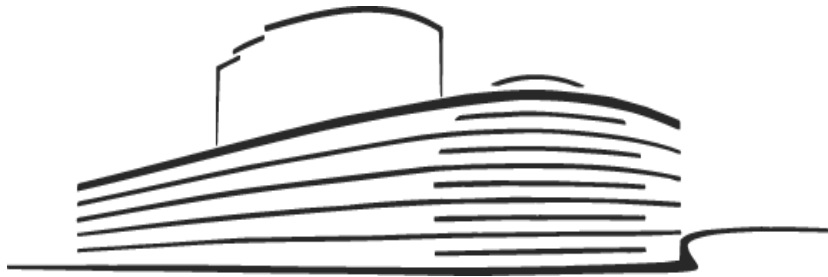


EUROPEAN PARLIAMENT



2004 - 2005



TEXTS ADOPTED

at the sitting of

Tuesday
9 March 2004

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Waste ***I

{ TC"(A5-0117/2004 - Rapporteur: Giuseppe Gargani)"\l3 \n> * MERGEFORMAT }

Committee on Legal Affairs and the Internal Market

PE 338.525

European Parliament legislative resolution on the proposal for a European Parliament and Council directive on waste (codified version) (COM(2003) 731 – C5-0577/2003 – 2003/0283(COD))

(Codecision procedure)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2003) 731)¹,
 - having regard to Articles 251(2) and 175 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0577/2003),
 - having regard to Rules 67, 89 and 158(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the Internal Market (A5-0117/2004),
1. Approves the Commission proposal;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

¹ Not yet published in OJ.

Extraction solvents used in the production of foodstuffs *I**

{ TC"(A5-0085/2004 - Rapporteur: Giuseppe Gargani)"\l3 \n> * MERGEFORMAT }

Committee on Legal Affairs and the Internal Market

PE 338.524

European Parliament legislative resolution on the proposal for a European Parliament and Council directive on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients (codified version) (COM(2003) 467 – C5-0364/2003 – 2003/0181(COD))

(Codecision procedure)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2003) 467)¹,
 - having regard to Articles 251(2) and 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0364/2003),
 - having regard to Rules 67, 89 and 158(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the Internal Market (A5-0085/2004),
1. Approves the Commission proposal;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and the Commission.

¹ Not yet published in OJ.

P5_TA-PROV(2004)0125

Cargo shipping ***I

{ TC"(A5-0086/2004 - Rapporteur: Giuseppe Gargani)"\l3 \n> * MERGEFORMAT }

Committee on Legal Affairs and the Internal Market

PE 338.523

European Parliament legislative resolution on the proposal for a European Parliament and Council decision concerning the activities of certain third countries in the field of cargo shipping (codified version) (COM(2003) 732 – C5-0578/2003 – 2003/0285(COD))

(Codecision procedure)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2003) 732)¹,
 - having regard to Articles 251(2) and 80(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0578/2003),
 - having regard to Rules 67, 89 and 158(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the Internal Market (A5-0086/2004),
1. Approves the Commission proposal;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and the Commission.

¹ Not yet published in OJ.

P5_TA-PROV(2004)0126

Participation in pre-accession Community assistance programmes *

{ TC"(A5-0089/2004 - Rapporteur: Luis Berenguer Fuster)" \l3 \n> * MERGEFORMAT }
Committee on Industry, External Trade, Research and Energy
PE 340.338

European Parliament legislative resolution on the proposal for a Council regulation amending Council Regulations (EEC) No 3906/89, (EC) No 555/2000, (EC) No 2500/2001(EC), (EC) No 1268/1999 and (EC) No 1267/1999 in order to allow the Stabilisation and Association Process Countries to participate in tenders organised under the pre-accession Community assistance programmes (COM(2003) 793 – C5-0049/2004 – 2003/0306(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM (2003) 793)¹,
 - having regard to Article 181a, paragraph 2 of the EC Treaty, pursuant to which the Council consulted Parliament (C5-0049/2004),
 - having regard to Rule 67 and 158(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, External Trade, Research and Energy (A5-0089/2004),
1. Approves the Commission proposal;
 2. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 3. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 4. Instructs its President to forward its position to the Council and the Commission.

¹ Not yet published in OJ.

P5_TA-PROV(2004)0127

Protection of the Community's financial interests ***I

{ TC"(A5-0087/2004 - Rapporteur: Herbert Bösch)"\l3 \n> * MERGEFORMAT }

Committee on Budgetary Control

PE 338.183

European Parliament legislative resolution on the proposal for a European Parliament and Council decision establishing a Community action programme to promote activities in the field of the protection of the Community's financial interests (COM(2003) 278 – C5-0312/2003 – 2003/0152(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2003) 278)¹,
 - having regard to the European Court of Auditors' Opinion No 8/2003²,
 - having regard to Articles 251(2) and 280(4) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0312/2003),
 - having regard to Article 112 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities³,
 - having regard to the declaration of 18 December 2003 by the European Parliament and the Council on the programmes adopted under codecision⁴,
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Budgetary Control and the opinion of the Committee on Budgets (A5-0087/2004),
1. Approves the Commission proposal as amended;
 2. Considers that the financial statement in the Commission proposal is compatible with the ceiling of headings 3 and 5 of the 2000-2006 financial perspective;
 3. 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;

¹ Not yet published in OJ.

² OJ C 318, 30.12.2003, p. 5.

³ OJ L 248, 16.9.2002, p. 1.

⁴ P5_TA(2003)0588.

4. Calls also, in keeping with the European Court of Auditors' opinion, for the objectives of the action programme, should it be renewed after 2006, to be more clearly defined and more effectively measurable in order to facilitate evaluation;
5. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1
Recital 3

(3) *Specific* activities in this field should therefore be promoted and bodies engaged in this field should be supported by ***means of*** operating grants. Experience has shown the value of providing support at Community level as compared with national promotional activities.

(3) Activities in this field should therefore be promoted and bodies engaged in this field should be supported by ***awarding*** operating grants. Experience has shown the value of providing support at Community level as compared with national promotional activities.

Amendment 2
Recital 5

(5) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ***requires a basic instrument to be provided for existing support measures.***

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

Amendment 3
Recital 6

(6) It is therefore necessary to ***establish*** that basic instrument ***and to rationalise and supplement all existing support measures*** by adopting this Decision establishing a structured, specific and multidisciplinary Community action programme for a substantial period.

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

Amendment 4

Recital 7

(7) The programme should **cover** all Member States and neighbouring countries in view of the importance of providing effective and equivalent protection for the Community's financial interests beyond the Member States alone.

(7) The programme should ***be opened up to*** all Member States and neighbouring countries in view of the importance of providing effective and equivalent protection for the Community's financial interests beyond the Member States alone.

Amendment 5
Recital 7a (new)

(7a) The European Parliament, the Council and the Commission, when adopting the Financial Regulation, undertook to achieve the objective of ensuring that this basic act comes into force as from the financial year 2004.

Amendment 7
Recital 10

(10) The Commission should **report** to the European Parliament and the Council on the attainment of the programme's objectives.

(10) The Commission should ***submit to the European Parliament and the Council an interim report by the European Anti-Fraud Office (OLAF) on the implementation of the programme and a final report*** on the attainment of the programme's objectives.

Amendment 9
Article 2, paragraph 1

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

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

general criteria set out in the Annex.

out in the Annex.

Amendment 11
Article 2, paragraph 2a (new)

2a. Applications for operating grants must contain all necessary information, to enable the Commission to select beneficiaries, on:

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

Amendment 12
Article 3

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

- (a) countries which ***agreed at the Copenhagen summit in 2002 to join the European Union in 2004***;
- (b) the EFTA/EEA countries, in accordance with the conditions laid down in the EEA Agreement;
- (c) Romania and Bulgaria, in accordance with the conditions laid down in the Europe Agreements, in their additional protocols and in the decisions of the respective Association Councils;
- (d) Turkey;

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

- (a) ***acceding*** countries which ***signed the Accession Treaty on 16 April 2004***;
- (b) the EFTA/EEA countries, in accordance with the conditions laid down in the EEA Agreement;
- (c) Romania and Bulgaria, in accordance with the conditions laid down in the Europe Agreements, in their additional protocols and in the decisions of the respective Association Councils;
- (d) Turkey, ***in accordance with Council Decision 2002/179/EC of 17 December 2001 concerning the conclusion of a Framework Agreement between the European Community and the Republic of Turkey on the general principles for the participation of the Republic of Turkey in Community programmes¹***;

(e) the Balkan countries forming part of the stabilisation and association process for countries of south eastern Europe;

(f) certain countries of the Commonwealth of Independent States

¹ OJ L 61, 2.3.2002, p. 27.

Amendment 13
Article 4, paragraph -1 (new)

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

Amendment 14
Article 5, paragraph 1

1. Financial assistance granted for activities may not cover all eligible expenditure. The amount of a grant for an activity awarded under the programme may not exceed ***90% of the eligible expenditure of the body for the calendar year for which the grant is intended.***

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

(a) 50% of eligible expenditure for technical support;

(b) 80% of eligible expenditure for training measures, promoting exchanges of specialised staff and the holding of seminars and conferences, provided that the beneficiaries are those referred to in point 2, first indent, of the Annex hereto;

(c) 90% of eligible expenditure for the holding of seminars and conferences, etc., provided that the beneficiaries are those referred to in point 2, second and third indents, of the Annex hereto.

Amendment 15
Article 6, paragraph 1

1. The programme shall start on 1 January 2004 and end on 31 December ***2008.***

1. The programme shall start on 1 January 2004 and end on 31 December ***2006.***

Amendment 16
Article 6, paragraph 2

2. The financial framework for the implementation of the programme for the period 2004 to **2008** shall be EUR **21.485** million.

2. The financial framework for the implementation of the programme for the period 2004 to **2006** shall be EUR **11.775** million.

Amendment 17
Article 7

By 31 December 2009 at the latest, the Commission shall **report** to the European Parliament and the Council on the achievement of the objectives of **this** programme. The report **shall be** based on the results obtained by the beneficiaries **and** assess, in particular, their effectiveness in achieving the objectives defined in Article 1 and the Annex.

The Commission shall **submit** to the European Parliament and the Council:

(a) by 30 June 2006 at the latest, a report by OLAF on the implementation of the programme and the appropriateness of continuing it;

(b) by 31 December 2007 at the latest, a report by OLAF on the achievement of the objectives of **the** programme. The report, based on the results obtained by the beneficiaries, **shall** assess, in particular, their effectiveness in achieving the objectives defined in Article 1 and **in** the Annex.

Amendment 18
Annex, point 1, indent 4 a (new)

- promoting exchanges of specialised staff;

Amendment 19
Annex, point 2

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

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

Union's policy in this area.

In accordance with Article 2 of the Decision, **this applies to:**

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

this area.

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

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

Amendment 20 Annex, point 4

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

- consistency of the proposed activity in relation to the objectives of the programme;
- complementarity of the proposed activity with other assisted activities;
- feasibility of the proposed activity, i.e. the real possibility that it can be carried out using the proposed means;
- the cost-benefit ratio;
- the added **value** of the proposed activity;

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

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- complementarity of the proposed activity with other assisted activities;
- feasibility of the proposed activity, i.e. the real possibility that it can be carried out using the proposed means;
- the cost-benefit ratio;
- the added **utility** of the proposed activity;

- size of public targeted by the proposed activity;
- transnational and multidisciplinary aspects of the activity;
- geographic scope of the proposed measure.

- size of public targeted by the proposed activity;
- transnational and multidisciplinary aspects of the activity;
- geographic scope of the proposed measure.

Amendment 21
Annex, point 5, paragraph 1a (new)

Also eligible is expenditure in connection with the participation of representatives of the Balkan countries forming part of the stabilisation and association process for countries of south eastern Europe¹ and certain countries of the Commonwealth of Independent States².

¹ *Former Yugoslav Republic of Macedonia, Albania, Serbia and Montenegro, Bosnia-Herzegovina and Croatia.*

² *Belarus, Moldavia, Russian Federation and Ukraine.*

Amendment 23
Annex, point 6.4

6.4. The Court of Auditors and the European Anti-Fraud Office (OLAF) must enjoy the same rights, especially of access, as the **Commission**.

6.4. The Court of Auditors and the European Anti-Fraud Office (OLAF) must enjoy the same rights, especially of access, as the **persons referred to in point 6.3**.

Amendment 24
Annex, point 6.5

6.5. Furthermore, in order to protect the European Community's financial interests against fraud and other irregularities, the Commission **may carry** out on-the-spot checks and inspections under this programme in accordance with Council Regulation (Euratom, EC) No 2185/96. Where necessary, investigations must be

6.5. Furthermore, in order to protect the European Community's financial interests against fraud and other irregularities, the Commission **carries** out on-the-spot checks and inspections under this programme in accordance with Council Regulation (Euratom, EC) No 2185/96 **of 11 November 1996 concerning on-the-spot**

conducted by the European Anti-Fraud Office (OLAF) and governed by European Parliament and Council Regulation (EC) No 1073/1999.

checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities. Where necessary, investigations must be conducted by the European Anti-Fraud Office (OLAF) and governed by European Parliament and Council Regulation (EC) No 1073/1999.

Amendment 25
Annex, point 7

On the basis of a cost-effectiveness analysis, the Commission may ***decide to entrust all or some of the tasks of managing the programme to an executive agency, in accordance with Article 55 of the Financial Regulation applicable to the general budget of the European Communities; it may also*** employ experts and ***incur*** any other ***expenditure on*** technical and administrative assistance not involving public authority tasks outsourced under ad hoc service contracts. It may also finance studies and organise meetings of experts to facilitate the implementation of the programme, and take information, publication and dissemination measures directly linked to fulfilling the objectives of the programme.

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

P5_TA-PROV(2004)0128

Draft Amending Budget No 1/2004 (Section III)

{ TC"(A5-0059/2004 - Rapporteur: Jan Mulder)"\l3 \n> * MERGEFORMAT }

PE 338.036

European Parliament resolution on Draft Amending Budget No 1/2004 (Section III - Commission) for the financial year 2004 (06696/2004 - C5-0108/2004 – 2004/2009(BUD))

The European Parliament,

- having regard to Article 272 of the EC Treaty and Article 177 of the Euratom Treaty,
- having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities¹ and particularly Articles 37 and 38 thereof,
- having regard to the general budget of the European Union for the financial year 2004, as finally adopted on 18 December 2003²,
- having regard to the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure³,
- having regard to Article 28 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded⁴,
- having regard to the Declarations on the budget procedure 2004⁵ and on the EU-25 Budget⁶ adopted at the budgetary conciliation meetings of 16 July 2003 and 24 November 2003 between the European Parliament and the Council,
- having regard to the Preliminary Draft Amending Budget No 1/2004 of the European Union for the financial year 2004, which the Commission presented on 3 February 2004 (SEC(2004) 105),

¹ OJ L 248, 16.9.2002.

² OJ L 53, 23.2.2004.

³ OJ C 172, 18.6.1999, p.1. Agreement as amended by Decision 2003/429/EC (OJ L 147, 14.6.2003, p. 25).

⁴ OJ L 236, 23.9.2003, p. 33.

⁵ Annex to its resolution of 23 October 2003 on the draft general budget of the European Union for the financial year 2004 - Section III: Commission, P5_TA(2003)0449.

⁶ Annex to its resolution of 18 December 2003 on the draft general budget of the European Union for the financial year 2004, as modified by the Council, P5_TA(2003)0588.

- having regard to the Draft Amending Budget No 1/2004, which the Council established on 26 February 2004 (06696/2004 – C5-0108/2004),
 - having regard to Rule 92 of and Annex IV to its Rules of Procedure,
 - having regard to the report of the Committee on Budgets (A5-0059/2004),
- A. whereas according to Article 28 of the Accession Treaty, the 2004 budget shall be adapted to take into account the accession of the new Member States through an amending budget that shall enter into effect on 1 May 2004,
 - B. whereas in the budgetary conciliation meeting of 16 July 2003, the European Parliament, Council and Commission agreed that the amounts entered in budget documents for the current 15 Member States (EU-15) and those for the enlarged Union (EU-25) are both part of the budgetary procedure,
 - C. whereas, in the Preliminary Draft Budget 2004, the Commission proposed EU-25 amounts while including for each budget line the proposed amount for EU-15,
 - D. whereas, in the Draft Budget 2004, the Council formally entered amounts for EU-15, while agreeing politically on its first reading position on figures for EU-25,
 - E. whereas, at first reading, it amended the Draft Budget 2004, resulting in precise figures for both EU-25 and EU-15,
 - F. whereas, in the conciliation meeting on 24 November 2003, the two arms of the budgetary authority reached an agreement on amounts for EU-15 and EU-25,
 - G. whereas it subsequently adopted the Budget 2004 containing figures for EU-15, while at the same time indicating figures for EU-10,
 - H. whereas, in accordance with the political agreement, the Commission prepared a Preliminary Draft Amending Budget at the beginning of 2004 for the budgeting of the amounts for EU-25,
1. Welcomes the fact that the Commission followed the European Parliament's and Council's invitation to present, early in 2004, a Preliminary Draft Amending Budget for the budgeting of the amounts for EU-25;
 2. Confirms that the figures presented in the Amending Budget No 1/2004 correspond to those which it adopted in the 2004 budgetary procedure;
 3. Expresses its satisfaction that the figures for 25 Member States as agreed upon by the two arms of the budgetary authority are thus retained;
 4. Notes that, with the adoption of Amending Budget No 1/2004, the principle of the unity of the budget, as enshrined in Article 4 of Council Regulation (EC, Euratom) No 1605/2002, will be re-established, and that, consequently, there will be only one budget for the future European Union of 25;

5. Approves the Draft Amending Budget No 1/2004, unamended, and calls upon the Commission to publish the budget for EU-25 in the Official Journal of the European Union;
6. Instructs its President to forward this resolution to the Council and the Commission.

P5_TA-PROV(2004)0129

Draft Amending Budget No 2/2004 (Section VIII(B))

{ TC"(A5-0073/2004 - Rapporteur: Neena Gill)"\l3 \n> * MERGEFORMAT }

PE 338.042

European Parliament resolution on Draft Amending Budget No 2/2004 for the financial year 2004 (Section VIII B - European Data Protection Supervisor) (06699/2004 - C5-0109/2004 - 2004/2010(BUD))

The European Parliament,

- having regard to Article 272 of the EC Treaty and Article 177 of the Euratom Treaty,
- having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities¹ and in particular Articles 37 and 38 thereof,
- having regard to 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 data²,
- having regard to Decision No 1247/2002/EC of the European Parliament, of the Council and of the Commission of 1 July 2002 on the regulations and general conditions governing the performance of the European Data-protection Supervisor's duties³,
- having regard to Decision 2004/55/EC of the European Parliament and of the Council of 22 December 2003 appointing the independent supervisory body provided for in Article 286 of the EC Treaty (European Data Protection Supervisor)⁴,
- having regard to the general budget of the European Union for the financial year 2004, as finally adopted on 18 December 2003⁵,
- having regard to the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure⁶,

¹ OJ L 248, 16.9.2002.

² OJ L 8, 12.1.2001, p. 1.

³ OJ L 183, 12.7.2002, p. 1.

⁴ OJ L 12, 17.1.2004, p. 47.

⁵ OJ L 53, 23.2.2004. Agreement as amended by Decision 2003/429/EC (OJ L 147, 14.6.2003, p. 25).

⁶ OJ C 172, 18.6.1999, p. 1.

- having regard to the Preliminary Draft Amending Budget No 2/2004 of the European Union for the financial year 2004, which the Commission presented on 3 February 2004 (SEC(2004) 104),
 - having regard to the Draft Amending Budget No 2/2004 of the European Union for the financial year 2004, which the Council established on 26 February 2004 (006699/2004 – C5–0109/2004),
 - having regard to Rule 92 of and Annex IV to its Rules of Procedure,
 - having regard to the report of the Committee on Budgets and the opinion of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0073/2004),
- A. whereas the Commission may present preliminary draft amending budgets, if there are unavoidable, exceptional and unforeseen circumstances,
 - B. whereas the nomination of the European Data Protection Supervisor and the Assistant Supervisor has already taken place,
 - C. whereas the Amending Budget No 2/2004 of the European Union will provide the necessary budgetary appropriations for the European Data Protection Supervisor to begin his duties,
 - D. whereas the Commission proposal is identical to the budget adopted in 2002 for Section VIII (B) in terms of expenditure and the establishment plan, and the modifications in terms of revenue are technical,
1. Considers that the Draft Amending Budget No 2/2004, as established by the Council, provides sufficient appropriations for the European Data Protection Supervisor for the year 2004 for him to begin his duties;
 2. Requests the European Data Protection Supervisor to submit a report to the Budgetary Authority before 30 September 2004, with a view to Parliament's first reading of the 2005 budget, assessing the state of play as regards operational needs, the progress made in setting up the administrative structures and recruitment procedures, the co-operation agreement with the European Parliament, and financial and budgetary management;
 3. Considers that the Draft Amending Budget No 2/2004 is compatible with the ceiling fixed in heading 5 of the financial perspective without restricting other activities;
 4. Approves the Draft Amending Budget No 2/2004 unamended;
 5. Instructs its President to forward this resolution to the Council, the Commission and the European Data Protection Supervisor.

P5_TA-PROV(2004)0130

Enlargement: adaptation of reference amounts for 6th Euratom framework programme *

{ TC"(A5-0069/2004 - Rapporteur: Reimer Böge and Joan Colom i Naval)"\l3 \n> *

MERGEFORMAT }

Committee on Budgets

PE 338.048

European Parliament legislative resolution on the proposal for a decision of the Council amending Decision No 2002/668/Euratom to adapt the financial reference amount in order to take account of the enlargement of the European Union (COM(2003) 778 – C5-0031/2004 – 2003/0298(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2003) 778)¹,
 - having regard to Article 7 of the European Atomic Energy Community Treaty, pursuant to which the Council consulted Parliament (C5-0031/2004),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Budgets (A5-0069/2004),
1. Considers the amounts referred to in the legislative proposals are compatible with the ceiling of heading 3 of the financial perspective as adjusted and revised in order to take account of enlargement;
 2. Calls for the budgetary authority to be more fully involved in the definition of the financial impact of the legislative programmes in accordance with the statement on financial programming annexed to its resolution of 26 October 2000 on the Interinstitutional Agreement on financial statements²;
 3. Welcomes the Commission proposals in respect of the agreement on indicative figures reached at the conciliation of 24 November 2003;
 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 and Commission.

¹ Not yet published in OJ.

² OJ C 197, 12.7.2001, p. 354.

P5_TA-PROV(2004)0131

Enlargement: adaptation of reference amounts (Regulations) ***I

{ TC"(A5-0066/2004 - Rapporteur: Reimer Böge and Joan Colom i Naval)" \l3 \n> \}*
MERGEFORMAT }

Committee on Budgets

PE 338.046

European Parliament legislative resolution on a decision of the European Parliament and of the Council amending Regulations (EC) No 2236/95, (EC) No 1655/2000, (EC) No 1382/2003 and (EC) No [...] /2004 in view of adapting the reference amounts to take account of the enlargement of the European Union (COM(2003) 777 – C5-0652/2003 – 2003/0305(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2003) 777)¹,
 - having regard to Articles 251(2), 71(1), 80(2), 156, first subparagraph, and 175 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0652/2003),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Budgets(A5-0066/2004),
1. Considers that the amounts referred to in the legislative proposals are compatible with the ceiling of heading 3 of the financial perspective as adjusted and revised in order to take account of enlargement;
 2. Calls for the budgetary authority to be more fully involved in the definition of the financial impact of the legislative programmes in accordance with the statement on financial programming annexed to its resolution of 26 October 2000 on the Interinstitutional Agreement on financial statements²;
 3. Welcomes the Commission proposals in respect of the agreement on indicative figures reached at the conciliation of 24 November 2003;
 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 and Commission.

¹ Not yet published in OJ.

² OJ C 197, 12.7.2001, p. 354.

P5_TA-PROV(2004)0132

Enlargement: adaptation of reference amounts (Decisions I) *I**

{ TC"(A5-0067/2004 - Rapporteur: Reimer Böge and Joan Colom i Naval)" \l3 \n> * MERGEFORMAT }

Committee on Budgets

PE 338.045

European Parliament legislative resolution on the proposal for a decision of the European Parliament and of the Council amending amending Council Decision No 96/411/EC and Decisions Nos 276/1999/EC, 1719/1999/EC, 2850/2000/EC, 507/2001/EC, 2235/2002/EC, 2367/2002/EC, 253/2003/EC, 1230/2003/EC and [...] /2004/EC in view of adapting the reference amounts to take account of the enlargement of the European Union (COM(2003) 777 – C5-0651/2003 – 2003/0304(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2003) 777)¹,
 - having regard to Articles 251(2), 95, 153(2), 156, first subparagraph, 157(3), 175(1) and 285 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0651/2003),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Budgets (A5-0067/2004),
1. Considers that the amounts referred to in the legislative proposals are compatible with the ceiling of heading 3 of the financial perspective as adjusted and revised in order to take account of enlargement;
 2. Calls for the budgetary authority to be more fully involved in the definition of the financial impact of the legislative programmes in accordance with the statement on financial programming annexed to its resolution of 26 October 2000 on the Interinstitutional Agreement on financial statements²;
 3. Welcomes the Commission proposals in respect of the agreement on indicative figures reached at the conciliation of 24 November 2003;
 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 and Commission.

¹ Not yet published in OJ.

² OJ C 197, 12.7.2001, p. 354.

P5_TA-PROV(2004)0133

Enlargement: adaptation of reference amounts (Decisions II) ***I

{ TC"(A5-0065/2004 - Rapporteur: Reimer Böge and Joan Colom i Naval)" \l3 \n> \}*
MERGEFORMAT }

Committee on Budgets

PE 338.044

European Parliament legislative resolution on the proposal for a decision of the European Parliament and of the Council amending Decisions Nos 1720/1999/EC, 253/2000/EC, 508/2000/EC, 1031/2000/EC, 1445/2000/EC, 163/2001/EC, 1411/2001/EC, 50/2002/EC, 466/2002/EC, 1145/2002/EC, 1513/2002/EC, 1786/2002/EC, 291/2003/EC and 20/2004/EC (COM(2003) 777 – C5-0650/2003 – 2003/0303(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2003) 777)¹MNU[MODPROP0][MODPROP2][MODPROP3]@CHOICE@,
 - having regard to Articles 129, 137(2), 149, 150 and\$160 251(2) TXTART1@ART@of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (\$\$0030C5-0650/2003),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the {BUDG}Committee on Budgets (A5-0065/2004()),
1. Considers that the amounts referred to in the legislative proposals are compatible with the ceiling of heading 3 of the financial perspective as adjusted and revised in order to take account of enlargement;
 2. Calls for the budgetary authority to be more fully involved in the definition of the financial impact of the legislative programmes in accordance with the statement on financial programming annexed to its resolution of 26 October 2000 on the Interinstitutional Agreement on financial statements²;
 3. Welcomes the Commission proposals in respect of the agreement on indicative figures reached at the conciliation of 24 November 2003;
 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;

¹ Not yet published in OJNROJDT(d.m.yyyy)@DATEMSG@.

² OJ C 197, 12.7.2001, p. 354.

5. <OptDel>Instructs its President to forward its position to the Council and Commission.MNU[MODPROP0][MODPROP2][MODPROP3]@CHOICE@\$\$160TXT ART1@ART@\$\$0030{BUDG}(STD@_ANumber<OptDel>

Convention on the suppression of illicit drug trafficking on the high seas *

{ TC"(A5-0100/2004 - Rapporteur: Marjo Matikainen-Kallström)"\l3 \n> * MERGEFORMAT }

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs
PE 329.933

European Parliament legislative resolution on the initiative of the Kingdom of Spain with a view to adopting a Council Act establishing, in accordance with Article 34 of the Treaty on European Union, the Convention on the suppression by customs administrations of illicit drug trafficking on the high seas (5382/2002 – C5-0249/2003 – 2003/0816(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative of the Kingdom of Spain (5382/2002)¹,
- having regard to Articles 30(1)(a), 32 and 34(2)(d) of the EU Treaty,
- having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C5-0249/2003),
- having regard to the opinion of the Committee on Legal Affairs and the Internal Market on the proposed legal basis,
- having regard to Rules 106, 67 and 63 of its Rules of Procedure,
- having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0100/2004),

1. Approves the initiative of the Kingdom of Spain as amended;
2. Calls on the Council to amend the text accordingly;
3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
4. Calls on the Council to consult Parliament again if it intends to amend the initiative of the Kingdom of Spain substantially;
5. Instructs its President to forward its position to the Council and Commission, and the government of the Kingdom of Spain.

¹ OJ C 45, 19.2.2002, p. 8.

Amendment 1
Title (Council Act)

Council Act establishing in accordance with **Article 34** of the Treaty on European Union, the Convention on the **suppression by customs administrations of illicit drug trafficking on the high seas**

Council Act establishing in accordance with **Articles 30(1)(a), 32 and 34** of the Treaty on European Union, the Convention on **operational cooperation between the competent authorities of the Member States in relation to the prevention, detection, investigation and prosecution of criminal offences committed on the high seas**

Amendment 2
Citation 1 (Council Act)

Having regard to the Treaty on European Union, and in particular **Article 34(2)(d)** thereof,

Having regard to the Treaty on European Union, and in particular **Articles 30(1)(a), 32 and 34(2)(d)** thereof,

Amendment 3
Recital 1 (Council act)

Whereas, for the purposes of achieving the **objectives** of the European Union, Member States **regard customs cooperation as a matter of common interest for the cooperation established in Title VI of the Treaty**,

Whereas, for the purposes of achieving the **objective** of the European Union **of maintaining and developing the Union as an area of freedom, security and justice, it is a matter of urgency and essential to step up cooperation between Member States in relation to the prevention, detection, investigation and combating of criminal offences committed on the high seas and to the prosecution of the natural and legal persons responsible**,

Amendment 4
Recital 1 (Convention)

ACKNOWLEDGING the need to strengthen the commitments made in the Convention on Mutual Assistance between Customs Administrations, signed in Rome

ACKNOWLEDGING the need to strengthen the commitments made in the Convention on Mutual Assistance between Customs Administrations, signed in Rome

on 7 September 1967, and in the Convention on Mutual Assistance and Cooperation between Customs Administrations, done at Brussels on 18 December 1997.

on 7 September 1967, and in the Convention on Mutual Assistance and Cooperation between Customs Administrations, done at Brussels on 18 December 1997, **and to establish operational cooperation between the competent law enforcement authorities of the Member States, including police, customs and other specialised services, aimed at combating crime committed on the high seas, on vessels flying the flag of a Member State or without nationality.**

Amendment 5
Recital 2 (Convention)

TAKING INTO ACCOUNT the United Nations Convention on the Law of the Sea, signed in Montego Bay on 10 December 1982, which provides *inter alia* for the right of hot pursuit, and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Vienna on 20 December 1988.

TAKING INTO ACCOUNT the United Nations Convention on the Law of the Sea, signed in Montego Bay on 10 December 1982, **Article 111 of** which provides for the right of hot pursuit, and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Vienna on 20 December 1988, **with particular reference to Article 17 thereof.**

Amendment 6
Recital 3 (Convention)

CONSIDERING that the customs administrations are responsible within the customs territory of the Community, including its territorial sea and air space and especially at its points of entry and exit, for the prevention, investigation and prosecution of breaches not only of the Community customs rules but also of national laws, and in particular for combating smuggling, including the smuggling of narcotic drugs and psychotropic substances.

deleted

Amendment 7
Recital 4 (Convention)

CONSIDERING that occasionally in the fight against **drug trafficking** it is necessary and effective for the **customs** to take action **outside Community customs territory, particularly** on the high seas.

CONSIDERING that occasionally in the fight against **crime** it is **essential**, necessary and effective for the **competent authorities of the Member States** to take action on the high seas.

Amendment 8
Recital 5 (Convention)

CONSIDERING that the increase in **trafficking in narcotic drugs and psychotropic substances at sea** is a situation which seriously threatens the health and security of the citizens of the European Union.

CONSIDERING that the increase in **offences committed on the high seas on vessels flying the flag of a Member State of the European Union or without nationality** is a situation which seriously threatens the health and security of the citizens of the European Union.

Amendment 9
Recital 6 (Convention)

CONSIDERING that under the special forms of cooperation which have been established between Member States of the European Union **both within the Member States themselves and in their respective territorial waters**, officials of one Member State are empowered to take action in the territory of another Member State, without prior authorisation on occasion.

CONSIDERING that under the special forms of cooperation which have been established between Member States of the European Union **and which are provided for in particular in the Convention implementing the Schengen Agreement of 14 June 1985¹, with reference to land borders, and the Convention, drawn up on the basis of Article K.3 of the Treaty on European Union, on mutual assistance and cooperation between customs administrations², with reference to all types of borders**, officials of one Member State are empowered to take action in the territory of another Member State, without prior authorisation on occasion.

¹ OJ L 239, 22.9.2000, p. 19.

² OJ C 24, 23.1.1998, p. 2.

Amendment 10
Recital 7 (Convention)

CONVINCED that it is necessary to strengthen cooperation between the **customs administrations** in combating **drug trafficking** by giving vessels of the competent authorities of a Member State greater scope to take immediate action without prior authorisation against vessels from another Member State in emergencies, where currently it is not possible to take action without prior authorisation outside territorial waters,

CONVINCED that it is necessary to strengthen cooperation between the **competent authorities** in combating **crime on the high seas** by giving vessels of the competent authorities of a Member State greater scope to take immediate action without prior authorisation against vessels from another Member State in emergencies, where currently it is not possible to take action without prior authorisation outside territorial waters,

Amendment 11
Article 1, point (a) (Convention)

(a) "vessels" means any structure or floating craft operating on the high seas suitable for the carriage of goods and/or persons, including hovercraft, non-displacement craft and submersibles.

(a) "vessels" means any **type of ship**, structure or floating craft operating on the high seas suitable for the carriage of goods and/or persons, including hovercraft, non-displacement craft and submersibles.

Amendment 12
Article 1, point (d) (Convention)

(d) "**relevant** offence" means **the offences defined** in Article 3.

(d) "offence" means **deliberate conduct or acts classified as criminal offences in the domestic law of the Member States or in European Union law, as set out** in Article 3.

Amendment 13
Article 1, point (e), subparagraph 1 (Convention)

(e) "**customs** authorities" means **the authorities responsible for implementing the customs rules and also the other** authorities given the responsibility of implementing the provisions of this Convention.

(e) "**competent** authorities" means the authorities given the responsibility of implementing the provisions of this Convention, **including the police, customs and other specialised law enforcement services of the Member States.**

Amendment 14
Article 2 (Convention)

The customs authorities of the Member States of the European Union shall cooperate to the fullest extent possible to suppress illicit trafficking in narcotic drugs and psychotropic substances by sea, in conformity with the International Law of the Sea.

The purpose of this Convention is to promote, facilitate and establish operational cooperation and mutual assistance between the competent authorities of the Member States in relation to the prevention, detection, investigation and prosecution of the offences set out in Article 3, committed on the high seas on vessels flying the flag of a Member State or without nationality, in conformity with the International Law of the Sea and within the bounds of the powers assigned to them by national or international law.

Amendment 15
Article 3 (Convention)

Each Member State shall adopt the measures necessary to classify as **an** offence in its national law, and penalise, offences on board vessels or by means of any other craft or floating medium not excluded from the scope of this Convention under Article 4 thereof, ***involving the possession for distribution, transport, transshipment, storage, sale, manufacture or processing of narcotic drugs or psychotropic substances as defined in the relevant international instruments.***

Each Member State shall adopt the ***legislative and other*** measures necessary to classify as ***a criminal*** offence in its national law, and penalise, ***deliberate*** offences ***committed on the high seas*** on board vessels or by means of any other craft or floating medium not excluded from the scope of this Convention under Article 4 thereof, ***flying the flag of any of the Member States or without nationality, as defined by the law of each Member State and if punishable in the State intending to prosecute the offence by a custodial sentence or a detention order for a maximum period of at least three years, as applicable to similar offences committed within the territory under its sovereignty, in respect of the following offences:***

(a) illicit trafficking in narcotic drugs and psychotropic substances;

(b) illicit trafficking in substances listed in tables I and II of the United Nations Convention Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances and intended for the illicit production of drugs (precursor

substances);

(c) illicit trafficking in weapons, components thereof, munitions and explosives;

(d) illicit trafficking in cultural goods, including antiques and works of art;

(e) illicit trafficking in hazardous and toxic waste;

(f) illicit trafficking in nuclear materials and materials and equipment intended for the production of nuclear, biological and chemical weapons;

(g) illicit cross-border trade in goods subject to taxation;

(h) trafficking in human beings;

(i) illicit trafficking in immigrants;

(j) trafficking in stolen vehicles;

(k) illicit trade in human organs and tissue or hormonal substances;

(l) counterfeiting and piracy of products;

(m) kidnapping, illegal restraint of persons and vessels and hostage-taking.

Amendment 16

Article 3a (new) (Convention)

Article 3a

Liability of legal persons

1. Member States shall take the necessary measures to ensure that legal persons can be held liable for an offence as referred to in Article 3, where such offences are committed on the high seas on behalf of such persons by any person acting either individually or as part of an organ of the legal person, based on:

(a) a power of representation of the legal person;

(b) an authority to take decisions on behalf of the legal person;

(c) an authority to exercise control within

the legal person.

2. Without prejudice to the cases provided for in paragraph 1, Member States shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made it possible for a person under its authority to commit an offence within the meaning of Article 3 on behalf of a legal person.

3. Liability of a legal person under paragraphs 1 and 2 shall be without prejudice to criminal proceedings against natural persons who have perpetrated, instigated or been accessories to an offence within the meaning of Article 3.

Amendment 17
Article 4 (Convention)

Warships and official non-commercial public service **vessels** shall be excluded from the scope of this Convention.

Warships, **naval reserve vessels and other vessels owned or operated by a State and vessels currently being used solely for official non-commercial public service purposes, when on the high seas**, shall be excluded from the scope of this Convention.

Amendment 18
Article 4a (new) (Convention)

Article 4a

Competence

1. Each Member State shall take the necessary measures to establish its competence with regard to offences pursuant to Article 3 committed on the high seas, where such offences are committed:

(a) on board a vessel flying its flag;

(b) on board a vessel by one of its nationals or a person normally resident within its territory, or on behalf of a legal

person established within its territory;

(c) on board a vessel without nationality or assimilated to a vessel without nationality;

(d) on board a vessel flying the flag of another Member State;

In the case referred to in (d), competence shall be exercised only where the intervening State has received the prior authorisation of the flag State or, in exceptional cases, without prior authorisation where the urgency of the situation makes this impossible, in which case the competent authorities shall be notified immediately.

2. Nothing in this Convention shall entitle a Member State to exercise within the territory of another State jurisdiction or functions that the national law of that State exclusively confers on its own authorities.

Amendment 19

Article 5, paragraph 1 (Convention)

1. *Save as provided for in the Convention on mutual assistance and cooperation between customs administrations,*

Member States shall exercise sole jurisdiction in relation to offences committed in their territorial and national waters including situations where offences originated or are due to be completed in another Member State.

1. *Expect in the cases provided for in current national and international law,*

Member States shall exercise sole jurisdiction in relation to offences committed in their territorial and national waters including situations where offences originated or are due to be completed in another Member State.

Amendment 20

Article 6, paragraph 1 (Convention)

1. Where there are good grounds to suspect that one of the offences referred to in Article 3 has been committed, each Member State shall allow the other Member States a right of representation, which shall give legitimacy to action taken by ships or aircraft belonging to their

1. Where there are good grounds to suspect that one of the offences referred to in Article 3 has been committed, each Member State shall allow the other Member States a right of representation, which shall give legitimacy to action taken ***on the high seas*** by ships or aircraft

respective **customs administrations** against vessels from another Member State.

belonging to their respective **competent authorities** against vessels from another Member State.

Amendment 21

Article 6, paragraph 2 (Convention)

2. In exercising the right of representation referred to in paragraph 1, official ships or aircraft may give pursuit, stop and board the vessel, examine documents, identify and question the persons on board and inspect the vessel and, should their suspicions be confirmed, seize **the drugs**, detain the persons alleged to be responsible and escort the vessel to the nearest or most suitable port where it shall be detained prior to being returned, informing beforehand if possible or immediately afterwards the State whose flag was being flown by the vessel.

2. In exercising the right of representation referred to in paragraph 1, official ships or aircraft **of a Member State that are duly authorised to carry out such tasks** may give pursuit, stop and board the vessel, examine documents, identify and question the persons on board and inspect the vessel and **its cargo and**, should their suspicions be confirmed, seize the **corpus delicti and take and assemble evidence**, detain the persons alleged to be responsible and escort the vessel to the nearest or most suitable port where it shall be detained prior to being returned, informing beforehand if possible or immediately afterwards the State whose flag was being flown by the vessel, **to which they shall immediately forward a summary of the evidence of all the offences detected. The flag Member State shall immediately issue a receipt for such evidence.**

Amendment 22

Article 6, paragraph 3 (Convention)

3. This right shall be exercised in accordance with the general provisions of international law.

3. This right shall be exercised in accordance with the general provisions of international law, **European Union law in this area and the provisions of this Convention.**

Amendment 23

Article 7, paragraph 1 (Convention)

1. Where action has been taken pursuant to Article 6, due account **shall be taken** of the need not to endanger the safety of life at sea or the security of the vessel and cargo,

1. Where action has been taken pursuant to Article 6, **in all relevant cases the intervening State shall take** due account of the need not to endanger the safety of life

or to prejudice the commercial and legal interests of the flag State or the commercial interests of third parties.

at sea or the security of the vessel and cargo, or to prejudice the commercial and legal interests of the flag State or the commercial interests of third parties.

Amendment 24

Article 7, paragraph 2 (Convention)

2. ***In any case, should*** the action ***have*** been taken ***without adequate grounds for carrying out the operation***, the Member State which carried it out shall be held responsible for damage and losses incurred ***unless the action was taken at the request of the flag State***.

2. ***Where*** the action ***has*** been taken ***in a manner that cannot be justified under this Convention***, the Member State which carried it out shall be held responsible for damage and losses incurred.

Amendment 25

Article 7, paragraph 2a (new) (Convention)

2a. The intervening State shall make good any loss, injury or damage incurred by the natural or legal persons as a result of negligence or mistakes attributable to it during the course of the action taken.

Amendment 26

Article 7, paragraph 3 (Convention)

3. A vessel's period of detention shall be reduced to the absolute minimum and the vessel returned to the flag State or given the right to free passage as soon as possible.

3. A vessel's period of detention shall be reduced to the absolute minimum ***required in order to complete the investigations into the offence in question***, and the vessel ***shall be*** returned to the flag State or given the right to free passage as soon as possible.

Amendment 27

Article 7, paragraph 4 (Convention)

4. Persons detained shall be guaranteed the same rights as those enjoyed by nationals, especially the right to ***have an interpreter and be assisted by a lawyer***.

4. Persons detained shall be guaranteed the same rights as those enjoyed by nationals ***of the State exercising its relevant jurisdiction***, especially the right to ***a fair trial within the meaning of Article 6 of the***

European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and Articles 47 and 48 of the Charter of Fundamental Rights of the European Union.

Amendment 28
Article 7, paragraph 5 (Convention)

5. The period of detention shall be subject to supervision by the courts and to the time limits laid down by the law of the intervening Member State.

5. The period of detention shall be subject to supervision by the courts and to the time limits laid down by the law of the intervening Member State. ***Persons not suspected of having committed an offence shall be released immediately and items that may not be used as evidence shall be returned.***

Amendment 29
Article 8, title (Convention)

SURRENDER OF JURISDICTION

PROVISIONS GOVERNING THE EXERCISE OF COMPETENCE

Amendment 30
Article 8, paragraph 1 (Convention)

1. Each Member State shall have preferential jurisdiction over ***its*** vessels but may surrender it in favour of the intervening State.

1. Each Member State shall have preferential jurisdiction over vessels ***flying its flag*** but may surrender it in favour of the intervening State.

Amendment 31
Article 8, paragraph 2 (Convention)

2. Before taking initial proceedings, the intervening State shall forward to the flag State by fax if possible or other means a summary of the evidence assembled pertaining to all the relevant offences committed, to which the flag State shall respond within one month stating whether it will exercise its jurisdiction or surrender

2. Before taking initial proceedings, the intervening State shall forward to the flag State by fax if possible or other means a summary of the evidence assembled pertaining to all the relevant offences committed, to which the flag State shall respond within one month stating whether it will exercise its ***preferential*** jurisdiction

it and possibly asking for further information should it deem it necessary.

or surrender it and possibly asking for further information should it deem it necessary.

Amendment 32
Article 8, paragraph 3 (Convention)

3. If the time limit referred to in paragraph 2 has lapsed without any decision being notified, the flag Member State shall be deemed to have surrendered its jurisdiction.

3. If the time limit referred to in paragraph 2 has lapsed without any decision being notified, the flag Member State shall be deemed to have surrendered its **preferential** jurisdiction.

Amendment 33
Article 8, paragraph 4 (Convention)

4. If the State whose flag is being flown by the vessel surrenders its preferential jurisdiction, it shall send the **other** Member State the information and documents in its possession. Should **it** decide to exercise its jurisdiction, the **other** State shall transfer to **the preferential State** the documents and evidence it has assembled, the corpus delicti and the persons detained.

4. If the State whose flag is being flown by the vessel surrenders its preferential jurisdiction, it shall send the **intervening** Member State the information and documents in its possession. Should **the flag State** decide to exercise its **preferential** jurisdiction, the **intervening** State shall transfer to **it** the documents and evidence it has assembled, the corpus delicti and the persons detained.

Amendment 34
Article 8, paragraph 6 (Convention)

6. Surrender of detained persons shall not be subject to formal extradition proceedings; an order for detention of the person concerned or an equivalent document shall suffice, provided that the fundamental principles of each Party's legal system are observed. The Intervening State shall certify the length of time spent in detention.

6. Surrender of detained persons shall not be subject to formal extradition proceedings; **the original or a certified copy of** an order for detention of the person concerned or an equivalent document **issued by a judicial authority of the flag State, including in cases where such action is taken in accordance with the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States¹**, shall suffice, provided that the fundamental principles of each Party's legal system are observed. The Intervening State

shall certify the length of time spent in detention.

¹ OJ L 190, 18.7.2002, p. 1.

Amendment 35
Article 8, paragraph 8 (Convention)

8. Without prejudice to the general powers of Member States' Ministries of Foreign Affairs, any communication provided for in this Convention shall, as a rule, pass through their Ministries of Justice.

8. Each Member State shall appoint a central authority, coming under the Ministry of Justice, which shall be responsible for sending, receiving and notifying any communication provided for in this Convention and which shall remain operational twenty-four hours a day throughout the year.

Amendment 36
Article 9, paragraph 1 (Convention)

1. Member States agree to settle disputes between them on the interpretation or application of this Convention, including those concerning damages, by direct negotiation between the respective Ministries of Justice and Foreign Affairs.

deleted

Amendment 37
Article 9, paragraph 2 (Convention)

2. Where agreement cannot be reached using the arrangement in paragraph 1, the Court of Justice of the European Communities shall have jurisdiction to rule on any dispute between Member States regarding the interpretation or the application of this Convention, whenever such dispute cannot be settled by the Council within six months of its being referred to the Council by one of its members.

2. The Court of Justice of the European Communities shall have jurisdiction to rule on any dispute between Member States regarding the interpretation or the application of this Convention, whenever such dispute cannot be settled by the Council within six months of its being referred to the Council by one of its members.

Amendment 38
Article 9, paragraph 2a (new) (Convention)

2a. The Court of Justice of the European Communities shall have jurisdiction to rule on any dispute between Member States and the Commission regarding the interpretation or the application of this Convention.

Amendment 39
Article 9, paragraph 3 (Convention)

3. The Court of Justice of the European Communities shall have jurisdiction, subject to the conditions laid down in paragraphs 4 to 7, to give preliminary rulings on the interpretation of this Convention.

3. The Court of Justice of the European Communities shall have jurisdiction, subject to the conditions laid down in paragraphs 4 to 7, to give preliminary rulings on the interpretation of this Convention ***and on the validity and interpretation of the measures implementing it.***

Amendment 40
Article 10, paragraph 1 (Convention)

1. This Convention shall be ***subject to*** adoption by the Member States in accordance with their respective constitutional requirements.

1. This Convention shall be ***open for*** adoption by the Member States in accordance with their respective constitutional requirements.

Amendment 41
Article 10, paragraph 2 (Convention)

2. Member States shall notify the ***depository*** of the completion of the constitutional procedures for the adoption of this Convention.

2. Member States shall notify the ***Secretary-General of the Council*** of the completion of the constitutional procedures for the adoption of this Convention.

Amendment 42
Article 10, paragraph 3 (Convention)

3. This Convention shall enter into force ninety days after the notification referred to in paragraph 2 by the State, ***Member*** of the

3. This Convention shall enter into force ***for those Member States that have adopted it*** ninety days after the ***date of the***

European Union *at the time of adoption by the Council of the Act drawing up this Convention, which is last to complete* that formality.

notification referred to in paragraph 2 by the **Member** State of the European Union *whose completion of* that formality *means that at least half of the Member States have adopted the Convention.*

Short-term residence permits for victims of trafficking *

{ TC"(A5-0099/2004 - Rapporteur: Patsy Sorensen)"\l3 \n> * MERGEFORMAT }

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

PE 339.589

European Parliament legislative resolution on the proposal for a Council Directive on the residence permit issued to third-country nationals victims of trafficking in human beings or to third-country nationals who have been the subjects of an action to facilitate illegal immigration who co-operate with the competent authorities (14432/2003– C5-0557/2003 – 2002/0043(CNS))

(Consultation procedure - renewed consultation)

The European Parliament,

- having regard to the Council draft (14432/2003)¹,
 - having regard to the Commission proposal to the Council (COM(2002) 71)²,
 - having regard to its position of 5 December 2002³,
 - having been reconsulted by the Council pursuant to Article 67 of the EC Treaty (C5-0557/2003),
 - having regard to Rules 67 and 71(3) of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinions of the Committee on Legal Affairs and the Internal Market and the Committee on Women's Rights and Equal Opportunities (A5-0099/2004),
1. Approves the Council draft as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Instructs its President to forward its position to the Council and Commission.

¹ Not yet published in OJ.

² OJ C 216 E, 28.5.2002, p. 393.

³ OJ C 27 E, 30.1.2004, p. 140.

Amendment 1

Recital 1 (new)

(1) The European Union, in view of enlargement and its cultural affinities with its new neighbours, has an important responsibility to fight trafficking in human beings and to provide help to victims of action to facilitate illegal immigration.

Amendment 2

Recital 2 (new)

(2) Trafficking in human beings is a grave violation of human rights and should be combated actively.

Amendment 3

Recital 3 (new)

(3) With a view to the protection of third-country nationals who are victims of trafficking, Member States should conduct an assessment of the risks such persons run whether they choose to return to their country of origin or not.

Amendment 4

Recital 4 (new)

(4) With a view to enabling victims to regain their independence and ensuring that they do not re-establish contact with the criminal network responsible for their plight, Member States may couple the issue of such a residence permit with participation by the victims in programmes to foster their integration into society or to prepare them for a return to their home country.

Amendment 5
Recital 5 (new)

(5) The Council, the Commission and the European Parliament consider the Brussels Declaration on Preventing and Combating Trafficking in Human Beings as the primary reference text for the further development of anti-trafficking policy at European level. This Directive falls within the scope and is in line with the ambitions of that document.

Amendment 6
Article 4

This Directive shall be without prejudice to the protection extended to refugees, to beneficiaries of subsidiary protection and persons seeking international protection under international refugee law and without prejudice to other human rights instruments, such as the Charter of Fundamental Rights of the European Union and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Amendment 7
Article 6

This directive shall not prevent Member States from adopting or maintaining more favourable provisions for the persons covered by this Directive.

This Directive shall not prevent Member States from adopting or maintaining more favourable provisions for the persons covered by this Directive, ***including minors who have fallen victim to trafficking in human beings or to actions to facilitate illegal immigration.***

Amendment 8
Article 7, paragraph 1

When the competent authorities of the Member States take the view that a third-country national may fall into the scope of this Directive, they shall inform him/her of

When the competent authorities of the Member States take the view that a third-country national may fall into the scope of this Directive, they shall inform him/her of

the possibilities offered under this Directive.

the possibilities offered under this Directive ***in a language which he/she understands.***

Amendment 9

Article 8, paragraph 1, subparagraph 2

The duration ***and starting point*** of ***the*** period ***referred to in the first subparagraph shall be determined according to national law.***

The duration of ***this*** period ***shall be 30 days from the time when the third-country national breaks off all relations with those suspected of committing the offences referred to in Article 2(b) and (c).***

Amendment 10

Article 8, paragraph 2a (new)

2a. The reflection period shall be extended in exceptional cases such as physical or psychological distress or for reasons relating to the safety of third parties.

Amendment 11

Article 9, paragraph 1

1. Member States shall ensure that the third-country nationals concerned who do not have sufficient resources are granted standards of living capable of ensuring their subsistence and access to emergency medical treatment. They shall attend to the special needs of the most vulnerable, including, where appropriate ***and if provided by national law,*** psychological assistance.

1. Member States shall ensure that the third-country nationals concerned who do not have sufficient resources are granted standards of living capable of ensuring their subsistence and access to emergency medical treatment. They shall attend to the special needs of the most vulnerable, ***such as pregnant women, disabled persons, victims of rape or other forms of violence and, insofar as Member States make use of the possibility provided for in Article 3(3), minors,*** including, where appropriate, psychological assistance.

Amendment 12

Article 9, paragraph 3, subparagraph 2

Member States ***may*** provide the third-country nationals concerned with free legal aid, ***if established and*** under the conditions set by national law.

Member States ***shall*** provide the third-country nationals concerned with free legal aid, under the conditions set by national law.

Amendment 13
Article 9, paragraph 3, subparagraph 2a (new)

Member States shall ensure the effective availability of the third-country national to cooperate with the competent authorities for the duration of the residence permit.

Amendment 14
Article 10, paragraph 2a (new)

2a. When issuing a residence permit, Member States shall consider issuing family members accompanying the victim a residence permit for the same limited period.

Amendment 15
Article 10, paragraph 2b (new)

2b. The fact that a third-country national does not have identity papers or is in possession of false papers shall not preclude the issuing and renewal of a residence permit.

Amendment 16
Article 12, paragraph 1, subparagraph 1

1. Member States shall define the rules under which holders of the residence permit shall be authorised to have access to the labour market, to vocational training and education.

1. Member States shall define the rules under which holders of the residence permit shall be authorised to have access to the labour market, to vocational ***and language*** training and education.

Amendment 17
Article 13a (new)

Article 13a
Judicial proceedings
Member States shall protect the privacy

and identity of persons who take part in judicial proceedings and shall guarantee, in particular, that such proceedings are not held in public.

Amendment 18
Article 14, point (ca) (new)

(ca) In addition, Member States shall ensure that unaccompanied minors are accommodated on the basis of arrangements in the following order of preference:

- with adult relatives;***
- with a foster family;***
- in institutions which specialise in accommodating minors;***
- in other forms of accommodation suitable for minors.***

Amendment 19
Article 16, paragraph 1

1. The residence permit issued on the basis of this Directive shall not be renewed ***if the conditions of Article 10(2) cease to be satisfied or if a decision adopted by the competent authorities has terminated the relevant proceedings.***

1. The residence permit issued on the basis of this Directive shall not be renewed ***in the following cases:***

- (a) where it is no longer necessary for the purpose of the investigation or of the judicial proceedings to prolong the stay of the third-country national concerned, or***
- (b) where a decision of the competent authorities concludes the proceedings.***

Amendment 20
Article 16, paragraph 2

2. When the residence permit issued on the

2. When the residence permit issued on the

basis of this Directive expires ordinary aliens law shall apply.

basis of this Directive expires ordinary aliens law shall apply. ***If the third-country national concerned submits an application for another type of residence permit, and without prejudice to the relevant rules of ordinary aliens law, Member States shall take into account their cooperation when considering their application.***

Amendment 21
Article 17, points (a) to (e)

(a) ***if the holder has actively, voluntarily and in his/her own initiative renewed contacts with those suspected of committing the offences in question, or***

(a) ***for reasons relating to the protection of public policy and public security, or***

(b) ***if the competent authority believes that the victim's co-operation or complaint is fraudulent or wrongful, or***

(b) ***when the victim ceases to cooperate, or***

(c) ***for reasons relating to public policy and to the protection of national security, or***

(c) ***if the holder has renewed contacts with those suspected of committing the offences in question, or***

(d) ***when the victim ceases to cooperate;***

(d) ***if the competent authority believes that the victim's cooperation or complaint is fraudulent or wrongful.***

(e) ***when the competent authorities decide to dismiss the case.***

Amendment 22
Article 17, paragraph 1a (new)

Should they decide not to renew or to withdraw a third-country national's residence permit, the competent authorities shall assess the risks to that person's safety regardless of whether or not he or she intends voluntarily to return.

Amendment 23
Article 17, paragraph 1b (new)

A decision taken by the competent authorities not to renew a third-country national's residence permit or to withdraw it may be the subject of an appeal to a court.

Europol: staff regulations, salaries and allowances *

{ TC"(A5-0108/2004 - Rapporteur: Maurizio Turco)"\l3 \n> * MERGEFORMAT }

PE 339.606

European Parliament legislative resolution on the initiative of Ireland with a view to adopting a Council Act amending Europol's staff regulations (5435/2004 – C5-0057/2004 – 2004/0804(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative of Ireland (5435/2004)¹,
 - having regard to the Convention on the establishment of a European Police Office (Europol Convention)² and, in particular, Article 30(3) thereof,
 - having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C5-0057/2004),
 - having regard to Rules 67 and 61(4) of its Rules of Procedure,
 - having regard to the report by the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0108/2004),
1. Rejects the initiative of Ireland;
 2. Calls on Ireland to withdraw its initiative;
 3. Instructs its President to forward its position to the Council and Commission and to the Government of Ireland.

¹ Not yet published in OJ.

² OJ C 316, 27.11.1995, p. 2.

P5_TA-PROV(2004)0137

Europol: staff regulations, salaries and allowances *

{ TC"(A5-0108/2004 - Rapporteur: Maurizio Turco)"\l3 \n> * MERGEFORMAT }

PE 339.606

European Parliament legislative resolution on the initiative of Ireland with a view to adopting a Council Decision adjusting the basic salaries and allowances applicable to Europol staff (5436/2004 – C5-0058/2004 – 2004/0805(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative of Ireland (5436/2004)¹,
- having regard to the Council Act of 3 December 1998 laying down the staff regulations applicable to Europol employees² and, in particular, Article 44 thereof,
- having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C5-0058/2004),
- having regard to Rules 67 and 61(4) of its Rules of Procedure,
- having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0108/2004),

1. Rejects the initiative of Ireland;
2. Calls on Ireland to withdraw its initiative;
3. Instructs its President to forward its position to the Council and Commission and to the Government of Ireland.

¹ Not yet published in OJ.

² OJ C 26, 30.1.1999, p. 23.

P5_TA-PROV(2004)0138

Europol: staff regulations, salaries and allowances *

{ TC"(A5-0108/2004 - Rapporteur: Maurizio Turco)"\l3 \n> * MERGEFORMAT }

PE 339.606

European Parliament legislative resolution on the initiative of Ireland with a view to adopting a Council Decision adjusting the basic salaries and allowances applicable to Europol staff (5438/2004 – C5-0059/2004 – 2004/0806(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative of Ireland (5438/2004)¹,
 - having regard to Council Act of 3 December 1998 laying down the staff regulations applicable to Europol employees² and, in particular, Article 44 thereof,
 - having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C5-0059/2004),
 - having regard to Rules 67 and 61(4) of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0108/2004),
1. Rejects the initiative of Ireland;
 2. Calls on Ireland to withdraw its initiative;
 3. Instructs its President to forward its position to the Council and Commission and to the Government of Ireland.

¹ Not yet published in OJ.

² OJ C 26, 30.1.1999, p. 23.

P5_TA-PROV(2004)0139

Monitoring the application of Community law

{ TC"(A5-0109/2004 - Rapporteur: Sir Neil MacCormick)"\l3 \n> * MERGEFORMAT }

Committee on Legal Affairs and the Internal Market

PE 338.480

Motion for a European Parliament resolution on the Commission Communication on better monitoring of the application of Community law (COM(2002) 725 – C5-0008/2003 – 2003/2008(INI))

The European Parliament,

- having regard to the Commission Communication (COM(2002) 725) – C5-0008/2003),
 - having regard to the Commission's twentieth annual report on monitoring the application of Community law (2002) (COM(2003) 669),
 - having regard to the Commission staff working paper (SEC(2003) 804),
 - having regard to Rules 47(2) and 163 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the Internal Market (A5-0109/2004),
- A. whereas the Commission's practice of annually reporting to Parliament about the application of Community law has been established for over twenty years,
- B. whereas this series of reports makes it possible, over the long run, to judge how far the Community has genuinely committed itself to upholding the rule of law, both through the conduct of the Commission as guardian of the Treaties and through the conduct of the Member States as their ultimate masters,
- C. whereas, in particular, these reports depict both the quality of Member States' performance in transposing directives, and their degree of commitment to the loyal fulfilment of their resultant Community obligations,
- D. whereas the correct monitoring of these actions requires the following:
- qualitative judgements concerning the practices adopted in actually applying the law, and
 - quantitative reporting on the number of directives whose transposition or effective implementation is delayed by reference to established deadlines or whose transposition is otherwise deficient,

- E. whereas much of the Commission's activity in securing the implementation of Community law originates from complaints that citizens make to the Commission about what they consider to be infringements,
- F. whereas the annual average number of complaints lodged by citizens has increased from 536 in 1983-89 to 1346 in 1999-2002,
- G. whereas over the whole period, the primary areas of citizen complaint have been: the single market (36% 1990-98, 27% 1999-2002); the environment (31% 1990-98, 40% 1999-2002); and agriculture (14% 1990-98, 4% 1999-2002); environmental concerns are thus becoming predominant among activist citizens,
- H. whereas the increase in the number of complaints illustrates the vital role that activist citizens play in the application of Community law,
- I. whereas in its resolution of 3 June 2003 on the Commission's eighteenth and nineteenth annual reports about the implementation of Community law¹, Parliament called on the Commission to keep complainants fully informed of the progress of their complaints and to copy to complainants all correspondence exchanged between the Commission and Member States in pursuance of their complaint,
- J. whereas it appears that the Commission generally maintains a satisfactory degree of vigilance in upholding the rule of law in respect of the matters covered in the twentieth report and its predecessors; whereas these reports constitute in themselves an essential tool for Parliament to play its role in scrutinising the performance of the executive,
- K. whereas the number of preliminary references is a result of the quality of Community legislation,
- L. whereas failure by the Community legislature to produce legislation of good quality can itself be detrimental to the correct understanding and application of Community law, hence faithful observance of the inter institutional agreement of 16 December 2003 on Better law-making² will be of great importance and should be tracked in future annual reports,
- M. whereas Member States regularly fail to fulfil, or at least to fulfil expeditiously, some of the obligations that their Governments freely undertake as participants in the legislative process of the Community, and sometimes show a cynical disregard for their manifest obligations by deferring compliance until the latest possible stage in an enforcement action, or by disregarding legal obligations (e.g. those under the Stability and Growth Pact) so as to bring about de facto legal change,
- N. whereas the Community institutions have a duty to ensure that the citizens of Europe can fully exercise their rights in the Union, in particular as regards access to justice and the implementation of rights that have been judicially declared and upheld after due process of law,

¹ P5_TA(2003)0231.

² OJ C 321, 31.12.2003, p. 1.

- O. whereas the Commission has to undertake some responsibility for assisting Member State authorities to achieve a timely transposition and efficient implementation at regional and local as well as at central state level,
- P. whereas the Commission has developed its SOLVIT system for solving certain politically uncontroversial problems of individual application of Community law through a network of administrative agencies of Member States; whereas this system is available to MEPs and their assistants,
1. Welcomes the improvements in monitoring suggested by the Commission in its Communication;
 2. Welcomes the Commission's commitments in response to recommendations by the Ombudsman about the Commission's relations with complainants (COM (2002) 141 final), but regrets that they fall short of keeping complainants fully informed of the progress of their complaints and copying to complainants all correspondence exchanged between the Commission and Member States in pursuance of their complaint;
 3. Welcomes the Commission's resolve, stated in the aforementioned working paper SEC (2003) 804, to ensure, especially in field of environmental law, that Community rules are 'enforcement-friendly', that guidelines and interpretative texts are prepared in consultation with all stakeholders, that there is proactive contact with Member States (including, it is hoped, their relevant regional authorities), and that use is made of the informal EU network on implementing environmental law;
 4. Generally supports the Commission's efforts to solve problems of transposition proactively rather than reactively;
 5. Reiterates its desire to see enhanced cooperation between Members of the European Parliament and, including, where appropriate, regional or other local Members, to aid and increase effective scrutiny of European matters at national level; considers that parliaments at all levels play a valuable role in the monitoring of the application of Community law, thus helping to strengthen the democratic legitimacy of the Union and bring it closer to its citizens;
 6. Reiterates, therefore, its recommendation to the Commission to send its annual reports on the monitoring of the application of Community law to national parliaments for transmission, as may be appropriate, to the relevant internal parliaments;
 7. Deplores the fact that, notwithstanding the Commission's assiduous activity to ensure proper application of Community law, there remain glaring examples of drawn-out and pertinacious failures by Member States to comply with declared obligations, thereby undermining the ideal of the Union as a Community based on law;
 8. Welcomes the Commission's intention to give priority to infringement proceedings under Article 228 EC, and to reinforce the machinery at its disposal for performing its task of monitoring the implementation of Community law;

9. Calls once again on the Commission to set short deadlines for the pre-litigation phase of the procedure for breach, which should be concluded by a predefined deadline, to be established from the outset;
10. Recalls that petitions forwarded by individuals to the Commission, the Ombudsman and Parliament's relevant committees enable the European Union to assess the way in which Community law is being implemented at national and European level;
11. Calls once again on the Commission to make every effort to shorten the relatively long delay in dealing with complaints or petitions and to find practical solutions to the problems submitted by deciding, upon receipt of the case, whether alternative methods, such as package meetings, SOLVIT or formal procedures are more appropriate;
12. Reiterates its belief that close cooperation and monitoring arrangements between the Commission, the Council, the Ombudsman and Parliament's relevant committees are essential to ensure effective intervention in all cases where the petitioner has justifiably complained of an infringement of Community law;
13. Strongly deplores the conduct of the Commission towards Parliament and, in particular, its competent committee in the case concerning Lloyd's of London, in relation to which there has been an obstinate refusal to communicate fully with Parliament on all questions it has raised;
14. Reiterates, yet again, its request for the Commission to include in its future annual reports on the monitoring of the application of Community law a chapter devoted to the petitions forwarded to it by Parliament's competent committees;
15. Reiterates its request that the Commission draw up a list of all the reports relating to the application of Community law, whether of a general or sectoral nature, by the national authorities of the European Economic Area Member States;
16. Welcomes the steps the Commission has taken in monitoring the area of freedom, security and justice in accordance with the principles of Community law, and takes note of the contents of Section 2.15 of the Commission's twentieth annual report; however, in this context, reiterates its call for the Commission to produce, in future, a report on the application of European Union law which includes matters falling within the second and third pillar;
17. Observes that the courts of some Member States virtually never request preliminary rulings pursuant to Article 234 of the Treaty, and repeats its call to the Commission to investigate the reasons for this and report thereon to Parliament;
18. Notes with concern that the inadequate familiarity of members of national judiciaries and lawyers with Community law seriously hinders its full application;
19. Welcomes initiatives to facilitate out-of-court settlement of disputes such as the European extra-judicial network and the Financial services complaints network; calls on the Commission to carefully monitor the progress of these bodies and report its results to the European Parliament as this process will constitute another helpful indicator of the application of Community rules and access to justice;

20. In this connection, warmly welcomes the recent further development of the SOLVIT network; notes that generalised access for MEPs is now possible and that this should be made available on a systematic basis to all MEPs and their assistants; calls on the Commission and Member States to promote the network widely to potential users and to devote adequate resources thereto so as to ensure that it can deal with an increase in case flow;
21. Encourages reflection on how the role of national and regional Ombudsmen in monitoring the application of Community law might be developed;
22. Notes with concern that recent case law concerning individual applicants' right to institute proceedings before the Court of Justice fails to provide uniform interpretation and application of Community law, and regrets that even the Draft Constitution takes only timid steps towards improving the situation in this regard;
23. Instructs its President to forward this resolution to the Council, the Commission, the Court of Justice of the European Communities, the Ombudsman and the Parliaments of the Member States.

Biological and chemical agent attacks (health security)

{ TC"(A5-0097/2004 - Rapporteur: Gerhard Schmid)"\l3 \n> * MERGEFORMAT }

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

PE 329.941

European Parliament recommendation to the Council on cooperation in the European Union on preparedness and response to biological and chemical agent attacks (health security) (2003/2187(INI))

The European Parliament,

- having regard to the proposal for a recommendation to the Council by Anna Terrón i Cusí and Gerhard Schmid on behalf of the PSE Group on dealing with the possible threat of biological and chemical weapon attacks (B5-0407/2003),
- having regard to Rule 49(3) of its Rules of Procedure,
- having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0097/2004),
- A. whereas the threat of terrorist attacks against Member States involving chemical and biological weapons is being discussed,
- B. whereas, in addition to early-warning systems in Member States, information exchange and sharing of laboratory capacities, it has also been suggested that vaccines, antibiotics, etc. be stockpiled at European level,
- C. whereas early-warning systems in Member States, information exchange and the sharing of laboratory capacities, as well as the stockpiling of vaccines, antibiotics, etc., could have a considerable impact on the budgets of the EU and the Member States and require targeted legislative measures,
- D. whereas budgetary and legal steps could be justified only on the basis of a clear risk analysis demonstrating a genuine probability of terrorist attacks in the EU involving biological and chemical weapons,
- E. whereas the necessary analyses clearly exceed the capabilities of the Commission,
- 1. Addresses the following recommendations to the Council:
 - (a) that it commission a realistic analysis of the threat posed, making use of European cooperation between national police forces and involving Europol and bearing in mind the results of cooperation between intelligence services in the fight against terrorism, in order to form the basis of a serious EU response,

- (b) that it communicate to Parliament in the appropriate form the general findings of this analysis that can, as such, be made public, so as to provide it with a rational basis for any relevant budgetary consultations,
 - (c) that it initiate, in the light of the findings of the analysis, the necessary legislative steps to deal with biological and chemical weapons attacks;
2. Instructs its President to forward this recommendation to the Council and, for information, to the Commission.

Data protection

{ TC"(A5-0104/2004 - Rapporteur: Marco Cappato)"\l3 \n> * MERGEFORMAT }

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

PE 339.591

European Parliament resolution on the First Report on the implementation of the Data Protection Directive (95/46/EC) (COM(2003) 265 – C5-0375/2003 – 2003/2153(INI))

The European Parliament,

- having regard to the First Report on the implementation of the Data Protection Directive (95/46/EC) (COM(2003) 265 - C5-0375/2003),
- having regard to the texts that in international law protect the right to privacy, and notably Article 12 of the Universal Declaration of Human Rights of 10 December 1948, Article 17 of the International Covenant on Civil and Political Rights of 16 December 1966, Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms¹ of 4 November 1950, the Convention for the protection of individuals with regard to automatic processing of personal data² of 28 January 1981 and the recommendations adopted by the Council of Europe,
- having regard to Article 6 of the TEU (respect for human rights and fundamental freedoms in the EU) and Article 286 of the EC Treaty, as well as Articles 7 (respect for private and family life) and 8 (protection of personal data) of the Charter of Fundamental Rights of the European Union,
- having regard to the Community legislation which protects the right to privacy and to data protection, and notably European Parliament and Council Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data³ and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector⁴,
- having regard to other EU instruments concerning data protection in the field of the third pillar, and notably to the draft Greek Presidency working document on common rules for the protection of personal data within the framework of the third pillar, and having regard to the announcement made by Commissioner Vitorino that the Commission intended to propose a legal instrument on this issue in 2004⁵,

¹ ETS No 005.

² ETS No 108.

³ OJ L 281, 23.11.1995, p. 31.

⁴ OJ L 201, 31.7.2002, p. 37.

⁵ See Verbatim Report of Proceedings, sitting of Wednesday, 19 November 2003.

- having regard to the opinions of the working party on the protection of individuals with regard to the processing of personal data established by Article 29 of Directive 95/46/EC (the "Article 29 Working Party"),
 - having regard to the documents relating to the transfer of transatlantic passengers' personal data to the USA, with particular reference to: the opinions of the Article 29 Working Party, the Commission communications, the US Undertakings, the opinion of the Belgian Committee on the Protection of Privacy on complaints by some passengers, and the complaint lodged with the Commission regarding the violation of Council Regulation (EEC) No 2299/89 of 24 July 1989 on a code of conduct for computerized reservation systems¹,
 - having regard to the Court of Justice judgment of 20 May 2003 in the *Österreichischer Rundfunk and Others* case²,
 - having regard to Rule 47(2) and Rule 163 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinions of the Committee on Legal Affairs and the Internal Market and the Committee on Industry, External Trade, Research and Energy (A5-0104/2004),
- A. whereas the right to privacy is a fundamental human right, as set out in all the main legal instruments that guarantee citizens' freedoms and rights at international, European and national level,
 - B. whereas the EU has developed a legal regime aimed at guaranteeing citizens' privacy through a high standard of data protection in areas covered by the first pillar,
 - C. whereas, due to the current pillar structure of the EU, activities that fall within the remit of the second and third pillars are excluded from this legal regime and are partially subject to fragmented specific provisions; whereas the European Parliament is only partially consulted and informed and whereas the Court of Justice has limited powers in this area,
 - D. whereas Directive 95/46/EC charges the Commission with reporting to the Council and the European Parliament on the implementation of the directive and with proposing, if necessary, suitable amendments,
 - E. whereas, since the terrorist attacks of September 2001, measures aimed at increasing security by modifying privacy and data protection rights have been adopted or are planned at national, European and international level,
 - F. whereas data transfers to third states and organisations are an area of concern, both because of disparities in the laws of the Member States, some of which are excessively permissive and other excessively rigid, and, above all, because the binding assessment of the adequacy of the protection provided by recipients for a fundamental right of European

¹ OJ L 220, 29.7.1989, p. 1.

² Joined cases C-465/00, C-138/01 and C-139/01, ECR I-4989.

citizens comes within the remit of the executive body, the Commission, and not that of Parliament,

- G. whereas negotiations are still underway between the EU and the US on the issue of the illegal transfer of transatlantic passengers' data to the US and whereas Parliament has asked the Commission to take action pursuant to Article 232 of the EC Treaty,
- H. whereas the Belgian Committee on the Protection of Privacy has ascertained that the personal data of some European transatlantic passengers - including a Member of the European Parliament - were transferred to the USA illegally, in violation of Belgian law and European directives,
- I. whereas the Article 29 Working Party stated in its opinion on the transfer to the USA of data relating to transatlantic passengers that 'the progress made does not allow a favourable adequacy finding to be achieved', and whereas a large number of further issues need to be resolved before the Commission can take an adequacy decision,
- J. whereas the EU, its institutions and the Member States are required to comply with the Charter of Fundamental Rights of the EU, particularly Article 8 thereof, the European Convention on Human Rights and Fundamental Freedoms and the general principles of international law, and whereas the current policies of data retention and data transfer to third countries are likely to result in their being seriously breached,
- K. whereas the Commission and Member States and national privacy protection authorities are responsible for the effective implementation of national and European privacy laws and for punishing violations of those laws,
- L. whereas national and European laws on the transfer of personal data to third countries have been flagrantly breached by the transfer of transatlantic passengers' personal data to the US law-enforcement authorities, and whereas the Commission, the Member States and some privacy protection authorities - particularly those which under national law have the power to block data transfers - have substantially colluded in infringing the legislation and the principle of legality,
- M. whereas, in the global context of an Internet information society, solutions cannot be found within the EU only,

on the need for a comprehensive and trans-pillar European privacy and data protection regime

1. Criticises the extremely serious delays that have occurred within the Commission in this matter and urges it to propose within the first half of 2004, as announced, a 'legal instrument' on the protection of privacy in the third pillar; this instrument should be binding in nature and aimed at guaranteeing in the third pillar the same level of data protection and privacy rights as in the first pillar; it should harmonise, in accordance with those high standards, the current rules on privacy and data protection concerning Europol, Eurojust and all other third-pillar organs and actions, as well as any exchange of data between them and with third countries and organisations;

2. Considers that, in the long term, Directive 95/46/EC should be applied, following the appropriate modifications, to all areas of EU activity, so as to guarantee a high standard of harmonised and common rules for privacy and data protection;
3. Believes that compliance with privacy and data protection rules should be guaranteed by national supervisory authorities, a common EU authority, to which citizens will have the right to appeal, and the Court of Justice; maintains that Parliament should also be consulted on, and have decision-making powers in respect of, all proposals concerning or having an impact on the protection of privacy within the EU, such as international agreements involving its bodies, adequacy findings and so on;
4. Considers that immediate steps should be taken to facilitate enjoyment by citizens of their right to privacy and protection of their personal data (access to data, correction, amendment, deletion, etc.), involving the introduction of a single procedure for national privacy authorities regarding data stored in national and European databases coming under the first and third pillars;
5. Welcomes the fact that the Commission has conducted an open and in-depth consultation and debate with all interested parties (Member State governments and supervisory authorities, organisations, companies, citizens), on-line and off-line, on the implementation of the directive, and takes note of the results of this consultation;

on the implementation of Data Protection Directive 95/46/EC

6. Deplores the fact that some Member States did not implement the directive before the deadline for transposition of 24 October 1998, thereby obliging the Commission to take legal action on 11 January 2000 against France, Luxembourg, the Netherlands, Germany and Ireland, but notes that all Member States have now done so; calls on Ireland to immediately notify to the Commission its recent law of implementation; regrets the fact that the tardy implementation of the directive by the Member States and the continuing differences in the way in which it is applied at national level have prevented economic operators from drawing maximum benefit from it, and have blocked some cross-border activities within the European Union;
7. Calls on all the parties concerned, European institutions, Member States and data protection authorities, as well as economic and societal actors, to make their contribution and cooperate to ensure correct implementation of the data protection principles regulated by the directive;
8. Shares the view of the Commission that, since implementation of the directive has been slow and experience with it is still very limited, the directive should not be amended for the time being (except as indicated in paragraph 16), and that current shortcomings in the implementation of the directive should be overcome by actions taken at the European and national level by Member States and data protection authorities following the programme announced in the Commission's communication;
9. Points out that the completion of the internal market is conditional upon guaranteed data protection; accordingly, calls on the Commission to highlight the areas in which diverging interpretations of the directive are hampering the smooth operation of the internal market, and to report on this to the European Parliament;

10. Shares the Commission's view that, if after a deadline of six months this cooperation does not produce the results expected, it will bring those Member States failing or refusing to comply with the directive to Court; considers, in this connection, that the Commission should show particular vigilance and determination as regards the proper application of legal exceptions to privacy laws, so as to ensure compliance with the ECHR and the related case-law;

on data transfers to third states or organisations

11. Welcomes the intention of the Commission to simplify the regulatory framework for enterprises as regards requirements for international transfers of data;
12. Recalls that no exception should be allowed to the principle that first-pillar-related data can be transferred to third countries and organisations only if their level of data protection is similar to that of the EU;
13. Points out, notably to Europol, Eurojust and other third-pillar organs, that law enforcement-related data can only be transferred on a case-by-case basis to countries or organs that respect human rights and fundamental freedoms, democracy, the rule of law and European data protection standards, such as the data protection principles laid down by Council of Europe Recommendation R (87) 15 on the use of data of a personal nature in the police sector; asks, furthermore, to be consulted before - and receive reports after - such transfers take place; urges Europol and Eurojust to clarify and make available to citizens and to Parliament the necessary information on the exchange of data, whether personal or not, with third countries and organisations;
14. Reiterates that, as stated in the opinion of the Belgian Committee on the Protection of Privacy, the opinions of the Article 29 Working Party and the report of the EU network of experts on human rights, EU data protection standards are seriously infringed when personal data are, without informing and obtaining the consent of the data subject, transferred or accessed directly and systematically by a third state party or law-enforcement authority, notably when data are collected for another purpose and without judicial authorisation, as in the case of US authorities accessing transatlantic passenger data collected in the EU by airline companies and electronic reservation systems;
15. Agrees with the Article 29 Working Party's opinion on the inadequacy of the current privacy arrangements in the United States and on the latest version of the Undertakings, as well as on the remaining problem areas; considers the progress made in this connection during a year of negotiations between the Commission and the US authorities to be totally inadequate;
16. Proposes that the directive be amended so as to make the assessment of the adequacy of the protection provided for the personal data of European citizens by a third country to which such data are to be transferred subject to Parliament's approval;
17. Calls for the agreements currently being negotiated or already negotiated which entail the transmission of personal data between the EU and third countries or bodies to guarantee an adequate level of data protection and, in any case, to maintain the level guaranteed in Directive 95/46/EC;

on exceptions to privacy laws

18. Believes that Member States' laws providing for the wide-scale retention of data related to citizens' communications for law-enforcement purposes are not in full conformity with the European Convention on Human Rights and the related case-law, since they constitute an interference with the right to privacy and fall short of the requirements of: being authorised by the judiciary on a case-by-case basis and for a limited duration, distinguishing between categories of people that could be subject to surveillance, respecting confidentiality of protected communications (such as lawyer-client communications), and specifying the nature of the crimes or the circumstances that authorise such an interference; believes, furthermore, that serious doubts arise as to their necessity within a democratic society and - as specified by Article 15 of Directive 2002/58/EC - as to their appropriateness and proportionality;
19. Asks the Commission to produce a document on the right to privacy and the conditions for exceptions to be legal, on the basis of the European Convention on Human Rights, the related case-law and EU data protection directives and urges the EU institutions to launch an open and transparent debate on the basis of this document;

other concerns

20. Asks the Member States to respect the criteria of legal clarity and legal certainty so as to ensure better regulation when implementing the directive in order to avoid any unnecessary burden on enterprises and particularly on SMEs;
21. Stresses that the free movement of personal data is vital for the smooth operation of virtually all Union-wide economic activities; it is therefore necessary to resolve these differences of interpretation as soon as possible, to enable multinational organisations to frame pan-European data protection policies;
22. Stresses the need for the Member States and the European institutions to adopt an equivalent level of protection of fundamental rights and protection of individuals in applying both Directive 95/46/EC and European Parliament and Council Regulation (EC) No 45/2001 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 data¹;
23. Calls on the Commission to adopt an approach seeking to harmonise this directive with other legislative provisions, such as the proposal for a European Parliament and Council directive for the approximation of laws, regulations and administrative provisions of the Member States concerning consumer credit, in order to avoid inconsistencies between such proposals;
24. Calls on Member States and supervisory authorities to create a less complex and burdensome environment for data controllers and agrees with the Commission on the need to avoid imposing requirements that could be dropped without any detrimental effects for the high level of protection guaranteed by the directive;

¹ OJ L 8, 12.1.2001, p. 1.

25. Stresses that the management and protection of data are nowadays a critical factor of success for companies;
26. Agrees with the Commission on the need for improvements to be made in order for economic operators to have a wider choice of standard contractual clauses in the field of data protection and that these should possibly be based on clauses submitted by business representative associations;
27. Calls on Member States to ensure that data protection authorities are provided with the necessary means to comply with the tasks provided for by Directive 95/46/EC, and that they are independent and autonomous from national governments; considers that data protection authorities should keep enhancing their efficiency and effectiveness and play a more active role at national and European level in the framework of the Article 29 Working Party, for instance in helping to implement the programme proposed by the Commission and in ensuring that the law is implemented;
28. Deplores that seven Member States - Belgium, Germany, Greece, France, Luxembourg, the Netherlands and Portugal - have not respected the deadline for implementation of Directive 2002/58/EC set for 31 October 2003, and calls on them to take the necessary measures;
29. Calls on the Commission, the Member States and national privacy authorities to carry out annual assessments of compliance with national and international privacy laws, irrespective of the pillar concerned, and, where appropriate, to submit amendments to legislation, to forward these amendments to the relevant bodies - particularly parliamentary bodies - and to make them publicly available, inter alia on the Internet;
30. Expresses concern at the development of SIS and the Council plans under which SIS II should allow new categories of alerts (persons and objects) and new sectors to be added, alerts to be inter-linked, the period during which alerts may be stored to be changed, biometric data (especially photographs and fingerprints) to be registered and transferred, and access to be provided to new authorities, namely Europol, Eurojust and national judicial authorities, where necessary, for purposes other than those originally laid down, such as the service of European arrest warrants; deplores, furthermore, the legal confusion created by the fact that SIS covers both first and third pillar matters, with different levels of privacy protection;
31. Expresses concern at the general approach taken by the Council to proposals seeking to incorporate biometric data (digital photographs and fingerprints) into visas and residence permits using an electronic chip, particularly because such data can easily be copied into centralised databases when checks are carried out; is concerned that new developments in the field of data protection, such as the possible use of biometrics, will put more demands on the supervisory authorities that are currently 'under-resourced for their wide range of tasks' (COM(2003) 265); calls on the Member States to make additional resources available for the data protection supervisory authorities to ensure the effective functioning of the system;
32. Calls on the Member States and national and European authorities to ensure that privacy legislation is not misused for the purposes or with the result of undermining the right of

access to documents, administrative transparency and institutional advertising, or to make it excessively difficult for individuals to exercise their 'right to be known'; calls on the Commission to submit a report, on the basis of an opinion of the Article 29 Working Party, on this type of abusive conduct and to put forward guidelines and, where appropriate, legislative measures with a view to guarding against such practices;

33. Calls on the Commission to continue to monitor the issue of video surveillance, not least in the light of national judicial rulings, and awaits the submission of the proposal on the protection of privacy at the workplace, of which advance notice has been given;
34. Urges Eurojust to state exactly which national and European provisions it has been and is implementing, given that there is much confusion and some serious doubts surrounding this matter;
35. Believes that self-regulation is a good means of avoiding excessively detailed legislation and calls on the business community to create a European code of conduct on personal data protection;
36. Asks for an additional effort towards internationally agreed principles to be made at the national, European and international level in order to improve the application of OECD guidelines and the Council of Europe Convention;
37. Points out that privacy and personal data protection should be part of the educational curriculum related to computers and the Internet; asks the Member States and the Commission to promote citizens' awareness in the field of data protection rights;

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38. Instructs its President to forward this resolution to the Council and the Commission, the governments and parliaments of the Member States, the national privacy authorities, Europol and Eurojust and the United States Government.

The rights of prisoners in the European Union

{ TC"(A5-0094/2004 - Rapporteur: Maurizio Turco)"\l3 \n> * MERGEFORMAT }

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

PE 339.594

European Parliament recommendation to the Council on the rights of prisoners in the European Union (2003/2188(INI))

The European Parliament,

- having regard to the proposal for a recommendation to the Council by Marco Cappato and Giuseppe Di Lello Finuoli on behalf of the GUE/NGL Group on the rights of prisoners in the European Union (B5-0362/2003/rev.),
- having regard to the European Union instruments dealing with the protection of human rights, in particular Articles 6 and 7 of the Treaty on European Union, the Charter of Fundamental Rights of the European Union, in particular Article 4 thereof, and the draft European Constitution, which would make that Charter binding,
- having regard to the international instruments dealing with human rights and banning torture and inhuman or degrading punishment or treatment, in particular the Universal Declaration of Human Rights (Article 5), the International Pact on Civil and Political Rights (Article 7), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol to that Convention on the establishment of a system of regular visits by independent international and national bodies to places of detention,
- having regard to the Council of Europe instruments dealing with human rights and the prohibition of torture and inhuman or degrading punishment or treatment, in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 3), the protocols to that Convention and the case-law of the European Court of Human Rights, the 1987 European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, which established the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), and the CPT's reports,
- having regard to the instruments which deal more specifically with the rights of persons who have been deprived of their liberty, in particular: at United Nations level, the standard minimum rules on the treatment of prisoners and the declarations and principles adopted by the General Assembly; at Council of Europe level, Resolution (73)5 on standard minimum rules for the treatment of prisoners, Recommendation R(87)3 on European prison rules, the other recommendations adopted by the Committee of Ministers¹ and the recommendations adopted by the Parliamentary Assembly,

¹ For an exhaustive list of the Council of Europe's recommendations and resolutions in the penal sphere:

- having regard to the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (which were adopted by the General Assembly in its Resolution 45/113 of 14 December 1990) and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), which were adopted by the General Assembly in its Resolution 40/33 of 29 November 1985,
 - having regard to its annual resolutions on respect for human rights in the European Union, its resolution of 18 January 1996 on poor conditions in prisons in the European Union¹, and its resolution of 17 December 1998 on prison conditions in the European Union: improvements and alternative penalties²,
 - having regard to its repeated calls to the Commission and Council to propose a framework decision on the rights of prisoners³,
 - having regard to the Council resolution on the treatment of drug addicts in prison and the Council Recommendation of 18 June 2003 on the prevention and reduction of health-related harm associated with drug dependence⁴,
 - having regard to the report of the EU Network of Independent Experts in Fundamental Rights on the situation of fundamental rights in the EU and its Member States in 2002,
 - having regard to Rule 49(3) of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0094/2004),
- A. whereas the European Union has set itself the task of developing an area of freedom, security and justice, and whereas, pursuant to Article 6 of the Treaty on European Union, it respects human rights and fundamental freedoms, thereby taking on positive obligations which it must meet in order to honour that commitment,

http://www.coe.int/T/F/Affaires_juridiques/Coopération_juridique/Emprisonnement_et_alternative_s/Instruments_juridiques/Liste_instruments.asp#TopOfPage

¹ OJ C 32, 5.2.1996, p.102.

² OJ C 98, 9.4.1999, p.299.

³ See its recommendation of 6 November 2003 to the Council on procedural safeguards for suspects and defendants in criminal proceedings throughout the European Union, paragraph 23: "Urges the Council and Commission to speed up the investigation on the condition of prisoners and of prisons in the EU, with a view to adopting a framework directive on prisoners' rights and common minimum standards to guarantee such rights on the basis of Article 6 TEU" (P5_TA (2003)0484); and its resolution of 4 September 2003 on the situation as regards fundamental rights in the European Union (2002), paragraph 22: "Considers, at a general level, that efforts must also be made in a European area of freedom, security and justice to mobilise European capacities to improve the operation of the police and prison system, for example ... by drawing up a framework decision on minimum standards to protect the rights of prisoners in the EU". (P5_TA(2003)0376).

⁴ OJ L 165, 3.7.2003, p. 31.

- B. whereas the application of the principle of the mutual recognition of criminal law decisions and the entry into force of the European arrest warrant have created an urgent need for additional measures in the area of the effective protection of human rights and fundamental freedoms, in particular in the light of the fact that the number of Member State nationals held in another Member State may rise as a result,
- C. whereas, according to Council of Europe statistics, on 1 September 2002 a total of 539 436 persons were being held in prison in the enlarged European Union, statistics which paint an alarming picture:
- overcrowding;
 - excessive increase in the prison population;
 - rise in the number of foreign nationals being held;
 - high numbers of remand prisoners;
 - numerous cases of death and suicide,
- D. whereas the CPT's reports draw attention to the persistence of certain serious problems, such as ill-treatment and the unsuitability of prison facilities, activities and health care,
- E. whereas Article 3 of the European Convention on Human Rights and the case-law of the European Court of Human Rights impose on the Member States not only negative obligations, by banning them from subjecting prisoners to inhuman and degrading treatment, but also positive obligations, by requiring them to ensure that prison conditions are consistent with human dignity and that thorough, effective investigations are carried out if such rights are violated,
- F. whereas the Council of Europe is in the process of revising its European Prison Rules, and whereas a proposal on the drafting of a European Prisons Charter has been put forward in the Parliamentary Assembly by Michel Hunault, rapporteur on the situation of European prisons and pre-trial detention centres,
- G. whereas only eight EU Member States and accession countries (Austria, Denmark, Spain, Finland, Italy, Malta, Sweden and the United Kingdom) have signed the Optional Protocol to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and whereas only three (Spain, Malta and the United Kingdom) have ratified it,
- H. whereas some Member States grant national MPs and MEPs the right to visit and inspect prisons, and whereas it has called for that right to be granted to MEPs throughout the territory of the EU¹,

¹ See, for example, paragraph 41 of its abovementioned resolution of 17 December 1998: 'Calls for Members of the European Parliament to have right to visit and inspect prisons and detention centres for refugees on the territory of the European Union'.

- I. whereas one of the problems to which Member States frequently draw attention is the lack of resources available to improve prisons, and whereas it may be necessary to create a budget heading with a view to encouraging them to comply with high standards and the CPT's recommendations,
- J. whereas providing decent conditions for prisoners and granting them access to schemes designed to prepare them for a return to society help to reduce the likelihood that they will re-offend,
- K. having regard to the existence of special prison regimes, whether legal or de facto, and pointing out that the CPT has expressed concern at the Italian regime known as 41 bis, that the European Court of Human Rights has ruled against Italy on account of the length of time which it has taken the Supervisory Court to consider the appeals lodged by a prisoner, and that in its report on 2002 the EU Network of Independent Experts in Fundamental Rights stated that 'insofar as this exceptional regime comprises ... measures that bear no relation whatsoever to the objective of security, we may question its compatibility with the approach advocated by the CPT',
- L. whereas the situation in 'residence centres for foreigners' is extremely alarming, as has recently been reported by Médecins sans Frontières in the case of Italy, for example, and whereas asylum-seekers' rights to legal assistance and healthcare are being violated,
- M. whereas the Member States have given an undertaking in the Council of Europe to extend the use of penalties which offer an alternative to prison and imprisonment,
- N. whereas the Council has adopted resolutions and recommendations (which are not always implemented by the Member States) concerning the specific problem of drug dependence and the reduction of the related risks, dealing in particular with the treatment of drug dependence in prison or outside,
- O. whereas, under the Italian Presidency, the Council launched an initiative on prisons,
 - 1. Addresses the following recommendations to the Council:
 - (a) continue its activities on matters relating to prisoners, in particular by coordinating a joint position to which the Member States and accession countries can subscribe and by encouraging the Council of Europe to revise its European Prison Rules, incorporating a higher degree of protection on the basis of the principles drawn up by the CPT and the European Court of Human Rights;
 - (b) encourage, on the basis of a joint contribution subscribed to by all the EU Member States, the drafting of a European Prisons Charter covering all the Council of Europe's Member States;
 - (c) work to ensure that such a Charter incorporates detailed rules, binding on the Member States, concerning:
 - a prisoner's right to have access to a lawyer, to healthcare and to notify a third person that he or she has been detained;

- the right to physical and mental safety, in particular protection against violence committed by fellow prisoners and the prevention of suicide;
- prison conditions: health, accommodation, cleanliness, ventilation, light, food;
- the right of access to internal and, if necessary, external medical services;
- re-education, training, rehabilitation and reintegration into society and the workforce, in particular through the provision of information to prisoners concerning the resources available to help them prepare for such reintegration;
- the separation of categories of detained persons: juveniles, persons on remand, convicted criminals;
- specific measures concerning vulnerable groups: juveniles, women, persons with psychiatric or physical problems, the sick, the elderly, persons likely to commit suicide, drug addicts, foreigners, asylum-seekers, etc.;
- special protection for juveniles by means of:
 - the provision that imprisonment is a last resort to be turned to when all other alternatives have been exhausted,
 - supervisory staff trained to deal with the challenges of working with the age group concerned and with that group's specific needs,
 - an appropriate multidisciplinary activity programme combining sport, education and technical and vocational training, and focusing on skills which will facilitate social reintegration following release,
 - fair treatment for both men and women in terms of access to activities whilst in prison, pursuant to Rule 26.4 of the Beijing Rules;
- the protection of women by means of:
 - physical separation from men,
 - female supervisory staff or, if that proves physically impossible, a mixed supervisory staff as a minimum requirement,
 - an appropriate response to women's specific health and hygiene needs, including screening for breast cancer and cervical cancer;
- special protection for pregnant women and for the mothers of young children by means of:
 - a diet suitable for pregnancy,
 - gynaecological examinations and labour taking place without handcuffs or any other form of restraint,

- babies to be born outside prison,
 - prison accommodation for mothers and their young children which does not reflect the prison world and which is geared to children's needs;
 - visiting rights for relatives, friends and third parties:
 - the right to an emotional and sex life, for which suitable arrangements must be made and areas provided;
 - the provision of visiting rooms enabling families to be reunited - in particular areas equipped for activities involving imprisoned parents and their children;
 - an effective right of appeal to enable prisoners to uphold their rights in the face of arbitrary punishment or treatment;
 - special security regimes;
 - the greatest possible use of open or semi-open prisons and the promotion of measures which offer an alternative to imprisonment such as, in particular, community service;
 - the provision of information to prisoners concerning their rights, also to be made available on paper and in a language which the prisoner understands;
 - training for prison staff and law-enforcement officers;
- (d) declare that should this exercise not be completed in the near future, or should the outcome prove unsatisfactory, the European Union will draw up a Charter of the rights of persons deprived of their liberty which is binding on the Member States and which can be invoked before the Court of Justice;
- (e) urge the Member States and accession countries to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which establishes a system of regular visits by independent international and national bodies to places of detention and which confers on those bodies the task of inspecting prisons and hearing appeals by prisoners and of drawing up a public annual report for the relevant parliaments, and encourage the European Union to incorporate a call to sign and ratify the Optional Protocol into its policy vis-à-vis third countries;
- (f) take measures at Union level so that national MPs are guaranteed the right to visit and inspect prisons and this right is likewise granted to MEPs on the territory of the EU;
- (g) urge the Member States to take action designed to prevent prison suicides and to carry out impartial investigations systematically in cases where a prisoner dies in prison;
- (h) initiate an assessment of the laws of the Member States in order to verify that they are consistent with the standards established by the Council of Europe, the CPT, the European Court of Human Rights and its relevant case-law and the observations of the

UN Human Rights Committee, Committee against Torture and Special Rapporteur on Torture, and guarantee that the laws in question are actually applied;

- (i) call on the Member States to earmark appropriate resources for the restructuring and modernisation of detention centres and to provide the police and prison staff with training concerning prisoners' rights and the monitoring of prisoners suffering from psychological disorders, and create a specific EU budget heading with a view to encouraging such projects;
 - (j) call on the CPT and the Council of Europe's Human Rights Commissioner to conduct a series of unannounced visits in Member States which have established special regimes, whether legal or de facto, including residence of centres for foreigners, and call on the EU Network of Independent Experts in Fundamental Rights to draw up an analysis of the compatibility of such regimes with fundamental rights and freedoms;
 - (k) remind the Member States of the undertakings they have given in the Council of Europe to make greater use of penalties which offer an alternative to imprisonment, and urge them to step up their efforts in both the legislative and judicial spheres;
2. Instructs its President to forward this recommendation to the Council, the Commission, the governments and parliaments of the Member States, the Council of Europe, the Council of Europe Parliamentary Assembly, the Council of Europe Commissioner for Human Rights, the European Committee for the Prevention of Torture, the European Court of Human Rights, the UN Committee on Human Rights, the UN Committee against Torture, the UN Special Rapporteur on Torture and the UN High Commissioner for Human Rights.

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DAPHNE II ***II

{ TC"(A5-0083/2004 - Rapporteur: Lissy Gröner)"\l3 \n> * MERGEFORMAT }

Committee on Women's Rights and Equal Opportunities

PE 337.815

European Parliament legislative resolution on the Council common position with a view to the adoption of a European Parliament and Council decision adopting a programme of Community action (2004-2008) to prevent and combat violence against children, young people and women and to protect victims and groups at risk (the Daphne II programme) (13816/1/2003 – C5-0599/2003 – 2003/0025(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (13816/1/2003 – C5-0599/2003),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2003) 54)²,
 - having regard to the amended proposal (COM(2003) 616)³,
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 80 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on Women's Rights and Equal Opportunities (A5-0083/2004),
1. Amends the common position as follows;
 2. Instructs its President to forward its position to the Council and Commission.

Council common position	Amendments by Parliament
Amendment 1 Article 2, paragraph 1, subparagraph 2	
The aim of this programme shall be to prevent and combat all forms of violence, occurring in the public or the private	The aim of this programme shall be to prevent and combat all forms of violence, occurring in the public or the private

¹ Texts Adopted, 3.9.2003, P5_TA(2003)0366.

² Not yet published in OJ.

³ Not yet published in OJ.

domain, against children, young people and women by taking preventive measures and by providing support for victims and groups at risk, including in particular the prevention of future exposure to violence. It further aims to assist and encourage non governmental organisations and other organisations active in this field. ***This programme shall also address the question of perpetrators and their need for treatment with the aim of tackling this problem.***

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

Amendment 2
Article 4, point (f)

(f) development and implementation of treatment programmes and support for victims and people at risk, ***including children and young people who witness domestic violence;***

(f) development and implementation of treatment programmes and support for victims and people at risk, ***on the one hand, and perpetrators on the other hand, whilst ensuring the safety of victims;***

Amendment 3
Article 4, point (g)

(g) development and implementation of treatment programmes for perpetrators, whilst ensuring the safety of victims and children;

deleted

Amendment 4
Annex, part I, section 6, objective

to develop and implement treatment programmes for victims and people at risk, ***including*** children and young people who witness domestic violence, ***as well as treatment programmes for*** perpetrators with the aim of preventing violence.

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

Amendment 5
Annex, part II, section 2, point (e), point (iiia) (new)

(iiia) establishing a help-desk to assist non-governmental organisations, especially those participating for the first time, to

elaborate their projects, to liase with other partners and to use and benefit from the Daphne acquis;

Statute and financing of political parties at European level (amendments to the Rules of Procedure)

{ TC"(A5-0071/2004 - Rapporteur: Giorgos Dimitrakopoulos)"\l3 \n> * MERGEFORMAT }
Committee on Constitutional Affairs
PE 335.114

European Parliament decision on the amendments to the European Parliament's Rules of Procedure following the adoption of the Regulation governing the statute and the financing of political parties at European level (2003/2205(REG))

The European Parliament,

- having regard to the Treaty establishing the European Community and, in particular, Article 191 thereof,
 - having regard to European Parliament and Council Regulation (EC) No 2004/2003 of 4 November 2003 on the regulations governing political parties at European level and the rules regarding their funding¹,
 - having regard to the letter of 6 November 2003 from its President,
 - having regard to Rules 180 and 181 of its Rules of Procedure,
 - having regard to the report of the Committee on Constitutional Affairs (A5-0071/2004),
1. Decides to amend its Rules of Procedure as shown below;
 2. Points out that these amendments will enter into force on the first day of the next part-session;
 3. Instructs its President to forward this decision to the Council and Commission, for information.

Current text

Amendments

Amendment 1
Rule 22, paragraph 9a (new)

9a. The Bureau shall lay down the implementing rules relating to European Parliament and Council Regulation (EC)

¹ OJ L 297, 15.11.2003, p. 1.

No 2004/2003 on the regulations governing political parties at European level and the rules regarding their funding and shall, in implementing that Regulation, assume the tasks conferred upon it by Parliament's Rules of Procedure.

Amendment 2
Chapter XXVIa, Title (new)

Chapter XXVIa

Powers and responsibilities relating to political parties at European level

Amendment 3
Rule 184a (new)

Rule 184a

Powers and responsibilities of the President

The President shall represent Parliament in its relations with political parties at European level, pursuant to Rule 19(4).

Amendment 4
Rule 184b (new)

Rule 184b

Powers and responsibilities of the Bureau

1. The Bureau shall take a decision on any application for funding submitted by a political party at European level and on the distribution of appropriations amongst the beneficiary political parties. It shall draw up a list of the beneficiaries and of the amounts allocated.

2. The Bureau shall decide whether or not to suspend or reduce funding and to recover amounts which have been wrongly paid.

3. After the end of the budget year the

Bureau shall approve the beneficiary political party's final activity report and final financial statement.

4. Under the terms and conditions laid down in European Parliament and Council Regulation (EC) No 2004/2003 the Bureau may grant technical assistance to political parties at European level in accordance with their proposals. The Bureau may delegate specific types of decisions to grant technical assistance to the Secretary-General.

5. In all the cases set out in the above paragraphs the Bureau shall act on the basis of a proposal from the Secretary-General. Except in the cases set out in the first and fourth paragraphs the Bureau shall, before taking a decision, hear the representatives of the political party concerned. The Bureau may at any time consult the Conference of Presidents.

6. Where Parliament - following verification - establishes that a political party at European level has ceased to observe the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, the Bureau shall decide that that political party shall be excluded from funding.

Amendment 5
Rule 184c (new)

Rule 184c

Powers and responsibilities of the committee responsible and of Parliament's plenary

1. At the request of one-quarter of Parliament's Members representing at least three political groups, the President, following an exchange of views within the Conference of Presidents, shall call upon the committee responsible to verify whether or not a political party at

European level is continuing to observe (in particular in its programme and in its activities) the principles upon which the European Union is founded, namely the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law.

2. Before submitting a proposal for a decision to Parliament, the committee responsible shall hear the representatives of the political party concerned and it shall ask for and consider the opinion of a committee of independent eminent persons, pursuant to Regulation (EC) No 2004/2003 of the European Parliament and of the Council of 4 November 2003 on the regulations governing political parties at European level and the rules regarding their funding.

3. Parliament shall vote (by a majority of the votes cast) on the proposal for a decision establishing that the political party concerned either does or does not observe the principles set out in paragraph 1. No amendment may be tabled. In either case, if the proposal for a decision does not secure a majority, a decision to the contrary will be deemed to have been adopted.

4. Parliament's decision shall apply with effect from the day upon which the request referred to in paragraph 1 was tabled.

5. The President shall represent Parliament on the committee of independent eminent persons.

6. The committee responsible shall draw up the report provided for in European Parliament and Council Regulation (EC) No 2004/2003 on the application of that Regulation and the activities funded, and shall submit it in plenary.

Restructuring the European Parliament's Rules of Procedure

{ TC"(A5-0068/2004 - Rapporteur: Richard Corbett)"\l3 \n> * MERGEFORMAT }

Committee on Constitutional Affairs

PE 335.115

European Parliament decision on the restructuring of Parliament's Rules of Procedure in the light of its decision of 12 June 2002 and the minor changes which have become necessary since then (2003/2233(REG))

The European Parliament,

- having regard to the letters from its President dated 21 October and 11 December 2003,
 - having regard to Article 43 of the act concerning the conditions of accession to the European Union and the adjustments to the Treaties on which the European Union is founded, signed on 16 April 2003 in Athens,
 - having regard to Rules 180 and 181 of its Rules of Procedure,
 - having regard to the report of the Committee on Constitutional Affairs (A5-0068/2004),
1. Decides to restructure its Rules of Procedure in accordance with the new list of contents shown below;
 2. Decides to amend its Rules of Procedure as shown below;
 3. Decides that these amendments will enter into force on the first day of the first part-session following the 2004 elections to the European Parliament;
 4. Instructs its President to adapt the wording of Rule 1(2) of its Rules of Procedure in the light of the enlargement of the Union by adding, in the respective official languages, the official names used to refer to the representatives elected to the European Parliament in the Member States joining the Union on 1 May 2004;
 5. Decides, further, to change the date of 1 July 2004 scheduled for the entry into force of the new version of Rule 29(2) of the Rules of Procedure to take account of the date of enlargement, which is now known, and to fix the date for the entry into force of that provision for 30 April 2004; this shall, however, be without prejudice to the continued existence of the current political groups until the end of the legislature;
 6. Instructs its Secretary-General to take the steps required to ensure that the restructured version of the Rules of Procedure which has been brought into line with the increased number of Members, pursuant to Rule 180(8), is available immediately after the 2004 elections to the European Parliament;

7. Instructs its President to forward this decision, for information, to the Council and Commission.

Amendment 1

(Proposal for a restructuring of the Rules of Procedure)
(The current numbering of the chapters and rules is given in brackets and italics)

TITLE I MEMBERS, PARLIAMENT BODIES AND POLITICAL GROUPS

CHAPTER 1 MEMBERS OF THE EUROPEAN PARLIAMENT (*Chapter I*)

- Rule 1: The European Parliament (*Rule 1*)
- Rule 2: The independent mandate (*Rule 2*)
- Rule 3: Verification of credentials (*Rule 7*)
- Rule 4: Term of office of Members (*Rule 8*)
- Rule 5: Privileges and immunities (*Rule 3*)
- Rule 6: Waiver of immunity (*Rule 6*)
- Rule 7: Procedures on immunity (*Rule 6a*)
- Rule 8: Payment of expenses and allowances (*Rule 5*)
- Rule 9: Code of conduct (*Rule 9*)
- Rule 10: Internal investigations conducted by the European Anti-Fraud Office (OLAF) (*Rule 9a*)

CHAPTER 2 OFFICERS OF PARLIAMENT (*Chapter III*)

- Rule 11: Oldest Member (*Rule 12*)
- Rule 12: Nominations and general provisions (*Rule 13*)
- Rule 13: Election of President - opening address (*Rule 14*)
- Rule 14: Election of Vice-Presidents (*Rule 15*)
- Rule 15: Election of Quaestors (*Rule 16*)
- Rule 16: Term of office of Officers (*Rule 17*)
- Rule 17: Vacancies (*Rule 18*)
- Rule 18: Early termination of an office (*Rule 185a*)

CHAPTER 3 BODIES AND DUTIES (*CHAPTER IV*)

- Rule 19: Duties of the President (*Rule 19*)
- Rule 20: Duties of the Vice-Presidents (*Rule 20*)
- Rule 21: Composition of the Bureau (*Rule 21*)
- Rule 22: Duties of the Bureau (*Rule 22*)
- Rule 23: Composition of the Conference of Presidents (*Rule 23*)
- Rule 24: Duties of the Conference of Presidents (*Rule 24*)
- Rule 25: Duties of the Quaestors (*Rule 25*)
- Rule 26: Conference of Committee Chairmen (*Rule 26*)
- Rule 27: Conference of Delegation Chairmen (*Rule 27*)
- Rule 28: Accountability of the Bureau and the Conference of Presidents (*Rule 28*)

CHAPTER 4 POLITICAL GROUPS (*Chapter V*)

- Rule 29: Formation of political groups (*Rule 29*)
- Rule 30: Activities and legal situation of political groups (*Rule 29a*)
- Rule 31: Non-attached Members (*Rule 30*)
- Rule 32: Allocation of seats in the Chamber (*Rule 31*)

TITLE II LEGISLATIVE, BUDGETARY AND OTHER PROCEDURES

CHAPTER 1 LEGISLATIVE PROCEDURES – GENERAL PROVISIONS (*Chapter VIII*)

- Rule 33: Commission's legislative and work programme (*Rule 57*)
- Rule 34: Examination of respect for fundamental rights, the principles of subsidiarity and proportionality, the rule of law, and financial implications (*Rule 58*)
- Rule 35: Verification of legal basis (*Rule 63*)
- Rule 36: Verification of financial compatibility (*Rule 63a*)
- Rule 37: Access to documents and provision of information to Parliament (*Rule 64*)
- Rule 38: Representation of Parliament in Council meetings (*Rule 62a*)
- Rule 39: Initiative pursuant to Article 192 of the EC Treaty (*Rule 59*)
- Rule 40: Consideration of legislative documents (*Rule 60*)
- Rule 41: Consultation on initiatives originating from a Member State (*Rule 61*)

CHAPTER 2 PROCEDURE IN COMMITTEE

- Rule 42: Legislative reports (*Rule 159*)
- Rule 43: Simplified procedure (*Rule 158*)
- Rule 44: Non-legislative reports (*Rule 160*)
- Rule 45: Own-initiative reports (*Rule 163*)
- Rule 46: Opinions of committees (*Rule 162*)
- Rule 47: Enhanced cooperation between committees (*Rule 162a*)
- Rule 48: Drafting of reports (*Rule 161*)

CHAPTER 3 FIRST READING

– Committee stage

- Rule 49: Modification of a Commission proposal (*Rule 65*)
- Rule 50: Commission and Council position on amendments (*Rule 66*)

– Plenary stage

- Rule 51: Conclusion of first reading (*Rule 67*)
- Rule 52: Rejection of a Commission proposal (*Rule 68*)
- Rule 53: Adoption of amendments to a Commission proposal (*Rule 69*)

– Follow-up procedure

- Rule 54: Follow-up to Parliament's opinion (*Rule 70*)
- Rule 55: Renewed referral to Parliament (*Rule 71*)
 - Codecision procedure
 - Other procedures

Rule 56: Conciliation procedure contained in the 1975 joint declaration
(*Rule 72*)

CHAPTER 4 SECOND READING

– *Committee stage*

Rule 57: Communication of the Council's common position (*Rule 74*)

Rule 58: Extension of time limits (*Rule 75*)

Rule 59: Referral to and procedure in the committee responsible
(*Rule 76*)

– *Plenary stage*

Rule 60: Conclusion of second reading (*Rule 77*)

Rule 61: Rejection of the Council's common position (*Rule 79*)

Rule 62: Amendments to the Council's common position (*Rule 80*)

CHAPTER 5 THIRD READING

– *Conciliation*

Rule 63: Convening of Conciliation Committee (*Rule 81*)

Rule 64: Delegation to Conciliation Committee (*Rule 82*)

– *Plenary stage*

Rule 65: Joint text (*Rule 83*)

CHAPTER 6 CONCLUSION OF THE LEGISLATIVE PROCEDURE

Rule 66: First reading agreement (*Rule 73*)

Rule 67: Second reading agreement (*Rule 78*)

Rule 68: Signature of adopted acts (*Rule 84*)

CHAPTER 7 BUDGETARY PROCEDURES (*Chapter IX*)

Rule 69: General Budget (*Rule 92*)

Rule 70: Discharge to the Commission in respect of implementation of the
budget (*Rule 93*)

Rule 71: Other discharge procedures (*Rule 93a*)

Rule 72: Parliamentary control over implementation of the budget (*Rule
94*)

CHAPTER 8 INTERNAL BUDGETARY PROCEDURES

- Rule 73: Estimates of Parliament (*Rule 183*)
- Rule 74: Power to incur and settle expenditure (*Rule 184*)

CHAPTER 9 ASSENT PROCEDURE

- Rule 75: Assent procedure (*Rule 86*)

CHAPTER 10 ENHANCED COOPERATION (*Chapter XIV*)

- Rule 76: Procedures in Parliament (*Rule 109*)

CHAPTER 11 OTHER PROCEDURES

- Rule 77: Procedure for delivering opinions pursuant to Article 122 of the EC Treaty (*Rule 85*)
- Rule 78: Procedures relating to dialogue between management and labour (*Rule 87*)
- Rule 79: Procedures relating to scrutiny of voluntary agreements (*Rule 87a*)
- Rule 80: Codification (*Rule 89*)
- Rule 81: Implementing provisions (*Rule 88*)

CHAPTER 12 TREATIES AND INTERNATIONAL AGREEMENTS (*Chapter X and Chapter XI*)

- Rule 82: Accession treaties (*Rule 96*)
- Rule 83: International agreements (*Rule 97*)
- Rule 84: Procedures based on Article 300 of the EC Treaty in the case of provisional application or the suspension of international agreements or the establishment of the Community position in a body set up by an international agreement (*Rule 98*)

CHAPTER 13 EXTERNAL REPRESENTATION OF THE UNION AND COMMON FOREIGN AND SECURITY POLICY (*Chapter XI*)

- Rule 85: Appointment of the High Representative for the common foreign and security policy (*Rule 99*)
- Rule 86: Appointment of special representatives for the purposes of the common foreign and security policy (*Rule 100*)
- Rule 87: Statements by the High Representative for the common foreign and security policy and by other special representatives (*Rule 101*)
- Rule 88: International representation (*Rule 102*)
- Rule 89: Consultation of and provision of information to Parliament within the framework of the common foreign and security policy (*Rule 103*)
- Rule 90: Recommendations within the framework of the common foreign and security policy (*Rule 104*)

Rule 91: Breach of human rights (*Rule 104a*)

CHAPTER 14 POLICE AND JUDICIAL COOPERATION IN CRIMINAL MATTERS (*Chapter XII*)

Rule 92: Provision of information to Parliament in the fields of police and judicial cooperation in criminal matters (*Rule 105*)

Rule 93: Consultation of Parliament in the fields of police and judicial cooperation in criminal matters (*Rule 106*)

Rule 94: Recommendations in the fields of police and judicial cooperation in criminal matters (*Rule 107*)

CHAPTER 15 BREACH BY A MEMBER STATE OF FUNDAMENTAL PRINCIPLES (*Chapter XIII*)

Rule 95: Determination of a breach (*Rule 108*)

TITLE III TRANSPARENCY OF BUSINESS (*Chapter XXII*)

Rule 96: Transparency of Parliament's activities (*Rule 171*)

Rule 97: Public access to documents (*Rule 172*)

TITLE IV RELATIONS WITH THE OTHER INSTITUTIONS (*Chapter VI*)

CHAPTER 1 APPOINTMENTS

Rule 98: Election of the President of the Commission (*Rule 32*)

Rule 99: Election of the Commission (*Rule 33*)

Rule 100: Motion of censure on the Commission (*Rule 34*)

Rule 101: Appointment of the Members of the Court of Auditors (*Rule 35*)

Rule 102: Appointment of the Members of the Executive Board of the European Central Bank (*Rule 36*)

CHAPTER 2 STATEMENTS

Rule 103: Statements by the Commission, Council and European Council (*Rule 37*)

Rule 104: Statements explaining Commission decisions (*Rule 38*)

Rule 105: Statements by the Court of Auditors (*Rule 39*)

Rule 106: Statements by the European Central Bank (*Rule 40*)

Rule 107: Recommendation on the broad guidelines of economic policies (*Rule 41*)

CHAPTER 3 QUESTIONS TO THE COUNCIL, THE COMMISSION AND THE EUROPEAN CENTRAL BANK

Rule 108: Questions for oral answer with debate (*Rule 42*)

- Rule 109: Question Time (*Rule 43*)
- Rule 110: Questions for written answer (*Rule 44*)
- Rule 111: Questions for written answer to the European Central Bank (*Rule 40a*)

CHAPTER 4 REPORTS OF OTHER INSTITUTIONS

- Rule 112: Annual reports and other reports of other institutions (*Rule 47*)

CHAPTER 5 RESOLUTIONS AND RECOMMENDATIONS

- Rule 113: Motions for resolutions (*Rule 48*)
- Rule 114: Recommendations to the Council (*Rule 49*)
- Rule 115: Debates on cases of breaches of human rights, democracy and the rule of law (*Rule 50*)
- Rule 116: Written declarations (*Rule 51*)
- Rule 117: Consultation of the European Economic and Social Committee (*Rule 52*)
- Rule 118: Consultation of the Committee of the Regions (*Rule 53*)

CHAPTER 6 INTERINSTITUTIONAL AGREEMENTS

- Rule 119: Interinstitutional agreements (*Rule 54*)

CHAPTER 7 REFERRALS TO THE COURT OF JUSTICE

- Rule 120: Proceedings before the Court of Justice (*Rule 91*)
- Rule 121: Consequences of the Council failing to act following approval of its common position under the cooperation procedure (*Rule 90*)

TITLE V RELATIONS WITH THE NATIONAL PARLIAMENTS (*Chapter VII*)

- Rule 122: Exchange of information, contacts and reciprocal facilities (*Rule 55*)
- Rule 123: Conference of European Affairs Committees (COSAC) (*Rule 56*)
- Rule 124: Conference of Parliaments (*Rule 56a*)

TITLE VI SESSIONS

CHAPTER 1 SESSIONS OF PARLIAMENT (*Chapter II*)

- Rule 125: Parliamentary term, sessions, part-sessions, sittings (*Rule 10, paragraph 1*)
- Rule 126: Convening of Parliament (*Rule 10, paragraphs 2-5*)
- Rule 127: Venue of sittings and meetings (*Rule 11*)
- Rule 128: Attendance of Members at sittings (*Rule 4*)

CHAPTER 2 ORDER OF BUSINESS OF PARLIAMENT (*Chapter XV*)

- Rule 129: Draft agenda (*Rule 110*)
- Rule 130: Procedure in plenary without amendment and debate (*Rule 110a*)
- Rule 131: Adopting and amending the agenda (*Rule 111*)
- Rule 132: Extraordinary debate (*Rule 111a*)
- Rule 133: Urgent procedure (*Rule 112*)
- Rule 134: Joint debate (*Rule 113*)
- Rule 135: Time limits (*Rule 115*)

CHAPTER 3 GENERAL RULES FOR THE CONDUCT OF SITTINGS (*Chapter XVI*)

- Rule 136: Access to the Chamber (*Rule 116*)
- Rule 137: Languages (*Rule 117*)
- Rule 138: Distribution of documents (*Rule 118*)
- Rule 139: Calling speakers and content of speeches (*Rule 119*)
- Rule 140: Allocation of speaking time (*Rule 120*)
- Rule 141: List of speakers (*Rule 121*)
- Rule 142: One-minute speeches (*Rule 121a*)
- Rule 143: Personal statements (*Rule 122*)
- Rule 144: Order in the Chamber (*Rule 123*)
- Rule 145: Exclusion of Members (*Rule 124*)
- Rule 146: Disturbances (*Rule 125*)

CHAPTER 4 QUORUM AND VOTING (*Chapter XVII*)

- Rule 147: Quorum (*Rule 126*)
- Rule 148: Tabling and moving amendments (*Rule 139, not including first subparagraph of paragraph 1*)
- Rule 149: Admissibility of amendments (*Rule 140*)
- Rule 150: Voting procedure (*Rule 127*)
- Rule 151: Tied votes (*Rule 128*)
- Rule 152: Principles governing voting (*Rule 129*)
- Rule 153: Order of voting on amendments (*Rule 130*)
- Rule 154: Committee consideration of plenary amendments (*Rule 130a*)
- Rule 155: Split voting (*Rule 131*)
- Rule 156: Right to vote (*Rule 132*)
- Rule 157: Voting (*Rule 133*)
- Rule 158: Voting by roll call (*Rule 134*)
- Rule 159: Electronic voting (*Rule 135*)
- Rule 160: Voting by secret ballot (*Rule 136*)
- Rule 161: Explanations of vote (*Rule 137*)
- Rule 162: Disputes on voting (*Rule 138*)

CHAPTER 5 INTERRUPTIVE AND PROCEDURAL MOTIONS (*Chapter XVIII*)

- Rule 163: Procedural motions (*Rule 141*)
- Rule 164: Points of order (*Rule 142*)
- Rule 165: Moving the inadmissibility of a matter (*Rule 143*)

- Rule 166: Referral back to committee (*Rule 144*)
- Rule 167: Closure of a debate (*Rule 145*)
- Rule 168: Adjournment of a debate and vote (*Rule 146*)
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CHAPTER 6 PUBLIC RECORD OF PROCEEDINGS

- Rule 170: Minutes (*Rule 148*)¹
- Rule 171: Verbatim reports (*Rule 149*)

TITLE VII COMMITTEES AND DELEGATIONS

CHAPTER 1 COMMITTEES – SETTING UP AND POWERS (*Chapter XX*)

- Rule 172: Setting up of standing committees (*Rule 150, paragraph 1*)
- Rule 173: Setting up of temporary committees (*Rule 150, paragraph 2*)
- Rule 174: Committees of inquiry (*Rule 151*)
- Rule 175: Composition of committees (*Rule 152*)
- Rule 176: Substitutes (*Rule 153*)
- Rule 177: Duties of committees (*Rule 154*)
- Rule 178: Committee responsible for the verification of credentials (*Rule 155*)
- Rule 179: Subcommittees (*Rule 156*)
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CHAPTER 2 COMMITTEES – FUNCTIONING (*Chapter XX*)

- Rule 181: Committee meetings (*Rule 166*)
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- Rule 190: Examination of petitions (*Rule 175*)
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- Rule 192: Appointment of the Ombudsman (*Rule 177*)
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TITLE X PARLIAMENT'S SECRETARIAT

- Rule 195: Secretariat (*Rule 182*)

TITLE XI APPLICATION AND AMENDMENT OF THE RULES OF PROCEDURE
(*Chapter XXV*)

- Rule 196: Application of the Rules of Procedure (*Rule 180*)
Rule 197: Amendment of the Rules of Procedure (*Rule 181*)

TITLE XII MISCELLANEOUS PROVISIONS (*Chapter XXVII*)

- Rule 198: Unfinished business (*Rule 185*)
Rule 199: Arrangement of annexes (*Rule 186*)

Amendment 2
Rule 91, paragraphs 1 and 2

1. Parliament shall, within the time limits specified by the Treaties and the Statute of the Court of Justice for action by the institutions of the Union and by any natural or legal persons, examine Community legislation to ensure that *its* rights have been fully respected.

2. The committee responsible shall report to Parliament, orally if necessary, where it suspects a breach of *Parliament's rights*.

1. Parliament shall, within the time limits specified by the Treaties and the Statute of the Court of Justice for action by the institutions of the Union and by any natural or legal persons, examine Community legislation ***and the implementing measures*** to ensure that ***the Treaties, in particular where Parliament's rights are concerned***, have been fully respected.

2. The committee responsible shall report to Parliament, orally if necessary, where it suspects a breach of ***Community law***.

Amendment 3
Rule 94, paragraph 1

1. Parliament shall monitor the implementation of the current year's budget. It shall entrust this task to the ***committee*** responsible for budgetary control and the other committees concerned.

1. Parliament shall monitor the implementation of the current year's budget. It shall entrust this task to the ***committees*** responsible for ***the budget and*** budgetary control and the other committees concerned.

Amendment 4
Rule 150, paragraph 2

2. Parliament may at any time set up temporary committees, whose powers, composition and term of office shall be defined at the same time as the decision to set them up is taken; their term of office may not exceed twelve months, except where Parliament extends that term on its expiry.

2. ***On a proposal from the Conference of Presidents***, Parliament may at any time set up temporary committees, whose powers, composition and term of office shall be defined at the same time as the decision to set them up is taken; their term of office may not exceed twelve months, except where Parliament extends that term on its expiry.

Amendment 5
Rule 158, paragraph 3a (new)

3a. The first and second sentences of paragraph 1, the first, second and third sentences of paragraph 2 and paragraph 3 shall apply, mutatis mutandis, to committee opinions within the meaning of Rule 162.

Amendment 6
Rule 183, paragraph 6a (new)

6a. The implementing provisions governing the procedure for drawing up Parliament's estimates shall be adopted by a majority of the votes cast and be annexed to these Rules.

Amendment 7
Annex IV, Article 7a (new)

Article 7a

Procedure to be applied when drawing up Parliament's estimates

1. As regards problems relating to Parliament's budget, the Bureau and the committee responsible for the budget shall take decisions in successive stages on:

(a) the establishment plan;

(b) the preliminary draft and the draft estimates.

2. The decisions concerning the establishment plan will be taken according to the following procedure:

(a) the Bureau shall draw up the establishment plan for each financial year;

(b) a conciliation procedure between the Bureau and the committee responsible for the budget shall be opened in cases where the opinion of the latter diverges from the initial decisions taken by the Bureau;

(c) at the end of the procedure, the Bureau

shall take the final decision on the estimates for the establishment plan, in accordance with Rule 182(3), without prejudice to decisions taken pursuant to Article 272 of the EC Treaty.

3. As regards the estimates proper, the procedure for drawing up the estimates will begin as soon as the Bureau has taken a final decision on the establishment plan. The stages of this procedure will be those laid down in Rule 183, viz.:

(a) the Bureau shall draw up the preliminary draft estimates of revenue and expenditure (paragraph 1);

(b) the committee responsible for the budget shall draw up the draft estimates of revenue and expenditure (paragraph 2);

(c) a conciliation procedure shall be opened in cases where the positions of the committee responsible for the budget and the Bureau are widely divergent.

Amendment 8
Annex V, Article 2, interpretation

Amendments to the motion for a resolution to be put to the vote in plenary must be referred to the committee responsible for consideration.

deleted

Official feed and food controls *I**

{ TC"(A5-0449/2003 - Rapporteur: Marit Paulsen)"\l3 \n> * MERGEFORMAT }

Committee on the Environment, Public Health and Consumer Policy

PE 331.675

European Parliament legislative resolution on the proposal for a European Parliament and Council Regulation on official feed and food controls (COM(2003) 52 – C5-0032/2003 – 2003/0030(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2003) 52)¹,
 - having regard to Articles 251(2), 37, 95 and 152(4)(b) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0032/2003),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on the Environment, Public Health and Consumer Policy and the opinion of the Committee on Agriculture and Rural Development (A5-0449/2003),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment <NumAm>88</NumAm>
<Article>Title</Article>

Regulation of the European Parliament and of the Council on official **feed and food controls**

Regulation of the European Parliament and of the Council on official **controls performed to ensure the verification of compliance with feed and food law, animal**

¹ Not yet published in OJ.

health and animal welfare rules

Amendment <NumAm>89</NumAm>
<Article>Recital 4</Article>

(4) *Animal health and animal welfare are also important factors that contribute to the quality and safety of food.*

(4) *Community feed and food law is based on the principle that feed and food business operators at all stages of production, processing and distribution within the businesses under their control are responsible for ensuring that feed and food satisfy the requirements of feed and food law which are relevant to their activities.*

Amendment <NumAm>90</NumAm>
<Article>Recital 5</Article>

(5) *Community feed and food law is based on the principle that feed and food business operators at all stages of production, processing and distribution within the businesses under their control are responsible for ensuring that feed and food satisfy the requirements of feed and food law which are relevant to their activities.*

(5) *Animal health and animal welfare are important factors that contribute to the quality and safety of food, to the prevention of the spreading of animal diseases and to a humane treatment of animals. The rules covering these matters are laid down in several acts. These acts prescribe the obligations of natural and legal persons with regard to animal health and animal welfare as well as the duties of the competent authorities.*

Amendment <NumAm>91</NumAm>
<Article>Recital 6</Article>

(6) The Member States should enforce feed and food law and monitor and verify that the relevant requirements **of food law** are fulfilled by feed and food business operators at all stages of production, processing and distribution. Official controls should be organised for that purpose.

(6) The Member States should enforce feed and food law, **animal health and animal welfare rules** and monitor and verify that the relevant requirements **thereof** are fulfilled by feed and food business operators at all stages of production, processing and distribution. Official controls should be organised for that purpose.

Amendment <NumAm>92</NumAm>
<Article>Recital 7</Article>

(7) A Community framework should be established for the organisation of official controls covering all the areas of feed and food law, including animal health and welfare.

(7) It is therefore appropriate to establish at Community level a harmonised framework of general rules for the organisation of such controls. It is appropriate to assess in the light of the experience gained whether such general framework functions properly, in particular in the area of animal health and welfare. It is therefore appropriate for the Commission to present a report together with any necessary proposal.

Amendment <NumAm>93</NumAm>
<Article>Recital 13</Article>

(13) The frequency of official controls should be regular and proportionate to the risk, taking into account the results of the checks carried out by feed and food business operators under HACCP based control programmes or Quality Assurance Programmes, where these are designed to meet requirements of feed and food law. **Where necessary**, ad hoc controls must be carried out in case of suspicion of non-compliance **with feed and food law**.

(13) The frequency of official controls should be regular and proportionate to the risk, taking into account the results of the checks carried out by feed and food business operators under HACCP based control programmes or Quality Assurance Programmes, where these are designed to meet requirements of feed and food law, **animal health and animal welfare rules**. Ad hoc controls must be carried out in case of suspicion of non-compliance. **Additionally ad hoc controls may be carried out at any time, even where there is no suspicion of non-compliance.**

Amendment <NumAm>94</NumAm>
<Article>Recital 17</Article>

(17) Laboratories involved in the analysis of official samples should work in accordance with internationally approved procedures or criteria based performance standards and use methods of analysis that have as far as possible been validated.

(17) Laboratories involved in the analysis of official samples should work in accordance with internationally approved procedures or criteria based performance standards and use methods of analysis that have as far as possible been validated. **Such laboratories must in particular have equipment that enabled the correct determination of standards such as maximum residue levels fixed in Community law.**

Amendment <NumAm>95</NumAm>
<Article>Recital 19</Article>

(19) The activities of reference laboratories should cover all the areas of feed and food law, in particular those areas where there is a need for precise analytical and diagnostic results. ***This includes animal health given the importance of this sector with regard to feed and food law.***

(19) The activities of reference laboratories should cover all the areas of feed and food law, in particular those areas where there is a need for precise analytical and diagnostic results.

Amendment 5
Recital 30

(30) In order to ensure a more efficient organisation of the official controls on feed and food from third countries and in order to facilitate commercial flows, it may be necessary to designate specific points of entry for feed and food from third countries into the territory of the Community. Likewise, it may be necessary to require advance notice of the arrival of goods at the territory of the Community.

(30) In order to ensure a more efficient organisation of the official controls on feed and food from third countries and in order to facilitate commercial flows, it may be necessary to designate specific points of entry for feed and food from third countries into the territory of the Community. Likewise, it may be necessary to require advance notice of the arrival of goods at the territory of the Community. ***It should be ensured that each designated point of entry has access to the appropriate facilities to operate controls within reasonable time-limits.***

Amendment <NumAm>96</NumAm>
<Article>Recital 32</Article>

(32) Adequate financial resources should be available for organising official controls. Where ***for that purpose*** fees are imposed on ***feed and food business*** operators, common principles should apply. It is appropriate therefore to lay down the criteria for setting the level of inspection fees. With regard to fees applicable for import controls, it is appropriate to establish directly the rates for main import items with a view to ensure their uniform application and to avoid trade distortions.

(32) Adequate financial resources should be available for organising official controls. ***Hence, the competent authorities of the Member States must be able to levy the fees or costs contributions to cover the costs incurred through official controls. In the process, the competent authorities of the Member States shall be at liberty to establish the fees and costs contributions as flat-rate amounts based on the costs incurred and taking the specific situation of the establishments into account.*** Where fees are imposed on operators, common principles should apply. It is appropriate

therefore to lay down the criteria for setting the level of inspection fees. With regard to fees applicable for import controls, it is appropriate to establish directly the rates for main import items with a view to ensure their uniform application and to avoid trade distortions.

Amendment <NumAm>97</NumAm>
<Article>Recital 34</Article>

(34) In order to have a global and uniform approach with regard to official feed and food controls, Member States should establish and implement national control plans in accordance with broad guidelines elaborated at Community level. These guidelines should promote coherent national strategies, and identify risk-based priorities and the most effective control procedures. A Community strategy should take a comprehensive, integrated approach to the operation of controls.

(34) In order to have a global and uniform approach with regard to official feed and food controls, Member States should establish and implement national control plans in accordance with broad guidelines elaborated at Community level. These guidelines should promote coherent national strategies, and identify risk-based priorities and the most effective control procedures. A Community strategy should take a comprehensive, integrated approach to the operation of controls. ***In view of the non-binding character of certain technical guidelines to be established it is appropriate to establish them by means of a consultative Committee procedure.***

Amendment <NumAm>98</NumAm>
<Article>Recital 39</Article>

(39) Community controls in third countries are required in order to verify compliance or equivalence with Community feed and food law as well as with the legislation on animal health. Third countries may also be requested to ***establish control plans similar to those intended for Member States, in respect of the feed and food exported by them. These plans***, which should be established on the basis of Community guidelines, should form the basis for subsequent Commission controls, which should be carried out within a multidisciplinary framework covering the main sectors exporting to the Community.

(39) Community controls in third countries are required in order to verify compliance or equivalence with Community feed and food law as well as with the legislation on animal health and, ***where appropriate***, welfare. Third countries may also be requested to ***provide information on their controls systems. This information***, which should be established on the basis of Community guidelines, should form the basis for subsequent Commission controls, which should be carried out within a multidisciplinary framework covering the main sectors exporting to the Community. This evolution should allow a simplification

This evolution should allow a simplification of the current regime, enhance effective control co-operation, and consequently facilitate trade flows.

of the current regime, enhance effective control co-operation, and consequently facilitate trade flows.

Amendment <NumAm>99</NumAm>
<Article>Recital 40</Article>

(40) In order to ensure that imported **feed and food** comply with or are equivalent to Community food law and feed law, it is necessary to establish procedures that allow the definition of import conditions and certification requirements as appropriate.

(40) In order to ensure that imported **goods** comply with or are equivalent to Community food law and feed law, it is necessary to establish procedures that allow the definition of import conditions and certification requirements as appropriate.

Amendment <NumAm>100</NumAm>
<Article>Recital 41</Article>

(41) Breaches of feed and food law may constitute a threat to human health, animal health, and animal welfare. Such breaches should therefore be subject to effective, dissuasive and proportionate measures at national level throughout the Community.

(41) Breaches of feed and food law **and animal health and animal welfare rules** may constitute a threat to human health, animal health, and animal welfare. Such breaches should therefore be subject to effective, dissuasive and proportionate measures at national level throughout the Community.

Amendment <NumAm>101</NumAm>
<Article>Recital 43</Article>

(43) *Experience has shown that the existing systems of sanctions have not always been sufficient to achieve compliance with Community law. Such compliance can and should be strengthened by the application of criminal penalties, which demonstrate a social disapproval of a qualitatively different nature compared to administrative measures or a compensation mechanism under civil law.*

deleted

Amendment <NumAm>102</NumAm>
<Article>Recital 44</Article>

(44) Entrusting to judicial authorities, rather than to administrative authorities the task of imposing penalties, entails giving responsibility for investigating and enforcing the respect of animal health rules and feed and food law to authorities which are independent of those which grant exploitation licences. ***deleted***

Amendment <NumAm>103</NumAm>
<Article>Recital 45</Article>

(45) Certain offences should therefore be considered criminal offences when they are committed intentionally or through negligence, and should be subject to criminal penalties, involving in serious cases deprivation of liberty. ***deleted***

Amendment <NumAm>104</NumAm>
<Article>Recital 46</Article>

(46) Legal persons should also be subject to effective, dissuasive and proportionate penalties, because breaches of Community law to a large extent are committed in the interest of legal persons or for their benefit. ***deleted***

Amendment <NumAm>105</NumAm>
<Article>Recital 47</Article>

(47) Feed and food business operators should have a right to appeal against the decisions taken by the competent authority as a result of the official controls, and be informed about such right.

(47) Operators should have a right to appeal against the decisions taken by the competent authority as a result of the official controls, and be informed about such right.

Amendment <NumAm>106</NumAm>
<Article>Recital 48</Article>

(48) It is appropriate to take account of the special needs of developing countries, and in particular of the least-developed countries, and to introduce measures to that effect.

(48) It is appropriate to take account of the special needs of developing countries, and in particular of the least-developed countries, and to introduce measures to that effect. ***The Commission should be committed to support developing countries with regard to feed and food safety, which is an important element of human health and trade development. Such support should be organised in the context of the Community's Development Co-operation Policy.***

Amendment <NumAm>107</NumAm>
<Article>Recital 49, introductory wording</Article>

(49) The rules contained in this Regulation underpin the integrated and horizontal approach necessary to implement a coherent control policy on feed and food safety. There must be room however to develop specific control rules where required. Likewise, more specific rules existing in the area of feed and food controls should be kept in place. These include in particular the following acts:

(49) The rules contained in this Regulation underpin the integrated and horizontal approach necessary to implement a coherent control policy on feed and food safety, ***animal health and animal welfare***. There must be room however to develop specific control rules where required, ***for example with regard to the setting of maximum residue levels for certain contaminants at EC level***. Likewise, more specific rules existing in the area of feed and food ***animal health and animal welfare*** controls should be kept in place. These include in particular the following acts:

Amendment <NumAm>108</NumAm>
<Article>Recital 49, indent 9a (new)

– Acts on the control of animal diseases such as foot-and-mouth disease, swine fever etc., as well as requirements on the official controls on the welfare of animals.

Amendment <NumAm>109</NumAm>
<Article>Recital 50, indent 4a (new)</Article>

– *Council Decision 93/383/EEC of 14 June 1993 of reference laboratories for the monitoring of marine biotoxines¹ as amended by Decision 1999/312/EC²,*

¹ OJ L 166, 8.7.1993, p. 31.

² OJ L 120, 8.5.1999, p. 37.

Amendment <NumAm>110</NumAm>
<Article>Recital 50, indent 7a (new)</Article>

– *Council Decision 93/313/EEC of 29 April 1999 on reference laboratories for monitoring bacteriological and viral contamination of bivalve molluscs¹.*

¹ OJ L 120, 8.5.1999, p. 40.

Amendment <NumAm>111</NumAm>
<Article>Recital 51, indent 1</Article>

– *Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market.*

deleted

Amendment <NumAm>112</NumAm>
<Article>Recital 52</Article>

(52) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of the proposed action to ensure a harmonised approach with regard to official **feed and food** controls, cannot be sufficiently achieved by the Member States since such harmonisation requires a Community approach, and can therefore, by reason of its complexity, its transborder character and,

(52) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of the proposed action to ensure a harmonised approach with regard to official controls, cannot be sufficiently achieved by the Member States since such harmonisation requires a Community approach, and can therefore, by reason of its complexity, its transborder character and, with regard to

with regard to feed and food imports, its international character, be better achieved by the Community. This Regulation confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

feed and food imports, its international character, be better achieved by the Community. This Regulation confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

Amendment <NumAm>113</NumAm>
<Article>Article 1, paragraph 1</Article>

1. ***The purpose of*** this Regulation ***is to*** lay down ***the*** general rules for the performance of official controls ***as defined in Article 2(1). This Regulation aims to:***

(a) ***prevent*** risks to humans and animals, either directly or through the environment;

(b) ***protect*** consumer interests, including ***those with regard to consumer information.***

1. This Regulation lays down general rules for the performance of official controls ***to verify compliance with rules aimed, in particular, at:***

(a) ***preventing, eliminating or reducing to acceptable levels,*** risks to humans and animals, either directly or through the environment; and

(b) ***guaranteeing fair practices in feed and food trade and protecting*** consumer interests, including ***feed and food labelling and other forms of*** consumer information.

Amendment <NumAm>114</NumAm>
<Article>Article 1, paragraph 2a (new)</Article>

2a. This regulation shall be without prejudice to specific Community provisions concerning official controls.

Amendment <NumAm>115</NumAm>
<Article>Article 1, paragraph 2b (new)</Article>

2b. The performance of official controls pursuant to this Regulation shall be without prejudice to feed and food business operators' primary legal responsibility for ensuring feed and food safety, as laid down in Regulation (EC) 178/2002, and any civil or criminal liability arising from the breach of their obligations.

Amendment <NumAm>116</NumAm>
<Article>Article 2, point 1</Article>

1. "official control" means any form of control **performed by** the competent authority or **by** the Community for the verification of compliance with feed and food law, **including** animal health and animal welfare rules;

1. "official control" means any form of control **that** the competent authority or the Community **performs** for the verification of compliance with feed and food law, animal health and animal welfare rules;

Amendment <NumAm>117</NumAm>
<Article>Article 2, point 2</Article>

2. "verification" means **the confirmation** by examination and **provision** of objective evidence **that** specified requirements have been fulfilled;

2. "verification" means **checking**, by examination and **the consideration** of objective evidence, **whether** specified requirements have been fulfilled;

Amendment <NumAm>118</NumAm>
<Article>Article 2, point 3</Article>

3. "feed law" means the laws, regulations and administrative provisions governing feed in general and feed safety in particular; it covers **any stage** of production, processing, distribution and use of feed;

3. "feed law" means the laws, regulations and administrative provisions governing feed in general and feed safety in particular, **whether at Community or national level**; it covers **all stages** of production, processing, **and** distribution **of feed** and **the** use of feed;

Amendment <NumAm>119</NumAm>
<Article>Article 2, point 4</Article>

4. "competent authority" means the authority of a Member State **or a third country designated to carry out official controls**;

4. "competent authority" means the **central** authority of a Member State **competent for the organisation of official controls or any other authority to which that competence has been conferred; it shall also include, where appropriate, the corresponding authority of a third country**;

Amendment <NumAm>120</NumAm>
<Article>Article 2, point 5</Article>

5. "control body" means ***a non-governmental body*** to which the competent authority has delegated certain control tasks;

5. "control body" means ***an independent third party*** to which the competent authority has delegated certain control tasks;

Amendment <NumAm>121</NumAm>
<Article>Article 2, point 7</Article>

7. "inspection" means the examination of ***plants, animals, feed and food, of their processing, of feed and food businesses, of their management and production systems including finished product testing and feeding practices, and of the origin and destination of production inputs and outputs***, in order to verify that ***all these items conform to*** legal requirements;

7. "inspection" means the examination of ***any aspect of feed, food, animal health and animal welfare*** in order to verify that ***such aspect(s) comply with the*** legal requirements of feed law, food law, animal health and animal welfare rules;

Amendment <NumAm>122</NumAm>
<Article>Article 2, point 7a (new)</Article>

7a. "monitoring" means conducting a planned sequence of observations or measurements with a view to obtaining an overview of the state of compliance with feed or food law, animal health and animal welfare rules;

Amendment <NumAm>123</NumAm>
<Article>Article 2, point 7b (new)</Article>

7b. "surveillance" means a careful observation of one or more feed or food businesses, feed or food business operators or their activities;

Amendment <NumAm>124</NumAm>
<Article>Article 2, point 7c (new)</Article>

7c. "non-compliance" means non-compliance with feed or food law, the rules for the protection of animal health and welfare;

Amendment <NumAm>125</NumAm>
<Article>Article 2, point 7d (new)</Article>

7d. "sampling for analysis" means taking feed or food or any other substance relevant to the production, processing and distribution of feed or food (including the environment) or to the health of animals, in order to verify compliance with feed or food law or animal health rules through analysis;

Amendment <NumAm>126</NumAm>
<Article>Article 2, point 8</Article>

8. "official certification" means the procedure by which the competent authority or control bodies provide written or equivalent assurance **that feed and food or feed and food businesses conform to requirements;**

8. "official certification" means the procedure by which the competent authority or control bodies, **authorised to act in such a capacity**, provide written, **electronic** or equivalent assurance **concerning compliance;**

Amendment <NumAm>127</NumAm>
<Article>Article 2, point 8a (new)</Article>

8a. "official detention" means the procedure by which the competent authority ensures that feed or food is not moved or tampered with pending a decision on its destination; it includes storage by feed and food business operators in accordance with instructions from the competent authority;

Amendment <NumAm>128</NumAm>
<Article>Article 2, point 8b (new)</Article>

8b. "equivalence" means the capability of different systems or measures to meet the same objectives; and "equivalent" means

different systems or measures capable to meet the same objectives;

Amendment <NumAm>129</NumAm>
<Article>Article 2, point 9</Article>

9. "import" means the release for free circulation of feed ***and*** food ***and*** the intention to release feed or food for free circulation within the meaning of Article 79 of Regulation (EEC) No 2913/92 in one of the territories referred to in Annex I;

9. "import" means the release for free circulation of feed ***or*** food ***or*** the intention to release feed or food for free circulation within the meaning of Article 79 of Regulation (EEC) No 2913/92 in one of the territories referred to in Annex I;

Amendment <NumAm>130</NumAm>
<Article>Article 2, point 12</Article>

12. "identity check" means ***a check by*** visual inspection to ensure that the documents accompanying the consignment tally with the labelling and the content of the consignment;

12. "identity check" means visual inspection to ensure that ***certificates or other*** documents accompanying the consignment tally with the labelling and the content of the consignment;

Amendment <NumAm>131</NumAm>
<Article>Article 2, point 13</Article>

13. "physical check" means a check on the feed or food itself;

13. "physical check" means a check on the feed or food itself ***which may include checks on the means of transport, the packaging, labelling, the temperature, sampling for analysis and laboratory testing and any other check necessary to verify compliance with feed or food law;***

Amendment <NumAm>132</NumAm>
<Article>Article 2, point 14</Article>

14. "control plan" means a ***plan*** established by the competent authority containing general information on the structure and organisation of ***the feed and food*** control

14. "control plan" means a ***description*** established by the competent authority containing general information on the structure and organisation of ***its official***

systems ***operated by it.***

control systems.

Amendment <NumAm>133</NumAm>
<Article>Article 3, paragraph 1</Article>

1. Member States shall ***organise*** official controls ***on a regular basis and with a frequency appropriate*** to achieve the objectives of ***the present*** Regulation, taking ***into*** account:

(a) identified risks associated with feed ***and*** food, feed ***and*** food businesses, the use of feed or food or any process, material, substance, activity or operation that may influence feed ***and*** food safety;

(b) ***the experience and knowledge gained from previous controls;***

(c) the reliability of ***the controls already carried out by feed and food business operators;***

(d) ***suspicion of possible*** non-compliance.

1. Member States shall ***ensure that*** official controls ***are carried out regularly and on a risk basis and with an appropriate frequency, so as*** to achieve the objectives of ***this*** Regulation, taking account of:

(a) identified risks associated with ***animals***, feed ***or*** food, feed ***or*** food businesses, the use of feed or food or any process, material, substance, activity or operation that may influence feed ***or*** food safety, ***animal health and animal welfare;***

(b) ***feed or food business operators' past record as regards compliance with feed or food law or with animal health and animal welfare rules;***

(c) the reliability of ***any own check have already been carried out; and***

(d) ***any information that might indicate*** non-compliance.

Amendment <NumAm>134</NumAm>
<Article>Article 3, paragraph 2</Article>

2. ***As a general rule,*** official controls shall be carried out without prior warning.

2. Official controls shall be carried out without prior warning, except in cases such as audits where prior notification of the feed or food business operator is necessary.

Official controls may also be carried out on an ad hoc basis.

Amendment <NumAm>135</NumAm>
<Article>Article 3, paragraph 3</Article>

3. Official controls shall be carried out at any stage of production, processing and

3. Official controls shall be carried out at any stage of production, processing and

distribution of feed **and** food. They shall include controls on feed and food businesses, on the use of feed or food, on any process, material, substance, activity or operation applied to feed **and** food and, **where relevant for achieving** the objectives of this Regulation, **on live animals and plants**.

distribution of feed **or** food **and of animals and animal products**. They shall include controls on feed and food businesses, on the use of feed or food, **the storage of feed and food**, on any process, material, substance, activity or operation **including transport** applied to feed **or** food and **on live animals to achieve** the objectives of this Regulation.

Amendment <NumAm>136</NumAm>
<Article>Article 3, paragraph 4</Article>

4. Feed and food intended for export outside the Community **shall be controlled with the same care as feed and food intended for the Community market**.

4. Official controls shall, with the same care, cover exports outside the Community, **the placing on the market within the Community, and introductions from third countries into the territories referred to in Annex I**.

Amendment <NumAm>137</NumAm>
<Article>Article 3, paragraph 4a (new)</Article>

4a. Member States shall take all necessary measures to ensure that products intended for dispatch to another Member State are controlled with the same care as those intended to be placed on the market in their own territory.

Amendment <NumAm>138</NumAm>
<Article>Article 3, paragraph 4b (new)</Article>

4b. The competent authority of the Member State of destination may check compliance of feed and food with the feed and food law by means of non-discriminatory checks. To the extent strictly necessary for the organisation of the official controls, Member States may ask operators who have delivered goods to them from another Member State to report the arrival of such goods.

Amendment <NumAm>139</NumAm>
<Article>Article 3, paragraph 4c (new)</Article>

4c. If, during a check carried out at the place of destination or during storage or transport, a Member State establishes non-compliance, it shall take the appropriate measures, which may include re-dispatch to the Member State of origin.

Amendment <NumAm>140</NumAm>
<Article>Article 4, paragraph 2</Article>

The competent authorities shall **meet the following criteria:**

(a) they must be impartial and free from any conflict of interest;

(b) they must ensure the effectiveness and appropriateness of **the** official controls at all stages of **feed and food** production, processing and distribution;

(c) they must have, or have access to, an adequate laboratory capacity for testing and to a sufficient number of suitably qualified and experienced staff so that the official controls and control duties can be carried out efficiently and effectively;

(d) they must have appropriate and properly maintained facilities and equipment to ensure that staff can perform their control duties efficiently and effectively;

(e) they must have the legal powers to carry out official controls and to take the measures prescribed by this Regulation;

(f) they must have contingency plans in place and be prepared to operate such plans in case of emergencies.

The competent authorities shall **ensure:**

(b) the effectiveness and appropriateness of official controls on live animals, feed and food at all stages of production, processing and distribution, **and on the use of feed;**

(ba) that staff carrying out official controls are free from any conflict of interest;

(c) that they have, or have access to, an adequate laboratory capacity for testing and a sufficient number of suitably qualified, and experienced staff so that the official controls and control duties can be carried out efficiently and effectively;

(d) that they have appropriate and properly maintained facilities and equipment to ensure that staff can perform **official controls** efficiently and effectively;

(e) that they have the legal powers to carry out official controls and to take the measures **provided for in** this Regulation;

(f) that they have contingency plans in place and be prepared to operate such plans in **the event of an emergency;**

(fa) that the feed and food business operators are obliged to undergo any inspection carried out in accordance with

this Regulation and to assist inspectors in the accomplishment of their tasks.

Amendment <NumAm>141</NumAm>
<Article>Article 4, paragraph 3</Article>

3. *Where* a **central competent authority** has **conferred** the competence to carry out official controls **to another** authority or authorities, in particular those at regional or local level, there shall be effective **and efficient** co-ordination between **or among** the **central** competent **authority and the authority or authorities to which that competence has been conferred**.

The quality and uniformity of the controls shall be ensured at all levels at which the competent authorities are operating.

3. *When* a **Member State** **confers** the competence to carry out official controls **on an** authority or authorities **other than a central competent authority**, in particular those at regional or local level, there shall be effective co-ordination between **all** the competent **authorities involved, including where appropriate in the field of environmental and health protection**.

Amendment <NumAm>142</NumAm>
<Article>Article 4, paragraph 3a (new)</Article>

3a. Competent authorities shall ensure the impartiality, quality and consistency of official controls at all levels at which they operate. The criteria listed in paragraph 2 must be fully respected by every authority on which the competence to carry out official controls is conferred.

Amendment <NumAm>143</NumAm>
<Article>Article 4, paragraph 4</Article>

4. *Where* within a competent authority official **control duties are given to different control units**, efficient co-ordination and co-operation between **these** different units **shall be ensured**.

4. *When*, within a competent authority, **more than one unit is competent to carry out official controls, there shall be** efficient co-ordination and co-operation between **the** different units.

Amendment <NumAm>144</NumAm>
<Article>Article 4, paragraph 5</Article>

5. ***Audits shall be carried out to ensure that the competent authorities achieve*** the objectives of this Regulation. These audits shall be subject to independent scrutiny and shall be carried out in a transparent manner.

5. ***Competent authorities shall carry out internal audits or may have external audits carried out, and take appropriate measures in the light of their results, to ensure that they are achieving*** the objectives of this Regulation. These audits shall be subject to independent scrutiny and shall be carried out in a transparent manner.

Amendment <NumAm>145</NumAm>
<Article>Article 4, paragraph 6</Article>

6. Detailed rules for the implementation of this Article may be adopted in accordance with the procedure referred to in Article 62(3), ***including for the accreditation of the competent authorities referred to in paragraph 1.***

6. Detailed rules for the implementation of this Article may be adopted in accordance with the procedure referred to in Article 62(3).

Amendment <NumAm>146</NumAm>
<Article>Article 5, title</Article>

Delegation of specific ***control*** tasks

Delegation of specific tasks ***related to official controls***

Amendment <NumAm>147</NumAm>
<Article>Article 5, paragraph 1</Article>

1. The competent authority may delegate specific control tasks to one or more control bodies. However, the activities referred to in Article 54 shall not be the subject of such a delegation.

A list of tasks that may or may not be delegated may be established in accordance with the procedure referred to in Article 62(3).

1. ***(a)*** The competent authority may delegate specific tasks ***related to official controls*** to one or more control bodies ***in accordance with paragraphs 2 to 4.***

(b) A list of tasks that may or may not be delegated may be established in accordance with the procedure referred to in Article 62(3).

(ba) ***However, the activities referred to in Article 54 shall not be the subject of such a delegation.***

The competence for performing specific control tasks shall not be delegated unless the following criteria are met:

- (a) there ***must be*** an accurate description of the tasks that ***can be carried out by the control body*** and of the conditions under which ***the delegated competence can be exercised***;
- (b) there ***must be*** proof that the control ***bodies***:
 - (i) ***have*** the expertise, equipment and infrastructures required to carry out the tasks that ***have been assigned to them***;
 - (ii) ***have*** a sufficient number of suitably qualified and experienced staff;
 - (iii) ***are*** impartial and free from any conflict of interest;
- (c) ***it must be ensured that the control bodies work and are*** accredited in accordance with ***the*** European Standard EN 45004 "General criteria for the operation of various types of bodies performing inspection";
- (d) ***the results of the controls carried out by control bodies shall be communicated to the competent authority on a regular basis and upon request of the latter; where the results of the controls show non-compliance or a suspicion thereof, the competent authority shall be informed immediately by the control bodies***;
- (e) the control ***bodies must regularly carry out internal audits in order to ensure their capacity to perform efficiently the tasks that have been assigned to them***;
- (f) there ***must be*** efficient co-ordination between the delegating competent authority

The competent authority may delegate specific tasks to a particular control body only if:

- (a) there ***is*** an accurate description of the tasks that ***the control body may carry out*** and of the conditions under which ***it may carry them out***;
- (b) there ***is*** proof that the control ***body***:
 - (i) ***has*** the expertise, equipment and infrastructure required to carry out the tasks ***delegated to it***;
 - (ii) ***has*** a sufficient number of suitably qualified and experienced staff, ***and***
 - (iii) ***is*** impartial and free from any conflict of interest ***as regards the exercise of the tasks delegated to it***;
- (c) ***the control body works and is*** accredited in accordance with European Standard EN 45004 "General criteria for the operation of various types of bodies performing inspection" ***and/or another standard if more relevant to the delegated tasks in question***;
- (d) ***laboratories shall operate in accordance with the standards referred to in Article 12(2)***
- (e) the control ***body communicates the results of the controls carried out to the competent authority on a regular basis and whenever the competent authority so requests. If the results of the controls indicate non-compliance or point to the likelihood of non-compliance, the control body shall immediately inform the competent authority***;
- (f) there ***is*** efficient ***and effective*** co-ordination between the delegating competent

and the control **bodies**;

authority and the control **body**;

Amendment <NumAm>149</NumAm>

<Article>Article 5, paragraph 3</Article>

3. **The control bodies shall be subject to audits as necessary organised by the delegating competent authority.** If as a result of an audit it appears that such bodies **fail to perform** the tasks **that have been** delegated to them, the **delegation of competence** may **be withdrawn, and** shall **be withdrawn** without delay **in the absence of** appropriate and timely **remedies**.

3. **Competent authorities delegating specific tasks to control bodies shall organise audits or inspections of control bodies as necessary.** If, as a result of an audit **or an inspection**, it appears that such bodies **are failing to carry out** the tasks delegated to them **properly**, the **delegating competent authority** may **withdraw the delegation**. It shall **withdraw it** without delay **if the control body fails to take** appropriate and timely **remedial action**.

Amendment <NumAm>150</NumAm>

<Article>Article 5, paragraph 4</Article>

Any Member State wishing to delegate a specific control task to a control body shall notify the Commission **and the other Member States**. This notification shall provide detailed description of:

(a) **the task to be delegated;**

(b) **the body to which the task will be delegated.**

Any Member State wishing to delegate a specific control task to a control body shall notify the Commission. This notification shall provide detailed description of:

(a) the competent authority that would delegate the task

(b) **the task that it would delegate; and**

(ba) the control body to which it would delegate the task.

Member States shall have three months from the receipt of a notification to send written comments to the Commission. The Commission may – and, when it receives written comments from one or more Member States, shall – consult Member States within the committee referred to in Article 62(1). The Commission may decide, in accordance with the procedure referred to in Article 62(3), whether the measure may be implemented subject to, if necessary, appropriate amendments.

Amendment <NumAm>151</NumAm>
<Article>Article 6</Article>

1. **Staff of the competent authority performing official controls shall have**, for their area of competence, **received appropriate training in order to undertake their duties competently and to ensure that official controls are carried out in a uniform way**. This training shall cover as appropriate the areas referred to in Annex II, Chapter I.

2. **Staff performing official controls shall be regularly kept** up-to-date **on all issues** in their area of competence and **shall** receive additional training as necessary.

The competent authority shall ensure that all of its staff performing official controls:

1. **Receive**, for their area of competence, **appropriate training enabling them to undertake their duties competently and to carry out official controls in a consistent manner**. This training shall cover as appropriate the areas referred to in Annex II, Chapter I;

2. **keep** up-to-date in their area of competence and receive **regular** additional training as necessary; **and**

2a. have aptitude for multidisciplinary co-operation.

Amendment <NumAm>152</NumAm>
<Article>Article 7</Article>

Confidentiality

Without prejudice to the need to protect public health, staff of the competent authority shall respect rules of confidentiality on information acquired when undertaking their duties and shall be bound by rules on professional secrecy laid down in national legislation.

Transparency and Confidentiality

1. **The competent authorities shall ensure that they carry out their activities with a high level of transparency. For that purpose, relevant information held by them shall be made available to the public as soon as possible.**

In general, the public shall have access to:

(a) information on the control activities of the competent authorities and their effectiveness, and

(b) information pursuant to Article 10 of Regulation (EC) No 178/2002.

2. **The competent authority shall take steps to ensure that members or their staff are required not to disclose information**

acquired when undertaking their official control duties which by its nature is covered by professional secrecy in duly justified cases. Protection of professional secrecy shall not prevent the dissemination by the competent authorities of information referred to in paragraph 1(b). The rules of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data remain unaffected.

3. Information covered by professional secrecy includes in particular:

- *the confidentiality of preliminary investigation proceedings or of current legal proceedings;*
- *the personal data;*
- *the documents covered by an exception in Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents;*
- *information protected by national and Community legislation concerning in particular professional secrecy, the confidentiality of deliberations, international relations and national defence;*

Amendment <NumAm>153</NumAm>
<Article>Article 8</Article>

Control procedures **and guidelines**

1. Official controls by the competent authority shall be carried out in accordance with documented procedures. **This documentation** shall contain information and instructions for staff performing official controls including *inter alia* the areas referred to in Annex II, Chapter II.

Control **and verification** procedures

1. Competent authorities shall carry out official controls in accordance with documented procedures. **These procedures** shall contain information and instructions for staff performing official controls including, *inter alia*, the areas referred to in Annex II, Chapter II.

1a. Member States shall ensure that they have legal procedures in place in order to ensure that staff of the competent authorities have access to premises and documentation maintained by feed and food business operators so as to be able to accomplish their

2. Specific control procedures and guidelines for controls may be determined in accordance with the procedure referred to in Article 62(2). These may include procedures for official controls on the implementation of the HACCP principles or of management systems operated by the feed and food businesses where these systems are designed to meet feed and food law requirements.

tasks properly.

1b. Competent authorities shall have procedures in place :

(a) to verify the effectiveness of official controls that they carry out; and

(b) to ensure that corrective action is taken when needed and that the documentation referred to in paragraph 1 is updated as appropriate.

2. The Commission may establish guidelines for official controls *in accordance with the procedure referred to in Article 62 (2).*

The guidelines may, in particular, contain recommendations concerning official controls:

(a) on the implementation of HACCP principles;

(b) of management systems that feed or food business operators operate with a view to meeting the requirements of feed or food law.

(c) on the microbiological, physical and chemical safety of feed and food.

Amendment <NumAm>154</NumAm>
<Article>Article 9</Article>

Verification procedures and reports

1. The competent authority shall ***have procedures in place for the verification of the efficiency and efficacy of its control system and for taking corrective action when needed.***

2. ***The competent authority shall establish reports of the official controls that have been carried out. These reports shall at least include*** a description of the purpose of

Reports

1. The competent authority shall ***draw up reports on the official controls that it has carried out.***

2. ***These reports shall include*** a description of the purpose of the official controls, the control methods ***applied***, the results of the official controls and, where appropriate,

the official control, the control methods **that have been applied**, the results of the official controls and where appropriate **the corrective action to be taken by the feed or food business concerned. These reports shall be submitted to those who have been the subject of the controls.**

action that the feed business operator concerned is to take.

2a. At least in case of non-compliance, the competent authority shall provide the feed or food business operator concerned with a copy of the report referred to in paragraph 2.

Amendment <NumAm>155</NumAm>
<Article>Article 10</Article>

Official controls shall include the following activities:

(a) **The verification of the efficacy of the control systems put in place by feed and food business operators.**

(b) Inspection of feed and food businesses **and** their surroundings, premises, offices, equipment, installations, machinery **as well as** of feed and food.

(c) checks on the hygiene conditions in feed

1. Tasks related to official controls shall, in general, be carried out using appropriate control methods and techniques such as monitoring, surveillance, verification, audit, inspection, sampling and analysis.

2. Official controls **on feed and food** shall include, **inter alia** the following activities:

(a) **examination of any control systems that feed and food business operators have put in place and the results obtained;**

(b) inspection of:

(i) primary producers installations, feed and food businesses, **including** their surroundings, premises, offices, equipment, installations and machinery, transport **and** of feed and food;

(ii) raw materials, ingredients, processing aids and other products used for the preparation and production of feed and food;

(iii) semi-finished products;

(iv) materials and articles intended to come into contact with food;

(v) cleaning and maintenance products, processes and pesticides;

vi) labelling, presentation and advertising

(c) checks on the hygiene conditions in feed

and food businesses.

(d) assessment of **the** procedures on good manufacturing practices (GMP), good hygiene practices (GHP) and HACCP, taking into account the use of guides established for that purpose.

(e) examination of written, **documentary** material and other records which may be relevant to the assessment of compliance with feed or food law.

(f) examination of any control and verification system set up by the undertaking and of the results obtained.

(g) interviews with **the** feed and food business operators and with **the** staff **employed by feed and food businesses.**

(h) **the** reading of values **recorded by** measuring instruments **installed by the undertaking.**

(i) controls carried out with the competent authority's own instruments **in order** to verify **the measurements made by the** feed or food business.

(j) any other activity used to verify compliance with feed and food law.

Official controls shall be carried out using appropriate control methods and techniques such as monitoring, surveillance, verification, audit, inspection, sampling and analysis.

and food businesses.

(d) assessment of procedures on good manufacturing practices (GMP), good hygiene practices (GHP), **good farming practices** and HACCP, taking into account the use of guides established **in accordance with Community legislation.**

(e) examination of written material and other records which may be relevant to the assessment of compliance with feed or food law.

(g) interviews with feed and food business operators and with **their** staff;

(h) reading values **that feed of food business'** measuring instruments **have recorded**

(i) controls carried out with the competent authority's own instruments to verify feed or food business **operators' measurements.**

(j) any other activity used to ensure that the objectives of this Regulation are met.

Amendment <NumAm>156</NumAm>
<Article> Article 11</Article>

1. In the context of official controls methods of sampling recognised by international organisations shall be used, where available.

2. The methods of analysis used within the context of official controls shall be fully validated in accordance with Community legislation or with internationally accepted protocols, in particular those methods that

1. Sampling and analysis methods used in the context of official controls shall comply with relevant Community rules; or

(a) if none exist, internationally recognised rules or protocols, for example those that the European Committee for standardisation (CEN) has accepted or

have been accepted by the European Committee for standardisation (CEN). If these are not available, methods accepted by other international organisations or by national bodies may be used.

Where such methods of analysis are not available, other methods fit for the intended purpose or developed in accordance with scientific protocols may be used.

When justified by the circumstances the methods of analysis may be validated within a single laboratory according to an internationally accepted protocol.

3. The methods of analysis shall comply whenever possible with all or with the appropriate criteria set out in Annex III.

4. The methods of sampling and analysis to be applied for ensuring compliance with feed and food law, including the reference methods to be used in the case of dispute and the acceptance criteria for such methods, may be laid down in accordance with the procedure referred to in Article 62(3).

5. Feed and food business operators, whose products are subject to sampling and analysis, may apply for a second opinion. This implies that a sufficient number of samples, taken under identical conditions, are taken so as to provide feed and food business operators with a counter sample. However, this right shall not prejudice the obligation of the competent authorities to take prompt action in case of emergencies.

those agreed in national legislation; or

(b) if none exist, other methods fit for the intended purpose or developed in accordance with scientific protocols.

2. Where paragraph 1 does not apply, validation of methods of analysis may take place within a single laboratory according to an internationally accepted protocol.

3. Wherever possible, methods of analysis shall be characterised by the appropriate criteria set out in Annex III.

4. The following implementing measures may be laid down in accordance with the procedure referred to in Article 62(3):

(a) the methods of sampling and analysis, including the confirmatory or reference methods to be used in the event of a dispute;

(b) the performance criteria, analysis parameters, measurement uncertainty and procedures for the validation of such methods; and

(c) rules on the interpretation of results.

5. The competent authorities shall establish adequate procedures in order to guarantee the right of feed and food business operators whose products are subject to sampling and analysis to apply for a supplementary expert opinion without prejudice to the obligation of competent authorities to take prompt action in case of emergency.

6. In particular, they shall ensure that feed and food business operators can obtain sufficient numbers of samples for a supplementary expert opinion, unless impossible in case of highly perishable products or very low quantity of available substrate.

7. Samples must be handled and labelled in such a way as to guarantee both their legal and analytical validity.

Amendment <NumAm>157</NumAm>
<Article>Article 12</Article>

1. The analysis of samples taken during official controls shall be carried out by laboratories designated for that purpose by the competent authority. Any laboratory that fulfils the criteria laid down in paragraph 2 shall be eligible for designation as an official laboratory.

2. The laboratories referred to in paragraph 1 shall operate, be assessed and be accredited in accordance with the following European Standards *developed by CEN*:

- (a) EN ISO/IEC 17025 on "General requirements for the competence of testing and calibration laboratories";
- (b) EN 45002 on "General criteria for the assessment of testing laboratories";
- (c) EN 45003 on "Calibration and testing laboratory accreditation system-General requirements for operation and recognition",
taking into account criteria for different testing methods laid down in Community feed and food law.

3. The accreditation and assessment of testing laboratories referred to in paragraph 2 may relate to individual tests or groups of tests.

4. Any deviation in the way in which the standards referred to in paragraph 2 are applied shall be adopted in accordance with the procedure referred to in Article 62(3).

1. The competent authority shall designate laboratories that may carry out the analysis of samples taken during official controls.

2. However, competent authorities may designate only laboratories that operate and are assessed and accredited in accordance with the following European Standards:

- (a) EN ISO/IEC 17025 on "General requirements for the competence of testing and calibration laboratories";
- (b) EN 45002 on "General criteria for the assessment of testing laboratories";
- (c) EN 45003 on "Calibration and testing laboratory accreditation system-General requirements for operation and recognition",
taking into account criteria for different testing methods laid down in Community feed and food law.

3. The accreditation and assessment of testing laboratories referred to in paragraph 2 may relate to individual tests or groups of tests.

4. The competent authority may cancel the designation referred to in paragraph 1 when the conditions referred to in paragraph 2 are not fulfilled anymore.

Amendment <NumAm>158</NumAm>
<Article>Article 13</Article>

Contingency plans

1. For the implementation of the general plan for crisis management referred to in Article 55 of Regulation (EC) No 178/2002,

Contingency plans **for feed and food**

1. For the implementation of the general plan for crisis management referred to in Article 55 of Regulation (EC) No 178/2002,

Member States shall draw up **contingency operational** plans setting out measures to be implemented without delay **where** feed or food **have been** found to pose a serious risk to humans or animals either directly or through the environment, **and specifying the administrative authorities to be engaged together with their powers and responsibilities, as well as channels and procedures for transmitting information among the relevant actors.**

Member States shall review these contingency plans as appropriate, particularly in the light of changes in the organisation of the **control services** and of experience, including experience gained **in** simulation exercises.

2. Where necessary, **guidelines** may be **issued to harmonise those contingency plans** in accordance with the procedure referred to in Article 62(3), **ensuring** that such **contingency** plans are compatible with the general plan for crisis management referred to in Article 55 of Regulation (EC) No 178/2002. **These guidelines** shall also indicate the role of stakeholders in the establishment and operation of the contingency plans.

Member States shall draw up **operational contingency** plans setting out measures to be implemented without delay **when** feed or food **is** found to pose a serious risk to humans or animals either directly or through the environment.

2. **These contingency plans shall specify:**

(a) **the administrative authorities to be engaged;**

(b) **their powers and responsibilities; and**

(c) **channels and procedures for sharing information between the relevant parties.**

3. Member States shall review these contingency plans as appropriate, particularly in the light of changes in the organisation of the **competent authority** and of experience, including experience gained **from** simulation exercises

4. Where necessary, **implementing measures** may be **adopted** in accordance with the procedure referred to in Article 62(3). **Such measures shall establish harmonised rules for contingency plans to the extent necessary to ensure** that such plans are compatible with the general plan for crisis management referred to in Article 55 of Regulation (EC) No 178/2002. **They** shall also indicate the role of stakeholders in the establishment and operation of the contingency plans.

Amendment <NumAm>159</NumAm>
<Article>Article 14</Article>

Chapter V: Controls on feed and food of animal origin

The checks on feed and food of animal origin provided for in Council Directive 97/78/EC **shall, as appropriate, be supplemented with official controls on the verification of compliance with aspects of feed law and food law that are not covered by that Directive, including those aspects referred to in Articles 47 to 49 of this Regulation.**

Chapter V: **Official** controls on feed and food of animal origin

1. This Regulation shall not affect the requirements for veterinary checks on feed and food of animal origin provided for in Council Directive 97/78/EC. **However, the competent authority designated in accordance with Directive 97/78/EC shall, in addition, carry out official controls to verify compliance with aspects of feed or food law that the Directive does not cover,**

as appropriate, including those aspects referred to in Title VI, Chapter II of this Regulation.

2. The general rules of Articles 18 to 25 of this Regulation shall also apply to official controls on all feed and food, including feed and food of animal origin.

3. Satisfactory results of checks on goods that are:

(a) placed under one of the customs procedures referred to in points b) to f) of Article 4(16) of Regulation (EEC) no. 2913/92; or

(b) to be handled in free zones of free warehouses

shall not affect feed and food business operators' duty to ensure that feed and food comply with feed and food law from the moment of release for free circulation. Nor shall they prevent further official controls on the feed or food concerned from being carried out.

Amendment <NumAm>160</NumAm>
<Article>Article 15</Article>

Controls on feed and food of non-animal origin

1. The competent authorities shall **proceed to** regular official controls of feed and food of non-animal origin not covered by Directive 97/78/EC, imported into the territories referred to in Annex I. **These controls** shall **be organised using a plan established** on the basis of potential risks **and shall include any** aspect of feed and food law.

These controls shall take place at an appropriate place, including the point of entry of the goods into one of the territories referred to in Annex I, the point of release for free circulation, warehouses, the premises of the importing feed and food business operator, or other points of the feed

Official controls on feed and food of non-animal origin

The competent authority shall **carry out** regular official controls on feed and food of non-animal origin not covered by **the scope of** Directive 97/78/EC, imported into the territories referred to in Annex I. It **shall** organise these controls **on the basis of** the national control plan drawn up in accordance with Articles 42 and 43 and in the light **of potential risks**. The controls shall cover all aspects of feed and food law.

These controls shall take place at an appropriate place, including the point of entry of the goods into one of the territories referred to in Annex I, the point of release for free circulation, warehouses, the premises of the importing feed and food business operator, or other points of the feed

and food chain.

These controls may also **include checks** on goods that are placed under one of the customs procedures referred to in points (b) to (f) of Article 4(16) of Regulation (EEC) No 2913/92, or to be **handled** in free zones or free warehouses.

Satisfactory results of **these** checks **do not preclude feed and food from compliance** with feed and food law **at** the moment of release for free circulation, **and from renewed controls.**

2. The controls referred to in paragraph 1 shall include at least a documentary check and, as appropriate, an identity check and a physical check.

Physical checks shall be conducted in accordance with a frequency taking into account:

(a) possible risks that may be associated with the different feed and food commodities;

(b) the history of compliance with the requirements of a product, establishment of origin, importing feed or food business operator, exporting feed or food business operator, or third country;

(c) the controls carried out by the importer;

(d) the guarantees given by the exporting third country's competent authority.

Physical checks may include:

(a) checks of the means of transport;

(b) checks on the packaging;

(c) checks of the temperature of the products;

(d) sampling and laboratory testing; or

(e) any other check necessary to check

and food chain.

These controls may also **be carried out** on goods that are:

(a) placed under one of the customs procedures referred to in points (b) to (f) of Article 4(16) of Regulation (EEC) No 2913/92; or

(b) to be **introduced** in free zones or free warehouses, **as defined in Article 4(15) b) of Regulation (EC) n°2913/92.**

Satisfactory results of checks **referred to in paragraph 3 shall not affect feed and food business operators' duty to ensure that feed and food comply** with feed and food law **from** the moment of release for free circulation. **Nor shall they prevent further official controls on the feed or food concerned from being carried out.**

The Commission shall draw up and update a list of feed and food of non-animal origin that is, on the basis of known or emerging risk, to be subject to an increased level of official controls at the point of entry into territories referred to in Annex I, in accordance with the procedure referred to in Article 62(3). The frequency and nature of these controls, shall be laid down in accordance with the same procedure. At the same time, the fees related to such controls may be established in accordance with the same procedure.

compliance with feed or food law.

Physical checks shall be carried out under satisfactory conditions and at a place, which allows investigations to be conducted correctly, representative samples to be taken, and the feed and food to be handled hygienically. Samples must be handled in such a way as to avoid altering the validity of the sample.

3. In accordance with the procedure referred to in Article 62(3), a list shall be drawn up of feed and food of non-animal origin, that on the basis of known risks shall be subject to an increased level of official controls at the point of entry into territories referred to in Annex I. The frequency and the nature of these controls shall also be laid down in accordance with the procedure referred to in Article 62(3).

Amendment <NumAm>161</NumAm>
<Article>Article 15a (new)</Article>

Article 15a

Types of checks on feed and food of non-animal origin

1. The official controls referred to in Article 15(1) shall include at least a systematic documentary check, a random identity check and, as appropriate, a physical check.

2. Physical checks shall be carried out at a frequency depending on:

(a) the risks associated with different types of feed and food;

(b) the history of compliance with the requirements for the product concerned of the third country and establishment of origin and of the feed or food business operators importing and exporting the product;

(c) the controls that the feed or food business importing the product has carried out;

(d) the guarantees that the competent authority of the third country of origin has given.

3 The Member States shall ensure that physical checks be carried out under appropriate conditions and at a place that has access to appropriate control facilities, that allows investigations to be conducted correctly, a number of samples adapted to the risk management to be taken, and the feed and food to be handled hygienically. Samples must be handled in such a way as to guarantee both their legal and analytical validity. Member States shall ensure that the equipment and methodology are adequate for measuring the limit values laid down under Community or national legislation.

Amendment <NumAm>162</NumAm>
<Article> Article 16</Article>

Points of entry and *in-advance information*

To the extent strictly necessary for the organisation of the controls referred to in Article 15(3) and for the controls of feedingstuffs, the Member States may designate particular points of entry in their territory for the various types of feed and food products. They shall inform the Commission and the other Member States thereof. These measures shall be designed in such a way as to avoid unnecessary disruption of trade.

For the same purpose and subject to the same conditions, Member States may require feed and food business operators responsible for the consignments to forward to them in-advance information concerning the arrival and the nature of a consignment.

Points of entry and *prior notification*

Member States shall, for the organisation of the official controls referred to in Article 15(5) and may, for other feed of non-animal origin:

- designate particular points of entry in their territory which have access to the appropriate control facilities for different types of feed and food; and*
- require feed and food business operators responsible for consignments to give prior notification of their arrival and nature.*

Member States shall inform the Commission and other Member States of any measures that they take in accordance with paragraph 1.

They shall design those measures in such a way as to avoid unnecessary disruption of

trade.

Amendment <NumAm>163</NumAm>
<Article> Article 17</Article>

Where it is suspected that feed law or food law have not been complied with or where there is doubt as to the identity or the actual destination of the consignment, the competent authority shall carry out any control that it deems appropriate in order to confirm or rule out the suspicion.

The products checked shall then remain under supervision of the competent authority until the results of the checks are obtained.

In case of suspicion of non-compliance or if there is doubt as to the identity or the actual destination of the consignment, or as to the correspondence between the consignment and the certified guarantees, the competent authority shall carry out official controls in order to confirm or to eliminate the suspicion or doubt. The competent authority shall place the consignment concerned under official detention until it obtains the results of such official controls.

Amendment <NumAm>164</NumAm>
<Article> Article 18</Article>

Feed or food from third countries not complying with feed and food law may be seized or confiscated, and shall be destroyed, submitted to a special treatment in accordance with Article 20, or re-dispatched outside the Community in accordance with Article 21. Where necessary, products shall be recalled following importation.

Feed and food to be destroyed, submitted to a special treatment, or used for other purposes shall not give rise to any adverse effects on human and animal health either directly or through the environment.

1. The competent authority shall place feed or food from third countries, that does not comply with feed and food law, under official detention and, having heard the feed or food business operators responsible for the consignment, it shall take the following measures in respect of such feed or food:

(a) order that such feed or food is destroyed, submitted to a special treatment in accordance with Article 20 or re-dispatched outside the Community in accordance with Article 21; other appropriate measures such as the use of feed or food for other purposes than those for which they were originally intended may also be taken.

(b) if the feed or food has already been placed on the market, monitor or, if necessary, order its recall or withdrawal before taking one of the measures referred to above;

(c) verify that feed and food does not give

rise to any adverse effects on human or animal health either directly or through the environment during or pending any of the measures referred to in subparagraphs (a) and (b).

2. If, however:

(a) the official controls provided for in Articles 14 and 15 indicate that a consignment is injurious to human or animal health or unsafe, the competent authority shall place the consignment in question under official detention pending its destruction or any other appropriate measure necessary to protect human and animal health;

(b) feed or food of non-animal origin for which an increased level of controls has been laid down in accordance with Article 15(5) is not presented for official controls, or is not presented in accordance with any specific requirements established in accordance with Article 17, the competent authority shall order that it is recalled and placed under official detention without delay and that it is then either destroyed or re-dispatched in accordance with Article 21.

3. When it does not permit the introduction of feed or food, the competent authority shall notify the Commission and other Member States of its findings and of the identification of the products concerned in accordance with the procedure provided for in Article 50(3) of Regulation (EC) No 178/2002 and notify its decisions to the customs services, together with information as regards its final destination.

4. Decisions on consignments shall be subject to the right of appeal referred to in Article 54(3).

Amendment <NumAm>165</NumAm>
<Article>Article 19</Article>

Article 19

deleted

Decisions on consignments

Where a consignment of feed or food is not complying with feed or food law, the competent authority in consultation with the feed or food business operators responsible for the consignment shall take a decision on its destination. Such decisions shall be taken without unnecessary delay.

If the official controls provided for in Articles 14 and 15 indicate that a consignment is likely to have adverse effects on human or animal health, the competent authority shall seize and destroy the consignment in question, or take any other appropriate measure necessary to protect human and animal health.

Feed or food of non-animal origin which is subject to an increased level of controls in accordance with Article 15(3) without being presented for official controls, shall be recalled and seized without delay, and the competent authority shall decide either to destroy the feed or food or to re-dispatch it in accordance with Article 21.

Where feed and food are denied introduction, the competent authority shall inform the other Member States and the Commission of the findings and of the identification of the products and notify its decisions to the customs services. Such decision shall be subject to the right of appeal referred to in Article 54(3).

Amendment <NumAm>166</NumAm>
<Article>Article 20</Article>

Special treatments

The special treatment ***provided for*** in ***Article 18*** may include:

(a) ***bringing the products into line with*** the requirements of Community law, or with the requirements of a third country of re-dispatch, including decontamination where

Special treatment

The special treatment ***referred to*** in ***Article 19*** may include:

(a) ***treatment or processing to bring the feed or food into line with*** the requirements of Community law, or with the requirements of a third country of re-dispatch, including decontamination, where appropriate, but

appropriate;

(b) processing in any other suitable manner for purposes other than animal or human consumption.

The competent authority shall ensure that the special ***treatments are carried out*** under its control and in accordance with ***the procedures prescribed by it***.

excluding dilution;

(b) processing in any other suitable manner for purposes other than animal or human consumption.

The competent authority shall ensure that special ***treatment takes place*** in establishments under its control, ***or under the control of another Member State*** and in accordance with ***conditions laid down in accordance with the procedure referred to in Article 62 (3) or in the absence of such conditions, with national rules***.

Amendment <NumAm>167</NumAm>
<Article>Article 21</Article>

In the case of re-dispatch of consignments of feed and food outside the territories of the Community, the destination of the consignments shall be agreed with the person responsible for the load. However, a consignment shall not be re-dispatched to the third country of origin or to another third country unless the competent authorities of the third country of destination have expressly agreed to receive the consignment, after having been fully informed of the reasons for which and the circumstances under which the feed or food concerned could not be placed on the market in the Community.

Re-dispatch shall take place within a maximum time limit of 60 days from the day the decision has been submitted to the feed or food business operator, where this is not precluded by the results of the control. If and when the person responsible for the load gives his agreement, or if re-dispatch is found impossible after 60 days on the basis of the control results, the consignment shall be destroyed.

1. The competent authority shall allow re-dispatch of consignments only if :

(a) the destination has been agreed with the feed or food business operator responsible for the consignment; and

(b) the feed and food business operator has first informed the competent authority of the third country of origin, or third country of destination if different of the reasons and circumstances preventing the placing on the market of the feed or food concerned within the Community; and

(c) when the country of destination is not the country of origin, the competent authority of the third country of destination has notified the competent authority of its preparedness to accept the consignment.

2. Without prejudice to the national rules applicable as regards the delays for applying for a supplementary expert opinion, where the results of official controls do not preclude it, re-dispatch shall, as a general rule, unless legal action have been undertaken, take place no more than 60 days after the day on which the competent authority decided on the destination of the consignment. If, after the expiry of the 60 days, re-dispatch does not

Pending re-dispatch of consignments or confirmation of the reasons for rejection, the competent authorities shall **keep the consignments in question under their supervision**.

The **controlling** competent authority shall **activate the notification procedure** provided for in Article 50(3) of Regulation (EC) 178/2002, **and further measures shall be taken as necessary by the competent authorities co-operating** in accordance with Title IV, **so as** to ensure that it is not possible to reintroduce the rejected consignments into the Community.

take place, unless justified delay, the consignment shall be destroyed.

3. Pending re-dispatch of consignments or confirmation of the reasons for rejection, the competent authority shall **place consignments under official detention**.

4. The competent authority shall **notify the Commission and other Member States in accordance with the procedure** provided for in Article 50(3) of Regulation (EC) 178/2002 **and notify its decisions to the customs services. Competent authorities shall co-operate** in accordance with Title IV **to take any further measures necessary** to ensure that it is not possible to reintroduce the rejected consignments into the Community.

Amendment <NumAm>168</NumAm>
<Article>Article 22</Article>

The feed or food business operator responsible for the **consignments** or **his** representative, shall be liable for the costs incurred **in the process of a special treatment, re-dispatch, destruction or storage under supervision of the competent authority of the consignment**.

The feed or food business operator responsible for the **consignment** or **its** representative, shall be liable for the costs incurred **by competent authorities for the activities referred to in Articles 18, 19, 20 and 21**.

Amendment <NumAm>169</NumAm>
<Article>Article 23</Article>

1. Specific pre-export checks **performed by** a third country on feed and food immediately prior to export to the Community with a view to **verify** that the exported products satisfy the **requirements of the Community** may be approved in accordance with the procedure referred to in Article 62(3). The approval may only apply to feed and food originating in the third country concerned, and may be granted for one or more products.

1. Specific pre-export checks **that** a third country **carries out** on feed and food immediately prior to export to the Community with a view to **verifying** that the exported products satisfy **Community requirements** may be approved in accordance with the procedure referred to in Article 62(3). The approval may apply only to feed and food originating in the third country concerned, and may be granted for one or more products.

Where such approval has been granted the frequency of import controls for feed or food ***established under the plan provided for in Article 15(1), or under Directive 97/78/EC for feed and food of animal origin, may be adapted.*** However, Member States shall ***conduct*** controls ***of*** feed and food imported in accordance with the approval referred to in the first ***subparagraph on a significant proportion of the consignments. Such proportions shall be sufficient to ensure that the pre-export checks conducted by the competent authority or control bodies of the third country remain effective and efficient.***

2. The approval referred to in paragraph 1 may only be granted to third countries if:

(a) it has been shown after a Community audit that the Community requirements, or requirements that are at least equivalent, are met;

(b) the controls carried out by the third country prior to dispatch are considered effective and efficient so as to replace or reduce the documentary, identity and physical checks prescribed in Community law.

3. The approval referred to in paragraph 1 shall specify the competent authority ***in*** the third country under ***whose*** responsibility the pre-export checks are performed and ***as necessary the*** control body to which ***such controls may have been delegated by the central competent authority.*** Such delegation may ***only*** be approved ***when*** the criteria ***referred to in*** Article 5, or equivalent conditions, ***are fulfilled.***

The competent authority and control body specified in the approval shall be responsible for contacts with the Community.

4. The competent authority or control ***bodies*** of the third country shall ***draw up, for*** each consignment checked prior to its entry into one of the territories referred to in Annex I, ***an official certificate the model of which shall be specified in the approval*** referred

Where such approval has been granted, the frequency of import controls for feed or food ***may be reduced*** as a consequence. However, Member States shall ***carry out official*** controls ***on*** feed and food imported in accordance with the approval referred to in the first ***subparagraph so as to ensure that the pre-export checks carried out in the third country remain effective.***

2. The approval referred to in paragraph 1 may only be granted to a third country if:

(a) a Community audit has shown that feed or food exported to the Community meets Community requirements, or equivalent requirements;

(b) the controls carried out in the third country prior to dispatch are considered effective and efficient so as to replace or reduce the documentary, identity and physical checks prescribed in Community law.

3. The approval referred to in paragraph 1 shall specify the competent authority ***of*** the third country under ***the*** responsibility ***of which*** the pre-export checks are performed and, if appropriate, any ***control body to which*** that competent authority ***may*** delegate certain tasks. Such delegation may be approved ***only if it meets*** the criteria ***of*** Article 5 or equivalent conditions.

The competent authority and ***any*** control body specified in the approval shall be responsible for contacts with the Community.

4. The competent authority or control ***body*** of the third country shall ensure ***the official certification of*** each consignment checked prior to its entry into one of the territories referred to in Annex I. ***The approval*** referred to in paragraph 1 ***shall specify a***

to in paragraph 1.

5. *Where border controls reveal significant irregularities, Member States shall immediately inform the Commission and the other Member States, increase the number of consignments checked in accordance with this Article and where necessary to allow a proper analytical examination of the situation, keep an appropriate number of samples under appropriate storage conditions.*

6. *In accordance with the procedure referred to in Article 62(3), the approval referred to in paragraph 1 shall be either suspended or revoked if it is found that, in a significant number of consignments, the goods do not correspond to the information in the certificates issued by the competent authority or control bodies of the third country.*

model for such certificates.

5. *Without prejudice to Article 50(3) of Regulation (EC) No 178/2002, when official controls on imports subject to the procedure referred to in paragraph 2 reveal significant non-compliance, Member States shall immediately notify the Commission and other Member States and the operators concerned in accordance with the procedure provided for in Title IV of the present Regulation, increase the number of consignments checked and, where necessary, to allow a proper analytical examination of the situation, keep an appropriate number of samples under appropriate storage conditions.*

6. *If it is found that, in a significant number of consignments, the goods do not correspond to the information in the certificates that the competent authority or control body of the third country has issued, the reduced frequency referred to in paragraph 1 shall no longer apply.*

Amendment <NumAm>170</NumAm>
<Article>Article 24</Article>

For the organisation of the controls referred to in this Chapter, the competent authorities and the customs services shall **work together**.

With regard to consignments of feed and food of animal origin and of feed and food referred to in Article 15(3), **the** customs **authorities** shall not allow **the** introduction or **the** handling in free zones or free warehouses, **unless proof has been supplied that controls have been carried out with satisfactory results.**

Where samples are taken, the competent authority shall inform the customs services and indicate whether or not the goods can be released **prior to** the results of the analysis

For the organisation of the **official** controls referred to in this Chapter, the competent authorities and the customs services shall **co-operate closely**.

With regard to consignments of feed and food of animal origin and of feed and food referred to in Article 15(5), customs **services** shall not allow **their** introduction or handling in free zones or free warehouses **without the agreement of the competent authority.**

Where samples are taken, the competent authority shall inform the customs services **and the operators concerned** and indicate whether or not the goods can be released **before** the results of the analysis of the

of the samples ***being available***.

In the case of release for free circulation ***they*** shall work together in accordance with the requirements laid down in Articles 2 to 6 of Regulation (EEC) No 339/93.

samples ***is available, provided that the traceability of the consignment is ensured***.

In the case of release for free circulation, ***competent authorities and customs services*** shall work together in accordance with the requirements laid down in Articles 2 to 6 of Regulation (EEC) No 339/93.

Amendment <NumAm>171</NumAm>
<Article>Article 25</Article>

1. ***Where*** necessary to ensure the uniform implementation of controls on the introduction of feed and food, ***measures to that effect*** shall be laid down in accordance with the procedure referred to in Article 62(3).

2. In particular, detailed rules may be laid down for:

(a) feed and food imported or placed under one of the customs procedures referred to in Article 4(16)(b) to (f) of Regulation (EEC) No 2913/92 or that are to be handled in free zones or free warehouses;

(b) food for the supply of the crew and passengers of international means of transport ***where such food does not comply with food law***;

(c) food ordered ***and sent by mail or carried by passengers and crew of international means of transport***;

(d) specific conditions or exemptions concerning certain territories referred to in Article 3 of Regulation (EEC) No 2913/92, so as to take account of the natural constraints specific to these territories;

(e) ***ensuring uniformity of the decisions taken by the competent authority as referred to in Article 19***.

1. Measures necessary to ensure the uniform implementation of ***official*** controls on the introduction of feed and food shall be laid down in accordance with the procedure referred to in Article 62(3).

2. In particular, detailed rules may be laid down for:

(a) feed and food imported or placed under one of the customs procedures referred to in Article 4(16)(b) to (f) of Regulation (EEC) No 2913/92 or that are to be handled in free zones or free warehouses;

(b) food for the supply of the crew and passengers of international means of transport ;

(c) ***feed and*** food ordered ***remotely (for example, by mail, by telephone or via the internet) and delivered to the consumer***;

(ca) feed intended for pets or horses and food carried by passengers and crew of international means of transport;

(d) specific conditions or exemptions concerning certain territories referred to in Article 3 of Regulation (EEC) No 2913/92, so as to take account of the natural constraints specific to these territories;

(e) the purpose of ensuring the consistency of competent authorities' decisions concerning feed and food from third countries within the framework of Article 19;

(ea) consignments of Community origin that are returned from a third country:

(eb) Documents that must accompany consignments when samples have been taken.

Amendment <NumAm>172</NumAm>

<Article>Article 26</Article>

Member States shall ensure that adequate financial resources are **made** available for official controls.

Member States shall ensure that adequate financial resources are available **to provide the necessary staff and other resources** for official controls **by whatever means considered appropriate, including through general taxation or by establishing fees or charges.**

Amendment 173

Article 26a (new)

Article 26a

Fees or charges

1. Member States may collect fees or charges to cover the costs occasioned by official controls.

2. However, as regards the activities listed in Annex IV, section A, and in Annex IVa, section A, Member States shall ensure the collection of a fee.

3. Without prejudice to paragraph 4 and 6, fees collected as regards the specific activities mentioned in Annex IV, section A and IVa, section A shall not be lower than the minimum rates specified in Annex IV, section B and Annex IVa, section B. However, for a transitional period until 1st January 2008, as regards the activities referred to in Annex IV, section A, Member States may continue to use the rates applied pursuant to Directive 85/73/EEC.

Annex IV, Section B and Annex IVa, Section B shall be updated every two years,

in accordance with the procedure referred to in Article 62(3), in particular to take account of the inflation.

4. Fees collected for the purposes of official controls in accordance with paragraph 1 or 2:

(a) shall not be higher than the costs borne by the responsible competent authorities in relation to the items listed in Annex VI, and

(b) may be fixed at flat-rates on the basis of the costs borne by the competent authorities over a given period of time or, where applicable, at the amounts fixed in Annex IV, section B or in Annex IVa, section B.

5. In setting the fees Member States shall take into consideration:

(a) the type of feed or food business concerned and relevant risk factors;

(b) the interests of feed and food businesses with a low throughput;

(c) traditional methods used for food production, processing and distribution;

(d) the needs of feed or food businesses located in regions subjected to particular geographical constraints.

6. When, in view of own-check and tracing systems implemented by the feed or food business as well as the level of compliance found during official controls, for a certain type of feed or food or activities, official controls are carried out with a reduced frequency or to take account of the criteria referred to in paragraph 5 point b) to d), Member States may set the official control fee below the minimum rates referred to in paragraph 4 (b), provided that the Member State concerned provides the Commission with a report specifying:

(a) the type of feed or food or activity concerned;

(b) the controls performed in the feed and food business concerned ,and

(c) the method for calculating the

reduction of the fee;

7. When the competent authority carries out at the same time several official controls in a single establishment, it shall consider these controls as a single activity and charge a single fee.

8. Fees relating to import controls are to be paid by the feed and food business operator or his representative to the competent authority in charge of import controls.

9. Fees shall not directly or indirectly be refunded, unless unduly collected.

10. Without prejudice to the costs deriving from the expenses laid down in article 28, Member States shall not collect any other fee than those referred to in this Article for the implementation of the present Regulation.

11. Feed and food business operators or other relevant businesses or their representatives shall receive proof of their payment of fees.

12. The Member States shall make public the method of calculation of fees and communicate it to the Commission. The Commission shall examine whether the fees comply with the requirements of this Regulation.

Amendment <NumAm>174</NumAm>
<Article> Article 27</Article>

Activities subject to fees

Where the detection of non-compliance ***with feed and food law*** leads to ***control activities*** that exceed the ***normal monitoring activity*** of the competent authority, ***the expenses caused by these activities shall be charged to the feed and food business operators concerned by these additional controls. The normal monitoring activity is that required by Community or national law and in particular that described***

Expenses deriving from additional official controls

When the detection of non-compliance leads to ***official controls*** that exceed the ***competent authority's normal control activities***, the competent authority ***shall charge the operators responsible for the non-compliance or may charge the operator owning or keeping the goods at the time where the additional official controls are carried out, for the expenses arising from the additional official controls. Normal control activities are the***

in the plan provided for in Article 42.

Activities that exceed **the** normal **monitoring** activities include the taking and analysis of samples as well as other controls that are required to check the extent of **the** problem **and** to verify whether corrective action has been taken.

routine control activities that Community or national law **requires and**, in particular, **those** described in the plan provided for in Article 42. Activities that exceed normal **control** activities include the taking and analysis of samples as well as other controls that are required to check the extent of **a** problem, to verify whether corrective action has been taken, **or to detect and/or to substantiate non-compliance.**

In setting the level of these expenses, account shall be taken of the principles set out in Article 28. In addition to the publication of the method and data used for calculating the expenses, Member States shall adopt and publish in advance the criteria for defining control activities that exceed normal monitoring and for identifying the operators concerned by the expenses linked thereto.

Amendment <NumAm>175</NumAm>
<Article>Article 28</Article>

Article 28

deleted

Level of fees

Where for the purpose of Article 26 fees are imposed to feed and food business operators, the following principles shall apply:

(a) the following expenses are eligible for calculating the fees:

(i) staff salaries;

(ii) travel and associated costs;

(iii) laboratory and sampling costs;

(b) account shall be taken of:

(i) the interests of feed and food businesses with a small turnover;

(ii) the level of official controls required, in relation to the quality and intensity of the own checks already carried out by feed and

food businesses;

(c) where in an establishment several official control activities are carried out, these activities must be considered as a single activity and shall not therefore account for multiple fees;

(d) the methods and data used for the calculation of the fees shall be published or otherwise made available to the public;

(e) the direct or indirect refund of fees regularly collected by Member States shall be prohibited; however, the application of average fees shall not be regarded as an indirect refund.

(f) without prejudice to charging the expenses referred to in Article 27, the fees shall replace all other charges or fees levied by the competent authorities of Member States for the controls covered by this Regulation;

(g) feed and food business operators shall receive proof of payment of the fees.

Amendment <NumAm>176</NumAm>
<Article>Article 29</Article>

Article 29

deleted

Fees for import controls

1. Member States shall collect fees for the costs incurred by the competent authority for performing controls on imported feed, food and animals.

2. The fees are to be paid by the importer or his customs agent and charged at the customs office responsible for the border inspection post, directly at the border inspection post or at the competent authority in charge of the import controls.

3. The amount of the fees for the activities covered by Directive 97/78/EC, and Directive 91/496/EEC is set out in Annex IV.

4. Other activities for which fees shall be levied and the amount thereof may be

established in accordance with the procedure referred to in Article 62(3).

Amendment <NumAm>177</NumAm>
<Article>Article 29a (new)</Article>

Article 29a

When setting the level of expenses referred to in Article 27, account shall be taken of the principles laid down in Article 29.

Amendment <NumAm>178</NumAm>
<Article>Article 30</Article>

1. Without prejudice to ***certification requirements adopted for animal health or phytosanitary purposes, certification*** requirements may be adopted in accordance with the procedure referred to in Article 62(3), concerning:

(a) the models of the certificates;

(b) the qualifications ***of the*** certifying officers;

(c) the principles that are to be respected ***for ensuring*** reliable certification, including electronic certification;

(d) the procedures to be followed in case of the withdrawal of certificates and for replacement certificates;

(e) consignments that are split into smaller consignments or that are mixed with other consignments.

(f) the documents that must follow ***the*** goods after ***the*** official controls have been carried out.

2. Where official certification is required, it shall be ensured that:

(a) a link exists between the certificate and the consignment;

1. Without prejudice to ***requirements concerning official certification adopted for animal health or animal welfare purposes***, requirements may be adopted, in accordance with the procedure referred to in Article 62(3), concerning:

the circumstances in which official certification is required;

model certificates;

certifying officers' ***qualifications***;

the principles to be respected ***to ensure*** reliable certification, including electronic certification;

the procedures to be followed in case of the withdrawal of certificates and for replacement certificates;

consignments that are split into smaller consignments or that are mixed with other consignments;

documents that must follow goods after official controls have been carried out.

2. Where official certification is required, it shall be ensured that:

(a) a link exists between the certificate and the consignment;

(b) the information in the certificate is accurate and authentic.

3. *Feed and food certification requirements shall be combined where appropriate with other certification requirements in a single model of certificate.*

(b) the information in the certificate is accurate and authentic.

3. *A single model certificate shall, where appropriate, combine requirements concerning the official certification of feed and food and other requirements for official certification.*

Amendment <NumAm>179</NumAm>
<Article>Article 31</Article>

1. *The* competent authorities shall establish *the* procedures to *be followed by feed and food business operators who apply* for the registration of their establishments in accordance with Regulation (EC) No .../... (on the hygiene of foodstuffs), Regulation (EC) No .../... (*laying down specific hygiene rules for food of animal origin*), or Directive 95/69/EC.

The competent authorities shall keep up-to-date *the* list of *the establishments that have applied for registration*. Where such *a list* already exists for other purposes, it may also be used for the purposes of this Regulation.

2. *The* competent authorities shall establish procedures *to be followed by feed and food business operators who apply* for the approval of their establishments in accordance with Regulation (EC) No .../... (on the hygiene of foodstuffs), Regulation (EC) No .../... (*laying down specific hygiene rules for food of animal origin*, or Directive 95/69/EC.

When receiving an application for approval from a feed or food business operator, the competent authorities shall make an *on-the-spot control*.

1.(a) Competent authorities shall establish procedures *for feed and food business operators to follow when applying* for the registration of their establishments in accordance with Regulation (EC) No .../... [*on feed* hygiene of foodstuffs], Regulation (EC) No .../... [*on the hygiene of foodstuffs*] or Directive 95/69/EC.

(b) *They shall draw up and* keep up-to-date *a* list of *feed and food business operators, which have been registered*. Where such *lists* already exist for other purposes, it may also be used for the purposes of this Regulation.

2.(a) Competent authorities shall establish procedures *for feed and food business operators to follow when applying* for the approval of their establishments in accordance with Regulation (EC) No .../... [*on the hygiene of foodstuffs*], Regulation (EC) No .../... [*laying down specific hygiene rules for food of animal origin*] or [Directive 95/69/EC] [*Regulation (EC) No .../... [on feed hygiene]*].

(b) When receiving an application for approval from a feed or food business operator, the competent authority shall *make an on site visit*.

The competent authority shall approve establishments only if it has been demonstrated that they meet the relevant requirements of feed or food law. The approval shall be withdrawn if the approval conditions are no longer fulfilled. In that event, it must be ensured that feed and food business operators cease their operations.

In establishments starting up their activities, the competent authority shall grant an initial approval if it appears from an on-the-spot control that all of the infrastructure and equipment requirements are adhered to and that operational procedures such as the HACCP system are in place.

A final approval can only be granted if it appears from a new on-the-spot control carried out within three months after the initial approval has been given that all requirements of relevant feed and food law are complied with.

The competent authorities shall keep up-to-date the list of the establishments that are approved and make it available for the other Member States.

(c) It shall approve an establishment for the activities concerned only if the feed or food business operator has demonstrated that it meets the relevant requirements of feed or food law.

(d) The competent authority may grant conditional approval if it appears that the establishment meets all the infrastructure and equipment requirements. It shall grant full approval only if it appears from a new official control of the establishment, carried out within three months of granting conditional approval, that the establishment meets the other relevant requirements of feed or food law. If clear progress has been made but the establishment still does not meet all of the relevant requirements, the competent authority may prolong conditional approval. However, conditional approval shall not exceed a total of six months.

(e) The competent authority shall keep the approval of establishments under review when carrying out official controls. If the competent authority identifies serious deficiencies or has to stop production at an establishment repeatedly and the feed or food business operator is not able to provide adequate guarantees regarding future production, the competent authority shall initiate procedures to withdraw the establishment's approval. However, the competent authority may suspend an establishment's approval if the feed or food business operator can guarantee that it will resolve deficiencies within a reasonable time.

(f) The competent authorities shall maintain up-to-date lists of approved establishments and make them available to other Member States and to the public in a manner that may be specified in accordance with the procedure referred to in Article 62(3).

Amendment <NumAm>180</NumAm>
<Article>Article 32</Article>

1. The Community reference laboratories referred to in Annex V shall be responsible for:

(a) providing national reference laboratories with details of analytical methods, including reference methods;

(b) co-ordinating **the application, by** national reference laboratories, of the methods referred to in (a), in particular by organising comparative testing and by assuring an appropriate follow-up of such comparative testing in accordance with internationally accepted protocols, when available;

(c) co-ordinating within their area of competence, the practical arrangements needed to apply new analytical methods and informing national reference laboratories of advances in this field;

(d) conducting initial and further training courses for the benefit of staff from national reference laboratories and of experts from developing countries;

(e) providing scientific and technical assistance to the Commission, especially in cases where **the results of analyses are contested between Member States;**

(f) collaborating with laboratories responsible for analysing feed and food in third countries.

2. Article 12(2) and (3) shall apply to the Community reference laboratories.

3. The Community reference laboratories shall **comply with the following conditions:**

(a) they must have suitably qualified staff with adequate training in the techniques applied to the analysis and testing of feed and food;

(b) they must possess the equipment and

1. The Community reference laboratories **for feed and food** referred to in Annex V shall be responsible for:

(a) providing national reference laboratories with details of analytical methods, including reference methods;

(b) co-ordinating national reference laboratories' **application** of the methods referred to in (a), in particular by organising comparative testing and by assuring an appropriate follow-up of such comparative testing in accordance with internationally accepted protocols, when available;

(c) co-ordinating, within their area of competence, practical arrangements needed to apply new analytical methods and informing national reference laboratories of advances in this field;

(d) conducting initial and further training courses for the benefit of staff from national reference laboratories and of experts from developing countries;

(e) providing scientific and technical assistance to the Commission, especially in cases where **Member States contest the results of analyses;**

(f) collaborating with laboratories responsible for analysing feed and food in third countries.

2. The Community reference laboratories **in the animal health sector** shall **be responsible for:**

(a) co-ordinating the methods employed in the Member States for diagnosing diseases;

(b) assisting actively in the diagnosis of

substances needed to carry out the tasks assigned to them;

(c) they must have an appropriate administrative infrastructure;

(d) they must ensure that its staff respect the confidential nature of certain subjects, results or communications;

(e) they must have sufficient knowledge of international standards and practices;

(f) they must have available, if appropriate, an updated list of available reference substances and reagents and an updated list of the manufacturers and suppliers of such substances and reagents;

(g) they must take into account the research activities at national and Community level.

disease outbreaks in Member States by receiving pathogen isolates for confirmatory diagnosis, characterisation and epizootic studies;

(c) facilitating the training or retaining of experts in laboratory diagnosis with a view to the harmonisation of diagnostic techniques throughout the Community;

(d) collaborating as regards methods of diagnosing animal diseases falling within their competence, with the competent laboratories in third countries where those diseases are prevalent;

(e) conducting initial and further training courses for the benefit of staff from national reference laboratories and of experts from developing countries;

3. Article 12(2) and (3) shall apply to Community reference laboratories.

4. Community reference laboratories shall fulfil the following requirements. They must:

(a) have suitably qualified staff with adequate training in diagnostic and analytical techniques applied in their area of competence;

(b) possess the equipment and substances needed to carry out the tasks assigned to them;

(c) have an appropriate administrative infrastructure;

(d) ensure that their staff respect the confidential nature of certain subjects, results or communications;

(e) have sufficient knowledge of international standards and practices;

(f) have available, if appropriate, an updated list of available reference substances and reagents and an updated list of manufacturers and suppliers of such substances and reagents;

(g) take account of research activities at national and Community level;

(h) have trained personnel available for

4. Other Community reference laboratories relevant to the areas referred to in Article 1 may be included in Annex **V** in accordance with the procedure referred to in Article 62(3);

5. Additional responsibilities and tasks for Community reference laboratories may be laid down in accordance with the procedure referred to in Article 62(3).

6. **The** Community reference laboratories may be granted a Community financial contribution in accordance with Article 28 of Council Decision 90/424/EEC.

7. **The** Community reference laboratories may be subject to Community **inspections in order** to verify **whether the requirements laid down in this Regulation are being complied with**.

8. Paragraphs 1 to 7 shall apply without prejudice to more specific rules, and in particular Chapter VI of Regulation (EC) No 999/2001 and Article 14 of Directive 96/23/EC.

emergency situations occurring within the Community.

5. Other Community reference laboratories relevant to the areas referred to in Article 1 may be included in Annex **VII** in accordance with the procedure referred to in Article 62(3). **In accordance with the same procedure, Annex VII may be updated.**

6. Additional responsibilities and tasks for Community reference laboratories may be laid down in accordance with the procedure referred to in Article 62(3).

7. Community reference laboratories may be granted a Community financial contribution in accordance with Article 28 of Council Decision 90/424/EEC.

8. Community reference laboratories may be subject to Community **controls** to verify **compliance with the requirements of this Regulation. If these controls find that a laboratory is not complying with those requirements or tasks for which they have been designated, necessary measures may be taken in accordance with the procedure referred to in Article 62(3).**

9. Paragraphs 1 to 7 shall apply without prejudice to more specific rules, and in particular Chapter VI of Regulation (EC) No 999/2001 and Article 14 of Directive 96/23/EC.

Amendment <NumAm>181</NumAm>
<Article>Article 33</Article>

1. Member States shall **ensure that** one or more national reference laboratories **are designated for each Community reference** laboratory referred to in Article 32.

These national reference laboratories shall:

1. Member States shall **arrange for the designation of** one or more national reference laboratories **for each Community reference** laboratory referred to in Article 32. **A Member State may designate a laboratory situated in another Member State or European Free Trade Association (EFTA) Member and a single laboratory may be the national reference laboratory for more than one Member State.**

2. These national reference laboratories

- (a) collaborate with the Community reference laboratory in their area of competence;
- (b) co-ordinate, **within** their area of competence, the activities of the official laboratories responsible for the analysis of samples in accordance with Article 11;
- (c) where appropriate organise comparative tests between the official national laboratories;
- (d) ensure **that the** information **supplied by the Community reference laboratory is disseminated to the competent authority and to the official national laboratories;**
- (e) **assist with** the implementation of the co-ordinated control plans adopted in accordance with Article 53;
- (f) be responsible for carrying out other specific duties provided for in accordance with the procedure referred to in Article 62(3).

2. Article 12(2) and (3) shall apply to the national reference laboratories.

3. Member States shall communicate the name and address of each national reference laboratory to the Commission, the relevant Community reference laboratory and the other Member States.

4. **Where** more than one national reference laboratory **is designated per** Community reference laboratory, **it must be ensured** that these laboratories work closely together so as to ensure efficient co-ordination between them, with **the** other national laboratories and with the Community reference laboratory.

5. Additional responsibilities and tasks for national reference laboratories may be laid down in accordance with the procedure referred to in Article 62(3).

6. Paragraphs 1 to 4 shall apply without

shall:

- (a) collaborate with the Community reference laboratory in their area of competence;
- (b) co-ordinate, **for** their area of competence, the activities of official laboratories responsible for the analysis of samples in accordance with Article 11;
- (c) where appropriate, organise comparative tests between the official national laboratories **and assure an appropriate follow-up of such comparative testing;**
- (d) ensure the **dissemination to the competent authority and official national laboratories of** information **that the Community reference laboratory supplies;**
- (e) **provide scientific and technical assistance to the competent authority for** the implementation of co-ordinated control plans adopted in accordance with Article 53;
- (f) be responsible for carrying out other specific duties provided for in accordance with the procedure referred to in Article 62(3), **without prejudice of existing additional national duties.**

3. Article 12(2) and (3) shall apply to National reference laboratories.

4. Member States shall communicate the name and address of each national reference laboratory to the Commission, the relevant Community reference laboratory and other Member States.

5. **Member States that have** more than one national reference laboratory **for** a Community reference laboratory must ensure that these laboratories work closely together, so as to ensure efficient co-ordination between them, with other national laboratories and with the Community reference laboratory.

6. Additional responsibilities and tasks for national reference laboratories may be laid down in accordance with the procedure referred to in Article 62(3).

7. Paragraphs 1 to 5 shall apply without

prejudice to more specific rules and in particular Chapter VI of Regulation (EC) No 999/2001 and Article 14 of Directive 96/23/EC.

prejudice to more specific rules and in particular Chapter VI of Regulation (EC) No 999/2001 and Article 14 of Directive 96/23/EC.

Amendment <NumAm>182</NumAm>
<Article>Chapter IV, title</Article>

ADMINISTRATIVE ASSISTANCE AND
CO-OPERATION

ADMINISTRATIVE ASSISTANCE AND
CO-OPERATION **IN THE AREAS OF
FEED AND FOOD**

Amendment <NumAm>183</NumAm>
<Article>Article 34</Article>

1. Where the outcome of official controls requires action **by** more than one Member State, **the** competent authorities **of** Member States shall **afford** each other administrative assistance.

2. **The administrative assistance** shall **be granted** upon request, or spontaneously **where required by** the course of investigations. Administrative assistance may include, where appropriate, participation to on-the-spot controls **carried out by** the competent authority of another member State.

3. Articles 35 to **41** shall not prejudice national rules applicable to the release of documents **which** are the object of, or are related to, court proceedings, **nor** rules aimed at the protection of commercial interests **of natural or legal persons**.

1. Where the outcome of official controls **on feed and food** requires action **in** more than one Member State, competent authorities **in the** Member States **concerned** shall **provide** each other **with** administrative assistance.

2. **Competent authorities** shall **provide administrative assistance** upon request, or spontaneously **when** the course of investigations **so requires**. Administrative assistance may include, where appropriate, participation in on-the-spot controls **that** the competent authority of another Member State **carries out**.

3. Articles 35 to **40** shall not prejudice national rules applicable to the release of documents **that** are the object of, or are related to, court proceedings, **or** rules aimed at the protection of **natural or legal persons'** commercial interests.

Amendment <NumAm>184</NumAm>
<Article>Article 35</Article>

Liaison **body**

1. Each Member State shall designate **a single** liaison **body** to liaise as appropriate with **the liaison bodies of** other Member

Liaison **bodies**

1. Each Member State shall designate **one or more** liaison **bodies** to liaise as appropriate with other Member States'

States. The role of **the** liaison bodies shall be to assist and co-ordinate communication and, in particular, the transmission and reception of requests for assistance.

2. Member States shall inform the Commission and the other Member States of all the relevant details of their designated liaison **body**, and of any **change that are made to it**.

3. The designation of liaison bodies shall not preclude direct contacts, exchange of information or co-operation between **Member States' officials. Where an official of a Member State contacts an official of another Member State on one of the matters referred to in this title, he shall inform at the same time the liaison bodies of both Member States concerned about the nature of the contact. He shall also forward to the liaison bodies concerned all information that is the subject of the contact.**

4. Where a liaison body receives information on the existence of a serious direct or indirect risk to human health deriving from feed or food, this information shall be immediately notified to the national contact point for the rapid alert system referred to in Article 50 of Regulation (EC) No 178/2002.

liaison **bodies**. The role of liaison bodies shall be to assist and co-ordinate communication **between competent authorities** and, in particular, the transmission and reception of requests for assistance.

2. Member States shall inform the Commission and other Member States of all the relevant details of their designated liaison **bodies**, and of any **modification of these details**.

3. **Without prejudice to paragraph 1**, the designation of liaison bodies shall not preclude direct contacts, exchange of information or co-operation between **the staff of competent authorities in different Member States**.

4. **The competent authorities to which Council Directive 89/608/EEC on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure correct application of the legislation on veterinary and zootechnical matters³⁹ applies, shall liaise as appropriate with the authorities operating under this Title.**

Amendment <NumAm>185</NumAm>
<Article>Article 36</Article>

1. Upon receiving a reasoned request, the requested competent authority shall ensure that the requesting competent authority is provided with all necessary information and documents enabling the latter to verify compliance with feed and food law within its jurisdiction.

For that purpose, the competent authority **of**

1. Upon receiving a reasoned request, the requested competent authority shall ensure that the requesting competent authority is provided with all necessary information and documents enabling the latter to verify compliance with feed and food law within its jurisdiction.

For that purpose, the **requested** competent

the requested Member State shall arrange for the conduct of any administrative enquiries necessary to obtain such information and documents.

2. **The** information and documents provided pursuant to paragraph 1 shall be forwarded without delay. Documents may be transmitted in their original form or copies may be provided.

3. By agreement between the requesting authority and the requested authority, **officials designated by** the requesting authority may be present during administrative enquiries.

Such enquiries shall at all times be carried out by the officials of the requested authority. The requesting authority's **officials** may not, on their own initiative, exercise the powers of enquiry conferred on officials of the requested authority.

They shall, however, have access to the same premises and documents as the latter, through their intermediary, and for the sole purpose of the administrative enquiry being carried out.

4. **The officials** of the requesting authority present in another Member State in accordance with paragraph 3 shall at all times be able to produce written authority stating their identity and their official capacity.

authority shall arrange for the conduct of any administrative enquiries necessary to obtain such information and documents.

2. Information and documents provided pursuant to paragraph 1 shall be forwarded without **undue** delay. Documents may be transmitted in their original form or copies may be provided.

3.(a) By agreement between the requesting authority and the requested authority, **staff that** the requesting authority **has designated** may be present during administrative enquiries.

(b) Staff of the requested authority shall always carry out such enquiries.

(c) The requesting authority's **staff** may not, on their own initiative, exercise the powers of enquiry conferred on officials of the requested authority. They shall, however, have access to the same premises and documents as the latter, through their intermediary, and for the sole purpose of the administrative enquiry being carried out.

4. **Staff** of the requesting authority present in another Member State in accordance with paragraph 3 shall at all times be able to produce written authority stating their identity and their official capacity.

Amendment <NumAm>186</NumAm>
<Article>Article 37</Article>

1. **Where** a competent authority becomes aware of non-compliance **with feed or food law**, and such non-compliance may have implications for another Member State or Member States, it shall pass such information to the other Member State(s) without prior request and without delay.

2. **The** Member States receiving such information shall investigate the matter and inform the **first** Member State of the results

1. **When** a competent authority becomes aware of non-compliance, and **if** such non-compliance may have implications for another Member State or States, it shall pass such information to the other Member State(s) without prior request and without delay.

2. Member States receiving such information shall investigate the matter and inform the Member State **that provided the**

of this investigation and where appropriate of the measures taken.

information of the results of this investigation and, where appropriate, of **any** measures taken.

Amendment <NumAm>187</NumAm>
<Article>Article 38</Article>

Assistance in **case** of **risks and** non-compliance

1. If during an official control carried out at the place of destination of the goods or during their transport the competent authority of the Member State of destination establishes that the goods do not **meet** feed or food law requirements in such a way as to create a risk to human or animal health or constitute a serious infringement of feed or food law, it shall contact the competent **authorities** of the Member State of dispatch without delay.
2. The competent **authorities** of the Member State of dispatch shall investigate the matter, take all necessary measures and notify the competent authority of the member State of destination of the nature of the investigations and official controls carried out, the decisions taken and the reasons for such decisions.
3. If the competent authority of the Member State of destination has reason to believe that such measures are inadequate, the competent authorities **of the two Member States** shall together seek ways and means of remedying the situation including, if appropriate, an on-the-spot joint inspection.

Assistance in **the event** of non-compliance

1. If, during an official control carried out at the place of destination of the goods, or during their transport, the competent authority of the Member State of destination establishes that the goods do not **comply with** feed or food law in such a way as to create a risk to human or animal health or to constitute a serious infringement of feed or food law, it shall contact the competent **authority** of the Member State of dispatch without delay.
2. The competent **authority** of the Member State of dispatch shall investigate the matter, take all necessary measures and notify the competent authority of the Member State of destination of the nature of the investigations and official controls carried out, the decisions taken and the reasons for such decisions.
3. If the competent authority of the Member State of destination has reason to believe that such measures are inadequate, the **two Member States'** competent authorities shall together seek ways and means of remedying the situation including, if appropriate, **a joint** on-the-spot inspection **carried out in accordance with Article 36(3) and (4). They shall inform the Commission if they are not able to agree on appropriate measures.**

Amendment <NumAm>188</NumAm>
<Article>Article 39</Article>

1. When **the** competent authority **of a**

1. When **a** competent authority receives

Member State receives information from a third country, that authority shall pass that information on to the competent authorities **of the** Member States **which** might be interested in it **and in any event to all those Member States which** request it.

Such information shall also be communicated to the Commission whenever it is of relevance at Community level.

2. **Provided** the third country has given a legal undertaking to provide the assistance required to gather evidence of the irregular nature of transactions that are or appear to be contrary to the relevant feed and food law, information obtained under this Regulation may be communicated to that third country, with the consent of the competent authorities **which** supplied the information, in accordance with laws applying to the communication of personal data to third countries.

information from a third country **indicating non-compliance and/or a risk to human or animal health**, that authority shall pass that information on to competent authorities **in other** Member States **if it considers that they** might be interested in it **or if they** request it. **It shall also communicate such information to the Commission whenever it is of relevance at Community level.**

2. **If** the third country has given a legal undertaking to provide the assistance required to gather evidence of the irregular nature of transactions that are or appear to be contrary to the relevant feed and food law, information obtained under this Regulation may be communicated to that third country, with the consent of the competent authorities **that** supplied the information, in accordance with laws applying to the communication of personal data to third countries.

Amendment <NumAm>189</NumAm>
<Article>Article 40</Article>

1. The Commission shall as quickly as possible co-ordinate the action undertaken by **the** Member States when it, further to information received from the Member States or from other sources, becomes aware of activities **which** are, or appear to be, contrary to **the food law or feed law** and **which** are of particular interest at Community level, and in particular:

(a) **where** such activities have, or might have, ramifications in several Member States, or

(b) **where** it appears that similar activities have been carried out in several Member States.

2. **Where** official controls at destination

1. The Commission shall as quickly as possible co-ordinate the action undertaken by Member States when it, further to information received from Member States or from other sources, becomes aware of activities **that** are, or appear to be, contrary to **feed or food law** and are of particular interest at Community level, and in particular:

(a) **when** such activities have, or might have, ramifications in several Member States;

(b) **when** it appears that similar activities have been carried out in several Member States; **or**

(ba) when Member States are unable to agree on appropriate action to address non-compliance.

2. **When** official controls at destination

show repeated non-compliance or other risks to humans or animals from feed or food, either directly or through the environment, the competent authority of the Member State of destination shall inform the Commission and **the** competent authorities **of the other Member States** without delay.

3. The Commission may:

(a) send an inspection team **for making an on-the-spot control**:

(b) request the competent authority of the Member State of dispatch **to** intensify **its** official controls **on the matter and to** report on the action and measures taken.

4. Where the measures provided for in paragraphs 2 and 3 are taken to deal with repeated **irregularities** by a feed or food business, the competent authority shall charge any expenses **due by** such measures to the business in question, **including the costs established by the Commission for its inspection. In the latter case, the amounts collected by the Member State shall be remitted to the Commission following a procedure to be established in accordance with the procedure provided for in Article 62(3).**

show repeated non-compliance or other risks to humans, **plants** or animals from feed or food, either directly or through the environment, the competent authority of the Member State of destination shall inform the Commission and **other Member States'** competent authorities without delay.

3. The Commission may :

(a) **in collaboration with the concerned Member State**, send an inspection team **to carry out an official control on-the-spot**;

(b) request **that** the competent authority of the Member State of dispatch intensify **relevant** official controls **and** report on the action and measures taken.

4. Where the measures provided for in paragraphs 2 and 3 are taken to deal with repeated **non-compliance** by a feed or food business, the competent authority shall charge any expenses **arising from** such measures to the business in question.

Amendment 190 </NumAm>

<Article>Article 41, title and paragraph 1</Article>

Disclosure of information

1. In criminal proceedings, the information forwarded under this Chapter can be used only with the prior consent of the sending Member State in accordance with, for those Member States who are parties to them, the international conventions and agreements in force on mutual assistance in criminal affairs.

deleted

Amendment 60

2. If the sending Member State indicates that the information contains data whose disclosure could undermine the protection of commercial interests of a natural or legal person, the receiving Member State shall undertake not to disclose the information without the prior consent of the sending Member State. If it is not possible for the receiving Member State to give such undertaking, it shall not be contrary to the terms of this Regulation for the sending Member State to withhold it. *deleted*

Amendment <NumAm>191</NumAm>
<Article>Article 41, paragraph 3</Article>

3. Any refusal to provide information according to the provisions of this Article shall give reasons. *deleted*

Amendment <NumAm>192</NumAm>
<Article>Article 41a (new) </Article>

TITLE V

CONTROL PLANS

Article 41a

Multi-annual national control plans

In order to ensure the effective implementation of Article 17(2) of Regulation (EC) No 178/2002, of animal health and animal welfare rules and of Article 45 of this Regulation, each Member State shall prepare a single integrated multiannual national control plan.

Amendment <NumAm>193</NumAm>
<Article>Article 42 </Article>

TITLE V

CONTROL PLANS

Multi-annual national control plans

1. For the implementation of Article 17(2) of Regulation (EC) No 178/2002 and of Article 45 of this Regulation, Member States shall within six months after the entry into force of this Regulation prepare an integrated multi-annual national control plan. National control plans shall:

(a) be maintained by the Member States and presented to the Commission upon request; and

(b) be implemented for the first time one year after the entry into force of this Regulation at the latest.

2. National control **plans** shall contain general information on the structure and organisation of the feed and food control, animal health and animal welfare systems in the Member States and in particular on:

(a) the strategic objectives of the plan and how **these are reflected in** the prioritisation of controls and allocation of resources;

(b) the designation of competent authorities and their tasks at central, regional and local level, and **on the** resources available to these authorities;

(c) the general organisation and management of official **control systems** at national, regional and local level, including official controls in individual establishments;

(d) **the** control systems applied to **the** different sectors and **the** co-ordination between the different services of the competent authorities **in charge of controlling** these sectors;

(e) where appropriate, the delegation of **competence** to control bodies;

(f) **the** methods to ensure that operational

Principles for the preparation of multi-annual national control plans

1. Member States shall:

(a) implement the plan referred to in Article 41 for the first time no later than 1 January 2007; and

(b) regularly update it in the light of developments; and

(c) provide the Commission with the latest version of the plan on request.

2. **Each** national control **plan** shall contain general information on the structure and organisation of the feed and food control, animal health and animal welfare **control** systems in the Member **State concerned**, and in particular on:

(a) the strategic objectives of the plan and how the prioritisation of controls and allocation of resources **reflects these objectives**;

(aa) the risk categorisation of the activities concerned;

(b) the designation of competent authorities and their tasks at central, regional and local level, and resources available to these authorities;

(c) the general organisation and management of official **controls** at national, regional and local level, including official controls in individual establishments;

(d) control systems applied to different sectors and co-ordination between the different services of competent authorities **responsible for official controls in** these sectors;

(e) where appropriate, the delegation of **tasks** to control bodies;

(f) methods to ensure **compliance with the**

- criteria referred to in Article 4(2) *are met*;
- (g) the training of **control officials** referred to in Article 6;
- (h) the documented procedures referred to in Articles 8 and 9;
- (i) the organisation and operation of contingency plans for disease emergencies, food contamination incidents and other human health risks;
- (j) the organisation of co-operation and mutual assistance.

3. National control plans may be adjusted during their implementation. Amendments may be made in the light of, or in order to take account of, factors including:

- (a) new legislation;
- (b) the emergence of new diseases or other health risks;
- (c) significant changes to the structure, management or operation of the competent national authorities;
- (d) the results of **controls carried out by the Member States**;
- (e) the results of controls carried out **by the Commission** in accordance with Article 45;
- (f) **an** amendment of the guidelines referred to in Article 43;
- (g) scientific findings;
- (h) the outcome of audits carried out by a third country.

- operational criteria **of** Article 4(2);
- (g) the training of **staff performing official controls** referred to in Article 6;
- (h) the documented procedures referred to in Articles 8 and 9;
- (i) the organisation and operation of contingency plans **for animal or food-borne** disease emergencies, **feed and** food contamination incidents and other human health risks;
- (j) the organisation of co-operation and mutual assistance.

3. National control plans may be adjusted during their implementation. Amendments may be made in the light of, or in order to take account of, factors including:

- (a) new legislation;
- (b) the emergence of new diseases or other health risks;
- (c) significant changes to the structure, management or operation of the competent national authorities;
- (d) the results of **Member States' official** controls;
- (e) the results of **Community** controls carried out in accordance with Article 45;
- (f) **any** amendment of the guidelines referred to in Article 43;
- (g) scientific findings;
- (h) the outcome of **a third country's** audits.

Amendment <NumAm>194</NumAm>
<Article>Article 43</Article>

1. The national control plans referred to in Article 42(1) shall **be drawn up** in accordance with **broad guidelines to be established** in accordance with the procedure referred to in Article 62(2). **They** shall in particular:

- (a) promote a **uniform**, comprehensive and

1. The national control plans referred to in Article 42(1) shall **take account of guidelines that the Commission shall draw up** in accordance with the procedure referred to in Article 62(2). **These guidelines** shall in particular:

- (a) promote a **consistent**, comprehensive and

integrated approach to official controls of feed and food, animal health and animal welfare legislation, and embrace all sectors and all stages of the food chain;

(b) identify risk based priorities and the most effective control procedures;

(c) identify other priorities and the most effective control procedures;

(d) identify the **points in the** production, processing and distribution of feed and food which will provide the most reliable and indicative information about compliance with feed and food law;

(e) encourage the adoption of best practices at all levels of the control system;

(f) encourage the development of effective traceability systems;

(g) provide advice on the development of systems to record the performance and results of control actions;

(h) reflect standards and recommendations made by the relevant international bodies regarding the organisation and operation of official services;

(i) lay down criteria for the conduct of the audits referred to in Article 4(5);

(j) lay down the structure of, and information to be included in, the annual reports required in Article 44;

(k) indicate the main performance indicators to be applied in assessing national control plans.

2. Where necessary, the guidelines shall be adapted in the light of the analysis of **the** annual reports **submitted by the Member States as referred to in Article 44**, or the **audits and** controls carried out **by the Commission**.

integrated approach to official controls of feed and food, animal health and animal welfare legislation, and embrace all sectors and all stages of the **feed and** food chain, including **import and introduction**;

(b) identify risk based priorities **and criteria for the risk categorisation of the activities concerned** and the most effective control procedures;

(c) identify other priorities and the most effective control procedures;

(d) identify the **stages of** production, processing and distribution of feed and food, **including the use of feed**, which will provide the most reliable and indicative information about compliance with feed and food law;

(e) encourage the adoption of best practices at all levels of the control system;

(f) encourage the development of **effective controls on** traceability systems;

(g) provide advice on the development of systems to record the performance and results of control actions;

(h) reflect **relevant international bodies'** standards and recommendations regarding the organisation and operation of official services;

(i) lay down criteria for the conduct of the audits referred to in Article 4(6);

(j) lay down the structure of, and information to be included in, the annual reports required in Article 44;

(k) indicate the main performance indicators to be applied in assessing national control plans.

2. Where necessary, the guidelines shall be adapted in the light of the analysis of annual reports **that** Member States **submit in accordance with** Article 44, or **Community** controls carried out **in accordance with Article 45**.

1. One year after starting the implementation of **the** national control plans, and subsequently every year, **the** Member States shall submit to the Commission a report indicating:

(a) **an update of the initial** national control **plan** in relation to the factors referred to in Article 42(3);

(b) results of controls and audits conducted in the previous year under the provisions of the national control plan;

(c) the type and number of **infringements that have been established**;

(d) **the** actions to ensure the effective operation of **the** national control plans, including enforcement **actions** and **their** results.

In order to **ensure a uniform** presentation of this report and in particular of the results of official controls, this information shall **be drawn** up in accordance with **guidelines to be adopted in accordance with** the procedure referred to in Article 62(2).

This report shall be established within four months of the end of the year to which the report relates and shall be sent to the Commission.

2. In the light of the reports referred to in paragraph 1, the outcome of **Commission** controls **in the Member States** and any other relevant information, the Commission shall establish a report on the overall operation of **the official control systems in the** Member States. It may, where appropriate, include recommendations on:

(a) possible improvements to **the** official control and audit systems in **the** Member States, including their scope, management and implementation,

1. One year after starting the implementation of national control plans, and subsequently every year, Member States shall submit to the Commission a report indicating:

(a) **any amendments made to** national control **plans to take account of** the factors referred to in Article 42(3);

(b) **the** results of controls and audits conducted in the previous year under the provisions of the national control plan;

(c) the type and number of **cases of non-compliance identified**;

(d) actions to ensure the effective operation of national control plans, including enforcement **action** and **its** results.

In order to **promote the consistent** presentation of this report and in particular of the results of official controls, this information shall **take account of guidelines that the Commission shall draw** up in accordance with the procedure referred to in Article 62(2).

Member States shall finalise their reports and send them to the Commission, within six months of the end of the year to which the report relates.

In the light of the reports referred to in paragraph 1, the outcome of **Community** controls **carried out in accordance with Article 45** and any other relevant information, the Commission shall establish a report **every year** on the overall operation of official **controls** in Member States. It may, where appropriate, include recommendations on:

(a) possible improvements to official control and audit systems in Member States, including their scope, management and implementation,

- (b) specific control actions concerning sectors or activities ***either covered or not covered by the*** national control ***plan***,
- (c) co-ordinated plans aiming at addressing issues of particular interest.

On the basis of the conclusions and recommendations contained in this report, the national control plans and the guidelines shall, where appropriate, be adapted.

This report shall be submitted to the European Parliament and the Council.

- (b) specific control actions concerning sectors or activities ***that*** national control ***plans do or do not cover,***
- (c) co-ordinated plans aiming at addressing issues of particular interest.

National control plans and the related guidelines shall, where appropriate, be adapted on the basis of the conclusions and recommendations contained in the Commission's report.

The Commission shall submit its report to the European Parliament and the Council and make it available to the public.

Amendment <NumAm>196</NumAm>
<Article>Article 45</Article>

Community controls in ***the*** Member States

1. Experts ***of the Commission, who may be assisted by experts of the Member States appointed by the Commission,*** shall carry out general and specific audits in ***the*** Member States. ***The*** general audits shall be organised ***on a regular basis*** in co-operation with the competent authorities ***in the Member States.*** Their main purpose shall be to verify ***that the overall official control activities in the*** Member States ***are*** in accordance with the national control plans referred to in Article 42 and in compliance with Community law. For this purpose ***Member States shall, upon request, immediately make available*** up-to-date copies of the national control plans ***to the Commission.***

2. ***The general*** audits ***may be supplemented by*** specific audits and inspections ***covering*** one or more specific areas. These specific audits and inspections shall in particular serve ***to:***

- (a) verify the implementation of the national control plan, feed and food law and ***the*** animal health and animal welfare legislation

Community controls in Member States

1. ***Commission*** experts shall carry out general and specific audits in Member States. ***The Commission may appoint experts from Member States to assist its own experts. General and specific*** audits shall be organised in co-operation with Member States' competent authorities. ***Audits shall be carried out on a regular basis.*** Their main purpose shall be to verify that, overall, official ***controls take place*** in Member States in accordance with the national control plans referred to in Article 42 and in compliance with Community law. For this purpose, ***and in order to facilitate the efficiency and effectiveness of the audits, the Commission may, in advance of carrying out such audits, request that the Member States provide, as soon as possible,*** up-to-date copies of national control plans.

2. ***Specific*** audits ***and inspections in*** one or more specific ***areas may supplement general*** audits. These specific audits and inspections shall in particular serve:

- (a) ***to*** verify the implementation of the national control plan, feed and food law and animal health and animal welfare legislation

and may include, as appropriate, on the spot inspections of **the** official services and of **the** facilities associated with the sector being audited;

(b) verify the functioning and organisation of **the** competent authorities;

(c) investigate important or recurring problems in **the** Member States;

(d) investigate emergency situations, emerging problems or new developments in **the** Member States.

3. The Commission shall **establish, for** each control carried **out**, a report on its findings. **This** report shall, if appropriate, contain recommendations for **the** Member States on the improvement of compliance with feed and food law. **These** reports shall **be made** publicly available.

4. The Commission shall establish an annual control programme, communicate it to **the** Member States in advance, and report on **the** results **thereof**. **This programme** may be **amended** to take account of developments in the feed and food safety, animal health and plant health situation.

5. Member States shall:

(a) **ensure an** appropriate follow-up of the recommendations resulting from **the** Community controls;

(b) give all necessary assistance and provide all documentation and other technical support **requested** by Commission experts to enable controls to be carried out efficiently;

(c) ensure that the experts **of the Commission** have access to all premises or

and may include, as appropriate, on the spot inspections of official services and of facilities associated with the sector being audited;

(b) **to** verify the functioning and organisation of competent authorities;

(c) **to** investigate important or recurring problems in Member States;

(d) **to** investigate emergency situations, emerging problems or new developments in Member States.

3. The Commission shall **report on the findings of** each control carried out.. **Its** report shall, if appropriate, contain recommendations for Member States on the improvement of compliance with feed and food law, **animal health and animal welfare rules. The Commission shall make its** reports publicly available. **In the case of reports on controls carried out in a Member State, the Commission shall provide the relevant competent authority with a draft report for comments, take those comments into consideration in preparing the final report and publish the competent authority's comments together with the final report.**

4. The Commission shall establish an annual control programme, communicate it to Member States in advance, and report on **its** results. **The Commission** may **amend the programme** to take account of developments in the feed and food safety, animal health, **animal welfare** and plant health situation.

5. Member States shall:

(a) **take** appropriate follow-up action **in the light of** the recommendations resulting from Community controls;

(b) give all necessary assistance and provide all documentation and other technical support **that** Commission experts **request** to enable **them to carry out controls** efficiently;

(c) ensure that **Commission** experts have access to all premises or parts of premises

parts of premises and information, including **informatics** systems, relevant to the execution of their duties.

6. Detailed rules concerning Community controls in **the** Member States may be determined or amended in accordance with the procedure referred to in Article 62(3).

and information, including **computing** systems, relevant to the execution of their duties.

6. Detailed rules concerning Community controls in Member States may be determined or amended in accordance with the procedure referred to in Article 62(3).

Amendment <NumAm>197</NumAm>
<Article>Article 46</Article>

1. **Experts of the Commission, who may be assisted by experts of the Member States appointed by the Commission**, may carry out controls in third countries in order to verify, on the basis of the **control plans** referred to in Article 47(1), **either** compliance or equivalence of third country legislation and systems with Community feed **law** and food law, and Community animal health legislation. **In doing so, account shall in particular be taken of:**

- (a) the legislation of the third country;
- (b) the organisation of the competent **authority/authorities of the third country and of its control services, of the** powers and independence **of these services and** the supervision to which they are subject, **as well as** the authority that **these services** have to enforce effectively **their** legislation;
- (c) the training of staff in the performance of **control functions**;
- (d) the resources including diagnostic facilities available to **the control services**;
- (e) the existence and operation of documented control procedures and control systems based on priorities;
- (f) where applicable, the situation regarding animal health, zoonoses and plant health, and **the** procedures for **notification to the Commission services** and relevant international bodies of outbreaks of animal and plant diseases;
- (g) the extent and operation of controls **over**

1. **Commission experts** may carry out **official** controls in third countries in order to verify, on the basis of the **information** referred to in Article 47(1), **the** compliance or equivalence of third country legislation and systems with Community feed and food law and Community animal health legislation. **The Commission may appoint experts from Member States to assist its own experts. Such official controls shall have** particular **regard to:**

- (a) the legislation of the third country;
- (b) the organisation of the **third country's** competent authorities, **their** powers and independence, the supervision to which they are subject **and** the authority that **they** have effectively to enforce **the applicable** legislation;
- (c) the training of staff in the performance of **official controls**;
- (d) the resources including diagnostic facilities available to **competent authorities**;
- (e) the existence and operation of documented control procedures and control systems based on priorities;
- (f) where applicable, the situation regarding animal health, zoonoses and plant health, and procedures for **notifying** the Commission and relevant international bodies of outbreaks of animal and plant diseases;
- (g) the extent and operation of **official**

imports of animals, plants and their products;

(h) the assurances which the third country can give regarding compliance or equivalence **with** Community requirements.

2. In order to facilitate the efficiency and effectiveness of the controls in a third country, the Commission may, in advance of carrying out such controls, request that third country **to submit a control plan** referred to in Article 47(1) and where appropriate written records on **its** implementation **referred to in Article 47(3).**

3. The frequency of **the** controls **carried out by the Commission** in third countries shall be determined on the basis of:

(a) a risk assessment of the products exported to the Community;

(b) the provisions of Community legislation;

(c) the volume and nature of imports from the country concerned;

(d) the results of controls **already carried out by** the Commission services or other inspection bodies;

(e) the results of import controls and of any other controls **performed by the Member States;**

(f) information received from the European Food Safety Authority or similar bodies;

(g) information received from internationally recognised bodies such as WHO, Codex Alimentarius and the *Office International des Epizooties* (OIE), or from other sources;

(h) evidence of emerging disease situations or other **health risks** that might **have consequences for imports of** live animals, live plants **or their products;**

(i) the need to investigate or respond to emergency situations in individual third countries.

The criteria for determining the risk for the purpose of the risk assessment referred to in **point** (a) shall be decided in accordance with

controls **on** imports of animals, plants and their products;

(h) the assurances which the third country can give regarding compliance **with**, or equivalence **to**, Community requirements.

2. In order to facilitate the efficiency and effectiveness of the controls in a third country, the Commission may, in advance of carrying out such controls, request that **the** third country **concerned provide the information** referred to in Article 47(1) and, where appropriate, **the** written records on **the** implementation **of such controls.**

3. The frequency of **Community** controls in third countries shall be determined on the basis of:

(a) a risk assessment of the products exported to the Community;

(b) the provisions of Community legislation;

(c) the volume and nature of imports from the country concerned;

(d) the results of controls **that** the Commission services or other inspection bodies **have already carried out;**

(e) the results of import controls and of any other controls **that Member States' competent authorities have carried out;**

(f) information received from the European Food Safety Authority or similar bodies;

(g) information received from internationally recognised bodies such as WHO, Codex Alimentarius and the *Office International des Epizooties* (OIE), or from other sources;

(h) evidence of emerging disease situations or other **circumstances** that might **result in** live animals, live plants or **feed or food imported from a third country presenting health risks;**

(i) the need to investigate or respond to emergency situations in individual third countries.

The criteria for determining the risk for the purpose of the risk assessment referred to in **subparagraph** (a) shall be decided in

the procedure referred to in Article 62(3).

4. The procedure and **guidelines** for controls in third countries may be determined or amended in accordance with the procedure referred to in Article 62(3).

These shall include, in particular, procedures for and **guidelines** on:

- (a) controls in third countries in the context of a bilateral agreement;
- (b) controls in other third countries.

5. If during a Community control a serious risk to **humans** or **animals** is identified, the Commission shall immediately take **the** emergency measures **deemed necessary and inform the Member States thereof**.

6. The Commission shall communicate its programme of controls in third countries to **the** Member States in advance and report on the results **thereof**. **This programme may be amended** to take account of developments in the feed and food safety, animal health and plant health situation.

accordance with the procedure referred to in Article 62(3).

4. The procedure and **detailed rules** for controls in third countries may be determined or amended in accordance with the procedure referred to in Article 62(3).

They shall include, in particular, procedures for and **detailed rules** on:

- (a) controls in third countries in the context of a bilateral agreement;
- (b) controls in other third countries.

According to the same procedure, charges for the above mentioned controls may be established on a reciprocal basis.

5. If, during a Community **control**, a serious risk to **human** or **animal health** is identified, the Commission shall immediately take **any necessary** emergency measures **in accordance with Article 53 of Regulation (EC)178/2002 or safeguard provisions in other relevant Community legislation**.

5a. The Commission shall report on the findings of each Community control carried out. Its report shall, if appropriate, contain recommendations. The Commission shall make its reports publicly available.

6. The Commission shall communicate its programme of controls in third countries to Member States in advance and report on the results. **It may amend the programme** to take account of developments in the feed and food safety, animal health and plant health situation.

Amendment <NumAm>198</NumAm>
<Article>Article 47 </Article>

General import conditions

1. Imports of feed and food, animals or animal products from a third country into one of the territories referred to in Annex I shall be subject to the notification to the Commission by the third country that it has in place a control plan accessible upon request, which provides the following

Specific import conditions

1. The Commission shall be responsible for requesting third countries intending to export goods to the Community to provide the following accurate and up-to-date information on the general organisation and management of sanitary control

accurate and up-to-date information on the general organisation and management of sanitary control systems operated by the competent authority of the third country:

- (a) any sanitary or phyto-sanitary regulations adopted or proposed within its territory;
- (b) any control and inspection procedures, production and quarantine treatment, pesticide tolerance and food additive approval ***procedures, which are*** operated within its territory;
- (c) risk assessment procedures, factors taken into consideration, as well as the determination of the appropriate level of sanitary or phytosanitary protection;
- (d) where appropriate, the follow-up given to the recommendations made pursuant to controls referred to in Article 46.

2. A control plan referred to in paragraph 1 shall be proportionate and technically and economically feasible taking into account the specific situation and structure in the third country and the nature of the products exported. Its scope shall cover at least the products intended to be exported to the Community.

3. Imports of feed and food, animals or animal products from a third country into the Community shall be subject to the maintenance by the third country of written records on the implementation of the control plan referred to in paragraph 1.

The records on the implementation of the control plan shall indicate:

- (a) results of the ***domestic*** controls carried out ***under the control plan***;
- (b) important changes which have been made to the ***original plan or to the*** structure and functioning of the relevant control systems, in particular to meet Community requirements or recommendations;

4. Guidelines specifying how the control plan and the records referred to in paragraph 3 shall be drawn up and

systems:

- (a) any sanitary or phyto-sanitary regulations adopted or proposed within its territory;
- (b) any control and inspection procedures, production and quarantine treatment, pesticide tolerance and food additive approval procedures operated within its territory;
- (c) risk assessment procedures, factors taken into consideration, as well as the determination of the appropriate level of sanitary or phytosanitary protection;
- (d) where appropriate, the follow-up given to the recommendations made pursuant to controls referred to in Article 46.

2. The information referred to in paragraph 1 shall be proportionate to the nature of the goods and may take account of the specific situation and structure of the third country and the nature of the products exported to the Community. Its scope shall cover at least the goods intended to be exported to the Community.

3. The information referred to in paragraph 1 and 2 may also relate to:

- (a) results of the ***national*** controls carried out ***on goods intended to be exported to the Community***;
- (b) important changes which have been made to the structure and functioning of the relevant control systems, in particular to meet Community requirements or recommendations.

4. Where a third country does not provide such information or where such information is inadequate, specific import

presented to the Commission, as well as transitional measures to allow third countries time to prepare and implement the control plan shall be established in accordance with the procedure referred to in Article 62(2).

conditions may be fixed in accordance with the procedure referred to in Article 62(3) on a case by case and strictly temporary basis following consultations with the third country concerned.

4a. Guidelines, specifying how the information referred to in paragraphs 1,2 and 3 shall be drawn up and presented to the Commission, as well as transitional measures allowing time for third countries to prepare this information shall be established in accordance with the procedure referred to in Article 62(2).

Amendment <NumAm>199</NumAm>
<Article>Article 48</Article>

1. The conditions and detailed procedures to be respected when importing **feed and food** from third countries or regions **thereof** shall be established **where necessary** in accordance with the procedure referred to in Article 62(3).

1. **To the extent that** the conditions and detailed procedures to be respected when importing **goods** from third countries or **their** regions **are not provided for by Community law and in particular by Regulation (EC) .../2004 of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption, they shall, if necessary,** be established in accordance with the procedure referred to in Article 62(3).

2. The conditions and detailed procedures referred to in paragraph 1 may include:

- (a) the establishment of a list of third countries from which **feed and food** may be imported **in** one of the territories referred to in Annex I;
- (b) the establishment of models of certificates accompanying consignments;
- (c) special import conditions, depending on the type of product and the possible risks associated therewith.

3. Third countries shall appear on **a list** referred to in **point (a)** of **paragraph 2** only if their competent authorities provide

2. The conditions and detailed procedures referred to in paragraph 1 may include:

- (a) the establishment of a list of third countries from which **specific products** may be imported **into** one of the territories referred to in Annex I;
- (b) the establishment of models of certificates accompanying consignments;
- (c) special import conditions, depending on the type of product **or animal** and the possible risks associated therewith.

Third countries shall appear on **the lists** referred to in **paragraph 2(a)** only if their competent authorities provide appropriate

appropriate guarantees as regards compliance or equivalence with Community feed and food law.

When drawing up or updating lists particular account shall be taken of:

- (a) the third country's legislation in the sector concerned;
- (b) the structure and organisation of the competent authority of the third country and its control services, as well as the powers available to it/them and the guarantees that can be provided with regard to the implementation of the legislation concerned;
- (c) the existence of adequate **feed and food** controls;
- (d) the regularity and rapidity of information supplied by the third country on the presence of hazards in feed and food;
- (e) the guarantees given by a third country that:
 - (i) conditions applied to the establishments from which feed and food may be imported in the Community comply with or are equivalent to the requirements in Community feed and food law;
 - (ii) a list of such establishments is established and kept up-to-date;
 - (iii) the list of establishments and its updated versions are communicated to the Commission without delay;
 - (iv) the establishments are the subject of regular and effective controls by the competent authority of the third country.

4. **In deciding the** import conditions referred to in **point (c) of paragraph 1**, account shall be taken of **the** information submitted by third countries and where necessary the results of Community controls carried out in third countries.

These import conditions may be established for **each commodity or group of commodities** and **per third country or regions thereof**, or **for** a group of third

guarantees as regards compliance or equivalence with Community feed and food law **and animal health rules**.

When drawing up or updating lists particular account shall be taken of **the following criteria**:

- (a) the third country's legislation in the sector concerned;
- (b) the structure and organisation of the competent authority of the third country and its control services, as well as the powers available to it/them and the guarantees that can be provided with regard to the implementation of the legislation concerned;
- (c) the existence of adequate **official** controls;
- (d) the regularity and rapidity of information supplied by the third country on the presence of hazards in feed and food, **and in live animals**;
- (e) the guarantees given by a third country that:
 - (i) conditions applied to the establishments from which feed and food may be imported in the Community comply with or are equivalent to the requirements in Community feed and food law;
 - (ii) a list of such establishments is established and kept up-to-date;
 - (iii) the list of establishments and its updated versions are communicated to the Commission without delay;
 - (iv) the establishments are the subject of regular and effective controls by the competent authority of the third country.

When adopting the special import conditions referred to in **paragraph 2(c)**, account shall be taken of information that relevant third countries have provided and, where necessary, the results of Community controls carried out in such third countries.

Special import conditions may be established for **a single product** or for **a group of products**. **They may apply to a single third country, to regions of a third**

countries.

country, or **to** a group of third countries.

Amendment <NumAm>200</NumAm>
<Article>Article 49, paragraphs 1 and 2</Article>

1. Pursuant to the implementation of an equivalence agreement, or to a satisfactory audit, a decision may be taken, in accordance with the procedure referred to in Article 62(3), recognising that measures **in areas of feed and food law applied by a third country or a region thereof**, offer guarantees equivalent to those applied in the Community, if the third country supplies objective proof in this respect.

2. The decision referred to in paragraph 1 shall set out the conditions governing the **importation of feed and food** from that third country or region of a third country.

Those conditions may include:

- (a) the nature and content of the certificates that must accompany the products;
- (b) specific requirements applicable to importation into the Community;
- (c) where necessary, procedures for drawing up and amending lists of regions or establishments from which imports are permitted.

1. Pursuant to the implementation of an equivalence agreement, or to a satisfactory audit, a decision may be taken, in accordance with the procedure referred to in Article 62(3), recognising that measures that third countries or their regions apply in specific areas offer guarantees equivalent to those applied in the Community, if the third country supplies objective proof in this respect.

2. The decision referred to in paragraph 1 shall set out the conditions governing the **imports** from that third country or region of a third country.

Those conditions may include:

- (a) the nature and content of the certificates that must accompany the products;
- (b) specific requirements applicable to importation into the Community;
- (c) where necessary, procedures for drawing up and amending lists of regions or establishments from which imports are permitted.

Amendment <NumAm>201</NumAm>
<Article>Article 50</Article>

In accordance with the procedure referred to in Article 62(3) the following measures may be adopted for ensuring that developing countries are able to comply with the provisions of this Regulation:

- (a) a phased introduction of the **requirement to present a control plan for the products that are** exported to the Community, **and a report on the results of such plan**;

1. In accordance with the procedure referred to in Article 62(3) the following measures may be adopted **and maintained so long as they have a demonstrable effect to ensure** that developing countries are able to comply with the provisions of this Regulation:

- (a) a phased introduction of the **requirements referred to in Article 47 and Article 48 for products** exported to the Community. **Progress in meeting these requirements shall be evaluated and taken**

- (b) assistance *on the establishment of a control plan*, if necessary by Community experts;
- (c) the promotion of *twin* projects between a developing *country and a* Member State;
- (d) the development of guidelines to assist developing countries in organising official controls on *the* products exported to the Community;
- (e) *the* sending of Community experts to developing countries so as to assist in the organisation of official controls;
- (f) the participation *by control staff of developing countries* in the training courses referred to in Article 51.

into account in determining the need for specified time-limited exceptions in whole or in part from the requirements. The phased introduction shall also take into account of the progress in building the institutional capacity referred to in paragraph 1a.

- (b) assistance *with providing the information referred to in Article 47*, if necessary by Community experts;
- (c) the promotion of *joint* projects between developing *countries and* Member States;
- (d) the development of guidelines to assist developing countries in organising official controls on products exported to the Community;
- (e) sending Community experts to developing countries so as to assist in the organisation of official controls;
- (f) the participation *of developing countries' control staff* in the training courses referred to in Article 51.

1a. In the context of the Community's Development Co-operation Policy, the Commission shall promote the support of developing countries with regard to feed and food safety in general and the respect of feed and food standards in particular, in order to build in institutional capacity required to meet the requirements referred to in Articles 5, 12, 47 and 48.

Amendment <NumAm>202</NumAm>
<Article>Article 51, paragraph 1</Article>

1. The Commission may organise training courses for the staff of *the* competent authorities *in the Member States* responsible for the controls referred to in this Regulation. These training courses shall serve to develop a harmonised approach *towards* official controls in *the* Member States. They may include in particular training on:

1. The Commission may organise training courses for the staff of *Member States'* competent authorities responsible for the *official* controls referred to in this Regulation. These training courses shall serve to develop a harmonised approach *to* official controls in Member States. They may include in particular training on:

- (a) Community feed and food law;
- (b) control methods and techniques such as the auditing of systems ***designed by feed and food business operators to meet feed and food law requirements***;
- (c) controls to be carried out on ***feed and food*** imported into the Community;
- (d) feed and food production, processing and marketing methods and techniques.

- (a) Community feed and food law ***and animal health and animal welfare rules***;
- (b) control methods and techniques, such as the auditing of systems ***that operators design to comply with feed and food law, animal health and animal welfare rules***;
- (c) controls to be carried out on ***goods*** imported into the Community;
- (d) feed and food production, processing and marketing methods and techniques.

Amendment <NumAm>203</NumAm>
<Article> Article 52</Article>

1. ***Experts from the*** Commission may ***assist the Member States during controls carried out by third countries, upon request*** and in co-operation with ***the authorities of the*** Member States.

2. Member States in ***whose*** territory ***a control as referred to in paragraph 1 is undertaken by a third country*** shall inform the Commission about the planning, scope, documentation and any other relevant information enabling the Commission to take part efficiently in the control.

3. ***The assistance by the Commission*** shall serve in particular ***to***:

- (a) clarify Community feed and food law;
- (b) provide information and data available at Community level that may be useful for the control ***carried out by the third country***;
- (c) ensure uniformity with regard to controls carried out by third countries.

1. Commission ***experts*** may, ***at the request of***, and in co-operation with, ***Member States' competent authorities, assist*** Member States ***during controls that third countries carry out***.

2. In such cases, Member States in ***the*** territory ***of which a third country is to carry out a control*** shall inform the Commission about the planning, scope, documentation and any other relevant information enabling the Commission to take part efficiently in the control.

3. ***The Commission's assistance*** shall serve in particular:

- (a) ***to*** clarify Community feed and food law ***and animal health and animal welfare rules***;
- (b) ***to*** provide information and data available at Community level that may be useful for the control ***that the third control carries out***;
- (c) ***to*** ensure ***uniformity*** with regard to controls that third countries carry out.

Amendment <NumAm>204</NumAm>
<Article>Article 53</Article>

Community co-ordinated plans ***may be established*** in accordance with the

The Commission may recommend ***co-ordinated plans*** in accordance with the

procedure referred to in Article 62(2). These plans shall be:

- (a) organised annually in accordance with a programme; and
- (b) **where** considered necessary, organised on an ad-hoc basis in particular with a view to establish the prevalence of hazards in feed **or food**.

procedure referred to in Article 62(2). These plans shall be:

- 1. organised annually in accordance with a programme; and
- 2. **when** considered necessary, organised on an ad-hoc basis, in particular with a view to establishing the prevalence of hazards in feed, **food or animals**.

Amendment <NumAm>205</NumAm>
<Article>Article 54</Article>

1. **Where non-compliance with feed law or food law is identified and depending on the nature of the non-compliance, the competent authority shall take action to ensure that the feed or food business** operator remedies the situation.

2. Such action shall include, where appropriate, the following measures:

- (a) the imposition of sanitation procedures or any other **corrective** action deemed necessary to ensure the safety of feed and food or compliance with feed **law and** food law;
- (b) the restriction or prohibition of the placing on the market, importation or exportation of feed **and** food;
- (c) the recall, withdrawal and/or destruction of feed and food;
- (d) **the** authorisation to use feed or food for **other** purposes;
- (e) the suspension of operation or closure of all or part of the business concerned for an appropriate period of time;
- (f) the suspension or withdrawal of the **approved status of establishments**;
- (g) the measures referred to in Article 19 on consignments from third countries;
- (h) other **measures deemed appropriate by**

1. **When the competent authority identifies non-compliance, it shall take action to ensure that the** operator remedies the situation. **When deciding which action to take, the competent authority shall take account of the nature of the non-compliance and the operator's past record with regard to non-compliance.**

2. Such action shall include, where appropriate, the following measures:

- (a) the imposition of sanitation procedures or any other action deemed necessary to ensure the safety of feed or food or compliance with feed **or** food law, **animal health or animal welfare rules**;
- (b) the restriction or prohibition of the placing on the market, importation or exportation of feed, food **or animals**;
- (c) **monitoring and, if necessary, ordering** the recall, withdrawal and/or destruction of feed or food;
- (d) authorisation to use feed or food for purposes **other than those for which they were originally intended**;
- (e) the suspension of operation or closure of all or part of the business concerned for an appropriate period of time;
- (f) the suspension or withdrawal of the **establishment's approval**;
- (g) the measures referred to in Article 19 on consignments from third countries;
- (h) **any** other **measure that** the competent

the competent authority.

In deciding which action to take in accordance with the first subparagraph, account shall be taken of the record of the feed or food business operator with regard to non-compliance with feed or food law.

3. The decisions concerning the action taken by the competent authority in accordance with paragraph 1 together with the reasons thereof, shall be notified in writing to the feed or food business operator concerned or his representative and where appropriate to the competent authority of the Member State of dispatch. The feed or food business operator shall be informed of his rights of appeal against such decisions and of the procedure and time limits applicable.

authority *deems appropriate*.

3. The competent authority shall provide the operator concerned, or a representative, with:

(a) written notification of its decision concerning the action to be taken in accordance with paragraph 1, together with the reasons for the decision; and

(b) information on rights of appeal against such decisions and of the applicable procedure and time limits.

3a. Where appropriate, the competent authority shall also notify the competent authority of the Member State of dispatch of its decision.

3b. All expenditures incurred pursuant to this Article shall be borne by the responsible food and feed business operator.

Amendment <NumAm>206</NumAm>
<Article>Article 55</Article>

Penalties

1. Member States shall lay down the rules on ***penalties*** applicable to infringements of feed and food law and shall take all measures necessary to ensure that they are implemented. The ***penalties*** provided for must be effective, proportionate and dissuasive. ***The Member States shall notify those provisions and any subsequent amendment to the Commission without***

Sanctions

1. Member States shall lay down the rules on ***sanctions*** applicable to infringements of feed and food law ***and other Community provisions relating to the protection of animal health and welfare*** and shall take all measures necessary to ensure that they are implemented. The ***sanctions*** provided for must be effective, proportionate and

delay.

2. For the purpose of paragraph 1, the activities referred to in Annex VI shall be criminal offences when committed intentionally or through serious negligence, insofar as they breach rules of Community feed and food law or rules adopted by the Member States in order to comply with such Community law.

3. The offences referred to in paragraph 2 and the instigation to or participation in such offences shall, as for natural persons, be punishable by sanctions of criminal nature, including as appropriate deprivation of liberty, and, as for legal persons, by penalties which shall include criminal or non-criminal fines and may include other penalties such as exclusion from entitlement to public benefits or aid, temporary or permanent disqualification from engaging in business activities, placing under judicial supervision or a judicial winding-up order.

dissuasive.

2. Member States shall notify the provisions applicable to infringements of feed and food law and any subsequent amendment to the Commission without delay.

Amendment <NumAm>207</NumAm>
<Article>Article 56</Article>

Where the Commission has evidence that there is a serious failure in the control systems of a Member State and where such failures may constitute a possible and widespread risk for human health, animal health or the welfare of the animals, either directly or through the environment, the emergency measures referred to in Article 53 of Regulation (EC) No 178/2002 may be applied.

These measures shall only be adopted after:

1. Measures shall be taken under the procedures provided for in Article 53 of Regulation (EC) No 178/2002 if:

(a) the Commission has evidence of a serious failure in a Member State's control systems; and

(b) such failure may constitute a possible and widespread risk for human health, animal health or animal welfare, either directly or through the environment.

2. Such measures shall be adopted only

- (a) Community controls have shown and reported non-compliance with Community legislation; and
- (b) the Member State concerned has failed to correct the situation upon request and within the time limit **set by** the Commission.

after:

- (a) Community controls have shown and reported non-compliance with Community legislation; and
- (b) the Member State concerned has failed to correct the situation upon request and within the time limit **that** the Commission **has set**.

Amendment <NumAm>208</NumAm>
<Article>Article 57</Article>

Article 57

deleted

Amendment of Directive 89/662/EEC

In Annex A of Council Directive 89/662/EEC, Chapter I is replaced by the following:

"ANNEX A

CHAPTER I

Council Regulation (EC) No .../... laying down the animal health rules governing the production, placing on the market and importation of products of animal origin intended for human consumption.

Amendment <NumAm>209</NumAm>
<Article>Article 58</Article>

Directive 96/23/EC is amended as follows:

1. In Article 14, paragraph 2 is replaced by the following text:

"2. The Community reference laboratories are those referred to in the relevant part of Annex V of Regulation (EC) No .../... (on official controls performed to verify compliance with feed and food law, animal health and animal welfare rules)."

In Article 30 of **Directive 96/23/EC**, the part of paragraph 1 beginning "Where such additional checks demonstrate..." and ending "...or to use it for other purposes

2. In Article 30, the part of paragraph 1 beginning "Where such additional checks demonstrate..." and ending "...or to use it for other purposes authorised by Community

authorised by Community legislation, without indemnity or compensation", is replaced by the following text:

"Where checks demonstrate the presence of unauthorised substances or products or when maximum limits have been exceeded, the provisions of **Articles 18** to 22 of Regulation (EC) No .../... **(on official feed and food controls)** shall apply. "

legislation, without indemnity or compensation", is replaced by the following text:

"Where checks demonstrate the presence of unauthorised substances or products or when maximum limits have been exceeded, the provisions of **Articles 19** to 22 of Regulation (EC) No .../... **on official controls performed to verify compliance with feed and food law, animal health and animal welfare rules** shall apply."

3. Annex V is deleted.

Amendment <NumAm>210</NumAm>
<Article>Article 59, paragraphs 1 to 8

1. Article 1 of Directive 97/78/EC is replaced by the following text:

"Veterinary checks on products from third countries introduced into one of the territories listed in Annex I shall be carried out by Member States in accordance with this Directive and with Regulation (EC) No/.... on official **feed and food** controls".

2. Article 2, paragraph 2(a) is replaced by the following text:

"(a) "products" means the products of animal origin referred to in Directives 89/662/EEC and 90/425/EEC, and in Regulation (EC) No 1774/2002 laying down health rules concerning animal by-products not intended for human consumption; it also includes the plant products referred to in Article 19;"

3. In **Article 7**, the words "inspection fees

1. Article 1 of Directive 97/78/EC is replaced by the following text:

"Veterinary checks on products from third countries introduced into one of the territories listed in Annex I shall be carried out by Member States in accordance with this Directive and with Regulation (EC) No/.... on official controls **performed to verify compliance with feed and food law, animal health and animal welfare rules**".

2. Article 2, paragraph 2(a) is replaced by the following text:

"(a) "products" means the products of animal origin referred to in Directives 89/662/EEC and 90/425/EEC, in Regulation (EC) No 1774/2002 laying down health rules concerning animal by-products not intended for human consumption, **in Council Directive 2002/99/EC laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption¹ and in Regulation (EC) No/.... laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption**; it also includes the plant products referred to in Article 19;"

3. In **Article 7(3)**, the words "inspection fees

referred to in Council Directive 85/73/EEC of 29 January 1985 on the financing of veterinary inspections and controls covered by Directives 89/662/EEC, 90/425/EEC, 90/675/EEC and 91/496/EEC (amended and consolidated)" are replaced by: "inspection fees referred to in Regulation (EC) No .../... on official **feed and food** controls".

4. In Article 10, paragraph 1 point (b), the following words are deleted : "or, in the case of establishments approved in accordance with Council Decision 95/408/EC of 22 June 1995 on the conditions for drawing up, for an interim period, provisional lists of third country establishments from which Member States are authorised to import certain products of animal origin, fishery products or live bivalve molluscs, from an establishment which has undergone either a Community or a national inspection".

5. In Article 12, paragraph 9 is deleted.

6. In Article 15, paragraph 5 is deleted.

7. Article 16 **is replaced by the following text:**

"Detailed rules for the introduction of products of animal origin **sent by post or carried by passengers and crew** of international means of transport shall be laid down in accordance with Article 25 of Regulation (EC) No .../... on official **feed and food** controls".

8. Article 17 is replaced by the following text:

"Consignments which have been introduced into one of the territories of the Community without being presented for veterinary checks in accordance with the requirements of Articles 3 and 4 shall be seized or confiscated, and handled in accordance with Articles 18 to 22 of

referred to in Council Directive 85/73/EEC of 29 January 1985 on the financing of veterinary inspections and controls covered by Directives 89/662/EEC, 90/425/EEC, 90/675/EEC and 91/496/EEC (amended and consolidated)" are replaced by: "inspection fees referred to in Regulation (EC) No .../... on official controls **performed to verify compliance with feed and food law, animal health and animal welfare rules**".

4. In Article 10, paragraph 1 point (b), the following words are deleted : "or, in the case of establishments approved in accordance with Council Decision 95/408/EC of 22 June 1995 on the conditions for drawing up, for an interim period, provisional lists of third country establishments from which Member States are authorised to import certain products of animal origin, fishery products or live bivalve molluscs, from an establishment which has undergone either a Community or a national inspection".

5. In Article 12, paragraph 9 is deleted.

6. In Article 15, paragraph 5 is deleted.

7. **In Article 16, the following new paragraph 4 is inserted:**

"4. Detailed rules for the introduction of products of animal origin for the supply of the crew and passengers of international means of transport, and for products of animal origin ordered remotely (for example, by mail, by telephone or via the internet) and delivered to the consumer, shall be laid down in accordance with Article 25 of Regulation (EC) No .../... on official controls **performed to verify compliance with feed and food law, animal health and animal welfare rules**".

Regulation (EC) No .../... on official feed and food controls".

¹ OJ L 18, 23.1.2003, p. 11.

Amendment <NumAm>211</NumAm>
<Article>Article 60</Article>

Amendment of Directive 2000/29/EC

In Directive 2000/29/EC, the following Article 27(a) is added:

"Article 27(a)

For the purpose of this Directive, **Articles 42 to 46 of Regulation (EC) No .../... (on official feed and food controls) shall apply"**

Amendment of Directive 2000/29/EC

In Directive 2000/29/EC, the following Article 27(a) is added:

"Article 27(a)

For the purpose of this Directive **and without prejudice of Article 21 thereof, Articles 41 to 46 of Regulation (EC) No .../... on official controls performed to verify compliance with feed and food law, animal health and animal welfare rules shall apply, as appropriate."**

Amendment <NumAm>212</NumAm>
<Article>Article 60a (new)</Article>

Article 60a

Amendment of Regulation (EC) .../... [laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption]

Regulation (EC) .../... [laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption] is amended as follows:

1. In Article 1, the following paragraph 1a is added:

"1a. This Regulation shall apply in addition to Regulation (EC) No .../... on official controls performed to verify compliance with feed and food law, animal health and animal welfare rules."

2. In Article 2:

(a) in paragraph 1, subparagraphs (a), (b), (d) and (e) are deleted; and

(b) in paragraph 2, the following subparagraph (ba) is added:

"(ba) Regulation (EC) No .../...on official controls performed to verify compliance with feed and food law, animal health and animal welfare rules".

3. In Article 3:

(a) paragraph 1 is replaced by the following:

"1. The competent authorities shall approve establishments when, and in the manner, specified in Article 31(2) of Regulation (EC) No .../... on official controls performed to verify compliance with feed and food law, animal health and animal welfare rules"; and

(b) paragraph 4(a) and (b) and paragraph 6 are deleted.

4. Article 9 is deleted.

5. Article 10 is replaced with the following:

"To ensure the uniform application of the principles and conditions laid down in Article 11 of Regulation (EC) No 178/2002 and Title VI, Chapter II, of Regulation (EC) No .../... on official controls performed to verify compliance with feed and food law, animal health and animal welfare rules the procedures laid down in this Chapter shall apply. "

6. In Article 11:

(a) paragraph 2 is replaced by the following:

"2. A third country shall appear on such lists only if a Community control in that country has taken place and demonstrates that the competent authority provides appropriate guarantees as specified in Article 48(3) of Regulation (EC) No .../... on official controls performed to verify compliance with feed and food law, animal health and animal welfare rules. However,

a third country may appear on such lists without a Community control having taken place if:

(a) the risk determined in accordance with Article 46(3)(a) of Regulation (EC) No .../... on official controls performed to verify compliance with feed and food law, animal health and animal welfare rules does not warrant it; and

(b) it is determined, when deciding to add a particular third country to a list in accordance with paragraph 1, that other information indicates that the competent authority provides the necessary guarantees.";

(b) the introduction to paragraph 4 is replaced by the following:

"4. When drawing up or updating lists, particular account shall be taken of the criteria listed in Articles 46 and 48(3) of Regulation (EC) No .../... on official controls performed to verify compliance with feed and food law, animal health and animal welfare rules. Regard shall also be had to:"; and

(c) subparagraphs (b) to (h) of paragraph 4 are deleted.

7. Article 14(2)(b) is replaced by the following:

"(b) any specific import conditions established in accordance with Article 48 of Regulation (EC) No .../... on official controls performed to verify compliance with feed and food law, animal health and animal welfare rules".

8. In Article 18, points (17) to (20) are deleted.

Amendment <NumAm>213</NumAm>
<Article>Article 61, paragraphs 1 and 2</Article>

Directives 70/373/EEC, 85/591/EEC, 89/397/EEC, 93/99/EEC, 95/53/EC and 96/43/EC and Decision 98/728/EC are

1. Directives 70/373/EEC, 85/591/EEC, 89/397/EEC, 93/99/EEC and 95/53/EC and Decisions 93/383/EC, 98/728/EC **and**

repealed with effect from **1 January 2005**.

However, the implementing rules adopted on the basis of these acts **as listed in Annex VII** shall remain in force insofar as they are not in contradiction with this Regulation, **until they are repealed or where necessary replaced by rules having the same effect adopted** on the basis of this Regulation.

1999/313/EC are repealed with effect from **the date mentioned in Article 67, second sentence. Directive 85/73/EEC is repealed with effect from the 1 January 2008.**

2. However, the implementing rules adopted on the basis of those acts **in particular those referred to in Annex VIII** shall remain in force insofar as they are not in contradiction with this Regulation, **pending the adoption of the necessary provisions** on the basis of this Regulation.

Amendment <NumAm>214</NumAm>
<Article>Article 62, title and paragraph 1</Article>

Standing Committee procedure

1. The Commission shall be assisted by the Standing Committee on the Food Chain and Animal Health instituted by Article 58 of Regulation (EC) No 178/2002, or where **necessary for the purpose of this Regulation**, by the Standing Committee on plant health set up by Council Decision 76/894/EEC.

Committee procedure

1. The Commission shall be assisted by the Standing Committee on the Food Chain and Animal Health instituted by Article 58 of Regulation (EC) No 178/2002 or, where **dealing with matters mainly relating to plant health**, by the Standing Committee on plant health set up by Council Decision 76/894/EEC

Amendment <NumAm>215</NumAm>
<Article>Article 63</Article>

1. Implementing and transitional measures necessary to ensure a uniform application of this Regulation may be laid down in accordance with the procedure referred to in Article 62(3).

1. Implementing and transitional measures necessary to ensure the uniform application of this Regulation may be laid down in accordance with the procedure referred to in Article 62(3).

This applies in particular to:

(a) the delegation of control tasks to control bodies referred to in Article 5, where these control bodies were already in operation before the entry into force of this Regulation;

(b) any modification with regard to the standards referred to in Article 12;

(c) the non-compliance referred to in Article 28 which gives rise to expenses

deriving from additional official controls;

(d) expenditure incurred pursuant Article 54;

(e) rules on microbiological, physical and/or chemical analysis in official controls, in particular in case of suspicion of risk and including the surveillance of the safety of products imported from third countries.

(f) defining which feeds are to be considered as feed of animal origin for the purpose of this Regulation.

2. In order to take account of the specificity of Regulations (EEC) No 2092/91, (EEC) No 2081/92 and (EEC) No 2082/92, **the rules laid down in this Regulation may be adapted** in accordance with the procedure referred to in Article 62(3).

2. In order to take account of the specificity of Regulations (EEC) No 2092/91, (EEC) No 2081/92 and (EEC) No 2082/92, **specific measures to be adopted** in accordance with the procedure referred to in Article 62(3) **may provide for the necessary derogations and adjustments to the rules laid down in this Regulation.**

Amendment <NumAm>216</NumAm>
<Article>Article 64</Article>

In accordance with the procedure referred to in Article 62(3), **amendments may be made to:**

(a) the Annexes to this Regulation, except for **Annex VI**, in order to take account of scientific **and** technological progress;

(b) the references to the European Standards referred to in this Regulation in the event that these references **are amended by CEN**.

In accordance with the procedure referred to in Article 62(3):

(a) the Annexes to this Regulation **may be updated**, except for **Annex I, Annex IV, Annex V , without prejudice to Article 27(3), in particular** in order to take account of **administrative changes**, scientific **and/or** technological progress;

(b) the references to the European Standards referred to in this Regulation **may be updated** in the event that **CEN amends** these references.

Amendment <NumAm>217</NumAm>
<Article>Article 64a (new)</Article>

Article 64a

Report to the European Parliament and the Council

1. The Commission shall, not later than three years after the entry into force of this Regulation, submit a report to the European Parliament and the Council.

2. The report shall, in particular, review the experience gained from the application of this Regulation and consider in particular the following issues:

(a) re-evaluating the scope, in relation to animal health and animal welfare;

(b) ensuring that other sectors contribute to the financing of official controls by extending the list of activities referred to in Annex IV, section A and in Annex V, section A, and taking into account in particular the impact of the new hygiene legislation;

(c) setting updated minimum rates for fees referred to in Annex IV, section B and in Annex V, section B, taking into account in particular risk factors.

3. The Commission shall, if appropriate, accompany the report with relevant proposals.

Amendment <NumAm>218</NumAm>
<Article>Article 65</Article>

1. The appropriations required for:

(a) the travel and subsistence expenses ***incurred by the Member State experts appointed by the Commission as referred to*** in Articles 45(1) and 46(1);

(b) the training of control staff ***referred*** in Article 51;

(c) the financing of other measures necessary to ensure the application of this Regulation,

shall be ***decided*** each year ***as a part of*** the budgetary procedure.

1. The appropriations required for:

(a) the travel and subsistence expenses ***that Member States' experts incur as a result of the Commission appointing them to assist its experts as provided for*** in Articles 45(1) and 46(1);

(b) the training of control staff ***provided*** for in Article 51;

(c) the financing of other measures necessary to ensure the application of this Regulation,

shall be ***authorised*** each year ***in the framework of*** the budgetary procedure.

2. The measures referred to in paragraph 1(c) shall include in particular the organisation of conferences, the establishment of databases, the publication of information, the organisation of studies, the organisation of meetings **in order** to prepare the sessions of the Standing Committee on the Food Chain and Animal Health.

3. **A Community technical** support and financial contribution for the organisation of the activities referred to in Article 50 may be granted within the limits of the human and financial resources available to the Commission.

2. The measures referred to in paragraph 1(c) shall include in particular the organisation of conferences, the establishment of databases, the publication of information, the organisation of studies **and** the organisation of meetings to prepare the sessions of the Standing Committee on the Food Chain and Animal Health.

3. **Technical** support and a financial contribution **from the Community** for the organisation of the activities referred to in Article 50 may be granted within the limits of the human and financial resources available to the Commission.

Amendment <NumAm>219</NumAm>
<Article> Article 66</Article>

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

It shall apply from **1 January 2005**.

However, **Article 55 paragraphs 2 and 3** shall apply from **1 July 2006**.

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 2006**.

However, **Articles 27 and 28** shall apply from **1 January 2007**.

Amendment <NumAm>220</NumAm>
<Article>Annex I, title</Article>

TERRITORIES REFERRED TO IN
ARTICLE 2(9)

TERRITORIES REFERRED TO IN
ARTICLE 2(15)

Amendment <NumAm>221</NumAm>
<Article>Annex II</Article>

THE COMPETENT AUTHORITIES

Chapter I: **subject matters** for the training of staff performing official controls

1. **The different** control techniques such as auditing, sampling and inspection.

COMPETENT AUTHORITIES

Chapter I : **Subject matter** for the training of staff performing official controls

1. **Different** control techniques, such as auditing, sampling and inspection.

2. **The control** procedures.
3. Feed **law** and food law.
4. The different stages of production, processing and distribution, and the possible risks for human health, and where appropriate for the health of the animals and plants and for the environment.
5. Assessment of non-compliance with feed **law** and food law.
6. Hazards in animal, feed and food production.
7. The Hazard Analysis and Critical Control Point (HACCP) procedures **and the techniques for the assessment of the HACCP procedures**.
8. Management systems such as quality assurance programmes operated by the feed and food businesses and **the** assessment **thereof** in so far as these are relevant for feed **law** and food law requirements.
9. Official certification systems.
10. Contingency arrangements **in case of** emergencies.
11. Legal proceedings and implications of official controls.
12. Examination of written, documentary material and other records, including those related to proficiency testing, accreditation and risk assessment, which may be relevant to the assessment of compliance with feed **law** or food law; this may include financial and commercial aspects.
13. Any other area, including animal health and animal welfare, **that is deemed** necessary to ensure that official controls are carried out in accordance with this Regulation.

Chapter II: **subject matters** for control procedures **and guidelines**

1. The organisation of the competent authority and the relationship between **the** central competent authorities and **the**

2. **Control** procedures.
3. Feed and food law.
4. The different stages of production, processing and distribution, and the possible risks for human health, and where appropriate for the health of animals and plants and for the environment.
5. Assessment of non-compliance with feed and food law.
6. Hazards in animal, feed and food production.
7. The **evaluation of the application of** Hazard Analysis and Critical Control Point (HACCP) procedures.
8. Management systems such as quality assurance programmes that feed and food businesses operate and **their** assessment in so far as these are relevant for feed or food law requirements.
9. Official certification systems.
10. Contingency arrangements **for** emergencies, **including communication between Member states and the Commission**.
11. Legal proceedings and implications of official controls.
12. Examination of written, documentary material and other records, including those related to proficiency testing, accreditation and risk assessment, which may be relevant to the assessment of compliance with feed or food law; this may include financial and commercial aspects.
13. Any other area, including animal health and animal welfare, necessary to ensure that official controls are carried out in accordance with this Regulation.

Chapter II : Subject areas **for control procedures**

1. The organisation of the competent authority and the relationship between central competent authorities and authorities

authorities to which ***the competence for performing official controls has been conferred to.***

2. The relationship between the competent authorities and the non-governmental bodies to which ***the competence for performing official controls has been delegated.***

3. A statement on the objectives to be achieved.

4. ***The tasks***, responsibilities and duties of staff.

5. ***The*** control methods and techniques.

6. Monitoring and surveillance programmes.

7. Mutual assistance in ***case the*** controls require action by more than one Member State.

8. Action to be taken following official controls.

9. ***The co-operation*** with other services or departments that may have responsibilities ***in the matter.***

10. Verification of appropriateness of methods of analysis and detection tests.

11. Any other activity or information required for the ***proper*** functioning of the official controls.

to which ***they have delegated tasks to carry out official controls.***

2. The relationship between competent authorities and non-governmental ***control*** bodies to which ***they have delegated tasks to carry out tasks related to official controls.***

3. A statement on the objectives to be achieved.

4. ***Tasks***, responsibilities and duties of staff.

5. ***Sampling procedures***, control methods and techniques, ***interpretation of results and consequent decisions.***

6. Monitoring and surveillance programmes.

7. Mutual assistance in ***the event that official*** controls require more than one Member State ***to take action.***

8. Action to be taken following official controls.

9. ***Co-operation*** with other services or departments that may have ***relevant*** responsibilities.

10. Verification of ***the*** appropriateness of methods of ***sampling, methods of*** analysis and detection tests.

11. Any other activity or information required for the ***effective*** functioning of the official controls.

Amendment <NumAm>222</NumAm>
<Article>Annex III, title and paragraph 1</Article>

CRITERIA FOR METHODS OF ANALYSIS

1. Methods of analysis should ***take into account*** the following criteria:

(a) accuracy;

(b) applicability (matrix and concentration range);

(c) limit of detection;

CHARACTERISATION OF METHODS OF ANALYSIS

1. Methods of analysis should ***be characterised by*** the following criteria:

(a) accuracy;

(b) applicability (matrix and concentration range);

(c) limit of detection;

(d) limit of determination;
(e) precision; ***repeatability intra-laboratory (within laboratory), reproducibility inter-laboratory (within and between laboratories) generated from collaborative trial data and where performance criteria for analytical methods have been established, criteria compliance tests, rather than measurement uncertainty considerations;***

(f) recovery;
(g) selectivity;
(h) sensitivity;
(i) linearity;

(j) other criteria that may be selected as required.

(d) limit of determination;
(e) precision;

(ea) repeatability;
(eb) reproducibility;

(f) recovery;
(g) selectivity;
(h) sensitivity;
(i) linearity;

(ia) measurement uncertainty;
(j) other criteria that may be selected as required

Amendment <NumAm>223</NumAm>
<Article>Annex III, paragraph 4</Article>

4. In situations where methods of analysis can only be validated within a single laboratory then they should be validated in accordance with IUPAC Harmonised Guidelines, or where performance criteria for analytical methods have been established, be based on criteria compliance tests.

4. In situations where methods of analysis can only be validated within a single laboratory then they should be validated in accordance with ***e.g.*** IUPAC Harmonised Guidelines, or where performance criteria for analytical methods have been established, be based on criteria compliance tests.

Amendment <NumAm>224</NumAm>
<Article> Annex IV</Article>

FEES RELATED TO THE CONTROL OF GOODS IMPORTED INTO THE COMMUNITY

Chapter I

ACTIVITIES AND MINIMUM RATES FOR FEES OR CHARGES RELATED TO OFFICIAL CONTROL IN RELATION TO COMMUNITY ESTABLISHMENTS

SECTION A : ACTIVITIES

Fees applicable to imported meat

The fee for the official control of imported meat is fixed at a level of € 5 per tonne, with a minimum amount of € 30 per consignment.

Chapter II

Fees applicable to imported fishery products

The fee for the official control of imported fishery products is fixed at a level of €5 per tonne, with a minimum amount of € 30 per consignment. Above 100 tonnes, the minimum standard amount of € 5 shall be reduced to:

- € 1,5 per additional tonne for fishery products which have undergone no preparation other than gutting;*
- € 2,5 per additional tonne of other fishery products.*

Chapter III

Fees applicable to imported live animals covered by Directive 91/496/EEC

With regard to animals covered by Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organisation of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC, the following applies:

- 1. The fee for the control of the following species shall be at the standard rate of € 5 per tonne live weight with a minimum amount of € 30 per consignment: bovine, porcine and ovine animals, solipeds, poultry, rabbits. These include domestic and wild species.*
- 2. The fee for the control of other species is fixed at the actual cost of inspection*

1. The activities covered by Directives 89/662/EEC, 90/425/EEC, 93/119/EC, and 96/23/EC for which Member States are currently collecting fees under Directive 85/73/EEC.

2. The approval of feed establishments

SECTION B : MINIMUM RATES

Member States shall collect for controls relating to the following list of products, at least the corresponding minimum fees or charges rates.

CHAPTER I : MINIMUM RATES FOR FEES OR CHARGES APPLICABLE TO SLAUGHTER INSPECTION

(a) beef meat

- adult bovine animals : 5 EUR/animal

- young bovine animals : 2 EUR/animal

(b) solipeds equidae : 3 EUR/animal

(c) pigmeat : animals of a carcass weight

- of less than 25 kg : 0.5 EUR/animal

- equal to or greater than 25 kg : 1 EUR/animal

expressed per animal or per tonne imported, with a minimum of € 30 per consignment, it being understood that this minimum does not apply to imports of species covered by Commission Decision 97/794/EC of 12 November 1997 laying down certain detailed rules for the application of Council Directive 91/496/EEC as regards veterinary checks on live animals to be imported from third countries¹.

(d) sheepmeat and goatmeat : animals of a carcass weight

- of less than 12 kg : 0.15 EUR/animal*
- equal or greater than 12 kg : 0.25 EUR/animal*

(e) poultry meat

- poultry of genus Gallus and guinea fowl : 0.005 EUR/animal*
- ducks and geese : 0.01 EUR/animal*
- turkeys : 0.025 EUR/animal*
- farmed rabbit meat : 0.005 EUR/animal.*

CHAPTER II : MINIMUM RATES FOR FEES OR CHARGES APPLICABLE TO CUTTING PLANTS CONTROLS

Member States will collect for official controls relating to the activities carried out in cutting plants, the following minimum fees or charges rates :

Per tonne of meat :

- beef, veal, pig, solipeds/equidae, sheep and goat meats : 2 EUR*
- poultry and farmed rabbit meat : 1.5 EUR*
- farmed and wild game meat :*
 - * small game birds and ground game : 1.5 EUR*
 - * ratites meat (ostrich, emu, nandou) : 3 EUR*
 - * boars and ruminants : 2 EUR.*

CHAPTER III : MINIMUM RATES FOR FEES OR CHARGES APPLICABLE TO GAME PROCESSING HOUSES

- (a) small game birds : 0.005 EUR/animal*
- (b) small ground game : 0.01 EUR/animal*
- (c) ratites : 0.5 EUR/animal*
- (d) land mammals :*

- boar : 1.5 EUR/animal*

- ruminants : 0.5 EUR/animal*

CHAPTER IV : MINIMUM RATES FOR FEES OR CHARGES APPLICABLE TO MILK PRODUCTION

Member States shall collect for official controls relating to milk production, the following minimum fees or charges rates :

- EURO 1 per 30 tonnes and*

- EUR 0.5 per tonne, thereafter.*

CHAPTER V : MINIMUM RATES FOR FEES OR CHARGES APPLICABLE TO THE PRODUCING AND PLACING ON THE MARKET OF FISHERY PRODUCTS AND AQUACULTURE PRODUCTS

Member States shall collect the following minimum fees or charges rates :

(a) first placing on the market of fishery and aquaculture products

- 1 EUR/tonne for the first 50 tonnes in the month ;*

- 0.5 EUR/tonne thereafter.*

(b) first sale in fish market

- 0.5 EUR/tonne for the first 50 tonnes in the month ;*

- 0.25 EUR/tonne thereafter.*

(c) first sale in case of lack or insufficient gradation for freshness and/or size in accordance with Regulation (EEC) no. 103/76 and no. 104/76 :

- 1 EUR/tonne for the first 50 tonnes in the month ;*

- 0.5 EUR/tonne thereafter.*

The fees collected on the species referred to in Annex II to Commission Regulation (EEC) no. 3703/85 must not exceed 50

EUR per consignment.

Member States will collect 0.5 EUR/tonne for the processing of fishery and aquaculture products.

Amendment <NumAm>225</NumAm>
<Article>Annex IVa (new)</Article>

ANNEX IVa

ACTIVITIES AND MINIMUM RATES FOR FEES OR CHARGES RELATED TO THE OFFICIAL CONTROL OF GOODS AND LIVE ANIMALS INTRODUCED INTO THE COMMUNITY

SECTION A : ACTIVITIES OR CONTROLS

The activities covered by Directives 97/78/EC and 91/496/EEC for which Member States are currently collecting fees under Directive 85/73/EEC.

SECTION B : FEES OR CHARGES

CHAPTER I : FEES APPLICABLE TO IMPORTED MEAT

The minimum rates for fee for the official control on the import of a consignment of meat is fixed at:

- € 55 per consignment, till 6 tonnes, and
- € 9 per tonne, till 46 tonnes, thereafter,
OR

- € 420 per consignment, over 46 tonnes.

CHAPTER II : FEES APPLICABLE TO IMPORTED FISHERY PRODUCTS

1. The minimum fee for the official control on the import of a consignment of fishery products is fixed at:

- € 55 per consignment, till 6 tonnes, and
- € 9 per tonne, till 46 tonnes, thereafter,
OR

- € 420 per consignment, over 46 tonnes.

2. The above amount for the official control on the import of a consignment of fishery products, transported ass break bulk

shipment, shall be:

- € 600 per vessel, with a cargo fishery products till 500 tonnes,*
- € 1200 per vessel, with a cargo fishery products till 1000 tonnes,*
- € 2400 per vessel, with a cargo fishery products till 2000 tonnes,*
- € 3600 per vessel, with a cargo fishery products, more than 2000 tonnes.]*

3. In the case of fishery products caught in their natural environment directly landed by a fishing vessel flying the flag of a third country, the provisions laid down in Annex IV, Section B, Chapter V, point a) shall apply.

**CHAPTER III : FEES OR CHARGES
APPLICABLE TO MEAT PRODUCTS,
POULTRY MEAT, WILD GAME MEAT,
RABBIT MEAT, FARMED GAME MEAT,
BY-PRODUCTS AND FEED OF ANIMAL
ORIGIN**

1. The minimum fee for the official control on the import of a consignment of other products of animal origin than mentioned in chapter I and II or a consignment of by-products of animal origin or a consignment of feed, is fixed at :

- € 55 per consignment, till 6 tonnes, and*
- € 9 per tonne, till 46 tonnes, thereafter,*
- OR**
- € 420 per consignment, over 46 tonnes.*

2. The above amount for the official control on the import of a consignment of other products of animal origin than mentioned in chapter I and II, a consignment of by-products of animal origin or a consignment of feed transported as break bulk shipment, shall be:

- € 600 per vessel, with a cargo products till 500 tonnes,*
- € 1200 per vessel, with a cargo products till 1000 tonnes,*
- € 2400 per vessel, with a cargo products*

till 2000 tonnes,

- € 3600 per vessel, with a cargo products, more than 2000 tonnes.

CHAPTER IV : FEES APPLICABLE TO TRANSIT THROUGH THE COMMUNITY OF GOODS AND LIVE ANIMALS

The amount of fees or charges for the official control on the transit of goods and live animals through the community is fixed at a minimum level of € 30, increased with € 20 per quarter of an hour for every staff involved in the controls.

CHAPTER V : FEES APPLICABLE TO IMPORTED LIVE ANIMALS

1. The fee for the official control on the import of a consignment of live animals is fixed:

a) for bovine animals, equidae, pigs, sheep, goats, poultry, rabbits and small game birds or ground game and the following land mammals: wild boar and ruminants, at:

*- € 55 per consignment, till 6 tonnes, and
- € 9 per tonne, till 46 tonnes, thereafter,
OR*

- € 420 per consignment, over 46 tonnes.

for animals of other species at the actual cost of inspection expressed either per animal or per tonne imported, at :

*- € 55 per consignment, till 46 tonnes, OR
- € 420 per consignment, over 46 tonnes.*

b) It being understood that this minimum does not apply to imports of species referred to in Commission Decision 92/432/EEC.

2. At the request of a Member State, accompanied by appropriate supporting documents and accordance with the procedure laid down in Article 18 of Directive 89/662/EEC, a lower level fees may be applied to imports from certain third countries.

Amendment <NumAm>226</NumAm>
<Article>Annex IVb (new)</Article>

ANNEX IVb

CRITERIA TO BE TAKEN INTO CONSIDERATION FOR THE CALCULATION OF FEES

**(a) the salaries of the staff involved in the
official controls;**

**(b) the costs for the staff involved in the
official controls, including facilities, tools,
equipment, training, travel and associated
costs;**

**(c) the laboratory analysis and sampling
costs;**

Amendment <NumAm>227</NumAm>
<Article>Annex V</Article>

COMMUNITY REFERENCE LABORATORIES

1. Community reference laboratory for milk
and milk products

AFSSA-LERHQA
41, rue du 11 Novembre 1918
94700 Maison Alfort
France

2. Community reference laboratories for the
analysis and testing of zoonoses

***The laboratories designated in accordance
with***

***Directive .../... on the monitoring of
zoonoses and zoonotic agents, amending
Council Decision 90/424/EEC and
repealing Council Directive 92/117/EEC,
and***

***Regulation .../... on the control of
salmonella and other food-borne zoonotic***

COMMUNITY REFERENCE LABORATORIES

I. Community reference laboratories for feed and food

1. Community reference laboratory for milk
and milk products

AFSSA-LERHQA
94700 Maisons-Alfort
France

2. Community reference laboratories for the
analysis and testing of zoonoses

(Salmonella)

***Rijksinstituut voor Volksgezondheid en
Milieu (RIVM)***

3720 BA Bilthoven, The Netherlands

agents and amending Council Directives 64/432/EEC, 72/462/EEC and 90/539/EEC.

3. Community reference laboratory for the monitoring of marine biotoxins

The laboratory referred to in Council Decision 93/383/EEC of 14 June 1993 on reference laboratories for the monitoring of marine biotoxins, as amended by Decision 1999/312/EC.

4. Community reference laboratory for viruses in molluscs

The laboratory referred to in Council Decision 1999/313/EC of 29 April 1999 on reference laboratories for monitoring bacteriological and viral contamination of bivalve molluscs.

5. Community reference laboratories for residues

The laboratories referred to in Annex V, Chapter 1 of Council Directive 96/23/EC of 29 April 1996 on measures to monitor certain substances and residues thereof in live animals and animal products and repealing directives 85/358/EEC and 86/469/EEC and Decisions 89/187/EEC and 91/664/EEC.

3. Community reference laboratory for the monitoring of marine biotoxins

Ministerio de Sanidad y Consumo, Vigo, Spain.

4. Community reference laboratory for monitoring the viral and bacteriological contamination of bivalve molluscs

The laboratory of the Centre for Environment, Fisheries and Aquaculture Science, Weymouth, United Kingdom.

5. Community reference laboratories for residues

(a) For the residues listed in Annex I, Group A 1, 2, 3, 4, Group B 2 (d) and Group B 3 (d) to Council Directive 96/23/EC

Rijksinstituut voor Volksgezondheid en Milieu (RIVM)

NL-3720 BA Bithoven, The Netherlands

(b) For the residues listed in Annex I, Group B 1 and B 3 (e) to Council Directive 96/23/EC and carbadox and olaquidox

Laboratoires d'études et de recherches sur les médicaments vétérinaires et les désinfectants

AFSSA - Site de Fougères

BP 90203, France

(c) For the residues listed in Annex I, Group A 5 and Group B 2 (a), (b), (e) to Council Directive 96/23/EC

Bundesinstitut für Verbraucherschutz und

Lebensmittelsicherheit (BVL)

D-53123, Germany

(d) For the residues listed in Annex I, Group B 2 (c) and Group B 3 (a), (b), (c) to Council Directive 96/23/EC

**Istituto Superiore di Sanità
I-00161-Roma, Italy**

6. Community reference laboratory for transmissible spongiform encephalopathies (TSEs)

The laboratory referred to in Annex X, Chapter B of Regulation (EC) No 999/2001.

6. Community reference laboratory for transmissible spongiform encephalopathies (TSEs)

The laboratory referred to in Annex X, Chapter B of Regulation (EC) No 999/2001.

7. Community reference laboratory for additives for use in animal nutrition

The laboratory referred to in Annex II of Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition¹

8. Community reference laboratory for Genetically Modified Organisms (GMO)

The laboratory referred to in the Annex to in Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed².

9. Community reference laboratory for material intended to come into contact with foodstuffs

Commission's Joint Research Centre

II. Community reference laboratories for animal health

¹ OJ L 268, 18.10.2003, p. 29.

² OJ L 268, 18.10.2003, p. 1.

Amendment <NumAm>228</NumAm>
<Article>Annex VI</Article>

This annex is deleted.

**INVENTORY OF THE IMPLEMENTING
RULES THAT HAVE BEEN TAKEN ON
THE BASIS OF THE DIRECTIVES
REPEALED**

2. Implementing rules based on Directive 95/53/EC of 25 October 1995 fixing the principles governing the organisation of official inspections in the field of animal nutrition

(a) Commission Directive 98/68/EC of 10 September 1998 laying down the standard document referred to in Article 9(1) of Council Directive 95/53/EC and certain rules for checks at the introduction into the Community of feedingstuffs from third countries.

(b) *Commission Recommendation 2002/214/EC of 12 March 2002 on the coordinated inspection programmes in the field of animal nutrition for the year 2002 in accordance with Council Directive 95/53/EC¹.*

¹ OJ L 70, 13.3.2002, p. 20.

**IMPLEMENTING RULES THAT
REMAIN IN FORCE**

PURSUANT TO ARTICLE 61

2. Implementing rules based on Directive 95/53/EC of 25 October 1995 fixing the principles governing the organisation of official inspections in the field of animal nutrition

Commission Directive 98/68/EC of 10 September 1998 laying down the standard document referred to in Article 9(1) of Council Directive 95/53/EC and certain rules for checks at the introduction into the Community of feedingstuffs from third countries¹⁸

Intellectual property *I**

{ TC"(A5-0468/2003 - Rapporteur: Janelly Fourtou)"\l3 \n> * MERGEFORMAT }

Committee on Legal Affairs and the Internal Market

PE 332.534

European Parliament legislative resolution on the proposal for a directive of the European Parliament and of the Council on measures and procedures to ensure the enforcement of intellectual property rights (COM(2003) 46 – C5-0055/2003 – 2003/0024(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2003) 46)¹,
 - having regard to Articles 251(2) and 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0055/2003),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the Internal Market and the opinion of the Committee on Industry, External Trade, Research and Energy (A5-0468/2003),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment <NumAm>56</NumAm>
<Article>Recital 10</Article>

(10) The objective of this Directive is to approximate legislative systems so as to ensure a high, equivalent and homogeneous level of protection in the Internal Market.
This protection is essential against

(10) The objective of this Directive is to approximate legislative systems so as to ensure a high, equivalent and homogeneous level of protection in the Internal Market.

¹ Not yet published in OJ.

infringements carried out on for commercial purposes or which cause significant harm to the right holder, apart from minor and isolated infringements.

Amendment <NumAm>57</NumAm>
<Article>Recital 12</Article>

(12) This Directive shall not affect the application of the rules of competition, and in particular Articles 81 and 82 of the Treaty.

(12) This Directive should not affect the application of the rules of competition, and in particular Articles 81 and 82 of the Treaty. ***The measures provided for in this Directive should not be used to unduly restrict competition in a manner which is contrary to the Treaty.***

Amendment <NumAm>58</NumAm>
<Article>Recital 13</Article>

(13) It is necessary to define the scope of this Directive as widely as possible in order to encompass all the intellectual property rights covered by Community provisions in this field ***and by the resulting national provisions, while excluding certain activities which do not involve intellectual property in the strict sense.*** Nevertheless, that requirement does not affect the possibility, on the part of those Member States which so wish, to extend, for internal purposes, the provisions of this Directive to include acts involving unfair competition or similar activities.

(13) It is necessary to define the scope of this Directive as widely as possible in order to encompass all the intellectual property rights covered by Community provisions in this field ***and/or by the national law of the Member State concerned.*** Nevertheless, that requirement does not affect the possibility, on the part of those Member States which so wish, to extend, for internal purposes, the provisions of this Directive to include acts involving unfair competition, ***including parasitic copies,*** or similar activities.

Amendment <NumAm>59</NumAm>
<Article>Recital 13a (new)</Article>

(13a) The measures provided for in Articles 7(2), 9(1) and 10(1a) of this Directive need to be applied only in respect of acts committed on a commercial scale. This is without prejudice to the possibility for Member States to apply these measures also in respect of other acts. The acts which are committed on a commercial scale are those carried out for direct or indirect

economic or commercial advantage; this would normally exclude acts done by end consumers acting in good faith.

Amendment <NumAm>60</NumAm>
<Article>Recital 15</Article>

(15) The provisions of this Directive are without prejudice to the particular provisions for the enforcement of rights in the domain of copyright and related rights set out in Community instruments and notably **Article 8 of** Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.

(15) The provisions of this Directive are without prejudice to the particular provisions for the enforcement of rights **and on exceptions** in the domain of copyright and related rights set out in Community instruments and notably **those found in Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs¹** or Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.

¹ OJ L 122, 17.5.1991, p. 42.

Amendment <NumAm>61</NumAm>
<Article>Recital 16</Article>

(16) The measures and **procedures designed to enforce intellectual property rights must be effective and place the right holder in the situation in which he would have been were it not for the infringement in question.**

(16) The measures and **remedies provided for in this Directive should be determined in each case in such a manner as to take due account of the specific characteristics of that case, including the specific features of each intellectual property right and, where appropriate, the intentional or unintentional character of the infringement.**

Amendment <NumAm>62</NumAm>
<Article>Recital 17</Article>

(17) **In order to improve and extend access to justice**, the persons entitled to request application of these measures and procedures should be not only the right holders but also **the** professional

(17) The persons entitled to request application of these measures and procedures should be not only the right holders but also **persons who have a direct interest and legal standing in so far as**

organisations in charge of the management of those rights or for the defence of the collective and individual interests for which they are responsible.

permitted by and in accordance with the applicable law, which may include professional organisations in charge of the management of those rights or for the defence of the collective and individual interests for which they are responsible.

Amendment <NumAm>63</NumAm>
<Article>Recital 18</Article>

(18) It is appropriate to adopt the rule in Article 15 of the Berne Convention, which establishes the presumption whereby the author of a literary or artistic work is regarded as such if his name appears on the work. ***Moreover, as copyright exists as from the creation of a work and does not require formal registration as in the case of an industrial property right, it is useful to recall the principle that a work is considered to be sufficiently creative enjoy copyright protection until proven otherwise. This principle is of particular importance when an author seeks to defend his rights in a legal dispute and represents largely current practice in Member States' national jurisdictions.***

(18) ***Since copyright exists from the creation of a work and does not require formal registration,*** it is appropriate to adopt the rule in Article 15 of the Berne Convention, which establishes the presumption whereby the author of a literary or artistic work is regarded as such if his name appears on the work. ***A similar presumption should be applied to the owners of related rights since often it is the holder of a related right, such as a phonogram producer, who will seek to defend rights and engage in fighting acts of piracy.***

Amendment <NumAm>64</NumAm>
<Article>Recital 19</Article>

(19) Given that evidence is an element of paramount importance for establishing the infringement of intellectual property, it is appropriate to ensure that effective means of presenting ***and*** obtaining evidence ***is*** available ***to all parties.***

(19) Given that evidence is an element of paramount importance for establishing the infringement of intellectual property ***rights,*** it is appropriate to ensure that effective means of presenting, obtaining ***and*** protecting evidence ***are*** available. ***The procedures must have regard to the rights of the defence and must provide the necessary guarantees including the protection of confidential information. For infringements carried out on a commercial scale it is also important that the courts may order access, where appropriate, to banking, financial or commercial documents under the control of the alleged infringer.***

Amendment <NumAm>65</NumAm>
<Article>Recital 20</Article>

(20) If there is a duly established danger that evidence may be destroyed, an effective and inexpensive procedure must be made available to the parties which allows for the detailed description, with or without the taking of samples, or the physical seizure of the infringing goods and, in appropriate cases, of the documents relating thereto. The procedure must have regard to the rights of the defence and must provide the necessary guarantees.

deleted

Amendment <NumAm>66</NumAm>
<Article>Recital 21</Article>

(21) Other measures designed to ensure a high level of protection exist in certain countries and must be made available in all the Member States. This is the case with the right of information, which allows precise information to be obtained on the origin of the infringing goods, the distribution channels and the identity of the third parties involved in the infringement, as well as the publication of judicial decisions on infringements of intellectual property, which makes it possible to inform the public and deter third parties from committing such infringements.

(21) Other measures designed to ensure a high level of protection exist in certain countries and must be made available in all the Member States. This is the case with the right of information, which allows precise information to be obtained on the origin of the infringing goods **or services**, the distribution channels and the identity of the third parties involved in the infringement.

Amendment <NumAm>67</NumAm>
<Article>Recital 22a (new)</Article>

(22a) Without prejudice to any other measures and remedies available, rightholders should have the possibility of applying for an injunction against an intermediary whose services are being used by a third party to infringe the rightholder's industrial property right. The conditions and modalities relating to such injunctions should be left to the national law of the Member States. As far as infringements of

copyright and related rights are concerned, a comprehensive level of harmonisation is already provided for in Directive 2001/29/EC. The provision of Article 8, paragraph 3 of Directive 2001/29/EC should therefore not be affected by this Directive.

Amendment <NumAm>68</NumAm>
<Article>Recital 23</Article>

(23) Depending on the particular case, and if justified by circumstances, the measures and procedures to be provided for **must** include prohibitory measures aimed at preventing further infringements of intellectual property, **as well as preventive and** corrective measures, such as **the confiscation** of the infringing goods and **other objects used predominantly for illegal purposes, removal from the channels of commerce, possible destruction and the recall, at the infringer's expense where appropriate, of the infringing goods placed on the market.**

(23) Depending on the particular case, and if justified by circumstances, the measures and procedures to be provided for **should** include prohibitory measures aimed at preventing further infringements of intellectual property **rights. Moreover there should be** corrective measures, **where appropriate at the expense of the infringer,** such as **the recall, the removal definitively from the channels of commerce, or destruction** of the infringing goods and **in appropriate cases the materials and implements principally used in the creation or manufacture of these goods. These corrective measures should take account of the interests of third parties including, in particular, consumers and private parties acting in good faith.**

Amendment <NumAm>69</NumAm>
<Article>Recital 23a (new)</Article>

(23a) Member States should have the option of providing, in cases where an infringement has been carried out unintentionally and without negligence and where the corrective measures or injunctions provided for by this Directive would be disproportionate, for the possibility, in appropriate cases, of pecuniary compensation being awarded to the injured party as an alternative measure. However, where the commercial use of counterfeit goods or the supply of services would constitute an infringement of law other than intellectual property law or would be likely to harm consumers, such

use or supply should remain prohibited.

Amendment <NumAm>70</NumAm>
<Article>Recital 24</Article>

(24) With a view to compensating for the prejudice suffered as a result of an infringement committed by an infringer who has engaged in an activity in the knowledge, or with reasonable grounds for knowing, that it would give rise to such an infringement, the amount of damages awarded to the right holder should ***be set either at a fixed rate equal to double*** the royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question (the aim being to allow for compensation based on an objective criterion while taking account of the expenses incurred by the right holder, such as the costs of identification and research), ***or according to the actual prejudice (including loss of earnings) suffered by the right holder (compensatory damages), to which must be added the profits made by the infringer, which are not taken into account in calculating the compensatory damages. It must also be possible to take into account other elements, such as the moral prejudice caused to the right holder.***

(24) With a view to compensating for the prejudice suffered as a result of an infringement committed by an infringer who has engaged in an activity in the knowledge, or with reasonable grounds for knowing, that it would give rise to such an infringement, the amount of damages awarded to the right holder should ***take account of all appropriate aspects, such as loss of earnings incurred by the right holder, or unfair profits made by the infringer and, where appropriate, any moral prejudice caused to the right holder. As an alternative, for example where it would be difficult to determine the amount of the actual prejudice suffered, the amount of the damages might be derived from elements such as*** the royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question (the aim being ***not to introduce an obligation to provide for punitive damages but*** to allow for compensation based on an objective criterion while taking account of the expenses incurred by the right holder, such as the costs of identification and research).

Amendment <NumAm>71</NumAm>
<Article>Recital 24a (new)</Article>

(24a) To act as a supplementary deterrent to future infringers and contribute to the awareness of the public at large, it is useful to publicise judgments in intellectual property infringement cases.

Amendment <NumAm>72</NumAm>
<Article>Recital 25</Article>

(25) ***In order to ensure the proper***

(25) ***In addition to the civil and***

functioning of the Internal Market, and in accordance with the undertakings entered into under the TRIPS Agreement, and in particular Article 61 thereof, Member States are required to punish serious infringements of intellectual property in an effective, proportionate and deterrent fashion under criminal law. To this end, “serious infringement” means acts which are carried out intentionally and for commercial purposes. All or some of those participating in the infringement or attempted infringement, should be declared responsible, according to the particular country's internal law, as accomplices or instigators.

administrative measures and procedures provided for under this Directive, criminal sanctions also constitute, in appropriate cases, a means of ensuring the enforcement of intellectual property rights.

Amendment <NumAm>73</NumAm>
<Article>Recital 26</Article>

(26) Protection measures make a major contribution towards combating infringements of intellectual property. Appropriate legal protection of security and authentication devices which protect against copying, manipulation or neutralisation is therefore necessary in the field of industrial property, and already exists in the field of copyright. Moreover, these protection measures targeting the abuse of technical devices to infringe intellectual property rights are in line with Article 6 of the Convention on Cybercrime adopted by the Council of Europe in Budapest on 23 November 2001.

deleted

Amendment <NumAm>74</NumAm>
<Article>Recital 28</Article>

*(28) In order to facilitate the uniform application of the provisions set out in this Directive, it is appropriate to provide for **systems of** cooperation and **mutual assistance** between Member States, on the one hand, and between the Member States and the Commission on the other, in particular by creating a network of*

*(28) In order to facilitate the uniform application of the provisions set out in this Directive, it is appropriate to provide for cooperation and **the exchange of information** between Member States, on the one hand, and between the Member States and the Commission on the other, in particular by creating a network of*

correspondents designated by the Member States. ***Within this framework, a Contact Committee made up of national correspondents could also be set up within the Commission.***

correspondents designated by the Member States ***and by providing regular reports assessing the application of this Directive and the effectiveness of the measures taken by the various national bodies.***

Amendment <NumAm>75</NumAm>

<Article>Recital 29</Article>

(29) Since the objectives of this Directive ***cannot be sufficiently achieved by the Member States for the reasons already described, and can therefore be better*** achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve its objectives.

(29) Since, ***for the reasons already described,*** the objectives of this Directive can ***best be*** achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve its objectives.

Amendment <NumAm>76</NumAm>

<Article>Article 1</Article>

This Directive concerns the measures necessary to ensure the enforcement of intellectual property rights.

This Directive concerns the measures ***and procedures*** necessary to ensure the enforcement of intellectual property rights. ***For the purposes of this Directive, the term "intellectual property rights" includes industrial property rights.***

Amendment <NumAm>77</NumAm>

<Article>Article 2</Article>

1. Without prejudice to the means which are or may be provided for in Community or national legislation, in so far as those means may be more favourable for right holders, the measures provided for by this Directive shall apply to any infringement of ***the rights deriving from Community and European acts on the protection of intellectual property, as listed in the Annex, and from the provisions adopted by the Member States in order to comply with those acts when the***

1. Without prejudice to the means which are or may be provided for in Community or national legislation, in so far as those means may be more favourable for right holders, the measures ***and procedures*** provided for by this Directive shall apply, ***in accordance with Article 3,*** to any infringement of ***intellectual property rights as provided for by Community law and/or by the national law of the Member State concerned.***

infringement is committed for commercial purposes or causes significant harm to the right holder.

2. This Directive shall be without prejudice to the particular provisions on the enforcement of rights contained in Community legislation concerning copyright and notably those found in Directive 2001/29/EC.

3. This Directive shall not affect :

(a) the Community provisions governing the substantive law on intellectual property, Directive 95/46/EC, Directive 1999/93/EC or Directive 2000/31/EC;

(b) Member States' international obligations and notably the Agreement on Trade-Related Aspects of Intellectual Property Rights (the "TRIPS Agreement").

2. This Directive shall be without prejudice to the particular provisions on the enforcement of rights ***and on exceptions*** contained in Community legislation concerning copyright and ***rights related to copyright***, notably those found in ***Directive 91/250/EEC and, in particular, Article 7 of that Directive, or Directive 2001/29/EC and, in particular, Articles 2 to 6 and Article 8 of that Directive.***

3. This Directive shall not affect:

(a) the Community provisions governing the substantive law on intellectual property, Directive 95/46/EC, Directive 1999/93/EC or Directive 2000/31/EC ***in general, and the provisions of Articles 12 to 15 in particular of that Directive;***

(b) Member States' international obligations and notably the Agreement on Trade-Related Aspects of Intellectual Property Rights (the "TRIPS Agreement"), ***including those relating to criminal procedures and penalties;***

(ba) any national provisions in Member States relating to criminal procedures or penalties in respect of infringement of intellectual property rights.

Amendment <NumAm>78</NumAm>
<Article>Article 3</Article>

Member States shall provide for the ***proportionate*** measures ***and*** procedures needed to ensure the enforcement of the intellectual property rights covered by this Directive.

These measures and procedures shall be such as to remove from those responsible

Member States shall provide for the measures, procedures ***and remedies*** needed to ensure the enforcement of the intellectual property rights covered by this Directive. ***These measures, procedures and remedies shall be fair and equitable, and shall not be unnecessarily complicated or costly, nor entail unreasonable time-limits or unwarranted delays.***

for an infringement of an intellectual-property right the economic benefits of that infringement. They shall be fair and equitable, and shall not be unnecessarily complicated or costly, nor entail unreasonable time-limits or unwarranted delays.

These measures and **procedures** shall be applied in such a manner as to avoid the creation of barriers to legitimate trade.

The measures and **remedies shall also be effective, proportionate and dissuasive and** shall be applied in such a manner as to avoid the creation of barriers to legitimate trade **and to provide for safeguards against their abuse.**

Amendment <NumAm>79</NumAm>
<Article>Article 4</Article>

Article 4

deleted

Penalties

Member States shall ensure that any infringement of an intellectual property right covered by Article 2 is punishable by penalties. These penalties must be effective, proportionate and deterrent.

Amendment <NumAm>80</NumAm>
<Article>Article 5</Article>

1. Member States shall recognise as persons entitled to **apply for** application of the measures referred to in this Chapter **the holders of intellectual property rights, as well as all other persons authorised to use those rights in accordance with the applicable law, or their representatives.**

Member States shall recognise as persons entitled to **seek** application of the measures **and procedures** referred to in this Chapter:

- the holders of intellectual property rights in accordance with the provisions of the applicable law,

- all other persons authorised to use those rights, in particular licensees, in so far as permitted by and in accordance with the provisions of the applicable law,

- intellectual property collective rights

management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the applicable law,

- professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the applicable law.

2. Member States shall confer upon rights management or professional defence bodies, wherever they represent intellectual property right holders or other persons authorised to use these rights according to the applicable law, an entitlement to seek application of the measures and procedures referred to in this Chapter, including the authority to initiate legal proceedings for the defence of those rights or of the collective or individual interests for which they are responsible.

Such entitlement shall be accorded to any properly constituted rights management body or professional defence body, regardless of the Member State in which it is established.

The first and second subparagraphs shall be without prejudice to the applicable rules on the representation of parties in court proceedings.

Amendment <NumAm>81</NumAm>
<Article>Article 6</Article>

Until proved otherwise, authorship of a work shall be presumed to be vested in the person whose name, presented as being that of the author, is featured on copies of the work, or whose authorship is referred to on a copy of the work by way of a statement, label or other mark.

For the purposes of applying the measures and procedures provided for in this Directive,

(a) in order that the author of a literary or artistic work, in the absence of proof to the contrary, be regarded as such, and

consequently be entitled to institute infringement proceedings, it shall be sufficient for his name to appear on the work in the usual manner;

(b) the provision under (a) shall apply mutatis mutandis to the holders of rights related to copyright with regard to their protected subject matter.

Amendment <NumAm>82</NumAm>
<Article>Article 7</Article>

1. Member States shall **lay down** that, *where* a party has presented reasonably **accessible** evidence sufficient to support its claims, and has, in substantiating those claims, **cited** evidence which **is to be found under** the control of the opposing party, the judicial authorities may order that such evidence be produced by the opposing party, subject to the protection of confidential information.

2. **In order to identify and prosecute the real beneficiaries of the infringement**, Member States shall take such measures as are necessary to enable the **responsible** authorities to order the communication **or seizure** of banking, financial or commercial documents, subject to the protection of confidential information.

1. Member States shall **ensure** that, **on application by** a party **which** has presented reasonably **available** evidence sufficient to support its claims, and has, in substantiating those claims, **specified** evidence which **lies in** the control of the opposing party, the **competent** judicial authorities may order that such evidence be produced by the opposing party, subject to the protection of confidential information. **For the purposes of this paragraph, Member States may provide that a reasonable sample of a substantial number of copies of a work or any other protected object be considered by the competent judicial authorities to constitute reasonable evidence.**

2. **Under the same conditions, in the case of an infringement carried out on a commercial scale**, Member States shall take such measures as are necessary to enable the **competent judicial** authorities to order, **where appropriate, on application by a party**, the communication of banking, financial or commercial documents **under the control of the opposing party**, subject to the protection of confidential information.

Amendment <NumAm>83</NumAm>
<Article>Article 8</Article>

1. Member States shall **lay down** that, **where there is a demonstrable risk that evidence may be destroyed** even before the commencement of proceedings on the merits

1. Member States shall **ensure** that even before the commencement of proceedings on the merits of the case the **competent** judicial authorities may, **on application by a party**

of the case, the judicial authorities may, ***in the event of an actual or imminent infringement of an intellectual property right, authorise in any place either*** the detailed description, with or without the taking of samples, or the physical seizure of the infringing goods, and, in appropriate cases, the documents relating thereto. These measures shall be taken ***by order issued on application***, if necessary without the other party having been heard.

Where ***the evidence protection*** measures have been ***revoked, or where they lapse owing to any act or omission by the applicant, or where it is subsequently found that there has been no infringement of any intellectual property right, the judicial authorities shall have be empowered to order the applicant, at the defendant's request, to provide the defendant with adequate compensation for any injury caused by the measures.***

2. Member States shall ***lay down*** that ***physical seizure*** may be subject to the applicant's lodging of an adequate ***guarantee*** intended to ensure compensation for any prejudice suffered by the defendant ***if the proceedings instituted against him are subsequently judged to be unfounded.***

3. Member States shall ***lay down*** that, if the applicant has not instituted legal proceedings leading to a decision on the merits of the case within 31 calendar days ***of the seizure, the seizure shall be null and void, without prejudice to the damages which may be claimed.***

who has presented reasonably available evidence to support his claims that his intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in regard to the alleged infringement, subject to the protection of confidential information. Such measures may include the detailed description, with or without the taking of samples, or the physical seizure of the infringing goods, and, in appropriate cases, ***the materials and implements used in the production and/or distribution of these goods and*** the documents relating thereto. These measures shall be taken, if necessary without the other party having been heard, ***in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.***

Where ***evidence-protection*** measures have been ***adopted without the other party having been heard, the affected parties shall be given notice immediately after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the affected parties with a view to deciding, within a reasonable period after the notification of the measures, whether the measures shall be modified, revoked or confirmed.***

2. Member States shall ***ensure*** that ***the evidence-protection measures*** may be subject to the applicant's lodging of an adequate ***security or equivalent assurance*** intended to ensure compensation for any prejudice suffered by the defendant ***as provided for in paragraph 4.***

3. Member States shall ***ensure*** that ***the evidence-protection measures shall be revoked or otherwise cease to have effect upon request by the defendant, without prejudice to the damages which may be claimed***, if the applicant has not instituted legal proceedings leading to a decision on the merits of the case ***before the competent judicial authority within a reasonable period, to be determined by the judicial***

authority ordering the measures when the law of a Member State so permits or, in the absence of such determination, within a period not to exceed 20 working days or 31 calendar days, whichever is the longer.

3a. Where the evidence-protection measures have been revoked, or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of any intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant with appropriate compensation for any injury caused by these measures.

3b. Member States may take measures to protect witnesses' identity.

Amendment <NumAm>84</NumAm>
<Article>Article 9</Article>

1. Member States shall **lay down** that, **in order to deal with** proceedings **involving** an infringement of an intellectual property right, **or** in response to a request **for provisional or precautionary measures**, the judicial authorities **shall** order, **at the request of the right holder, unless particular reasons are invoked for not doing so, any person to provide information on the origin of the goods or services which are thought to infringe an intellectual property right and on the networks for their distribution or provision, respectively, if that person:**

(a) was found in possession, **for commercial purposes**, of the infringing goods;

(b) was found to be using the infringing services **for commercial purposes; or**

(c) was indicated by the person referred to in

1. Member States shall **ensure** that, **in the context of** proceedings **concerning** an infringement of an intellectual property right **and** in response to a **justified and proportionate** request **of the claimant**, the **competent** judicial authorities **may** order **that information on the origin and distribution networks of the goods or services which infringe an intellectual property right be provided by the infringer and/or any other person who:**

(a) was found in possession of the infringing goods **on a commercial scale;**

(b) was found to be using the infringing services **on a commercial scale;**

(ba) was found to be providing on a commercial scale services used in infringing activities; or

(c) was indicated by the person referred to in

point (a) **or** (b) as being *at the origin* of the goods or services **or as being a link in the network for distributing those goods or providing those services.**

2. The information referred to in paragraph 1 shall comprise:

(a) the names and addresses of the producers, distributors, suppliers and other previous holders of the **product** or **service**, as well as the intended wholesalers and retailers;

(b) information on the quantities produced, delivered, received or ordered, as well as the price obtained for the goods or services in question.

3. Paragraphs 1 and 2 shall apply without prejudice to other provisions which:

(a) grant the right holder rights to receive fuller information;

(b) govern the use in civil or criminal proceedings of the information communicated pursuant to this Article;

(c) govern responsibility for misuse of the right of information; **or**

(d) afford an opportunity for refusing to provide information which would force the person referred to in paragraph 1 to admit to **the existence of an infringement of an intellectual property right.**

4. Apart from the cases referred to in paragraph 1, Member States shall lay down that, when the responsible authorities are in possession of the information referred to in paragraph 2, they may so inform the right holder, provided the latter is known, while complying with the rules on the protection of confidential information, in order to allow the right holder to institute proceedings leading to a decision on the merits of the case or to obtain provisional

point (a), (b) **or (ba)** as being **involved in the production, manufacture or distribution** of the goods or **the provision of the services.**

2. The information referred to in paragraph 1 shall, **as appropriate**, comprise:

(a) the names and addresses of the producers, **manufacturers**, distributors, suppliers and other previous holders of the **goods** or **services**, as well as the intended wholesalers and retailers;

(b) information on the quantities produced, **manufactured**, delivered, received or ordered, as well as the price obtained for the goods or services in question.

3. Paragraphs 1 and 2 shall apply without prejudice to other **statutory** provisions which:

(a) grant the right holder rights to receive fuller information;

(b) govern the use in civil or criminal proceedings of the information communicated pursuant to this Article;

(c) govern responsibility for misuse of the right of information;

(d) afford an opportunity for refusing to provide information which would force the person referred to in paragraph 1 to admit to **his own participation or that of his close relatives in an infringement of an intellectual property right; or**

(da) govern the protection of confidentiality of information sources or the treatment of personal data.

or precautionary measures.

Amendment <NumAm>85</NumAm>
<Article>Article 10</Article>

1. Member States shall **lay down** that the judicial authorities may **serve the alleged infringer, or the intermediary whose services are being used by a third party to infringe a right, with an interlocutory injunction intended to prevent any impending infringement of an intellectual property right, or to forbid, on a provisional basis and subject to a recurrent fine, the continuation of the alleged infringements of an intellectual property right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder.**

The judicial authorities shall be empowered to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right is being infringed or, that such infringement is imminent.

1. Member States shall **ensure** that the judicial authorities may, **at the request of the applicant:**

(a) issue against the alleged infringer an interlocutory injunction intended to prevent any impending infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by national law, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder; an interlocutory injunction may also be issued, under the same conditions, against an intermediary whose services are being used by a third party to infringe an intellectual property right ; injunctions against intermediaries whose services are used by a third party to infringe a copyright or a related right are covered by Directive 2001/29/EC;

(b) order the seizure or delivery up of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce.

1a. In cases of infringement committed on a commercial scale, the Member States shall ensure that, if the injured party demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his bank accounts and other assets. To this end, the competent authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.

2. Member States shall **lay down** that the provisional measures referred to in paragraph 1 may in appropriate cases be taken without the defendant having been heard, in particular when any delay would cause irreparable prejudice to the right holder. In the event of this happening, the **defendant** shall be so informed without delay after the execution of the measures.

A review, including the right to be heard, shall take place **at the** request of the defendant **in order to decide**, within a reasonable time after notification of the measures, whether **they are to be amended**, revoked or confirmed.

3. Member States shall **lay down** that a **prohibitory measure** shall be revoked if the applicant does not institute proceedings leading to a decision on the merits of the case within **thirty-one calendar days from the day on which the right holder became aware of the facts on which it is based**.

4. The judicial authorities may make the **prohibition** subject to the lodging by the applicant of adequate **guarantees** intended to ensure any compensation of the prejudice suffered by the defendant **if the proceedings on the merits are subsequently judged to be unfounded**.

1b. The judicial authorities shall, in respect of the measures referred to in paragraphs 1 and 1a, have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right is being infringed, or that such infringement is imminent.

2. Member States shall **ensure** that the provisional measures referred to in paragraphs 1 **and 1a** may, in appropriate cases, be taken without the defendant having been heard, in particular when any delay would cause irreparable prejudice to the right holder. In the event of this happening, the **parties** shall be so informed without delay after the execution of the measures **at the latest**.

A review, including the right to be heard, shall take place **upon** request of the defendant **with a view to deciding**, within a reasonable time after notification of the measures, whether **these measures shall be modified**, revoked or confirmed.

3. Member States shall **ensure** that **the provisional measures referred to in paragraphs 1 and 1a** shall be revoked, **or otherwise cease to have effect, upon request by the defendant**, if the applicant does not institute proceedings leading to a decision on the merits of the case **before the competent judicial authority within a reasonable period to be determined by the judicial authority ordering the measures where the Member State 's law so permits or, in the absence of such determination, within a period not to exceed 20 working days or 31 calendar days, whichever is the longer**.

4. The **competent** judicial authorities may make the **provisional measures referred to in paragraphs 1 and 1a** subject to the lodging by the applicant of adequate **security or equivalent assurance** intended to ensure any compensation of the prejudice suffered by the defendant **as provided for in paragraph 5**.

5. Where the provisional measures **have been** revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have **be empowered** to order the applicant, **at the** request of the defendant, to provide the defendant **adequate** compensation for any injury caused by these measures.

5. Where the provisional measures **are** revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have **the authority** to order the applicant, **upon** request of the defendant, to provide the defendant **with appropriate** compensation for any injury caused by these measures.

Amendment <NumAm>86</NumAm>
<Article>Article 11</Article>

Article 11

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Precautionary measures

1. The Member States shall lay down that, in appropriate cases, and in particular if the injured party demonstrates circumstances likely to threaten the recovery of damages, and if necessary without the other party having been heard, the judicial authorities may authorise the precautionary seizure of the fixed and non-fixed assets of the infringer, including the blocking of his bank accounts and other assets.

In order to ensure the implementation of the provisions set out in the first paragraph, Member States shall also take the necessary steps to allow the judicial authorities to order the communication or seizure of bank, financial or commercial documents

2 The judicial authorities may make the measures provided for in paragraph 1 subject to the lodging by the applicant of guarantees adequate to ensure possible compensation for the prejudice suffered by the defendant if the proceedings on the merits are subsequently judged to be unfounded.

3. Where the precautionary measures are revoked, or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no

infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant adequate compensation for any injury caused by these measures.

Amendment <NumAm>87</NumAm>
<Article>Article 12</Article>

Recall of goods

Without prejudice to ***the*** damages due to the right holder by reason of the infringement, Member States shall ***lay down*** that the judicial authorities may order ***the recall, at the infringer's expense*** in appropriate cases, ***of the goods which have been found to infringe an intellectual property right.***

Corrective measures

Without prejudice to ***any*** damages due to the right holder by reason of the infringement, ***and without compensation of any sort,*** Member States shall ***ensure*** that the ***competent*** judicial authorities may order, ***at the request of the applicant, that appropriate measures be taken with regard to goods that they have found to be infringing an intellectual property right and, in appropriate cases, with regard to materials and implements principally used in the creation or manufacture of these goods. Such measures shall include:***

- (a) recall from the channels of commerce,***
- (b) definitive removal from the channels of commerce or***
- (c) destruction.***

The judicial authorities shall order that these measures shall be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

In considering a request for corrective measures, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account.

Amendment <NumAm>88</NumAm>
<Article>Article 13</Article>

Article 13

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Disposal outside the channels of commerce

Member States shall lay down that the judicial authorities may order that the goods which have been found to infringe an intellectual property right, as well as the materials and implements used primarily for the creation or the manufacture of the goods in question, be disposed of outside the channels of commerce, without any compensation being due.

Amendment <NumAm>89</NumAm>
<Article>Article 14</Article>

Article 14

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Destruction of goods

Member States shall lay down that the judicial authorities may order the destruction of the goods which have been found to infringe an intellectual property right, without there being any entitlement to compensation.

Amendment <NumAm>90</NumAm>
<Article>Article 15</Article>

Preventive measures

1. Member States shall **lay down** that, when a judicial decision has been taken finding an infringement of an intellectual property right, the judicial authorities may **serve** the infringer **with** an injunction aimed at prohibiting the continuation of the infringement. **Non-compliance** with an injunction shall be **punishable by a fine accompanied, where applicable, by a recurring fine**, with a view to ensuring compliance.

Injunctions

Member States shall **ensure** that, when a judicial decision has been taken finding an infringement of an intellectual property right, the judicial authorities may **issue against** the infringer an injunction aimed at prohibiting the continuation of the infringement. **Where provided for by national law, non-compliance** with an injunction shall, **where appropriate**, be **subject to** a recurring **penalty payment**, with a view to ensuring compliance.

Member States shall also ensure that right holders are in a position to apply for an injunction against intermediaries whose services are used by a third party to

infringe an intellectual property right, without prejudice to Article 8(3) of Directive 2001/29/EC.

2. Member States shall ensure that right holders are able to apply for an injunction to be addressed to intermediaries whose services are used by third parties to infringe an intellectual property right.

Amendment <NumAm>91</NumAm>
<Article>Article 16</Article>

In appropriate cases, Member States shall lay down that, if the person liable to be subjected to the measures provided for in this Section has acted without fault or negligence but has nevertheless caused injury to the applicant, that person may, if execution of the measures in question would cause him disproportionate harm and if the injured party could reasonably be satisfied with pecuniary compensation, compensate that party in cash, with the latter's agreement.

Member States *may provide* that, ***in appropriate cases and at the request of the person liable to be subjected to the measures provided for in this Section, the competent judicial authorities may order pecuniary compensation to be paid to the injured party instead of applying the above measures if that person has acted unintentionally and without negligence,*** if execution of the measures in question would cause him disproportionate harm and if ***pecuniary compensation to the injured party appears reasonably satisfactory.***

Amendment <NumAm>92</NumAm>
<Article>Article 17</Article>

1. Member States shall lay down that the judicial authorities shall order *an* infringer to pay the right holder *adequate* damages *in reparation of the damage incurred by the latter as a result of his intellectual property right being infringed through the infringer having engaged in an activity in the knowledge, or with reasonable grounds for knowing, that it would give rise to such an infringement.*

To this end, the competent authorities shall award, at the request of the prejudiced party:

(a) either damages set at double the royalties or fees which would have been

1. Member States shall ensure that the competent judicial authorities, on application by the injured party, shall order the infringer who knowingly, or with reasonable grounds to know, engaged in an infringing activity, to pay the right holder damages appropriate to the actual prejudice suffered by him as a result of the infringement.

When the judicial authorities set the damages:

(a) they shall take into account all appropriate aspects, such as the negative

due if the infringer had requested authorisation to use the intellectual property right in question;

(b) or compensatory damages corresponding to the actual prejudice (including lost profits) suffered by the right holder as a result of the infringement.

In appropriate cases, Member States shall lay down that the prejudice suffered can also be deemed to include elements other than economic factors, such as the moral prejudice caused to the right holder by the infringement.

2. In the case provided for in paragraph 1, point (b), Member States may provide for the recovery, for the benefit of the right holder, of all the profits made by the infringer which are attributable to that infringement and which are not taken into account when calculating the compensatory damages.

For calculating the amount of the profits made by the infringer, the right holder is bound to provide evidence only with regard to the amount of the gross income achieved by the infringer, with the latter being bound to provide evidence of his deductible expenses and profits attributable to factors other than the protected object.

economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the right holder by the infringement;

(b) as an alternative to (a), they may, in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.

2. In cases where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, Member States may lay down that the judicial authorities may order the recovery of profits or the payment of damages which may be pre-established.

Amendment <NumAm>93</NumAm>
<Article>Article 18</Article>

Member States shall **lay down** that *the* legal costs, **lawyer's fees** and **any** other expenses incurred by the successful party shall be borne by the **other** party, unless equity **or the economic situation of the other party** does not allow this. **The responsible**

Member States shall **ensure** that **reasonable and proportionate** legal costs and other expenses incurred by the successful party shall **as a general rule** be borne by the **unsuccessful** party, unless equity does not allow this.

authorities shall determine the sum to be paid.

Amendment <NumAm>94</NumAm>
<Article>Article 19</Article>

*1. Member States shall **lay down** that, in legal proceedings instituted for infringement of an intellectual property right, the judicial authorities may order, at the request of the **right holder** and at the expense of the infringer, **that the decision be displayed and published** in full or in part **in the newspapers designated by the right holder.***

Member States shall **ensure** that, in legal proceedings instituted for infringement of an intellectual property right, the judicial authorities may order, at the request of the **applicant** and at the expense of the infringer, **appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it** in full or in part.

Member States may provide for other additional publicity measures which are appropriate to the particular circumstances, including prominent advertising.

2. Member States may also provide for other publicity measures which are appropriate to the particular circumstances.

Amendment <NumAm>95</NumAm>
<Article>Article 20</Article>

1. Member States shall ensure that all serious infringements of an intellectual property right, as well as attempts at, participation in and instigation of such infringements, are treated as a criminal offence,. An infringement is considered serious if it is intentional and committed for commercial purposes.

Without prejudice to the civil and administrative measures and procedures laid down by this Directive, Member States may apply other appropriate sanctions in cases where intellectual property rights have been infringed.

2. Where natural persons are concerned, Member States shall provide for criminal sanctions, including imprisonment.

3. As regards natural and legal persons, the Member States shall provide for the following sanctions:

(a) fines;

(b) confiscation of the goods, instruments and products stemming from the offences referred to in paragraph 1, or of goods whose value corresponds to those products.

In appropriate cases, Member States shall also provide for the following sanctions:

(a) destruction of the goods infringing an intellectual property right;

(b) total or partial permanent or temporary closure of the establishment used primarily to commit the infringement;

(c) a permanent or temporary ban on engaging in commercial activities;

(d) placing under judicial supervision;

(e) judicial winding-up;

(f) a ban on access to public assistance or subsidies;

(g) publication of judicial decisions.

4. For the purposes of this Chapter, the term “legal person” shall be understood to mean any legal entity having such status under the applicable national law, except for States or any other public bodies acting in the exercise of their prerogative of public power, as well as public international organisations.

Amendment <NumAm>96</NumAm>
<Article>Article 21</Article>

Article 21

deleted

Legal protection of technical devices

1. Without prejudice to particular provisions applicable in the field of copyright, related rights and the sui generis right of the creator of a database, Member States shall provide for appropriate legal protection against the manufacture, import, distribution and use of illegal technical devices.

2. For the purposes of this Chapter,

(a) “technical device” means any

technology, device or component which, in the normal course of its functioning, is designed for the manufacture of authentic goods and the incorporation therein of elements which are manifestly identifiable by customers and consumers and which make it easier to recognise the goods as being authentic.

(b) “illegal technical device” means any technical device which is designed to circumvent a technical device which permits the manufacture of goods infringing industrial property rights and incorporating the manifestly identifiable elements described in point (a).

Amendment <NumAm>97</NumAm>
<Article>Article 22</Article>

1. Member States shall encourage:

(a) the development by trade or professional associations or organisations of codes of conduct at Community level aimed at contributing towards the enforcement of the intellectual property rights referred to in Article 2;

(b) the establishment, by optical disc manufacturers and the professional organisations concerned, of codes of conduct aimed at helping manufacturers to combat infringements of intellectual property, particularly by recommending the use on optical discs of a source code enabling the identification of the origin of their manufacture;

(c) the submission to the Commission of draft codes of conduct at national and Community level and of any evaluations of the application of these codes of conduct.

2. The codes of conduct must be in accordance with Community law and notably the rules on competition and

Member States shall encourage:

(a) the development by trade or professional associations or organisations of codes of conduct at Community level aimed at contributing towards the enforcement of the intellectual property rights referred to in Article 2, ***particularly by recommending the use on optical discs of a source code enabling the identification of the origin of their manufacture;***

(b) the submission to the Commission of draft codes of conduct at national and Community level and of any evaluations of the application of these codes of conduct.

protection of personal data.

Amendment <NumAm>98</NumAm>
<Article>Article 23, paragraph 1</Article>

1. Three years after the date laid down in **Article 26(1)**, each Member State shall submit to the Commission a report informing it of the situation with regard to implementation of this Directive.

On the basis of those reports, the Commission shall draw up a report on the application of this Directive, including an assessment of the effectiveness of the measures taken **by the various competent bodies and instances**, as well as an evaluation of its impact on innovation and the development of the information society. That report shall then be transmitted to the European Parliament, the Council and the European Economic and Social Committee. It shall be accompanied, if necessary, by proposals for amendments to this Directive.

1. Three years after the date laid down in **Article 25(1)**, each Member State shall submit to the Commission a report informing it of the situation with regard to implementation of this Directive.

On the basis of those reports, the Commission shall draw up a report on the application of this Directive, including an assessment of the effectiveness of the measures taken, as well as an evaluation of its impact on innovation and the development of the information society. That report shall be transmitted to the European Parliament, the Council and the European Economic and Social Committee. It shall be accompanied, if necessary, **and in the light of developments in the Community legal order**, by proposals for amendments to this Directive.

Amendment <NumAm>99</NumAm>
<Article>Article 24</Article>

Correspondents

1. Each Member State shall designate one or more correspondents (***referred to hereinafter as “the national correspondents”***) for any question relating to the implementation of the measures provided for by this Directive. It shall communicate the details of the **correspondent(s)** to the other Member States and to the Commission.

2. ***For the purposes of applying this Directive, the Member States shall co-operate with the other Member States and***

Exchange of information and correspondents

For the purpose of promoting cooperation, including the exchange of information, among Member States and between Member States and the Commission, each Member State shall designate one or more **national** correspondents for any questions relating to the implementation of the measures provided for by this Directive. It shall communicate the details of the correspondents to the other Member States and to the Commission.

with the Commission via the national correspondents. They shall provide the assistance and information requested by the other Member States or the Commission as rapidly as possible, including by appropriate electronic means.

Amendment <NumAm>100</NumAm>
<Article>Article 25, paragraph 1</Article>

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive ***not later than eighteen months after the date of its adoption.*** They shall ***immediately*** inform the Commission thereof.

When Member States adopt these ***provisions, these*** shall contain a reference to this Directive or shall be accompanied by such reference ***at the time*** of their official publication. ***The procedure for*** such reference shall be ***adopted*** by Member States.

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

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

**** Twenty-four months after the date of adoption of this Directive.***

P5_TA-PROV(2004)0148

Electromagnetic compatibility ***I

{ TC"(A5-0113/2004 - Rapporteur: Luis Berenguer Fuster)"\l3 \n> * MERGEFORMAT }

Committee on Industry, External Trade, Research and Energy

PE 337.416

European Parliament legislative resolution on the proposal for a European Parliament and Council directive on the approximation of the laws of the Member States relating to electromagnetic compatibility (COM(2002) 759 – C5-0634/2002 – 2002/0306(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2002) 759)¹,
 - having regard to Article 251(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0634/2002),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, External Trade, Research and Energy (A5-0113/2004),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment1
Recital 2

(2) Member States are responsible for ensuring that radio-communications, electrical supply and telecommunications networks, as well as equipment connected thereto, are protected against

(2) Member States are responsible for ensuring that radio-communications, ***including radio broadcast reception and the amateur radio service operating in accordance with International***

¹ Not yet published in OJ.

electromagnetic disturbance.

Telecommunication Union radio regulations, electrical supply and telecommunications networks, as well as equipment connected thereto, are protected against electromagnetic disturbance.

Amendment 2
Recital 11

(11) Where this Directive regulates apparatus, it should refer to finished apparatus commercially available for the first time on the Community market. Certain components or sub-assemblies should, under certain conditions, be considered to be apparatus if they are made available to the end-user. ***Ready-made connecting devices, although incapable of generating electromagnetic disturbance in isolation, may generate or transmit electromagnetic disturbance when connected to an apparatus and should therefore be considered to be apparatus for the purposes of this Directive.***

(11) Where this Directive regulates apparatus, it should refer to finished apparatus commercially available for the first time on the Community market. Certain components or sub-assemblies should, under certain conditions, be considered to be apparatus if they are made available to the end-user.

Amendment 3
Recital 13

(13) It is in the interest of the functioning of the internal market to have standards for the electromagnetic compatibility of equipment which have been harmonised at Community level; once the reference to such a standard has been published in the Official Journal of the European ***Communities***, compliance with it should raise a presumption of conformity with the relevant essential requirements, although other means of demonstrating such conformity should be permitted.

(13) ***Harmonised standards reflect the generally acknowledged state of the art as regards electromagnetic compatibility matters in the European Union.*** It is ***thus*** in the interest of the functioning of the internal market to have standards for the electromagnetic compatibility of equipment which have been harmonised at Community level; once the reference to such a standard has been published in the Official Journal of the European ***Union***, compliance with it should raise a presumption of conformity with the relevant essential requirements, although other means of demonstrating such conformity should be permitted. ***Compliance with a harmonised standard means conformity with its provisions and demonstration thereof by the methods the***

harmonised standard describes or refers to.

Amendment 4
Recital 20

(20) It is not pertinent to carry out the conformity assessment of apparatus placed on the market for incorporation into a given fixed installation, and otherwise not commercially available, in isolation from the fixed installation into which it is to be incorporated. Such apparatus should therefore be exempted from the conformity assessment procedures normally applicable to apparatus. However, such apparatus should not be permitted to compromise the conformity of the fixed installation into which it is incorporated.

(20) It is not pertinent to carry out the conformity assessment of apparatus placed on the market for incorporation into a given fixed installation, and otherwise not commercially available, in isolation from the fixed installation into which it is to be incorporated. Such apparatus should therefore be exempted from the conformity assessment procedures normally applicable to apparatus. However, such apparatus should not be permitted to compromise the conformity of the fixed installation into which it is incorporated. ***Should apparatus be incorporated into more than one identical fixed installation, identifying the EMC characteristics of these installations should be sufficient to ensure exemption from the conformity assessment procedure.***

Amendment 5
Article 1, paragraph 1

1. This Directive regulates the electromagnetic compatibility of equipment. It aims to ensure the functioning of the internal market by requiring equipment to comply with an adequate level of electromagnetic compatibility.

1. This Directive regulates the electromagnetic compatibility of equipment. It aims to ensure the functioning of the internal market by requiring equipment to comply with an adequate level of electromagnetic compatibility. ***This Directive applies to equipment as defined in Article 2.***

Amendment 6
Article 1, paragraph 2, point (b)

(b) ***aircraft and equipment intended to be fitted into aircraft;***

(b) ***aeronautical products, parts and appliances as referred to in Regulation (EC) No 1592/2002 of the European Parliament and of the Council of 15 July 2002 on common rules in the field of civil***

aviation and establishing a European Aviation Safety Agency¹;

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

Amendment 7

Article 1, paragraph 2, point (c)

(c) radio equipment ***which is not commercially available, including kits of components to be assembled*** by radio amateurs, within the meaning defined in the Radio Regulations adopted in the framework of the Constitution and Convention of the International Telecommunication Union, ***as well as*** commercial equipment modified by and for the use of ***such*** radio amateurs;

(c) radio equipment ***used*** by radio amateurs within the meaning defined in the Radio Regulations adopted in the framework of the Constitution and Convention of the International Telecommunication Union, ***unless the equipment is available commercially. Kits of components to be assembled by radio amateurs and*** commercial equipment modified by and for the use of radio amateurs ***are not regarded as commercially available equipment;***

Amendment 8

Article 1, paragraph 3, point (a)

(a) it is incapable of generating electromagnetic emissions which exceed a level allowing radio and telecommunication equipment and other equipment to operate as intended; and

(a) it is incapable of generating ***or contributing to*** electromagnetic emissions which exceed a level allowing radio and telecommunication equipment and other equipment to operate as intended; and

Amendment 9

Article 1, paragraph 4

4. This Directive shall not apply to equipment or requirements in so far as the requirements laid down in this Directive are harmonised by more specific Community legislation.

4. Where, for the equipment referred to in paragraph 1, the requirements referred to in Annex I are wholly or partly laid down more specifically by other Community directives, this Directive shall not apply, or shall cease to apply, to that equipment in respect of such requirements from the date of implementation of those directives.

Amendment 10

Article 2, paragraph 1, point (e)

(e) "Electromagnetic disturbance" means any electromagnetic phenomenon which may degrade the performance of equipment;

(e) "Electromagnetic disturbance" means any electromagnetic phenomenon which may degrade the performance of equipment.
An electromagnetic disturbance may be electromagnetic noise, an unwanted signal or a change in the propagation medium itself;

Amendment 11

Article 2, paragraph 1, point (fa) (new)

(fa) "Safety purposes" means the purposes of safeguarding human life or property;

Amendment 12

Article 2, paragraph 1, point (g)

(g) "Harmonised standard" means a technical specification adopted by a recognised standards body under a mandate from the Commission in conformity with the procedures laid down in Directive 98/34/EC for the purpose of establishing a European requirement, compliance with which is not compulsory.

deleted

Amendment 13

Article 2, paragraph 1, point (ga) (new)

(ga) "Electromagnetic environment" means all electromagnetic phenomena observable in a given location.

Amendment 15

Article 2, paragraph 2, point (aa) (new)

(aa) "mobile installations" defined as a combination of apparatus and, where applicable, other devices, intended to be moved and operated in a range of locations.

Amendment 14
Article 2, paragraph 2, point (b)

(b) "ready-made connecting devices" *deleted*
intended for connection to an apparatus by an end user for the transmission of signals, which are placed on the market separately from such apparatus, and which are liable to generate or transmit electromagnetic disturbance when connected to it.

Amendment 17
Article 4, paragraph 2

2. The requirements of this Directive shall not prevent the application in any Member State of special measures, concerning the putting into service or use of equipment, ***which have been taken in respect of a specific site*** in order to overcome an existing or predicted electromagnetic compatibility problem, ***or*** for safety ***purposes*** to protect *the* public telecommunications networks or receiving or transmitting stations used. Member States shall notify those measures ***in accordance with the procedure laid down in Directive 98/34/EC.***

2. The requirements of this Directive shall not prevent the application in any Member State of ***the following*** special measures concerning the putting into service or use of equipment:

(a) measures in order to overcome an existing or predicted electromagnetic compatibility problem ***at a specific site;***

(b) measures taken for safety ***reasons*** to protect public telecommunications networks or receiving or transmitting stations ***when*** used ***for safety purposes in well-defined spectrum situations.***

Without prejudice to Directive 98/34/EC, Member States shall notify these measures ***to the Commission and to the other Member States.***

Those special measures which have been accepted shall be published by the Commission in the Official Journal of the European Union.

Amendment 18
Article 4, paragraph 3

3. Member States shall not create any obstacles to the display at trade fairs, exhibitions, **demonstrations** or similar events of equipment which does not comply with this Directive provided that a visible sign clearly indicates that such equipment may not be placed on the market **or** put into service until it has been brought into conformity with this Directive.

3. Member States shall not create any obstacles to the display **and/or demonstration** at trade fairs, exhibitions or similar events of equipment which does not comply with this Directive, provided that a visible sign clearly indicates that such equipment may not be placed on the market **and/or** put into service until it has been brought into conformity with this Directive. **Demonstration may only take place provided that adequate measures are taken to avoid electromagnetic disturbances.**

Amendment 19
Article 6, paragraph 1

1. The compliance of equipment with the relevant harmonised standards whose references have been published in the Official Journal of the European Communities shall raise a presumption, on the part of the Member States, of conformity with the essential requirements referred to in Annex I to which such standards relate.

1. "Harmonised standard" means a technical specification adopted by a recognised European standardisation body under a mandate from the Commission in conformity with the procedures laid down in Directive 98/34/EC for the purpose of establishing a European requirement. Compliance with a "harmonised standard" is not compulsory.

Amendment 20
Article 6, paragraph 2

2. The modalities for the application of harmonised standards are set out in Annex V.

2. The compliance of equipment with the relevant harmonised standards whose references have been published in the Official Journal of the European Union shall raise a presumption, on the part of the Member States, of conformity with the essential requirements referred to in Annex I to which such standards relate. This presumption of conformity is limited to the scope of the harmonised standard(s) applied and the relevant essential requirements covered by such harmonised standard(s).

Amendment 21
Article 6, paragraph 4, point (c)

(c) to maintain the reference in the publication referred to in **paragraph 1**;

(c) to maintain the reference in the publication referred to in **paragraph 2**;

Amendment 22
Article 6, paragraph 4, point (d)

(d) to withdraw the reference from the publication referred to in **paragraph 1**.

(d) to withdraw the reference from the publication referred to in **paragraph 2**.

Amendment <NumAm>39</NumAm>
<Article>Article 7</Article>

1. For the purposes of demonstrating the compliance of apparatus with the provisions of this Directive, with a view to its placing on the market and/ or putting into service, the conformity assessment procedure set out in paragraphs 2 to 5 shall be used.

2. The manufacturer or his authorised representative established within the Community shall draw up technical documentation which provides evidence of the conformity of the apparatus with the essential requirements of this Directive.

The technical documentation may include a report from the notified body referred to in Article 11 confirming the compliance of the apparatus with the relevant essential requirements set out in Annex I. The manufacturer may determine the subject and depth of the assessment to be carried out.

The technical documentation shall be held at the disposal of the competent authorities for a period of at least ten years after the date on which such apparatus was last manufactured.

3. The compliance of apparatus with all relevant essential requirements shall be attested by an EC declaration of conformity issued by the manufacturer or his authorised representative established within the Community.

Compliance of apparatus with the **essential requirements referred to in Article 5 shall be demonstrated using the procedure described in Annex Ia (internal production control). However, at the discretion of the manufacturer or of his authorised representative in the Community, the procedure described in Annex Ib may also be followed.**

The EC declaration of conformity shall be held at the disposal of the competent authorities for a period of at least ten years after the date on which such apparatus was last manufactured.

4. If neither the manufacturer nor his authorised representative is established within the Community, the obligation to hold the EC declaration of conformity and the technical documentation at the disposal of the competent authorities shall be the responsibility of the person who places the apparatus on the Community market.

5. The technical documentation and the EC declaration of conformity shall be drawn up in accordance with the provisions set out in Annex II.

Amendment 23
Article 8a (new)

Article 8a

Other marks and information

1. Each apparatus shall be identified in terms of type, batch, serial number or any other information allowing for the identification of the apparatus.

2. Each apparatus shall be accompanied by the name and address of the manufacturer and, if he is not established within the Community, the name and address of his authorised representative or of the person established within the Community responsible for placing the apparatus on the Community market.

3. The manufacturer shall provide information on any specific precautions that have to be taken when the apparatus is assembled, installed, maintained or used, in order to ensure that, when put into service, the apparatus is in conformity with the protection requirements set out in Annex I, point 1.

4. Apparatus for which compliance with

the protection requirements is not ensured in residential areas shall be accompanied by a clear indication of this restriction of use, where appropriate also on the packaging.

5. The information required to enable use in accordance with the intended purpose of the apparatus shall be contained in the instructions accompanying the apparatus.

Amendment 24
Article 9, paragraph 4

4. Where the measure referred to in paragraph 1 is attributed to a shortcoming in harmonised standards, the Commission, after consulting the parties, shall, if the Member State concerned intends to uphold the measure, bring the matter before the Committee and initiate the procedure laid down in Article 6(3).

4. Where the measure referred to in paragraph 1 is attributed to a shortcoming in harmonised standards, the Commission, after consulting the parties, shall, if the Member State concerned intends to uphold the measure, bring the matter before the Committee and initiate the procedure laid down in Article 6(3) **and (4)**.

Amendment 25
Article 9, paragraph 5

5. Where the non-compliant apparatus **is accompanied by the report** referred to in **Article 7(2)**, the Member State concerned shall take appropriate action in respect of the author of **that report**, and shall inform the Commission and the other Member States accordingly.

5. Where the non-compliant apparatus **has been subject to the conformity assessment procedure** referred to in **Annex Ib**, the Member State concerned shall take appropriate action in respect of the author of **the statement referred to in Annex Ib, point 3**, and shall inform the Commission and the other Member States accordingly.

Amendment 26
Article 11, paragraphs 1 and 2

1. Member States shall **designate** the bodies **competent to draw up the reports referred to in Article 7(2) and shall notify them (notified bodies) to the Commission and to the other Member States**.

Such notification shall state whether the

1. Member States shall **notify** the **Commission of the** bodies **which they have designated to carry out the tasks referred to in Annex Ib. Member States shall apply the criteria laid down in Annex IV in determining the bodies to be designated**.

Such notification shall state whether the

bodies are **competent** for all apparatus covered by this Directive **or whether their responsibility** is limited to certain specific aspects.

2. Member States shall apply the criteria listed in Annex IV for the assessment of notified bodies.

bodies are **designated to carry out the tasks referred to in Annex Ib** for all apparatus covered by this Directive **and/or the essential requirements referred to in Annex I, or whether the scope of designation** is limited to certain specific aspects **and/or categories of apparatus.**

Amendment 30

Article 12, paragraph 1, subparagraph 2

However, the provisions of Articles 5, 7 **and** 8 shall not be compulsory in the case of apparatus which is **specifically designed** for incorporation into a given fixed installation and is otherwise not commercially available. In such cases, the accompanying documentation shall **name the site of** the fixed installation and indicate the precautions to be taken for the incorporation of the apparatus into the fixed installation in order not to compromise the conformity of the specified installation. It shall furthermore include the information referred to in **Point 4(a) and (b) of Annex I.**

However, the provisions of Articles 5, 7, 8 **and 8a** shall not be compulsory in the case of apparatus which is **intended** for incorporation into a given fixed installation and is otherwise not commercially available. In such cases, the accompanying documentation shall **identify** the fixed installation and **its EMC characteristics and** indicate the precautions to be taken for the incorporation of the apparatus into the fixed installation in order not to compromise the conformity of the specified installation. It shall furthermore include the information referred to in **Article 8a(1) and (2).**

Amendment 33

Annex I, section 2

2. SPECIFIC REQUIREMENTS FOR APPARATUS

deleted

2. Electromagnetic compatibility assessment:

The manufacturer shall perform an electromagnetic compatibility assessment of the apparatus, based on the relevant phenomena, with a view to meeting the protection requirements set out in Point 1.

The electromagnetic compatibility assessment shall take into account all normal intended operating conditions.

In cases where the apparatus can take different configurations, the electromagnetic compatibility assessment shall confirm that the apparatus meets the protection requirements set out in Point 1 in all possible configurations identified by the manufacturer as representative of normal use in its intended application.

3. External devices:

All apparatus shall meet the protection requirements referred to in Point 1 without external devices such as filtering or shielding, unless those devices, including the necessary instructions for use, are placed on the market together with the apparatus as a functional unit.

This provision shall not apply to apparatus designed and intended for installation by a person technically competent in the field of electromagnetic compatibility. In such cases external devices need not be placed on the market together with the apparatus, provided that those devices are commercially available and their required electromagnetic compatibility characteristics are sufficiently described in the instructions for use of the apparatus;

Connecting devices, such as plugs or cables, which have to fulfil specific requirements for the compliance of the apparatus with the protection requirements set out in Point 1, need not to be placed on the market together with the apparatus if they are commercially available and their required properties are sufficiently described in the instructions for use of the apparatus.

4. Information requirements:

(a) Each apparatus shall be identified in terms of type, batch, serial number or any other information allowing for the identification of the apparatus;

(b) Each apparatus shall be accompanied by the name and address of the manufacturer and, if he is not established within the Community, the name and

address of his authorised representative or the person established within the Community responsible for placing the apparatus on the Community market;

(c) The manufacturer shall provide information on any specific precautions that have to be taken when the apparatus is assembled, installed, maintained or used, in order to ensure that, when put into service, the apparatus is in conformity with the protection requirements set out in Point 1;

(d) Apparatus for which compliance with the protection requirements is not ensured in residential areas shall be accompanied by a clear indication of this restriction of use.

5. Ready-made connecting devices:

(a) The requirements for apparatus set out in Points 2, 3, 4(c) and (d) shall not apply to ready-made connecting devices;

(b) Ready-made connecting devices shall be designed and manufactured in such a way that, when connected to the apparatus for which they are intended, following any specific precautions as described below, compliance with the protection requirements set out in Point 1 is ensured;

(c) Ready-made connecting devices shall be accompanied by an indication of the technical characteristics of the apparatus to which they are intended to be connected, and information on any specific precautions that need to be taken regarding the connection to such apparatus with a view to meeting the protection requirements set out in Point 1.

Amendment 32
Annex I, section 3

**3. SPECIFIC REQUIREMENTS FOR
FIXED INSTALLATIONS**

6. Installation and intended use of

**1a. SPECIFIC REQUIREMENTS FOR
FIXED INSTALLATIONS**

Installation and intended use of

components:

A fixed installation shall be installed applying good engineering ***practice*** and respecting the information on the intended use of its components, with a view to meeting the protection requirements set out in Point 1.

components:

A fixed installation shall be installed applying good engineering ***practices*** and respecting the information on the intended use of its components, with a view to meeting the protection requirements set out in Point 1. ***These good engineering practices shall be documented and the documentation shall be held by the responsible person(s) at the disposal of the relevant national authorities for inspection purposes as long as the fixed installation is in operation.***

Amendment 34
Annex Ia (new)

Annex Ia

Conformity Assessment procedure referred to in Article 7 (internal production control)

- 1. The manufacturer shall perform an electromagnetic compatibility assessment of the apparatus, based on the relevant phenomena, with a view to meeting the protection requirements set out in Annex I, point 1. The correct application of all the relevant harmonised standards whose references have been published in the Official Journal of the European Union shall be equivalent to the carrying out of the electromagnetic compatibility assessment.***
- 2. The electromagnetic compatibility assessment shall take into account all normal intended operating conditions. In cases where the apparatus can take different configurations, the electromagnetic compatibility assessment shall confirm that the apparatus meets the protection requirements set out in Annex I, point 1 in all possible configurations identified by the manufacturer as representative of its intended use.***
- 3. In accordance with the provisions set out in Annex II, the manufacturer shall***

draw up technical documentation providing evidence of the conformity of the apparatus with the essential requirements of this Directive.

4. The manufacturer or his authorised representative in the Community shall hold the technical documentation at the disposal of the competent authorities for a period of at least ten years after the date on which such apparatus was last manufactured.

5. The compliance of apparatus with all relevant essential requirements shall be attested by an EC declaration of conformity issued by the manufacturer or his authorised representative established within the Community.

6. The manufacturer or his authorised representative in the Community shall hold the EC declaration of conformity at the disposal of the competent authorities for a period of at least ten years after the date on which such apparatus was last manufactured.

7. If neither the manufacturer nor his authorised representative is established within the Community, the obligation to hold the EC declaration of conformity and the technical documentation at the disposal of the competent authorities shall be the responsibility of the person who places the apparatus on the Community market.

8. The manufacturer must take all measures necessary in order that the manufacturing process ensures compliance of the manufactured products with the technical documentation referred to in point 3 and with the provisions of this Directive that apply to them.

9. The technical documentation and the EC declaration of conformity shall be drawn up in accordance with the provisions set out in Annex II.

Annex Ib

**Conformity Assessment procedure
referred to in Article 7**

- 1. This procedure consists of applying Annex Ia, completed as follows:**
- 2. The manufacturer or his authorised representative established within the Community shall present the technical documentation to the notified body referred to in Article 11 and ask the notified body for an assessment. The manufacturer or his authorised representative established within the Community shall specify to the notified body which aspects of the essential requirements have to be assessed by the notified body.**
- 3. The notified body shall review the technical documentation and assess whether the technical documentation properly demonstrates that the requirements of the Directive he shall assess have been met. If the compliance of the apparatus is confirmed, the notified body shall issue a statement to the manufacturer or his authorised representative established within the Community confirming the compliance of the apparatus. The statement of the notified body shall be limited to those aspects of the essential requirements which have been assessed by the notified body.**
- 4. The manufacturer shall add the statement of the notified body to the technical documentation.**

1. TECHNICAL DOCUMENTATION

The technical documentation must enable the conformity of the apparatus with the

1. TECHNICAL DOCUMENTATION

The technical documentation must enable the conformity of the apparatus with the

essential requirements to be assessed. It must cover the design and manufacture of the apparatus, in particular:

- a general description of the apparatus;
- **a report** of compliance with the harmonised standards, if any, applied in full or in part;
- where the manufacturer has not applied harmonised standards, or has applied them only in part, a description and explanation of the steps taken to meet the essential requirements of the Directive, including a description of the electromagnetic compatibility assessment set out in Annex I, results of design calculations made, examinations carried out, test reports, etc.;
- **on a voluntary basis, the manufacturer may include in the technical documentation a report from a notified body confirming the conformity of the apparatus with the relevant essential requirements set out in Annex I.**

2. EC DECLARATION OF CONFORMITY

The EC declaration of conformity must contain, at least, the following:

- reference to this Directive;
- identification of the apparatus to which it refers, as set out in **Point 4(a) of Annex I**;
- name and address of the manufacturer and, where applicable, the name and address of his authorised representative within the Community;
- dated reference to the specifications under which conformity is declared to ensure the conformity of the apparatus with the provisions of this Directive;
- date **and place of issue** of the declaration;
- identification and signature of the person empowered to bind the manufacturer or his authorised representative.

essential requirements to be assessed. It must cover the design and manufacture of the apparatus, in particular:

- a general description of the apparatus;
- **evidence** of compliance with the harmonised standards, if any, applied in full or in part;
- where the manufacturer has not applied harmonised standards, or has applied them only in part, a description and explanation of the steps taken to meet the essential requirements of the Directive, including a description of the electromagnetic compatibility assessment set out in Annex I, results of design calculations made, examinations carried out, test reports, etc.;
- **a statement from the notified body, when the procedure referred to in Annex Ib has been followed.**

2. EC DECLARATION OF CONFORMITY

The EC declaration of conformity must contain, at least, the following:

- reference to this Directive;
- identification of the apparatus to which it refers, as set out in **Article 8a(1)**;
- name and address of the manufacturer and, where applicable, the name and address of his authorised representative within the Community;
- dated reference to the specifications under which conformity is declared to ensure the conformity of the apparatus with the provisions of this Directive;
- date of the declaration;
- identification and signature of the person empowered to bind the manufacturer or his authorised representative.

Amendment 38

Annex V

Annex V is deleted

Pollution from natural gas or liquefied petroleum gas engines *I**

{ TC"(A5-0057/2004 - Rapporteur: Bernd Lange)"\l3 \n> * MERGEFORMAT }

Committee on the Environment, Public Health and Consumer Policy

PE 337.068

European Parliament legislative resolution on the proposal for a directive of the European Parliament and of the Council on the approximation of the laws of the Member States relating to the measures to be taken against the emission of gaseous and particulate pollutants from compression-ignition engines for use in vehicles, and the emission of gaseous pollutants from positive-ignition engines fuelled with natural gas or liquefied petroleum gas for use in vehicles (COM(2003) 522 – C5-0456/2003 – 2003/0205(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2003) 522)¹,
 - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0456/2003),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on the Environment, Public Health and Consumer Policy (A5-0057/2004),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1
Recital 6a (new)

(6a) Under all randomly selected load conditions within a defined operating range, the limit values may not be exceeded

¹ Not yet published in OJ.

by more than an appropriate percentage.

Amendment <NumAm>12</NumAm>

<Article>Recital 15a (new)</Article>

(15a) The Commission should submit proposals it may deem appropriate for a further stage for limit values for NO_x and particulate emissions as soon as possible.

Amendment 3

Recital 16

(16) The Commission should consider the available technology with a view to confirming the mandatory NO_x standard for 2008 in a report to the European Parliament and the Council, accompanied, if necessary, by appropriate proposals. **deleted**

Amendment <NumAm>13</NumAm>

<Article>Article 2, paragraph 9a (new)</Article>

9a. For compression-ignition or gas engines that must comply with the limit values set out in section 6.2.1. of Annex I under the type-approval system, the following shall apply: under all randomly selected load conditions, belonging to a definite control area and with the exception of specified engine operating conditions which are not subject to such a provision, the emissions sampled during a time duration as small as 30 seconds shall not exceed by more than 100 % the limit values in rows B2 and C of the tables in section 6.2.1. of Annex I. The control area to which the percentage not to be exceeded shall apply, the excluded engine operating conditions and other appropriate conditions shall be defined in accordance with the procedure referred to in Article 6.

Amendment <NumAm>14</NumAm>
<Article>Article 3, paragraph 1, points (a) to (c)</Article>

(a) 100 000 km or five years, whichever is the sooner, in the case of engines to be fitted to vehicles of category N1;

(b) 200 000 km or six years, whichever is the sooner, in the case of engines to be fitted to vehicles of category N2 and **M2**;

(c) 500 000 km or seven years, whichever is the sooner, in the case of engines to be fitted to vehicles of category N3 and M3.

(a) 100 000 km or five years, whichever is the sooner, in the case of engines to be fitted to vehicles of category N1 **and M2**;

(b) 200 000 km or six years, whichever is the sooner, in the case of engines to be fitted to vehicles of category N2, **N3 with a maximum technically permissible mass not exceeding 16 tonnes and M3 Class I, Class II and Class A, and Class B with a maximum technically permissible mass not exceeding 7.5 tonnes**;

(c) 500 000 km or seven years, whichever is the sooner, in the case of engines to be fitted to vehicles of category N3 **with a maximum technically permissible mass exceeding 16 tonnes and M3, Class III and Class B with a maximum technically permissible mass exceeding 7.5 tonnes**.

Amendment 6
Article 3, paragraph 1, subparagraph 1a (new)

From 1 October 2005, for new types, and from 1 October 2006, for all types, type-approvals granted to vehicles shall also require confirmation of the correct operation of the emission control devices during the normal life of the vehicle under normal conditions of use (conformity of in-service vehicles properly maintained and used).

Amendment 7
Article 4, paragraph 3a (new)

3a. Full and uniform access to OBD information must be provided for the purposes of testing, diagnosis, servicing and repair in keeping with the relevant provisions of Directive 70/220/EEC and provisions regarding replacement

components ensuring compatibility with OBD systems.

Amendment <NumAm>15</NumAm>
<Article>Article 4a (new)</Article>

Article 4a

Emission Control Systems Using Consumable Reagents

In defining the measures necessary to implement Article 4, as provided for by Article 6(1), the Commission shall, if appropriate, include technical measures to minimise the risk of emissions control systems using consumable reagents being inadequately maintained in service. In addition, and if appropriate, measures shall be included to ensure that emissions of ammonia due to the use of consumable reagents are minimised.

Amendment 9
Article 6, paragraph 1

1. The measures necessary for the implementation of Articles 3 and 4 of this Directive shall be adopted by the Commission, assisted by the Committee established by Article 13(1) of Directive 70/156/EEC, in accordance with the procedure referred to in Article 13(3) of that Directive.

1. The measures necessary for the implementation of **Article 2(9a)**, Articles 3 and 4 of this Directive shall be adopted by the Commission, assisted by the Committee established by Article 13(1) of Directive 70/156/EEC, in accordance with the procedure referred to in Article 13(3) of that Directive.

Amendment <NumAm>16</NumAm>
<Article>Article 7, paragraph 1a (new)</Article>

1a. The Commission should submit to the European Parliament and the Council legislative proposals on further limits on NOx and particulate emissions for heavy-duty vehicles.

If appropriate, it shall investigate whether setting an additional limit for particulate levels and size is necessary, and, if so,

include it in the proposals.

Amendment 11
Article 7, paragraph 4

4. The Commission shall consider the available technology with a view to confirming the mandatory NO_x standard for 2008 in a report to the European Parliament and to the Council, accompanied, if necessary, by appropriate proposals.

deleted

Amendment <NumAm>17</NumAm>
<Article>Article 8, paragraph 1</Article>

1. Member States shall adopt and publish by ...[12 months after the entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with Articles 3 and 4. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

1. Member States shall adopt and publish by ...[12 months after the entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with **this Directive. If the adoption of the implementing measures referred to in Article 6 is delayed beyond [3 months after the date of adoption of this Directive], Member States shall comply with this obligation by the transposition date provided in the Directive containing these implementing measures.** They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from ... [12 months after the entry into force of this Directive].

They shall apply those provisions from ... [12 months after the entry into force of this Directive] **or, if the adoption of the implementing measures referred to in Article 6 is delayed beyond [3 months after the date of adoption of this Directive], from the transposition date specified in the Directive containing these implementing measures.**

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

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

statement that references in existing laws, regulations and administrative provisions to the Directives repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

statement that references in existing laws, regulations and administrative provisions to the Directives repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

P5_TA-PROV(2004)0150

Criminal acts and penalties in the field of drug trafficking *

{ TC"(A5-0095/2004 - Rapporteur: Arie M. Oostlander)"\l3 \n> * MERGEFORMAT }

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

PE 338.598

European Parliament legislative resolution on the proposal for a Council Framework Decision laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of drug trafficking (15102/2/2003 – C5-0618/2003 – 2001/0114(CNS))

(Consultation procedure - renewed consultation)

The European Parliament,

- having regard to the Council draft (15102/2/2003)¹,
 - having regard to the Commission proposal to the Council (COM(2001) 259)²,
 - having regard to its position of 25 April 2002³,
 - having regard to Articles 31(1)(e) and 34(2)(b) of the EU Treaty,
 - having been reconsulted by the Council pursuant to Article 39(1) of the EU Treaty, (C5-0618/2003),
 - having regard to Rules 106, 67 and 71(3) of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0095/2004),
1. Approves the proposal for a Council framework decision as amended;
 2. Calls on the Council to amend the text accordingly;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Calls on the Commission to continue its work and to bring forward new proposals for the creation of a common judicial area in criminal matters;

¹ Not yet published in OJ.

² OJ C 270 E, 25.9.2001, p. 144.

³ OJ C 131 E, 5.6.2003, p. 98.

5. Instructs its President to forward this resolution to the Council and Commission.

Amendment <NumAm>1</NumAm>
<Article>Article 1a (new)
</Article>

Article 1a

Scope

The aim of this Framework Decision is to tackle serious and/or international illegal drug trafficking.

European Agency for the Management of Operational Co-operation at the External Borders *

{ TC"(A5-0093/2004 - Rapporteur: Christian Ulrik von Boetticher)"\l3 \n> *
MERGEFORMAT }

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs
PE 329.954

European Parliament legislative resolution on the proposal for a Council regulation establishing a European Agency for the Management of Operational Co-operation at the External Borders (COM(2003) 687 – C5-0613/2003 – 2003/0273(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal (COM(2003) 687)¹,
 - having regard to Article 66 of the EC Treaty,
 - having regard to Article 67 of the EC Treaty, pursuant to which the Council consulted Parliament (C5-0613/2003),
 - having regard to the Protocol integrating the Schengen acquis into the framework of the European Union,
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinions of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy and the Committee on Budgets (A5-0093/2004),
1. Approves the Commission proposal as amended;
 2. Considers that the financial statement of the Commission proposal is compatible with the ceiling of heading 3 of the Financial Perspective without restricting other policies;
 3. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 4. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

¹ Not yet published in OJ.

5. Calls for initiation of the conciliation procedure under the Joint Declaration of 4 March 1975 if the Council intends to depart from the text approved by Parliament;
6. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
7. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1 Recital 1

(1) Community policy in the field of the EU external borders aims at an integrated management ensuring a uniform and high level of control and surveillance, which *is* a necessary corollary to the free movement of persons within the European Union and a fundamental component of an Area of Freedom, Security and Justice. To this end, the establishment of common rules on standards and procedures for the control of the external borders is foreseen.

(1) Community policy in the field of the EU external borders aims at an integrated management ensuring a uniform and high level of control and surveillance, which ***constitutes a measure designed to prevent trafficking in human beings***, a necessary corollary to the free movement of persons within the European Union and a fundamental component of an Area of Freedom, Security and Justice. To this end, the establishment of common rules on standards and procedures for the control of the external borders is foreseen.

Amendment 2 Recital 6

(6) The Agency should provide training at European level for national instructors of border guards and additional training and seminars related to control and surveillance at the external borders ***and removal of third country nationals illegally resident in the Member States for officers of the competent national services.***

(6) The Agency should provide training at European level for national instructors of border guards and additional training and seminars related to control and surveillance at the external borders.

Amendment 3 Recital 7a (new)

(7a) In carrying out the above activities the Agency shall act in conformity with the objectives and priorities adopted by

the Commission in accordance with Article 12 of Decision 2002/463/EC⁽¹⁾.

⁽¹⁾ Council Decision 2002/463/EC of 13 June 2002 adopting an action programme for administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO programme) (OJ L 161, 19.6.2002, p. 11).

Amendment 4
Recital 9

(9) The Agency should also support Member States in circumstances requiring increased technical and operational assistance at the external borders.

(9) The Agency should also support Member States in **exceptional** circumstances requiring increased technical and operational assistance at the external borders.

Amendment 5
Recital 10

(10) In most Member States, the operational aspects of return of third-country nationals illegally residing in the Member States fall under the competencies of the authorities responsible for controlling the external borders. As there is a clear added value in performing these tasks at European level, the Agency should, subject to the Community return policy, accordingly co-ordinate and organise return operations of Member States and develop best practices on the acquisition of travel documents and return of third-country nationals from the territories of the Member States.

deleted

Amendment 6
Recital 12

(12) Building upon the experiences of the External Borders Practitioners' Common

deleted

Unit and the centres specialised in the different aspects of control and surveillance of land, air, and maritime borders respectively, which have been set up by Member States, the Agency may itself create specialised branches responsible for dealing with land, air, and maritime borders.

Amendment 7
Recital 16a (new)

(16a) 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 data¹ applies to the processing of personal data by the Agency.

¹ OJ L 8, 12.1.2001, p. 1.

Amendment 8
Recital 17

(17) The Commission and the Member States should be represented within a Management Board in order to control effectively the functions of the Agency. This Board should be entrusted with the necessary powers to establish the budget, verify its execution, adopt the appropriate financial rules, establish transparent working procedures for decision making by the Agency ***and appoint the Executive Director.***

(17) The Commission and the Member States should be represented within a Management Board in order to control effectively the functions of the Agency. This Board should be entrusted with the necessary powers to establish the budget, verify its execution, adopt the appropriate financial rules ***and*** establish transparent working procedures for decision making by the Agency.

Amendment 9
Recital 18a (new)

(18a) The control of national borders should remain a sovereign Member State

responsibility.

Amendment 10

Recital 19

(19) Bearing in mind the constantly changing nature of the challenges to efficient management of the external borders, a possible gradual widening of the scope of action of the Agency should be provided for. Such a wider scope could e. g. encompass tasking the Agency with the carrying out of inspections at the external borders and the facilitation of operational co-operation with relevant third countries and international organisations, taking into account the institutional framework of the European Community. This Regulation should apply to any other area related to the management of the external borders on a basis of a future proposal in accordance with the Treaty establishing the European Community.

deleted

Amendment 11

Recital 20

(20) Recalling that efficient control and surveillance of the external borders is a matter of the utmost importance to Member States regardless of their geographical position. Accordingly there is a need for promoting solidarity between Member States in the field of external border management. The establishment of the Agency, assisting Member States with implementing the operational aspects of external border management, ***including return of third-country nationals illegally residing in the Member States***, constitutes an important step in this direction.

(20) Recalling that efficient control and surveillance of the external borders is a matter of the utmost importance to Member States regardless of their geographical position. Accordingly there is a need for promoting solidarity between Member States in the field of external border management. The establishment of the Agency, assisting Member States with implementing the operational aspects of external border management, constitutes an important step in this direction.

Amendment 12
Recital 26

(26) This Regulation respects the fundamental rights and observes the principles recognised by Article 6(2) of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union

(26) This Regulation respects the fundamental rights and observes the principles recognised by Article 6(2) of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union, ***in particular in Article 19 thereof.***

Amendment 13
Article 1, paragraph 2

2. The Agency shall facilitate the application of ***existing and future*** Community measures relating to the management of the external borders by ensuring the co-ordination of Member States' actions in the implementation of those measures, thereby contributing to an efficient, high and uniform level of control on persons and surveillance of the external borders of the European Union.

2. The Agency shall, ***within its remit as laid down in Article 2,*** facilitate the application of Community measures relating to the management of the external borders by ensuring the co-ordination of Member States' actions in the implementation of those measures, thereby contributing to an efficient, high and uniform level of control on persons and surveillance of the external borders of the European Union.

Amendment 14
Article 2, point (ba) (new)

(ba) carry out inspections at the external borders.

Amendment 15
Article 2, point (da) (new)

(da) study measures to ensure the compatibility of technical equipment.

Amendment 16
Article 2, point (f)

(f) co-ordinate operational co-operation between Member States in the field of removal of third-country nationals

deleted

illegally residing in the Member States.

Amendment 17
Article 2, point (fa) (new)

(fa) study the need for and feasibility of setting up a European Border Guard.

Amendment 18
Article 2, point (fb) (new)

(fb) develop and coordinate a network of liaison officers for migration-related issues.

Amendment 19
Article 3, paragraph 2

2. The Agency may operate through its specialised branches provided for in Article 13, for the practical organisation of joint operations and pilot projects. ***deleted***

Amendment 20
Article 3, paragraph 4

4. The Agency may decide to co-finance the operations and projects referred to in paragraph 1, with grants from its budget in accordance with the financial rules applicable to the Agency. ***deleted***

Amendment 21
Article 4, paragraph 2

It shall prepare both general and tailored risk assessments to be submitted to the Council and the Commission.

It shall prepare both general and tailored risk assessments to be submitted to the ***European Parliament, the*** Council and the Commission.

Amendment 22
Article 5, paragraph 2

The Agency shall also offer additional training courses and seminars on subjects related to the control and surveillance of the external borders ***and return of third country nationals*** for officers of the competent national services of Member States.

The Agency shall also offer additional training courses and seminars on subjects related to the control and surveillance of the external borders for officers of the competent national services of Member States.

Amendment 23
Article 5, paragraph 2a (new)

The Agency may also hold training seminars at the request of the authorities of the Member States on the European Union's immigration policies and the procedures laid down by the competent institutions.

Amendment 24
Article 6

The Agency shall follow up on the developments in research relevant for the control and surveillance of the external borders and disseminate this information to the Commission and the Member States.

The Agency shall follow up on the developments in research relevant for the control and surveillance of the external borders and disseminate this information to the ***European Parliament, the*** Commission and the Member States.

Amendment 25
Article 9

Article 9

deleted

Return co-operation

1. The Agency shall subject to the Community return policy co-ordinate or organise joint return operations of Member States. The Agency may use Community financial means available in the field of return.

2. The Agency shall identify best practices on the acquisition of travel

documents and the removal of illegally residing third-country nationals from the territories of the Member States.

Amendment 26

Article 13

Article 13

deleted

Specialised branches

The Agency shall evaluate the need for and decide the setting up of specialised branches in the Member States, subject to their consent.

The specialised branches of the Agency shall develop best practices with regard to the particular types of external borders for which they are responsible. The Agency shall ensure the coherence and uniformity of such best practices.

Each specialised branch shall submit a detailed annual report to the Agency on its activities as well as provide any other type of information relevant for the co-ordination of operational co-operation.

Amendment 27

Article 14, paragraph 3

3. The Agency's staff shall consist of a limited number of officials and of national experts in the field of control and surveillance of the external borders seconded by the Member States to carry out management duties. The remaining staff shall consist of other employees recruited by the Agency as necessary to carry out its tasks.

3. The Agency's staff shall consist of a limited number of officials ***assigned by the Commission*** and of national experts in the field of control and surveillance of the external borders seconded by the Member States to carry out management duties. The remaining staff shall consist of other employees recruited by the Agency as necessary to carry out its tasks.

Amendment 28

Article 17, paragraph 2, point (a)

(a) appoint the Executive Director on a proposal from the Commission in

deleted

accordance with Article 23;

Amendment 29
Article 17, paragraph 2, point (c)

(c) before **30 September** each year, and after receiving the opinion of the Commission, adopt, by a three-quarters majority of its members, the Agency's programme of work for the **coming** year and forward it to the European Parliament, the Council, the Commission; this programme of work shall be **adopted according to** the annual Community budgetary procedure **and** the Community legislative programme in relevant areas of the management of external borders;

(c) before **31 January** each year, and after receiving the opinion of the Commission, adopt, by a three-quarters majority of its members, the Agency's **draft** programme of work for the year **in question** and forward it to the European Parliament, the Council, the Commission; this programme of work shall be **finalised in the light of the outcome of** the annual Community budgetary procedure; **it shall take due account of** the Community legislative programme in relevant areas of the management of external borders;

Amendment 30
Article 17, paragraph 2, point (ha) (new)

(ha) sign memoranda of understanding with the European Police College, the European armaments agency, the European Maritime Safety Agency and other bodies working in the Agency's field of activity on a clear division of responsibilities, so as to avoid duplication of work.

Amendment 31
Article 18, paragraph 1

1. The Management Board shall be composed of twelve members **and two representatives of the Commission**. The Council shall appoint **the** members as well as their alternates who will represent them in their absence. **The Commission shall appoint its representatives and their alternates**. The duration of the terms of office shall be four years. This term of office shall be extendable once.

1. The Management Board shall be composed of twelve members. The Council **and the Commission** shall **each** appoint **six** members as well as their alternates who will represent them in their absence. The duration of the terms of office shall be four years. This term of office shall be extendable once.

Amendment 32
Article 18, paragraph 1a (new)

1a. Members of the Management Board shall be appointed on the grounds of their experience in the field of border protection.

Amendment 33
Article 19

1. The Management Board shall elect a Chairperson and a Deputy Chairperson from among its members. The Deputy Chairperson shall ex-officio replace the Chairperson in the event of his/her being prevented from attending to his/her duties.

The Management Board shall ***be chaired by one of the Commission representatives.***

2. The term of office of the Chairperson and Deputy Chairperson shall expire when their respective membership of the Management Board ceases. Subject to this provision, the duration of the terms of office of the Chairperson or Deputy Chairperson shall be two years. These terms of office shall be extendable once.

Amendment 34
Article 22, paragraph 1

1. The Agency shall be managed by its Executive Director, who shall be completely independent in the performance of his/her duties. Without prejudice to the respective competencies of the Commission and the Management Board, the Executive Director shall neither seek nor take instructions from any government or from any other body.

1. The Agency shall be managed by its Executive Director, who shall be completely independent in the performance of his/her duties. The Executive Director shall neither seek nor take instructions from any government or from any other body.

Amendment 35
Article 22, paragraph 2

2. The European Parliament or the Council **may** invite the Executive Director of the Agency to report on the carrying out of his/her tasks.

2. The European Parliament **pursuant to Article 23a** or the Council **shall** invite the Executive Director of the Agency to report on the carrying out of his/her tasks.

Amendment 36
Article 23, paragraph 1

1. The Commission shall **propose candidates for the post of** the Executive Director based on a list following publication of the post in the Official Journal and other press or internet sites as appropriate.

1. The Commission shall **appoint** the Executive Director based on a list following publication of the post in the Official Journal and other press or internet sites as appropriate.

Amendment 37
Article 23, paragraph 1a (new)

1a. The European Parliament may hear the candidates prior to appointment and issue an opinion.

Amendment 38
Article 23, paragraph 2

2. The Executive Director of the Agency shall be appointed by the **Management Board** on the grounds of merit and documented administrative and management skills, as well as his/her relevant experience in the field of management of the external borders. **The Management Board shall take its decision by a two-thirds majority of all members with a right to vote.**

Power to dismiss the Executive Director shall be with the **Management Board, according to the same procedure.**

2. The Executive Director of the Agency shall be appointed by the **Commission** on the grounds of merit and documented administrative and management skills, as well as his/her relevant experience in the field of management of the external borders.

Power to dismiss the Executive Director shall be with the **Commission.**

Amendment 39
Article 23, paragraphs 3, 4 and 5

3. The Executive Director shall be assisted by a Deputy Executive Director. If the Executive Director is absent or indisposed, the Deputy Executive Director shall take his/her place.

4. The Deputy Executive Director shall be appointed by the Management Board on the grounds of merit and documented administrative and management skills, as well as his/her relevant experience in the field of management of the external borders on the proposal of the Executive Director. The Management Board shall take its decision by a two-thirds majority of all members with a right to vote.

Power to dismiss the Deputy Executive Director shall be with the Management Board, according to the same procedure.

5. The **terms of the offices** of the Executive Director **and the Deputy Executive Director** shall be five years. **They** may be prolonged by the **Management Board** once for another period of up to five years.

5. The **term of office** of the Executive Director shall be five years. **This term of office** may be prolonged by the **Commission** once for another period of up to five years.

Amendment 40
Article 23a (new)

Article 23a

Hearing of the Executive Director before the European Parliament

Each year the Executive Director shall submit and present to the European Parliament the general report on the Agency's activities. The European Parliament may also request at any time a hearing with the Executive Director on any subject related to the Agency's activities.

Amendment 41
Article 24a (new)

Article 24a

Working languages

The Agency shall determine its internal working languages.

Amendment 42
Article 25a (new)

Article 25a

Protection of personal data

1. Regulation (EC) No 45/2001 shall apply to the processing of personal data by the Agency.

2. Within six months after the entry into force of the Regulation, the Management Board shall lay down the practical arrangements for the application of paragraph 1.

Amendment 43
Article 26, paragraph 1, indent 4a (new)

- a contribution from the host Member State.

Amendment 44
Article 26, paragraph 3

3. The Executive Director shall draw up an estimate of the revenues and expenditure of the Agency for the following financial year and shall forward it to the Management Board together with ***an*** establishment plan.

3. The Executive Director shall draw up an estimate of the revenues and expenditure of the Agency for the following financial year and shall forward it to the Management Board together with ***a provisional*** establishment plan.

Amendment 45
Article 26, paragraph 6

6. The estimate shall be forwarded by the

6. The estimate ***and the provisional***

Commission to the European Parliament and the Council (hereinafter referred to as the "budgetary authority") together with the preliminary draft budget of the European Union.

establishment plan shall be forwarded by the Commission to the European Parliament and the Council (hereinafter referred to as the "budgetary authority") together with the preliminary draft budget of the European Union.

Amendment 46

Article 26, paragraph 11, subparagraph 2

Where a branch of the budgetary authority **has notified its intention** to deliver an opinion, it shall forward its opinion to the Management Board within a period of six weeks from the date of notification of the project.

The budgetary authority **shall notify the Agency whether it intends** to deliver an opinion. It shall forward its opinion to the Management Board within a period of six weeks from the date of notification of the project. **The Management Board shall defer implementation of the project in question until the opinion has been delivered.**

Amendment 47

Article 29, paragraph 1

1. Within **three years** from the date of the Agency having taken up its responsibilities, and every **five years** thereafter, the Management Board shall commission an independent external evaluation on the implementation of this Regulation.

1. Within **two years** from the date of the Agency having taken up its responsibilities, and every **two years** thereafter, the Management Board shall commission an independent external evaluation on the implementation of this Regulation, **placing particular emphasis on respect for fundamental rights.**

Amendment 48

Article 29, paragraph 1a (new)

1a. The first evaluation shall also contain the findings of the Agency of the need for and feasibility of setting up a European Border Guard.

Amendment 49

Article 29, paragraph 2

2. The evaluation shall examine how

2. The evaluation shall examine how

effectively the Agency fulfils its mission. It shall also assess the impact of the Agency and its working practices. The evaluation shall take into account the views of stakeholders, at both European and national level.

effectively the Agency fulfils its mission. It shall also assess the impact of the Agency, **its added value** and its working practices. The evaluation shall take into account the views of stakeholders, at both European and national level.

Amendment 50
Article 29, paragraph 3

3. The Management Board shall receive the findings of the evaluation and issue recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission, which **may** forward them, together with its own opinion as well as appropriate proposals, to the Council. An action plan with a timetable shall be included, if appropriate. Both the findings and the recommendations of the evaluation shall be made public.

3. The Management Board shall receive the findings of the evaluation and issue recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission, which **shall** forward them, together with its own opinion as well as appropriate proposals, to the **European Parliament and the** Council. An action plan with a timetable shall be included, if appropriate. Both the findings and the recommendations of the evaluation shall be made public.

Amendment 51
Article 30

The financial rules applicable to the Agency shall be adopted by the Management Board after the Commission has been consulted. They may not depart from the Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, unless specifically required for the Agency's operation and with the Commission's prior consent.

The financial rules applicable to the Agency shall be adopted by the Management Board after the Commission has been consulted. They may not depart from the Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, unless specifically required for the Agency's operation and with the Commission's prior consent. **The budgetary authority shall be duly informed of such departure.**

Amendment 52
Article 31

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

The Agency shall take up its responsibilities from 1 January 2005.

This Regulation shall enter into force ***once a definitive seat for the Agency has been established.***

The decision on the seat shall be taken following a procedure in which Member States interested in obtaining the seat make an offer as to what they are prepared to contribute to the Agency. They shall outline inter alia whether they are willing to provide a building, what other assistance might be given and the expertise available in the Member State in the fields of activity of the Agency.

The decision on the seat of the Agency shall be taken by the Council not later than 31 December 2004. The Member State designated to host the Agency shall contribute financially to its setting up.

Work, the family and private life

{ TC"(A5-0092/2004 - Rapporteur: Regina Bastos) "l3 \n> * MERGEFORMAT }

Committee on Women's Rights and Equal Opportunities

PE 337.816

European Parliament resolution on reconciling professional, family and private lives (2003/2129(INI))

The European Parliament,

- having regard to its resolution of 9 June 1983 on family policy in the European Community¹,
- having regard to the Conclusions of the Council and of the ministers responsible for family affairs of 29 September 1989 regarding family policies²,
- having regard to the Council Recommendation 92/241/EEC of 31 March 1992 on child care³,
- having regard to Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding⁴,
- having regard to its resolution of 14 December 1994 on protection of families and family units at the close of the International Year of the Family⁵,
- having regard to Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC⁶,
- having regard to its resolution of 28 January 1999 on the protection of families and children⁷,
- having regard to the resolution of the Council and of the Ministers for Employment and Social Policy, meeting within the Council of 29 June 2000 on the balanced participation of women and men in family and working life⁸,

¹ OJ C 184, 11.7.1983, p. 116.

² OJ C 277, 31.10.1989, p. 2.

³ OJ L 123, 8.5.1992, p. 16.

⁴ OJ L 348, 28.11.1992, p. 1.

⁵ OJ C 18, 23.1.1995, p. 96.

⁶ OJ L 145, 19.6.1996, p. 4.

⁷ OJ C 128, 7.5.1999, p. 79.

⁸ OJ C 218, 31.7.2000, p. 5.

- having regard to the indicators on combining family and professional life adopted by the European Council in 2000,
 - having regard to Article 9 of the Charter of Fundamental Rights of the European Union,
 - having regard to the Joint Report by the Commission and the Council of March 2003 on supporting national strategies for the future of health care and care for the elderly,
 - having regard to the fact that 2004 has been proclaimed International Year of the Family,
 - whereas 2004 marks the tenth anniversary of the proclamation by the UN General Assembly of 'International Day of Families' which has been celebrated every year (on 15 May),
 - having regard to Article 136, Article 137(1) and Article 141(3) of the Treaty establishing the European Community,
 - having regard to Rule 163 of its Rules of Procedure,
 - having regard to the report of the Committee on Women's Rights and Equal Opportunities and the opinion of the Committee on Employment and Social Affairs (A5-0092/2004),
- A. whereas one of the aims of the European Union is to promote employment and improve living and working conditions,
- B. whereas the European Union supports and complements the activities of the Member States with a view to achieving the objectives set out in Article 136 of the EC Treaty, in particular in the fields of equality between men and women with regard to labour market opportunities and treatment at work,
- C. whereas, with regard to Article 141(3) of the EC Treaty, it is important to protect male and female employees exercising the rights inherent in fatherhood, motherhood or the combination of professional and family lives,
- D. whereas the European Council in Lisbon in March 2000 recognised that it was important to improve all aspects of equal opportunities, in particular by making it easier to reconcile professional and family life, and that such measures should help to ensure that, by 2010, the proportion of women in employment is more than 60%,
- E. whereas the European Council in Barcelona in March 2002 concluded that the Member States should eliminate obstacles to the participation of women in the labour market and set up, by 2010, childcare facilities for at least 90% of children between three years old and the mandatory school age and for at least 33% of children under three years old, which facilities must be equally available in towns and in rural areas,
- F. whereas the Member States may commit to allowing men and women to reconcile family responsibilities and professional responsibilities, as envisaged in the Beijing Programme of Action,

- G. whereas making allowance for the combining of professional and personal lives contributes to the personal fulfilment of men and women, promotes an increase in the rate of employment of women and, hence, in the overall employment rate and in the birth rate,
- H. whereas making allowance for reconciling the different stages of life is not a financial burden for businesses but a useful and relevant investment which will promote long-term growth,
- I. whereas women must be able to choose whether to work, even if they have children, or to stay at home,
- J. whereas the rights of children must be one of the cornerstones at the heart of family policies,
- K. whereas, in the European Union, 17% of the population is under 15 years old, 16% of the population is over 65 years old and people with disabilities make up between 10% and 12% of the population; whereas, furthermore, at least 15% of children suffer, to varying degrees, from specific learning difficulties (dyslexia, dyspraxia, dyscalculia, attention deficit disorder, etc.),
1. Underlines that the European Employment Strategy and the Lisbon Strategy aim at increasing the fairness of employment for women and men and at supporting the social changes needed for this; calls on the Commission, therefore, to give practical effect to the employment guidelines by clarifying the action programmes used to co-finance active measures on national labour markets to promote equal opportunities;
 2. Points out that the adoption of policies and the taking of measures to promote the reconciliation of professional and private life will also make a decisive contribution to tackling the demographic problem faced by the majority of the Member States;
 3. Considers that family policy should create conditions which enable parents to spend more time with their children and that in many cases a more equal division of parents' time between paid work and caring for their children would lead to better contact between parents and children and also have a positive effect on family formation and family stability and considers that a general reduction of daily working time is the best way of combining work and family life;
 4. Is convinced that the significant pay gap between men and women is both a major cause and a result of the present unequal division and value of labour as between men and women;
 5. Encourages the Commission to draw up, on the basis of the indicators on combining professional and family life adopted by the European Council in 2000, a follow-up report on the situation in the Member States and accession states, and at the same time encourages the Member States to develop various forms of cooperation and networks for the exchange of good practices, in order to obtain accurate information on the actual situation;
 6. Calls on the Member States and accession states to reconsider the national systems for gathering data and gradually to perfect them, in order to ensure that statistics for the nine

indicators adopted by the European Council in 2000 can be produced every year; also calls on the Member States and the accession states to create Internet sites incorporating data banks on existing support structures;

7. Encourages the Member States and accession states to analyse the impact of their policies on families (family mainstreaming), while at the same time calling on them to separate gender mainstreaming and family mainstreaming; also calls on the Commission, in the context of its communication of 2002 on impact assessment (COM(2002) 276), to take account of the various dimensions and definitions of the family in order to identify the social impact of the measures proposed;
8. Urges the Commission to take the measures needed to draw up a European Parliament and Council framework directive on reconciling professional, family and private lives, with a view to implementing the ad hoc Council resolution of 29 June 2000 and the conclusions of the European Council in Barcelona;
9. Calls upon the EU institutions to improve their employees' opportunities for combining work, family and personal life throughout life, using innovative models for working time and work organisation and bearing in mind that both sexes must have equal opportunities and responsibilities and that, as a minimum, the social policies *acquis* of the Union is fully reflected in the working conditions of all its staff;
10. Calls on the Commission to organise an annual conference on 'Reconciling work and family life' together with the European social partners, the Member States, NGOs and representatives of the EP's competent committees in order to take stock of progress made and to analyse outstanding problems and find solutions;
11. Recommends that the Commission conduct an awareness-raising campaign and introduce pilot projects to facilitate the balanced participation of women and men in professional and family life;
12. Urges the Member States and accession states to promote information and awareness-raising campaigns in order to change attitudes so as to bring about better sharing of family responsibilities within couples among both the general population and specific target groups;
13. Observes that private households can also be a source of qualified jobs in the field of running the household, bringing up children and care, and calls on the Member States to promote home economics as an occupational field;
14. Suggests that each Member State and accession state draw up an information and awareness-raising guide for the social partners, for business leaders, human resources directors and employees, setting out arguments in favour of promoting good practices with the aim of reconciling professional and family life more effectively;
15. Notes that, alongside support for parents in caring for children and persons in need of care in the form of regular allowances and tax exemptions or reductions, a new way should be found to offer parents greater freedom of choice, for example in the form of cash benefits or vouchers (childcare vouchers, vouchers for the recruitment of home helps, service vouchers or coupons) and, moreover, that those who opt to work within the family and to

bring up children must enjoy the same social protection in old age as those who have been gainfully employed;

16. Recommends the adoption of fiscal policies which neither discriminate against the family nor penalise households on the basis of size; welcomes policies with social aims of this kind already adopted successfully by the Member States and by regional and municipal authorities, within the scope of their respective competences; furthermore, and without prejudice to the principle of subsidiarity, considers that if there are discriminatory weightings in policies governing taxation, other levies and tariffs, they should be of a positive nature, favouring families and their unifying role, and never negative forms of discrimination penalising families, in particular larger households;
17. Emphasises the need to introduce specific allowances in all the Member States and accession states, especially for children with disabilities, families with a large number of children or multiple births and to help low-income families with three children or more;
18. Notes the specific needs of single-parent families, of which the parent is most often a woman, and hence calls on the Member States and accession states to increase aid to such families, to increase the credit given for periods spent bringing up children and to guarantee individual social security rights;
19. Calls on the Member States and accession countries to use an 'audit for a family-friendly working environment' to encourage firms to implement a family-oriented personnel policy;
20. Calls on the Member States to consider that part of the expenditure incurred by businesses relating to employees with families should be borne by the State, since measures eligible for a tax rebate of this sort might, for example, encourage part-time work, the involvement of employers in paying for childcare, and recruiting people to replace those on maternity, paternity and parental leave and so on;
21. Welcomes the conclusions of the European Council in Barcelona, which commit the Member States to eliminating obstacles to the participation of women in the labour market and to introducing by 2010 childcare for 90% of children between three years of age and the mandatory school age, and for at least 33% of children under three; emphasis, however, that in order to achieve these objectives, national, regional or local authorities must step up their financial contributions towards the creation and/or operation of high-quality childcare services at affordable prices;
22. Is deeply concerned about the work/family situation in the new Member States where previous child care infrastructures have largely been demolished;
23. Calls on the Member States and the accession states to encourage flexibility and diversity in services for the care of children, the elderly and other dependants, in order to increase choice and cater for the preferences, needs and specific circumstances of children and their parents (especially children with special needs), including the availability of such services in all areas and regions of the Member States and accession states;
24. Also encourages the national, regional and local authorities, the social partners, businesses and other competent entities to facilitate the development of mini-crèches in

firms or groups of firms, as well as the flexibility of working hours, school timetables (including extracurricular activities and supervised homework) and the timetables of urban services (in particular opening hours of service-providers and shops, transport, and so on);

25. Recommends, without prejudice to the principle of subsidiarity, that the Member States and regional and municipal authorities, within the scope of their respective competences, devise and pursue family-friendly housing and town-planning policies, creating inclusive and "human" urban environments with a sense of community and space in order to meet the basic needs of households consisting of several generations (children and young people, people of working age and retired, elderly people) under conditions likely to promote the compatibility of the school, professional, personal and family lives of all their members;
26. Urges the Member States and the accession states to facilitate access to paid parental leave with a non-transferable portion, respecting freedom of choice for parents, as well as access to other forms of long-term leave, including career breaks, as well as special short-term leave (leave for breast-feeding or where a family member is ill), whilst envisaging a degree of flexibility in the organisation of leave, in order to facilitate the resumption of work by those returning to the labour market;
27. Calls on the Member States and accession states to implement fully Directive 75/117/EEC¹ on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women, and to take decisions on parental leave and other periods of absence on the basis, *inter alia*, of equal pay;
28. Calls for ancillary training and further training measures to be stepped up in order to ensure the integration of those returning to the labour market, including those returning after sabbatical leave, in which connection special care should be taken to ensure that it is possible to take advantage of further vocational training courses during parental leave;
29. Recalls that learning throughout the entire working life as well as access for women to the information society, is possible only if study leave is financially viable, by means of either public funding or employment-related arrangements;
30. Also emphasises the importance of flexible working hours and distance working, where possible, which allow both male and female employees to meet their professional, family and educational responsibilities, with a balance being struck between their interests and those of the employer;
31. Considers it essential to promote quality part-time work for both men and women; emphasises, however, that part-time work may be an effective way of reconciling family and employment and promoting equality of opportunity only if people of all levels of qualification are able to secure part-time work, if long-term career prospects are not affected, the level of social protection provided is reasonable and the workload is manageable;

¹ OJ L 45, 19.2.1975, p. 19.

32. Criticises the fact that the issue of assistance for the oldest section of the population is not receiving the attention it deserves, and urges the Member States to promote adequate provision of high-quality services, including domestic help for the elderly, provided by staff with adequate training;
33. Instructs its President to forward this resolution to the Council, the Commission and the governments of the Member States and the accession countries.

Women from minority groups in the European Union

{ TC"(A5-0102/2004 - Rapporteur: Elena Valenciano Martínez-Orozco)"\l3 \n> *
MERGEFORMAT }

Committee on Women's Rights and Equal Opportunities
PE 337.818

European Parliament resolution on the situation of women from minority groups in the European Union (2003/2109(INI))

The European Parliament,

- having regard to the EC Treaty, especially Article 2, Article 3(2), Articles 6 and 13 and Article 141(4),
- having regard to the Universal Declaration on Human Rights, the United Nations Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the United Nations pacts on civil and political rights and economic, social and cultural rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, which recognise that every individual's right to equality before the law and protection against discrimination is a universal right and which have been signed by all the Member States,
- having regard to the 1979 United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the 1995 Beijing Platform for Action, which recognise the gender dimension in ethnic discrimination,
- having regard to Convention No 111 of the International Labour Organisation, which prohibits discrimination in employment and work,
- having regard to Articles 21 and 26 of the Charter of Fundamental Rights of the European Union,¹
- having regard to Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin²,
- having regard to Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation³,
- having regard to Decision No 293/2000/EC of the European Parliament and of the Council of 24 January 2000 adopting a programme of Community action (the Daphne

¹ OJ C 364, 18.12.2000, p. 1.

² OJ L 180, 19.7.2000, p. 22.

³ OJ L 303, 2.12.2000, p. 16.

programme) (2000 to 2003) on preventive measures to fight violence against children, young persons and women¹,

- having regard to the Communication from the Commission to the Member States establishing the guidelines for the Community initiative ‘Equal’ concerning transnational cooperation to promote new means of combating all forms of discrimination and inequalities in connection with the labour market²,
- having regard to Council Decision 2000/750/EC of 27 November 2000 establishing a Community action programme to combat discrimination (2001 to 2006)³,
- having regard to Council Decision 2001/51/EC of 20 December 2000 establishing a programme relating to the Community framework strategy on gender equality (2001-2005)⁴,
- having regard to the Commission Communication to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on the draft joint report on social inclusion (COM(2001) 565),
- having regard to the Council Decision 2001/903/EC of 3 December 2001 on the European Year of People with Disabilities 2003⁵,
- having regard to Decision No 50/2002/EC of the European Parliament and of the Council of 7 December 2001 establishing a programme of Community action to encourage cooperation between Member States to combat social exclusion⁶,
- having regard to the Communication from the Commission to the Council and the European Parliament of 24 January 2003 entitled ‘Towards a United Nations legally binding instrument to promote and protect the rights and dignity of persons with disabilities’(COM(2003) 16),
- having regard to the Council resolution of 6 February 2003 on social inclusion through social dialogue and partnership⁷,
- having regard to the Council resolution of 15 July 2003 on promoting the employment and social integration of people with disabilities⁸,
- having regard to the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions of 30 October 2003 entitled ‘Equal opportunities for people with disabilities: a European action plan’ (COM(2003) 650),

¹ OJ L 34, 9.2.2000, p. 1.

² OJ C 127, 5.5.2000, p. 2.

³ OJ L 303, 2.12.2000, p. 23.

⁴ OJ L 17, 19.1.2001, p. 22.

⁵ OJ L 335, 19.12.2001, p. 15.

⁶ OJ L 10, 12.1.2002, p. 1.

⁷ OJ C 39, 18.2.2003, p. 1.

⁸ OJ C 175, 24.7.2003, p. 1.

- having regard to the Council’s conclusions of 1 and 2 December 2003 on promotion of equal opportunities for people with disabilities,
 - having regard to the conclusions of the Council of Europe's working group on discrimination against women with disabilities,
 - having regard to Rule 163 of its Rules of Procedure,
 - having regard to the report of the Committee on Women's Rights and Equal Opportunities (A5-0102/2004),
- A. whereas, in accordance with Article 6 of the EU Treaty, the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law; whereas these principles must include respect for the diversity of the peoples living in the EU, as regards their culture, language and ethnic origin, and respect for, and the taking into account of, the interests and concerns of all groups and minorities,
 - B. whereas EU legislation prohibits any discrimination based on race or ethnic origin in areas such as employment, education, occupational training, social protection and social security, health care, social benefits, access to goods and services and the supply of goods and services,
 - C. whereas the Copenhagen criteria for the candidate countries’ accession to the EU also make reference to the protection of minorities,
 - D. whereas under Article 3(2) of the EC Treaty, the Community aims to eliminate inequalities and to promote equality between men and women, in particular, as women are often victims of multiple forms of discrimination,
 - E. whereas women’s NGOs and their networks make a considerable contribution to upholding women’s rights and combating discrimination against women,
 - F. whereas EU legislation prohibits any discrimination relating to disability in employment and occupation,
 - G. whereas disabled women experience the same sort of discrimination, compared with disabled men, as is generally experienced by women compared with men, and also compared with non-disabled women, as well as having all the disadvantages of a disability, although the disadvantages vary according to the nature and severity of the disability,
 - H. whereas it is of prime importance to implement policies that will enable disabled women to lead an independent life, allow them to support themselves through work, where this is possible, choose their private, professional and family life, have access to education, employment and public and private places, and enable the whole of society to benefit from their experience, abilities and talents; whereas policies for disabled people must be devised, adopted and assessed with the aim of ensuring equal treatment for disabled women,

- I. whereas the critical areas for improving the status of disabled women are the promotion of education and training, employment, social policy, involvement in decision-making, participation and integration in social and cultural life, the right to sexuality, health and motherhood and the right to found a family, protection against violence and sexual abuse, promotion of self-esteem, promotion of networks and organisations for disabled women and their involvement in decision-making, and improvement of the media image of disabled women,
- J. whereas migrant women represent on average 50 % of the immigrant population in the EU and their economic contribution is significant for the survival of their families and the economic stability of their countries of origin; whereas these women are very often faced with double or multiple forms of discrimination, as women in their communities and because of their ethnic origin,
- K. whereas racism, xenophobia and discrimination encountered by migrant women are common occurrences throughout the EU; whereas these contribute to poverty and social exclusion and, consequently, make it difficult to get access to resources and basic social services, such as health care, housing, welfare and social protection benefits, and access to the employment market, education, training and promotion, rates of pay and social security,
- L. whereas migrant women are particularly vulnerable to poverty and social exclusion because of their low level of education and their cultural and language differences; whereas they are often victims of trafficking and other forms of violence such as domestic violence, prostitution, forced marriage and genital mutilation,
- M. whereas women who have joined their husbands under the family reunification policy do not have individual rights and are dependent on their husband's legal status; whereas these women run the risk of expulsion in the event of divorce or their husband's death and are often powerless to report violence when they are the victims thereof,
- N. whereas, with the future enlargement of the EU and the accession of five countries in particular – the Czech Republic, Slovakia, Hungary, Bulgaria and Romania – which have the most sizeable Roma communities, the Roma will become the largest ethnic minority in the EU and thus the poverty, exclusion and economic, social and political discrimination that they face will become a challenge and a major subject for concern for the EU,
- O. whereas Roma women are victims of multiple discrimination, they are discriminated against and marginalised in society because of their ethnic minority status and they are oppressed within their own community on gender grounds; whereas, by virtue of this situation, these women are simultaneously confronted with racism, sexism, poverty, exclusion and violation of their human rights, resulting in a limited life expectancy and a high mortality rate, illiteracy due to restricted access to education, the persistence of sexual prejudices, limited access to reproductive and sexual health care, very early motherhood and/or forced marriages, abduction, trafficking, forced prostitution, sexual abuse and domestic violence, non-participation in the employment market and non-participation in decision-making in their community,

Disabled women

1. Urges the Member States to promote the fundamental rights of disabled women and, in particular, to ensure that Council Directive 2000/78/EC on equal treatment in employment and occupation is incorporated into law and implemented as soon as possible;
2. Calls on the Council, the Commission and the Member States to take account of the interests and needs of disabled women in all relevant policies, programmes and Community instruments such as the European Social Fund, the Equal initiative, legislation and the action programme against discrimination, the action programme on equality between women and men, the combating of social exclusion, health and culture programmes, the Daphne programme, initiatives in connection with the information society, research, etc.;
3. Welcomes the Commission's action plan (2004-2010) for disabled people; calls on the Commission to take account of gender aspects in drawing up priorities for the plan and its implementation; stresses in this connection the need to include information on the situation of disabled women in future Commission reports on the situation of disabled people in an enlarged Europe;
4. Calls on the EU and Member States to develop statistics on the situation of disabled people, with a breakdown by sex, and to carry out studies on disabled women;
5. Calls on the Member States to encourage disabled women's access to education, training and employment in an ordinary environment, to assist their real integration in society and development of their autonomy, self-esteem and self-defence, in order to avoid the negative effects of excessive protection;
6. Calls on the Member States to encourage the occupational reintegration of disabled women, whether in relation to training offered or the possibility of combining training and family responsibilities, e.g. training locations, care of dependent persons, flexible hours, part-time options, facilities and transport infrastructure, personal assistance or contact with the family; urges the two sides of industry to promote equal opportunities and access to employment and training for disabled women, including migrant women, in their measures and collective agreements;
7. Calls on the Member States to encourage the formation of networks of disabled women and support groups, at national, regional and local level, with a view to improving disabled women's means of expression and their involvement in social and political life and to providing premises, financial resources, transport facilities and facilities for the care of children or other dependent people;
8. Calls on the Member States to take measures to increase disabled women's involvement in political life and decision-making processes;
9. Calls on all parties involved, including the media, to undertake initiatives to change attitudes and behaviour towards disabled women, and to involve disabled women in the drawing up and implementation of these initiatives;

10. Calls on the Member States to take vigorous measures against all forms of violence against disabled women and girls, especially those in institutions, and to undertake studies specifically on violence against disabled women, to determine the origin and scale of this violence and to ensure better defined measures;

Migrant women

11. Welcomes the legislation and action programme against discrimination but points out that these measures do not include equality between men and women; in view of multiple forms of sex discrimination, calls for equality between men and women to be integrated into policies, programmes and measures to combat racism, discrimination and social exclusion;
12. Calls on the Member States and the Commission to do everything possible to ensure effective application of the United Nations Convention on the Elimination of All Forms of Discrimination against Women, and its optional protocol, and the International Convention on the Elimination of All Forms of Racial Discrimination;
13. Believes that the underlying tension in the EU's increasingly multi-ethnic and multicultural societies is linked to the sharing out of the labour market and the coexistence of cultures; is of the opinion that this situation, which fuels racism and racial discrimination, particularly affects women, on both gender and ethnic grounds, and leads to social exclusion, a precarious legal status, various forms of violence, difficulties in access to the labour market, the underrating of their contribution to the host society and the persistence of a stereotyped view of migrant women as a docile, flexible and cheap labour force;
14. Calls on the Member States, with the Commission's assistance, to draw up a strategy with accompanying measures, to promote the integration of migrant women in the host country by:
 - organising courses in the host country's language and general culture at affordable prices;
 - setting up centres for health consultation, legal aid, occupational training as a preliminary to looking for work, and refuges for women who are victims of domestic violence,
 - establishing parenting support centres,
 - establishing good-quality child-care services at affordable prices,
 - increasing public service staff's awareness of cultural diversity and gender equality,
 - promoting anti-racism awareness campaigns and intercultural dialogue in the field of education,
 - promoting awareness campaigns among migrant populations on the importance of education for women and girls,

- involving migrant women in political life and decision-making processes,
 - promoting studies, research and statistics broken down by sex;
15. Recommends that Member States and Community bodies take particular account of the situation of Muslim women in the EU and take measures to protect these women against violation of their human rights, in religious communities, and against practices that hinder their education, training, employment, advancement and, above all, integration in the host countries; calls for measures against female genital mutilation and forced marriages, and for measures that recognise this type of persecution as a legitimate reason for requesting asylum;
 16. Considers that migrants, including women, who hold a long-term residence permit in a Member State should benefit from ***rights and obligations comparable to those of European Union citizens***, as the only appropriate means of combating all forms of discrimination and creating an inclusive society;

Roma women

17. Welcomes the EU's active support for efforts by public authorities, NGOs and other players who are working to improve the Roma's levels of integration and Roma women's situation in the Member States and acceding and candidate countries, by policies, programmes and projects to combat discrimination, poverty and social exclusion;
18. Nevertheless, draws the attention of the Commission and governments concerned to the need to ensure (a) the effective application of policies implemented at Community and national level that are likely to improve Roma women's economic, social and political situation, their involvement in the decision-making process and protection of their human rights, (b) the inclusion of the issues concerning Roma populations in general, and equality of treatment and opportunity for Roma women in particular, in all relevant policies and programmes relating to employment policies and social inclusion, the European Social Fund, the Equal initiative, education and training programmes, the Daphne programme, and legislation and the action programme against discrimination, (c) consultation of Roma women when drawing up any programme or project likely to affect them and when adopting positive measures on their behalf;
19. Considers that the lack of adequate data and statistics in the Member States and acceding and candidate countries makes it difficult to understand the scale of discrimination against the Roma, especially Roma women, and acts as a barrier to devising effective policies and assessing the impact of policies that have already been implemented;
20. Calls on the governments concerned to take measures to improve the reproductive and sexual health protection of Roma women, to prevent and put an end to forced sterilisation, and to promote family planning, alternative arrangements to early marriages and sex education;

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21. Instructs its President to forward this resolution to the Council and the Commission, the governments of the Member States, the acceding countries and the candidate countries.

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Population and development

{ TC"(A5-0055/2004 - Rapporteur: Karin Junker)"\l3 \n> * MERGEFORMAT }

Committee on Development and Cooperation

PE 326.776

European Parliament resolution on population and development: 10 years after the UN Conference in Cairo (2003/2133(INI))

The European Parliament,

- having regard to the Programme of Action of the International Conference on Population and Development held from 5 to 13 September 1994 in Cairo, which was adopted by 179 participating states,
- having regard to the key actions for the further implementation of the Programme of Action of the International Conference on Population and Development adopted by the Twenty-first Special Session of the UN General Assembly, which was held from 30 June to 2 July 1999 in New York,
- having regard to Article 25(1) of the Universal Declaration of Human Rights, which includes health as a human right,
- having regard to the Strategic Health Objectives adopted at the 1995 World Conference on Women in Beijing and confirmed at the Twenty-third Special Session of the UN General Assembly on Beijing + 5: 'Women 2000: Gender Equality, Development and Peace for the Twenty-First Century', which was held in New York from 5 to 9 June 2000,
- having regard to the Millennium Development Goals adopted at the UN Millennium Summit, which was held from 6 to 8 September 2000,
- having regard to the Monterrey Consensus, which was adopted on 22 March 2002 at the International Conference on Financing for Development,
- having regard to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 7 November 1967,
- having regard to the outcome of the 1993 Vienna Human Rights Conference, which specifically recognised women's rights as human rights and condemned violations of women's right to sexual self-determination perpetrated in the name of culture and tradition,
- having regard to the Johannesburg Declaration on Sustainable Development, adopted on 4 September 2002 by the World Summit on Sustainable Development,
- having regard to the Resolution by the Council of Europe on the impact of the 'Mexico City Policy' on the free choice of contraception in Europe (resolution 1347 (2003)1),

- having regard to the Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by UN General Assembly resolution 44/25 of 20 November 1989,
- having regard to the European Population Forum held from 12 to 14 January 2004 in the United Nations Economic Commission for Europe, which discussed the urgent issues, for Europe, North America and the countries of the former Soviet Union, of demography, sexual and reproductive health and the rights pertaining thereto, and, in addition, gave particular prominence to implementation of the Cairo Action Programme in the developing countries by the donor nations,
- having regard to Regulation (EC) No 1567/2003 of the European Parliament and of the Council of 15 July 2003 on aid for policies and actions on reproductive and sexual health and rights in developing countries¹,
- having regard to Regulation (EC) No 1568/2003 of the European Parliament and of the Council of 15 July 2003 on aid to fight poverty diseases (HIV/AIDS, tuberculosis and malaria) in developing countries²,
- having regard to Article 25(1)(c) and (d) and Article 31 of the ACP-EU Partnership Agreement signed in Cotonou in June 2000³,
- having regard to its resolution of 4 July 1996 on the follow-up to the Cairo International Conference on Population and Development⁴,
- having regard to the resolution on the importance of the UN World Conferences of 1990 to 1996 for cooperation between the European Union and the ACP States in the context of the Lomé Convention, adopted by the ACP-EU Joint Parliamentary Assembly on 29 October 1997 in Togo⁵,
- having regard to the resolution on the follow-up to the Fourth World Conference on Women (Beijing, 1995), adopted by the ACP-EU Joint Parliamentary Assembly on 23 March 2000 in Abuja, Nigeria⁶,
- having regard to its resolution of 18 May 2000 on the follow-up to the Beijing Action Platform⁷,
- having regard to the resolution on the results of the special session of the United Nations General Assembly of 5-9 June 2000 on 'Women 2000: Equality, Development and Peace

¹ OJ L 224, 6.9.2003, p. 1.

² OJ L 224, 6.9.2003, p. 7.

³ OJ L 317, 15.12.2000, p. 3.

⁴ OJ C 211, 22.7.1996, p. 31.

⁵ OJ C 96, 30.3.1998, p. 19.

⁶ OJ C 263, 13.9.2000, p. 41.

⁷ OJ C 59, 23.2.2001, p. 258.

for the Twenty-First Century', adopted by the ACP-EU Joint Parliamentary Assembly on 12 October 2000 in Brussels, Belgium¹,

- having regard to the resolution on the importation and local production of generic drugs, adopted by the ACP-EU Joint Parliamentary Assembly on 22 March 2001 in Libreville, Gabon²,
- having regard to the resolutions on HIV/AIDS, adopted by the ACP-EU Joint Parliamentary Assembly on 23 March 2000 in Abuja, Nigeria³, and on 1 November 2001 in Brussels, Belgium⁴,
- having regard to the resolution on the rights of disabled people and older people in ACP countries, adopted by the ACP-EU Joint Parliamentary Assembly on 1 November 2001 in Brussels, Belgium⁵,
- having regard to its resolution of 7 February 2002 on EU policy towards Mediterranean partner countries in relation to the promotion of women's rights and equal opportunities in these countries⁶,
- having regard to the resolution on the impact of communicable diseases on health, young people, the elderly and people living with disabilities, adopted by the ACP-EU Joint Parliamentary Assembly on 21 March 2002 in Cape Town, South Africa⁷,
- having regard to its resolution of 25 April 2002 on the communication from the Commission to the Council and the European Parliament on the programme of action for the mainstreaming of gender equality in Community development cooperation⁸,
- having regard to its resolution of 20 September 2001 on female genital mutilation⁹ and to its resolution of 3 July 2002 on sexual and reproductive health and rights¹⁰,
- having regard to its position of 13 February 2003 on the proposal for a European Parliament and Council regulation on aid for policies and actions on reproductive and sexual health and rights in developing countries¹¹,
- having regard to the resolution on children's rights and child soldiers in particular, adopted by the ACP-EU Joint Parliamentary Assembly on 15 October 2003 in Rome, Italy¹²,

¹ OJ C 64, 28.2.2001, p. 49.

² OJ C 265, 20.9.2001, p. 24.

³ OJ C 263, 13.9.2000, p. 44.

⁴ OJ C 78, 2.4.2002, p. 66.

⁵ OJ C 78, 2.4.2002, p. 64.

⁶ OJ C 284 E, 21.11.2002, p. 337.

⁷ OJ C 231, 27.9.2002, p. 57.

⁸ OJ C 131 E, 5.6.2003, p. 153.

⁹ OJ C 77 E, 28.3.2002, p. 126.

¹⁰ OJ C 271 E, 12.11.2003, p. 369.

¹¹ OJ C 43 E, 19.2.2004, p. 342.

¹² OJ C 26, 29.1.2004, p. 17.

- having regard to the resolution adopted by the HIV/Aids Conference hosted by the Irish Council Presidency in Dublin from 23-24 February 2004,
 - having regard to Rule 163 of its Rules of Procedure,
 - having regard to the report of the Committee on Development and Cooperation and the opinion of the Committee on Women's Rights and Equal Opportunities (A5-0055/2004),
- A. whereas the Programme of Action of the International Conference on Population and Development adopted by 179 participating states in 1994 in Cairo and the consensus secured thereby was confirmed afresh five years later when the Programme of Action was reviewed,
 - B. whereas it is mainly women and children who live below the poverty line, and whereas it is mainly women and girls who are denied access to education – 57% of the children who do not attend primary school are girls –, so that girls and women are also severely disadvantaged when it comes to access to family planning measures,
 - C. whereas the Cairo Conference focused on a range of population and development objectives, mainly sustained economic growth, poverty eradication, education, gender equality, infant, child and maternal mortality reduction and, for the first time, the needs and rights of individual women and men, instead of setting abstract demographic targets,
 - D. reaffirming that everyone has the right to enjoy the highest attainable standard of physical and mental health, that reproductive health-service programmes should provide the widest range of services without any coercion and that all couples and individuals have the basic right to decide freely and responsibly the number of their children and the timing of the parenthood and to have access to information on family planning, education on prevention and the means to do so¹,
 - E. whereas sex education and family planning services must also make specific reference to men's responsibility for the reproductive health of their partners and family-oriented birth control,
 - F. whereas, according to the Programme of Action, 'all countries should strive to make accessible, through the primary health-care system, reproductive health to all individuals of appropriate ages as soon as possible and no later than the year 2015'²,
 - G. whereas the implementation of the Programme of Action so as to attain the Millennium Development Goals is also essential for the purposes of guaranteeing reproductive health, since three of the Millennium Development Goals are directly connected with reproductive health (reducing child mortality rates, improving maternal health and combating HIV/AIDS, malaria and other diseases); whereas the links between action to combat poverty, women's access to education and training, and sexual and reproductive health are broadly recognised and investment in those areas is particularly beneficial,

¹ Cairo Programme of Action, principle 8.

² Cairo Programme of Action, Chapter 7.6.

- H. regretting that, in 2000, total expenditure (including UN appropriations and loans) accounted for no more than 45.6% of the target set for that year in the Programme of Action, with donor countries contributing only 45% of the share of funds which they had undertaken to provide under the Cairo Programme of Action, while the developing countries contributed as much as 76%,
- I. whereas not all the donor countries feel committed to the issue to the same extent, and whereas that results in a massive funding gap for the sexual and reproductive health sector, although the European Union has played a key role in the short-term provision of funds and in supporting the Programme of Action by taking legislative measures,
- J. whereas, at the International Parliamentarians' Conference on the implementation of the Cairo Programme of Action, held in Ottawa in 2002, Parliamentarians undertook to press for between five and ten per cent of national budgets to be devoted to population policy and sexual and reproductive health,
- K. whereas the European Population Forum, which was organised by the United Nations Economic Commission for Europe and involved numerous parliamentarians and non-governmental organisations, specifically confirmed the Cairo Action Programme as a common basis for action in the area of sexual and reproductive health and the associated rights,
- L. whereas the Mexico City Policy withholds USAID funds from any foreign organisation that, with non-US money, performs, refers, counsels or advocates for termination of pregnancy, regardless of whether termination of pregnancy is legal in that country; whereas the MCP has worsened the problems it intended to resolve: as clinics close and access to reproductive health services becomes more difficult, fewer poor women worldwide can afford contraception, leading to an increase in unwanted pregnancies – and consequently abortions, many of them unsafe; this in turn increases the maternal mortality toll,
- M. whereas the need to ensure gender equality is no longer seen merely as a question of rights and good governance but also, and increasingly, as an aspect of economic efficiency, since progress in gender equality frequently has a positive impact on the welfare of society as a whole,
- N. concerned that, in some regions of the world, the false belief that men are supposedly superior to women leads to forced gender-specific abortions or the murder of new-born girls, so that, for example, according to the population census in China, 120 boys were born in 2000 for every 100 girls, which has led UNICEF to estimate that, in a few years' time, there will be 50 million men who will not be able to find a wife,
- O. whereas in many cases cultural, religious, social and economic factors and the human rights situation are not conducive to female emancipation and self-determination,
- P. aware that large numbers of girls and women throughout the world become the victims of socially structured violence, namely male domestic or military violence, rape in times of war or crisis, enforced pregnancies, sexual abuse and women and girls in every age group being forced into prostitution, genital mutilation, arranged marriages, the abandonment or sale of new-born girls, etc, which are all violations of universal human rights, run counter

to the right of sexual self-determination and seriously jeopardise women's reproductive and mental health,

- Q. aware that, according to UN surveys, every third pregnancy worldwide is unwanted or unplanned and that more than 300 million couples have no access to contraceptives, with the frequent result that women undergo abortions in unsafe conditions which have serious consequences for their health or may even result in death,
- R. whereas every year more than 500,000 women die in pregnancy and childbirth, and Millennium Development Goal 5 is to "reduce by three quarters the maternal mortality ratio", and whereas lack of access to basic health services and to reproductive health services and education, e.g. prenatal consultations, contributes to the fact that pregnancy remains a major cause of death or disabilities in women of developing countries,
- S. reaffirming, in conformity with the Programme of Action, that the family is the basic unit of society and is entitled to comprehensive protection and support,
- T. whereas fewer than 1% of women in the countries most seriously affected by HIV have access to services for the prevention of transmission of that virus from mother to child, and 3.2 million children under the age of 15 are infected with HIV, and whereas half of all new HIV infections affect young people, including girls and young women who constitute a very high-risk category, reflecting the need for specific HIV prevention programmes for young people,
- U. whereas, currently, 1 000 000 000 young people are entering the reproductive phase of their lives,
- V. concerned that numerous HIV/AIDS infections are caused by the use of dirty needles since, according to WHO statistics, 75% of all injections worldwide involve the use of needles that are not sterile, and aware that, in seven Chinese provinces, an estimated 370 000 people have become infected with HIV because of poor hygiene when they were donating blood,
- W. having regard to the alarming spread of sexually transmitted diseases including HIV/AIDS, necessitating the full integration of programmes for the prevention of sexually transmitted infections/HIV within sexual and reproductive health programmes,
- X. whereas, today, 80% of all refugees worldwide are women and children; whereas, when people are forced to flee their homes, maternal mortality rates are frequently higher because of poor nutrition and rapidly succeeding pregnancies; and whereas unprotected sex and situations involving gender-specific violence lead to an increase in the number of cases of sexually transmitted diseases,
- Y. whereas the WHO's plan to train tens of thousands of 'barefoot doctors' to provide health services in rural and poor areas is a step in the right direction,
- Z. regretting that conservative circles have succeeded in capping or even reducing funds for family planning and education, one result being, for example, that the USA, through the reinstatement of the Mexico City Policy, suspended its commitments for the United Nations Population Fund (UNFPA) and for NGOs active in this field from 2002 onwards;

applauding in this respect the Commission's initiative of compensating for the loss in funding,

- AA. welcoming the contribution, often made with considerable difficulty, of the organisations responsible, such as UNFPA, which should be given more comprehensive support, inter alia in cooperation with the European Union's services and the Member States' Foreign Offices, with a view to improving health services, offering the possibility of choice and preventing avoidable deaths among women in the prime of their lives,
 - AB. whereas measures such as primary healthcare services or basic education programmes may not be included by the industrialised nations and the developing countries when they are calculating expenditure on population policy, despite their connection therewith,
 - AC. whereas the costs and social consequences of failing adequately to meet the reproductive health needs and rights of the biggest ever generation of young people - 1.2 billion - about to enter their childbearing years would be very high, since this age group is already disproportionately affected by HIV/AIDS infections and unwanted pregnancies,
 - AD. whereas, in the implementation of the Programme of Action, civil society has an important and complementary role to play, and whereas the Commission should operate more closely with civil society groups, especially women's groups, women's associations, family planning organisations, and also private enterprises, especially in its country strategy documents,
 - AE. whereas the media have a particularly important role to play in consciousness-shaping and imparting information,
1. Calls for the publication of a comprehensive overview of progress in the implementation of the Cairo Programme of Action to mark the tenth anniversary of the International Conference on Population and Development (ICPD) in 2004 from every responsible UN body and, above all, from the governments of the EU Member States, the Commission and the ACP institutions, as well as from the non-governmental organisations concerned;
 2. Welcomes the organisation of the Round Table on ICPD+10 to review and assess progress made and the remaining challenges for the implementation of the ICPD Programme of Action, and congratulates the Commission on its support for this initiative;
 3. Calls on the European Union to publish a round-up of the initiatives launched so far, and calls on the Member States, in accordance with their undertakings in the area of public development aid (PDA), to make more funding available for the protection of reproductive health;
 4. Calls on the European Union, its Member States and the Accession Countries to meet in full the commitments given by them with regard to the implementation and the financing of the Cairo Programme of Action, including basic, secondary and higher education and training, especially for girls and women, elementary medical services and easy and affordable access for all young people, both women and men, throughout the reproductive phase in their lives, to high-quality health services for the protection of their sexual and reproductive health and of their right to decide equally, freely and responsibly in this field,

5. Calls on the Commission, to that end, to make the Programme of Action a key issue in its cooperation with third countries and at international fora and to devise strategies for its joint implementation;
6. Calls on the European Union and its Member States to integrate sexual and reproductive health and rights into their development policies and, in that context, to seek to reduce infant, child and maternal mortality rates;
7. Calls on the EU and its Member States to engage the United States in an informed debate about the impact of the reinstatement of the Mexico City Policy worldwide, encouraging President George W. Bush to rescind it;
8. Calls for a greater share of humanitarian and emergency aid to be used to benefit the reproductive health of people in emergency situations;
9. Considers it essential to treat the poorest of the poor in the countries in question as priority groups, for example through targeted interventions in programming, since these are the people who suffer most from lack of access to reproductive health care measures;
10. Calls on the European Union and the developing countries, in particular the ACP countries, to pay particular attention to the distress of a large number of women - especially young women - in rural areas in the developing countries who suffer from vaginal fistula (an estimated 0.3% of all pregnancies), and to do everything possible to prevent this disease and ensure proper treatment;
11. Stresses that abortion must not be regarded as a family planning method, but calls for legal and medically safe interventions to be possible for women who have no other way out of their difficulties, in order to protect their reproductive and mental health, which would mean a reduction in maternal mortality in developing countries, since 14% of the women who do not survive labour are victims of botched abortions;
12. Calls on states to refrain from prosecuting women who have had an illegal abortion;
13. Calls on the European Union and its Member States, to that end, to coordinate activities among the donor countries more efficiently and to provide more funds for programmes in the field of sexual and reproductive health and rights in order to fulfil the international commitments made in Cairo in 1994;
14. Calls on the EU and the international community as a whole, in the absence of a cure for AIDS, to increase resources for, and commitment to, international research and development of an AIDS vaccine and comprehensive clinical trials, particularly in developing countries;
15. Considers it appropriate to make budgetary assistance for healthcare available to developing countries, but insists that steps be taken to ensure that this aid is used also to maintain or restore reproductive health;

16. Stresses the need to improve access for women to education, economic independence and decision-making processes as essential rights and conditions for development, thus reducing gender-related inequality and poverty by empowering women;
17. Stresses the importance of useful, active involvement of young people in all projects, programmes and measures that will have a positive impact on their lives;
18. Calls on the Commission to develop a framework agreement which will encourage implementation of the Cairo objectives by 2015 and coordinate financial cooperation efforts on the part of the European Union, the Member States and the other institutional donors, so that the agreed objectives relating to total resources for programmes in the areas of population and reproductive health, including HIV/Aids, can still be achieved;
19. Calls on the Commission and the Member States to support research efforts towards developing protection against sexually transmitted diseases and HIV/Aids, and contraceptive methods which are easily usable by women;
20. Considers it necessary to raise the awareness of members of Commission delegations of the objectives set in Cairo and to inform them further on gender-specific issues, in order to hasten the achievement of the health and population goals which have been set;
21. Expects the WHO and all others responsible in this field to ensure that every conceivable effort is made to prevent HIV infection from dirty needles by taking the appropriate hygiene measures, in order to prevent damage to reproductive health caused by circumstances beyond the individual's control which can lead to life-threatening infections even though safe sex has been practised;
22. Calls on the European Union and its Member States, and governments and institutions in the developing countries, to undertake, in cooperation with those countries, widespread information and advice campaigns, as well as other appropriate measures, in developing countries with the following objectives:
 - the provision of sex education and information for children and young people in a form commensurate with their age and gender, which must be in keeping with their capabilities and life circumstances,
 - the fight against sexual exploitation and repression and/or support for victims of sexual exploitation and repression,
 - emphasis on the fact that every person is worthy of respect, whatever that person's sexual orientation,
 - emphasis on the right of every individual to self-determination in matters relating to sex,
 - adequate and affordable access to contraceptives,
 - general improvement in health care, including access to affordable sexual and reproductive health services;
 - provision of a sufficient supply of affordable medicinal products for the treatment of sexually transmitted diseases, especially HIV/AIDS, with the pharmaceutical industry also being involved by facilitating treatment with generic medicines, and specific research into child-focussed anti-retroviral therapy,
 - increased provision of integrated services to prevent the transmission of diseases from mother to child,

- facilitation of medically safe abortions,
 - provision of the information required to ensure safe pregnancy and motherhood;
23. Calls on the Commission and the ACP Council of Ministers to give reproductive health protection high priority in the framework of ACP cooperation, and to include the necessary measures in this area in the country strategy papers;
 24. Calls on the European Union, its Member States, the accession countries and the ACP countries to involve civil society organisations, including private enterprises, and particularly the media, in attaining their objectives;
 25. Calls on the developing countries to make available funds which they have earmarked for health care;
 26. Stresses that access to contraceptives, particularly condoms, must be significantly improved, above all for the poorest strata of society in the poorest countries;
 27. Calls on all governments to prohibit harmful traditions and practices, such as female genital mutilation, and to launch information campaigns on this subject in order to show that they constitute an unacceptable violation of the bodily integrity of women, are a significant threat to health and may even result in death; to this end, calls on them to incorporate in their policies the objectives and instruments mentioned in the 'Cairo Declaration' adopted by the governments and NGOs taking part in the 2003 Cairo Conference, held in the context of the international campaign 'STOPFGM!' (an international campaign to eradicate female genital mutilation);
 28. Welcomes the fact that fifteen African states have made genital mutilation of girls and women illegal, thereby ultimately contributing to the reproductive health of women by preventing dangerous infections and complications in pregnancy and childbirth; calls on those African states where genital mutilation is still practised likewise to take legislative steps to prohibit it, and in particular calls on the African States to ratify as soon as possible the "Additional Protocol to the African Charter on Human and Peoples' Rights and the Rights of Women in Africa" (Maputo Protocol) adopted in July 2003 by the Assembly of the African Union in the capital of Mozambique, which provides for the prohibition and condemnation of all harmful practices which violate respect for women's rights, and calls on the governments to adopt all legislative, information and educational measures needed to ensure an end to this practice; in particular calls for all the initiatives in this context to be encouraged and supported;
 29. Calls on the Commission to work with developing countries to tackle and prevent fistula problems at childbirth among girls and young women, particularly in relation to early marriage;
 30. Propose to give particular attention to gender equality and reproductive rights in its future annual reports on human rights in the world and in the European Union;
 31. Instructs its President to forward this resolution to the Commission, the Council, the ACP-EU Council, the governments of the Member States, the UN Secretary-General, the United Nations Population Fund (UNFPA) and the Joint United Nations Programme on AIDS (UNAIDS).

Simplifying and improving Community regulation

{ TC"(A5-0118/2004 - Rapporteur: Manuel Medina Ortega)"\l3 \n> * MERGEFORMAT }
Committee on Legal Affairs and the Internal Market
PE 338.461

European Parliament resolution on the Commission communication on simplifying and improving the Community's regulatory activity (COM (2001) 726 – C5-0108/2002 – 2002/2052(COS))

The European Parliament,

- having regard to the Commission Communication on simplifying and improving the regulatory environment (COM (2001) 726 – C5-0108/2002),
- having regard to the Commission Communication entitled ‘European Governance: Better lawmaking’ (COM(2002) 275),
- having regard to the Commission Communication on impact assessment (COM(2002) 276),
- having regard to the Commission Communication entitled ‘Consultation document: Towards a reinforced culture of consultation and dialogue - Proposal for general principles and minimum standards for consultation of interested parties by the Commission’ (COM(2002) 277),
- having regard to the Commission Communication entitled ‘Action plan "Simplifying and improving the regulatory environment"' (COM(2002) 278),
- having regard to the Commission Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on Environmental agreements at community level within the framework of the action plan on the simplification and improvement of the regulatory environment (COM(2002) 412),
- having regard to the Commission Communication to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on updating and simplifying the Community acquis (COM(2003) 71),
- having regard to the Commission Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions entitled ‘First Report on the Implementation of the Framework Action “Updating And Simplifying The Community Acquis”’(COM(2003) 623),
- having regard to the Interim Report from the Commission to the Stockholm European Council entitled ‘Improving and Simplifying the Regulatory Environment’ (COM(2001) 130),

- having regard to the Commission White Paper on European Governance¹,
- having regard to its resolution of 4 July 1996² on the report of the group of independent experts on simplification of Community legislation and administrative provisions ('deregulation'),
- having regard to its resolution of 13 May 1997³ on the reports from the Commission to the Council entitled "Better Law-making" on the application of the subsidiarity and proportionality principles on simplification and consolidation for the years 1994 to 1996, and to its resolutions of 18 December 1998⁴ and 26 October 2000⁵ on the similarly entitled reports from the Commission to the Council for the years 1997 to 1999,
- having regard to the interinstitutional agreement between the European Parliament, the Council and the Commission of 22 December 1998⁶ on common guidelines for the quality of drafting of Community legislation,
- having regard to its resolution of 29 November 2001 on the Commission White Paper on European governance⁷,
- having regard to the final report of the High-Level Advisory Group, chaired by Mr Mandelkern, on the quality of regulatory arrangements of 13 November 2001,
- having regard to its resolution of 5 February 2002 on the implementation of financial services legislation⁸,
- having regard to the report of the European Parliament's Directorate-General for Research on 'Regulatory Impact Analysis': developments and current practices in the EU Member States, on the EU level and in selected third countries', drawn up at the request of the Committee on Legal Affairs and the Internal Market (IV/JURI 106),
- having regard to its decision of 9 October 2003 on the conclusion of the interinstitutional agreement on Better Law-Making between the European Parliament, the Council and the Commission⁹,
- having regard to the opinions of the Economic and Social Committee¹⁰,
- having regard to the opinion of the Committee of the Regions (CdR 0263/2002),

¹ OJ C 287, 12.10.2001, p. 1.

² OJ C 211, 22.7.1996, p. 23.

³ OJ C 167, 2.6.1997, p. 34.

⁴ OJ C 98, 9.4.1999, p. 500.

⁵ OJ C 197, 12.7.2001, p. 433.

⁶ OJ C 73, 17.3.1999, p. 1.

⁷ OJ C 153 E, 27.6.2002, p. 314.

⁸ OJ C 284 E, 21.11.2002, p. 115.

⁹ P5_TA(2003)0426.

¹⁰ OJ C 125, 27.5.2002, p. 105, OJ C 61, 14.3.2003, p. 142, OJ C 133, 6.6.2003, p. 5.

- having regard to Rule 47(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the Internal Market and the opinions of the Committee on Economic and Monetary Affairs, the Committee on Industry, External Trade, Research and Energy, the Committee on Employment and Social Affairs, the Committee on the Environment, Public Health and Consumer Policy, the Committee on Constitutional Affairs and the Committee on Petitions (A5-0443/2002),
 - having regard to the second report of the Committee on Legal Affairs and the Internal Market (A5-0235/2003),
 - having regard to the third report of the Committee on Legal Affairs and the Internal Market (A5-0118/2004),
- A. whereas the quality and comprehensibility of Community legislation have a direct impact on the welfare and prosperity of Community citizens and businesses,
 - B. whereas a clear and precise legal and regulatory framework should therefore be established to facilitate the decision-making process and make it more transparent,
 - C. whereas Parliament has concluded the aforementioned interinstitutional agreement with the Council and the Commission on common guidelines for the quality of Community legislation,
 - D. whereas Parliament has also concluded an interinstitutional agreement with the Council and the Commission on ‘Better Lawmaking’,¹
1. Warmly welcomes the interinstitutional agreement on ‘Better Lawmaking’;
 2. Considers it desirable to establish a permanent interinstitutional dialogue among the Community institutions on improving the quality of legislation;
 3. Recalls that this interinstitutional dialogue concerns not only the fields covered by the interinstitutional agreement on ‘Better Lawmaking’, but also any other field involving the adoption of Community legislation;
 4. Stresses that any future interinstitutional dialogue among the institutions regarding legislation must take due account of the principle of democratic legitimacy, of which the European Parliament is the guarantor;
 5. Demands that the Commission always consult the legislative authority when it deems self-regulation to be useful;
 6. Stresses Parliament’s right to call on the Commission to submit a draft legislative act in connection with the latter’s consideration of self-regulation practices;

¹ OJ C 321, 31.12.2003, p. 1.

7. Stresses Parliament's right to oppose the implementation of any self-regulation practice;
8. Defends Parliament's right to oppose the entry into force of any draft voluntary agreement in the context of co-regulation;
9. Considers it essential that the Commission should not be able to override opposition expressed by Parliament or the Council to any voluntary practice in the context of self-regulation or co-regulation;
10. Instructs its President to forward this resolution to the Council and the Commission.