procedures, essential IMI functionalities and categories of data that may be processed in IMI;

(e) a comprehensive list of all implementing or delegated acts regarding IMI, adopted pursuant to this Regulation or to another Union act, and a consolidated version of the Annex to this Regulation and its subsequent amendments by other Union acts.

Article 19

Right of access, correction and deletion

1. IMI actors shall ensure that data subjects may effectively exercise their right of access to data relating to them ***in IMI*** , and the right to have inaccurate or incomplete data corrected and unlawfully processed data deleted, in accordance with national legislation. The correction or deletion of data shall be carried out ***as soon as possible, and at the latest 30 days after the request by the data subject is received*** by the IMI actor responsible.

2. Where the accuracy or lawfulness of data blocked pursuant to Article 14(1) is contested by the data subject, this fact shall be recorded, as well as the accurate, corrected information.

Article 20

Exceptions and limitations

Member States shall inform the Commission where they provide for exceptions to, or limitations of, the rights of data subjects set out in this Chapter in national legislation in accordance with Article 13 of Directive 95/46/EC.

Article 21

Supervision

1. The national supervisory authority or authorities designated in each Member State and endowed with the powers referred to in Article 28 of Directive 95/46/EC (the 'National Supervisory Authority') shall ***independently*** monitor the lawfulness of the processing of personal data by the ***IMI actors of their Member State*** and, in particular, shall ensure that the rights of data subjects set out in this Chapter are ***protected in accordance with this Regulation*** .

2. The European Data Protection Supervisor shall ***monitor and seek to*** ensure that the personal data processing activities of the Commission, in its role as an IMI actor, are carried out in accordance with this Regulation. The duties and powers referred to in Articles 46 and 47 of Regulation (EC) No 45/2001 shall apply accordingly.

3. The National Supervisory Authorities and the European Data Protection Supervisor, each acting within the scope of their respective competencies, shall ensure coordinated supervision of IMI and its use by ***IMI actors.***

4. The European Data Protection Supervisor may invite the National Supervisory Authorities to meet, where necessary, for the purposes of ensuring coordinated supervision of IMI and its use by IMI actors, as referred to in paragraph 3. The cost of such meetings shall be borne by the European Data Protection Supervisor. Further working methods for this purpose, including rules of procedure, may be developed jointly as necessary. A joint report of activities shall be sent to the European Parliament, the Council and the Commission at least every three years.

Chapter V

GEOGRAPHIC SCOPE OF IMI

Article 22

National use of IMI

1. A Member State may use IMI for the purpose of administrative cooperation between competent authorities within its territory, in accordance with national law, only where the following conditions are satisfied:

(a) no substantial changes to the existing administrative cooperation procedures are required;

(b) a notification of the envisaged use of IMI has been submitted to the National Supervisory Authority ***where required under national law*** ; and

(c) ***it does not have a negative*** impact on the efficient functioning of IMI ***for IMI users*** .

2. Where ***a Member State intends to make systematic*** use of IMI ***for national purposes, it shall notify its intention to the Commission and seek its prior approval*** . ***The Commission shall examine whether the conditions set out in paragraph 1 are met.*** Where necessary, ***and in accordance with this Regulation,*** an agreement setting out, inter alia, the technical, financial and organisational arrangements ***for national use*** , including the responsibilities of the IMI actors, shall be concluded between the Member State and the Commission.

Article 23

Information exchange with third countries

1. ***Information, including personal*** data, may be exchanged in IMI pursuant to this Regulation between IMI actors within the Union and ***their counterparts*** in a third country only where the following conditions are satisfied:

(a) the ***information is*** processed pursuant to a provision of a Union act listed in the Annex ▌ and an equivalent provision in the law of the third country;

(b) the ***information is*** exchanged or made available in accordance with an international agreement providing for***:***

(i) the application of a provision of a Union act listed in ***the*** Annex by the third country,

(ii) the use of IMI, and

(iii) the principles and modalities of that exchange ; and

(c) the ▌ third country in question ensures adequate protection of personal data in accordance with Article 25(***2***) of Directive 95/46/EC ▌ , including adequate safeguards that the data processed in IMI shall only be used for the purpose for which they were initially exchanged***, and the Commission has adopted a decision in accordance with Article 25(6) of Directive 95/46/EC*** .

2. Where the Commission is an IMI actor, Article 9(1) and (7) of Regulation ***(EC) No*** 45/2001 shall apply to any exchange of personal data processed in IMI with ***its counterparts*** in a third country.

3. The Commission shall publish in the *Official Journal of the European Union* ***and keep up-to-date a*** list of third countries ***authorised to exchange information, including personal data, in accordance with paragraph 1.***

Chapter VI

FINAL PROVISIONS

Article 24

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

▌

Article 25

Monitoring and reporting

1. The Commission shall report to the European Parliament and the Council on the functioning of IMI on a yearly basis.

2. ***By ...*** [(13)] ***and every five*** years thereafter, the Commission shall report to the European Data Protection Supervisor on aspects relating to the protection of personal data in IMI, including data security.

3. For the purpose of producing the reports referred to in paragraphs 1 and 2, Member States shall provide the Commission ▌ with any information relevant to the application of this Regulation, including on the application in practice of the data protection requirements laid down in this Regulation.

Article 26

Costs

1. The costs incurred for the development, ***promotion,*** operation and maintenance of IMI shall be borne by the general budget of the European Union, without prejudice to arrangements under Article 22(2).

2. Unless otherwise stipulated in a Union act, the costs for the IMI operations at Member State level, including the human resources needed for training, promotion and technical assistance (helpdesk) activities, as well as for the administration of IMI at national level, shall be borne by each Member State.

Article 27

Repeal

Decision 2008/49/EC is repealed.

Article 28

Effective application

Member States shall take all necessary measures to ensure effective application of this Regulation by their IMI actors.

Article 29

Exceptions

1. Notwithstanding Article 4 of this Regulation, the IMI pilot project launched on 16 May 2011 to test the suitability of IMI for the implementation of Article 4 of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services [(14)] ***may continue to operate on the basis of the arrangements that were made prior to the entry into force of this Regulation.***

2. Notwithstanding Article 8(3) and points (a) and (b) of the first paragraph of Article 12 of this Regulation, for the implementation of the administrative cooperation provisions of the SOLVIT Recommendation through IMI, the involvement of the Commission in administrative cooperation procedures and the existing facility for external actors may continue on the basis of the arrangements that were made prior to the entry into force of this Regulation. The period as referred to in Article 14(1) of this Regulation shall be 18 months for personal data processed in IMI for the purposes of the SOLVIT Recommendation.

3. Notwithstanding Article 4(1) of this Regulation, the Commission may launch a pilot project to assess whether IMI is an efficient, cost-effective and user-friendly tool to implement Article 3(4), (5) and (6) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') [(15)] ***. No later than two years after the launch of that pilot project, the Commission shall submit to the European Parliament and the Council the evaluation referred to in Article 4(2) of this Regulation, which shall also cover the interaction between administrative cooperation within the consumer protection cooperation system established in accordance with Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation)*** [(16)] ***and within IMI.***

4. Notwithstanding Article 14(1) of this Regulation, any periods up to a maximum of 18 months decided on the basis of Article 36 of Directive 2006/123/EC with regard to administrative cooperation pursuant to Chapter VI thereof shall continue to apply in that area.

Article 30

Entry into force

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

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

Done at …,

For the European Parliament For the Council

The President The President

ANNEX

Provisions on administrative cooperation in Union acts that are implemented by means of IMI , referred to in Article 3

1. Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market[17] : Chapter VI***, Article 39(5), as well as Article 15(7), unless a notification, as provided for in that latter Article, is made in accordance with Directive 98/34/EC.***

2. Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications[18] : Article 8, Article 50***(1), (2) and (3),*** and Article 56.

3. Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare[19] : Article 10***(4).***

4. Regulation (EU) No 1214/2011 of the European Parliament and of the Council of 16 November 2011 on the professional cross -border transport of euro cash by road between euro-area Member States [20] : Article 11(2).

5. Commission Recommendation of 7 December 2001 on principles for using 'SOLVIT' – the Internal Market Problem Solving Network: Chapters I and II.

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(1) OJ C 43, 15.2.2012, p. 14.
(2) OJ C 43, 15.2.2012, p. 14.
(3) Position of the European Parliament of XX September 2012.
(4) OJ L 281, 23.11.1995, p. 31.
(5) OJ L 8, 12.1.2001, p. 1.
(6) ***OJ L 331, 15.12.2001, p. 79.***
(7) ***OJ L 376, 27.12.2006, p. 36.***
(8) ***OJ L 204, 21.7.1998, p. 37.***
(9) OJ L 13, 16.1.2008, p. ***18.***
(10) OJ L 263, 7.10.2009, p. ***32.***
(11) ***OJ L 55, 28.2.2011, p. 13.***
(12) ***OJ C 48, 18.2.2012, p. 2.***
(13) **** OJ: please insert the date: five years after the date of entry into force of this Regulation.***
(14) ***OJ L 18, 21.1.1997, p. 1.***
(15) ***OJ L 178, 17.7.2000, p. 1.***
(16) ***OJ L 364, 9.12.2004, p. 1.***
(17) OJ L 376, 27.12.2006, p. 36.
(18) ***OJ L 255, 30.9.2005, p. 22.***
(19) OJ L 88, 4.4.2011, p. 45.
(20) ***OJ L 316, 29.11.2011, p. 1.***

Common system of taxation applicable to interest and royalty payments *

European Parliament legislative resolution of 11 September 2012 on the proposal for a Council directive on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (recast) (COM(2011)0714 – C7-0516/2011 – 2011/0314(CNS))

P7_TA-PROV(2012)0318 **A7-0227/2012**

(Special legislative procedure – consultation – recast)

The European Parliament ,

– having regard to the Commission proposal to the Council (**COM(2011)0714**),

– having regard to Article 115 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C7-0516/2011),

– having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts[1] ,

– having regard to the letter of 6 March 2012 from the Committee on Legal Affairs to the Committee on Economic and Monetary Affairs in accordance with Rule 87(3) of its Rules of Procedure,

– having regard to Rules 87 and 55 of its Rules of Procedure,

– having regard to the report of the Committee on Economic and Monetary Affairs (**A7-0227/2012**),

A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance;

1. Approves the Commission proposal as adapted to the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission and as amended below;

2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;

5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Text proposed by the Commission	*Amendment*
Amendment 1 **Proposal for a directive** **Recital 1**	
(1) Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States has been amended several times. Since further amendments are to be made, it should be recast in the interests of clarity.	(1) Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States has been amended several times. Since further amendments are to be made, it should be recast in the interests of clarity. ***On 19 April 2012, the European Parliament called for concrete ways to combat tax fraud and tax evasion, drawing attention to tax evasion via hybrid financial instruments and calling on the Member States to ensure smooth cooperation and coordination between their tax systems to avoid unintended non-taxation and tax evasion.***
Amendment 2 **Proposal for a directive** **Recital 1 a (new)**	
	(1a) Persistent and considerable public deficits are closely linked to the current social, economic and financial crisis.
Amendment 3 **Proposal for a directive** **Recital 4**	
(4) The abolition of taxation on interest and royalty payments in the Member State where they arise, whether collected by deduction at source or by assessment, is the most appropriate means of eliminating the aforementioned formalities and problems and of ensuring the equality of tax treatment as between national and cross-border transactions; it is particularly necessary to abolish	(4) The abolition of taxation on interest and royalty payments in the Member State where they arise, whether collected by deduction at source or by assessment, is the most appropriate means of eliminating the aforementioned formalities and problems and of ensuring the equality of tax treatment as between national and cross-border transactions; it is particularly necessary to abolish

such taxes in respect of such payments made between associated companies of different Member States as well as between permanent establishments of such companies.	such taxes in respect of such payments made between associated companies of different Member States as well as between permanent establishments of such companies ***in order to ensure a simplified and more transparent system of taxation*** .

Amendment 4
Proposal for a directive
Recital 5

(5) It is necessary to ensure that interest and royalty payments are subject to tax once in a Member State and that the benefits of the Directive should only be applicable when the income derived from the payment is effectively subject to tax in the Member State of the receiving company or in the Member State where the recipient permanent establishment is situated.	(5) It is necessary to ensure that interest and royalty payments are subject to tax once in a Member State and that the benefits of the Directive should only be applicable when the income derived from the payment is effectively subject to tax in the Member State of the receiving company or in the Member State where the recipient permanent establishment is situated***, without there being the possibility of exemption or a substitution or replacement by payment of another tax*** .

Amendment 5
Proposal for a directive
Recital 12

(12) It is moreover necessary not to preclude Member States from ***taking appropriate measures to combat*** fraud ***or*** abuse.	(12) It is moreover necessary ***to take appropriate measures in order*** not to preclude Member States from ***combating tax*** fraud***, tax evasion and*** abuse.

Amendment 6
Proposal for a directive
Recital 20 a (new)

	(20a) To ensure smooth and cost-efficient implementation of the provisions of this Directive, companies should prepare their annual accounts together with all relevant tax data in eXtensible Business Reporting Language (XBRL).

Amendment 7
Proposal for a directive
Article 1 – paragraph 1

1. Interest or royalty payments arising in a Member State shall be exempt from any taxes imposed on those payments in that Member State, whether by deduction at source or by assessment, provided that the beneficial owner of the interest or royalties is a company of another Member State or a permanent establishment situated in another Member State of a company of a Member State and is effectively subject to tax on the income deriving from those payments in that other Member State.	1. Interest or royalty payments arising in a Member State shall be exempt from any taxes imposed on those payments in that Member State, whether by deduction at source or by assessment, provided that the beneficial owner of the interest or royalties is a company of another Member State or a permanent establishment situated in another Member State of a company of a Member State and is effectively subject to tax on the income deriving from those payments in that other Member State ***at a rate not lower than 70% of the average statutory corporate tax rate applicable in the Member States, without there being the possibility of exemption or a substitution or replacement by payment of another tax*** . ***Interest***

	or royalty payments shall not be exempted in the Member State in which they arise if the payment is not taxable according to the national tax law to which the beneficial owner is subject due to a different qualification of the payment (hybrid instruments) or a different qualification of the payer and recipient (hybrid entities).
Amendment 8 **Proposal for a directive** **Article 1 – paragraph 3**	
3. A permanent establishment shall be treated as the payer of interest or royalties only insofar as those payments represent an expense incurred for the purposes of the activity of the permanent establishment.	3. A permanent establishment shall be treated as the payer of interest or royalties only insofar as those payments represent an expense incurred for the purposes of the activity of the permanent establishment. ***Only a permanent establishment that has met its tax liabilities shall be treated as the beneficiary of a tax exemption or a tax benefit.***
Amendment 10 **Proposal for a directive** **Article 2 – paragraph 1 – point d – point ii**	
(ii) the second company has a minimum holding of ***10*** % in the capital of the first company, or	(ii) the second company has a minimum holding of ***25*** % in the capital of the first company, or
Amendment 11 **Proposal for a directive** **Article 2 – paragraph 1 – point d – point iii**	
(iii) a third company has a minimum holding of ***10*** % both in the capital of the first company and in the capital of the second company.	(iii) a third company has a minimum holding of ***25*** % both in the capital of the first company and in the capital of the second company.
Amendment 12 **Proposal for a directive** **Article 4 – title**	
Fraud and abuse	***Tax fraud, tax evasion*** and abuse
Amendment 13 **Proposal for a directive** **Article 4 – paragraph 2**	
2. Member States may, in the case of transactions for which the principal motive or one of the principal motives is tax ***evasion*** , tax ***avoidance*** or abuse, withdraw the benefits of this Directive or refuse to apply this Directive.	2. Member States may, in the case of transactions for which the principal motive or one of the principal motives is tax ***fraud*** , tax ***evasion, tax*** abuse, ***or tax avoidance,*** withdraw the benefits of this Directive or refuse to apply this Directive.
Amendment 14 **Proposal for a directive** **Article 6 – paragraph 1 – subparagraph 1**	
1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 1(1) and (3), Article 2(c) and (d), and Annex I, Part A by ***1***	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 1(1) and (3), Article 2(c) and (d), and Annex I, Part A by ***31***

January 2012 at the latest . They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive .	***December 2013*** at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.
Amendment 15 **Proposal for a directive** **Article 6 – paragraph 2 a (new)**	
	2a. Companies shall prepare their annual accounts together with all relevant tax data in eXtensible Business Reporting Language (XBRL).
Amendment 16 **Proposal for a directive** **Article 7**	
By 31 December ***2016*** , the Commission shall report to the Council on the economic impact of this Directive.	By 31 December ***2015*** , the Commission shall report to ***the European Parliament and to*** the Council on the economic impact of this Directive.
Amendment 17 **Proposal for a directive** **Article 8**	
This Directive shall not affect the application of domestic or agreement-based provisions which go beyond the provisions of this Directive and are designed to eliminate or mitigate the double taxation of interest and royalties.	This Directive shall not affect the application of domestic or agreement-based provisions which go beyond the provisions of this Directive and are designed to eliminate or mitigate the double taxation ***and double non-taxation*** of interest and royalties.

(1) OJ C 77, 28.3.2002, p. 1.

Preparation of the Commission work programme 2013

European Parliament legislative resolution of 11 September 2012 on the Commission Work Programme for 2013 (2012/2688(RSP))

P7_TA-PROV(2012)0319

B7-0346 , **0347** , **0348** and **0350/2012**

The European Parliament ,

– having regard to the forthcoming Communication on the Commission Work Programme for 2013,

– having regard to the existing Framework Agreement on relations between Parliament and the Commission and, in particular, Annex 4 thereto,

– having regard to its resolution of 4 July 2012 on the June 2012 European Council meeting[(1)] ,

– having regard to Rule 35(3) of its Rules of Procedure,

A. whereas the scale and nature of the sovereign debt, financial and economic crisis are testing the governance of the European Union as never before;

B. whereas the EU is at a critical point and the crisis will not be overcome without a significant deepening of European integration, in particular in the euro area, with a corresponding reinforcement of democratic control and accountability;

C. whereas the role of the Commission is to promote the general interest of the Union, to take appropriate initiatives to that end, to ensure the application of the Treaties, to oversee the implementation of Union law, to exercise

coordinating, executive and management functions and to initiate legislation;

PART 1

1. Urges the Commission to use all its powers to the full and to provide the political leadership required to meet the numerous challenges thrown up by the continuing crisis, while aiming to achieve financial stability and economic recovery based on increased competitiveness and a sustainable, effective and socially just anti-crisis agenda;

2. Recalls its demand of 4 July 2012 that the Commission table a package of legislative proposals by September, in line with the Community method, on the basis of the four building blocks identified in the report entitled 'Towards a Genuine Economic and Monetary Union';

3. Insists that the Commission play a full part in formulating the reports to the European Council meetings in October and December 2012, which must establish a clear roadmap and schedule for the consolidation of economic and monetary union, including an integrated financial, fiscal and economic policy framework, and which must lead in due course to a stronger political union, and in particular to greater democratic accountability and legitimacy on the basis of Treaty change;

4. Points to Parliament's position on the 'two-pack' legislation, which will strengthen budgetary surveillance and enhance budgetary policy in the euro area and which contains provisions allowing for a differentiated path for budgetary consolidation in the event of a severe economic downturn;

5. Urges the Commission to put forward proposals to implement the commitments outlined in the Compact for Growth and Jobs, notably with a view to stimulating sustainable growth-oriented investment, improving the competitiveness of a European economy geared towards the Europe 2020 objectives, in particular those of resource efficiency and sustainability, and deepening the single market; calls on the Commission to use its Work Programme for 2013 to set out a detailed growth agenda which focuses on encouraging business and entrepreneurs to develop the industries and services that will deliver long-term jobs and prosperity; stresses, in this context, the importance of significantly scaling up European project bonds on the basis of cooperation between the EU budget and the European Investment Bank;

6. Points, furthermore, to the need for a sustained and symmetrical reduction of excessive macro-economic imbalances and calls for concrete changes in EU tax law to tackle all aspects of tax havens and fiscal evasion;

7. Calls on the Commission to do its utmost to facilitate the speedy adoption of the Multiannual Financial Framework (MFF) and the related multiannual legislative programmes, with full involvement of Parliament and due respect for its co-decision rights; strongly supports the commitment to make the EU budget a catalyst for growth and jobs around Europe; calls on the Commission, in this connection, to defend its proposal to ensure that the Union's budget reflects more directly its needs and political objectives;

8. Insists, however, that the reform of the own-resources system, including the creation of new own resources, is an essential element without which the prospects for an agreement on the new MFF are poor; asks the Commission to support the request by several Member States for enhanced cooperation in this area; underlines the desirability, nevertheless, of reaching an overall agreement by the end of this year;

9. Urges the Commission to improve the coherence of its legislative programme, to raise the quality of its legislative drafting, to strengthen its impact assessment of draft laws, to propose wherever appropriate the use of correlation tables with a view to better transposition of EU law, and to back Parliament in its negotiations with the Council on the use of delegated implementing acts; reiterates its repeated calls for the 2003 Interinstitutional Agreement on better lawmaking to be renegotiated;

10. Calls on the Commission to take due note of the sector-specific positions of Parliament as set out in Part 2 below;

PART 2
Implementation

11. Emphasises the importance of the proper and timely implementation of EU law through national legislation, and urges the Commission, if necessary, to open infringement proceedings in order to ensure proper transposition and effective enforcement;

12. Urges the Commission to propose the introduction of compulsory national management declarations, signed at the appropriate political level, covering EU funds under shared management; urges continued action on simplifying the EU's programmes, particularly in the field of research and innovation; calls on the Commission to monitor closely the use of financial engineering instruments (FEIs); calls for systematic, regular and independent evaluations, to ensure that all spending is achieving the desired outcomes in a cost-effective manner;

13. Expects the Commission to submit in good time the draft amending budgets necessary to ensure that payment

levels are in line with the measures agreed at the June 2012 European Council to stimulate growth and are sufficient to honour outstanding commitments;

Single market

14. Calls on the Commission to continue to focus on improving the governance of the single market, to renew its drive to achieve administrative simplification, to give due consideration to proposing, where appropriate, regulations rather than directives in order to ensure the proportionality of proposed measures, and to monitor progress with a view to the full implementation of the single market *acquis* , especially in the services sector, including the possibility of 'fast-track' infringement procedures; stresses that due account must be taken of the economic, social and environmental dimensions of the single market;

15. Looks forward to the Commission's Single Market Act II proposals for priority actions to boost growth, employment and confidence in the single market; encourages the use of enhanced cooperation where appropriate and necessary;

16. Calls on the Commission to be more systematic in assessing the impact of its proposals on SMEs, on which Europe relies for many new jobs; urges the Commission, in this regard, actively to discourage the 'gold-plating' of EU law at national level, which distorts the level playing field in the internal market; calls for the bureaucratic burden to be further reduced;

17. Confirms its support for the Commission's emphasis on the digital agenda; urges proposals to provide more cross-border services to consumers throughout the EU;

18. Recalls the need for a solid revision of the General Product Safety Directive (Directive 2001/95/EC of the European Parliament and of the Council[(2)]) that guarantees consumer health and safety but also facilitates trade in goods, especially for SMEs; calls on the Commission to propose a cross-cutting regulation on market surveillance for all products; calls, furthermore, for effective redress in retail financial services and a common horizontal, coordinated approach in order to protect consumers;

19. Urges the Commission to improve its regulatory behaviour towards SMEs and micro-enterprises by tailoring legislation to SME needs and also furthering the introduction of appropriate exemptions;

20. Urges the Commission to pursue its copyright reform, which should be fit for the internet environment and based on social legitimacy, with due respect for fundamental rights, including the completion of industrial property rights reform to boost Europe's growth and job creation; calls on the Commission to take account of the legal problems that came to light in the controversy surrounding the Anti-Counterfeiting Trade Agreement (ACTA) when presenting its proposal on the revision of EU trademark law;

Climate, environment, energy and transport

21. Insists on the need to implement the roadmap to a resource-efficient Europe in order to create incentives for the development of the green economy, the fostering of biodiversity and the fight against climate change, including the integration of resource-efficiency measures as envisaged in the Europe 2020 strategy;

22. Believes that the European Semester must provide the opportunity for each Member State to account for its own commitments regarding the EU 2020 strategy, the Euro Plus Pact, the Single Market Act and other major EU objectives;

23. Calls on the Commission to bring forward without delay proposals to address the weaknesses of the current Emissions Trading System in order to prevent its collapse;

24. Calls on the Commission to present a detailed action plan of measures designed to achieve a fully integrated and interconnected single market in energy, and emphasises the importance of providing the EU with a modern grid infrastructure;

25. Calls on the Commission to implement the Roadmap for moving to a competitive low-carbon economy in 2050, including mid-term milestones;

26. Requests that the Commission draw up a strategy to address the impact of rising energy prices on members of society;

27. Believes that the crisis should be used as an opportunity to transform our development model of society with a view to creating a highly efficient, renewable-based and climate-resilient economy; underlines the need for the Commission to come forward with proposals for a 2030 energy and climate package based on the current three pillars, i.e. greenhouse gas reductions, renewable energy sources and energy efficiency;

28. Supports the Commission's emphasis on the need to modernise Europe's multimodal transport network, which

is vital for the success of the internal market; calls on the Commission to stick to its commitment to railways and to extend the competences of the European Railway Agency in the field of safety certification and harmonisation of rolling stock;

29. Regrets the failure to implement in full the Single European Sky initiative, and calls on the Commission to renew its efforts in this regard;

Cohesive and inclusive societies – Citizens' Europe

30. Strongly welcomes the Commission's focus on youth employment and its proposals to expand the Union's capacity to boost education and training; expects, as part of the umbrella communication on the employment package, clear targets and timetables and concrete proposals in the areas of youth mobility, the 'Youth Guarantee', the quality framework for internships, language skills and youth entrepreneurship, in order to fight high youth unemployment; also expects concrete measures to reduce poverty, reform the labour market and establish social standards, so that a balanced 'flexicurity' approach can be implemented in those Member States that so desire, and calls for greater emphasis to be placed on the employment of disabled people in the context of an ageing society;

31. Stresses the importance of investment in human capital and research and development, and of adequate education and training to facilitate professional mobility; also calls for further work on the issues of violence against women and human trafficking;

32. Reiterates its call for a strong EU-wide cohesion policy post-2013, which must streamline existing funds and programmes, ensure adequate financing, be based on multi-level governance and be closely aligned with the objectives of the EU 2020 strategy; insists on the need to improve the efficiency and responsiveness of the Solidarity Fund and expects proposals to that end; is convinced that it is possible to find, by appropriate means, common ground for the EU cohesion and research and development policies, which ought to be targeted towards growth and competitiveness while respecting the principles of economic, social and territorial cohesion as well as excellence;

33. Supports initiatives at Union level to complement national efforts in increasing micro-credit and boosting social entrepreneurship which delivers services that are not sufficiently provided by the public or private sectors;

34. Welcomes the more robust approach taken by the Commission to protecting the rule of law and fundamental rights across the Union; calls for a review of the Fundamental Rights Agency in order to guarantee effective monitoring and implementation of the Charter of Human Rights and align it with the Lisbon Treaty; supports the Commission in its negotiation of the EU's accession to the European Convention on Human Rights;

35. Calls on the Commission to examine the implementation of the Racial Equality Directive (Council Directive 2000/43/EC[(3)]) and the transposition of the Framework decision on combating racism and xenophobia (Council Framework Decision 2008/913/JHA[(4)]), and considers it regrettable that the EU framework for national Roma integration strategies is not legally binding;

36. Calls on the Commission to ensure that freedom of movement of persons is secured and that the Schengen *acquis* is fully respected; stresses the need to replace inadequate peer review by Member States and calls for the Commission to take full responsibility for the supervision of the Schengen rules; welcomes the Commission's support for its position on the legal basis for the Schengen rules;

37. Considers regrettable the absence of a legislative proposal on enhanced intra-EU solidarity in the field of asylum; calls for a legislative proposal to establish a common European asylum system combining responsibility and solidarity;

38. Underlines the importance of adopting the regulation on a general framework for data protection and the directive on data protection in the field of prevention, detection, investigation or prosecution of criminal offences in order to ensure that any further counter-terrorism measures uphold high standards of privacy and data protection; calls on the Commission to bring forward its review of the Data Retention Directive (Directive 2006/24/EC of the European Parliament and of the Council[(5)]);

39. Strongly supports the Commission's emphasis on implementing citizen-friendly initiatives in the context of the proposal for a decision on the European Year of Citizens (2013) (**COM(2011)0489**) so as to further strengthen citizens' awareness of the benefits deriving from European citizenship;

Agriculture and fisheries

40. Takes note of the ongoing reform of the Common Agricultural Policy; welcomes the Commission's commitment to promoting a balanced and integrated approach which safeguards both the sustainable and efficient production of high-quality and affordable food and respect for the environmental and heritage value of the countryside; urges that the CAP be closely aligned with the Europe 2020 strategy in order to encourage innovation in farming and enhance the sustainability, fairness and competitiveness of European agriculture at local and regional levels;

41. Stresses that the reform of the Common Fisheries Policy must be ambitious in order to achieve sustainable and healthy long-term fish stocks; urges the Commission to ensure that Article 43(2) of the Treaty on the Functioning of the European Union (TFEU) is the legal basis for its proposals and to limit the use of Article 43(3) to proposals strictly connected to the setting and allocation of fishing opportunities; recalls its opposition to the practice of discards and to ill-judged and costly measures aimed at reducing fleet capacity;

Foreign and development policies

42. Calls for the Commission and the European External Action Service to work together to propose well-coordinated initiatives to the Council in the field of common foreign and security policy; urges the Commission to unite all its relevant activities and services, including development policy, with a view to attaining the international objectives of the Treaty of Lisbon and, in particular, Article 208 TFEU, which relates to policy coherence for development (PCD), while remaining faithful to the values on which the Union itself was built;

43. Expects legislative initiatives to revise the legal bases for the next generation of external financial assistance instruments, using to the full the system of delegated acts; calls for more flexibility in disbursing financial assistance in crisis situations;

44. Expects the Commission to support the enlargement of the Union to include any European country which respects the Union's values and is committed to promoting them, while taking into account the requirement for accession countries to fulfil the Copenhagen criteria and the Union's capacity for integration; believes that the Union would lose moral authority and political credibility worldwide were it to close its doors to its neighbours; expects the Commission to continue its work on the ongoing accession negotiations;

45. Calls on the Commission to apply an enhanced outcomes-oriented development policy ensuring greater aid effectiveness and guaranteeing tighter policy coherence and greater donor coordination at national, EU and global level and, increasingly, with emerging global development players; insists on the need to set up a dedicated trust fund to address the problem of malnutrition in developing countries and to open a consultation process on the phenomenon of land grabbing; urges the Commission to ensure greater EU aid effectiveness in the light of possible post-2015 Millennium Development Goals;

Trade

46. Considers the reciprocal and balanced openness of markets to be a strategic policy instrument for the EU's internal growth and employment; underlines the importance of involving Parliament at all stages of negotiations and remains committed to a multilateral approach to international trade; stresses the importance of the fight against protectionism at the multilateral level and through all trade agreements;

47. Supports the Commission's efforts in all ongoing bilateral and regional trade negotiations; recognises the need for continuing progress in reaching bilateral free trade agreements with significant partners;

48. Stresses the importance it attaches to the mainstreaming of human rights, social and environmental standards and corporate social responsibility in all international policy, together with clear rules requiring responsible behaviour by European companies;

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

(1) Texts adopted, **P7_TA(2012)0292** .
(2) OJ L 11, 15.1.2002, p. 4.
(3) OJ L 180, 19.7.2000, p. 22.
(4) OJ L 328, 6.12.2008, p. 55.
(5) OJ L 105, 13.4.2006, p. 54.

Voluntary and unpaid donation of tissues and cells

European Parliament resolution of 11 September 2012 on voluntary and unpaid donation of tissues and cells (2011/2193(INI))

P7_TA-PROV(2012)0320 **A7-0223/2012**

The European Parliament ,

– having regard to Article 184 of the Treaty on the Functioning of the European Union,

– having regard to the Charter of Fundamental Rights of the European Union, and in particular Article 1 on human dignity and Article 3 on the right to the integrity of the person, which refers to the 'prohibition on making the human body and its parts as such a source of financial gain',

– having regard to the Second Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Voluntary and Unpaid Donation of Tissues and Cells (**COM(2011)0352**),

– having regard to Directive 2010/53/EU of 7 July 2010 of the European Parliament and of the Council on standards of quality and safety of human organs intended for transplantation[(1)] ,

– having regard to its resolution of 19 May 2010 on the Commission Communication: Action Plan on Organ Donation and Transplantation (2009-2015): Strengthened Cooperation between Member States[(2)] ,

– having regard to Regulation (EC) No 1394/2007[(3)] of the European Parliament and of the Council of 13 November 2007 on advanced therapy medicinal products and amending Directive 2001/83/EC and Regulation (EC) No 726/2004,

– having regard to Directive 2004/23/EC of 31 March 2004 of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells[(4)] ,

– having regard to Directive 2006/17/EC of 8 February 2006[(5)] implementing Directive 2004/23/EC of the European Parliament and of the Council as regards certain technical requirements for the donation, procurement and testing of human tissues and cells,

– having regard to the World Health Organization's Guiding Principles on Human Cell, Tissue and Organ Transplantation,

– having regard to the Council of Europe Convention on Human Rights and Biomedicine, and its Additional Protocol concerning Transplantation of Organs and Tissues of Human Origin,

– having regard to the Oviedo Convention on Human Rights and Biomedicine, and the additional protocol thereto on transplantation of organs and tissues of human origin,

– having regard to the European data on Tissues, Haematopoietic and Reproductive Cells donation and transplantation activities of the 2010 Report of the European Registry for Organs, Tissues and Cells,

– having regard to its resolution of 10 March 2005 on the trade in human egg cells[(6)] ,

– having regard to Rule 48 of its Rules of Procedure,

– having regard to the report of the Committee on the Environment, Public Health and Food Safety and the opinion of the Committee on Legal Affairs (**A7-0223/2012**),

A. whereas donated tissues and cells, such as skin, bones, tendons, corneas and haematopoietic stem cells, are increasingly used in medical therapies and as starting material for advanced therapy medicinal products (ATMP); whereas Directive 2004/23/EC stipulates that Member States shall endeavour to ensure voluntary and unpaid donations and shall also endeavour to ensure that the procurement of tissues and cells as such is carried out on a non-profit basis; whereas this is a clear legal obligation, and if a Member State does not comply with the principle, infringement proceedings may be brought;

B. whereas in accordance with Article 12(1) of Directive 2004/23/EC, Member States shall submit reports on the practice of voluntary and unpaid donation to the Commission every three years;

C. whereas 27 of the 29 reporting countries have some form of provisions governing the principle of voluntary and unpaid donation of tissues and cells (binding or non-binding);

D. whereas 13 countries have guiding principles regarding the possibility of giving forms of compensation or incentives to donors of tissues and cells;

E. whereas 19 countries report providing some form of compensation or incentives for living donors of tissues and cells (excluding reproductive cells);

F. whereas 14 countries give some form of compensation or incentives for the donation of reproductive cells;

G. whereas four countries provide forms of compensation or incentives to relatives of deceased donors;

H. whereas targeted public awareness-raising and the dissemination of clear, fair, scientifically based and conclusive medical information at national and European level, particularly among the patient's immediate circle, play a very important role in gaining public support and increasing tissue and cell donation rates;

I. whereas advertising the need for, or availability of, human tissues and cells with a view to offering or seeking financial gain or comparable advantage, should be prohibited;

J. whereas, while 11 countries have official policies in place to endeavour to promote self-sufficiency of tissues and cells, 17 other countries have bilateral agreements with the same aim of ensuring national supplies of human tissues and cells;

K. whereas it is also of the utmost ethical importance to ensure, in so far as possible, an adequate supply of tissues and cells needed for medical purposes; whereas that supply must be managed in the interest of citizens and should therefore be supervised by public bodies;

L. whereas the majority of the reporting countries have public collectors/suppliers of tissues and cells or a dual system of private and public collectors/suppliers;

M. whereas the procurement of human tissues and cells shall be carried out by persons who have successfully completed a training programme specified by a clinical team specialising in the tissues and cells to be procured or a tissue establishment authorised for procurement;

N. whereas the removal of tissues and cells for the benefit of recipients may only be carried out under two conditions: it must be done with a medical or scientific and therapeutic aim, and all the elements removed must be donated without any payment being made;

O. whereas the removal of tissue and cells must be subject to the following principles: anonymity (except in the case of removal from a living person for a relative), non-remuneration, consent, the obligation to share organs for transplant fairly among patients, and safeguarding the health of donors and recipients;

P. whereas tissues and cells may only be removed if the donor has given prior free and informed consent to it in writing; whereas this consent may be withdrawn at any time, and with no particular requirement as to format;

Q. whereas the use of tissues and cells for application in the human body carries a risk of transmission of disease to recipients; whereas that risk can be reduced by careful donor selection, an evaluation of potential donors prior to procurement based on a risk/benefit analysis, testing and monitoring of each donation and the application of procedures to procure tissues and cells in accordance with rules and processes established and updated according to the best available scientific advice;

R. whereas the donation of some tissues and cells creates a severe risk for the donor; and whereas this risk is particularly high in egg cell donation because of the hormone treatment which is necessary to prepare for the donation;

S. whereas the EU Charter of Fundamental Rights, which is the EU's leading principle and has been legally binding since the entry into force of the Lisbon Treaty, prohibits making the human body and its parts as such a source of financial gain;

T. whereas it would be desirable for all Member States to have binding rules to enforce that ethical principle, including by means of criminal law;

U. whereas, however, doubts remain concerning the compatibility with this ethical principle of certain kinds of compensation provided in connection with donations, particularly when such compensation is provided to the relatives of deceased donors;

V. whereas unpaid donation is not only an ethical principle but also necessary to protect the health of the donor and the recipient, as the involvement of large sums of money in the donation process may encourage the donor to take risks and may hinder the disclosure of risks in his/her medical history;

W. whereas there is ample evidence to show that allogeneic cord blood transplantation is already successful for many patients, and whereas there are also credible reports that in some cases autologous treatment with these kinds of cells can be successful;

X. whereas reports from reputable media sources suggest that in the area of tissues and cells the principle of unpaid donation is being violated time and again;

Y. whereas the capacity to trace cells and tissues from the donor to recipients and vice versa and long-term follow-up of living donors and recipients of cells and tissues are central elements of safety and quality management;

1. Welcomes the presentation of the Second Report on Voluntary and Unpaid Donation of Tissues and Cells, which shows that much is being done in the Member States to implement the principle of unpaid donation, but also that there is a lot still to do;

2. Notes with concern that half of Member States state that they regularly face a lack of human tissues and cells, particularly spinal marrow, gametes and tissues such as corneas and skin; believes that the policies and laws in force should therefore be reviewed, as they are not adequate to meet the challenge of self-sufficiency in the European Union;

Non-remuneration, consent and safeguarding health

3. Stresses that donation should be voluntary, unpaid and anonymous (except in the case of procurement from a living person for a relative), governed by protective legal and ethical rules which respect the integrity of the person;

4. Calls on Member States to adopt protective measures for living donors and to guarantee that donation is anonymous (except in the case of procurement from a living person for a relative), voluntary, freely agreed to, informed and not remunerated;

5. Asks the Commission to carefully monitor developments in the Member States, to examine carefully any reports from civil society or in the media about violation of the principle of unpaid donation, and to take appropriate action, including, if necessary, infringement proceedings;

6. Believes that it is vital for all Member States to clearly define the conditions under which fair and proportionate financial compensation may be granted, bearing in mind that compensation is strictly limited to conditions making good the expenses incurred in donating tissues and cells, such as travel expenses, loss of earnings or medical costs related to the medical procedure and possible side effects, thereby prohibiting any financial incentives and avoiding disadvantages for a potential donor; such compensations must be transparent and regularly audited;

7. Calls on the Commission to report on current national practices and criteria for compensation of living donors, especially as regards egg cell donation;

8. Calls on the Member States to ensure that any compensation provided to donors is compatible with ethical principles; advises that particular attention should be paid to this issue where the compensation is given not to the donor, but to the donor's family after death;

9. Calls on Member States to ensure that living donors are selected on the basis of an evaluation of their health and medical history, including a psychological evaluation if deemed necessary, based on a risk-benefit analysis, by qualified and trained professionals;

10. Calls on Member States to take measures to protect minors and adults under guardianship with regard to the removal of tissues and cells;

Anonymity, traceability, transparency and information

11. Stresses that the principles of transparency and safety are key to achieving a high level of public support for donation; encourages Member States to work towards creating a transparent donation system which is safe for donors and recipients;

12. Calls on all Member States to set up rules for ensuring the traceability of tissues and cells of human origin from donor to patient and vice versa, as well as a system for the regulation of imports of human tissues and cells from third countries, ensuring that equivalent standards of quality and safety will apply;

13. Calls on Member States to step up their public information and awareness-raising campaigns to promote the donation of tissues and cells and to ensure the provision of medical information that is clear, fair, scientifically based and conclusive and of data enabling the public to make informed choices; stresses that donors should be fully informed of the procedures used in this process and their moral, psychological, medical and social consequences;

14. Calls on Member States to take coordinated actions to prevent the development of a black market in gametes on the Internet, as such a market risks both undermining the quality and safety of tissues and cells and raises legal, ethical and public health problems;

Exchanging best practice and reinforcing European and international cooperation

15. Calls on Member States to step up exchanges of good practices, particularly with regard to the supply of tissues and cells, the protection of the quality of tissues and cells while they are being transported, raising awareness of donating and training health staff;

16. Expects all Member States to establish public tissue and cell banks;

17. Calls for European standards and requirements for private tissue and cell banks;

18. Considers that, in order to pursue the ethical imperative of ensuring adequate supply, the Commission and the Member States should consider the possibility of setting up a Europe-wide database of donors and potential recipients in order to manage supply in the general interest and avoid shortages where possible;

19. Considers that the role of bilateral agreements is extremely important in supporting countries which experience shortages in tissues and cells or have no domestic donor matches and in ensuring that information on tissues and cells flows more freely between states;

20. Particularly applauds, in the European context, the role in this field of Eurocet , which has played a crucial role in acting as the central European database for the collection of data on tissue and cell donation and transplantation activities; calls on Member State authorities to reinforce their collaboration with Eurocet in order to agree further common standards in the donation of cells and tissues and thereby enable healthcare professionals to improve the matches offered to European citizens;

21. Calls on Member States to explore all possible opportunities for wider international cooperation in this field, in particular with regard to the potential uses of haematopoietic stem cells;

Cord blood and stem cells

22. Recognises the significant scientific advances made in the cord blood field, which is a very promising therapeutic alternative in the treatment of many diseases, including children's illnesses;

23. Points out that currently, clinical trials using umbilical cord blood stem cells for treatments linked to non-haematological diseases are mostly taking place outside the EU; calls therefore on the Commission and Member States to take appropriate measures to establish a regulatory framework which could stimulate increased availability of umbilical cord blood stem cells;

24. Regrets that at present, stem cells from umbilical cord blood are only stored at 1% of total births in the EU; underlines, consequently, the importance of mothers donating cord blood and tissue at birth into banks which adhere to common operational and ethical standards in order to help treat illnesses and further research in the field; stresses moreover that traceability must be one of the conditions required for the authorisation of these banks at national or European level; emphasises that the allocation process through such banks must be fair, equitable, non-discriminatory and transparent;

25. Points out that public cell banks must take the necessary steps to protect data confidentiality in order to reconcile the traceability requirement with the need to protect donors' rights, such as medical confidentiality and privacy;

26. Takes the view that donations of non-family allogeneic umbilical cord blood - regardless of whether the bank is public or private - should be further developed, so that stored units of umbilical cord blood are registered in the Bone Marrow Donors Worldwide (BMDW) database and made available to any compatible patient who needs them;

27. Points out that this donation must be subject to consent from the mother that is free, informed and given in writing, and that this consent may be withdrawn at any time prior to the donation, with no particular requirement as to format;

28. Calls on Member States to raise awareness of public cord blood banking through information campaigns that may take place, for example, during antenatal classes, and proposes that in compliance with the provisions of the Charter of Fundamental Rights of the European Union;

29. Considers that men and women should be informed about all existing options related to cord blood donation at birth e.g.: public or private storage, donation for autologous or heterologous purposes or for research; considers that comprehensive, objective and accurate information should be provided about the advantages and disadvantages of cord blood banks;

30. Calls on Member States to improve, at the same time, the protection of parents' rights to informed consent and freedom of choice regarding cord blood stem cell preservation practices;

31. Proposes that Member States consider adopting and enforcing operational and ethical standards for public and private cord blood banks that uphold the principle of non-commercialisation of the human body and its parts, for example, and ensure traceability;

32. Expects all Member States to establish at least one public stem cell bank;

33. Calls for the opinion issued by the European Group on Ethics in Science and New Technologies in 2004 on ‘Ethical Aspects of Umbilical Cord Blood Banking’ (Opinion No 19) to be updated in the light of developments in cord blood stem cell preservation and ongoing clinical trials on the use of umbilical cord blood stem cells;

34. Calls on Member States to provide a territorial network of maternity centres authorised to carry out this procurement to guarantee cord blood supply in all population centres;

35. Calls for that all banks that respect the EU operational standards for collection and storage of cord blood to be consulted by national authorities when defining and implementing national information campaign strategies for parents;

36. Calls for European standards and requirements for private stem cell banks;

37. Notes that collaboration models and opportunities between public and private sectors already exist in some Member States, and encourages public and private cord blood banks to collaborate closely in order to increase the availability and exchange of national, European and international cord blood and tissue samples; calls on Member States to appropriately regulate both public and private banks to guarantee the fullest transparency and safety of cord blood, underlining that banks need to ensure working practices which are open and robust in their information sharing, in order to provide maximum benefit for the patient;

38. Highlights the development of non-intrusive procedures of harvesting stem cells using peripheral blood stem cell collection (PBSC);

39. Takes the view that Member States ought to consider increasing the number of donors of bone marrow and peripheral blood stem cells, improving their registries of bone marrow donors so that, with the collaboration of other countries' national registries through the BMDW, any patient in need of a stem cell transplant has the best chance of finding a compatible donor;

40. Calls on Member States to develop programmes which encourage minority ethnic backgrounds to donate tissues and cells to public banks in order to address the shortages of successful donor matches in this group;

41. Emphasises that it is for the Member States to decide whether to allow, prohibit or regulate research with human embryonic stem cells and in vitro fertilisation but that Member States in this respect need to respect the rules set out in Directive 2004/23/EC, including those on quality and safety and those relating to the principle of unpaid donation; points out that the European Union has limited competence in this area and, when applying this competence, needs to respect the principles of the EU Charter of Fundamental Rights and the principles applied in the judgments of the Court of Justice of the European Union;

42. Calls on the Commission to propose, as soon as possible, a revision of Directive 2004/23/EC in order to bring it into line with the principles governing organ donation laid down in Directive 2010/45/EU, and to take into account the new legal situation after the entry into force of the Lisbon Treaty, scientific developments, the practical experience of those involved in the sector and the recommendations of this report;

43. Also calls on the Commission to propose a revision of Regulation (EC) No 1394/2007 in order to include a provision that guarantees the application of the principle of unpaid donation similar to that referred to in Directive 2010/45/EU and to take into account the problems that have occurred in respect of the implementation of the regulation, especially for SMEs;

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

(1) OJ L 207, 6.8.2010, p. 14.
(2) OJ C 161 E, 31.5.2011, p. 65.
(3) OJ L 324, 10.12.2007, p. 121.
(4) OJ L 102, 7.4.2004, p. 48.
(5) OJ L 38, 9.2.2006, p. 40.
(6) OJ C 320 E, 15.12.2005, p. 251.

Role of women in the green economy

European Parliament resolution of 11 September 2012 on the role of women in the green economy (2012/2035(INI))

P7_TA-PROV(2012)0321 **A7-0235/2012**

The European Parliament,

– having regard to Articles 2 and 3(3), second subparagraph, of the Treaty on European Union (TEU) and Article 8 of the Treaty on the Functioning of the European Union (TFEU),

– having regard to Article 23 of the Charter of Fundamental Rights of the European Union,

– having regard to the Commission communication of 20 June 2011 entitled 'Rio+20: towards the green economy and better governance' (**COM(2011)0363**),

– having regard to the Commission communication of 8 March 2011 entitled 'A Roadmap for moving to a competitive low carbon economy in 2050' (**COM(2011)0112**),

– having regard to the Commission staff working paper of 11 February 2011 entitled 'Report on the progress on equality between women and men in 2010' (SEC(2011)0193),

– having regard to the Commission communication of 21 September 2010 entitled 'Strategy for equality between women and men 2010-2015' (**COM(2010)0491**),

– having regard to the Fourth World Conference on Women held in Beijing in September 1995, the Declaration and the Platform for Action adopted in Beijing and the subsequent outcome documents of the United Nations Beijing +5, +10 and +15 Special Sessions on further actions and initiatives to implement the Beijing Declaration and the Platform for Action adopted respectively on 9 June 2000, 11 March 2005 and 2 March 2010,

– having regard to the United Nations Convention of 18 December 1979 on the Elimination of All Forms of Discrimination against Women (CEDAW),

– having regard to the report of the European Institute for Gender Equality of 2012 entitled 'Review of the Implementation in the EU of area K of the Beijing Platform for Action: Women and the Environment Gender Equality and Climate Change',

– having regard to the joint publication of the United Nations Environment Programme (UNEP), the United Nations Conference on Trade and Development (UNCTAD) and the Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLLS) of the report 'Why a Green Economy Matters for the Least Developed Countries'[(1)] , prepared for the LDC-IV Conference in May 2011,

– having regard to the UNEP report of September 2008 entitled 'Green Jobs: Towards Decent Work in a Sustainable, Low-Carbon World'[(2)] ,

– having regard to the UN Women report of 1 November 2011 entitled 'The Centrality of Gender Equality and the Empowerment of Women for Sustainable Development'[(3)] , prepared in anticipation of the outcome document of the United Nations Conference on Sustainable Development (Rio+20) to be held in 2012,

– having regard to the Women's Major Group Rio+20 Position Statement Summary of 1 November 2011[(4)] ,

– having regard to the Women's Major Group position paper of March 2011 in preparation for the United Nations Conference on Sustainable Development 2012 entitled 'A Gender Perspective on the 'Green Economy'[(5)]

– having regard to the publication of the official government report (Stockholm, Sweden) of 2005 entitled 'Bilen, Biffen, Bostaden: Hållbara laster – smartare konsumtion'[(6)] ,

– having regard to its resolution of 20 April 2012 on women and climate change[(7)] ,

– having regard to its resolution of 13 March 2012 on women in political decision-making – quality and equality[(8)] ,

– having regard to its resolution of 13 March 2012 on equality between women and men in the European Union – 2011[(9)] ,

– having regard to its resolution of 29 September 2011 on developing a common EU position ahead of the United Nations Conference on Sustainable Development (Rio+20)[(10)] ,

– having regard to its resolution of 7 September 2010 on developing the job potential of a new sustainable economy,[(11)]

– having regard to its resolution of 17 June 2010 on gender aspects of the economic downturn and financial crisis,[(12)]

– having regard to Rule 48 of its Rules of Procedure,

– having regard to the report of the Committee on Women's Rights and Gender Equality (**A7-0235/2012**),

A. whereas a green economy is defined as a sustainable economy, which means social and ecological

sustainability; whereas social sustainability involves a social order permeated by gender and social equality regardless of gender, ethnicity, colour, religion, sexual orientation, disability or political opinion;

B. whereas climate change and the loss of biodiversity threaten women's and men's living conditions, welfare and wellbeing; whereas the preservation of our ecosystem is therefore a cornerstone of a green economy; whereas today's generation cannot leave the responsibility of solving today's environmental problems to future generations; whereas ecological sustainability involves using, conserving and enhancing the community's resources so that ecological processes on which life depends are maintained and the total quality of life, now and in the future, can be increased;

C. whereas due to gender roles, women do not affect the environment in the same way as men, and in many countries women's access to resources, and their opportunities to manage conditions and adapt, are curtailed by structural norms and discrimination;

D. whereas environmental policies impact directly on the health and the socio-economic status of individuals, and whereas gender inequality, combined with lack of sensitivity to women's different economic and social status and needs, means that women often tend to suffer disproportionately from environmental degradation and inadequate policies in this area;

E. whereas the role of women in the green economy in several Member States continues to be underestimated and ignored, creating numerous discriminations in terms of lost benefits, such as social protection, healthcare insurance, adequate salaries and pension rights;

F. whereas it is the poorest people, an estimated 70 % of whom are women, who will be hardest hit by climate change and the destruction of the ecosystem;

G. whereas the transition to a green and sustainable economy is essential to reducing environmental impact, improving social justice and creating a society in which women and men enjoy equal rights and opportunities;

H. whereas the transition to a green economy often raises particular issues regarding the integration of women in the market for green jobs, as women often lack the adequate technical training required to undertake specialist roles in the green economy;

I. whereas women are clearly under-represented in environmental negotiations, budget deliberations and decisions on achieving a green economy;

J. whereas consumption and lifestyle patterns have a significant impact on the environment and climate; whereas the rich world's consumption patterns, e.g. food and transport, are unsustainable in the long term, especially given that all men and women on earth are entitled to live a good life with proper wellbeing;

K. whereas consumption patterns generally differ between women and men; whereas women consume less in comparison to men, regardless of socioeconomic status, but also seem to show a greater willingness to act to preserve the environment through consumer choices, such as eating less meat, driving less and being more energy efficient;

L. whereas women, in consequence of the current gender power structure, do not have the same control over, or access to, transport systems as men; whereas in order to improve women's transport opportunities, it is necessary to introduce more efficient means of public transport, more walking and cycling routes and shorter distances to services, and to develop and enhance knowledge and innovation of environmentally friendly means of transportation;

M. whereas women are particularly vulnerable to the effects of environmental hazards and climate change due to their lower socio-economic status relative to men, their traditionally disproportionate share of domestic responsibilities and the danger they face of being exposed to violence in situations of conflict created or exacerbated by scarcity of natural resources;

N. whereas women must participate fully in the policy formulation, decision-making and implementation of a green economy; whereas women's participation has resulted in improved emergency response, increased biodiversity, increased food safety, reduced desertification and increased forestry protection;

O. whereas there is a lack of comprehensive and comparable data on the impact of a green economy on the labour market;

General considerations

1. Supports the need to move society towards a green economy in which ecological considerations go hand in hand with social sustainability, e.g. greater equality and greater social justice;

2. Notes that specific and important parts of the green economy affect the ecosystem, consumption, food, growth,

transport, energy and the welfare sector;

3. Regrets that the Commission's communication to EU institutions and committees regarding 'Rio+20: towards a green economy and better control' lacks a gender perspective;

4. Calls on the Commission and the Member States to compile age- and gender-disaggregated data when strategies, programmes and budgeting projects are being planned, implemented and evaluated for the environment and climate sectors: without statistics, the options for implementing relevant measures to improve equality are reduced;

5. Regrets that gender concerns and perspectives are not well integrated in policies and programmes for sustainable development; recalls that the absence of gender perspectives from environmental policies increases gender inequality, and calls on the Commission and Member States to establish gender mainstreaming mechanisms at international, national and regional levels in environmental policies;

6. Calls on the Commission to initiate research on gender and the green economy, as well as on women's contribution to the development of green innovations, services and products;

7. Calls on the Commission and the Member States to support and promote specific research and studies on how the conversion into a green economy will affect women and men in different sectors, and on women's essential role in facilitating the transition; calls on the Commission and the Member States to integrate a gender perspective in environmental protection and environmental impact assessment studies;

8. Recognises the urgent need for an international agreement regarding a common definition of the green economy, based on the pillars of both social and ecological sustainability; emphasises the significant role that civil society – especially social movements, environmental organisations and women's rights organisations – have to play in defining the aims and objectives of the green economy;

9. Calls on the Commission to systematically include a gender-equality perspective in the definition, implementation and monitoring of environmental policies at all levels, including in local and regional development and in research activities; calls on the Commission to use and support the promotion of gender mainstreaming as an instrument for good governance;

10. Calls on the Commission to promote gender equality as a key issue when designing, and conducting negotiations on, future regulations and programmes for the EU structural funds (the European Social Fund (ESF) and the European Regional Development Fund (ERDF)) and the Common Agricultural Policy, especially in the framework of measures related to the transformation towards a green economy;

11. Observes that renewable energy can be used in remote and isolated areas where there is no electricity, and that it contributes to the production of non-polluting energy; encourages, therefore, the Member States to develop facilities to exploit renewable and environmentally friendly energy through the use of the ERDF and the ESF; encourages, furthermore, more innovation, and more participation of both women and men, in the development of, for example, renewable and environmentally friendly energy and architecture;

12. Calls on the Commission to raise, in its information campaigns, awareness about the importance of converting to a green economy and about the positive effects of gender-sensitive environmental policies;

Sustainable consumption

13. Calls on the Commission and the Member States to introduce gender equality into all environmental policy areas, and at all levels of economic decision-making; these targets should be compiled in consultation with civil society;

14. Urges the Commission and Member States to start applying a new, social and climate-friendly indicator on growth, which includes non-economic aspects of wellbeing and sets its primary focus on issues related to sustainable development such as gender equality, poverty reduction and lower greenhouse gas emissions;

15. Notes that work to meet people's legitimate demands for housing, food, provisions, energy and jobs must always be carried out so that ecosystems are conserved and climate change is limited, while the earth's resources are used in a manner consistent with human rights, leading to greater equality and allocation based on the principles of environmental equality;

16. Stresses the importance of ensuring that children and grandchildren enjoy good living conditions and that economic development meets current needs without compromising future generations;

17. Emphasises that GDP is a measurement of production and does not measure environmental sustainability, resource efficiency, social inclusion or social development in general; calls for the development of clear and measurable indicators that take account of climate change, biodiversity, resource efficiency and social equality;

18. Calls on the Member States to implement fiscal measures which lead towards a green economy, partly by putting a price on environmental impact and partly by investing funds to stimulate green innovations and sustainable infrastructural systems;

19. Believes that EU public funds should be used, to a much higher degree, for sustainable collective uses;

20. Calls for conditions to be imposed such that EU subsidies are limited to activities that benefit the environment and favour social sustainability;

Sustainable transport

21. Calls on the Commission and the Member States to create sustainable transport systems which take equal account of women's and men's transportation needs and which, at the same time, have a low impact on the environment;

22. Calls on the Commission to focus its research financing, a vital lever, on projects to develop innovative and sustainable transport solutions;

23. Calls on the Member States to reduce the environmental and energy impacts of the transport sector and to improve equality by working to increase access to IT systems and traffic-efficient planning;

24. Calls on the Commission and the Member States to introduce a transport hierarchy that clearly indicates which mode of transport should be prioritised for overall environmental and traffic targets to be achieved;

25. Calls for statistical data to be compiled prior to the development of any transport hierarchy, in order to measure the environmental impact of public and private methods of transport in the full range of differing local contexts, and calls on the public authorities concerned to set examples in this effort;

26. Calls on the Member States to integrate the impact of the use of transport by public authorities in the state audits carried out by respective auditing authorities;

27. Calls on the Member States to promote remote working by means of social and tax incentives, and by providing a protective legal framework for workers;

28. Calls on Member States to significantly strengthen local public transport by increasing the quantity and quality of transport services, by improving the safety, comfort and physical accessibility of transportation modes and facilities, and by providing integrated and additional systems of transport, including to small towns and rural areas, thus strengthen the ability to travel for women, disabled and the elderly, allowing for their greater social inclusion and enhancing their living conditions;

29. Stresses that investment in sustainable transport systems must take into account the fact that women's and men's perception of public spaces is different and is based on different risk assessments, which means that safe environments in the transport system must be prioritised for both women and men;

The welfare sector and green jobs

30. Notes that green jobs in areas such as agriculture, energy, transport, utilities, research, technology, IT, construction and waste are of great importance in the green economy;

31. Calls on the Member States to promote women's entrepreneurship in the green economy by facilitating women's access to it, through the dissemination of data and training workshops and by creating measures to help women achieve a balance between their working and private lives; calls on the Member States to encourage women's entrepreneurship in the development of environmental protection and environmentally friendly technologies, e.g., in sectors such as renewable energy, agriculture and tourism, and in the development of green innovations, especially within the service sector; notes that renewable energy can create new job opportunities for women entrepreneurs in areas where female unemployment is particularly high;

32. Calls on the Member States to ensure that women enjoy appropriate working conditions, have access to a decent standard of health care, education and habitation, and participate with a strong voice in social dialogues to facilitate the transition to the new green jobs;

33. Notes that a sustainable economy means that it is ‘green for all’, creating decent work and sustainable communities and allowing for a fairer distribution of wealth;

34. Notes that it is not only green jobs but all work with a low environmental impact that is important in a green economy; notes that while such work can be found in the private sector, it also found in the welfare sector, e.g., in schools and care services;

35. Calls on the Member States to ensure that women are equally represented in political decision-making bodies

as well as in government-appointed bodies and institutions dealing with defining, planning and implementing environmental, energy and green jobs policies, so as to include the gender perspective; calls on the Member States to appoint more women in management roles and company boards within the green jobs sector; stresses that if it is not possible to achieve this through voluntary means, targeted initiatives, such as the establishment of quotas or other methods, must be used to strengthen equality and democracy;

36. Points out that the ecological conversion of the economy, and the transition to a low-carbon economy, will create a huge demand for skilled workers; refers to the fact that female workers are strongly under-represented in the renewable sector and especially in science- and technology-intensive jobs; stresses, therefore, that it is especially important that the Member States develop action plans to encourage more women to choose courses and careers within fields such as engineering, natural sciences, IT and other areas of advanced technology, as these will be the focus of many green jobs in the future;

37. Calls on the Member States to use and develop ways to encourage women to choose courses and careers in the environmental, transport and energy sectors whilst determinedly fighting stereotypes that favour careers in natural and applied sciences for men;

38. Notes the need to support and encourage women's access to microcredit for small businesses;

39. Calls on Member States to use and develop methods to encourage men to choose courses and careers with a low environmental impact in the welfare sector;

40. Invites the Member States to develop training courses, through EU programmes such as the ERDF and the ESF, designed to facilitate women's access to new ‘green’ jobs, and emerging technologies with a low environmental impact, in both the private and public sectors; calls on the Member States to ensure that female workers are included more in training projects and programmes on ecological transformation, i.e., in the renewable sector and in science- and technology-intensive jobs, and to focus on giving women, through education and training, the competences and qualifications they need in order to compete with men on an equal basis for employment and individual career development; observes that men have easier access to the advanced agricultural production means and the business technologies needed to gain high-skill positions in the green economy;

41. Notes that in order for women to participate in the green economy on the same terms as men, more centres for the care of children and the elderly are needed, both women and men must be able to reconcile family and working life, and women's sexual and reproductive rights must be ensured; points out that policies and regulations should strive to provide support for social security, family planning and child care, since women will only be able to bring in their expertise, and contribute their equal share to prospering green economies, in a society that satisfies these requirements;

42. Points out that the greening of the economy has come to be regarded as a means of stimulating economic development, particularly in the context of the economic crisis and the EU 2020 Strategy; calls on the Commission and the Member States to support efforts to ‘green’ the economy by encouraging investments and programmes which promote green innovations and green jobs and that are targeted at those who need them the most; insists that a gender perspective is crucial if exacerbating inequalities are to be avoided;

43. Calls on the Commission and the Member States to collect and analyse gender-disaggregated data on the distribution of financial resources in correlation to gender-divided sectors and green innovations, and to develop indicators in order to measure the potential, disaggregated effects of a green economy on territorial and social cohesion; calls on the Commission and the Member States to develop strategic direction and a set of instruments for responding effectively to possible changes in employment levels and in the structure of the labour market;

Sustainable policies in international relations

44. Expects that the transition to broader and more sustainable economic indicators, including in development policy, will lead to more emphasis being placed on social and environmental objectives for developing countries, and that specific policies and regulations will secure women's property rights and control over natural resources; stresses that there is a need to promote women's access to such services and new technologies as are needed to manage and operate energy and water schemes, business enterprises and agricultural production; stresses that there is a need for women to engage more in business and in organisational leadership;

45. Calls on the Commission to fully recognise and address the multiple effects of environmental degradation on inequalities, in particular between women and men, and to ensure the promotion of women's equal rights in the elaboration of new policy proposals in the field of climate change and environmental sustainability;

46. Calls on the Commission and the Member States to develop indicators to assess the gender-specific impact of projects and programmes, and to facilitate a gender and equality perspective in environmental strategies for achieving a green economy;

47. Calls on the Commission to be particularly aware that access to clean water is of major importance to girls and women in many parts of the world, as it is often their responsibility to fetch and carry water home; stresses that it is also important to retain female indigenous knowledge of local ecosystems;

48. Calls on the Commission to pay particular attention to the fact that in many developing countries, the opportunities for women to pursue careers in a green economy are still severely limited as a result of social conditioning and patriarchal patterns, and that women fail to gain access to the information, training and technologies needed to access this sector;

49. Calls on the Commission to be particularly aware that billions of people are totally dependent on biomass for energy, and that children and women suffer from health problems because they collect, process and use biomass; stresses that investments are therefore needed in renewable and more efficient energy sources;

50. Calls for in-depth impact analyses, from a climate, gender and sustainability perspective, of the outcome of multilateral and bilateral trade agreements negotiated between the EU and third countries, and urges the Commission to authorise explicit support for the management of climate change as part of all aid-for-trade and other relevant development aid;

51. Calls on the Commission to develop programmes for the transfer of modern technology and expertise to help developing countries and regions adapt to environmental changes;

52. Stresses that gender inequalities in relation to access to resources, such as microloans, credit, information and technology, should be taken into account when defining strategies to combat climate change;

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

(1) http://unctad.org/en/Docs/unep_unctad_un-ohrlls_en.pdf
(2) http://www.unep.org/labour_environment/features/greenjobs-report.asp.
(3) http://www.unwomen.org/wp-content/uploads/2011/11/Rio+20-UN-Women-Contribution-to-the-Outcome-Document.pdf.
(4) http://www.womenrio20.org/Women's_MG_Rio+20_Summary.pdf.
(5) http://www.wecf.eu/download/2011/March/greeneconomyMARCH6docx.pdf.
(6) http://www.regeringen.se/content/1/c6/04/59/80/4edc363a.pdf.
(7) Texts adopted, **P7_TA(2012)0145** .
(8) Texts adopted, **P7_TA(2012)0070** .
(9) Texts adopted, **P7_TA(2012)0069** .
(10) Texts adopted, **P7_TA(2011)0430** .
(11) OJ C 308 E, 20.10.2011, p. 6.
(12) OJ C 236 E, 12.8.2011, p. 79.

Women's working conditions in the service sector

European Parliament resolution of 11 September 2012 on women's working conditions in the service sector (2012/2046(INI))

P7_TA-PROV(2012)0322 **A7-0246/2012**

The European Parliament ,

– having regard to Articles 2 and 3(3), second subparagraph, of the Treaty on European Union (TEU) and to Articles 8, 153(1), indent (i), and 157 of the Treaty on the Functioning of the European Union (TFEU),

– having regard to Article 23 of the Charter of Fundamental Rights of the European Union,

– having regard to the Commission communication of 18 April 2012 entitled 'Towards a job-rich recovery' (**COM(2012)0173**) and the accompanying document on exploiting the employment potential of the personal and household services (SWD(2012)0095),

– having regard to the Commission proposal of 6 October 2011 for a regulation of the European Parliament and of the Council on a European Union Programme for Social Change and Innovation (**COM(2011)0609**),

– having regard to the European Pact for Gender Equality (2011-2020), adopted by the European Council in March 2011(1) ,

– having regard to the Commission's 2011 Report on the Progress on Equality between Women and Men in 2010 (SEC(2011)0193),

– having regard to the Commission communication of 21 September 2010 entitled 'Strategy for equality between women and men – 2010-2015' (**COM(2010)0491**),

– having regard to the proposal for a Council decision on 'guidelines for the employment policies of the Member States – Part II of the Europe 2020 Integrated Guidelines' (**COM(2010)0193**),

– having regard to the Council Conclusions of 8 June 2009 on Flexicurity in times of crisis,

– having regard to Directive 2006/123/EC of 12 December 2006 on services in the internal market[(2)] ,

– having regard to Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)[(3)] ,

– having regard to Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services[(4)] ,

– having regard to the 2008 report by the European Foundation for the Improvement of Living and Working Conditions entitled 'Working in Europe: Gender differences',

– having regard to the 2007 report by the European Foundation for the Improvement of Living and Working Conditions entitled 'Working conditions in the European Union: The gender perspective',

– having regard to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 18 December 1979,

– having regard to its resolution of 13 March 2012 on 'equality between women and men in the European Union – 2011'[(5)] ,

– having regard to its resolution of 8 March 2011 on the face of female poverty in the European Union[(6)] ,

– having regard to its resolution of 19 October 2010 on precarious women workers[(7)] ,

– having regard to Rule 48 of its Rules of Procedure,

– having regard to the report of the Committee on Women's Rights and Gender Equality and the opinion of the Committee on Employment and Social Affairs (**A7-0246/2012**),

A. whereas many countries have undergone a tertiarisation of their economy, meaning that the service sector now accounts for the majority of jobs and is the largest contributor to GDP in the countries concerned, representing more than 70 % of economic activity in the European Union and a similar and growing percentage of total employment, and whereas in the EU in 2010 employment in the service sector accounted, on average, for almost 70 % of total employment, while employment in industry accounted for 25,4 % and employment in agriculture for 5,2 %;

B. whereas currently nine out of ten jobs are created in the service sector and studies indicate that further enhancement of the single market for services could help to unlock considerable potential for employment – jobs which the EU urgently needs in this time of crisis;

C. whereas the employment rate for women is 62,1 %, compared with 75,1 % for men, which means that the Europe 2020 strategy's primary goal of attaining 75 % employment by 2020 can be achieved only if more women have access to the labour market;

D. whereas most of the female workforce is employed in the service sector, and whereas in the EU in 2010 this proportion averaged 83,1 %, compared with 58,1 % of the male workforce;

E. whereas women tend to be disproportionately represented in the flexible and part-time employment market because of gender stereotypes in our society which depict women's primary responsibility as being the family carer, and whereas they are therefore deemed to be more suited than men to working on a temporary, casual or part-time basis or to working from home; whereas flexible working time arrangements, including teleworking and part-time or home-office work, are still largely considered as a 'female' way of organising working time;

F. whereas the service sector offers many opportunities for flexible employment contracts – flexitime, part-time and short-term contracts – which can help both male and female caregivers, where they have the ability to choose, to combine work and caregiving; whereas women are more likely to turn to flexible or part-time employment in order to reconcile professional and family obligations, even where there is a pay difference in terms of hourly rate between part-time and full-time workers; and whereas women have more career breaks and amass fewer working hours than men, which can affect their career development and prospects for social promotion, and thus also results in a less remunerative career;

G. whereas precarious work is a persistent feature of the European Union's labour market, and whereas women are more affected by such precarity, are discriminated against in terms of pay and are more involved in part-time work, and are therefore paid less than men, enjoy less social protection, are more restricted in terms of career progression and have less chance of economic independence, which encourages them to return to the private sphere, with a subsequent setback in the sharing of responsibilities; whereas women represent a great proportion of workers in undeclared employment, who are engaged mainly in domestic and care work;

H. whereas, at all levels of training, a higher percentage of men have jobs than women, even though the latter may be as or better qualified than men, but whereas their skills are often less well-regarded and their career advances slower;

I. whereas women make up around 60 % of university graduates, yet their representation in senior official and decision-making positions in the service sector is disproportionately low;

J. whereas women are over-represented in the lowest-ranked jobs and positions in the service sector in terms of qualifications, pay, remuneration and prestige and women therefore face greater job insecurity and are paid less than men;

K. whereas women's contribution to the labour force is usually underestimated by employers, since they are more likely to interrupt their careers in order to bear and raise children;

L. whereas better opportunities for women in professional life have to be seen as an asset and an investment for society as a whole, especially in the context of the current demographic changes and challenges in Europe;

M. whereas women face greater difficulties in balancing work and family life, as the responsibilities associated with family life are not always equally shared and care of dependent family members falls mainly to women, and whereas creating a balance between work and family life will thus help to unlock substantial employment potential for women and facilitate better matching of women to available jobs in the service sector and all other occupational sectors, thereby boosting economic growth, employment and innovation; whereas, in this connection, government policies that provide care services for children and dependants are an important factor in the ability of women and men to manage the different demands arising from workplace and caregiving activities;

N. whereas traditional gender roles and stereotypes continue to have a strong influence on the division of roles between women and men at home, in the workplace and in society at large, and tend to perpetuate the status quo of inherited obstacles to achieving gender equality and to limit women's range of employment choices and personal development in the service sector, impeding them from realising their full potential as individuals and economic actors;

O. whereas domestic, marital, economic and sexual violence against women is an infringement of human rights that affects all social, cultural and economic strata;

P. whereas women's economic independence is a condition sine qua non for them to take charge of their personal and professional trajectories and to be given real choice;

Q. whereas there are continuing inequalities between men and women in access to and use of new technologies and the internet, which often lead to a skills gap and even to ‘digital illiteracy’, a phenomenon widely known as the ‘gender digital divide’;

R. whereas the difference in pay between men and women for the same work or work of equal value is at one of the highest levels in the service sector;

1. Stresses that there is a strong horizontal segregation or gender-specific division of labour in the service sector: almost half the women in employment are concentrated in 10 of the 130 occupations listed in the International Standard Classification of Occupations drawn up by the International Labour Organisation (ILO): shop salespersons and sales demonstrators, domestic and related helpers, cleaners and launderers, personal care and related workers, office clerks, administration associate professionals, housekeeping and restaurant services workers, secretaries and keyboard operators, general managers, finance and sales associate professionals and nursing and midwifery associate professionals;

2. Invites the Commission to fight this gender divide by means of campaigns promoting the aforementioned occupations;

3. Underlines the importance of reducing occupational segregation in order to bridge the gender wage gap, which is often worse for women employed in female-dominated jobs than for women holding the same qualifications but employed in other sectors;

4. Points out that there is also a concentration of women working in the public sector, where 25 % of the active female population can be found, compared with only 17 % of the active male population; highlights the fact that in this

sector women are more vulnerable to loss of employment on account of budget cuts; points out that, in order to achieve the target of 75 % employment for women and men, set out in Europe 2020 (the EU's growth strategy), efforts are needed to get more women working in both the public and private sectors; notes that in a large number of Member States there are considerably more female doctors than male doctors;

5. Calls upon Member States to ensure that the public sector, which is characterised by transparent and clear recruitment criteria and terms of promotion, displays an exemplary attitude regarding equal access to employment in the public service and especially to management positions; stresses the need to introduce transparent rules for the selection and recruitment of employees in the private sector;

6. Calls on the Commission and the Member States to take concrete measures towards a further deepening of the market for services in order to develop its significant jobs potential;

7. Stresses the importance of combating stereotypes and gender-based discrimination by adopting active policies that can reduce the real disadvantages affecting women in the service sector, where there is an assumption that there are male and female jobs, and that the latter are associated with the work women do at home and are considered as an extension of these (clothing and textiles, teaching, nursing, cleaning, etc.); calls for educational and professional counselling to play a greater role at school, for equality between men and women to be promoted among young people and for the fight against stereotypes to steer young women towards qualifications and professions in which they are under-represented; notes that the proportion of men entering the teaching profession is considerably smaller than that of women and stresses the need for more males in the profession;

8. Points out that, among women employed in the service sector, there are more who find employment in the social, care and telecommunications sectors, which tend to require lower qualifications, enjoy little social prestige and correspond to women's traditional roles in society, while men dominate the most prestigious and lucrative sectors: finance and banking;

9. Points out that care policies and services for older people, dependants and children, including maternity, paternity and parental leave provisions, are absolutely fundamental elements to achieving gender equality; notes, therefore, that women and men should have the choice to engage in paid work and to have children and a family, without being deprived of their freedom to make full use of their right to employment and equal opportunities;

10. Draws attention to the fact that part-time employment (19,2 % of total employment in the EU in 2010) is still a predominantly female domain; notes that in the EU in 2010 31,9 % of the female workforce was in part-time employment, compared with just 8,7 % of the male population, meaning that 78 % of part-time work is carried out by women; points out that in the EU as a whole 19 % of women and 7 % of men work ‘short’ part-time hours (fewer than 20 hours a week) and only 3 % of men aged between 35 and 49 are on ‘short’ part-time hours, compared with 18 % of women in the same age group; notes also that part-time jobs are found mostly in specific sectors, with more than 38 % of part-time workers, including those on both ‘short’ and ‘substantial’ hours (i.e. between 20 and 34 hours a week), being employed in education, health and social services, other services or retail and wholesale;

11. Draws attention to the increasing prevalence of flexible working hours: weekend work, irregular and unpredictable working hours and the extension of the working day, and to the fact that, given that the demand for flexibility is greatest amongst part-time workers, who are mostly women, this means that more women than men have their working hours changed from week to week, making it even harder for women to strike a balance between work and family life, especially single mothers and those caring for dependent family members; stresses that work contracts should be stable and working hours scheduled, but that working hours may be negotiated upon the employee's request in order better to reconcile professional, family and private life; emphasises that flexible working hours should be the worker's decision, and should not be imposed or enforced by the employer; rejects situations of flexibility and contractual uncertainty that do not allow for family formation and stability;

12. Recalls that flexible working arrangements are specific to many jobs in this sector; emphasises that, on the one hand, increased flexibility in working arrangements – provided that it is voluntary and geared to the real needs of workers, and that workers have control over it and clarity as to their working hours and part-time arrangements – increases women's opportunities to participate actively in the service sector and supports the reconciliation of work, family and private life, but that, on the other hand, flexibility can have a negative impact on women's wages and pensions and negative consequences for women in employment, such as a lack of formal contracts, social security and employment security; notes that it can also result in employers failing to ensure adequate occupational health and safety conditions;

13. Stresses the importance of ‘home-working’, which is becoming increasingly fashionable; points out that more than 90 % of companies in Germany and Sweden are dividing their working week in new ways, judging staff on annual rather than weekly hours and allowing husbands and wives to share jobs;

14. Highlights the importance of ensuring decent working conditions coupled with rights relating to, inter alia, pay, health and safety standards, accessibility, career prospects, further training, sustainable social security and lifelong learning;

15. Notes that in the EU in 2010 the proportion of the female workforce on a fixed-term contract was 14,5 %, which was slightly higher than the proportion for men, at 13 %;

16. Recalls, once more, that women earn on average 16,4 % less than men in the European Union; states that women do not receive the same salary in cases where they hold the same jobs as men or jobs of equal value; notes that in other cases they do not hold the same jobs, owing to the continuing vertical and horizontal occupational segregation and the higher incidence of part-time jobs; calls, therefore, on the Member States, employers and trade union movements to draft and implement serviceable, specific job evaluation tools to help determine work of equal value in order to ensure equal pay for women and men, and encourages companies to undertake annual equal pay audits and publish the data for maximum transparency and to narrow the gender pay gap; points out that the gender pay gap often leads to a retirement pension gap, which may result in women finding themselves below the poverty line;

17. Stresses, therefore, the importance of enforcing the principle of equal pay for women and men in the same workplace, as enshrined in Article 157 of the Treaty of Lisbon; recalls its resolution of 24 May 2012 on equal pay for male and female workers for equal work or work of equal value[(8)] , and reiterates its request therein for a review of Directive 2006/54/EC by 15 February 2013 at the latest;

18. Notes with concern that the vast majority of low salaries, and almost all very low salaries, are for part-time work and that about 80 % of the working poor are women; points out that there is a need for concrete measures to combat precarious employment in the service sector, which particularly affects women, and therefore calls on the Commission and the Member States to develop strategies in order to combat precarious employment;

19. Claims that a fairly widespread yet discriminatory practice is to assign different occupational categories to men and women for the same work or work of equal value: in the case of cleaning services, for example, men are appointed as maintenance technicians whereas women are appointed as cleaning auxiliaries, a situation which is used as a means to justify lower pay for women's work;

20. Notes that a rise in women's level of education is seldom matched by a move up the hierarchy at work or an improvement in their conditions of employment, so much so that over-qualification could be said to exist in the female population;

21. Notes that, in relation to the growing trend towards employing women part-time and employers' preference to invest in employees on permanent employment contracts, women clearly have limited access to a wide range of training and retraining courses, which decreases their opportunities for professional development;

22. Stresses the need for all workers in the service sector, with attention paid to those belonging to the most vulnerable groups, to have access to permanent upskilling programmes and lifelong learning, in order to improve their future labour market opportunities and reduce the mismatch between skills and constantly evolving work duties;

23. Notes women's low level of participation in vocational training in the service sector in the context of lifelong learning, and calls on the Member States to take action on the matter;

24. Stresses the need for upskilling in the case of older workers and parents returning to the labour market after time spent caring for children or dependent relatives;

25. Points out that in 2010 only one in seven members of the boards of major European companies were women (13,7 %) and only 3,4 % of the boards of the biggest companies were chaired by a woman;

26. Stresses the importance of working to get more women into the research sector and emphasises that women can play a decisive role in the development of new and innovative systems and new products and services in the service sector, in particular because, although women are responsible for 80 % of the world's purchasing decisions, most products are designed by men, including 90 % of technical products; believes that greater participation by women in innovation processes would open up new markets and increase competitiveness; believes also that innovative services are essential for meeting the challenges of the future, in particular the rising demand for welfare services from an ageing population, and can create better opportunities for people to live and work in cities, towns and rural areas throughout the Union through the provision of good communications and commercial services;

27. Emphasises that, as many women continue to choose training in the service sector and are thus building up their commercial experience and knowledge of the trade, there is ample scope and great potential for female entrepreneurship; believes that, in order for efforts to increase entrepreneurship and enterprise among women to be effective, equivalent conditions to those in the service sector are needed for the production sector; welcomes, in this connection, the proposal to extend microfinance as a specific axis of the Programme for Social Change and Innovation, and highlights the importance of microfinance as an instrument to support female entrepreneurs and persons who are in a vulnerable labour-market position in the service sector, welcomes the Commission communication entitled ‘Social Business Initiative’ (**COM(2011)0682**), because women in particular are taking up work in the social business sector;

28. Notes that, in the service sector, women in managerial positions tend to work mainly in sectors such as retail distribution and hotels, although they are making headway in less traditional sectors such as insurance and banking, and that in most cases women are managers of small companies or companies without any employees; notes also that in large organisations women usually reach senior management positions only in less important areas of the company, such as human resources and administrative roles; encourages companies to make regular training available to juniors and to implement effective maternity, paternity and parental support schemes;

29. Calls for an end to the glass ceiling in the public service that prevents women from attaining positions of high responsibility; notes that the public sector must play an exemplary role in this field;

30. Emphasises that women account for a greater proportion than men of the informal economy in the service sector, partly because there is greater deregulation in the sectors in which women traditionally work, for example domestic service or care work; notes, on the other hand, that the informal economy has grown as a result of the crisis, although it is very difficult to determine its particular contours in the absence of reliable data on incidence and impact;

31. Welcomes the Annual Growth Survey working document entitled ‘On exploiting the employment potential of the personal and household services’ and calls on the Member States, the social partners and other stakeholders actively to accept the Commission's invitation to conduct a discussion on this issue;

32. Calls on the Member States to develop policies aimed at turning precarious workers in the informal economy into regular workers, for instance by introducing tax benefits and service vouchers; calls for the development of a programme aimed at educating workers in the service sector about their rights and promoting the organisation of such workers; calls for initiatives targeting employers and the wider public in order to raise awareness of the negative effects and impact of precarious irregular work, including on occupational safety and health;

33. Calls on the Commission to order an independent study on the effects of liberalising the domestic care sector on the position and conditions of workers;

34. Is concerned about the situation of female immigrant and undeclared workers in the service sector, in particular those employed in private households, as the vast majority work without a contract in precarious employment and domestic service with poor working conditions, substantially lower wages than declared workers and no social rights of any kind; stresses, therefore, the need for appropriate policies to ensure that migrant workers are entitled to basic human rights, including the right to health care, fair labour conditions, education and training, moral and physical integrity and equality before the law; calls on the Member States to review national policies and practices in order to place a greater focus on recruitment practices, access to information and human rights protection and to encourage such workers to report abusive working conditions without the risk of any impact on their residence status;

35. Encourages the Member States to ratify without delay ILO Convention No 189 on domestic workers, which was adopted by the tripartite organisation in 2011 with the aim of ensuring decent working conditions for domestic workers and the same basic labour rights as those available to other workers and supporting the development of a formal domestic and care services sector;

36. Calls on the Member States to consider introducing a special regime for the personal and household service sector in order to regularise the widespread phenomenon of undeclared work − which particularly affects women − and thereby ensure decent working conditions; calls on the Member States to report on their efforts to combat undeclared work in their national reform programmes submitted under the Europe 2020 strategy;

37. Calls on the Member States to adopt policies on integrating vulnerable workers into the labour market, with particular reference to low-skilled, unemployed, young and older workers, people with disabilities, those with mental disabilities and minority groups such as migrant workers and Roma, through targeted and tailored occupational guidance, training and apprenticeship programmes;

38. Notes that the economic crisis and so-called austerity measures have led to a reduction in gender equality measures and are an additional obstacle to the application of the principle of gender equality, particularly with regard to job losses, access to new jobs and increased insecurity for women, which, together with the fact that male employment rates tend to recover more quickly than female employment rates, are having a negative impact on women's employment in the service sector and on their careers and pensions; calls on the Commission to collect data on the impact of austerity measures on women in the labour market, with particular emphasis on the service sector; emphasises the need for greater recognition of the interdependence between social and economic issues, as increased attention to social issues is a prerequisite for effectively addressing gender-based inequalities;

39. Points out that the Fifth European Working Conditions Survey, published in April 2012, found that 18 % of workers reported a poor work-life balance; stresses the need for strengthened policies to reconcile work and family life and calls, in particular, for an increase in free and quality social public services and facilities in order to provide childcare services and care for other dependants which are compatible with the reconciliation of professional, family and private life, in both rural and urban areas; stresses that the provision of care facilities will also help to reduce poverty among women by making it possible for them to work;

40. Stresses that the active participation and involvement of men in reconciliation measures, such as part-time work, is crucial for achieving work-life balance, since both women and men could benefit from family-friendly employment policies and from equal sharing of unpaid work and household responsibilities; calls on the Commission and the Member States to take decisive policy action to fight gender stereotypes and encourage men to share equally in caring and domestic responsibilities, in particular through incentives for men to take parental and paternity leave, which will strengthen their rights as parents, ensure a greater degree of equality between women and men and more appropriate sharing of family and housekeeping responsibilities, and enhance women's opportunities to participate fully in the labour market; suggests that the Member States should correctly apply Council Directive 2010/18/EU[(9)] on parental leave, through both legislative and educational measures relating to gender equality;

41. Calls on the Commission and the Council to adopt an action plan for achieving the Barcelona targets for childcare provision and to establish a timeline for progressively increasing the target levels;

42. Points out the limited opportunities women have to adapt to the requirements of labour markets in a modern, highly globalised world, in which a worker's key attribute is mobility and the ability to move to take up a position outside his or her place of residence, which in the case of women, who are more involved in caring for children and looking after the home, is often impossible, preventing them from taking full advantage of the opportunities offered by the labour market;

43. Urges the Council to break the deadlock with regard to the adoption of the amendment to the pregnant workers directive accepting the flexibility proposed by Parliament so that Europe can make progress in protecting the rights and improving the working conditions of pregnant workers and those who have recently given birth; underlines, in this connection, the importance of effectively protecting motherhood and fatherhood by combating i) dismissal from employment during or after pregnancy, ii) salary cuts during maternity leave, and iii) downgrading of job status or remuneration upon return to work; emphasises the need to ensure that non-typical employees of companies, such as locums, freelance workers and other temporary employees, can assert rights to an extent that reflects the individual employee's work contribution in the period prior to pregnancy and birth, and which ensures the greatest possible equality of treatment in relation to permanent colleagues in the sector in question;

44. Calls on the Commission and the Member States, with due respect for the principle of subsidiarity and in consultation with the social partners, to develop strategies for setting minimum standards in the service sector, including regular contracts and collective bargaining, and to try to tackle the negative consequences of horizontal and vertical segregation;

45. Stresses the need to combat all forms of violence against women in the service sector, including economic violence, psychological and sexual workplace harassment, sexual abuse and human trafficking;

46. Stresses the need for the Commission and the Member States to ensure that women's working conditions (the strenuousness and risks of the work carried out as well as the working environment) in the service sector comply with the ILO Declaration on Fundamental Principles and Rights at Work, adopted in June 1998, and with the ILO's specific fundamental conventions;

47. Calls on the Member States to take measures to combat the misuse of personal care services, such as massage and saunas, to mask services of a sexual nature where the latter are provided under duress and controlled by human trafficking networks;

48. Calls on the Commission and the Member States to guarantee the protection of social and employment rights for the large number of mobile workers in the service sector, and to combat all forms of exploitation and the risk of social exclusion while ensuring that information on workers' rights is easily accessible; stresses that mobility should be voluntary;

49. Notes the need to promote initial and ongoing training options for women which are targeted and in line with the objective of developing the scientific and technical competencies required to find work and pursue a career;

50. Notes that, although there are increasing numbers of women using computers and surfing the internet in an elementary way, the digital divide in terms of skills remains very wide, restricting women's access to and use of information and communication technologies (ICTs), thus hampering their ability to seek and find skilled work and, consequently, intensifying inequalities within households, communities, labour markets and the wider economy; calls, therefore, for efforts to promote women's access to the use of new technologies by giving them priority access to free training courses; invites the Member States and the regions to set up free computer training courses through projects financed by the European Social Fund (ESF), providing women with the chance to acquire new technical skills in the fields of technology and computer science and leading to greater opportunities for female employment in the service sector; calls on governments to implement policies (such as promotion campaigns and specific scholarships) aimed at increasing the level of enrolment of female students in information and communications technology courses;

51. Calls for a strong social dialogue and the involvement of employers' and workers' representatives in setting EU

priorities for the service sector with regard to the protection of social and employment rights, unemployment benefits and representative rights;

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

(1) Annex to Council Conclusions of 7 March 2011.
(2) OJ L 376, 27.12.2006, p. 36.
(3) OJ L 204, 26.7.2006, p. 23.
(4) OJ L 373, 21.12.2004, p. 37.
(5) Texts adopted, **P7_TA(2012)0069** .
(6) OJ C 199 E, 7.7.2012, p. 77.
(7) OJ C 70 E, 8.3.2012, p. 1.
(8) Texts adopted, **P7_TA(2012)0225** .
(9) OJ L 68, 18.3.2010, p. 13.

Education, training and Europe 2020

European Parliament resolution of 11 September 2012 on Education, Training and Europe 2020 (2012/2045(INI))

P7_TA-PROV(2012)0323 **A7-0247/2012**

The European Parliament ,

– having regard to Articles 165 and 166 of the Treaty on the Functioning of the European Union (TFEU),

– having regard to the Charter of Fundamental Rights of the European Union, and in particular its Article 14,

– having regard to the Commission Communication of 23 December 2011 entitled 'Annual Growth Survey 2012' (**COM(2011)0815**),

– having regard to the Commission Communication of 20 December 2011 entitled 'Education and Training in smart, sustainable and inclusive Europe' (**COM(2011)0902**),

– having regard to Commission Communication of 3 March 2010 on 'Europe 2020: A strategy for smart, sustainable and inclusive growth' (**COM(2010)2020**),

– having regard to Council conclusions of 11 May 2010 on the social dimension of education and training(1) ,

– having regard to the Council conclusions of 12 May 2009 on a strategic framework for European cooperation in education and training ('ET 2020')(2) ,

– having regard to the Council Recommendation of 28 June 2011 entitled 'Youth on the Move' – promoting the learning mobility of young people(3) ,

– having regard to its resolution of 1 December 2011 on tackling early school leaving(4) ,

– having regard to its resolution of 12 May 2011 on early years learning in the European Union(5) ,

– having regard to its resolution of 18 May 2010 on key competences for a changing world: implementation of the Education and Training 2010 work programme(6) ,

– having regard to its resolution of 18 December 2008 on delivering lifelong learning for knowledge, creativity and innovation – implementation of the 'Education & Training 2010 work programme'(7) ,

– having regard to Rule 48 of its Rules of Procedure,

– having regard to the report of the Committee on Culture and Education and the opinion of the Committee on Employment and Social Affairs (**A7-0247/2012**),

A. whereas, despite some improvement in education and training, for the majority of the EU population lifelong learning (LLL) is still not a reality, and certain indicators are, in fact, worrying; whereas, in addition to general education and vocational training, the importance of formal and non-formal adult education should also be highlighted;

B. whereas LLL strategies are far from being properly implemented in many Member States, although they are a key part of the EU 2020 strategy;

C. whereas education and training policies need to provide LLL opportunities for all, irrespective of their age, disability, gender, race or ethnic origin, religion or belief, sexual orientation, linguistic and socio-economic background;

D. whereas limited and poorly tailored learning opportunities still persist for people of different groups; and whereas both indigenous populations and linguistic and cultural minorities should be able to learn in their own language;

E. whereas economic growth must be based, as a matter of priority, on education, knowledge, innovation and appropriate social policies to make the EU emerge out of the current crises, and it is important to implement the policies in this sphere within the EU 2020 strategy framework properly and in full in order to get through this crucial period;

F. whereas the Member States have a public responsibility to draft education and training policies, and whereas these spheres require adequate public funding in order to guarantee equal access to education without social, economic, cultural, racial or political discrimination;

G. whereas the austerity measures, and the consequent budget cuts to education and training systems throughout the EU, endanger one of the key drivers of cohesion and growth and undermine the objective to establish a knowledge-based economy in Europe;

H. whereas the Member States must continue to work together and exchange best practices in order to drive forward their national education and training systems;

I. whereas insufficient language knowledge continues to be an enormous obstacle to mobility for the purposes of education and training;

J. whereas a successful education and training strategy should also aim at equipping learners with skills and competences necessary for personal development and active citizenship;

K. whereas LLL should genuinely mean lifelong within the actual demographic context, and whereas we should continue to take better account of the potential of knowledge accrued by older people;

L. whereas skills in new technologies significantly facilitate the objectives of the Lifelong Learning Programme (LLP);

M. whereas LLL is a continuing process of learning and should last during a person's entire life, from quality early-childhood education to post-working age;

N. whereas providing all children with quality early-childhood facilities and education is an investment in the future and provides a great benefit both for the individual and for society;

O. whereas early school leaving (ESL) has serious consequences for the individual and for the EU's social and economic development;

P. whereas further innovation in the field of student grants at the pre-university stage of education should be considered;

Q. whereas the accessibility of education and training is a crucial challenge also to further contribute to social inclusion, cohesion and fight against poverty;

R. whereas European, national, regional and local authorities must cooperate in order to address successfully the challenges that Europe is currently facing;

1. Notes the above-mentioned Commission Communication on ‘Education and Training in smart, sustainable and inclusive Europe’;

2. Recalls that, prior to the current crisis, the performance of Member States in terms of participation of all age groups in education, training and LLL varied widely and the overall EU average was falling behind international averages;

3. Points out that some Member States have pursued budget cuts in education and training in light of the current economic situation, but believes that those investments with the greatest strategic value should be safeguarded and even increased; emphasises that the Union's multiannual financial framework anticipates that education and related sectors will obtain the biggest percentage increase under the EU's long-term budget;

4. Points out the need to approve the budget increase dedicated to education and related sectors under the multiannual financial framework; calls on Member States to adopt their national LLL strategies, with suitable amounts of financial resources as the best possible tool available for reaching the objectives outlined in the ET 2020 strategy;

5. Highlights that the economic costs of the consequences of educational underperformance, including school dropout and social inequalities within education and training systems and their impact on the development of the Member States, are significantly higher than the costs of the financial crisis, and the Member States are already paying the price year after year;

6. Asks the Member States to prioritise expenditures in education, training, youth, lifelong learning, research, innovation and linguistic and cultural diversity, which are investments for future growth and economic balance, while at the same time ensuring the added value of such investment; reiterates, in this regard, the request to target a total investment of at least 2 % of GDP in higher education, as recommended by the Commission in the Annual Growth and Employment Survey, being the minimum required for knowledge-based economies;

7. Recalls that in order to be competitive in the future with the new global powers the Members States are required to achieve the basic Europe 2020 objectives which, in the field of education, can be expressed as reaching 3 % in investments for research, increasing to 40 % the number of young people with a university education, and reducing early school leaving to below 10 %;

8. Recalls the importance of research in the framework of an ambitious strategy for education and training; asks, therefore, the Commission and the Member States to reinforce their actions aiming to increase the number of young people moving into this field;

9. Recalls that a special focus should be given to young people, bearing in mind that the EU unemployment rate has increased to over 20 %, with peaks in excess of 50 % in some Member States or some regions, and that young people, particularly the least qualified young people, are particularly hard hit in the current crisis; highlights, in particular, the detrimental effects of austerity programmes on youth unemployment in certain EU States, especially those in southern Europe, leading, for example, to a significant brain drain to other countries, including countries outside the EU; recalls also that one out of seven of today's pupils (14,4 %) leaves the education system with no more than a lower secondary education and does not participate in any further education or training;

10. Notes the existence of dual vocational training systems in some Member States that ensure a link between theory and practice and allow a better entry into the world of work than purely school-based forms of training;

11. Proposes that the Member States deduct investments in education and training from the national deficit calculation of the fiscal compact as they are considered to be key drivers for a sound recovery in line with the EU 2020 objectives;

12. Calls on the EU institutions to make further efforts to elaborate clearer and more targeted youth policies at EU level which are tailored to meet society's new challenges; the current generation of young people feels that it will not be able to attain the same level of prosperity as the previous one did;

13. In particular, asks the Member States to implement measures targeted at young people likely to leave school early or who are not in education, training or employment, in order to offer them quality learning, and provide them with training and youth guarantee schemes, so that they can gain the skills and experience they need to enter employment, and in order to facilitate the re-entry of some of them into the educational system; calls, at the same time, for special attention to vocational education and training in tertiary education, taking into account the diversity of national education systems; calls on the Member States to step up their efforts to ensure that young people can gain real work experience and quickly enter the job market; stresses that traineeships must be relevant for the studies and form part of the curriculum;

14. Points out that the employability of young people is particularly at risk during a period of crisis; stresses the importance of monitoring how quickly young graduates obtain employment appropriate to their education and knowledge after they complete their education, and of making an assessment, on the basis of this information, of the quality of education and training systems and of the need and possibility to make adjustments;

15. Calls on the Commission and the Member States to work consistently on the introduction, implementation and further development of the European Credit System for Vocational Education and Training, Europass and the European Qualifications Framework;

16. Stresses that young people have a key role to play in achieving the EU headline targets for 2020 as regards employment, research and innovation, climate and energy, education and the fight against poverty;

17. Stresses the importance of informal and non-formal education for the development of values, aptitudes and skills, particularly for young people, as well as for learning about citizenship and democratic involvement; calls on the Commission to provide support, including financial support, for informal and non-formal education within the framework of the new programmes for education and youth, as well as for citizenship;

18. Calls on universities to widen access to learning, and to modernise their curricula to address the new challenges, in order to upgrade the skills of the European population, without calling into question their academic

remit in terms of passing on knowledge, and bearing in mind that demographic change is an undeniable reality in Europe; highlights, in this context, the importance of supporting and recognising non-formal education and informal learning;

19. Encourages dialogue between private stakeholders, particularly SMEs and local and regional authorities, civil society stakeholders and higher-education institutes/universities in order to promote the acquisition by students of knowledge and skills to facilitate their entry into the labour market; reminds employers of the importance of initiation into work, as this promotes the adjustment of young people to working life;

20. Recalls that creativity is an essential element of the new knowledge-based economy; stresses that the creative sector makes a significant and increasing contribution to the economy, amounting to 4,5 % of EU GDP and 8,5 million jobs;

21. Considers the synergy between the supply of labour and the ability of the labour market to absorb it to be essential;

22. Stresses the essential role played by public employment services in carrying out policies to support and advise jobseekers, in particular as regards assistance in seeking employment or training; emphasises that an increasing number of these jobseekers must receive adequate training that facilitates their return to the labour market, and therefore urges the Member States to make the necessary resources available;

23. Stresses the decisive importance of facilitating access for persons with disabilities to LLL, not only through the formulation and implementation of targeted programmes but also through disability mainstreaming in all programmes intended for the general public; particular attention must be paid, in this connection, to the relationship between disability and LLL so as to prevent social exclusion and genuinely strengthen the position of those with disabilities on the labour market, given that, according to all relevant studies, the educational level of those with disabilities is below average while their degree of participation in the programmes in question is extremely low;

24. Recalls that employers have a key responsibility in making LLL a reality for all, with due regard for gender equality; encourages employers to facilitate continuous training throughout workers' careers by giving more visibility to the right to training, by ensuring that training is available to all workers and by giving workers proper credit for in-service training, thus making further specialisation possible and creating opportunities for career advancement;

25. Calls for greater efforts to establish and implement a European system for the certification and recognition of qualifications, formal and non-formal learning, including voluntary service, so as to strengthen the vital links between non-formal learning and formal education, as well as to improve national and cross-border educational and labour market mobility;

26. Notes the great disparities between national education and training systems and, in line with the principle of subsidiarity, recommends that the progress report be accompanied by a handbook for each individual Member State containing recommendations as to how existing policies might be improved and the national education systems developed;

27. Calls for the external dimension of EU policies to be enhanced through an intensified policy dialogue and through cooperation on education and training between the Union and its international partners and neighbouring countries, aiming to (a) reflect the increasing economic, social and political interdependencies, (b) contribute to the implementation of the external dimension of Europe 2020, and (c) support stability, prosperity and better employment opportunities for our partner countries' citizens, all the while developing better instruments for managing and facilitating skilled migration to Europe, thereby balancing skill shortages and gaps that are the result of demographic developments in Europe;

28. Recalls that, as players on the global education market, national vocational education and training (VET) systems need to be connected to the wider world in order to remain up to date and competitive, and need to be more capable of attracting learners from other European and third countries, providing them with education and training as well as making it easier to recognise their skills; highlights that demographic change and international migration make these issues even more relevant;

29. Stresses that, although a European area of education and training is emerging, the objective of removing obstacles to mobility has not been achieved yet, and the mobility of learners in VET remains low; underlines that increasing the transnational mobility of VET learners and teachers substantially, and recognising the knowledge, skills and competences they have acquired abroad, will be important challenges for the future, and that better and targeted provision of information and guidance is also needed to attract more foreign learners to our VET systems;

30. Regrets that the Commission Communication on ‘Education and Training in a smart, sustainable and inclusive Europe’ does not give adequate coverage to the issue of early school development, particularly its linguistic dimension, despite the fact that it comprises a basic objective of the ‘Europe 2020’ strategy; believes that this stage in education should be seen as the most crucial for the individual's future educational attainment and personal and

social development; believes that children will benefit from early education that is aimed at enhancing motoric and social skills as well as promoting balanced emotional growth while at the same time stimulating intellectual curiosity;

31. Calls on the Commission to encourage and help the Member States put in place measures to assist children in genuine educational pathways, from a very early age;

32. Strongly believes that investing in early childhood education and care (ECEC), appropriately tailored to the sensitivity period and maturity level of each target group, brings greater returns than investing in any other stage of education; points out that investing in the early years of education has been proven to reduce later costs; believes also that the success of education at all levels depends on well-trained teachers, and on their continually advancing professional training, and sufficient investment is therefore needed in teacher training;

33. Stresses the need for professional child care to address the social development of children, particularly children in families experiencing social difficulties;

34. Highlights the need for everyone to acquire excellent language skills from a very early age, covering not only the official languages of the EU but also regional and minority languages, as this will enable people to be more mobile, giving them greater access to the labour market and significantly increased opportunities for study, while serving to promote intercultural exchanges and greater European cohesion;

35. Emphasises that it is necessary to encourage mobility for language learning in order to achieve the objective that all citizens of the European Union should know at least two languages besides their mother tongue;

36. Notes the need to begin language acquisition before school, and welcomes initiatives that enable pupils to learn their native language in written and spoken form as an elective subject in school, thereby acquiring additional skills;

37. Believes that it is vital to promote mobility through ambitious community programmes for education and culture, in particular through exchanges of teachers, students and pupils, and especially in the language field, in order to promote an active citizenship and European values as well as language skills and other valuable skills and competences;

38. Encourages the Commission to support the development of innovative solutions in the field of education and training that easily could be adapted with regard to languages and in technical terms, and that would create mobility in sectors less affected by the phenomenon of multilingualism;

39. Recognises the important contribution of the EU Year for Active Ageing and Solidarity between Generations 2012, and recalls that it is important for the EU that its citizens be given the opportunity to engage in learning, in all its forms, late in life, and to involve older learners in dialogue with professionals who work in the services that provide and support learning;

40. Recalls that the Grundtvig programme aims to help develop the adult education sector as well as to enable more people to participate in learning experiences; point out that it focuses on the teaching and study needs of learners taking adult education and ‘alternative’ education courses, as well as on the organisations delivering these services; asks Member States to improve the quality of education offered by – and to foster co-operation between – adult education organisations;

41. Stresses the need to promote existing European tools, particularly the Structural Funds for training;

42. Stresses that adult learning extends beyond employment-related activities to include the advancement of personal, civic and social skills though formal education and training systems throughout life, as highlighted by the LLP programme;

43. Recognises the positive impact on society in general of the activities of older people, promoted by their participation in education and training activities, which are carried out for personal fulfilment or social contact;

44. Highlights the need for LLL statistics that cover the age group of 65 +; points out that with the retirement age in many of the EU countries rising, and with people working later in their lives, it is necessary to take into account the changes in the population that fall outside this age bracket;

45. Recognises the role that sport plays in education and training, and therefore invites the Member States to increase investments in sports, and to promote sports activities in schools, in order to encourage integration and contribute to the development of positive values among young Europeans;

46. Stresses that training players at local level is fundamental for the sustainable development and societal role of sport, and expresses its support for sports governing bodies that encourage clubs to invest in the education and training of young local players through measures establishing a minimum number of locally trained players in a club squad, and encourages them to go further still;

47. Encourages the Member States to consider the possibility of introducing a wider system of small grants, with a minimum of red tape, for pre-university students facing financial difficulties, so as to encourage them to stay in education, and thereby contribute to the elimination of social inequality and ensure greater learning opportunities for all;

48. Believes that more should be done to address the disparity between men and women graduating with degrees in STEM subjects (science, technology, engineering and mathematics), as exemplified by the fact that only 20 % of engineering graduates are female;

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

(1) OJ C 135, 26.5.2010 p. 2.
(2) OJ C 119, 28.5.2009, p. 2.
(3) OJ C 199, 7.7.2011, p. 1.
(4) Texts adopted, **P7_TA(2011)0531** .
(5) Texts adopted, **P7_TA(2011)0231** .
(6) OJ C 161 E, 31.5.2011, p. 8.
(7) OJ C 45 E, 23.2.2010, p. 33.

Online distribution of audiovisual works in the EU

European Parliament resolution of 11 September 2012 on the online distribution of audiovisual works in the European Union (2011/2313(INI))

P7_TA-PROV(2012)0324 **A7-0262/2012**

The European Parliament,

– having regard to Article 167 of the Treaty on the Functioning of the European Union,

– having regard to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions adopted by the United Nations Educational, Scientific and Cultural Organisation (UNESCO) on 20 October 2005,

– having regard to Article 21 of the Charter of Fundamental Rights of the European Union, in accordance with which the cultural and creative sectors make a significant contribution in the fight against every form of discrimination, including racism and xenophobia,

– having regard to Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)(1) ,

– having regard to Article 8 of the Charter of Fundamental Rights of the European Union, whereby the protection of personal data must be guaranteed,

– having regard to Decision No 1718/2006/EC of the European Parliament and of the Council of 15 November 2006 concerning the implementation of a programme of support for the European audiovisual sector (MEDIA 2007)(2) ,

– having regard to the Recommendation of the European Parliament and of the Council of 16 November 2005 on film heritage and the competitiveness of related industrial activities(3) ,

– having regard to the Commission Recommendation of 24 August 2006 on the digitisation and online accessibility of cultural material and digital preservation(4) ,

– having regard to the Commission communication of 3 March 2010 entitled ‘Europe 2020: A strategy for smart, sustainable and inclusive growth’ (**COM(2010)2020**),

– having regard to the Commission communication of 26 August 2010 entitled ‘A Digital Agenda for Europe’ (**COM(2010)0245**),

– having regard to its resolution of 12 May 2011 on unlocking the potential of cultural and creative industries(5) ,

– having regard to Rule 48 of its Rules of Procedure,

– having regard to the report of the Committee on Culture and Education and the opinions of the Committee on Industry, Research and Energy and the Committee on Legal Affairs (**A7-0262/2012**),

A. whereas the digital age, by nature, offers great opportunities for creating and disseminating works, but also presents enormous challenges;

B. whereas market progress has in many ways created the necessary growth and cultural content, in line with the objectives of the single market;

C. whereas there is more consumer content available today than ever before;

D. whereas it is essential to make the European audiovisual sector more competitive by supporting online services while also promoting European civilisation, linguistic and cultural diversity and media pluralism;

E. whereas copyright is a vital legal instrument which grants rights-holders certain exclusive rights and protects those rights, allowing the cultural and creative industries to grow and prosper financially while also helping to safeguard jobs;

F. whereas changes to the legal framework aimed at facilitating the acquisition of rights would encourage the free movement of works in the EU and help to strengthen the European audiovisual industry;

G. D. whereas European broadcasters play a crucial role in the promotion of the European creative industry and protection of cultural diversity, and whereas broadcasters provide funding for over 80 % of original European audiovisual content;

H. whereas cinema exhibition continues to account for a large proportion of film revenue and has a considerable impact on the success of films on video-on-demand platforms;

I. whereas Article 13(1) of the Audiovisual Media Services Directive provides the basis for introducing funding and promotion commitments for on-demand audiovisual media services, as they too play a crucial role in the promotion and protection of cultural diversity;

J. whereas European broadcasters operating in a digital, convergent, multimedia multi-platform environment need flexible, future-oriented rights clearance systems that make effective copyright clearance possible even in a one-stop shop. whereas flexible rights clearance systems of this kind have been in place in the Nordic countries for decades;

K. whereas it is essential to ensure the development of a diverse range of attractive, legal online content and further to facilitate and ensure the easy distribution of such content by keeping obstacles to licensing, including cross-border licensing, at an absolute minimum; also stresses the importance of making content easier to use for consumers, particularly as regards payment;

L. whereas consumers are demanding access to an ever-wider choice of online films, regardless of the platform's geographical location;

M. whereas audiovisual works are already being distributed across borders in Europe in accordance with pan-European licences acquired on a voluntary basis, and whereas their further development may be one of the avenues to explore, provided that the corresponding economic demand exists; whereas due recognition must be given to the fact that companies also have to take into account the various linguistic and cultural preferences of European consumers, which reflect the diverse choices of EU citizens in the consumption of audiovisual works in the internal market;

N. whereas the online distribution of audiovisual products is an excellent opportunity to enhance knowledge of European languages, and whereas this objective can be achieved through original versions and the possibility of having audiovisual products translated into a great variety of languages;

O. whereas it is essential to ensure legal certainty for both rights-holders and consumers with regard to the application of authors' and neighbouring rights in the European digital area, through greater coordination of legal rules between Member States;

P. whereas strengthening the legal framework for the audiovisual sector in Europe contributes to further protection of freedom of expression and thought, reinforcing the democratic values and principles of the EU;

Q. whereas specific action needs to be taken to preserve the European cinematographic and audiovisual heritage, in particular by encouraging the digitisation of content and making it easier for citizens and users to access Europe's film and audiovisual heritage;

R. whereas the introduction of a system for identifying and labelling works would help to protect rights-holders and restrict unauthorised use;

S. whereas it is absolutely essential to preserve net neutrality in information and communication networks and guarantee the technology-neutral design of media platforms and players with a view to ensuring the availability of

audiovisual services, and to promote freedom of expression and media pluralism in the European Union and take account of technological convergence;

T. whereas there can be neither sustainable creation nor cultural diversity in the absence of either authors' rights that protect and reward creators, or legally watertight access to the cultural heritage for users; whereas new business models should incorporate effective licensing systems, continued investment in the digitisation of creative content, and easy access for consumers;

U. whereas a large number of violations of authors' rights or related intellectual property rights stem from the potential audience's understandable need for new audiovisual content under simple and fairly priced conditions, and whereas this demand has not yet been sufficiently fulfilled;

V. whereas adjustments to the realities of the digital age, particularly those intended to prevent relocations resulting from a desire to find the legislation offering the least possible protection, need to be encouraged;

W. whereas fairness demands that all contracts should provide for fair remuneration for authors for all forms of exploitation of their works, including online exploitation;

X. whereas it is urgent that the Commission propose a directive on collective rights management and collecting societies in order to increase confidence in collecting societies by introducing measures aimed at enhancing efficiency, significantly improving transparency and promoting good governance and efficient dispute resolution;

Y. whereas collective rights management is an essential tool for broadcasters, given the high number of rights they need to clear daily, and should therefore provide for efficient licensing schemes for the online use of *on-demand* audiovisual content;

Z. whereas the arrangements for taxing cultural goods and services should be adapted to the digital age;

AA. whereas the principle of media chronology allows an overall balance in the audiovisual sector, ensuring efficient pre-financing of audiovisual works;

AB. whereas the principle of media chronology is encountering increasing competition owing to the growing availability of digital works and the possibilities of instant dissemination afforded by our advanced information society;

AC. whereas the Union needs to take a coherent approach to technological issues by promoting the interoperability of systems used in the digital age;

AD. whereas the legislative and fiscal framework should be favourable to enterprises that promote online distribution of audiovisual products with an economic value;

AE. whereas access to the media for people with disabilities is of major importance and should be facilitated, with programmes being adapted to people with disabilities;

AF. whereas there is a crucial need to step up research and development in order to develop techniques for the automated management of services for people with disabilities, in particular through hybrid broadcasting;

1. Acknowledges the fragmentation of the online market, which is characterised by, for example, technological barriers, the complexity of licensing procedures, differences in methods of payment, the lack of interoperability for crucial elements such as eSignature, and variations in the rates of certain taxes applicable to goods and services, including VAT; believes, therefore, that there is currently a need for a transparent, flexible and harmonised approach at European level in order to advance towards the digital single market; emphasises that any proposed measure should seek to reduce the administrative burdens and transaction costs associated with the licensing of content;

Legal content, accessibility and collective rights management

2. Stresses the need to make legal content more attractive in terms of both quantity and quality, and more up-to-date, and to improve the online availability of audiovisual works, including both subtitled works and works in all the official languages of the EU;

3. Underlines the importance of offering content with subtitles in as many languages as possible, especially via video on-demand services;

4. Stresses that there is a growing need to promote the emergence of an attractive, legal online supply of audiovisual content and to encourage innovation, and that it is therefore essential for new methods of distribution to be flexible in order to allow the emergence of new business models and to make digital goods accessible to all EU citizens, regardless of their Member State of residence, with due regard for the principle of net neutrality;

5. Stresses that digital services, such as video streaming, should be made available to all EU citizens irrespective of the Member State in which they are located; calls on the Commission to request that European digital companies

remove geographical controls (e.g. IP address blocking) across the Union and allow the purchase of digital services from outside the consumer's Member State of origin; asks the Commission to draft an analysis of the application of the Cable and Satellite Directive[(6)] to digital distribution;

6. Considers that greater attention should be given to improving the security of online distribution platforms, including online payments;

7. Stresses the necessity of developing alternative and innovative micropayment systems, such as payment by text message or applications for legal platforms providing online services, so as to facilitate their use by consumers;

8. Stresses that problems associated with online payment systems, such as the lack of interoperability and the high costs of micropayment for consumers, should be tackled with a view to developing simple, innovative and cost-effective solutions of benefit to both consumers and digital platforms;

9. Calls for the development of new solutions in the area of user-friendly payment systems, such as micropayments, and of systems facilitating direct payments to creators, thereby benefiting both consumers and authors;

10. Stresses that online use can represent a real opportunity for better dissemination and distribution of European works, particularly audiovisual works, in conditions whereby the legal supply of such works can develop in an environment of healthy competition which effectively tackles the illegal supply of protected works;

11. Promotes the development of a rich and diverse legal supply of audiovisual content, in particular through more flexible release windows; stresses that rights-holders should be able to decide freely when they wish to launch their products on different platforms;

12. Emphasises the need to ensure that the current system of release windows is not used as a means of blocking online exploitation to the detriment of small producers and distributors;

13. Welcomes the Commission's decision to implement the preparatory action adopted by Parliament for testing new modes of distribution based on complementarity between platforms as regards the flexibility of release windows;

14. Calls for support for strategies enabling European audiovisual SMEs to manage digital rights more effectively and thereby reach a wider audience;

15. Calls on all Member States, as a matter of urgency, to implement Article 13 of the Audiovisual Media Services Directive in a prescriptive manner and to introduce funding and promotion commitments for on-demand audiovisual media services, and on the Commission to provide Parliament with a detailed report on the current status of implementation as per Article 13(3) without delay;

16. Recalls that, for the creation of a single internal digital market in Europe, it is essential to establish pan-European regulations on the collective management of authors' rights and related intellectual property rights so as to put a stop to the continuing various amendments to legislation in the Member States that make cross-border rights management increasingly difficult;

17. Supports the creation of a legal framework designed to facilitate digitisation and the cross-border dissemination of orphan works on the digital single market, this being one of the key actions identified in the Digital Agenda for Europe, which is part of the Europe 2020 strategy;

18. Observes that the development of cross-border services is entirely possible, provided that business platforms are prepared to acquire, by contractual means, the rights to exploit one or more territories, since it must be remembered that territorial systems are natural markets in the audiovisual sector;

19. Stresses the need to create legal certainty as to which legal system applies for the clearance of rights in the event of cross-border distribution, by proposing that the applicable law should be that of the country where an enterprise carries out its main business and generates its main revenue;

20. Reaffirms the objective of intensified and efficient cross-border online distribution of audiovisual works between Member States;

21. Suggests adopting a comprehensive approach at EU level which should involve greater cooperation between rights-holders, online distribution platforms and internet service providers, so as to facilitate user-friendly and competitive access to audiovisual content;

22. Emphasises the need to ensure flexibility and interoperability in the distribution of audiovisual works by digital platforms, with a view to expanding the legal online supply of audiovisual works in response to market demand, and to foster cross-border access to content originating from other Member States while ensuring respect for copyright;

23. Welcomes the new Creative Europe programme proposed by the Commission, which emphasises that online

distribution is also having a massive, positive impact on the distribution of audiovisual works, especially in terms of reaching new audiences in Europe and beyond and enhancing social cohesion;

24. Stresses the importance of net neutrality in order to guarantee equal access to high-speed networks, which is crucial to the quality of legitimate online audiovisual services;

25. Emphasises that the digital divide between Member States or regions of the EU represents a serious barrier to the development of the digital single market; calls, therefore, for the expansion of broadband internet access throughout the EU with a view to stimulating access to online services and new technologies;

26. Recalls that, for the purpose of commercial exploitation, rights are transferred to the audiovisual producer, who relies on the centralisation of exclusive rights granted under copyright law to organise the financing, production and distribution of audiovisual works;

27. Recalls that commercial exploitation of the exclusive rights of 'communication to the public' and 'making available to the public' is aimed at generating financial resources, in the event of commercial success, in order to finance the future production and distribution of projects, thus promoting the availability of a diversified and ongoing supply of new films;

28. Calls on the Commission to present a legislative initiative for the collective management of copyright, aimed at ensuring better accountability, transparency and governance on the part of collective rights management societies, along with efficient dispute resolution mechanisms, and at clarifying and simplifying licensing systems in the music sector; stresses, in this regard, the need to operate a clear distinction between licensing practices for different types of content, notably between audiovisual/cinematographic and musical works; recalls that the licensing of audiovisual works is conducted on the basis of individual contractual agreements together with, in some cases, the collective management of remuneration claims;

29. Stresses that the Commission report on the application of Directive 2001/29/EC[(7)] identified differences in the implementation in Member States of the provisions of Articles 5, 6 and 8, leading to differing interpretations and decisions by the courts of the Member States; points out that these have become part of the specific body of case law relating to the audiovisual sector;

30. Requests the Commission to continue its rigorous monitoring of the application of Directive 2001/29/EC and its periodic reporting of findings to Parliament and the Council;

31. Invites the Commission to revise Directive 2001/29/EC, after consulting all the relevant stakeholders, in such a way that the provisions of Articles 5, 6 and 8 are worded more precisely, with a view to ensuring the harmonisation at Union level of the legal framework for copyright protection in the information society;

32. Supports the establishment of consistent European rules on the good governance and transparency of collecting societies and on efficient dispute resolution mechanisms;

33. Stresses that simplified clearance and aggregation, especially of musical rights in audiovisual works for online distribution, would promote the internal market, and urges the Commission to take this into consideration as appropriate in the legal act on collective rights management that has been announced;

34. Points out that the continuing convergence of the media, not only in terms of authors' rights, but also in terms of entertainment law, requires new problem-solving approaches; urges the European Commission to check to what extent various regulations for linear and non-linear services in Directive 2010/13/EU on audiovisual media services are still up-to-date, taking the latest technological developments into consideration;

35. Believes that restrictions on advertising for linear children's ranges, on news and information programmes, are reasonable despite the increasingly obsolete distinction between linear and non-linear selections; suggests, however, that consideration be given to new forms of cross-programme and cross-platform clearing systems, with the aid of which interest could be awoken in high-quality content, which would also increase the linear programme quality and the online variety without burdening the revenue of private broadcasters;

36. Stresses that the option of territorial production and distribution schemes should continue to apply to the digital environment, since this form of organisation of the audiovisual market appears to serve as the basis for financing European audiovisual and cinematographic works;

37. Calls on the Commission to present an analysis of whether the principle of mutual recognition could be applied to digital goods in the same manner as to physical goods;

Identification

38. Takes the view that new technologies could be used to facilitate the clearing of rights; welcomes, in this connection, the International Standard Audiovisual Number (ISAN) initiative, which makes it easier to identify

audiovisual works and their rights-holders; calls on the Commission to consider implementing measures facilitating wider use of the ISAN system;

Unauthorised use

39. Calls on the Commission to afford internet users legal certainty when they are using streamed services and to consider, in particular, ways to prevent the use of payment systems and the funding of such services through advertising on pay platforms offering unauthorised downloading and streaming services;

40. Calls on the Member States to promote respect for authors' and neighbouring rights and to combat the provision and distribution of unauthorised content, including via streaming;

41. Draws attention to the upsurge in social networking platforms offering internet users the chance to provide financial support for the production of a film or documentary, which makes them feel like an integral part of its making, but stresses, nonetheless, that in the short term this type of funding is unlikely to replace traditional sources of funding;

42. Recognises that, where legal alternatives do exist, online copyright infringement remains an issue and therefore the legal online availability of copyrighted cultural material needs to be supplemented with smarter online enforcement of copyright while fully respecting fundamental rights, notably freedom of information and of speech, protection of personal data and the right to privacy, along with the ‘mere conduit’ principle;

43. Calls on the Commission to promote legal certainty with a revision of Directive 2004/48/EC, designed for the analogue market, in order to introduce necessary modifications to that market in order to develop effective solutions for the digital market;

Remuneration

44. Recalls the necessity of ensuring the proper remuneration of rights-holders for online distribution of audiovisual content; notes that, although this right has been recognised at European level since 2001, there still is a lack of proper remuneration for works made available online;

45. Considers that this remuneration should aim to facilitate artistic creation, to increase European competitiveness and to take into account the characteristics of the sector, the interests of the different stakeholders and the need for significantly simplified licensing procedures; calls on the Commission to stimulate bottom-up solutions in cooperation with all stakeholders in order further to develop specific EU legislation;

46. Maintains that it is essential to guarantee authors and performers remuneration that is fair and proportional to all forms of exploitation of their works, especially online exploitation, and therefore calls upon the Member States to ban buyout contracts, which contradict this principle;

47. Calls on the Commission urgently to present a study considering disparities in the different remuneration mechanisms for authors and performers which are in use at the national level, in order to draw up a list of best practices;

48. Calls for the bargaining position of authors and performers vis-à-vis producers to be rebalanced by providing authors and performers with an unwaivable right to remuneration for all forms of exploitation of their works, including ongoing remuneration where they have transferred their exclusive ‘making available’ right to a producer;

49. Calls for measures to be taken to guarantee fair remuneration for rights-holders when distributing, retransmitting or rebroadcasting audiovisual works;

50. Maintains that the best means of guaranteeing decent remuneration for rights-holders is by offering a choice, as preferred, among collective bargaining agreements (including agreed standard contracts), extended collective licences and collective management organisations;

Licensing

51. Points out that the European copyright *acquis communautaire* does not *per se* preclude voluntary multi-territorial or pan-European licensing mechanisms, but that cultural and language differences between Member States, along with variations in national rules, including those unrelated to intellectual property, necessitate a flexible and complementary approach at European level in order to advance towards the digital single market;

52. Points out that multi-territorial or pan-European licensing mechanisms should remain voluntary and that linguistic and cultural differences between Member States, along with variations in national rules unrelated to copyright law, carry their own specific challenges; believes, therefore, that a flexible approach regarding pan-European licensing must be adopted, while protecting rights-holders and progressing towards the digital single market;

53. Takes the view that, if sustainable multi-territorial licensing can be encouraged and promoted in the digital single market for audiovisual works, this should facilitate market-driven initiatives; stresses that digital technologies provide new and innovative ways to customise and enrich the supply of such works for each market and to meet consumer demand, including for tailored cross-border services; calls for better exploitation of digital technologies, which should constitute a springboard for both differentiation and multiplication of the legitimate supply of audiovisual works;

54. Believes that there is a need for up-to-date information on licensing conditions, licence-holders and repertoires and for comprehensive studies at European level in order to facilitate transparency, identify where problems arise and find clear, efficient and appropriate mechanisms for solving them;

55. Points out that the administration of audiovisual rights for the commercial exploitation of works in the digital age could be made easier if Member States were to promote effective and transparent licensing, including voluntary extended collective licensing, where such procedures are currently lacking;

56. Observes that it would be useful for culture workers and Member States to negotiate the implementation of measures enabling public records to benefit fully from digital technology for works that form part of the heritage, especially as regards access to remote digital works on a non-commercial scale;

57. Welcomes the Commission's consultation triggered by the publication of the Green Paper and its acknowledgment of the specificities of the audiovisual sector with regard to licensing mechanisms, which are of major importance for the continued development of the sector in terms of promoting both cultural diversity and a strong European audiovisual industry in the digital single market;

Interoperability

58. Calls on the Member States to ensure that collective rights management is based on effective, functional and interoperable systems;

VAT

59. Stresses the importance of initiating a debate on the issue of the divergent VAT rates applied in Member States and calls on the Commission and the Member States to coordinate their action in this area;

60. Stresses that consideration should be given to applying a reduced rate of VAT to the digital distribution of cultural goods and services in order to eliminate the discrepancies between online and offline services;

61. Stresses the need to apply the same VAT rate to cultural audiovisual works sold online and offline; takes the view that the application of reduced VAT rates for online cultural content sold by a provider established in the EU to a consumer resident in the EU would boost the attractiveness of digital platforms; recalls, in this connection, its resolutions of 17 November 2011 on the modernisation of VAT legislation in order to boost the digital single market[(8)] and of 13 October 2011 on the future of VAT[(9)] ;

62. Calls on the Commission to implement a legal framework for non-EU online audiovisual services where these are aimed directly or indirectly at the EU public, so that they are subject to the same requirements as EU services;

Protection and promotion of audiovisual works

63. Draws attention to the conditions under which the task of restoring and conserving audiovisual works and making them available for cultural and educational purposes is carried out in the digital age, and stresses that special consideration should be given to this issue;

64. Encourages the Member States to implement the Audiovisual Media Services Directive and recommends that they monitor how European works, particularly films and documentaries, are actually presented and promoted through the different audiovisual media services accessible to the public, and stresses the need for closer cooperation between regulatory authorities and film funding organisations;

65. Calls on the Commission to find mechanisms for encouraging access to archived audiovisual material held by Europe's film heritage institutions; notes that, for reasons often linked to diminishing consumer appeal and limited shelf life, a substantial share of European audiovisual material is unavailable commercially;

66. Calls on the Member States and the Commission to promote solutions aimed at supporting the digitisation, preservation and educational availability of these works, including across borders;

67. Notes the importance of the ‘Europeana’ online library and believes that greater attention should be given by the Member States and cultural institutions to ensuring its accessibility and visibility;

68. Considers that the digitisation and preservation of cultural resources, along with enhanced access to such resources, offer great economic and social opportunities and represent an essential condition for the future

development of Europe's cultural and creative capacities and for its industrial presence in this field; supports, therefore, the Commission's Recommendation of 27 October 2011 on the digitisation and online accessibility of cultural works and digital preservation[(10)] , along with the proposal to create an up-to-date package of measures to that end;

Education

69. Stresses the importance of promoting digital skills and media literacy for all EU citizens, including elderly people and those with disabilities, such as the hard of hearing, and of reducing the digital gap in society, as these aspects play an essential role for societal participation and democratic citizenship; recalls the important role played by public service media in this regard as part of their public-service missions;

70. Reaffirms the crucial importance of integrating new technologies into national educational programmes, and the particular importance of educating all EU citizens, of all ages, in media and digital literacy in order to develop and benefit from their skills in these areas;

71. Highlights the need for European and national education campaigns to raise awareness of the importance of intellectual property rights and of the available legal channels through which audiovisual works are distributed online; points out that consumers should be properly informed about any issues relating to intellectual property rights that may arise when using file-sharing services in the context of cloud-computing services;

72. Draws attention to the need to communicate more strongly to the public the importance of copyright protection and the related need for fair remuneration;

73. Emphasises the need to take into account the granting of a special status to institutions with an educational purpose as regards online access to audiovisual works;

MEDIA 2014-2020

74. Points out that the MEDIA programme has established itself as an independent brand and that it is crucial to pursue an ambitious MEDIA programme for 2014–2020 which is in the same spirit as the current programme;

75. Stresses that it is vital for MEDIA to continue to exist as a specific programme focusing solely on the audiovisual sector;

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

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(1) OJ L 95, 15.4.2010, p. 1.
(2) OJ L 327, 24.11.2006, p. 12.
(3) OJ L 323, 9.12.2005, p. 57.
(4) OJ L 236, 31.8.2006, p. 28.
(5) Texts adopted, **P7_TA(2011)0240** .
(6) Directive 93/83/EEC, OJ L 248, 6.10.1993, p. 15.
(7) OJ L 167, 22.6.2001, p. 10.
(8) **P7_TA(2011)0513** .
(9) **P7_TA(2011)0436** .
(10) OJ L 283, 29.10.2011, p. 39.