I Resolutions, recommendations and opinions

RESOLUTIONS

European Parliament

2011-2012 SESSION
Sittings of 5 to 7 July 2011
The Minutes of this session have been published in OJ C 291 E, 4.10.2011.

TEXTS ADOPTED
Tuesday 5 July 2011

2013/C 33 E/01 Universal service and '112' emergency number
European Parliament resolution of 5 July 2011 on universal service and the 112 emergency number (2010/2274(INI)) ................................................................. 1

2013/C 33 E/02 A more efficient and fairer retail market
European Parliament resolution of 5 July 2011 on a more efficient and fairer retail market (2010/2109(INI)) .... 9

2013/C 33 E/03 Revised Hungarian constitution
European Parliament resolution of 5 July 2011 on the Revised Hungarian Constitution ......................... 17

2013/C 33 E/04 5th Cohesion Report and strategy for the post-2013 Cohesion Policy

2013/C 33 E/05 Budget support to developing countries
European Parliament resolution of 5 July 2011 on the future of EU budget support to developing countries (2010/2300(INI)) ................................................................. 38

(Continued overleaf)
<table>
<thead>
<tr>
<th>Notice No</th>
<th>Contents (continued)</th>
</tr>
</thead>
</table>
| 2013/C 33 E/06 | Energy infrastructure priorities for 2020 and beyond  
European Parliament resolution of 5 July 2011 on energy infrastructure priorities for 2020 and beyond (2011/2034(INI)) ................................................................. 46 |
| 2013/C 33 E/07 | Social services of general interest  
European Parliament resolution of 5 July 2011 on the future of social services of general interest (2009/2222(INI)) 65 |
| 2013/C 33 E/08 | Impact of EU development policy  
European Parliament resolution of 5 July 2011 on increasing the impact of EU development policy (2011/2047(INI)) ................................................................. 77 |
| 2013/C 33 E/09 | Wednesday 6 July 2011  
European broadband investing in digitally driven growth  
| 2013/C 33 E/10 | Personal data protection in the European Union  
European Parliament resolution of 6 July 2011 on a comprehensive approach on personal data protection in the European Union (2011/2025(INI)) ................................................................. 101 |
| 2013/C 33 E/11 | Commission Work Programme 2012  
European Parliament resolution of 6 July 2011 on the Commission Work Programme 2012 ............................ 110 |
| 2013/C 33 E/12 | Legislation on Transmissible Spongiform Encephalopathies (TSE) and on related feed and food controls  
European Parliament resolution of 6 July 2011 on EU legislation on Transmissible Spongiform Encephalopathies (TSE) and on related feed and food controls - implementation and outlook (2010/2249(INI)) ........................ 120 |
| 2013/C 33 E/13 | Aviation security with a special focus on security scanners  
European Parliament resolution of 6 July 2011 on aviation security, with a special focus on security scanners (2010/2154(INI)) ................................................................. 125 |
| 2013/C 33 E/14 | Women and business leadership  
European Parliament resolution of 6 July 2011 on women and business leadership (2010/2115(INI)) ........... 134 |
| 2013/C 33 E/15 | Financial, economic and social crisis: measures and initiatives to be taken  
European Parliament resolution of 6 July 2011 on the financial, economic and social crisis: recommendations concerning the measures and initiatives to be taken (2010/2242(INI)) ................................................................. 140 |

(Continued on page 366)
I

(Resolutions, recommendations and opinions)

RESOLUTIONS

EUROPEAN PARLIAMENT

Universal service and '112' emergency number

P7_TA(2011)0306

European Parliament resolution of 5 July 2011 on universal service and the 112 emergency number

(2010/2274(INI))

(2013/C 33 E/01)

The European Parliament,


— having regard to the public consultation launched on 2 March 2010 by the Commission on future universal service principles in the area of electronic communications networks and services,


— having regard to the Commission Recommendation of 20 September 2010 on regulated access to Next Generation Access Networks (NGA),

— having regard to the Working Document of the Commission’s Communications Committee on ‘Broadband access in the EU: situation at 1 July 2010’,


— having regard to the 4th edition of the ‘Consumer Markets Scoreboard - Making markets work for consumers’ published in October 2010,


— having regard to the Commission Recommendation on the processing of caller location information in electronic communication networks for the purpose of location-enhanced emergency call services,


having regard to the United Nations Convention on the Rights of Persons with Disabilities ratified by the EU on 23 December 2010,

— having regard to the Charter of Fundamental Rights of the European Union and especially Articles 2 (Right to life), 3 (Right to the integrity of the person), 6 (Right to liberty and security), 26 (Integration of persons with disabilities) and 35 (Health care),

— having regard to the survey entitled ‘The European Emergency Number 112’ (Flash Eurobarometer 314),

— having regard to the Working Document of the Commission’s Communications Committee on ‘Implementation of the European emergency number 112 – Results of the fourth data-gathering round’ (10 February 2011),

— having regard to its Declaration of 25 September 2007 on the European emergency call number 112 (1),

— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinion of the Committee on the Environment, Public Health and Food Safety (A7-0220/2011),

A. whereas the Universal Service Directive (USD) prevents social exclusion by ensuring that citizens in rural and remote areas or low-income households have affordable access to basic and essential telecoms services,

B. whereas particular attention must be paid to ensure that vulnerable groups are not left behind and special effective measures should always be implemented to guarantee their social inclusion and access to services on an equal footing with all other citizens,

C. whereas evolving technology, especially affordable mobile telephony, contributes to providing the majority of citizens with access to basic telecom services,

D. whereas the universal service is defined as the ‘minimum set of services of specified quality to which all end-users have access, at an affordable price in the light of specific national conditions, without distorting competition’,

E. whereas universal service should provide all citizens with access to services essential for their participation in society, in the event that market forces alone are not able to do this,

F. whereas basic broadband coverage for 100% of EU citizens by 2013 is one of the Digital Agenda’s key performance targets; considering nevertheless that where broadband connections are already available the average take-up approximates to 50% of households,

G. whereas it is not yet possible to assess implementation of the revised Universal Services and Users’ Rights Directive given that the transposition deadline is 25 May 2011 and the three-year period required before an evaluation of the correct and comprehensive implementation of all provisions in the Directive has only just begun,

H. whereas although existing legislation delivers positive results for citizens this is not an end in itself and it is also necessary to maximise the benefits derived from new measures through continuous monitoring by Member States and efforts to improve the quality, completeness and visibility of information,

I. whereas the Single Market can never be truly considered as complete and should continually be reassessed to reflect social protection guarantees, societal needs, technological progress and the emergence of innovative solutions; whereas, furthermore, measures to promote growth and jobs are key to ensuring that the Single Market and the Single Digital Market are enabled and realised without delay, for the benefit of European citizens, consumers and businesses,

J. whereas striving for progress constitutes the driving force and the delivery vehicle for the vision and objectives set by the European legislators; whereas proposals for new or amending legislation must take into account actual experiences and implementation capabilities; whereas legislative adaptations must benefit from clear political support underpinned, furthermore, by an objective cost-benefit and socio-economic evaluation as the decisive factor,

K. whereas the European emergency number 112, created in 1991 by a Council decision to enable citizens to access all emergency services (such as fire, police and medical services), is the only emergency number that can be accessed in all the Member States of the European Union and whereas a large majority of Europeans are still unaware of it, with no progresses observed since 2000,

L. whereas its Declaration of 11 March 2008 on early warning for citizens in major emergencies (1) was signed by 432 MEPs,

M. whereas efforts are still needed to assess and ensure the quality of service when dialling 112, both as regards the telecommunications and emergency services’ performance and the coordination aspects which depend on multiple factors, and whereas a comprehensive and detailed assessment of the real state of implementation of the 112 service in the EU as experienced by citizens, notably evaluating accessibility, interoperability and intervention times, has not been carried out,

N. whereas several recent disasters have shown that alerting citizens and giving them early warning in the event of imminent or developing major emergencies and disasters is necessary if suffering and the loss of life are to be reduced,

**Universal service and the context of new developments**

1. Underlines the importance of Universal Service Obligations (USOs) as a safety net for social inclusiveness where market forces alone have failed to provide citizens and businesses with basic services;

2. Supports the regular re-evaluation, as part of the Universal Services and Users’ Rights Directive, of how appropriate existing EU legislative provisions are for universal service in the light of social, economic and technological developments, in order to identify and introduce appropriate definitions which reflect evolving real needs and citizens’ demands and improve the quality of services;

3. Calls on the Commission to provide guidelines on how best to implement and enforce the revised USD, avoiding market distortions and, at the same time, allowing Member States to adopt the provisions that best suit their national circumstances;

4. Supports the Digital Agenda’s ‘Broadband for all’ objectives and is convinced that universal access to broadband helps citizens and businesses to reap the full benefits of the Digital Single Market, in particular by improving social inclusion, creating new opportunities for socially and environmentally innovative businesses driving jobs, growth and more opportunities for cross-border trade; supports, to this end, the promotion of digital literacy;

5. Calls on the Commission to give more financial support to local projects which provide digital access and to all communities which help disadvantaged groups to access technological devices by providing connections in public buildings offering free Internet access;

6. Underlines that a combination of policies and technologies (such as wired, cable, fibre, mobile, and satellite networks) can foster the development by businesses and public bodies of new online services and applications, such as e-governance, e-health and e-education, driving demand for faster Internet connections, making investments in open broadband networks more profitable, thereby encouraging public-private partnerships and developing the digital single market while improving the inclusion of marginalised citizens;

7. Emphasises the importance of the EU public procurement rules and considers it of utmost importance, in the context of the broad review of these rules, that both local and regional authorities benefit from measures to encourage their participation in communication technology investments, and in pre-commercial procurement (as a tool to bring the benefits of research to market), and that e-procurement is widely rolled out;

8. Calls for effective transposition of the telecoms framework, in particular its net neutrality provisions, in such a way that end-users can access the services and content, and run the applications of their choice on the Internet;

9. Stresses that universal service is not the only nor the key driver for achieving the ‘broadband for all’ objective, given the high investment costs required without necessarily being able to provide significantly improved services to consumers; notes, however, that Article 15 of the USD states that there shall be a periodical review of the scope of universal service and stresses that this review should take into account the evaluation of the implementation of the Directive’s provisions and the findings of the ongoing impact assessment, in particular as regards the extent to which broadband networks are deployed and the actual take-up by households;

10. Considers that making broadband availability obligatory will not automatically result in higher take-up; calls therefore on the Commission and the Member States to reinforce measures to drive demand and stimulate take-up, rather than just ensuring a connection; considers furthermore that universal service obligations might eventually, possibly as a medium-term target, become an additional incentive in the development of broadband, but that properly designed national programmes should achieve universal broadband objectives;

11. Considers that efficient radio spectrum policy, which enables harmonised use of the ‘digital dividend’, and investment-friendly regulation are also important instruments in increasing broadband coverage;

12. Calls on the Commission to complete the ongoing impact assessment and provide legislators with sound data on the existing take-up, the expected demand for and improvement of USOs through broadband, and finally, an analysis of the most effective financing mechanism for Member States, consumers and undertakings for rolling out USOs while avoiding inefficient costs and excessive burdens;
13. Calls on the Commission, in parallel and in collaboration with the National Regulatory Authorities (NRAs), to monitor markets carefully to ensure that those Member States which are already able to, or wish to, provide USOs across the range of broadband technologies and speeds, are able to do so in cases of market failure without actually causing distortions in the market;

14. Welcomes the Commission’s decision to carry out an in-depth study on Internet service provision following publication of the 4th Consumer Markets Scoreboard;

15. Calls on the Commission and the Member States, with the contribution of the NRAs, to examine the options for an even application of USOs and users’ rights provisions which would assure accessibility for vulnerable groups, and especially for people with disabilities, not only through the introduction of special terminal equipment and affordable tariffs, but also through the availability of adequate information and a real choice for consumers of available services and after-sales services;

16. Considers nevertheless that the basic provision for funding universal service, ensuring it is handled in a non-discriminatory and transparent manner, should remain in EU legislation and should be extended to cover data as well as voice obligations;

The 112 European Emergency Number

17. Stresses that the European 112 emergency number can be a life saving number and increases EU citizens’ protection by serving as a major support system for citizens and consumers living within the Single Market; underlines the importance of ensuring the smooth operation of the 112 number throughout the Union; considers that the Commission should ensure that every segment of society has access to this service, including persons with disabilities (hearing impairments, speech impediments, etc.) and other vulnerable groups;

18. Regrets however that the European 112 emergency number is far from having reached its full potential; considers accordingly that basic steps still need to be taken with regard to its recognition by citizens, along with other issues relevant to technology and better coordination;

19. Points out that, according to the Eurobarometer survey published in February 2011, only 26% of EU citizens can spontaneously identify 112 as the number to call for emergency services in the EU and 58% of EU citizens still disagree with the statement that people in their country are adequately informed about the existence of the 112 emergency number (1);

20. Urges the European Commission and the Member States to jointly intensify their efforts to increase public awareness of the existence and use of the 112 number, namely through the development of a targeted and far-reaching communication strategy which addresses the preoccupations and queries that citizens have with regard to the mechanics of the system;

21. Calls on the Commission and the Member States to further step up their information work so that the emergency number 112 reaches all EU citizens and travellers through the media, particularly the print and audiovisual media, by means of information campaigns such as the ‘EU-wide’ emergency number, and to organise and support promotional activities to raise public awareness and events held each year on 11 February, which has been established as ‘European 112 Day’; points out that special attention should be paid

to practical information, such as stressing that 112 is the European emergency number, reachable from fixed and mobile phones free of charge everywhere in the EU;

22. Notes considerable disparities among the Member States as regards knowledge of the European emergency number 112 and calls on the Member States to share their experiences and exchange best practices in order to achieve by 2020 at least 80% spontaneous identification by EU citizens of the 112 emergency number as the number to use to call emergency services anywhere in the European Union;

23. Calls on Member States to make use of the best points for disseminating information on the 112 emergency number through which a great number of households can be easily informed, in particular doctors surgeries and pharmacies, hospitals and clinics, educational establishments such as schools and universities, and airports, ports and train stations, given that the 112 number is particularly useful to travellers, as well as the information portals of the national emergency services;

24. Calls on the Commission and the Member States also to promote 112 as the EU-wide emergency number online and on radio, two of the most common media for young people and people who travel often; highlights that only 16% of people aware of the 112 number heard of it via radio and only 11% via the Internet;

25. Calls on all Member States to ensure that the 112 number is displayed prominently on all emergency vehicles including police cars, ambulances, fire engines and vehicles belonging to other services;

26. Notes however that Member States have existing and longstanding emergency numbers and emphasises that, where they intend to maintain those national numbers, it is important not to compromise awareness or cause confusion over which number to dial;

27. Regrets that Member States do not yet ensure that timely, accurate and reliable location information is provided to the 112 services; calls accordingly on the Commission, in close cooperation with the Member States, to improve significantly and as soon as possible the accuracy and reliability of caller location information under the new EU telecoms rules and to upgrade technology with the ultimate goal of mandatory automatic localisation for all 112 calls, including those from roaming customers, within a few seconds in order to provide dispatchers and first responders with this crucial information, thereby proving invaluable to citizens; calls on the Commission to envisage taking action against Member States that do not fulfil their obligations in this respect;

28. Requests that the Member States and the Commission roll out measures improving access to finance to support research projects so as to ensure that the best possible technologies for identifying caller location, including via VOIP, are developed and supports accordingly the development of next generation standards and regulations; asks for the ICT-PSP funds indicated in the EU Budget 2009, 2010 and 2011 to be allocated to support the testing and implementation of innovative services (based on VoIP and IP-access to 112) that could be initiated through network-independent applications in anticipation of the establishment of a Next Generation 112 system in the EU; calls on the Commission to examine also the implementation of Next Generation 112 applications such as texting, video and social networks and how such applications, which are currently available to citizens, can be implemented in emergency communications to improve access to 112 as well as to enhance citizen-initiated emergency response;
29. Believes that, through regulation, eCall should be deployed as a mandatory service;

30. Highlights the importance of better coordination between emergency bodies both at national and cross-border/European Union level to achieve the highest level of effectiveness and, to this end, calls on the Commission to support and coordinate with Member State administrations to explore ways of improving interoperability between their systems;

31. Calls on the Commission, in close cooperation with the Member States, to set reliability and quality requirements as soon as possible for the whole 112 service chain, and to establish performance indicators and guidelines pertaining to the quality of the 112 service as experienced by citizens, taking into account the need for accessibility, for interoperability between emergency services, for multilingualism and for timely and qualitative interventions by emergency services;

32. Recommends, with a view to improving the efficiency of the 112 emergency service in the EU, the establishment of an action programme to support experience sharing and exchange of best practices between the NRAs, emergency services and civil society organisations in the Member States, extending this exchange to organisations in EU candidate and neighbouring countries; suggests that, to this end, a network of experts could be set up; recommends specifically the exchange of best practices between Member States as regards the handling of 112 calls, in particular on operator training, the use of a single operator to handle a call and the use of online and interpretation services that could help those who do not speak the language of the country in which they are using the emergency services;

33. Calls on the Member States to take the measures needed to reduce the number of unsuccessful emergency-call attempts, shorten call set-up and response times and reduce the number of hoax/false calls; calls on the Member States to exchange best practices regarding blocking of calls from SIM-less mobile phones;

34. Emphasises the need to guarantee the accessibility of the 112 number for people with different types of disability and vulnerable groups, and urges that accessibility be standardised for 112 for these groups in particular, possibly via the provision of special terminal devices for hearing- or visually-impaired users, text relay or sign language services, or other specific equipment; calls also on the Commission and the Member States to step up their efforts to heighten awareness among these people of the 112 number through the use of means of communication specially adapted to their needs;

35. Calls on the Commission to carry out a study on the 112 emergency number services’ performances to date, on cooperation between the relevant bodies aimed at improving the service, and on the individual measures taken so far by the Member States; calls furthermore on the Commission to consider the possibility of extending the 112 service from voice calls to SMS so that texting ‘112’ triggers an emergency response;

36. Calls on the Commission to evaluate, by independent bodies and by the end of 2012 at the latest, the real state of implementation of the 112 number throughout the EU as experienced by citizens, assessing notably accessibility, interoperability and intervention times. In this respect, the Commission is also invited to provide by the same date an overview of legally binding and practically implemented intervention times in the EU and to extend the impact study prepared in the framework of eCall to the human and financial consequences of the functioning of the 112 number;
37. Calls on the Member States and the Commission, given that the technology already exists, to promote the establishment of a ‘reverse 112 system’, i.e. an EU-wide, universal, multilingual, accessible, simplified and efficient interconnected system for warning and alerting citizens in case of imminent or developing natural and/or man-made major emergencies and disasters of any type; considers that such a system should be implemented without hindering privacy and in combination with appropriate information and training campaigns for citizens;

38. Calls on the Commission to examine the feasibility of a future 116 service similar to the 112 service for citizens in emotional distress, suffering from depression or other mental health problems;

39. Instructs its President to forward this resolution to the Council and the Commission, and to the governments and parliaments of the Member States.

A more efficient and fairer retail market

European Parliament resolution of 5 July 2011 on a more efficient and fairer retail market (2010/2109(INI))

(2013/C 33 E/02)

The European Parliament,

— having regard to the Commission report of 5 July 2010 entitled ‘Retail market monitoring report – Towards more efficient and fairer retail services in the internal market for 2020’ (COM(2010)0355), and the accompanying Commission staff working document on retail services in the internal market (SEC(2010)0807),

— having regard to the responses to the Commission’s public consultation on the retail market monitoring report (held from 5 July to 10 September 2010),

— having regard to the Roundtable on a more efficient and fairer retail market for business and consumers held by its Committee on the Internal Market and Consumer Protection on 25 January 2011,

— having regard to the European Economic and Social Committee’s opinion of 20 January 2011 on the ‘Retail market monitoring report – Towards more efficient and fairer retail services in the internal market for 2020’,

— having regard to the Commission communication of 13 April 2011 entitled ‘Single Market Act - Twelve levers to boost growth and strengthen confidence – “Working together to create new growth” ’ (COM(2011)0206),

— having regard to the Commission communication of 27 October 2010 entitled ‘Towards a Single Market Act – For a highly competitive social market economy: 50 proposals for improving our work, business and exchanges with one another’ (COM(2010)0608),


— having regard to the Commission report of 5 July 2010 entitled ‘Retail market monitoring report – Towards more efficient and fairer retail services in the internal market for 2020’ (COM(2010)0355), and the accompanying Commission staff working document on retail services in the internal market (SEC(2010)0807),

— having regard to the responses to the Commission’s public consultation on the retail market monitoring report (held from 5 July to 10 September 2010),

— having regard to the Roundtable on a more efficient and fairer retail market for business and consumers held by its Committee on the Internal Market and Consumer Protection on 25 January 2011,

— having regard to the European Economic and Social Committee’s opinion of 20 January 2011 on the ‘Retail market monitoring report – Towards more efficient and fairer retail services in the internal market for 2020’,
— having regard to the Council conclusions of 10 December 2010 on the Single Market Act,

— having regard to the Commission communication of 8 October 2010 on ‘Smart Regulation in the European Union’ (COM(2010)0543),


— having regard to the 21st edition of the Internal Market Scoreboard published on 23 September 2010,


— having regard to the Commission communication of 28 October 2009 on a better functioning supply chain in Europe (COM(2009)0591),

— having regard to the Commission communication of 25 June 2008 entitled ‘“Think Small First” – A “Small Business Act” for Europe’ (COM(2008)0394),

— having regard to Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (1),

— having regard to Regulation (EC) No 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC (2),


— having regard to its position of 23 June 2011 on the proposal for a directive of the European Parliament and of the Council on consumer rights (6),

— having regard to its resolution of 6 April 2011 on governance and partnership in the single market (7),

— having regard to its resolution of 6 April 2011 on a single market for enterprises and growth (8),

— having regard to its resolution of 6 April 2011 on a single market for Europeans (1),

— having regard to its resolution of 21 October 2010 on the future of European standardisation (2),

— having regard to its resolution of 21 September 2010 on completing the internal market for e-commerce (3),

— having regard to its resolution of 7 September 2010 on fair revenues for farmers: a better functioning food supply chain in Europe (4),

— having regard to its resolution of 20 May 2010 on delivering a single market to consumers and citizens (5),

— having regard to its resolution of 9 March 2010 on consumer protection (6),

— having regard to its resolution of 9 March 2010 on the Internal Market Scoreboard (7),

— having regard to its resolution of 9 March 2010 on SOLVIT (8),

— having regard to its declaration of 19 February 2008 on investigating and remedying abuse of power by large supermarkets operating in the European Union (9),

— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on the Internal Market and Consumer Protection (A7-0217/2011),

A. whereas the wind of protectionism blowing across Europe is alarming,

B. whereas the real economy must be put back at the centre of the political agenda to unleash the full potential of the Single Market,

C. whereas the retail market is a crucial component of our commitment to relaunch the Single Market,

D. whereas the retail market, as a major energy user and waste producer, can make a key contribution to sustainability, including the EU 20-20-20 energy targets,

E. whereas the business potential for cross-border online trade is failing to materialise sufficiently because of various obstacles, such as language barriers, insecurity in the system, inadequate and insufficient information and lack of administrative coordination and cooperation, which make consumers reluctant to purchase online from retailers in other Member States and retailers reluctant to sell online across borders,

(1) Texts adopted, P7_TA(2011)0145.
A vision for more competitiveness, growth and jobs

1. Stresses that the retail sector is a driver for growth, competitiveness and jobs in Europe and plays a key role in reaching the goals of the EU2020 strategy;

2. Highlights that retailers are offering diverse and modern ways of purchasing and selling goods and services and contribute to wider consumer choice as well as flexible and decent employment opportunities, in particular for youth;

3. Calls on the EU institutions to give the highest political prominence to the retail sector as a pillar of the Single Market Act and a vehicle for restoring public confidence in the single market;

4. Calls on the Commission to reinforce cross-policy coordination and to take a holistic, long-term approach to the retail sector;

5. Regrets that serious obstacles still hinder the retail sector from achieving its full potential online and offline; stresses the need to address them without delay;

6. Underlines that retailers and suppliers have a shared responsibility in achieving a more efficient, transparent and fairer retail market;

7. Considers that the primary focus must be on the effective enforcement of Treaty principles, existing internal market rules and instruments, and self-regulation, before considering a regulatory approach, if appropriate;

Removing obstacles to free movement of goods and services

8. Is concerned that restrictive national rules, divergent interpretations and inadequate enforcement impede free movement of goods and services in the EU; stresses that requirements for extra tests and registrations, non-recognition of certificates and standards, territorial supply constraints and similar measures create extra costs for consumers and retailers, in particular SMEs, thus limiting the potential usefulness of the single market to European citizens and the business world;

9. Recognises the need for the Commission to further analyse the reasons for price differences in the EU, based on adequate statistical tools, in order to ensure greater price transparency and comparability for consumers, without prejudice to European and national fiscal and labour market rules, thereby promoting more enlightened choices and greater confidence in cross-border trade; recalls the need for active cooperation between national statistical agencies to this effect;

10. Urges Member States to fully and correctly implement the internal market rules and legislation, notably the Goods Package, the Services Directive, the Late Payments Directive, the E-Commerce Directive, the Small Business Act and the Unfair Commercial Practices Directive; also asks the Member States to remove overlaps and reduce administrative burdens and regulatory barriers that may limit growth and job creation;
11. Asks the Commission to monitor Member States more closely in order to reduce transposition deficit and ensure effective mutual recognition of goods and services; asks the Commission to ensure also simplification of existing rules;

12. Notes the difficulties faced by Europe's independent retailers, and considers that retail market legislation should be more thoroughly evidence-based, particularly as regards the need to adequately examine and understand the impact of legislation on small businesses;

13. Encourages business federations and consumer associations, supported by the Commission, to provide more information, training and legal advice to stakeholders on their rights and the problem-solving instruments at their disposal, such as SOLVIT, and to support the exchange of best practice among themselves;

14. Stresses that a fragmented payment system is an obstacle to trade; calls on the Commission to improve SEPA in order to develop a basic payment service available for all cards, foster competition between payment means by removing barriers, increase transparency in transaction costs and remove unjustified interchange fees; calls also on the Commission to ensure faster bank transfers within the EU; points out, moreover, that SEPA can be regarded as a useful tool to combat the informal economy;

Opening up market access for business and consumers

15. Draws attention to the concern expressed by parts of civil society and SMEs about the increase in shopping centres and the decrease in local shops and markets in remote areas and town centres;

16. Stresses that retail planning should provide a structural framework for companies to compete, enhance consumers' freedom of choice and allow access to goods and services, especially in less accessible and sparsely populated regions or when consumers' mobility is reduced; insists furthermore on the social, cultural and environmental role played by local shops and markets in the revitalisation of rural and urban areas; urges therefore Member States to encourage sustainable local communities by fostering innovation and growth of SMEs;

17. Stresses that SMEs constitute the backbone of the European economy and have a unique role to play in creating jobs, particularly in rural areas, as well as fostering innovation and growth in the retail sector in local communities across the EU;

18. Considers that accessibility must be addressed in full respect of subsidiarity;

19. Recognises that the Member States are responsible for their shop location policies and that sustainability, mobility, regional planning and core consolidation are major factors which must be taken into account in deciding on the admissibility of new shop locations;

20. Takes the view that incentives to renovate the urban building stock, also by using the Structural Funds, could enable rents to be reduced (public-private partnership) and could facilitate the return of businesses, particularly local ones, which are instrumental to economic and social development;

21. Calls on the Commission, in cooperation with the Member States, to draw up a survey of the impact and possible consequences of the creation of hypermarkets or shopping malls with regard to the employment market, SMEs and consumers;
22. Notes the great concern expressed by itinerant street vendors operating in public areas over the possibility that Directive 2006/123/EC might be enforced in the Member States, extending the concept of ‘natural resource’ also to public land, which would result in trading concessions in public areas being limited in time; this would be highly detrimental to employment, to consumers’ freedom of choice and to the very existence of traditional local street markets;

23. Emphasises that e-commerce is an important complement to offline trade and that appropriate action must be taken to develop its full potential, including improving access to the Internet in the European Union’s most remote areas; calls on the Commission to include in the upcoming communication on e-commerce measures to enhance confidence, in particular by simplifying registration of domains across borders, improving secure online payment, facilitating cross-border debt recovery and improving information to consumers on their rights, particularly concerning cancellations and opportunities to appeal;

24. Regrets the significant number of obstacles to retailers’ freedom of establishment across the EU; is concerned, in particular, about certain national trade and tax laws, which have a de facto discriminatory effect against foreign retailers;

25. Calls on the Commission to act more firmly with regard to any Member State infringing internal market principles, to speed up infringement procedures through a ‘fast-track approach’ and to report to the European Parliament yearly on resolved cases in the field of retail;

Addressing contractual and commercial practices in business-to-business relations

26. Reaffirms that free and fair competition, freedom of contract and proper enforcement of relevant legislation are key to a well-functioning retail market;

27. Recognises that companies have different market power, that they need to act in an economically sound way and that the EU needs economic champions to compete globally;

28. Stresses, however, that there is widespread concern about market dominance by bigger actors, who are often perceived to impose unfair terms on weaker suppliers and retailers, for instance through unjustified mechanisms of selective distribution, geographical segmentation, price control, delisting without notice, and other restrictive practices, thereby distorting competition; underlines that the entire retail supply chain is affected by such practices; denounces practices that misuse power imbalance between economic actors and affect true freedom of contract; stresses that raising all actors’ awareness of their contractual rights, especially SMEs, would contribute to preventing these practices;

29. Recognises that franchising is a good formula for independent retailers to survive in a highly competitive environment; notes with concern that the contracts for retailers to be part of a franchise are becoming more and more rigorous;

30. Emphasises that private labels should be developed in such a way as to deliver improved consumer choice, notably in terms of transparency, quality of information and diversity, and to provide clear opportunities for SMEs to innovate and expand;
31. Considers that ‘parasitic copying’, which can result, inter alia, from the retailer’s dual role as the customer and competitor of brand manufacturers, is an unacceptable practice that should be addressed without delay; welcomes the fact that the Commission is conducting an analysis to further clarify the legal frameworks and practices relating to trade secrets and ‘parasitic copying’ within the 27 EU Member States;

32. Recognises the need for more balanced relations and transparency in the retail supply chain; stresses the need to move from confrontation to dialogue based on facts, in order to restore confidence and enable fairer negotiations and a level playing field for all, thus enabling all economic actors in supply chains to benefit from the added-value of their products and reap the full benefits from the Single Market;

33. Urges the Commission and Member States to fully and coherently enforce competition law and, where applicable at national level, unfair competition and anti-trust law;

34. Stresses that, to ensure proper implementation of competition rules and prevent abuse of a dominant position, it is first and foremost necessary to strengthen the local competition watchdog authorities and ensure continuous and uninterrupted lines of communication and cooperation between them and the Commission’s Directorate-General for Competition;

35. Supports the good work of the Experts Platform on B2B contractual practices of the High Level Forum for a Better Functioning Food Supply Chain, in particular to define, list and assess what constitutes a manifestly unfair commercial practice, based on data and concrete examples; calls for strong support of initiatives for dialogue between parties on this issue; is concerned that the European Parliament is not formally involved in the work of the Platform and the High Level Forum; considers that the Parliament should urgently address this matter and should actively participate in the Forum’s work;

36. Supports the need expressed by stakeholders to take a broader and horizontal approach, extending the scope beyond the agro-food industry; asks the Commission and the business federations, building on the ongoing work in the Experts Platform, to explore the possibilities for creating a new, open-ended forum focusing on retail as a whole;

37. Strongly supports, at the same time, the intense work underway by retailers’ and suppliers’ federations to set up informal dialogue and regular consultation mechanisms in respect of competition law; welcomes their voluntary initiative to agree on a declaration on common principles of good trading practices across the retail supply chain;

38. Also welcomes the Commission’s European food prices monitoring tool as well as similar initiatives taken by Member States to allow fair revenues along the food supply chain, with an analysis of costs, processes, added value, volumes, prices and margins across all sections of the food supply chain;

39. Notes with concern that existing legal instruments are not being fully used, especially by SMEs, to uphold their rights, due to economic dependency and concern about losing business; asks the Commission, Member States and business federations to identify ways to restore confidence and facilitate access to judicial systems, including the possibility of anonymous complaints and the establishment of an EU Ombudsman in this area; is convinced moreover that it is necessary further to develop the conceptual framework so as to ensure fair competition in both vertical and horizontal B2B relations, thereby paving the way for a genuine level playing field for businesses;
Tuesday 5 July 2011

40. Asks the Commission to publish, by the end of 2011, a communication mapping national laws and tools in place to deal with commercial practices and contractual relations, and to assess thoroughly if these rules are being properly enforced and if further action is needed;

41. Considers that alternative and informal dispute resolution and redress mechanisms should be explored and their effectiveness evaluated, as they could be a means of resolving disputes for retailers; calls on the Commission to propose measures on alternative dispute resolution by the end of 2011 in order to strengthen businesses’ and consumers’ confidence;

42. Asks the Commission and operators in the retail supply chain to report to Parliament on a yearly basis on progress made in the existing platforms and informal dialogue mechanisms; suggests that the results should be debated at a yearly Retail Market Roundtable organised by its Committee on the Internal Market and Consumer Protection;

Enhancing efficiency and sustainable consumption - innovative practices

43. Highlights the retail sector’s responsibility concerning sustainability; welcomes the fact that retailers and suppliers have been at the forefront for green responsibility, particularly regarding waste, energy consumption, transport and CO₂ reduction; supports the commitments they have already taken towards sustainable consumption, but considers further efforts are necessary; considers that corporate responsibility should pay greater attention to social and environmental issues;

44. Emphasises that retailers and suppliers are drivers of innovation, research and development; stresses that the whole sector needs to continue driving up the level of investment in innovative technologies and practices to further improve competitiveness throughout the supply chain, covering logistics and transport, energy efficiency, packaging, waste disposal and product recycling, and to exchange best practices;

45. Calls on the Commission to develop a common assessment and labelling system, as indicated in its resolution on a single market for enterprises and growth, based on the product’s whole life cycle, particularly in order to simplify, harmonise and overcome the cost of fragmentation for business and consumers;

46. Calls on stakeholders to take further initiatives to combat food waste;

47. Welcomes the joint agreement by EuroCommerce and UNI-Europa, which illustrates that social dialogue is working well in commerce; recognises that more needs to be done to increase consumer information on the social responsibility of retailers, to match investments in new technologies with human capital, in particular through competence development, and to combat the informal economy;

48. Recalls the importance of proper implementation of existing social and labour legislation; regrets the existence of a high degree of undeclared employment, which involves a high level of tax evasion and prevents a level playing field among traders in the internal market;

49. Points out that improving working conditions, combating the informal economy and maintaining employment levels and competitiveness by better matching the needs of the retailers to the skills of the workers are among the main challenges in this sector; highlights, to this end, the need to invest in training and competence building as this will help the sector adapt quickly to new technologies;
Way ahead

50. Asks the Commission to prepare, in consultation with the retail sector, a comprehensive European Action Plan for Retail in order to set out a strategy, building on achievements and addressing outstanding issues, with sector-specific recommendations; welcomes the fact that Parliament has supported this initiative in its resolution on a single market for enterprises and growth;

51. Stresses that this Action Plan should take into account initiatives already developed by the Commission, such as the High Level Forum on the Better Functioning of the Food Supply Chain, initiatives on sustainability and climate change, and relevant proposals of the Single Market Act;

52. Proposes that follow-up to the recommended actions in the Action Plan, including progress made in the dialogue among stakeholders, be presented and debated at the first Retail Market Roundtable;

53. Expects that the further optimisation of purchasing and sales processes throughout the retail supply chain, from market research and product marketing to supplier relations, logistics and stock management, as well as the handling of faulty goods, consumer complaints and custom care, will improve competitiveness in the retail sector, drive down prices for consumers and improve service quality;

54. Encourages retailers and suppliers to actively engage in an open, constructive and continued dialogue to reach pragmatic solutions; invites Member States and EU institutions to actively support this process;

55. Instructs its President to forward this resolution to the Council and the Commission, and to the governments and parliaments of the Member States.

Revised Hungarian constitution

P7_TA(2011)0315

European Parliament resolution of 5 July 2011 on the Revised Hungarian Constitution

(2013/C 33 E/03)

The European Parliament,

— having regard to Articles 2, 3, 4, 6 and 7 of the Treaty on European Union (TEU), Articles 49, 56, 114, 167 and 258 of the Treaty on the Functioning of the European Union (TFEU), the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights (ECHR), which deal with respect for and the promotion and protection of fundamental rights,

— having regard to the Basic Law of Hungary, adopted on 18 April 2011 by the National Assembly of the Hungarian Republic that will enter into force on 1 January 2012 (hereinafter referred to as 'the new Constitution'),

— having regard to Opinions Nos CDL(2011)016, CDL(2011)001 of the European Commission for Democracy through Law (Venice Commission) on the new Hungarian constitution and the three legal questions arising out of the process of drafting the new Hungarian constitution,
— having regard to motion for resolution No 12490 on serious setbacks in the fields of the rule of law and human rights in Hungary tabled on 25 January 2011 in the Parliamentary Assembly of the Council of Europe,

— having regard to the ruling No 30141/04 of the European Court of Human Rights (Schalk and Kopf vs. Austria), and particularly its obiter dicta,

— having regard to the Oral Questions tabled in the European Parliament on the new Hungarian Constitution and to the Council and Commission statements on the revised Hungarian constitution and following the debate held on 8 June 2011,

— having regard to Rules 115(5) and 110(4) of its Rules of Procedure,

A. whereas the European Union is founded on the values of democracy and the rule of law, as stipulated in Article 2 TEU, on unequivocal respect for fundamental rights and freedoms, as enshrined in the Charter of Fundamental Rights of the European Union and in the ECHR, and on the recognition of the legal value of said rights, freedoms and principles, which is further demonstrated by the EU’s forthcoming accession to the ECHR,

B. whereas Hungary has signed the ECHR, the International Covenant on Civil and Political Rights and other international legal instruments obliging it to respect and implement principles concerning the separation of powers, the implementation of institutional checks and balances and the promotion of democracy and human rights,

C. whereas, while the drafting and the adoption of a new constitution falls within the remit of Member States’ competences, Member States, current and acceding, and the EU have a duty to ensure that the contents and processes are in conformity with EU values, the Charter of Fundamental Rights and the ECHR, and that the letter and spirit of adopted constitutions do not contradict these values and instruments; whereas this is clearly demonstrated by the fact that a number of current EU Member States had to review and amend their constitutions to ensure accession to the EU or adapt their constitutions to subsequent EU treaty requirements, notably at the request of the Commission,

D. whereas the constitution-making process lacked transparency and the drafting and adoption of the new Constitution was conducted in an exceptionally short time frame that did not allow sufficient time for a thorough and substantial public debate on the draft text; and whereas a successful and legitimate constitution should be based on the largest consensus possible,

E. whereas the Constitution has been widely criticised by national, European and international NGOs and organisations, the Venice Commission and representatives of Member States’ governments, and was adopted exclusively with the votes of the MPs from the governing parties, so that no political or social consensus was achieved,

F. whereas the European Parliament shares the concerns voiced by the Venice Commission, particularly regarding the transparency, openness and inclusiveness of and the time frame for the adoption process, and regarding the weakening of the system of checks and balances, in particular the provisions concerning the Constitutional Court and the courts and judges that may put the independence of the Hungarian judiciary at risk,
G. whereas the new Constitution fails to explicitly lay down a number of principles which Hungary, stemming from its legally binding international obligations, is obliged to respect and promote, such as the ban on the death penalty and life imprisonment without parole, the prohibition on discrimination on the grounds of sexual orientation and the suspension or restriction of fundamental rights by means of special legal orders,

H. whereas the new Constitution, through the values it enshrines and its unclear wording when defining basic notions such as 'family' and the right to life from the moment of conception, creates the risk of discrimination against certain groups in society, namely ethnic, religious and sexual minorities, single-parent families, people living in civil partnerships and women,

I. whereas the unclear wording of the preamble, particularly the parts concerning the Hungarian state's obligations towards ethnic Hungarians living abroad, may create a legal basis for actions that neighbouring countries would consider as interference in their internal affairs, which may lead to tensions in the region,

J. whereas the new Constitution stipulates that its preamble has legal force, which may have legal and political implications and may lead to legal uncertainty,

K. whereas the incorporation of the Charter of Fundamental Rights of the European Union into the new Constitution may give rise to overlaps in competences between Hungarian and international courts, as pointed out in the opinion issued by the Venice Commission,

L. whereas the new Constitution provides for the extensive use of cardinal laws, whose adoption is also subject to a two-thirds majority, which will cover a wide range of issues relating to Hungary's institutional system, the exercise of fundamental rights and important arrangements in society; whereas in practice this makes their adoption part of the new Hungarian constitutional process,

M. whereas, under the new Constitution, a number of issues, such as specific aspects of family law and the tax and pension systems, which normally fall within the sphere of competence of the government or are covered by the regular decision-making powers of the legislature, will also have to be regulated by cardinal laws, which means that future elections will have less significance and more scope will be created for a government with a two-thirds majority to cement its political preferences; whereas the process of enacting specific and detailed rules by means of cardinal laws can thus put the principle of democracy at risk,

N. whereas, as underlined by the Venice Commission, cultural, religious, socio-economic and financial policies should not be set in stone by means of cardinal laws,

O. whereas a non-parliamentary body, the Budget Council, with its limited democratic legitimacy, will have the power to veto the adoption of the general budget, in which case the Head of State can dissolve the National Assembly, severely restricting the scope for action of the democratically elected legislature,

P. whereas the effective system of four parliamentary commissioners will be downgraded to one consisting of a general ombudsman and two deputies, which may not provide the same level of protection of rights and whose powers will not include those of the former Commissioner for Personal Data and Freedom of Information; whereas the latter's powers will be transferred to an authority whose modus operandi is not specified,
Q. whereas in parallel with the adoption of the new Constitution, the Hungarian Government and the governing parties made many new appointments to key positions, such as Attorney-General, President of the State Audit Office and President of the Budget Council; whereas more recently the Hungarian Parliament elected the judges who will sit on the new Hungarian Constitutional Court, as required by the new Constitution; whereas the nomination procedure and the election were not based on political consensus,

R. whereas the new Constitution lays down very general rules governing the judicial system, and leaves it unclear as to whether the Supreme Court, under its new name, will continue with its current president,

S. whereas the Parliamentary Assembly of the Council of Europe has decided to prepare a report on the new Hungarian Constitution, based on the opinion of the Venice Commission,

T. whereas the drafting and adoption of a new constitution was not mentioned in the electoral manifesto of the governing parties,

U. whereas the Secretary-General of the United Nations, Ban Ki-moon, has stated that he would 'appreciate it if the Hungarian Government were to seek advice and recommendations from within the country and from the Council of Europe or the United Nations' and takes the view that Hungary, as an EU Member State, should ask the European institutions to give advice and review the new Constitution,

1. Calls on the Hungarian authorities to address the issues and concerns raised by the Venice Commission and to implement its recommendations, either by amending the new Constitution or through future cardinal and ordinary laws, notably to:

(a) actively seek consensus, to ensure greater transparency and to foster genuine political and social inclusion and a broad public debate in connection with the forthcoming drafting and adoption of the cardinal laws laid down in the new Constitution;

(b) adopt only the basic and clearly defined scope of cardinal laws regulating the tax and pension systems, family policies and cultural, religious and socio-economic policies, allowing future governments and democratically elected legislatures to take autonomous decisions on these policies; revise the current mandate of the Budget Council;

(c) guarantee equal protection of the rights of every citizen, no matter which religious, sexual, ethnic or other societal group they belong to, in accordance with Article 21 of the Charter of Fundamental Rights, in the Constitution and its preamble;

(d) explicitly guarantee in the Constitution, including its preamble, that Hungary will respect the territorial integrity of other countries when seeking the support of ethnic Hungarians living abroad;

(e) reaffirm the independence of the judiciary by restoring the right of the Constitutional Court to review budget-related legislation without exception, as required by ECHR-based law, by revising the provision on the lower mandatory retirement age for judges and by guaranteeing explicitly the independent management of the judicial system;
(f) explicitly protect in the new Constitution all fundamental civil and social rights in line with Hungary’s international obligations, ban the death penalty, life imprisonment without parole and discrimination on the basis of sexual orientation, provide sufficient guarantees concerning the protection of fundamental rights, and make it clear that fundamental rights are acquired at birth and are unconditional;

(g) ensure that the reorganisation of the system of parliamentary commissioners will not serve to water down the existing guarantees concerning the protection and promotion of rights in the areas of the protection of national minorities, the protection of personal data and the transparency of publicly relevant information, as well as the independence of the respective bodies responsible for these areas;

(h) make sure that the incorporation of the Charter of Fundamental Rights into the new Constitution does not cause problems of interpretation and overlapping competences between domestic courts, the new Hungarian Constitutional Court and the European Court of Justice;

2. Calls on the Commission to conduct a thorough review and analysis of the new Constitution and of the cardinal laws to be adopted in the future in order to check that they are consistent with the acquis communautaire, and in particular the Charter of Fundamental Rights of the European Union, and with the letter and spirit of the Treaties;

3. Instructs its relevant committees to follow up the matter, in cooperation with the Venice Commission and the Council of Europe, and to assess whether and how the recommendations have been implemented;

4. Instructs its President to forward this resolution to the Council, the Commission, the Council of Europe, the governments and parliaments of the Member States, the Fundamental Rights Agency, the OSCE and the UN Secretary General.

5th Cohesion Report and strategy for the post-2013 Cohesion Policy

P7_TA(2011)0316


(2013/C 33 E/04)

The European Parliament,

— having regard to the Commission communication of 9 November 2010 entitled ‘Conclusions of the fifth report on economic, social and territorial cohesion: the future of cohesion policy’ (COM(2010)0642) (hereinafter ‘the conclusions’),

— having regard to the Commission’s fifth report on economic, social and territorial cohesion, entitled ‘Investing in Europe’s future’, of 9 November 2010 (hereinafter ‘the fifth Cohesion Report’),

— having regard to the Treaty on the Functioning of the European Union, and in particular Part III, Title XVIII thereof,
Tuesday 5 July 2011


— having regard to Council Regulation (EC) No 1906/2006 of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (7),

— having regard to its resolution of 24 April 2007 on the consequences of future enlargements on the effectiveness of cohesion policy (8),

— having regard to its resolution of 24 March 2009 on the Green Paper on Territorial Cohesion and the state of debate on the future reform of cohesion policy (9),

— having regard to its resolution of 20 May 2010 on the contribution of the cohesion policy to the achievement of Lisbon and the EU 2020 objectives (10),

— having regard to its resolution of 22 September 2010 on the European strategy for the economic and social development of mountain regions, islands and sparsely populated areas (11),

— having regard to its resolution of 7 October 2010 on EU cohesion and regional policy after 2013 (12),

— having regard to its resolution of 7 October 2010 on the future of the European Social Fund (13),

— having regard to its resolution of 23 June 2011 on the state of play and future synergies for increased effectiveness between the ERDF and other structural funds (14),

(6) OJ L 210, 31.7.2006, p. 82.
(9) OJ C 117 E, 6.5.2010, p. 65.
(10) OJ C 161 E, 31.5.2011, p. 120.
(11) Texts adopted, P7_TA(2010)0341


— having regard to the Commission communication of 6 October 2010 entitled ‘Regional policy contributing to smart growth in Europe 2020’ (COM(2010)0553),

— having regard to the Commission communication 26 January 2011 entitled ‘Regional policy contributing to sustainable growth in Europe 2020’ (COM(2011)0017),

— having regard to the General Affairs Council’s conclusions of 21 February 2011 on the fifth report on economic, social and territorial cohesion (06762/2011),

— having regard to the Committee of the Regions’ opinion of 1 April 2011 on the fifth Cohesion Report (1),

— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on Regional Development and the opinions of the Committee on Employment and Social Affairs, the Committee on Budgetary Control and the Committee on Women’s Rights and Gender Equality (A7-0222/2011),

A. whereas EU cohesion policy has contributed greatly to the increased productivity achieved by all regions of the Union during the previous and current funding periods; whereas it is striking that ex-post evaluations have also shown a significant reduction of economic, social and regional disparities; whereas these developments are having equally positive effects on social security and on investment in environmental protection,

B. whereas cohesion policy was intended to be a counterpart to the single market and to foster the development of an innovative and protective Europe based on solidarity in the face of the challenges associated with globalisation, demographic change and resource conservation, and whereas the intrinsic potential of all regions should be exploited to boost growth and regional and social cohesion,

C. whereas cohesion policy is an issue of genuine relevance to citizens, bringing Europe into people’s daily lives and making it tangible and visible across the EU,

D. whereas the cohesion and structural policies have proved flexible in crisis situations and have made a crucial contribution to various national economic stimulus and training programmes, and whereas it is important to maintain this flexibility,

E. whereas European structural policy is making a major contribution towards overcoming the economic and financial crisis, as it tends to be oriented towards innovation and removing disparities, strongly encouraging European regions to upgrade infrastructure, increase regional innovation potential and boost environmentally sustainable development,

(1) OJ C 166, 7.6.2011, p. 35.
F. whereas gearing the Structural Funds to the Lisbon Strategy objectives has proved effective, as is evident from the impressive commitment rates for the Convergence and Regional Competitiveness and Employment objectives, and whereas 20% of European Territorial Cooperation projects are in keeping with the Lisbon aims,

G. whereas territorial cooperation aims to help territories and regions work together in tackling their common challenges, reduce the physical, administrative and regulatory barriers to such cooperation and lessen the ‘border effect’,

H. whereas the partial failure of the Lisbon Strategy is due not to inadequate implementation of cohesion policy but rather to the lack of multi-level governance and of ownership of this strategy by the regional and local levels, the effects of the financial crisis, imperfect implementation of the single market, slack budgetary discipline and inadequate macroeconomic framework conditions in individual Member States,

I. whereas the error rates and misuse of funds has been significantly lower in the most recent funding periods; whereas, regrettably, structural policy nonetheless remains an area with a high level of irregularities in this respect, and some Member States still lack effective machinery for countering the misuse of funding and recovering money wrongly paid out; whereas irregularities may not be reported, either through negligence or deliberately, and whereas it must be noted that a significant part of the errors in the cohesion policy sphere may be attributed to legislative requirements outside cohesion policy, in areas such as public procurement, environment and state aids,

J. whereas the existing system of cohesion and structural policy objectives (Convergence, Regional Competitiveness and Employment, and European Territorial Cooperation), combined with a multi-level governance approach, horizontal objectives and security to plan on the basis of reliable funding and an agreed time frame (seven years), has, overall, proved its worth, but whereas there have been considerable delays in programme planning as a result of protracted financial and legislative negotiations in the EU decision-making process and substantial changes in the rules applying to cohesion policy,

K. whereas sustained support for and development of the convergence regions has a positive impact on the demand for goods and services on their markets and thus has demonstrably beneficial effects on the wealthier EU Member States as well,

L. whereas a comprehensive and well-funded EU cohesion policy in all European regions continues to be essential, given the imbalances between regional economies and in social terms and the geographical disadvantages of certain regions (particularly the outermost regions), as well as specific structural problems and the need to adapt to new challenges; whereas it is also a requirement under the Lisbon Treaty,

M. whereas, given its strategic importance for the future, cohesion policy must not become an adjustment variable in future budget negotiations,

**Cohesion policy added value and investment priorities**

1. Calls for cohesion and structural policy programmes to place more emphasis on European added value; deems such added value to be achieved where EU projects bring about a sustainable improvement in the economic, infrastructural, social and/or environmental status of disadvantaged, less-developed regions, and where that improvement would not have been achievable without the European stimulus;
2. Recognises, too, that European funding adds value where projects supported at national, regional and local level contribute to the achievement of pan-European objectives in the fields of European integration, economic growth, research, environmental protection, culture, resource management, sport, demographic change, sustainability of energy supply, social cohesion or cross-border development and this would not have been achieved without the European stimulus;

3. Sees the achievement of European objectives in accordance with a decentralised approach and the principle of multi-level governance and shared management as one of the major advantages of cohesion policy and thus as a form of added value in itself; considers multi-level governance with clearly-defined structures and responsibilities as an embodiment of the principle of subsidiarity as well as due recognition of the importance of regional authorities in implementing cohesion policy; calls for the partnership principle and the sense of ownership of the actors involved to be further strengthened by introducing detailed binding provisions in a Territorial Pact to be decided in each Member State, in order to ensure more result-oriented planning and implementation;

4. Considers that transparency in respect of cohesion policy and its programming cycle, allocation of expenditure and access to information for potential beneficiaries of the Structural Funds are key prerequisites for achieving the overall objectives of cohesion policy, and that transparency should therefore be introduced as a guiding cross-sectoral principle in the cohesion programming and decision-making processes in the next funding period; underlines that disclosure of the list of beneficiaries should be continued, notably online, as it is an efficient means of improving transparency;

5. Considers that the transparency provisions (obligation to disclose the final beneficiary) are a necessary instrument for experts, the public and policy-makers to evaluate whether structural funding has been used in accordance with the objectives set and lawfully; calls for the description to be supplied not only in the relevant national language but also in one of the three working languages (English, French or German) and recommends further harmonisation of the information required;

6. Emphasises that, despite the trend towards a narrowing of inter-regional disparities, major imbalances still exist – and among/in some Member States are actually growing, inter alia as a result of the economic and financial crisis – and that cohesion policy must therefore continue to concentrate on reducing disparities and implementing harmonious and sustainable development for all regions of the Union, regardless of the Member State in which they are located;

7. Recognises the special needs of regions particularly disadvantaged by virtue of their geographical situation or natural environment; reiterates its call to Member States and the Commission for special forms of preference to continue to apply – provided they are effective and bring European added value – in respect of the particularly disadvantaged types of region referred to in the Treaty on the Functioning of the European Union (outermost regions, northernmost regions with a very low population density and island, mountain and cross-border regions);

8. Recognises the special status and needs of certain regions stemming from their geographical situation, demographic change or specific constraints, such as their natural environment, while paying attention also to their potential; reiterates its call for special forms of preference, flexibility and special budget funding to continue to apply in respect of these types of regions, and in particular those referred to in Articles 349 and 174 of Treaty on the Functioning of the European Union, which are particularly disadvantaged (such as outermost regions, including the rural outermost areas, northernmost regions with a very low population density, which, inter alia suffer from long distances and northern conditions, and island, mountain and cross-border regions), with more favourable terms being provided for investment in these regions, by means of either direct assistance or tax exemptions; calls also for studies into the preservation or creation of certain preferences for these types of regions, with a view to ensuring that the use of cohesion policy instruments is adapted to their economies, with due regard for the importance of their small and medium-sized undertakings and the need for competitiveness and equal opportunities in order to make them an integral part of the EU internal market;
9. Emphasises that the Union will be able to be competitive in the face of global competition only if its cohesion policy can fully exploit the development potential of all the regions, urban areas and cities and allow a sufficiently flexible regional response to be made to the challenges and bottlenecks identified by the Europe 2020 strategy; underlines in this connection that targeting Structural Fund resources in a broad territorial approach must also serve to compensate for structural weaknesses in the stronger regions; stresses, however, that cohesion policy is not merely an implementing tool for Europe 2020 and that a continued focus on the core principles of cohesion policy will have the added value of sustaining the achievements of Europe 2020 even after the strategy has come to an end;

10. Emphasises that cohesion policy must continue to focus on territorial cohesion and points out that the Lisbon Treaty added the objective of territorial cohesion to those of economic and social cohesion; affirms that this aim remains indissociable from the challenges of economic and social cohesion and strengthens the European added value of cohesion policy; emphasises that ‘territorial cohesion’ is also relevant at the sub-regional level, particularly in urban areas (urban districts facing difficulties, uncontrolled urban sprawl), even within regions considered to be rich;

11. Sees macroregional strategies – provided that regional authorities are involved in their governance – as affording a major opportunity to harness forms of supranational potential, improve cooperation between the different levels of governance and take a joint approach towards shared challenges such as environmental protection or the use of resources and development capacities, thus allowing more efficient, balanced and sustainable development; highlights the need to link territorial cooperation programmes more effectively with territorial strategies (such as regional development plans, local development strategies and local development plans); considers that better coordination of existing support mechanisms can create scope for more targeted use of the EU Structural Funds, without this entailing any increase in the resources earmarked for these fields of inter-regional cooperation; takes the view, moreover that no new instruments, financial resources or implementation structures should be created for these strategies and that the financial support provided to the regions for smaller scale development projects must not be affected; considers that the macroregional approach could be used to strengthen the links between cohesion policy and neighbourhood policy; encourages the Commission and Member States, in this context, to take greater account of the territorial dimension of the ESF, in particular with regard to access to employment;

12. Doubts whether specific operational programmes for functional geographical entities such as groups of authorities including local areas, or sea or river basins will yield additional benefits, in particular in cases where there are no political authorities (including democratically elected authorities) with a sufficiently wide-rang ing remit to implement them; calls instead for closer coordination of macroregional, metropolitan regional or environmental-geographic strategies at inter-governmental level and for appropriate consideration to be given to these functional geographical entities within national operational programmes in order to facilitate the use of EU funding for interregional development projects; considers that specific operational programmes should be an option for delivery in regions where sub-regional delivery provides added value vis-à-vis national and regional programmes and where partnerships have been formed by political bodies for implementation purposes; calls for cross-border groupings to be involved in devising the operational programmes for cross-border programmes, on the basis of the EGTC Regulation;

13. Stresses the key role of urban areas and regions – including capital cities and their regions – in achieving the economic, environmental and social objectives of the Europe 2020 strategy; supports the dynamic process launched during the previous programming period for Integrated Urban Programmes and stresses the importance of the experiments currently under way; calls for support for ideas and projects which can serve as models, on the basis of integrated place-based development plans, and for the mutually beneficial upgrading of links between towns and cities and the rural areas functionally linked to them; considers that greater cohesion between these areas is of special importance in addressing problems of areas with disadvantaged communities; stresses, in this context, that the greatest socioeconomic differences often exist within cities and that cities with deprived areas and pockets of poverty are also to be found in wealthy regions;
14. Stresses that towns and cities can make a key contribution, as growth centres and growth drivers, to a given region; points, at the same time, to the need for it to be made possible for rural settlements to participate in integrated solutions for a given geographical entity by means of the fostering of partnerships and networks; stresses that larger urban centres face specific challenges because of the complexity of their social, economic and environmental tasks; sees, in this context, the endogenous potential of rural and peri-urban areas as offering an opportunity for development, although not only around agglomerations and big cities; notes, furthermore, the opportunity for the economic development of particularly disadvantaged regions through appropriate exploitation of, and support for, the endogenous potential of rural areas, including their environmental and cultural assets; considers also, in the context of structural and cohesion policy, urban-rural partnerships more in terms of providing rural areas with the same conditions for development and quality of life with regard to social and economic factors; calls on the Member States, given the dynamic influence of towns and cities on economic development in the regions and in stimulating the economy in surrounding rural areas, to guarantee the resources needed to implement the urban and sub-urban projects required;

15. Rejects the use of obligatory quotas, in particular for national allocations under ESF/ERDF programmes, for local and urban development, for rural areas and for other types of spatial agglomerations or functional areas, as this could ensure a larger critical mass of interventions; considers that the requirement to specify at operational programme level which urban and other areas are to be eligible for support is an option that should be prioritised wherever this method will ensure added value and concentration of aid intensity, and that this needs to be negotiated on the basis of the principles of multi-level governance; takes the view that the Member States and regions should to be given more responsibility to organise competitive and performance-based selection procedures in this respect as well;

16. Emphasises that structural and cohesion policy must not be biased towards specific types of region; calls for urban-rural partnerships to be seen in their broader social, economic and environmental context;

17. Emphasises that structural and cohesion funding should also take into account the educational, cultural and socio-political challenges of the Europe 2020 strategy, while remaining in line with the overarching EU objective of economic, social and territorial cohesion as enshrined in the Treaty and respecting the subsidiarity principle; takes the view, however, that across-the-board ‘Europeanisation’ of the relevant policy areas would fail on financial grounds; calls, therefore, for further place-based local development approaches that could serve as models to be introduced, while retaining existing national and regional competences;

18. Stresses, likewise, that cohesion policy cannot become a vehicle or instrument serving sectoral issues such as policies on research and development, industrial innovation and the fight against climate change, as this would mean diluting its primary objective and placing constraints on its use to promote regions’ development potential, which is essential in order to bring the most disadvantaged regions closer to the most developed regions;

19. Calls, in the light of the necessary shift towards renewable sources of energy and of the climate debate, for cohesion policy to make a greater contribution to the rapid development of environmental technology and renewables; considers that this should be one of the priorities if sufficient amounts are available in the programmes and a focus on renewables provides EU added value, based on plans for decentralised energy concepts involving effective energy storage technologies in the regions; is in favour of exploiting the regional economy’s potential in this area;

20. Sees scope under the Structural Funds for supporting investment in specific energy infrastructure, although such support must be available only in regions where political or geographical constraints significantly hamper the ability of the market to meet energy-supply needs; calls, too, for support from the structural funds to be linked in all cases to the strengthening of the internal energy market and the security of supply, as well as to the principle of multi-level governance in resource management;
21. Also considers that cohesion policy has a responsibility to do what is needed to fill gaps and remove bottlenecks in a core TEN network of main routes of European significance, particularly in the border regions which have until now been badly neglected in this regard;

22. Emphasises that the trans-European transport networks play a decisive role in the cohesion of European regions and that development of TEN infrastructure, Motorways of the Sea and designated E-roads must therefore be stepped up and access to them improved, especially in border regions and outermost regions; calls for all necessary measures to be taken to ensure sufficient financing and guarantee timely implementation of priority TEN-T projects; suggests that certain cross-border 'infrastructure' should be considered as priority projects eligible for Objective 1, 2 and 3 funding and calls for there to be an obligatory right for the initial proposal for this type of action to be made at regional level and for equal participation of the border regions and local authorities in the planning process;

23. Encourages the application of the national resources, given the added value of such measures in strengthening regional convergence, territorial cohesion and development activities such as tourism, which are important for remote regions, such as island regions;

24. Supports economic development and employment in SMEs and micro-enterprises; requests, therefore, that the fundamental principles of the Small Business Act for Europe (SBAE) – i.e. 'think small first' and 'only once' – be considered one of the bases of cohesion policy, and considers that these principles should be applied by Member States and regions in the definition of their operational programmes;

**System of objectives and framework for programme planning**

25. Emphasises that the core components of the Europe 2020 strategy (innovation, education and training, energy, environment, employment, competitiveness, skills and combating poverty) are already integral to cohesion and structural policy; takes the view that the Europe 2020 challenges can be integrated very easily into the three objectives system (Convergence, Regional Competitiveness and Employment, and European Territorial Cooperation), which has proved its effectiveness;

26. Emphasises that investment in innovation and education can promote growth; points out, however, that the relevant infrastructure (transport, broadband internet, energy) and appropriate institutions (a balanced mix of public investment and fiscal policy consolidation with macro-economic measures, e-government services and cross-border learning) must provide effective support;

27. Takes the view that the development of basic infrastructure should also be regarded as compatible with Europe 2020, because only when they have competitive transport, energy and communications networks and waste-management infrastructure will the convergence regions be in a position to contribute to achieving the Europe 2020 objectives, which is precisely why the weakest and neediest regions must be given some flexibility to interpret those objectives;

28. Stresses that the ESF is the most important instrument for the implementation of the social dimension of the Europe 2020 strategy and that the fund can contribute significantly to the fulfillment of the central priorities of that strategy, namely employment, transition to a sustainable economy, a lower number of school drop-outs, fighting against poverty, discrimination and social exclusion and finding answers to the different social situations people find themselves in; stresses, in this context, that, alongside GDP, other social indicators would be useful in the SWOT analysis;

29. Considers that the ESF is of crucial importance to cohesion policy and has the potential to enhance the latter's contribution towards meeting the Europe 2020 objectives, including in the area of sustainable growth through the provision of support to SMEs for the creation of green jobs;
30. Considers the fight against discrimination in the labour market, whether related to gender, sexual orientation, ethnicity, age, disability or place of residence, to be crucial for the promotion of genuine equality of opportunity; notes that increasing the female employment rate is crucial for reaching the Europe 2020 employment target and that barriers to women’s labour market participation must therefore be fully addressed;

31. Takes the view that GDP must be retained as the key criterion in the definition of areas eligible for maximum support (those with a per capita GDP below 75 % of the EU average) and, where appropriate, cohesion countries (per capita GNI below 90 % of the EU average); considers that the competent national and regional authorities should be given scope for the use – at the appropriate decision-making level, for each objective and in a manner reflecting geographical concentrations – of additional indicators, to be agreed in the development and investment partnership contracts, with which to assess the social, economic, environmental, demographic and geographical challenges which they face;

32. Calls for cohesion policy to continue, in accordance with the Lisbon Treaty, to target as a priority those regions that lag furthest behind; stresses that the neediest regions should be granted an appropriate share – commensurate with the seriousness of their development problems – of the funding available under Objective 1 (Convergence);

33. Calls for a limit to be placed on eligibility periods for regions which prove unable to show any significant improvements in their economic, social and environmental situation after several programming periods, despite maximum support;

34. Calls on the Commission to present a proposal for the duration of the next programming period that will ensure the provision of adjustable, robust and proportionate transitional assistance for regions no longer coming under the Convergence Objective, in order to address their specific situation, and for regions with per capita GDP between 75 % and 90 % of the EU average, in the form of an intermediate category, in order to avoid unequal treatment of regions in spite of their similar situations; considers that this specific arrangement must replace the current ‘phasing-out’ and ‘phasing-in’ systems, thus creating a fair system which better addresses the negative impacts of the economic and financial crisis on the regions, while strengthening justice and solidarity, which are fundamental values of cohesion policy; stresses that these transitional measures for the next programming period should not be established at the expense of the current Convergence (Objective 1) and Competitiveness (Objective 2) regions or the European Territorial Cooperation Objective (Objective 3);

35. Calls for a strengthening of Objective 2 (Regional Competitiveness and Employment) through its horizontal nature to achieve results on a limited number of EU priorities, such as support for SMEs, green innovations, local economies, education and training, infrastructure, sustainable mobility, renewable energies and energy supply, resource efficiency and social inclusion; stresses that the proven system of ensuring that more developed regions are able to remove regional structural weaknesses, reduce territorial disparities, contribute to common European objectives and meet future challenges when using structures that can respond flexible to changing circumstance, including, inter alia, innovation clusters and competition for funding in these regions, must be retained and developed further; calls for additional measures for areas highly affected by structural change which can help to improve the socio-economic and infrastructure situation; points out in this context that strategies should be designed with sufficient flexibility to be able to cope with the problems and particularities of each individual region;

36. Calls for action to ensure that more developed regions are able to modernise their social and economic capital and to address specific pockets of deprivation and inadequate economic development;

37. Takes the unequivocal view that efforts under Objective 3 (European Territorial Cooperation) need to be stepped up at all EU internal borders and at all three levels of such cooperation (cross-border, inter-regional and trans-national), and calls for the relevant share of structural funds to be increased to 7 %; calls
for the allocation of funding for each territorial cooperation programme to be based on harmonised criteria, in order to provide a strategic and integrated response to the needs and specificities of each geographical territory and area concerned; stresses the importance of the border regions in terms of achievement of the Europe 2020 objectives; considers that there is a need to improve coordination between the Trans-European Networks, particularly those concerned with transport and energy, and cross-border infrastructure, and to increase the subsidies for those networks in line with European priorities, and calls for a corresponding increase in funding for all border regions; calls for simplification of the implementing rules governing Objective 3 programmes, based on the principle of proportionality, as well as for the development of a common set of eligibility rules, all of which are preconditions for these programmes becoming more effective and more visible; stresses the need for local decision-makers to be closely involved, since programmes can be fleshed out only if this is guaranteed:

38. Considers that EGTCs represent a unique, highly valuable territorial governance instrument which responds to the needs for structured cooperation and must be promoted as a means of setting up cross-border governance systems ensuring regional and local ownership of the different policies;

39. Rejects absolutely all proposals to nationalise or sectoralise cohesion policy; takes the view that new thematic funds (for climate, energy and transport) would undermine the tried and tested principle of shared management and integrated development programmes and jeopardise the availability of synergies and the effectiveness of interventions, and thus the regions’ contribution to the achievement of the Europe 2020 objectives;

40. Insists that the European Social Fund must remain part of cohesion policy, as only in this way can integrated strategies for resolving economic and social problems be developed and implemented;

41. Supports the Commission in its aim to ensure a stronger, efficient and more visible ESF; calls, to this end, on the Commission and Member States to reach agreement in their negotiations on the necessary amount of ESF contribution within the Structural Funds;

42. Takes the view that measures to improve the effectiveness of the ESF should be based primarily on incentives rather than penalties;

43. Stresses that the economic crisis has further increased the urgency of the need for measures in the sectors covered by the ESF, in particular to promote employment, occupational redeployment, social inclusion and poverty reduction;

44. Stresses the fact that the ESF provides crucial support for employment market policies such as preventive and local policies as well as those aimed at helping young people to enter the labour market and at combating unemployment; highlights the fact that the Member States should use the ESF for investment in new skills, education (including early childhood education), lifelong learning, retraining and occupational redeployment activities, and stresses that the fund plays an important part in boosting all dimensions of social inclusion, including for the most disadvantaged and vulnerable groups;

45. Asks the Commission to step up ESF action aimed at promoting integration into the job market; encourages the Member States to invest in children from a very early age through education and later to set up in-school guidance based on local and regional job opportunities and lifelong training to help workers adapt their skills to the needs of the job market, while implementing measures to combat youth unemployment and to tackle the phenomenon of the ‘working poor’ and establishing tailor-made programmes to assist disadvantaged and vulnerable groups such as the Roma, migrants, persons with disabilities and early school-leavers, with a view to promoting effective and inclusive growth and a knowledge-based economy in Europe;
46. Calls for better targeting and additional technical support to those entities that are affected by deep poverty and often tense co-existence of majority-minority cultures at sub-regional levels; considers that such sub-regional entities can easily remain deep poverty pockets facing segregation even within regions that are not necessarily lagging behind the statistical averages; notes that concentrated efforts should be made on the development of these sub-regional entities;

47. Welcomes the fact that operational programmes (OPs) covering all target areas have also been set up under the ESF for the first time in some Member States for the 2007-2013 funding period;

48. Underlines the fact that the invaluable experience gained with the Community EQUAL initiative is still relevant today, especially as regards combining local and regional measures and the EU-wide exchange of best practices;

49. Draws attention to the synergies achievable through integrated local and regional development approaches, notably linking the ESF and the ERDF, and calls for common eligibility rules and for the use of the option of cross-financing between these funds – specifically with a view to place-based integrated development planning – to be increased and facilitated; supports the introduction of an option for multi-fund OPs which would further facilitate integrated approaches; calls, furthermore, for better synergies between the EDF and the ERDF;

50. Calls, with a view to increasing synergies, for greater integration of sectoral policies (transport, energy, research, environment, education) under the cohesion and structural policies, so as to achieve greater effectiveness and better coordination between the Structural Funds, the CIP and the Framework Programmes for Research and Development; suggests that multi-fund programming could contribute to a more integrated approach and would increase the effectiveness of the interplay between these different funds; considers the national/regional development partnerships to be an appropriate instrument to bring together the various policies; underlines, in this respect, the need to set clear objectives and to assess whether the goals have been achieved in the Member States;

51. Proposes that research and development policies be territorialised; stresses, therefore, the importance of adapting cohesion policy and research and innovation policies to the specific needs of the territories, since closer involvement of regional and local authorities in the design and implementation of the regional development funds and research and innovation programmes is of crucial importance in view of the impossibility of applying the same development strategy in all regions;

52. Calls for a common strategic framework for the ERDF, the ESF, the Cohesion Fund, the framework programmes, the EAFRD and the EFF, for the post-2013 funding period; takes the view that the model of a harmonised regulatory approach (covering administration, eligibility, auditing and reporting rules) must be further strengthened by means of a joint framework regulation; highlights, in this respect, the importance of different funds working smoothly together in order to achieve results; calls for the Commission to make the adjustments required to ensure that the relevant funds can, where possible, complement each other;

53. Calls for a new Common Strategic Framework to be adopted by the Council and the Parliament under the ordinary legislative procedure, on the basis of Article 177 of the TFEU;

54. Takes the view that the European Social Fund needs to be included in the common strategic framework, without, however, altering its own specific operating rules and provisions and while ensuring the provision of adequate resources; calls on the Commission to strengthen the role of the ESF, raise its profile and simplify its budgetary control arrangements by establishing simple and effective cooperation procedures between the managing authorities and the budgetary control departments;
55. Suggests, in this context, that reintegration of the regionally oriented EAFRD (Axes 3 and 4) programmes should be considered; is opposed, however, to this resulting in a reduction in the budgets for the ERDF and EAFRD; calls for binding targets to be set for the Member States and the regions in order to establish harmonised administrative structures for the EU Structural Funds and the regionally oriented rural development programmes;

56. Calls for the revision of the regulation concerning cross-border cooperation at external borders and of the current ENPI, so as to integrate the relevant funds into Objective 3 (European Territorial Cooperation);

57. Welcomes the objectives of the development and investment partnership contracts between the EU and the Member States, which the Commission is proposing in place of the national strategic reference frameworks previously prepared for individual Member States; calls for key investment priorities geared to the implementation of the Europe 2020 strategy and the achievement of other cohesion policy objectives to be set at this stage; considers that the allocation of responsibilities between the various levels involved needs to be clarified as quickly as possible, and calls for national and/or regional and local competences to be retained in accordance with the principle of subsidiarity; calls for a clear commitment to the appropriate involvement of partners in the development and investment partnership contracts;

58. Supports retention of the operational programmes as the most important tool for implementation of the strategy papers in terms of concrete investment priorities; calls for clear and measurable objectives to be set in this respect;

59. Calls for the mandatory involvement of regional and local authorities and associations thereof, in accordance with the constitutional and institutional systems of the individual Member States, in all phases of cohesion policy implementation (strategic planning, drawing up and negotiating development and investment partnership agreements and operational programmes, monitoring and evaluation), in a structured and systematic way; considers it essential to make appropriate provision for this in the regulations governing the Structural Funds;

60. Believes that any future strategy for the use of the ESF will be more effective if it involves regional and local levels of governance, which are capable of gearing strategic objectives to specific territorial characteristics on the basis of structured dialogue with all stakeholders;

61. Supports the system of thematic priorities that the Commission is proposing; points out that, the lower the level of development in a Member State or region, the more wide-ranging the list of priorities needs to be, while specific regional development needs have to be taken into account and it has to be ensured that this thematic approach for structural and cohesion fund programming cannot be implemented to the detriment of the integrated place-based approach;

62. Calls for Member States, in the event of certain binding priorities being set for all Member States, to include among their priorities innovation, infrastructure, transport and resource management, but considers there should be some margin for manoeuvre to take into account the scale of the programmes, the baseline scenario in each region and the results to be achieved, in order for these priorities to be tailored to each region's specific needs; stresses, in this connection, that innovation must be given a broad interpretation in line with the Innovation Union flagship initiative; notes that SMEs are the main source of jobs in the EU and are a breeding ground for business ideas; stresses that support for SMEs must be continued and strengthened in light of the key role they can play in the implementation of the Europe 2020 strategy; stresses that, in connection with Innovation Union, a broad concept of 'innovation' needs to be applied, while SME access to finances must continue to be facilitated; stresses that it must be possible for additional priorities to be proposed and pursued on a voluntary basis and in accordance with the principle of subsidiarity; calls for the proposed priority areas to include energy, education and training, and action to combat poverty;
63. Calls for delays in launching programmes to be avoided and for decision-making and evaluation processes to be speeded up as a matter of principle; stresses that this is extremely important for small and medium-sized undertakings in particular; calls, too, for the technical equipment available to the relevant administrative authorities to be improved and for those authorities to be more closely inter-connected, for publication requirements to be reduced, and for deadlines for calls for tender and applications to be significantly shortened; asks the Commission to evaluate whether pilot areas could be established in order to test out new regulations on smaller scale before they become applicable to the rest of the regions, in order to identify possible implementation problems;

Incentives, conditionality, result-orientation, co-financing and financing options

64. Calls for funding under the development and investment partnerships to be made subject to certain specific commitments predetermined in a dialogue between the Commission and Member States; takes the view that those predetermined conditions must require the Member States to undertake reforms in order to ensure that funds are used efficiently in areas directly related to cohesion policy, that, where necessary, Member States should be called upon to do so, and that the funds should be made dependent on those conditions; calls for it to be made possible for the actors involved in the management of operational programmes to influence conditionality; considers it fair for such conditions to include, in particular, full implementation of existing EU legislation (e.g. on price regulation, tendering procedures, transport, the environment and health) in order to prevent irregularities and ensure effectiveness; rejects, however, the imposition of conditions requiring Member States to undertake fundamental social and economic reform; all conditions should fully respect the principles of subsidiarity and partnership;

65. Takes the view that any new conditionality must not result in extra administration burdens for the actors involved; encourages the development of consistent, standard systems of conditionality for both the ERDF and ESF that are objectively assessable;

66. Considers the Commission to be responsible for establishing conditionality and overseeing their implementation, and proposes corresponding action plans for the Member States and regions;

67. Welcomes the Commission's proposal to make cohesion policy more result-oriented by means of the ex-ante establishment of appropriate objectives and indicators; stresses that such indicators must be few in number, that they must all be clearly defined, measurable and related directly to the impact of the funding, and that they should be established by agreement with the regions/Member States; considers, however, that all instruments and criteria proposed to measure performance should continue to be based on a qualitative approach to the programmes;

68. Considers that the indicators determining regional subsidies from the Structural Funds and the Cohesion Fund must be based on Eurostat's most recent statistical data, so as to take full account of the economic and social impact of the crisis on the regions;

69. Calls for the effectiveness and transparency of the ESF to be increased through more results-oriented action and asks for the ex ante setting of clear and measurable targets and outcome indicators, directly linked to the purpose of the funding, which measure, in particular, success in the fight against poverty and social exclusion and integration into high-quality employment; considers that stakeholders at all levels of governance need to be involved in the setting of these targets and indicators and that the latter should be clearly defined in good time prior to the provision of funding, so that both the Member States and the Commission can evaluate the results achieved and use the experience during the next planning phase;
supports the Commission’s proposal to make the allocation of ESF money dependent on ex ante conditionality, including a precondition regarding the transposition of EU legislation and EU objectives, which are indispensable for the success of ESF measures, as well as structural reforms and adequate administrative capacities; stresses that result-orientation must not lead to small beneficiaries being disadvantaged or exposed either to new barriers to access or to risks;

70. Regards public and private co-financing as one of the basic principles of cohesion policy; calls for a review of the percentage ceiling for EU funding – which should take more account of regional development levels, European added value and the types of measure funded and should be raised or lowered accordingly;

71. Calls on the Member States and regions to look ahead when programming co-financing appropriations and to boost them by means of financial engineering;

72. Calls, in connection with direct subsidies to undertakings, for it to be recognised that cohesion policy funding, rather than influencing decisions by companies – and particularly larger companies – to open a plant in a given location, tends to be pocketed by companies which have already taken such decisions (deadweight effect), and calls, therefore, for grant support for large, private undertakings to focus on investment in research and development or for it to be provided, more often than is currently the case, indirectly through infrastructure financing; also calls for clear provisions to be included in the general regulation governing the Structural Funds ruling out the provision of any EU funding for the relocation of undertakings within the Union, substantially lowering the threshold for review of relocation investments, excluding large enterprises from direct subsidies, and placing a 10-year limit on the duration of operations;

73. Recognises the leverage effect of new financial instruments and their potential to mobilise investment, supports increased financing from credit in general, and calls for the use of revolving financial instruments to be extended to those areas eligible for funding which prove to be appropriate; calls for procedures to be simplified to that end and for a greater degree of legal certainty throughout the entire funding period, as well as for the establishment of an EU register showing which projects are provided with loans and which with subsidies; calls for the instruments to be adaptable, so as to ensure they are viable and feasible for all regions and cities; takes the view that at the end of a funding period, at the latest, responsibility for how the funds are spent should transfer to national level or project level; notes that during the current period not all Member States have adopted a decentralised approach to dealing with financial instruments such as JESSICA; emphasises the need for direct access for cities;

74. Emphasises that the provision of grants must always be retained as an option and that it must be the responsibility of those involved on the ground to use the funding mix best suited to regional needs;

75. Considers that the EIB must assume a stronger role in the financing of TEN infrastructure; calls for more emphasis to be placed on self-supporting public-private partnerships; considers, as a matter of principle, that the European Parliament has a major responsibility in this regard for ensuring transparency, as well as in relation to decision-making and supervision;

76. Welcomes the effective cooperation between the EIB and the Commission in implementing three joint initiatives – JESSICA, JEREMIE and JASMINE – which should increase the efficiency and effectiveness of cohesion policy and improve the functioning of the Structural Funds; calls on the Commission to continue to actively adopt joint initiatives with the EIB, particularly in the field of cohesion policy and to ensure financial support for SMEs;

77. Sees global grants at sub-regional level as an appropriate tool for developing independent innovation strategies in line with European regional-policy objectives;

78. Rejects quotas or obligations for global grants, however, as they could run counter to the setting of overriding priorities tailored to the regions’ needs;
Budget, financial processes, reducing red tape, budgetary discipline and financial control

79. Takes the view that the system of seven-year programming periods has proved its worth regarding cohesion policy and should be retained at least until the end of the next planning period (2020); calls, however, for swifter strategic reassessment of the basic conditions so that the EU can respond even more quickly and more flexibly to exceptional events (such as the financial crisis, the energy crisis or natural disasters);

80. Emphasises, nonetheless, that the EU budget as currently structured and its allocation mechanisms, underpinned by the regulations governing the various funds, have proved effective in the implementation of cohesion and structural policy in particular, and that changes should therefore be made only where procedures have not worked or where the arrangements are at odds with the Financial Regulation; supports, in this context, proposals from the Commission for harmonisation of the rules governing all funds available for regional development; calls, however, for the utmost caution to be exercised when making even the most minor adjustment to established, tried and tested structures, so as to avoid malfunctions and uncertainty for national and regional administrative bodies and an increased burden for beneficiaries, particularly those with small structures and limited capacity;

81. Regards the integration of the Europe 2020 objectives into the existing system of objectives and funds as feasible; rejects any division of the EU budget under the notional headings of 'smart', 'inclusive' or 'sustainable' growth, as well as any fragmentation of cohesion policy across various budget headings; considers that this policy should have its own heading within the EU budget;

82. Regards post-2013 cohesion policy as being capable of making an even greater contribution to further and sustainable development of the EU regions and as the decisive policy for cross-sectoral implementation of the Europe 2020 strategy, and therefore calls for it to be allocated at least the same budget appropriations;

83. Recalls that the European Court of Auditors has for many years reported that payments in the area of cohesion are affected by an error rate exceeding 5 %, but notes that this fell from 11 % for the last discharge procedure as shown by the ECA Annual Report, and that the supervisory and control systems are only partially effective; calls in addition for clarification on the method of calculating errors, as discrepancies in figures provided by the European Court of Auditors and by the Commission lead to confusion and to mistrust of official figures;

84. Calls for the adoption of stricter rules on the monitoring of irregularities in the use of the Structural Funds in respect of Member States that have a high level of irregularities in connection with the use of monies from the Structural Funds and on a procedure for the systematic interruption and suspension of payments as soon as evidence suggests significant deficiency in the functioning of the accredited authorities; calls, at the same time, for unnecessary controls to be done away with in those Member States that have a satisfactory fund management system; considers that the 'contract of confidence' and 'single audit' principles should be implemented wherever possible;

85. Calls on the Member States/public authorities to designate authorities or entities that will assume exclusive responsibility for the proper administration of monies from the Structural Funds;

86. Considers the annual, tested management declarations at the level of the head of the office administering the funds (payment office/administrative authority) to be an appropriate means of strengthening the reporting and control chain and highlights the absolute necessity for these declarations to be accurate in terms of content; calls, therefore, for a penalty system to apply to false declarations; continues to endorse the purpose of national statements of assurance;
87. Calls for the Commission to have, from the start of the next programming period, greater responsibility for the improvement of national administrative procedures; considers, in this connection, that there is an urgent need for simplification and clarification of the administration of support programmes, in particular in the area of financial implementation and financial control; takes the view, therefore, that it will be incumbent on the Commission to implement accreditation procedures for national or federal-state administrative and auditing bodies; considers that entitlement to simplified and less frequent reporting should be linked to successful accreditation and a reduction in the error rate;

88. Calls, furthermore, for the supervisory role of the Commission to be strengthened by introducing systematic interruption and suspension of payments as soon as well-established evidence suggests a significant deficiency in the functioning of the accredited authorities; calls on the Commission also to put in place more robust plans for increasing the rate of recoveries of erroneous payments;

89. Calls for the inspection system to be simplified and the number of inspection levels to be reduced and for the respective responsibilities of the Commission and Member States to be clarified; calls for the use of a single-level inspection procedure, under which Member States would inspect projects and the Commission would inspect the Member States' inspection systems;

90. Takes the view that, in order to improve the effectiveness of the operational programmes, greater use should be made of competitive procedures for project selection within the regions;

91. Calls, in the interests of reducing red tape, for more general application of standardised procedures, with higher standardised units of cost and the declaration of overheads on a flat-rate basis where this system is appropriate; calls for greater account to be taken of the principle of proportionality, i.e. for the implementation of smaller programmes to be subject to significantly reduced reporting and auditing requirements;

92. Calls on the Commission to maintain an annual public 'failure scoreboard' of inadequate and/or late execution of reporting and disclosure requirements and of irregularities, abuse and fraud in the use of monies from the Structural Funds; calls for this information to be broken down by Member State and by fund;

93. Is concerned at the fact that red tape is preventing small companies and organisations from gaining access to structural funding; calls for the relevant rules and technical documentation to be made as clear as possible;

94. Calls for annual clearance of accounts procedures that also cover multiannual programmes to be established for the new programming period;

95. Considers more efficient e-government solutions (harmonised forms) to be necessary for the entire implementation and monitoring system; calls for exchanges of experience between the Member States coordinated by the Commission and for coordinated implementation through groupings of administrative authorities and auditing bodies;

96. Supports the Commission’s proposal that national authorities should not receive reimbursement until the EU funding has been paid out to the beneficiaries; envisages that this will speed up payment procedures and will be a crucial incentive to carry out stringent national auditing; notes, however, that cash flow problems could potentially arise at Member State or regional level and that appropriate hedging arrangements will need to be made;
97. Regards the Commission's call for payments to be more closely geared to results as illogical, in that results will only be achieved by financing the projects in the first place; is concerned that the monitoring is likely to be highly bureaucratic, but regards as conceivable requirements which make payments contingent on proven consistency between the projects and, for example, the Europe 2020 strategy;

98. Considers that, while reimbursement should arrive after EU funding has paid out for projects, no extra burdens should be placed on the beneficiaries, in the form of interest rates that do not reflect the low risk factor of such loans, by banks or other financial institutions;

99. Calls for diversification of the penalty mechanisms, including among other aspects a bonus system for those Member States which comply with the implementation requirements, in particular through administrative concessions;

100. Recalls that, unlike other structural funds, the specificity of the ESF is that it is closely linked to the target groups it supports and that it needs to be shaped in a way that allows for many small-scale, locally based projects; calls for the Member States to be required to pass on funding to projects immediately, so as to rule out problems for smaller beneficiaries; calls on the Commission and the Member States to ensure flexibility in the financial implementation of programmes, to take the principle of proportionality regarding time and efforts and financial contribution into account when fixing control and audit obligations, and to simplify procedures and reduce excessive administrative costs and any obstacles, for the benefit of the projects and the potential beneficiaries, thereby making the ESF better able to contribute to achieving the EU’s objectives for growth and job creation; calls on the Commission to increase the choice for management authorities and beneficiaries as regards financing options and to propose the possibility of standard cost options alongside traditional accounting;

101. Supports the Commission’s proposal that the N+2 and N+3 rules should, in certain situations, be applied systematically, possibly at the level of Member States’ allocations, in order to provide greater flexibility, except in the first year of funding and except for cross-border programmes, and that any other derogations from the automatic decommitment rule should only reflect an adaptation to the administrative burdens imposed by new provisions related to strategic programming, results-based orientation and ex ante conditionality; supports, indeed, the application of an N+3 rule in the case of cross-border programmes, in order to take account of the slower administrative processes resulting from the linguistic and cultural challenges they face; considers this will guarantee that a balance is struck between high-quality investment and smooth and speedy programme implementation;

102. Emphasises the importance of the European Neighbourhood and Partnership Instrument (ENPI) for cohesion policy with regard to cross-border cooperation with states outside the EU; takes note of the current problems with implementation of the programme; is convinced that it will ultimately prove necessary to reincorporate the ENPI cross-border cooperation programmes into cohesion policy; sees infrastructure (transport, energy and environmental) links with neighbouring countries as having particularly positive effects on the European border regions; calls for ENPI funding to focus more closely on strategic needs in relation to energy and to transport infrastructure; underlines the role that macroregions can play in this context; calls on the Commission to look into the feasibility of establishing better synergies between ERDF initiatives, the Instrument for Pre-Accession Assistance, the European Neighbourhood and Partnership Instrument (ENPI) and the European Development Fund (EDF); asks the Commission, furthermore, to evaluate whether the structures already used in the regional policy sphere could also be applied to the administration of the ENPI;
Tuesday 5 July 2011

103. Stresses, too, the relevance of the EU enlargement process for cohesion, as part of which the Instrument for Pre-Accession Assistance (IPA) helps the candidate countries to make substantive and organisational preparations for implementing cohesion policy; draws the attention to the implementation problems in the Member States; recalls the original aims of the IPA instrument, in particular those of financing capacity building and institution-building and supporting the candidate countries' preparations for the implementation of the Community's cohesion policy in order to prepare them for full implementation of the Community acquis at the time of accession; calls on the Commission to identify the problems in the current functioning of the IPA instrument;

104. Reiterates its call for the Committee on Regional Development to be involved in and share responsibility for determining the form that these instruments will take in future;

*  *

105. Instructs its President to forward this resolution to the Council, the Commission and the Presidents of EU regions and Länder.

Budget support to developing countries

P7_TA(2011)0317

European Parliament resolution of 5 July 2011 on the future of EU budget support to developing countries (2010/2300(INI))

(2013/C 33 E/05)

The European Parliament,

— having regard to the commitments on aid volume, aid to sub-Saharan Africa and aid quality made by the G8 at the 2005 Gleneagles Summit and all subsequent G8 and G20 meetings,

— having regard to the Millennium Declaration adopted by the United Nations on 8 September 2000,

— having regard to the European Consensus on Development (1) and the European Union Code of Conduct on Complementarity and Division of Labour in Development Policies (2),

— having regard to the Paris Declaration on Aid Effectiveness and the Accra Agenda for Action,

— having regard to Article 208 of the Treaty on the Functioning of the European Union, which stipulates that 'the Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries',

— having regard to Article 25(1)(b) of Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation (3) (the ‘Development Cooperation Instrument’ (DCI)),

— having regard to Article 61(2) of the Cotonou Agreement,

— having regard to its resolution of 6 April 2006 on aid effectiveness and corruption in developing countries (1),

— having regard to its resolution of 5 May 2010 with observations forming an integral part of the decision on discharge in respect of the implementation of the budget of the Seventh, Eighth, Ninth and Tenth European Development Funds for the financial year 2008 (2),


— having regard to Court of Auditors Special Report No 11/2010 entitled 'The Commission’s management of general budget support in ACP, Latin American and Asian countries',

— having regard to the Green Paper from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the future of budget support to third countries (COM(2010)0586),


— having regard to the Commission’s 2008 report entitled ‘Budget support: The effective way to finance development?’

— having regard to the report of the ACP-EU Joint Parliamentary Assembly’s Committee on Economic Development, Finance and Trade on budgetary support as a means of delivering official development assistance (ODA) in ACP countries,

— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on Development and the opinions of the Committee on Foreign Affairs, the Committee on Budgets and the Committee on Budgetary Control (A7-0206/2011),

A. whereas the reduction and ultimate eradication of poverty is the European Union development policy’s primary objective under the Lisbon Treaty,

B. whereas budget support has become one of the key forms of aid,

C. whereas many donors consider general and sectoral budget support as a means of fostering partner countries’ ownership of development policies and lasting reform processes, strengthening national accountability institutions and systems, and facilitating growth, poverty reduction and the achievement of development objectives,

D. whereas operational capacity development is needed in order to create in the first place the preconditions for programme-based approaches, including budget support or more far-reaching models,

E. whereas budget support helps to overcome certain weaknesses of the traditional project-based approach (high transaction costs, fragmented parallel systems) and thus increase the coherence and efficiency of EU measures, aims which are stressed in the Lisbon Treaty,

F. whereas budget support should help to improve the quality and effectiveness of aid, with particular reference to the principles of ownership and harmonisation, given that political dialogue between donors and recipients makes it possible to tailor contributions to the priorities countries have set in their national poverty reduction strategies,

G. whereas, despite the risks mentioned by the European Court of Auditors in its reports on budget support, the 'dynamic approach' in the general conditionality of budget support is still a very important instrument of political dialogue; whereas budget support must nevertheless under no circumstances be considered as a 'blank cheque',

H. whereas the range of commitments made by beneficiary countries to all their partners may, in some cases, make their use difficult, given that the conditions imposed by donors are sometimes contradictory,

I. whereas the European Union has hitherto referred more frequently to violations of human rights ('first-generation rights') in partnership agreements rather than violations of social, economic and cultural rights ('second-generation rights'),

J. whereas all the donors should consult one another in order to prevent inconsistencies in conditionality,

K. whereas, pursuant to Article 2(3) of the Lisbon Treaty, it is an objective of the European Union to work for a sustainable social market economy, and whereas this should also apply with reference to development policy and relations under the neighbourhood policy,

L. whereas making a partner government publicly accountable for its budgetary management is an essential factor in the country's capacity building process through the exercise of scrutiny by its parliament and the provision of information to civil society in the field of public finance,

1. Welcomes the Commission’s initiative through the Green Paper on budget support, which is aimed principally at promoting the development of partner countries from within, and calls for the budget support eligibility criteria to be clarified with a view to avoiding any loss of control over or misuse of this type of assistance, with due account being taken of factors such as the corruption index ratings for the countries concerned;

2. Welcomes the European-level consultation process; hopes that budget support award practice will be objectively analysed and improved in order to increase its effectiveness;

3. Recalls that, according to the Lisbon Treaty, poverty reduction and eradication is the EU’s primary development policy objective; emphasises that poverty has multiple dimensions such as human, economic, socio-cultural, gender, environmental and political, which all need to be tackled by the EU development policy;

4. Is of the opinion that EU aid should generate real quality change in the partner countries and recognises budget support as an effective tool for achieving this goal, provided that, as well as implying conditionality, it is used alongside effective political and policy dialogue;
5. Emphasises the crucial and compulsory role of policy coherence in the implementation of a high-impact development policy; further calls for the EU foreign and security policy to focus on the promotion of democracy and human rights, peace and security, all key preconditions for sustainable development; calls for more systematic efforts to mainstream climate change adaptation and disaster risk reduction measures;

6. Takes the view that taxation guarantees an independent source of financing for sustainable development and provides an important link between the governments and citizens of developing countries; calls for the development of a viable fiscal administration and a comprehensive tax infrastructure to be made one of the highest priorities of budget support; recommends that budget support policy should incorporate measures to combat tax havens, tax evasion and illicit capital flight;

7. Stresses the need to use sectoral budget support wherever appropriate in order to ensure better targeting of basic social sectors, particularly health, education and assistance for the most vulnerable groups, especially persons with disabilities;

8. Points out that budget support must not be used to reinforce the EU’s particular economic and strategic interests, but to reach development objectives of and for developing countries, especially to eradicate poverty and hunger;

9. Draws attention to the innovative role played by the EU in the field of budget support and the added value which the Commission brings, owing to its expertise in this area;

10. Notes that budget support can enhance not only the accountability of governments but also donor coordination through the necessary dialogue on budgetary issues; points out that this a possible way forward for better coordination with emerging donors;

11. Stresses that the Union has a responsibility to pass on its experience to other institutional stakeholders, in particular at the High-Level Forum on Aid Effectiveness in Busan;

12. Stresses that the dynamic approach adopted by the Commission and a majority of budget support providers entails a number of risks which must be duly taken into account; calls on the Commission to carry out national assessments of the likely risks and benefits of budget support in partner countries;

13. Calls on the EU to administer budget support in such a way as to take full advantage of its complementarity with other forms of aid;

14. Stresses the need to strengthen both the Commission’s monitoring mechanisms and parliamentary scrutiny and the provision of information to civil society in countries in receipt of budget support; stresses also that optimum procedures must be established for auditing the public finances of recipient countries as a precondition for any disbursement of funds;

15. Recalls that clearly defined, widely supported and closely monitored indicators are essential in order to demonstrate the concrete effects of budget support in third countries and that the relevant budgetary authorities should be updated regularly on the indicators and guidelines that shape the decision-making process in relation to budget support; emphasises that these indicators must be better tailored to the specific needs of partner countries in order to avoid the ‘one size fits all’ approach taken by the Commission, which is potentially counterproductive;
16. Calls for budget support to be made contingent on democratic parliamentary scrutiny of the budget in recipient countries; calls for the broad participation of parliaments and consultation of civil society in partner countries, so as to ensure that decisions about the use of budget support funds can be taken democratically;

17. Calls on the Commission to ensure, before budget support is granted, that the aims of the intervention are part of the national programmes of the recipient country and that the principles of coordination, complementarity and coherence in relation to other donors are respected, as well as additionality to the resources allocated by the recipient country;

18. With a view to ensuring the relevance of EU budget support, calls on the Commission to streamline its programming and design process by improving the preparation and documentation of decisions to launch budget support operations and, given resource constraints in Delegations, which often limit their capacity to perform certain activities, calls on the Commission to provide sufficient qualified staff for the implementation process, as budget support requires different analytical skills from project and programme financing;

19. Insists on the leading role that national parliaments of recipient countries, civil society organisations and local authorities should play as they are best placed to identify priority sectors, prepare Country Strategy Papers and monitor budget allocations; demands that national parliaments adopt Country Strategy Papers and the multiannual budget in consultation with civil society, prior to policy dialogue with donors on budget support, in order to empower parliamentary scrutiny;

20. Emphasises the importance of the effectiveness of EU development aid; calls on developing EU-level independent evaluation systems and a complaints mechanism open to those affected by EU aid, as well as supporting in-country accountability mechanisms;

21. Calls on the Commission to supply a comprehensive financial analysis of general and sectoral budget support granted to local government and to consider whether part of budget support should be decentralised with a view to ensuring genuine ownership by local government stakeholders, as well as to assess the risks involved in doing so;

22. Calls on the EU to respect and promote genuine ownership of developing countries over their development strategy and to refrain from crowding out national policy-makers through policy dialogue surrounding budget support, which undermines democratic accountability and contributes to depoliticising domestic political realities;

23. Considers that budget support should focus as a priority on the government departments that have the greatest impact on poverty reduction, in particular health and education ministries;

24. Considers, furthermore, that there is a need for gender mainstreaming in budget support, with attention being paid to gender issues at all stages in the budget process, dialogue being promoted with women’s associations and gender-differentiated indicators being introduced;

25. Stresses that, with a view to enhancing mutual accountability, the Commission should step up its role as a facilitator between government, members of parliament and civil society, and considers, to that end, that a percentage of the budget support earmarked for technical assistance to sectoral ministries could also be used for capacity building in parliaments and civil society in order to enable them to play their budget support oversight role to the full;

26. Stresses the prominent role of donor organisations in supporting partner countries in their capacity development and the positive influence of local project aid on reducing poverty and promoting inclusive growth and sustainable development in partner countries;
27. Is concerned at the effects of macro-economic destabilisation and the impact on the most vulnerable sections of the population which a sudden break in budget support might cause; proposes that, on the basis of concerted action by donors and following consultation of the civil society and parliament of the partner country concerned, a mechanism be set up for the gradual reduction of budget support payments, which could attenuate such impacts, encourage political dialogue and enable concerted solutions to be found to the difficulties encountered;

28. Believes that budget support just like programmed aid should be treated as a transitional instrument and should not hamper efforts to strengthen countries’ capacities to raise own resources, such as taxes, in order to become independent from third country donations;

29. Calls on donor countries to coordinate budget support more effectively and make such support more predictable, and points out that they need to be willing to enter into long-term commitments with partner countries;

30. Calls on the EU to take the appropriate measures, so that there is commitment from the third countries that they will be investing in a mechanism which promotes their financial stability;

31. Insists on the effective implementation of the requirement contained in Article 25(b) of Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation (the DCI Regulation), which stipulates that the Commission shall consistently use an approach based on results and performance indicators and shall clearly define and monitor its conditionality and support efforts of partner countries to develop parliamentary control and audit capacities and to increase transparency and public access to information; urges the Commission to extend these provisions to budget support to beneficiary countries of the European Development Fund (the ACP countries), for which – so far – only the more technical criteria of Article 61(2) of the Cotonou Agreement apply;

32. Considers that, since the use of budget support is an important strategic decision in the Union’s relation with its partner countries, Article 290 TFEU (delegated acts) must apply to the definition of the eligibility criteria for this aid modality, giving the Council and Parliament, as co-legislators, full codecision powers over its adoption, including – if necessary – the right of revocation of the delegated act;

33. Recalls that major deficiencies in capabilities, in particular weak governance, are liable to deprive many developing countries of budget support;

34. Takes the view that financing decisions on budget support must be driven not only by expected benefits but also by the short-term and long-term risks incurred in both donor and partner countries; notes that the Court of Auditors, in its Special Report (1), is in full agreement with this assessment by highlighting that a sound risk management framework is still to be developed and implemented;

35. Is concerned that the Court of Auditors (‘the Court’) in its Annual Report on the activities funded by the Eighth, Ninth and Tenth European Development Funds (EDFs) for the financial year 2009 found budget support payments to be affected by a high frequency of non-quantifiable errors due to the lack of formalised and structured demonstration of compliance with payment conditions; at the same time takes note of and welcomes a substantial improvement in the demonstration of eligibility noted by the Court under the Tenth EDF owing to the clearer assessment frameworks that are now routinely used;

36. Points out that public investments in public goods, such as education, social security, infrastructures and productive capacities, especially with regard to smallholder farming and support to local markets, are crucial for successful development strategies;

37. Calls on the Commission to ensure that the specific conditions for performance-based variable tranches clearly specify the indicators, targets, calculation methods and verification sources and that Delegations’ reports provide a structured and formalised demonstration of public finance management progress by clearly setting the criteria against which progress is to be assessed, the progress made and the reasons why the reform programme may have not been implemented according to plan;

38. Calls on the Commission to take all necessary measures in order to combat corruption in the recipient countries, including suspension of disbursements if necessary; in this context calls on the Commission to maintain a close and regular dialogue with partner governments on corruption issues and pay sufficient attention to the capacity-building needs of particular recipient countries in terms of accountability and anti-corruption mechanisms;

39. Considers the predictability of aid flows to be one of the most important factors for ensuring the quality of spending, as it enables the partner countries to undertake long-term expenditure planning and to sustain improvements in sectoral policies; advocates that such an approach be reinforced by partner countries’ fiscal policies and mobilisation of domestic revenue which, in the long term, should reduce aid dependency;

40. Recalls that the lack of progress as regards the management of public finances still disqualifies many countries from receiving budget support;

41. Takes the view that budget support should be introduced gradually in developing countries, starting with a limited amount and increasing it as the partner countries build capacity;

42. Reiterates that budget support should be spent in pursuit of poverty reduction, including the pursuit of the Millennium Development Goals and to principles such as partnership, aid effectiveness and policy coherence for development; expresses its support for results-based incentives but emphasises that variances of disbursement must be predictable as far as possible so as not to impact negatively on budgetary planning; reiterates that budget support should only be granted to countries meeting and upholding minimum standards of governance and respect for human rights; underlines that conditions linked to macro-economic reforms must be compatible with human and social development;

43. Encourages developing countries and the Commission to promote participatory development, in accordance with the relevant provisions of the Cotonou Agreement and of Articles 19 and 20 of Regulation (EC) No 1905/2006, in particular with regard to the promotion and consultation of civil society and local and regional authorities;

44. Points out that, when granting budget support to banana-supplying ACP countries benefiting from accompanying measures in this sector, it is important to include in the variable tranche based on governance indicators the specific conditions contained in the new Article 17a that Parliament is proposing be inserted in Regulation (EC) No 1905/2006 (DCI Regulation), as set out in an amendment in its above mentioned position of 3 February 2011;

45. Demands that the Commission publish the agreements with developing countries on budget support and MDG contracts;
46. Underlines that sectoral budget support can constitute under certain circumstances a useful intermediary option to give the concerned governments and parliaments more ownership over aid funds while earmarking them for the MDGs;

47. Considers that oil and mineral rich countries have the potential to finance their own development and fight against poverty through transparent tax collection systems and fair redistribution of wealth;

48. Takes the view that, in principle, MDG contracts are an example of high-quality, results-oriented budget support (long-term, predictable, targeted at social sectors, etc.); calls accordingly on the Commission to publish an assessment of MDG contracts in 2011 and to look into the feasibility of extending them to a larger number of countries;

49. Calls on the Commission also to publish the conditionalities and performance indicators in Country Strategy Papers on the occasion of the mid-term review; takes the view that budget support performance should be measured in terms of progress towards poverty reduction targets and the MDGs;

50. Reiterates its previous calls on the Commission to move from control over inputs to the checking of results against indicators, by improving its reporting system so that it concentrates on the effectiveness of the programmes;

51. States that the effectiveness of development-policy measures in the partner countries must fully take into consideration local conditions and respect the EU values as stated by the Treaty including the principle of rule of law and democracy; stresses that needs must remain a crucial criterion for the allocation of EU development aid;

52. Calls on the Commission and the Member States to create a public register in which budget support agreements, procedures and development indicators are transparently listed, with a view to reinforcing the domestic democratic institutions and to ensuring mutual accountability;

53. Calls on the Member States to show greater consistency at national and Community level as regards development aid policy; calls on the Member States to make use of the European External Action Service to strengthen their coordination with the Commission as regards budget support so as to avoid duplication and inconsistency;

54. Reminds the Commission and the Member States to harmonise their development cooperation and to improve mutual accountability;

55. Is firmly convinced that a thorough analysis of the future of EU budget support to third countries must address the issue of budgetisation of the European Development Fund; is aware of the historical and institutional background to the current situation but believes that the time has come for the Council, the Member States and the ACP countries to acknowledge that this situation is detrimental to the efficiency, transparency and accountability of EU budget support; emphasises, however, that budgetisation must not entail a decrease in the overall financial envelope for development policies;

56. Calls on the Member States, the Commission and the European External Action Service (EEAS), in line with the practice established in other policy fields, to improve the coordination of their respective budget support to third countries in order to avoid overlap, inconsistencies and incoherencies; deplores the reviews showing that, at sectoral level, weak policies, institutions and service delivery systems have prompted donors to use their own systems to implement projects, and to act bilaterally rather than in a coordinated manner, a situation which is all the more unacceptable in a context of scarce funding and
which also makes it very hard for the EU to live up to its promises on making aid more predictable; maintains that a focus on specific areas offering the greatest added value should drive EU budget support throughout all phases of preparation and delivery;

57. Calls on the Commission to raise public awareness of the risks entailed by the practice of budget support and to highlight the positive impact of budget support on partner emancipation;

58. Calls on the EU and its Member States to continue to promote and preserve their financial support and at the same time to provide consultative support for technocratic management of public finances;

59. Emphasises that the aims of improved coordination are to optimise the allocation of resources, enhance the exchange of best practices and boost the efficiency of budget support;

60. Considers that the Union should recognise and utilise the added value generated by its huge political weight and the potentially broad scope of its action, ensuring political influence proportional to the financial support given;

61. Instructs its President to forward this resolution to the Council and the Commission.

Energy infrastructure priorities for 2020 and beyond

P7_TA(2011)0318

European Parliament resolution of 5 July 2011 on energy infrastructure priorities for 2020 and beyond (2011/2034(INI))

(2013/C 33 E/06)

The European Parliament,

— having regard to the Commission communication entitled ‘Energy infrastructure priorities for 2020 and beyond – a blueprint for an integrated European energy network’ (COM(2010)0677),

— having regard to the Commission staff working document on an impact assessment on the ‘Energy infrastructure priorities for 2020 and beyond – a blueprint for an integrated European energy network’ (SEC(2010)1395),

— having regard to the Commission communication entitled ‘Energy 2020 – a strategy for competitive, sustainable and secure energy’ (COM(2010)0639),


— having regard to the Commission communication entitled ‘Renewable energy – progressing towards the 2020 target’ (COM(2011)0031),


— having regard to the Commission communication entitled ‘Analysis of options to move beyond 20 % greenhouse gas emission reductions and assessing the risk of carbon leakage’ (COM(2010)0265),

— having regard to the Commission communication entitled ‘Roadmap for moving to a competitive low carbon economy in 2050’ (COM(2011)0112),

— having regard to the third legislative package concerning the internal market in the field of energy and entitled ‘Energising Europe: A real market with secure supply’ (1),


— having regard to the Commission communication entitled ‘A resource-efficient Europe – flagship initiative under the Europe 2020 strategy’ (COM(2011)0021),


— having regard to Regulation (EC) No 663/2009 of the European Parliament and the Council of 13 July 2009 establishing a programme to aid economic recovery by granting Community financial assistance to projects in the field of energy (4),

— having regard to the report from the Commission on the implementation of the trans-European energy networks in the period 2007-2009 (COM(2010)0203),

— having regard to its resolution of 6 May 2010 on mobilising information and communication technologies to facilitate the transition to an energy-efficient, low-carbon economy (5),


— having regard to its resolution of 25 November 2010 on ‘Towards a new Energy Strategy for Europe 2011-2020’ (8),

— having regard to its resolution of 15 December 2010 on revision of the Energy Efficiency Action Plan (1),

— having regard to its resolution of 17 February 2011 (2) on Europe 2020,

— having regard to Article 194 of the Treaty on the Functioning of European Union,

— having regard to Article 170 of the Treaty on the Functioning of European Union, under which the Union is required to contribute to the establishment and development of trans-European networks in the areas of transport, telecommunications and energy infrastructures,

— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on Industry, Research and Energy and the opinions of the Committee on the Environment, Public Health and Food Safety and the Committee on Regional Development (A7-0226/2011),

A. whereas our major energy challenges are confronting climate change, strengthening energy security and autonomy while reducing the overall energy use as well as fossil fuel imports and dependency, diversifying energy suppliers and sources, achieving a competitive internal energy market and ensuring universal access to sustainable, affordable, safe and efficient energy,

B. whereas the common energy policy at EU level has been built around the shared objective of ensuring the uninterrupted physical availability of energy products and services on the market, at prices that are affordable for all consumers (domestic and industrial),

C. whereas it is necessary to ensure security of supply and the consolidation of solidarity between Member States in situations where a Member State is confronted with an energy crisis,

D. whereas the Lisbon Treaty provides a specific legal basis for developing an EU energy policy promoting the successful interconnection of energy networks between Member States across national and regional borders, which is necessary to achieve the other EU energy policy and solidarity objectives (functioning of the energy market, energy efficiency and renewable energy, security of supply and diversification of energy sources and forms of supply),

E. whereas a lack of timely modernisation, upgrading, interconnection and adjustment of the Union’s energy infrastructure to a more sustainable and efficient energy production, transmission and consumption model could jeopardise its capacity to achieve the energy and climate objectives for 2020 – especially those of integration and increasing the share of renewable energy sources – and undermine the EU’s 2050 long-term objective of reducing greenhouse gas (GHG) emissions by 80 % to 95 %,

F. whereas infrastructure investment planning and the decisions to be taken in association with it need to be supported by long-term scenarios that take into account expected achievements and additional technical development needs,

G. whereas further integration of renewable energy sources will require some adaptations of the European energy infrastructure at both transmission and distribution levels,

(2) Texts adopted, P7_TA(2011)0068.
H. whereas an open, transparent, integrated and competitive EU energy market is needed in order to achieve competitive energy prices, security of supply and sustainability and efficient large-scale deployment of renewable energy, and whereas the completion of such a market still remains an important challenge for all Member States,

I. bearing in mind the crucial importance of timely and full implementation of existing legislation, including the regulatory work called for by the third internal energy market package and the adequate notification of investments in energy infrastructure, pending the judgment of the Court of Justice (1), in order to have an overview of potential gaps in demand and supply, as well as obstacles to investment,

J. whereas interconnection capacity or its availability between Member States still remains insufficient in one third of the Union, according to the 10% interconnection target set at the 2002 European Council and whereas certain Member States and regions still remain isolated and dependent on a single supplier, which prevents the real integration of markets, liquidity and energy flows,

K. whereas the special requirements of natural islands and outermost regions, such as the Canary Islands, Madeira, the Azores and the French Ultra-Peripheral Regions (RUPs), should be taken into consideration in terms of energy infrastructure,

L. whereas in south-east Europe the energy transport network is less dense than in the rest of the continent,

M. whereas alternative supply and transit routes and new interconnections are important in order to ensure that solidarity between Member States becomes operational,

N. whereas special focus should be placed on projects not yet finalised that have been selected by the EU as priority projects in accordance with Decision 1364/2006/EC of the European Parliament and of the Council of 6 September 2006 laying down guidelines for trans-European energy networks and repealing Decision 96/391/EC and Decision 1229/2003/EC,

O. whereas the third energy package has created a legal framework which should improve competitiveness in the energy market,

P. whereas energy infrastructures planned today must be consistent with market needs and with long-term EU climate and energy objectives and their implementation in the various national energy policies, giving priority to those energy sources with no societal and environmental cost,

Q. whereas, with regard to gas and electricity, a reinforcement of investment in transmission capacity is needed while bearing in mind the EU 20-20-20 energy objectives and the new, highly decarbonised energy environment beyond 2020,

R. whereas building energy infrastructure is of strategic importance with a view to meeting the Strategic Energy Technology (SET) Plan targets,

S. whereas energy efficiency offers a powerful and cost-effective tool for achieving a sustainable energy future: by reducing energy demand, it can also lessen import dependency and the relocation of plants in response to rising costs and, through smart investments in existing and new infrastructures, it can reduce the need for public and private investment in energy infrastructure,

T. whereas smart grids provide an important opportunity to establish an efficient relationship between energy production, energy transmission, energy distribution and end-users, allowing rational energy consumption and therefore increasing energy efficiency,

U. whereas the reinforcement of interconnection capacity between gas systems along the south-western axis in the North-South Corridor will enable both the LNG import capacity and the underground storage capacity of the Iberian Peninsula to contribute to EU security of supply, while providing an important step towards a truly integrated internal energy market,

V. whereas lengthy authorisation procedures and a lack of coordination between administrative bodies can result in major delays and additional costs, especially in cross-border projects,

W. whereas lengthy permit-granting procedures and the lack of cost-allocation methodologies and instruments for sharing the benefits and costs of cross-border energy infrastructure projects are a major impediment to their development,

X. whereas a high-quality public debate must be guaranteed and European environmental legislation must be duly taken into account,

Y. whereas regulators play an important role in the creation of a consumer-orientated, integrated and competitive internal energy market,

Z. whereas, according to the Commission communication entitled ‘Energy infrastructure priorities for 2020 and beyond – a blueprint for an integrated European energy network’, EUR 200 billion will be needed during the coming decade in order to finance energy infrastructure requirements, and whereas half this amount must be provided by the Member States,

AA. whereas market-based tools and the user-pay principle remain the basis for financing energy infrastructure, and whereas, transparently and on case by case basis, a limited amount of public finance will be required to fund certain projects of European interest, which are not strictly commercially viable, whilst defending a level playing field in the European internal energy market, guaranteeing security of supply, preventing distortions of competition and promoting the efficient integration of renewable energy,

AB. whereas there is a need to carry out large-scale investment as soon as possible,

AC. whereas a crucial role is played by regional authorities in that they are major players in energy matters, given their responsibilities in a number of activities concerned with general and regional planning, granting permits, granting authorisations for major infrastructure projects, investment, public procurement, production and the fact that they are close to consumers,
Strategic planning of energy infrastructure

1. Underlines the fact that public authorities have the overarching responsibility to serve the public interest by fulfilling societal and environmental goals, but that the main responsibility for the development of energy infrastructure should rest with a properly regulated market;

2. Stresses the crucial importance of timely, correct and full implementation of existing legislation, including the regulatory work called for by the third internal energy market package, in order to achieve an integrated and competitive European internal market by 2014 at the latest;

3. Emphasises the need to implement current policies and regulations so that the existing energy infrastructure is better utilised for the benefit of the European consumer; calls on the Commission and the Agency for the Cooperation of Energy Regulators (ACER) to monitor more strictly the national implementation of rules such as those concerning the use-it-or-lose-it principle;

4. Believes that an EU approach – developed in cooperation with all stakeholders – is needed in order fully to exploit the benefits of new infrastructure, and stresses the need to develop a complementary harmonised method, in line with the rules of the internal market, for the selection of infrastructure projects; considers that this method should take into consideration the European and regional perspectives in order to remove disparities and to optimise the socio-economic and environmental effects;

5. Stresses that the planning of energy infrastructure projects should comply fully with the precautionary principle; action plans should be subject to thorough environmental impact assessments on a case-by-case basis, taking into account local and regional environmental conditions;

6. Stresses the need to ensure an adequate degree of security of energy supply for the EU, and to develop favourable relations with non-EU energy supplying and transit countries by means of cooperation in connection with regional and global energy supply transport systems;

7. Stresses that the reference scenario used for assessing the energy infrastructure for 2020 needs to be transparent and consistent with the overall energy policy objectives enshrined in Article 194 of the Treaty on European Union and the EU’s 2050 roadmap, with other EU policies (such as transport, buildings and the Emission Trading Scheme (ETS)), with the energy efficiency policies required to deliver the 20 % energy savings target (in particular the energy efficiency plan), with the potential impact of technological advances, notably for renewable energy and the increasing role of electric vehicles, and with the deployment of smart grids and the ‘smart cities and regions’ initiatives;

8. Supports the prompt launch of the ‘Intelligent cities’ partnership for innovation, and calls on relevant partners involved in planning processes for sustainable urban development to better promote and profit from the benefits that the JESSICA and ELENA initiatives can provide for investments in sustainable energy at local level, with a view to helping cities and regions embark on viable investment projects in the fields of energy efficiency, clean-burning and renewable energy sources, and sustainable urban transport; points out furthermore the potential of cross-border funding with neighbouring countries in the framework of the European Neighbourhood and Partnership Instrument (ENPI);

9. Emphasises the need to identify, according to a hierarchy of importance and in the interest of cost-effectiveness, where infrastructure could be minimised through energy efficiency policies, where existing national and cross-border infrastructure can be upgraded or modernised and where new infrastructure is needed and can be built alongside existing energy or transport infrastructure;
10. Considers that the reduction of energy consumption and of polluting emissions, and enhanced energy efficiency can be achieved by implementing programmes for greater energy efficiency in the buildings and transport sectors; 

11. Highlights the importance of identifying potential future gaps of energy demand and supply, as well as potential forthcoming deficiencies in the production and transmission infrastructure; 

12. Underlines the importance of harmonising the EU market design and the development of common European infrastructure schemes in order to assure the management of the internal European interconnections and the interconnections with third countries; 

13. Considers that the development of electricity infrastructure between the EU and third countries, and in some cases existing electricity infrastructure, can create a risk of carbon leakage or increase that risk where it is already present; calls on the Commission to evaluate this possibility and to bring forward, if necessary, measures by which the EU could address this effectively such as requiring conformity with Directive 2009/28/EC on renewable energy; 

14. Calls on the network operators, the regulatory authorities, including ACER, and the Commission to create, in cooperation with network operators and authorities in third countries, the necessary conditions to ensure compatibility and stability between the EU’s electricity infrastructure and that of third countries, with the aim of enhancing Member States’ energy security; 

15. Stresses that there should be a focus not only on cross-border projects but also on internal transmission systems, which are crucial for the integration of energy markets, the integration of renewable generation and system security, the end of energy islands and the relief of internal bottlenecks that have an impact on the European power system as a whole; underlines the importance of guaranteeing that remote regions and their local needs are duly taken into account; 

16. Stresses the need for new infrastructure which will put an end to energy islands and single supplier dependency and will enhance security of supply; 

17. Stresses that no region, including island regions, of the EU Member States should remain isolated from the European gas and electricity networks after 2015 or see its energy security jeopardised by lack of appropriate connections; 

18. Welcomes the Commission’s efforts to promote regional cooperation and calls for further guidance on such regional initiatives; 

19. Draws attention to the opportunities which existing EU regional cooperation arrangements present for developing and intensifying cross-border energy infrastructure projects, particularly relating to renewable energy, and urges that the regional cooperation instruments (Euregios, EGTCs) be used for this purpose; 

20. Takes the view that regional initiatives should be expanded and further developed, since they tie in most closely with the way in which the energy system operates in individual regions (e.g. the structure of regional generation sources, wind energy, grid limitations and the availability of energy sources); 

21. Emphasises that cooperation between municipalities and regions on a national and European level contributes to eliminating energy islands, to the completion of the internal energy market and to the implementation of energy infrastructure projects; takes the view that the European territorial-cooperation objective of cohesion policy, as well as macro-regional strategies, can increase cooperation opportunities for cross-border projects with a view to achieving efficient and intelligent interconnections between non-conventional local and regional energy sources and large energy grids; underlines the fact that appropriate
coordination of infrastructure projects can guarantee the best possible cost-benefit ratio and maximise the efficiency of the EU funds; considers, in this context, that regional cooperation should be improved, in particular with a view to ensuring a proper connection between the priorities established and the European regions;

22. Asks the Commission and the Member States to establish measures to ensure that transmission system operators (TSOs) are properly incentivised to examine possible interconnectors from a regional or European perspective and that their investment plans are based on the socio-economic effects of energy interconnectors rather than purely on project economy, thereby avoiding under-investment in transmission capacity;

23. Calls on the Commission to submit, by the end of 2011, proposed solutions to the trade-offs described by the European coordinator Georg Wilhelm Adamowitz in his third annual report, of 15 November 2010, for example that between the urgent need for new infrastructure and rigid environmental protection rules;

24. Calls for steps to be taken to ensure compliance with international agreements, such as the Espoo Convention, before cross-border projects are undertaken or further developed, and draws attention, in the context of the expansion of energy networks, to the need to foster closer cooperation, in particular between Russia and Belarus and the Baltic States, and, in that connection, to develop the EU-Russia energy dialogue, in particular with a view to achieving the objective of energy security for the EU Member States and regions;

25. Welcomes the Commission’s decision to introduce ‘stress tests’ for Europe’s nuclear power plants; considers that future legislative initiatives to set up a common framework for nuclear safety are essential in order continuously to improve safety standards in Europe;

26. Notes that significant risks are associated with energy infrastructure, including operational risks (e.g. congestion and discontinuity of supply), natural risks (e.g. earthquakes and floods), environmental risks (e.g. pollution, and habitat and biodiversity loss) and anthropogenic/political risks (e.g. safety risks and terrorism); therefore calls for decisions on the development of smart grids to be implemented, as provided for in Directive 2008/114/EC on critical infrastructures; suggests that the Member States draw up a risk map as a tool for decision making and monitoring the results of smart grid implementation in order to improve the interconnectivity of grids;

27. Urges the Commission to assess the possibility of including in the energy infrastructure priorities projects that would enhance the safety and security of existing major energy infrastructures in Europe (gas and oil pipelines, electricity grids, nuclear power stations, LNG terminals etc.) against accidents and natural or human-induced disasters;

A comprehensive infrastructure development scenario

28. Considers that the Ten-Year Network Development Plan (TYNDP) identifies relevant electricity and gas infrastructure projects and should contribute to setting the priorities for the selection of projects of European interest to be developed in order to achieve EU energy and climate goals, without interfering with the functioning of the internal market; takes the view, in this regard, that interconnection capacity should be considered at the same level as the 20-20-20 targets, and that, accordingly, the TYNDP should be understood as the instrument for monitoring compliance with the 10 % interconnection target;
29. Calls on the Commission, with a view to ensuring better governance of future EU electricity and gas infrastructure planning, to present a concrete proposal to improve transparency and public participation in determining EU priorities, within a broader stakeholder participation process (including, for example, the energy sector, independent experts, consumer organisations and NGOs); considers the publication of technical planning data as key in ensuring this participation;

30. Considers that attention has to be paid to the ownership of EU energy infrastructure by foreign companies, or their subsidiaries, without a transparent management structure and subject to undue influence from foreign governments; calls on the Commission to present proposals to put in place adequate legal and institutional safeguards in this respect, in particular with regard to access to EU public funding;

31. Considers that the TYNDP contributes to the rolling programme for developing European gas transport and electricity transmission infrastructure within a long-term European planning perspective and with monitoring by ACER and the Commission, taking due account of the relevant provisions of the Third Internal Market Package;

32. Underlines that this bottom-up approach needs to be complemented by a well structured top-down view with a European perspective;

33. Stresses that fostering the building of transmission and distribution infrastructure for efficient and intelligent integration of renewable energy and new electricity uses (such as electric or plug-in hybrid vehicles) is critical for the successful achievement of overall energy objectives; welcomes the priority given to the future European super-grid and the pilot projects endorsed by the Florence Forum; asks the Commission to consult all relevant stakeholders with a view to speeding up the identification of electricity highways as an integrated hub-based grid infrastructure in order to optimise connectivity, system resilience and operational flexibility and to reduce costs, without excluding any wider European geographical territory, and calls the Commission to present an outline to Parliament by mid-2014, which addresses as fully as possible the specific needs arising from the transmission of renewable energies;

34. Points out that the geographical obstacles inherent in their location make islands and mountain areas very difficult to integrate into the EU energy network; calls, therefore, on the Commission to take into account the diverse circumstances in the regions and to focus expressly on regions with specific geographical and demographic characteristics, such as islands, mountain regions and regions with low population density, in order to achieve greater diversification of energy sources and the promotion of renewables so as to reduce dependence on imported energy; urges the Commission to include among its energy infrastructure priorities for 2020 the special situation of island energy systems;

35. Stresses that there is a need for transversal policy coherence with regard to energy infrastructures and their relation with the maritime spatial planning framework and that this could also be useful for embedding large offshore wind park projects in an overall strategy;

36. Reminds the Commission, however, that every Member State should also be given support to be a producer, as well as a consumer, of sustainable energy, for both security and economic reasons;

37. Maintains that developing regional power generation is an important means of guaranteeing self-sufficiency in energy in the various parts of Europe, especially in the Baltic region, which remains isolated and dependent on a single source of supply; notes that the regions have a wide range of resources to tap, including the possibilities offered by natural resources, and that the aim in future should be to exploit these to the full in order to diversify energy production;
38. Endorses the importance of efficient gas infrastructure in enhancing diversification and security of supply, in contributing to better internal energy market functioning, and thus in reducing energy dependence, while respecting the need substantially to reduce emissions from the energy sector by 2050; highlights the need for additional and correct implementation of flexibility requirements in gas infrastructure, in particular with a view to ensuring reverse flows and interconnections, and stresses that gas infrastructure should be developed, with full account being taken of the contribution of LNG and CNG terminals, transport ships and storage facilities, as well as the development of gasified biomass and biogas;

39. Welcomes the Commission’s announcement that natural gas will take on an important role as a backup fuel; stresses, however, that other forms of energy and energy storage facilities will also have to take on this role if security of supply is to be ensured; underlines the fact that a broad energy mix will continue to be the basis for secure, cost-effective energy supply;

40. Notes that, in contrast to all other infrastructure investment which the EU plans to incentivise, gas interconnections and storage under the 2009 Security of Gas Supply Regulation are compulsory infrastructure; asks the Commission to evaluate whether some EU funding of the infrastructure improvements required under the 2009 regulation is needed;

41. Urges the Commission to evaluate unconventional gas sources, taking into account legal issues, lifecycle assessment, available reserves, environmental impact and economic viability; asks the Commission to conduct, on the basis of the principle of equal treatment of primary energy sources, a thorough evaluation of the potential benefits and risks of using unconventional gas sources in the EU;

42. Considers that, although the decarbonisation of the economy will lead to a progressive decrease in fossil energy use, oil will remain a significant part of EU energy supply for many years and therefore a competitive European oil transport and refining infrastructure must be maintained during the transition in order to ensure secure and affordable product supplies to EU consumers;

43. Stresses the importance of integrated energy infrastructure planning for agricultural and small-scale rural energy sources, so as to favour decentralised energy production, market participation and rural development; emphasises the importance of priority access to the grid for renewables, as outlined in Directive 2009/28/EC;

44. Points out the need to prepare and adapt grids for the production of forms of energy such as electricity and biogas from agriculture and forestry sources, as a result of a reformed common agricultural policy;

45. Considers that attention should be paid to new technological solutions for the use of waste energy from industry, i.e. flared gas, waste heat, etc.;

46. Emphasises the importance of infrastructure at distribution level and the important role that prosumers and distribution system operators (DSOs) play during the integration into the system of decentralised energy products and demand-side efficiency measures; points out that according higher priority to demand-side management and demand-side energy generation would considerably strengthen the integration of decentralised energy sources and would advance the achievement of overall energy policy objectives; believes that this also applies to national infrastructure projects which have a positive impact beyond the national borders in terms of supply or interconnection of the internal energy market;
47. Urges the Commission to present, by 2012, concrete initiatives to promote the development of energy storage capacities (including multi-use gas/hydrogen facilities, smart reverse-flow electric vehicle batteries, hydropower pumping storage stations, decentralised biogas storage, high-temperature solar installations, compressed air storage facilities and other innovative technologies); suggests that the Commission assess further initiatives for energy storage in order to maximize the integration of renewable energy;

48. Considers that modernising and improving the efficiency of urban heating and cooling networks must be a priority for the EU and should be reflected and supported in relation to both the review of the existing financial framework and the future financial perspective;

49. Welcomes the CO₂ capture, transport and storage projects developed so far; calls on the Commission as a matter of urgency to draw up a mid-term report, including from a technical and economical point of view, evaluating the results obtained from the use of EU-subsidised experimental carbon capture and storage (CCS) technologies for coal-fired power stations;

50. Urges the Commission – in cooperation with all relevant stakeholders, including the relevant network and market operators – to assess critically and review, wherever necessary, the figures for investment needs given in the communication on energy infrastructure priorities, particularly in relation to demand reduction through energy efficiency measures, and asks it to report to the Council and to Parliament on the investments likely to be needed;

51. Notes that, apart from the capital and operational costs, significant environmental costs arise from the construction, operation and decommissioning of energy infrastructure projects; emphasises the importance of accounting for these environmental costs in the cost-benefit analysis using the life-cycle costing approach;

52. Considers that TSOs should be required to place all transmission lines fully at the disposal of the market, thereby preventing the reservation of transmission capacity for cross-border balancing, etc., and that this requirement needs to be established in binding legislation based on the current European Regulators’ Group for Electricity and Gas (ERGEG) guidelines on good practice;

53. Supports enhanced cooperation between Member States towards the creation of regional regulatory authorities for a number of Member States; welcomes similar initiatives towards creating single regional TSOs;

54. Calls on the Commission and ACER to pursue the task of creating a common European intraday market by 2014, as this would allow for the free exchange of power on all transmission interconnectors between countries and/or different price areas;

Smart grids

55. Believes that energy infrastructure should become more end-user-oriented, with a stronger focus on the interaction between distribution system capacities and consumption, and emphasises the need for real-time, two-directional power and information flows; points to the benefits of a new gas and electricity system incorporating efficient technologies, equipment and services such as smart grids, smart meters and interoperable ICT-operated load-side and demand-side energy management services, involving the development of innovative and dynamic pricing formulas and demand-response systems for the benefit of consumers;
56. Stresses the need to promote the development of user-friendly technologies and demand-side management so as to ensure the deployment of smart grid technologies and demand-response systems and to achieve the full benefit of smart grids for all stakeholders;

57. Stresses that the roll-out of smart grids should be one of the energy infrastructure priorities with a view to achieving EU energy and climate objectives, as it will help the integration of distributed renewable generation and electric cars, the reduction of energy dependence, the improvement of energy efficiency and the development of electric-system flexibility and capacity; believes that smart grids offer a unique opportunity to boost innovation, job creation and the competitiveness of European industry, with particular reference to SMEs;

58. Asks the Commission to facilitate the urgent deployment of large smart-grid demonstration projects as the best way to measure the costs and benefits to European society; notes that, in order to share the risk of the investment needed for these projects, public funding is required under a public-private partnership framework, which is effectively offered by the European Electric Grid Initiative (EEGI);

59. Notes that smart grids are a result of convergence between electricity and information and communications technologies, and that consequently special attention must be paid to cooperation between these two sectors, e.g. with regard to the efficient use of radio spectrum across Europe and to the understanding of smart energy functions in the planning of the future 'Internet of Things'; asks the Commission to establish a cooperation plan among the different units involved (DG Research, DG Energy, DG INFSO, etc.) so as to ensure the most coherent and generally efficient contribution to the deployment and operation of smart grids, as a fundamental base for energy policy activities;

60. Calls upon the Commission to assess whether any further legislative initiatives for smart grid implementation are necessary under the rules of the third internal energy market package; considers that the assessment must take into account the following objectives: i) ensuring adequate open access and sharing of operational information between actors and their physical interfaces; ii) creating a properly functioning energy services market; and iii) providing proper incentives for grid operators to invest in smart technologies for smart grids;

61. Calls for a stronger focus on the interaction between distribution system capacities and consumption, involving a common European smart grid strategy, and notes that, as highlighted in the European Council conclusions of 4 February 2011, technical standards for smart grids should be adopted by the end of 2012 at the latest;

62. Stresses that grids should be adapted for new entrants, in order to facilitate small-scale new production sources, such as households and SMEs;

63. Considers that, in the 7th and 8th R&D Framework Programmes, scope should be created, as a priority, for smart grid technology with regard to the private charging infrastructure for electric cars, with a view to the rapid roll-out of a decentralised, two-way energy network in this field;

64. Notes the need to create a stable regulatory framework in order to promote the very large investment needed in Europe to establish smart grids;

65. Stresses that smart grid standardisation and interoperability shall be a priority; urges the Members States, in liaison with European and international standardisation bodies and industry, to speed up work on technical and safety standards for electric vehicles, charging infrastructure, smart grids and smart metering, with a view to its completion by the end of 2012; emphasises that technologies should be based on open international standards so as to ensure their cost-effectiveness, which will enhance the interoperability of the system and will provide consumers with a choice of solutions;
66. Acknowledges that standardisation work in smart metering is progressing, with standardisation Mandate M/441 issued by the Commission to the European standardisation organisations (CEN, CENELEC and ETSI), and stresses that technical standards for smart meters should take into account the additional functionalities identified in the final report of the CEN/CENELEC/ETSI Smart Meters Coordination Group (SM-CG), namely:

— remote reading or metrological registers,

— two-way communication,

— support for advanced tariffication/pre-payment,

— remote enablement and disablement of supply and power limitation,

— communication with and, where appropriate, direct control of individual devices within homes and buildings,

— provision of information via web portal/gateway to an in-home display;

67. Welcomes the work carried out by the EEGI and the Commission’s Smart Grids Task Force; calls on the Commission to take the fullest account of their conclusions on the specific legislation for smart grids scheduled for the first half of 2011;

68. Underlines that the objective of smart meters is to enable consumers effectively to monitor and control their energy consumption;

69. Points out that Member States are already obliged, subject to positive assessment, to roll out smart meters for at least 80% of their final consumers by 2020, and draws attention to the interim target of smart meter installation in 50% of households by 2015, agreed in the new Digital Agenda for Europe;

70. Stresses that Member States should support a sufficient number of pilot projects for residential consumers in order to enhance public acceptance and boost the innovation process, as provided for in the third energy market package; calls on the Commission to present, on the basis of the assessments required in the third energy package, further measures to ensure the deployment of smart meters for all non-residential customers by 2014, temporarily excluding micro-enterprises; calls for clear rules concerning security, privacy and data protection to be established in accordance with existing EU law;

71. Stresses that the deployment of energy management devices, especially when installing smart meters for use by domestic consumers, must, first and foremost, be of clearly tangible benefit to the final consumer; emphasises the need to keep consumers informed about their energy consumption, in order to involve them actively in the energy saving effort, and requires a special focus on creating awareness-raising campaigns, providing training, clear invoicing, ensuring cost-effectiveness and promoting the development of user friendly technologies;

72. Emphasises, in this connection, the paramount importance of support for research and innovation, which must be backed up by an active financing policy, including the use of innovative instruments that have yet to be developed, such as a European fund for financing innovation or a European fund for patents;

73. Calls on the Commission and Member States to work towards the selection of a standardised licensed radio spectrum band for smart meters and grids;
74. Urges the Commission, in close cooperation with the European Data Protection Supervisor, to assess the need for additional data protection measures, the roles and responsibilities of different actors in relation, inter alia, to access to and the ownership possession and handling of data and read-and-change rights, and, if necessary, to issue adequate regulatory proposals and/or guidelines;

Defining clear and transparent criteria for priority projects

75. Welcomes the priority corridors identified by the Commission and agrees on the need to optimise limited funds; reiterates that, while responsibility for the planning and development of infrastructure projects lies mainly with the market, the EU has a role in promoting certain projects by awarding them the status of ‘project of European interest’ and in providing public financing to some of them;

76. Calls for a clear and transparent methodology leading to the selection of priority projects that meet pressing European needs; emphasises that the selection of projects of European interest (PEIs) should be conducted on the basis of objective and transparent criteria and with the involvement of all stakeholders;

77. Stresses that all PEIs should contribute to achieving EU energy policy objectives – completion of the internal market, promoting energy efficiency and renewable energy and enhancing security of supply – and should be capable of contributing substantially to:

— increasing market integration, competition and market liquidity and reducing market concentration,
— putting an end to energy islands,
— reducing network losses, preventing transmission bottlenecks – including in respect of internal projects as long as they contribute to the development of cross border interconnection – and relieving cross-border transmission,
— resolving single supplier dependency,
— diversification with regard to transit routes and the origin of resources,
— integration of renewable energy to the grid and increasing the use of renewable energy sources by reducing renewable energy curtailment;

78. Considers that, to justify projects being accorded priority, the following criteria should be taken into account:

— the project must have a European dimension (= clear EU public interest),
— its necessity must be demonstrated on the basis of the infrastructure hierarchy,
— it must be in line with climate, energy efficiency and environmental objectives,
— it must be consistent with long-term EU energy policy (allowing flexible and multifunctional application and avoiding lock-in effects),
— it must offer a good cost-benefit ratio and cost efficiency,

— it must be technically sound;

79. Takes the view that, to allow further prioritisation of projects, the following eligibility criteria should be taken into account:

— whether solidarity between Member States is enhanced,

— the maturity of projects,

— whether projects present minimal environmental impact,

— whether they offer the best solution for the public concerned;

80. Underlines the importance of regional cooperation in the planning, implementation and monitoring of the established priorities and in drawing up investment plans and specific projects; believes that the existing strategies for macroregions (such as the Baltic and Danube regions) can also serve as models for cooperation platforms when agreeing and implementing energy projects;

81. Points out that it is necessary to press ahead with the integration of the internal energy market by promoting, in particular, projects to ensure that neighbouring countries have a well balanced national energy mix;

82. Stresses that obstacles to competition and market-driven development of all energy infrastructures, including district heating and cooling, must be removed;

83. Reiterates that the geographical obstacles inherent to the location of island territories render their integration into the Union’s energy network very difficult, and that they should be granted special facilities in order to reduce their energy dependency, either by developing their endogenous potential in renewable energy sources or by promoting energy efficiency and energy saving;

84. Emphasises that transparency should be enhanced by clearly informing the public about the purpose and technical planning data of each project; asks that proof of compliance with the criteria should be verified in the context of public consultations;

85. Considers that not only large infrastructure projects should be supported, but also smaller projects which could have a high added value and be more swiftly completed;

86. Calls on the Commission to ensure that projects granted the status of PEI continue, after approval, to meet the criteria set out above; believes that, in the event of any major change to a project, its PEI status should be reviewed;

**Fast and transparent permit-granting procedures**

87. Agrees on the need to ensure timely implementation of PEIs and welcomes the Commission’s proposal to streamline, enhance the coordination of, improve and speed up permit-granting procedures – provided that the subsidiarity principle and national competence in relation to permit-granting are respected – in order to ensure that existing deadlines in these fields do not discourage private investors from being innovative;
88. Welcomes the establishment of a national contact authority (one-stop shop) for each European interest project as a single administrative interface between developers and the various authorities involved in the authorisation procedure; takes the view that, with regard to cross-border projects, further coordination between national one-stop shops and an increased role for the Commission in such coordination should be ensured; points out that, before the creation of new one-stop-shops, the Commission and the national authorities must make full use of existing institutions;

89. Stresses that any national contact authority must be independent and free from political or economic influence; believes that PEIs must be processed in order of submission and within the time limit set out in the future Commission proposal;

90. Stresses the importance of timely finalisation of projects and high quality stakeholder dialogue; encourages the Commission to provide for a system of mild to serious warnings in the event that a Member State fails to process a permit application within a reasonable period of time, and to monitor closely whether national administrative procedures ensure the correct and rapid implementation of PEIs; welcomes, where difficulties are encountered, the introduction of indicative time limits within which the relevant competent authorities must reach a final decision; urges the Commission – in the absence of such a decision – to investigate whether the delay in question could be understood as an instance of the Member State impeding the correct and rapid implementation of the EU energy internal market;

91. Calls on the Commission to determine, taking account of the diverse range of project specificities and the territorial characteristics of projects, whether joint or coordinated procedures establishing concrete ad hoc key measures and best practices (regular exchanges of information, timely communication of decisions, joint problem-solving mechanisms, etc.) could be set up, and to evaluate the suitability of using arbitration procedures as a final decision-making tool;

92. Stresses the need for a more participatory approach, and recognises that securing greater acceptance by local people of energy infrastructure projects goes hand in hand with providing adequate information about the purpose of the projects, and with local involvement in their development at the earliest possible stage; calls for the participation, at all levels of civil society, of NGOs, industry, the social partners and consumer organisations in the consultation process for projects of European interest; calls on the Commission to set up a consultation and assessment system in order to identify and disseminate best practices and knowledge in relation to public acceptance of infrastructure;

93. Stresses the need – given the importance of the regions’ sustainable energy strategies to their development potential – to establish a platform for exchanging best practices acquired in the regions, taking into account successful examples of municipalities and regions that have specialised in renewable energies, energy saving and efficiency; calls, in this regard, for a consultation and assessment system in order, where possible, to identify, share and copy best practices and knowledge about public acceptance of infrastructure;

94. Emphasises that the greatest challenge lies in securing local public acceptance for energy infrastructure projects; is convinced that the acceptance and trust of members of the public and decision-makers can only be won by holding open and transparent debates in the run-up to decisions on energy infrastructure projects;

95. Asks the Commission to evaluate whether the modernisation and upgrading of existing energy corridors is preferable to the creation of new corridors in terms of cost-efficiency and public acceptance;
96. Advocates providing more information on the importance of energy networks in the European Union; asks the Commission to consider running an EU energy networks information and communication campaign tailored to suit national and local audiences;

**Financing instruments**

97. Notes that grid investments are cyclical and should be viewed in a historical perspective; points out that much of the infrastructure built in recent decades to interconnect centralised power plants is ageing; points out that society will expect the cost of keeping existing infrastructure operational and deploying new infrastructure to be optimised through public-private partnerships and the development of innovative financing instruments; emphasises the need accurately to ascertain infrastructure requirements and avoid lock-in to surplus capacity by taking full account of cost-effective energy efficiency potential;

98. Stresses that the effective functioning of the market should provide a large part of the cost of the requisite infrastructure investment, on the basis of principles of proper cost-allocation, transparency, non-discrimination and cost-effectiveness and in line with the ‘user pays’ principle; requests the Commission to assess where the existing regulatory incentives are sufficient to send the necessary signals to the market, and what complementary measures, including those improving cost allocation rules, are needed;

99. Takes the view that, when no regulatory alternative is available and the market alone can not cover the investments needed, EU funding may be required to fund some limited PEIs the specific characteristics of which make them commercially unviable but the development of which is necessary to achieve EU energy policy objectives; considers that public funding may be used to lever private investment by setting up an innovative mix of financial instruments, provided that it does not distort competition;

100. Notes that the European Regional Development Fund makes a massive contribution to the funding of energy – and other – infrastructure projects and points out the significant role of cohesion policy at local and regional level in relation to energy efficiency and achievement of the Union’s renewable energy targets;

101. Stresses that the cohesion and structural funds should continue to be central to our infrastructure projects: believes any attempt to create new sectoral funds from cohesion policy funds to be misguided;

102. Calls on the Commission to ensure that financing of infrastructure investments is market-based in order to prevent distortions of competition and the creation of false incentives for investment, and that unjustified fluctuations between Member States are avoided, provided, however, that public interest – especially at local and regional level and in territories with specific geographical features such as islands, mountainous regions and regions with very low population density – is also safeguarded through a limited amount of public finance which has to result in an innovative mix of financial instruments that levers private investment;

103. Considers that the European Union should fund commercially unattractive projects that are unable to attract private investors but that are essential for the interconnection of isolated EU regions to the European power and gas grids, as an integral part of the creation of a unified energy market in the European Union;

104. Calls on the Commission to allow public funding only for Member States which have fully implemented and correctly apply existing EU legislation, including the regulatory provisions laid down in the third internal market package;
105. Calls on the Commission to review state-aid rules in relation to energy infrastructure and if necessary, to bring forward proposals to amend these rules to allow states to encourage the modernisation of infrastructure; calls on the Commission, at the same time, to issue a new guideline document on public financing of projects and current state-aid legislation, setting out clear criteria for the public funding of energy infrastructure; stresses that this document must be developed jointly by DG Energy, DG Competition and DG Regional Development in order to eliminate any inconsistency in the Commission rules;

106. Calls, on the basis of the strategic objectives, for the geographical principle to be taken into account in relation to future energy subsidies in the areas of infrastructure and R&D; insists, furthermore, that developed regions should receive further R&D subsidies only if the subsidised activity is conducted in conjunction with less-developed regions;

107. Emphasises that a stable, predictable and appropriate regulatory framework, including appropriate rates of return and incentives for new infrastructure, is crucial in order to promote investment in both transmission and distribution; stresses that regulators should foster the implementation of new technologies through market incentives and pilot projects;

108. Believes that private funding can facilitate timely construction of the requisite energy infrastructure, the sheer magnitude of the infrastructure challenge being such that private means need to be properly unlocked; considers that, as private investors embrace the infrastructure challenge, the Commission should establish clear guidelines for the involvement of market actors and private investors in so-called ‘merchant line’: believes that concerns about the possible impact on market functioning can be overcome if merchant lines are obliged to hand over their full capacity to the market;

109. Stresses that the fullest possible use should be made of market-based tools, including improvements to rules on cost allocation, project bonds, revolving funds, renewable energy equity funds, loan guarantees, non-commercial risk-sharing facilities, incentives for funding public-private partnerships, partnerships with the EIB – by improving its intervention capacity and available resources – and use of ETS auction revenue for projects linked to renewable energy sources and energy efficiency, as well as, where appropriate, other innovative financing instruments; calls on the Commission to take into account the financial capacities and market conditions of the less-developed Members States;

110. Underlines the importance of closer and more effective collaboration with the private sector and financial institutions, especially the European Investment Bank and the European Bank for Reconstruction and Development, to promote the necessary financing, in particular for priority cross-border projects; calls on the Commission to explore other innovative financial instruments and help to promote the establishment of public-private partnerships, for which local, regional and national authorities provide incentives and the necessary legislative framework and policy support; stresses in this context the need to develop technical assistance and financial engineering at local and regional authority level in order to support local players in setting up projects of energy efficiency – e.g. by harnessing the EIB's ELENA technical assistance facility and the experience of ESCO where energy efficiency infrastructure is concerned;

111. Supports the idea of issuing common European project bonds to finance Europe's significant infrastructure needs and structural projects in the framework of the EU 2020 agenda, including the new Strategy on Energy Infrastructure Development; believes that EU project bonds would secure the investment required and create sufficient confidence to enable major investment projects to attract the support they need, and would thus become an important mechanism for maximum leverage of public support; points out that, if Europe is to be put on a sustainable footing, these projects must also contribute to the ecological transformation of our economies;
112. Considers, in particular, that EU project bonds can become a key financial instrument for the requisite energy infrastructure investments in Europe, helping private project companies to attract capital market funding from investors; calls on the Commission swiftly to produce a legislative proposal on EU project bonds;

113. Stresses the importance of the regulators' developing a common methodology for cost allocation in cross-border infrastructure projects, as such network infrastructure incentives are characterised by multiple market failures, mainly due to natural monopoly and lack of competition;

114. Highlights the importance of transparent, proportionate, fair and non-discriminatory tariffs, with a view to ensuring appropriate cost allocation in cross-border and internal transmissions infrastructure, with cross-border impacts significantly contributing to the achievement of EU policy goals, fair prices for consumers and greater competitiveness; urges the Member States to abstain from applying excessively low regulated tariffs; welcomes the Commission's REMIT proposal;

115. Recalls that the third package creates an obligation for regulators, in setting tariffs, to evaluate investments on the basis not only of their benefits in the Member State in question, but also of their EU-wide benefits; urges the ACER to ensure that its members heed this obligation; asks the Commission to assess further, where costs and benefits cannot be fairly allocated through tariff setting, whether compensatory mechanisms based on strict transparency could prove useful in relation to the approval of cross-border projects or of relevant internal projects necessary for the achievement of EU energy objectives;

116. Stresses the importance of increasing the interconnective capacity of energy networks at a cross-border level, and points to the importance of providing the financing required to attain the goals laid down, including territorial cohesion;

117. Calls for improved EU financial instruments to be set up to back regional and local authorities as they seek to invest in sustainable energy production;

118. Welcomes the Commission's initiative to present in 2011 a proposal to address the question of cost allocation of technologically complex or cross-border projects, as this is considered one of the main barriers to the development of cross-border infrastructure and a new financial instrument to back priority projects during 2014-2020;

119. Considers it important that more attention be paid in future to dealing with the financial guarantees for investments, and that the projected financial framework be developed in conjunction with planning of the 2014-2020 budget period;

Other infrastructure issues

120. Considers that all external pipelines and other energy networks entering the territory of the European Union should be governed by transparent intergovernmental agreements and subject to internal market rules, including rules on third-party access, destination clauses, supervision of allocation and bottleneck management, the duration of the contracts and take-or-pay clauses; calls on the Commission to ensure that current and future pipelines and commercial agreements respect the European energy acquis, and to take action if necessary;
121. Calls on the Commission to further restrict the granting of third-party access exemptions on energy infrastructure, and for those granted to be reviewed to see if they are still needed; notes that the provision of public finance or support for projects through instruments such as EIB-backed project bonds, etc., should reduce or remove the need for third-party access exemptions;

* * *

122. Instructs its President to forward this resolution to the Council, the Commission and the Member States.

Social services of general interest

P7_TA(2011)0319

European Parliament resolution of 5 July 2011 on the future of social services of general interest

(2009/2222(INI))

(2013/C 33 E/07)

The European Parliament,

— having regard to the Treaty on European Union, in particular Articles 2 and 3(3) thereof, and the Treaty on the Functioning of the European Union, in particular Articles 9, 14, 106, 151, 153(1)(j) and (k), 159, 160, 161 and 345 thereof, and Protocol 26 thereto,

— having regard to the Charter of Fundamental Rights of the European Union, in particular Article 36 thereof,

— having regard to the United Nations Convention on the Rights of Persons with Disabilities, which was concluded by the European Community on 26 November 2009 (1),


— having regard to Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (3), in particular Article 1(3) thereof,


— having regard to the Commission communication entitled ‘Services of general interest, including social services of general interest: a new European commitment’ (COM(2007)0725),

---

— having regard to the Commission staff working documents entitled ‘Frequently asked questions in relation with Commission Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to undertakings entrusted with the operation of services of general economic interest, and of the Community Framework for State aid in the form of public service compensation’ (SEC(2007)1516) and ‘Frequently asked questions concerning the application of public procurement rules to social services of general interest’ (SEC(2007)1514),

— having regard to the Commission staff working document entitled ‘Guide to the application of the European Union rules on state aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest’ (SEC(2010)1545),

— having regard to the Commission communication entitled ‘Europe 2020: A strategy for smart, sustainable and inclusive growth’ (COM(2010)2020) and to its resolution of 16 June 2010 on that communication (1),


— having regard to the Commission Recommendation of 3 October 2008 on the active inclusion of people excluded from the labour market (3),

— having regard to the Commission communication on the taxation of the financial sector (COM(2010)0549), as well as the accompanying staff working document (SEC(2010)1166),

— having regard to the Commission communication entitled ‘Towards a Single Market Act for a highly competitive social market economy’ (COM(2010)0608),

— having regard to the Commission communication entitled ‘Towards a better functioning Single Market for services – building on the results of the mutual evaluation process of the Services Directive’ (COM(2011)0020) and to the accompanying Commission staff working paper (SEC(2011)0102) on the process of mutual evaluation of the Services Directive,

— having regard to the Commission communication entitled ‘Annual Growth Survey: advancing the EU’s comprehensive response to the crisis’ (COM(2011)0011),

— having regard to Commissioner Andor’s statement on the social provisions of the Lisbon Treaty (4),

— having regard to the Monti report of 9 May 2010 on ‘A new strategy for the single market at the service of Europe’s economy and society’ (5),

— having regard to the ‘Report on the application of Community rules to SSGI’ prepared by the Social Protection Committee in 2008 (6),

(4) Plenary debates, Wednesday, 6 October 2010 - Brussels, item 13, Social provisions of the Lisbon Treaty (debate), statement by László Andor, Member of the Commission.
(5) Report to the President of the European Commission by Mario Monti, 9 May 2010.
— having regard to the report entitled ‘A voluntary European quality framework for social services’ prepared by the Social Protection Committee in 2010 (1),

— having regard to the ‘Joint report on social protection and social inclusion 2010’ prepared by the Social Protection Committee in 2010 (2),

— having regard to the report entitled ‘Assessment of the social dimension of the Europe 2020 Strategy’, prepared by the Social Protection Committee in 2011 (3),

— having regard to the conclusions and recommendations of the Forums on Social Services of General Interest held in Lisbon in September 2007, Paris in October 2008 and Brussels in October 2010 (4),

— having regard to the conclusions of the EPSO Council meetings of 16 and 17 December 2008, 8 and 9 June 2009 and 6 and 7 December 2010 (5),

— having regard to the following judgments of the Court of Justice of the European Union (CJEU):

— of 19 April 2007 in Case C-295/05 Tragsa,

— of 18 December 2007 in Case C-532/03 Commission v Ireland (Irish rescue services),

— of 13 November 2008 in Case C-324/07 Coditel Brabant,

— of 9 June 2009 in Case C-480/06 Commission v Germany (Stadtwerke Hamburg),

— of 10 September 2009 in Case C-206/08 Eurawasser,

— of 9 October 2009 in Case C-573/07 Sea s.r.l.,

— of 15 October 2009 in Case C-196/08 Acoset,

— of 15 October 2009 in Case C-275/08 Commission v Germany (Datenzentrale Baden-Württemberg),

— of 25 March 2010 in Case C-451/08 Helmut Müller,

— having regard to the opinion of the Committee of the Regions of 6 December 2006 on the Commission communication entitled ‘Implementing the Community Lisbon programme: Social services of general interest in the European Union’ (6).
— having regard to its resolution of 6 September 2006 on a European Social Model for the future (1),

— having regard to its resolution of 27 September 2006 on the Commission white paper on services of general interest (2),

— having regard to its resolution of 14 March 2007 on social services of general interest in the European Union (3),

— having regard to its resolution of 9 October 2008 on promoting social inclusion and combating poverty, including child poverty, in the EU (4),

— having regard to its resolution of 19 February 2009 on Social Economy (5),

— having regard to its resolution of 6 May 2009 on the active inclusion of people excluded from the labour market (6),

— having regard to its resolution of 18 May 2010 on new developments in public procurement (7),

— having regard to its declaration of 10 March 2011 on the establishment of European Statutes for mutual societies, associations and foundations (8),

— having regard to the results of the Eurofound Quality of Life Surveys of 2003 and 2007 (9),

— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on Employment and Social Affairs and the opinions of the Committee on Economic and Monetary Affairs, the Committee on the Internal Market and Consumer Protection, the Committee on Regional Development and the Committee on Women’s Rights and Gender Equality (A7-0239/2011),

A. whereas Article 3 TEU affirms the Member States’ objective as the constant improvement of living and working conditions, and the Union’s aim as the well-being of its peoples, to be achieved through sustainable development of Europe based on balanced economic growth, a highly competitive social market economy geared to supporting small and medium-sized enterprises and aiming at full employment and social progress, protection and improvement of the environment, combating social exclusion, discrimination and inequalities in access to health care, promoting social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child,

B. whereas Article 9 TFEU requires that, in defining and implementing its policies and activities, the Union take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health,
C. whereas Article 14 of the TFEU and Protocol 26 thereto explicitly address services of general interest (SGI), which include social services of general interest (SSGI); and whereas it is confirmed that national, regional and local authorities have the essential role and wide discretion in providing, commissioning and organising services of general economic interest (SGEI), and that the Treaties do not affect the competence of Member States to provide, commission and organise non-economic services of general interest (SGNEI),

D. whereas access to services of general interest is a fundamental right included in the economic, social and cultural rights recognised in the Universal Declaration on Human Rights,

E. whereas the provision of universally available, high-quality, accessible and affordable SSGI within the meaning of the 2007 Commission communication on services of general interest can therefore be regarded as an essential pillar of the European social model and as the basis for a good quality of life and for the achievement of EU employment, social and economic objectives,

F. whereas social services of general interest, and in particular access to services for the care of children, the elderly and other dependants, are essential for the equal participation of women and men in the labour market, education and training,

G. whereas gender segregation in social services, both sectoral and occupational, has a detrimental impact on working conditions and pay levels and whereas unpaid domestic work, child care and elderly care work are predominantly performed by women,

H. whereas the expansion of social services of general interest has been a driving force in drawing more women into the labour market,

I. whereas Articles 4(2) and 5(3) TEU encompass subsidiarity at local level, give formal recognition to regional and local self-government and whereas Article 1 of Protocol 26 to the TFEU recognises the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest tailored as closely as possible to the needs of the users,

Fundamental Rights and Universality

1. Considers that SSGI, their users and their providers have a number of special characteristics in addition to the common characteristics of SGI; SSGI, as defined by Member States, encompass statutory and complementary social security schemes and universally available services provided directly to the person, aiming to enhance the quality of life of all; play a preventative, social cohesion and inclusion role and deliver on fundamental rights as proclaimed in the European Charter of Fundamental Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms;

2. Recognises that, in the case of SSGI, there are two contrasting factors which have to be reconciled: on the one hand, the principle of subsidiarity, which upholds the national public authorities' freedom to define, organise and finance SSGI as they see fit, in conjunction with the principle of proportionality; and, on the other hand, the responsibility incumbent on the Community and the Member States for their respective areas of competence under the Treaty;

3. Urges the Member States to maintain the availability of accessible, affordable, high-quality social services as during the period of fast economic growth, and to guarantee non-discriminatory access to these services regardless of gender, income, race or ethnic origin, religion or beliefs, disability, age, sexual orientation or employment conditions; considers that social services are fundamental in ensuring gender equality as, together with health services and childcare facilities, they are one of the mainstays of efforts to increase female employment rates and equality in general;
4. Insists on the need to prevent the current financial and economic crisis and future economic prospects from putting at risk the development of social services of general interest, as this would in the long term harm the growth of employment, economic growth in the EU, the increase in fiscal contributions and the promotion of equality between women and men;

5. Calls on the Commission and the Member States to conduct a gender-impact assessment of the various social services of general interest and to ensure that the assessment of proposed EU activities from a gender-equality perspective becomes a regular and transparent process with discernible results and that the gender perspective is included in the budget for all EU and national programmes and policies; also calls on the Commission to include in its monitoring reports the issue of gender equality;

6. Calls on the Member States to ensure the availability, within policies geared to achieving a work-life balance, of accessible, affordable, good-quality, diversified forms of care services for children as described in the Barcelona objectives and to improve the provision of care services for elderly and dependent persons as an essential step towards equality between women and men, since childcare services not only facilitate participation by women in the labour market but also offer job opportunities; requests the Commission and Member States to take action for the recognition of unpaid household, child and elderly care providers, mostly women, who have a very important role for the sustainability of the social systems;

7. Stresses that the general-interest nature of a social service does not depend on its field but on the way it is provided, in terms of a variety of factors such as non-profit status and non-selection of beneficiaries;

8. Emphasises that, where SSGI are concerned, the subsidiarity principle must take precedence over internal market rules;

9. Emphasises that, as a matter of principle, responsibility for decisions on designing, funding and delivering social services of general interest (SSGI) must lie with Member States and local authorities; respects and supports this principle and urges the European institutions also to espouse this position;

10. Stresses that, in order for SSGI to fulfil their role, access thereto cannot be only for disadvantaged and vulnerable people, but they must be universally accessible and independent of wealth or income, while ensuring equitable access for the most vulnerable people, in accordance with Member State laws and practice;

11. Stresses that the fundamentally structuring and inclusive character of SSGI contributes in a relevant, useful and effective way to the development of all regions by enabling the State and local or regional authorities to perform a role using public and private funding; considers that preserving them in rural and vulnerable regions is particularly important and stresses as well the vital role of SSGI in limiting risks of segregating fractured and marginalised communities;

12. Emphasises that SSGI are funded mainly by the Member States, as they fall primarily within their field of competence; considers nevertheless that the European Union can play an important role and assist Member States in their modernisation and adjustment to new conditions, and possibly give voice to citizens' requirements regarding the quality and scope of services;

13. Stresses the importance of conducting, as a matter of urgency, an assessment of the social consequences and impact on people's lives of liberalisation measures in sectors that are essential to social progress;
14. Stresses that it is important to reinforce the social dimension of the single market and to take better account of the special nature of SSGI, with emphasis on a pragmatic approach in which the accessibility, universality, fairness, quality and efficiency of such services are the prime considerations;

15. Endorses the recommendation in the Monti report that broadband internet and basic banking services be recognised in European law, as services which Member States may ensure, are universally available and accessible to all;

Economic contribution

16. While emphasising that SSGI must not be defined by their economic impact, notes the Commission’s second biennial report and confirms that SSGI make a major economic contribution in terms of jobs, economic activity and purchasing power and that the health and social services sector accounts for 5% of economic output and employs 21.4 million people; notes that the CEEP, in its report, ‘Mapping of Public Services,’ also confirmed that health and social activities account for 9.6% of EU employment, and 9.4% of GDP; notes that the 2008 Labour Force Survey shows that women account for 79% of the workforce in health services, 81% in residential care services and 83% in non-residential care services; notes also that an SME representative body, UEAPME, takes the view that SMEs need high-quality, efficient SSGI in order to operate successfully; calls on the Member States also to take into account gender-equality principles; notes that the promotion of inclusive labour markets, prevention and rehabilitation will lead to cost savings and improve quality of delivery in the longer term;

17. Stresses that SSGI help to enable citizens to exercise their rights and are geared to ensuring social, territorial and economic cohesion through the implementation of various forms of solidarity;

18. Stresses that, regional and local authorities play a fundamental role in defining, financing, providing and attributing SSGI within the framework of Member States’ social service and social protection systems: it is estimated that the local and regional government sector is worth 15.9% of EU-27 GDP, with local government alone accounting for 12.9%, and its social protection expenditure accounting for 3% of GDP (EUR 378.1 billion) (1);

19. Believes that national, regional and local authorities should extend the application of Public-Private Partnerships in the area of SSGI in order to increase their efficiency and availability;

Social contribution

20. Points out that Eurofound Quality of Life Surveys (2) have verified that one of the most important ways of enhancing citizens’ quality of life, ensuring full inclusion in society and providing for social and territorial cohesion is through the provision and development of SGI including SSGI; stresses that SSGI are a key pillar of the European social model, being part of the way European societies are organised, and that their purpose is to achieve social policy objectives, making tangible the social rights of individuals and groups, often through Member State’s social security systems;

21. Highlights the need to promote a policy of social progress, ensuring universal access to high-quality public services, with special consideration for disadvantaged groups, such as single mothers, women, elderly people, children, migrants and those with any kind of disability;

22. Stresses that it is inappropriate for public funds allocated to SSGI to be used otherwise than to fulfil the objectives of the service, and that no part of such funding, apart from reasonable staff and overhead costs incurred in service delivery, should be used for any other purpose; takes the view that the legitimate objective of profit maximisation conflicts unacceptably with the principles and objectives of SSGI; is of the opinion that where Member State authorities choose to use indirect delivery of SSGI, the general interest must be protected, and that they should, while ensuring quality, innovation, efficiency and cost effectiveness, support social economy enterprises, where any surplus is reinvested in the service and in innovation, and encourage them to operate as providers;

23. Emphasises the traditional role of the state as provider of social services of general interest, yet considers that opening up this sector to private service providers will enhance the accessibility and quality of services and increase consumer choice;

24. Reaffirms its commitment to modern, high-quality SSGI, which are a means of giving effect to many of the values embodied in the European project, such as equality, solidarity, the rule of law and respect for human dignity, as well as to the principles of accessibility, universal service, efficiency, economical management of resources, continuity, proximity to service users and transparency;

Regulatory constraints on delivery of SSGI

25. Stresses that national, regional and local authorities engaged in providing or mandating SSGI need legal certainty for their services and expenditures, and that, while the information and clarification service and the recently published Commission guide are very welcome, they do not deliver the necessary legal certainty, which tends to inhibit SSGI providers in fulfilling their mission;

26. Stresses that national and local authorities are responsible for ensuring that SSGI operate properly and for maintaining a high standard of quality;

27. Considers that it is neither efficient nor democratically acceptable that current interpretation of legislation results in the ECJ being asked to adjudicate on the limits of single market rules with regard to SGI, including SSGI, which is a clear indication of the lack of legal certainty; points to the long-standing and ongoing stakeholder dialogue on this matter and calls on the Commission finally to take action;

Economic and budgetary policy

28. Emphasises that SSGI are an indispensable investment for Europe's economic future, and that they are under severe pressure in some Member States as a result of the economic and banking crises and government austerity programmes, which are resulting in even greater demand for them; SSGI have been indispensable as automatic socio-economic stabilisers during these crises – notably via social security systems;

29. Stresses that the need for SSGI is steadily growing owing to the current climate of uncertainty over growth and jobs, while demographic change is giving rise to new needs; emphasises that the key challenge of the moment for the delivery of SSGI is maintaining their quality and scope and, given their importance and absolute necessity, that such services need to be enhanced in order to ensure they play their important role in achieving the EU 2020 social and economic targets for employment and poverty reduction;

30. Points out that the economic and financial crisis and the austerity policies imposed by Member States should not encourage disinvestment in SSGI but that, on the contrary, given their importance and absolutely essential nature, such services need to be consolidated in order to meet people's needs;
31. Draws attention to the importance of ensuring that the national, regional and local authorities facilitate access to social housing for women in need or at risk of exclusion, and for women who have been the victims of gender violence, in both cases especially when they have dependent children;

32. Points to the need for greater recognition to be given to the work performed by people employed in the social services sector, the majority of whom are women, because their jobs are difficult, call for a caring attitude and great personal commitment and are not very socially prestigious;

33. Considers that the principle of solidarity and the strengthening of the European Union require that the crisis, with its growth in unemployment and poverty, must be addressed by greater efficiency and effectiveness of spending at EU and national levels, strengthening of structural funds and, in particular, the European Social Fund, and the application of new resources such as project bonds;

34. Believes that in order to guarantee delivery of high-quality SSGI, Member State governments need to provide for an adequate financial framework for SSGI, which guarantees continuity of services with stable financing, as well as decent working conditions and training for those employed or assisting in delivering the services;

35. Stresses, furthermore, that all transfers of competence for SSGI from Member States to local or regional authorities require the introduction of coordination arrangements, in order to avoid any disparities in the quality of the services provided in the various areas, and must go hand in hand with the transfer of the resources required to ensure the continued provision of high-quality universal services that can respond to the rights and needs of users in an effective manner;

36. Considers that, not least in order to maintain the delivery of quality SSGI, the Member States need new income, and calls on the Commission swiftly to produce a feasibility study based on the European Heads of State decision of 11 March 2011 (1);

**Deficiencies in the regulatory framework for SSGI**

**General**

37. Believes there is a broad European consensus that SSGI are essential to the well-being of our peoples and an efficient economy and that while there has been some progress in addressing the difficulties that arise for providers in the delivery and development of SSGI from the application of EU rules to such services, there is no consensus so far within or between the Commission and the Council on the implementation of further practical measures to overcome the obstacles identified by stakeholders;

38. Underlines that the Treaties commit the EU and Member States to developing a social market economy and maintaining the European social model; emphasises that it is for Member States and local authorities freely to decide how SSGI are funded and delivered, whether directly or otherwise, using all available options, including alternatives to tendering, so as to ensure that their social objectives are achieved and are not hampered by the application of market rules to non-market services; stresses the need for a supportive environment that promotes quality, accessibility, affordability and efficiency in the delivery of the services, while facilitating the development by providers of a capacity for initiative that can enable them to anticipate public needs;

39. Emphasises that the quality of services must be based around regular and integrated consultation of users since services must first and foremost meet their needs;

(1) Conclusions of the Heads of State or Government of the euro area of 11 March 2011.
40. Takes note of its above mentioned declaration of 10 March 2011 on the establishment of European statutes for mutual societies, associations and foundations and the need for greater recognition for social economy actors, including models such as cooperatives, which are active in the provision of SSGI and the organisation and functioning of the social economy, calls on the Commission to take the necessary steps, based on impact assessments at national and EU level, to introduce proposals for European statutes for associations, mutual societies and foundations, which would enable them to operate on a transnational basis;

State aid

41. Welcomes the review of state Aid which Commissioner Almunia has undertaken and calls for clarification of basic principles on the control of state aid to enhance legal certainty and transparency for clarity of concepts such as ‘act of entrustment’ and ‘public authorities’; for the introduction of differentiation in the rules; for calculating compensation of public service obligations, that should take account of, among other things, social criteria, the specific features of the service provider and a number of external considerations relating to the provision of services, such as social added value and community involvement;

42. Welcomes the Commission evaluation of the impact of the 2005 Monti-Kroes package; calls for the revision of that package so as to strengthen legal security, simplify the rules such as those on the control of over-compensation for operators of SSGI at local level and improve flexibility in their application, and consider expanding the list of derogations from notification in line with the examples of hospitals and social housing; calls on the Commission to reassert the appropriate level of the de minimis threshold applicable to SSGI and to propose a system which takes into account Member State GDP in calculating the de minimis threshold, so that a specific de minimis threshold can be calculated for each Member State, thus preventing distortions of competition caused by the existence of a uniform, EU-wide threshold; urges that control of over-compensation be used only if the risk of serious violation of competition is ascertained;

43. Points out that neither the sector, the status of an entity carrying out a service nor the way in which it is funded determines whether its activities are deemed economic or non-economic, but rather the nature of the activity itself and its preventive effect;

44. Recalls that the key issue is not to distinguish between economic and non-economic SGI, including SSGI, but rather to establish clearly the responsibility of public authorities, in procuring a service, to ensure that particular general interest tasks which have been assigned to undertakings entrusted with the operation of such services are carried out;

45. In the framework of current EU legislation, calls for clarification of the concepts and the classification criteria used to differentiate between economic and non-economic SSGI, and for a common understanding of SGI with a view to ensuring that their intended aims can be achieved;

Initiative to Advance Reform

46. Recognises the high value of mutual learning and good practice exchange in inspiring and promoting the further modernisation of SSGI in different Member States, and urges the Commission to continue proactively to initiate and support such activities with, and including training for, regional and local authorities in the application of EU rules to SSGI; stresses that the problems which SSGI providers and beneficiaries have identified need prompt solutions based on a pragmatic approach;

47. Urges that the Commission, as a follow-up to the 2007 communication on SGI and the current review of procurement and state aid rules, undertake a programme of reform, adaptation and clarification to support and recognise the specific non-market characteristics of SSGI, to ensure full conformity not only with single market provisions but also with the social obligations of the Treaties;
48. Considers that an EU framework regulation on SGEI, permissible under Article 14 TFEU, is not the central issue at this time;

49. Considers that the Social Protection Committee has made and will continue to make an important contribution to the common understanding and role of SSGI; notes, however, that its Treaty mandate (Article 160 TFEU) specifies a purely advisory status and does not permit its membership to be broadened to include civil society, the European Parliament, the social partners or others;

50. Proposes the establishment of a high-level multi-stakeholder working group as recommended by the 3rd SSGI Forum, which is open, flexible and transparent, broadly representative of stakeholders and focused on achieving reforms such as the policy initiatives identified in this report and the opinions thereto, in the 3rd SSGI Forum recommendations, the Commission’s second Biennial Report and the SPC reports, as well as any other relevant proposals as they arise; proposes that the working group be co-chaired by the European Parliament and the Commissioner responsible for Social Affairs and comprise representatives of the Parliament, relevant Commissioners, the Council, the social partners and civil society organisations representing users and providers of SSGIs, the Committee of the Regions, local authorities and other relevant stakeholders, the working group could:

— consider the relative merits of establishing a European Observatory or Resource Centre for SSGI to collect information from various sources in the Member States and to enable the exchange of good SSGI practice at the national, regional and local level;

— seek to achieve broad consensus on steps to clarify legal obscurities and ambiguities regarding SSGI.

— evaluate whether European single market regulations which impact negatively on SSGI provision need to be redesigned so as to respect and support Member States’ responsibilities in the definition, funding and delivery of SSGI, taking account of the current Commission review of rules;

— carry out, with the assistance of the Social Protection Committee a comprehensive study concerning the functionality of SSGI;

— examine how the Member States, when defining social services of general interest, can take account of gender-specific services, especially advisory and social services particularly designed for women and important services that contribute to women’s quality of life and equality, such as health services, particularly sexual and reproductive health services, education and the care of the elderly;

— promote innovations such as a Member State register of SSGI, a pilot scheme on elder care, and action programmes based on the European Voluntary Quality Framework;

— consider how Member States can develop forms of home help including support for elderly and vulnerable persons, by both men and women, and reduce the negative employment and pension impact on those who take care of dependent family members;

51. Calls for a 4th European Forum on SSGI, to continue the initiative of the 2007 Ferreira report and to review progress on reform; and for the proposed working group to submit a progress report to the 4th Forum, providing the Forum with continuity, direction and substance;
European Voluntary Quality Framework

52. Welcomes the VQF and insists that application of the principles should be applied and monitored using the proposed quality criteria, in an Open Method of Coordination process in which stakeholders must be included;

53. Welcomes the fact that the European Commission, in the Key Initiatives annexed to the Communication on European Platform against Poverty and Social Exclusion, proposes to develop, at a sectoral level, the Voluntary European Quality Framework on social services, including in the field of long-term care and homelessness; recommends that it also address the areas of childcare, disability and social housing, and that it use equal opportunities as an indicator;

54. Invites the European Commission to clarify the link between the quality framework outlined in the VQF and the Prometheus Programme in order to avoid any duplication; urges Member States to use the VQF to draw up or improve existing monitoring and quality accreditation systems as appropriate for each Member State; takes the view that the functioning of the VQF should be evaluated by the Member States with reference to the Charter of Fundamental Rights and Protocol 26 TFEU;

55. Emphasises that decent working conditions, for men and women, which are stable and compliant with Member State law and practice, coupled with regular quality training and the participation and empowerment of users, taking gender perspectives into account, are essential for the delivery of quality social services; stresses that volunteers have a valuable role to play in the SSGI sector, but that they cannot take the place of an adequate number of professionally trained specialists such as social workers and general staff;

56. Calls on the Member States to encourage employment creation and the growth potential of the social, health and education services sector by offering migrants and EU citizens decent working conditions and access to comprehensive social protection systems;

57. Considers that, among the tasks performed by social workers, particular importance should be given to activities aimed at increasing motivation to undertake work, education or economic activity with a view to becoming independent and self-sufficient;

58. Considers that the VQF principles could be used to help define service quality criteria for application to revised public procurement rules for tendering and contracts, including subcontracts;

59. Proposes that further improvement of the VQF should include reference to funding and service provider status;

*    *

60. Instructs its President to forward this resolution to the Council, the Commission, the parliaments and governments of the Member States and the candidate countries, the Committee of the Regions and the European Economic and Social Committee.
Impact of EU development policy

P7_TA(2011)0320

European Parliament resolution of 5 July 2011 on increasing the impact of EU development policy
(2011/2047(INI))
(2013/C 33 E/08)

The European Parliament,

— having regard to Article 208 of the Treaty on the Functioning of the European Union, which stipulates that 'Union development cooperation policy shall have as its primary objective the reduction and, in the long term, the eradication of poverty. The Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries',

— having regard to the United Nations Millennium Declaration of 8 September 2000,

— having regard to the Monterrey Consensus, adopted at the International Conference on Financing for Development held in Monterrey, Mexico, from 18 to 22 March 2002,

— having regard to the European Consensus on Development (1),

— having regard to the Commission Staff Working Document on the EU Plan of Action on Gender Equality and Women's Empowerment in Development 2010-2015 (SEC (2010) 0265) and to the Council Conclusions of 14 June 2010 on the Millennium Development Goals in which the relevant EU Plan of Action is endorsed,

— having regard to Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation (2) (the 'Development Cooperation Instrument' (DCI)),

— having regard to the EU Code of Conduct on Complementarity and Division of Labour in Development Policies (3),

— having regard to the Paris Declaration on Aid Effectiveness and the Accra Agenda for Action,

— having regard to the Social Protection Floor Initiative, launched by the UN Chief Executives Board (CEB) in April 2009,

— having regard to the European Development Report entitled 'Social protection for inclusive development', launched on 7 December 2010,

— having regard to the ILO Decent Work Agenda and to the ILO Global Jobs Pact, adopted by global consensus on 19 June 2009 at the International Labour Conference,

— having regard to the report by the UN Special Rapporteur on right to food, Olivier De Schutter, entitled 'Agroecology and the Right to Food', presented at the 16th Session of the United Nations Human Rights Council [A/HRC/16/49], 8 March 2011,

Tuesday 5 July 2011

— having regard to the report entitled "The State of Food and Agriculture 2010-2011; Women in Agriculture – Closing the gender gap for development" by the United Nations Food and Agriculture Organization, Rome 2011,

— having regard to the 'Structured Dialogue – For an efficient partnership in development' initiative launched by the European Commission in March 2010 to find practical ways of improving the effectiveness of civil society organisations and local authorities involved in EU cooperation,

— having regard to the Commission Green Paper of 10 November 2010 entitled 'EU development policy in support of inclusive growth and sustainable development. Increasing the impact of EU development policy' COM(2010)0629,

— having regard to the Commission Green Paper of 19 October 2010 on the future of EU budget support to third countries,

— having regard to its resolutions of 23 May 2007 on promoting decent work for all (1), of 24 March 2009 on MDG contracts (2), of 25 March 2010 on the effects of the global financial and economic crisis on developing countries and on development cooperation (3), of 7 October 2010 on health care systems in Sub-Saharan Africa and Global Health (4), of 15 June 2010 on progress towards the achievement of the Millennium Development Goals: mid-term review in preparation of the UN high-level meeting in September 2010 (5), of 25 November 2010 on the climate change conference in Cancun (COP16) (6), and of 8 March 2011 on Tax and Development - Cooperating with Developing Countries on Promoting Good Governance in Tax Matters (7),

— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on Development (A7-0205/2011),

A. whereas poverty reduction and eradication is the EU’s primary development policy objective, as defined by the Lisbon Treaty,

B. whereas the European Consensus on Development reaffirms the EU’s commitment to poverty eradication and the pursuit of the MDGs, and to principles such as ownership and partnership, aid effectiveness and policy coherence for development, which continue to be crucial and should guide efforts to enhance the impact of EU development aid,

C. whereas poverty has multiple dimensions, not only economic, but also human, socio-cultural, political, protective, gender and environmental, which need to be tackled by EU development policy,

D. whereas gender equality, women’s political and economic empowerment and women’s enjoyment of human rights are essential for poverty reduction and sustainable development,

(2) OJ C 117 E, 6.5.2010, p. 15.
(3) OJ C 4 E, 7.1.2011, p. 34.
High-impact development policy

1. Welcomes efforts to develop European Country Strategy documents in order to achieve better coordination between the Commission and the Member States; emphasises that the programming process must ensure that the aid effectiveness agenda is implemented, and that Parliament's right to exercise democratic scrutiny, as defined by the Lisbon Treaty in Article 290, is respected;

2. Reiterates its call for incorporation of the EDF into the EU budget as an important step towards better coordination between the various EU aid instruments; insists that this must not lead to a reduction in the financing of either the future development cooperation instrument or the EDF (as compared to their present levels);

3. Stresses that great dividends in increasing the impact of EU aid could already be achieved through the full implementation of principles already guiding development action such as the poverty focus of EU aid, PCD, and the Paris and Accra aid effectiveness commitments; therefore calls on the Commission to take a leadership role on these issues, especially in the High Level Forum on Aid Effectiveness in Busan, and to ensure that this decisive process adheres to the previously outlined objectives with regard to the aid effectiveness framework towards 2015;

4. Considers that projects and policies funded by the European Union should be routinely assessed to determine which development actions are the most effective; calls on the Commission accordingly to formulate a comprehensive assessment policy based on clear-cut criteria and indicators; reiterates, however, that the quest for a policy with a strong impact should not lead to favouring a purely quantitative and short-term assessment of the results;

5. Believes that the MDG contracts provide a positive model for predictable and results-based aid, which should be further developed by the Commission and Member States;

6. Recalls through the Consensus on Development that accountable participatory governance is a key enabler of development; urges the Commission and Member States to monitor and report on governance practices in developing countries, which includes fighting corruption, improving public financial management, enhancing transparency and upholding human rights; supports the Commission proposals to enhance the promotion of good governance and the fight against corruption in beneficiary countries; stresses, however, that mechanisms using aid as an incentive for political reforms must be transparent, put particular emphasis on democracy and human rights and engage national development stakeholders;

7. Emphasises that in keeping with the concept of democratic ownership, parliaments, local and regional authorities, civil society and other stakeholders should be supported in their efforts to play their proper role in defining development strategies, holding governments to account, and monitoring and assessing past performance and development results; further insists on the fact that the territorial approach of development allows a better ownership by the beneficiaries;

8. Calls on the EU to meet its Accra commitments by providing funding and appropriate support to partner governments in order to enable meaningful participation for citizens in Civil Society Organisations;

9. Highlights the role played by local and regional authorities and their networks in increasing the impact of the European development policy; points out that national parliaments of recipient countries are best placed to play their proper role in identifying priority sectors, preparing and adopting Country Strategy
Papers and multiannual budgets, as well as monitoring budget allocations, in consultation with civil society, prior to policy dialogue with donors in order to empower parliamentarians' role in decision making;

10. Emphasises the close connection between a high-impact development policy and capacity development; points out that capacity development should be seen as an integrated process to improve the capability of citizens, organisations, governments and societies to design sustainable development strategies; stresses that capacity development is a process that requires ownership by, and policy space for, the partner countries;

11. Points out, that support for capacity development, not only through the instrument of budget support but also by means of technical cooperation, is essential to high-impact development assistance; acknowledges that ownership of, and identification with, transformation processes by partner countries can increase over time when nourished by those instruments;

12. Stresses that the aim of increasing the impact of aid and obtaining more results/value for money should not lead to a risk-averse development policy that only focuses on 'easy countries'; insists that poverty eradication and needs must remain the crucial criteria for the allocation of EU development aid and that aid effectiveness must be improved by focusing on tangible results; calls on the Commission and the Member States to review the scope of financing instruments and to focus the disbursement of Official Development Assistance (ODA) on the poorest and most vulnerable countries and on reaching the poorest layers of society particularly those facing the greatest risks of social exclusion, such as women, children, elderly people and people with disabilities while taking into consideration the results achieved and the impact of aid; calls for programming of a phasing-out period of ODA allocations for emerging countries;

13. Stresses the need to distinguish between the development needs of the Least Developed Countries (LDCs) and those of the Middle Income Countries (MICs), especially the emerging donors; recalls that 72 % of the world's poor live in MICs, and that cooperation and dialogue should therefore continue in order to address persisting poverty and inequality; reiterates that non-ODA cooperation with MICs and strategic partners must not be financed from the already scarce development budget;

14. Takes the view that the EU's development policy should aim at eliminating obstacles to development, such as dumping of agricultural products, illegitimate debt burden, capital flight and unfair trade, and at creating an international environment conducive to fighting poverty, guaranteeing decent incomes and livelihoods and to the fulfilment of basic human rights, including social and economic rights;

15. Reiterates the principle of the universality of human rights and non-discrimination as the basis upon which to enhance the impact of EU development policy;

16. Underlines that tackling inequality – including gender inequality – reinforces the human–rights-based approach championed in the European Consensus on Development and can lead to faster poverty reduction;

17. Recognises the development setbacks resulting from conflicts and disasters, as well as the importance and cost-effectiveness of investing in prevention;

18. Invites the Commission, together with interested Member States, to give new innovative aid approaches, such as cash on delivery, output-based aid and results-based financing, a chance;
19. Stresses that Policy Coherence for Development (PCD) is crucial to the implementation of a high-impact development policy and to the achievement of the MDGs; calls on the Commission to define clearly responsibilities and leadership at the highest level with regard to enforcement of the Treaty obligation of PCD and calls for sufficient resources to be set aside for this purpose in the Commission, the European External Action Service (EEAS) and the EU delegations;

20. Believes that in order to guarantee high impact the EU development policy should have an incentive-based approach based on greater differentiation by rewarding those countries that are performing well and supporting those that are most off track;

21. Insists that targeted innovative financing mechanisms focused on wealth creation, property rights and the reduction of capital flight be duly taken into account in devising localised development directions, in accordance with the specific priorities of the recipients;

**Meeting financial commitments**

22. Reiterates its position according to which the collective target of devoting 0.7 % of the Union’s Gross National Income (GNI) to ODA by 2015 must be met; urges the Commission and Member States to find new sources of development funding such as a financial transaction tax at global level, private-sector finance and market-orientated solutions; opposes any alteration or broadening of the definition of ODA, as set by the OECD Development Assistance Committee;

23. Urges the Member States to deliver on their outstanding financial commitments, including those made on maternal and child health as part of the G8 Muskoka Initiative;

24. Underlines that aid should be provided in a predictable manner that is aligned with national plans and priorities and provides incentives for greater transparency and accountability from donor governments, NGOs, and partner states;

25. Takes the view that the added value of the Commission’s development aid and the approaching MDGs deadline justifies a significant increase in real terms in the annual figures for ODA in the next MFF (Multiannual Financial Framework) period; stresses that the share of overall European aid channelled through the EU budget should not be reduced and should retain a poverty focus;

26. Recalls that aid under the future EU instruments for development cooperation must continue to be linked to the ODA criteria established by the OECD Development Assistance Committee;

27. Calls for increased efforts in the areas of development education and awareness-raising in Europe; emphasises that this should be seen as a means not only of increasing public support for development spending, but also of enabling every person in Europe to understand global development concerns; stresses that improving public awareness and reducing indifference to the plight of developing countries would help enhance EU development policy;
Notes that in order to increase public awareness and reduce indifference efforts must be made to improve the transparency of aid spending, enhance the dissemination of independent evaluation studies and apply stricter sanctions to those actors who have been found to be misappropriating development aid;

Promoting pro-poor growth

29. Acknowledges that economic growth is a crucial driver of development; stresses, however, that growth is only one instrument among many, and that maximising growth is not equivalent to maximising development; notes in particular that the impact of growth on poverty eradication could be much higher if inequality were reduced and human rights respected; insists, therefore, that EU development assistance must be geared towards pro-poor growth through the adoption of measures which specifically focus on the poor and the marginalized in order to foster an increase in their share of national wealth and allow them to become a driving force for genuinely inclusive growth, such as micro-credit and micro-finance, as well as other market-derived solutions;

30. Observes that a policy based solely on economic growth has shown its limited ability to eradicate poverty and promote social cohesion, as demonstrated by the recent financial, climate, energy and food crises; advocates sustainable development based on fair trade and social justice which benefits current generations without endangering resource availability to future generations;

31. Stresses that economic growth policies cannot succeed without promotion of social and environmental standards and the implementation of social protection mechanisms;

32. Stresses that EU policies should facilitate growth in areas of the economy where the poor earn their livelihoods, such as agriculture, and pay more attention to the informal sector; calls on the Commission and the Member States to favour measures which provide security of land tenure and facilitate poor people’s access to land, markets, credits and other financial services and skills development, without aggravating existing inequalities and without consolidating asymmetrical dependence structures;

33. Supports efforts to promote industrial development and the development of infrastructure that contributes to sustainable economic growth with full respect for social and environmental standards; notes that the most effective way to increase growth and lift people out of poverty is to enhance industrial and market development;

34. Points out that industrial development has tremendous transformative potential for national economies and, unlike agricultural exports or natural resources extraction, which expose economies to shocks, is likely to offer enhanced scope for long-term productivity growth; calls on developing countries, therefore, to address this issue by designing and implementing industrialisation policies with a specific focus on manufacturing specialisation and trade-capacity building;

35. Stresses the need for industrial growth to be energy-efficient, so that growth in GDP is decoupled from oil dependency and greenhouse gas emissions; urges the EU and its Member States to make every effort to facilitate the transfer to developing countries of energy efficiency technology and best practice;
36. Considers that funding for large-scale export or infrastructure projects, while attractive in terms of delivering visible results, is not necessarily the best strategy to deliver benefits to the wider population and poor marginalized communities;

37. Urges that the EU and its Member States support more systematically the ILO’s decent work agenda in developing countries, in order to stimulate the creation of high-quality jobs and the protection of core labour standards;

38. Emphasises that diversifying the economies of developing countries and reducing their dependence on imports need to be priority objectives for policies supporting growth;

39. Stresses that investment projects supported by EU mechanisms for blending grants and loans must be subject to monitoring of their implementation and impact studies of internationally agreed social and environmental standards; insists that the decision-making process on the selection of projects must be transparent and ensure coherence with EU strategy papers, the principle of country ownership and the EU’s commitment to untie its aid;

40. Insists that blending should generate new funds, rather than leading to grants under the EU’s ODA being replaced by loans;

41. Stresses that development policy cannot become truly effective without the promotion of adequate legal frameworks, especially in the areas of property rights and contract law;

42. Underlines that promoting gender equality will help to unlock the productivity of women and thus contribute to sustainable and pro-poor growth;

**Human development**

43. Stresses that poverty is not only measured in monetary terms and that in its wider sense it means being denied fundamental rights such as food, education, health or freedom of expression;

44. Emphasises that the provision of basic social services is crucial to pro-poor growth and reaching the MDGs; calls for 20% of all EU assistance to be earmarked for basic social services, as defined by the United Nations in the Millennium Development Goals (indicator 8.2 for goal 8: Develop a global partnership for development), with a special focus on free and universal access to primary health care and basic education, taking into account the EU’s support for the ‘Education for All’ initiative, and the 2010 Communication on the EU's role in global health; reiterates the need for specific attention to be paid to vulnerable groups and those with a high risk of social exclusion, such as people with disabilities;

45. Underlines that girls’ education and the promotion of gender equality in education are vital to development, and that policies and actions that do not address gender disparities miss critical development opportunities; underlines that girls’ education yields some of the highest returns of all development investments, yielding both private and social benefits that accumulate to individuals, families and society at large
by reducing women’s fertility rates, lowering maternal, infant and child mortality rates, protecting against HIV/AIDS infection, increasing women’s labour force participation rates and earnings and creating inter-generational education benefits;

46. Stresses the importance of bridging financing gaps in health systems resulting from priorities such as sexual and reproductive health suffering cuts, and emphasises the importance of investing in the fight against HIV/AIDS and other diseases;

47. Recalls that investing in children and youth is a long-term investment in sustainable human development;

48. Welcomes the UN initiative for a Social Protection Floor; calls on the Commission and the Member States to enhance support for national social protection programmes in developing countries and to develop a comprehensive policy framework on this issue which includes gender equality and women’s empowerment aspects;

49. Would welcome EU efforts to address more systematically the linkages between the external dimension of its migration and asylum policy and other policies with a bearing on migration e.g. employment, education, rights and social protection;

50. Takes the view that tax revenues are essential to enable developing countries to meet the basic needs of their citizens, to be less dependent on foreign aid and to promote democratic accountability; reiterates its view that the EU must support partner countries in developing fair, transparent and effective tax systems to generate the revenues needed for social protection and pro-poor policies, and must at an international level continue to work for greater financial transparency and to ensure that partner countries share the benefits; underlines that the exchange of best practice and information-sharing in taxation policy is crucial to the creation of fair tax systems;

51. Underlines the intrinsic importance of human rights and the many avenues available to the EU to help build capacity for the respect of all human rights;

**Involving the private sector**

52. Acknowledges that the development of the private sector in developing countries is crucial to creating employment opportunities, delivering services and enhancing wealth creation; recalls that 90% of jobs in developing countries are in the private sector; stresses that, in keeping with the pro-poor agenda, EU development aid should focus on financing for domestic companies, leveraging of domestic capitals and encouraging recipient countries to create an environment conducive to the development of small, medium-sized and micro-enterprises and on the removal of barriers to formalisation, access to capital and affordable credit and that services and capacity-building should be targeted in particular on poorer entrepreneurs;

53. Reaffirms the role of a socially and ecologically responsible private sector in stepping up the pace of sustainable development; calls on the Commission to promote and support, among other things, social-economy enterprises that work in accordance with ethical and economic principles;

54. Underlines that it is important to clearly assess the possible risks of increasing the involvement of the private sector and that clear criteria for supporting private-sector projects should therefore be defined, as well as strong impact assessment mechanisms, which should be developed in order to ensure that private-sector investment is both sustainable, in line with agreed international development goals, and does not lead to a move back to tied aid;
55. Recalls that public investment in public goods, infrastructure and services is fundamental to sustainable growth and the effective reduction of inequalities;

56. Stresses that investment projects involving the private sector which are financed by the EU in developing countries should meet internationally agreed environmental, human rights, social and transparency standards and be consistent with beneficiary countries’ development plans; objects to any kind of cooperation with private entities which would contribute directly or indirectly to any form of tax evasion or tax avoidance; asks the Commission to review its due-diligence mechanisms when deciding on funding for resource-extraction projects;

57. Is convinced that investment has a positive impact on growth and jobs, not only in the EU but also in developing countries; stresses that the industrialised countries have a responsibility to provide more support for investment in, and technology transfer to, indigenous undertakings so that emerging sectors of the economy in developing countries can implement quality standards as well as international social and environmental standards; also stresses the need for enhanced cooperation in order to help developing countries improve their institutional and regulatory capacity to manage foreign investments;

58. Calls on the EU to recognise the right of developing countries to regulate investment, to favour investors that support the partner country’s development strategy, and to give preferential treatment to domestic and regional investors in order to promote regional integration;

59. Calls on the EU to meet its Aid for Trade Strategy commitments on development assistance specifically targeted at projects designed to help developing countries develop their trade-related skills, improve the supply chain and ultimately compete in regional and global markets;

60. Calls on the Commission to make a legislative proposal with a similar objective to the new US ‘Conflict Minerals Law’, namely to combat the illegal exploitation of minerals in developing countries, in particular in Africa, which fuels civil war and conflicts, and to ensure traceability of imported minerals in the EU market;

61. Calls for an analysis and assessment of Public Private Partnerships (PPP), which involve the private sector in development and are promoted by the Commission, in order to draw lessons from this experience before moving to a new policy concept of using public money for leveraging private sector financing;

62. Emphasises that support for the private sector must go hand in hand with assistance to the national, regional and local public authorities and parliaments in beneficiary countries to enable them to regulate markets effectively, to promote transparency, to implement equitable tax policies and good governance and to fight corruption, within both businesses and NGOs, as well as in governments and public authorities;

**Climate change, energy and sustainable development**

63. Welcomes the proposal to focus development cooperation on sustainable renewable energy; reiterates that access to energy is a prerequisite for achieving the Millennium Development Goals; insists that water supply and access to energy for the poor and in connection with the provision of public services and local development must be prime objectives of EU-supported projects;
64. Prioritises support for local and regional sustainable energy solutions, and decentralised energy production in particular, so as to bring development priorities in line with environmental concerns;

65. Notes the huge potential for renewable energy (solar energy, wind power, geothermal energy and biomass) in many developing countries; calls on the EU and its Member States to implement renewable energy projects in developing countries and to make available technology, expertise and investment opportunities, as this is vital for economic and social development, reduces these countries’ dependency on fossil fuels and decreases their vulnerability to energy price fluctuation;

66. Urges the Commission to ensure that EU ODA for improving access to energy supports local economic development, green jobs and poverty reduction and is not tied to, or used to subsidise, EU businesses; calls also on the Commission not to confuse policies to increase energy access for poor people with meeting the EU’s climate mitigation goals or own energy security needs;

67. Welcomes initiatives taken by developing countries to invest in food production rather than in production of biofuels, in order to secure their food supply;

68. Reiterates that developed countries have a duty to take the lead in building the low-carbon global economy needed to achieve the necessary emission cuts; encourages Member States to take the lead in cutting emissions;

69. Recognizes that tackling climate change and achieving key development objectives are mutually supportive goals; emphasizes the need for more systematic efforts to mainstream ecosystem-based climate change adaptation and mitigation and disaster risk reduction measures, and calls, therefore, for a holistic approach which integrates the environmental dimension in development programmes and projects for example by improving regulations concerning waste transfer and illegal logging;

70. Calls on the Commission to assess the impact of ‘climate migration’, a phenomenon that some estimate will cause 200 million people to leave their homes by 2050 as conditions in their lands gradually worsen and emphasises that the European Union must contribute through its development policy to providing assistance and reducing the number of refugees, by investing in technologies, human resources and financial aid;

71. Reiterates its position that mainstreaming cannot replace the provision of new and additional resources which the EU and other donors have committed towards developing countries climate change mitigation efforts and adaptation needs; stresses that this approach must adopt a local and/or regional approach to addressing specific problems faced in these areas recalls that climate change financing – and public goods in general – is not to be financed from ODA and must therefore be new and additional to Member States’ commitments of 0.7 % of GNI to ODA;

72. Stresses the importance of promoting sustainable urban development as a part of the international agenda as well as implementing it at local, regional and national levels, which would have a beneficial impact on the quality of the life of all people in the world and, in particular, in developing countries;
73. Notes that sustainable development can only be achieved by enhancing recipient countries' capacity building and by improving basic infrastructure;

74. Demands the inclusion and implementation of Article 8(j) of the Convention on Biological Diversity, which is a pillar of sustainable development, in country and regional strategy papers;

75. Recognises that deforestation and unsustainable timber import onto the EU market have contributed to natural disasters and the vulnerability of poor countries, and calls therefore on the EU Commission and Council to integrate in their new development policy strategy a full-scale ban on circulation of illegal timber in the EU;

**Food security and agriculture**

76. Reiterates its position that the EU should focus its development assistance on safeguarding the food security of developing countries and promoting sustainable, local, small-scale and organic agricultural production; emphasises the need to ensure, in particular, access for small farmers to the means of production (land, secured title deeds, seeds, training, credit, consultancy and advisory services), to processing and marketing opportunities and to local and cross-border markets;

77. Calls, in accordance with the IAASTD report, for support for a switch to organic and ecologically sustainable farming, which both takes account of the experience of small-scale farming and constitutes an effective means of adjustment to climate change;

78. Stresses the importance of specific support to women in agriculture, since research shows that closing the gender gap in agriculture could raise the total agricultural output in developing countries by 2.5-4 percent and that women spend a larger portion of income on food, health, clothing and education for their children; calls for the elimination of all forms of discrimination against women and for agricultural policies and programmes to be gender-aware; underlines that women must be seen as equal partners in sustainable development for agricultural development and food security;

79. Insists that the EU should also address the root causes of food insecurity, including weak accountability for the right to food, food-price speculation and ‘land grabbing’; reiterates that the reform of the Common Agricultural Policy must take into account the Treaty obligation of PCD strengthening, fair competition, supporting developing countries' ability and their own productive activity; calls for action aimed at eliminating land grabbing, unsustainable use of land and water, securing the property rights of smallholders and indigenous farmers and their access to farm land, and ending seed monopolies and dependency on specialised pesticides;

80. Notes that, in order to feed a world population expected to surpass 9 billion in 2050, agricultural output will have to increase by 70% between now and then, using less land, less water and fewer pesticides; notes that global food security is a question of the utmost urgency for the European Union and calls for immediate and consistent action to ensure food security both for EU citizens and at the global level;
81. Underlines that tackling food insecurity means implementing many measures in diverse sectors, such as the management of local natural resources, the reinforcement of production and manufacturing, training, the structuring of professional organisations, the implementation of a safety net for the most vulnerable, the education on nutrition and also the diversification of rural jobs beyond agriculture to enhance the income of rural families, who are the first victims of hunger;

82. Points out that it is necessary to introduce better agricultural production methods, including low-cost technologies, provide research in agriculture and strengthen the productivity-efficiency ratio in developing countries in order to enhance sustainability;

83. Calls on EU and developing countries to promote land ownership as a tool for reducing poverty, by strengthening property rights and facilitating access to credit for farmers, small businesses and local communities;

84. Expresses its deep concern about the current farmland acquisition by government-backed foreign investors, particularly in Africa, which risks undermining local food security and causing unforeseen and far-reaching social unrest if it is not properly handled;

85. Underlines that the EU’s Fisheries Partnership Agreements (FPAs) should help consolidate the fisheries policies of partner countries and strengthen their capacity to guarantee sustainable fishing in their own waters and local employment in the sector;

86. Stresses that adequate protection from water-related disasters and diseases, as well as access to a sufficient quantity and quality of water at affordable cost without compromising the sustainability of vital ecosystems, in order to fulfil the basic food, energy and other requirements essential to leading a healthy and productive life, should be a pivotal aspect of development policy;

**Transparency**

87. In order to increase transparency and public acceptance of development projects funded fully or partially by the EU or the Member States, calls for creating an electronic data base that provides information on ODA; believes that this data base should enable users to track all EU donors’ and, if applicable, United Nations Agencies’ projects and programs in all recipient countries, who finances them, and which organization implements them; takes the view that it should be user-friendly and accessible to all through the Internet and that it should have a function which makes it easy to search for specific information through a set of predefined criteria (donor, DAC sector, location, project status, funding type and MDGs) and offer tables and geographic maps for analysis; notes that this kind of data base is also essential for strengthened coordination and harmonization among donors and alignment with the government of the recipient country;

* *

88. Instructs its President to forward this resolution to the Council and the Commission.
European broadband investing in digitally driven growth


(2013/C 33 E/09)

The European Parliament,

— having regard to the Commission Recommendation of 20 September 2010 on regulated access to Next Generation Access Networks (NGA) (1),


— having regard to its position of 11 May 2011 on the Commission proposal for a decision of the European Parliament and of the Council establishing the first radio spectrum policy programme (2),

— having regard to the Commission Communication of 26 August 2010 entitled ‘A Digital Agenda for Europe’ (COM(2010)0245),


— having regard to the Commission Communication of 17 September 2009 entitled ‘Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks’ (3),


— having regard to the Commission Communication of 18 June 2009 entitled ‘Internet of Things: An action plan for Europe’ (COM(2009)0278),


— having regard to the Commission Communication of 20 March 2006 entitled ‘Bridging the Broadband Gap’ (COM(2006)0129),


— having regard to the Commission Communication of 30 April 2004 entitled ‘e-Health - making healthcare better for European citizens: An action plan for a European e-Health Area’ (COM(2004)0356),

(2) Texts adopted, P7_TA(2011)0220.
Wednesday 6 July 2011

— having regard to its resolution of 15 June 2010 on the Internet of Things (1),

— having regard to its resolution of 5 May 2010 on a new Digital Agenda for Europe: 2015.eu (2),

— having regard to its recommendation of 26 March 2009 to the Council on strengthening security and fundamental freedoms on the internet (3),

— having regard to its resolution of 24 September 2008 on reaping the full benefits of the digital dividend in Europe: a common approach to the use of the spectrum released by the digital switchover (4),

— having regard to its resolution of 19 June 2007 on building a European policy on broadband (5),

— having regard to its resolution of 14 February 2007 entitled 'Towards a European policy on the radio spectrum' (6),

— having regard to its resolution of 14 March 2006 on a European information society for growth and employment (7),

— having regard to its resolution of 23 June 2005 on the information society (8),

— having regard to its resolution of 14 October 1998 on globalisation and the information society: the need for strengthened international coordination (9),


— having regard to the European Economic Recovery Plan (COM(2008)0800),


— having regard to Article 189 of the Lisbon Treaty,

— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on Industry, Research and Energy and the opinions of the Committee on the Internal Market and Consumer Protection, the Committee on Regional Development and the Committee on Culture and Education (A7-0221/2011),

(2) OJ C 81 E, 15.3.2011, p. 45.
(3) OJ C 117 E, 6.5.2010, p. 206.
(4) OJ C 8 E, 14.1.2010, p. 60.
(8) OJ C 133 E, 8.6.2006, p. 140.
A. whereas the EU-wide provision of fast broadband networks is of vital importance if the objectives of the EU 2020 strategy are to be achieved, in terms of promoting smart, sustainable, inclusive, territorially cohesive economic growth, improving the employment situation, strengthening Europe's competitiveness, facilitating scientific research and innovation and thereby enabling all regions, cities, municipalities and sectors of society to benefit from the digital environment and giving them the opportunity to exploit new digital technologies for public services,

B. whereas broadband access is enabled over many platforms (copper, cable, fibre, fixed and mobile wireless, satellite, etc.), has attracted users of all kinds (such as consumers, businesses, government, public and non-profit institutions, including schools, libraries, hospitals and public-safety agencies), who use broadband for a multitude of services (e-commerce, health-care delivery, voice and video communication, entertainment, fleet management, government services, education, job training, and many more), and is also enabling machine-to-machine applications (smart electric meters and smart grids, wireless heart monitors, emergency services, alarm systems, vehicle telemetry, inventory tracking, and more),

C. whereas recognising and embracing various platforms, users and services as part of the broadband ecosystem will help ensure 100 % broadband access and deliver the many societal benefits associated therewith, which will, in turn, promote 100 % broadband adoption; whereas the EU's objectives should include enabling all regions and sectors of society to benefit from the digital environment,

D. whereas sustainable infrastructure access and service competition, in conjunction with realistic, viable 'top-down' target setting, will make next-generation connectivity available efficiently and in line with demand,

E. whereas EU broadband policy must prepare the ground for a development where the EU can take the lead regarding broadband access and speeds, mobility, coverage and capacity; whereas global leadership in the ICT sector is crucial to the prosperity and competitiveness of the EU; whereas a European market with nearly 500 million people connected to high-speed broadband would act as a spearhead for the development of the internal market, creating a globally unique critical mass of users, exposing all regions to new opportunities and giving users increased value and the EU the capacity to be a world-leading knowledge-based economy; whereas the rapid deployment of broadband is essential to boost innovation and EU productivity, and to stimulate new SMEs and job creation in the EU,

F. whereas it is essential to bridge the digital divide and achieve broadband for all across the EU for European added value, especially with regard to remote and rural areas, in order to ensure social and territorial cohesion,

G. whereas broadband is important for the implementation of new technological infrastructures, which are necessary for the scientific, technological and industrial leadership of the EU, such as cloud computing, super computers, the Internet of Things and smart computing environments; recalls that proper broadband access and speed are core for the development and efficient use of such innovative ICT technologies; notes furthermore that these technologies and the services they provide are meant to benefit both consumers and businesses, including SMEs,

H. whereas public actors can contribute significantly to the roll-out of broadband for all and of Next Generation Access (NGA) in unserved and underserved areas; whereas public investment should operate in such a way that it complements private investment and enhances competition; whereas investors in NGA must retain appropriate incentives to continue to invest in broadband,
I. whereas the private sector has invested hundreds of billions of euro in broadband facilities, services, applications and content over the last decade, but without all European citizens having experienced the benefits of broadband; whereas promotion of private and public investment should continue to be the primary engine of broadband growth in the EU,

J. having regard to the decision taken by the Ministerial Conference for the Union for the Mediterranean of 4 November 2008 in Marseille to reduce the digital divide between the two shores of the Mediterranean, which resulted in the BB-Med (broadband for the Mediterranean) proposal,

Broadband for all

1. Notes that the Communication forms just one part of a broader package, which also includes the Digital Agenda, the Innovation Union, the Radio Spectrum Policy Programme and EU and national funding programmes, with a view to creating a mutually supportive system for the efficient further development, access to, and use of, networks, whether terrestrial fixed and mobile or via satellite;

2. Notes that the concept of broadband is constantly evolving as the number of platforms has grown and the customer base and the range of uses have multiplied exponentially: broadband is now not just about internet access, nor is it limited to direct human interaction as machine-to-machine connections and applications proliferate rapidly;

3. Notes that both fixed and mobile data traffic is growing exponentially and that a number of actions, such as further harmonised spectrum allocations for wireless broadband, increased spectrum efficiency and a rapid roll out of NGA networks, will be crucial to managing this increase;

4. Considers therefore that the objective must be to establish EU global leadership in ICT infrastructure; in order to achieve this objective, 100 % of basic broadband coverage must be delivered to all Europeans by 2013, giving at least 2Mbps service to all users in rural areas and much higher speeds to users in other areas; draws the Commission’s attention to the fact that, in order to counter a digital divide, basic coverage in rural areas will need to take account of increasing transmission requirements for innovative internet services such as e-government, e-health or e-learning; takes the view that, when considering how such targets should be funded, utmost account should be taken of competition in order to avoid market distortions and to allow the market to deliver solutions in the first instance;

5. Notes that, to be on track for the 100Mbps target, in 2015 around 15 % of EU households should have subscriptions with at least that speed;

6. Recalls the importance of realising the objectives of the Digital Agenda, i.e. ensuring that all EU citizens have access to broadband speeds of not less than 30Mbps by 2020 and making it possible for the EU to have the highest possible broadband speeds and capacity; underlines that, to achieve the EU2020 broadband targets, the Digital Agenda must establish benchmarks for the intermediate years 2013, 2015, and 2018, both at EU level and at national level;

7. Highlights the need to make best use of all available technologies, including mobile and satellite, to achieve broadband coverage in rural areas, mountainous regions and islands in the most cost-efficient manner, without undue burdens on consumers, Member States’ regions or the industry;
8. Notes that the future allocation of radio spectrum must pave the way for European leadership in wireless applications and new services; points out that access to low radio frequency bands, with their propagation characteristics supporting wide-area coverage, is crucial to facilitating wireless broadband coverage in rural, mountainous and island regions, allowing access to all foreseeable internet services; emphasises that Europe must remain at the forefront of scientific research and technological innovation in the field of wireless services; notes that it is essential to facilitate access to broadband infrastructures, including user equipment on the ground, in order to assist the take-up of broadband satellite internet services on an affordable basis in rural areas, mountainous and island regions, and to help users have access to all foreseeable internet services;

9. Recommends facilitating the prompt exploitation of the 'Digital Dividend' for new mobile broadband services through a harmonised and technology-neutral pan-EU approach, giving economies of scale and avoiding detrimental cross-border interference issues, while not interfering with existing Digital TV/HDTV reception based on international standards; emphasises the need for the EU to support projects and experiments with 'wireless cities';

10. Considers it essential for teaching and research institutes to have access to broadband infrastructures in order to ensure the free movement of knowledge for the purpose of preparing younger generations and making the EU competitive: calls on the Commission and the Member States to develop European and national programmes to facilitate and provide funding for access to broadband infrastructure for all teaching and research institutions by 2015; considers that by 2015 all European research and academic institutions should be connected by ultra high-speed Gbps networks, creating an intranet for the single European research area;

11. Calls on Member States to promote and extend high-speed open-access connectivity to important public infrastructure (schools, hospitals and other public institutions) located in remote areas, as a means of improving public service and anchoring high-speed connectivity in remote regions, thereby decreasing investment costs for local private distribution;

12. Suggests that the Member States be urged to implement public policies to support the introduction of new technologies and that the introduction of digital teaching methods be promoted; calls on the Commission to encourage exchanges of best practice between Member States and with countries outside the EU;

13. Recalls that the new technologies and access to high-speed connections impact positively on citizens' education, including by creating good opportunities for distance learning particularly in the outermost regions, information, communications and recreation;

14. Underlines the need for sustained research investment within the EU in both fixed and mobile future communication technologies; calls on the Commission to continue to develop joint technology initiatives in these areas, involving universities, research institutes, device manufacturers and service and content providers; considers that these platforms provide the optimum means of developing and exploiting new technology and will give the EU a significant competitive advantage;

15. Notes that broadcasters should be able to offer a high standard of pluralist audiovisual content, using existing broadcasting platforms, including terrestrial platforms as well as broadband networks, in particular for on-demand services, provided that the broadband networks fulfil the same requirements in terms of quality of service and seek to maximise their spectrum efficiency and coverage;
16. Asks the Commission, in order to create a coherent, consistent and effective EU structure marshalling all resources, to urgently present an appropriate proposal for a strategic plan containing a single framework for all aspects of EU cyber security, to ensure full protection and resilience of network and critical information infrastructures, including minimum safety standards and certifications, a common terminology, cyber incident management and a roadmap on cyber security; takes the view that such a plan should define the contributions required from each actor, including the Commission, Member States, ENISA, Europol, Eurojust, EU and national computer emergency response teams and other relevant EU and national bodies and authorities, as well as the private sector, and also address the EU’s role and representation internationally;

17. Considers that universal service obligations could eventually become an additional incentive to the development of broadband and encourages the Commission to quickly review the scope of universal service in this respect;

18. Invites Member States, in close cooperation with all stakeholders, to set national broadband plans and adopt operational plans with concrete measures to implement the 2013 and 2020 targets set in the Digital Agenda; calls on the Commission to study these plans, to propose optimal solutions and to coordinate their implementation with the Member States;

Broadband for economic growth, innovation and global competitiveness

19. Considers that new high-speed networks and services are needed to foster the EU’s international competitiveness and to create high-quality employment;

20. Believes that the combination of competition and carefully selected targets, in both infrastructure and services, provides the best basis for sustainable investment, innovation and take-up; nevertheless stresses that in some cases more cooperation between stakeholders can also foster investment;

21. Considers that high-capacity broadband networks and fibre in the access networks (FTTH) are essential from the perspective of both end-users and their future needs and economic development, given the ever more extensive use of broadband applications;

22. Recommends promoting a competitive market for investment in, and utilisation of fixed and wireless broadband infrastructure; notes that a competitive market is a catalyst for additional investment and innovation by communications, applications and content providers, as well as a vital platform for the digital economy; acknowledges the fact that a robust broadband platform will connect government, individual and business users in locations on both sides of the Atlantic, and that therefore the EU and the US in particular should pursue bold agendas to promote broadband;

23. Encourages the Commission, the Body of European Regulators for Electronic Communications (BEREC) and the service providers to work to find a common approach by 2013 to strengthening the single market for business and communications across the EU;
24. Highlights, with a view to achieving competitive mobile markets, the importance of competitive and timely allocation of spectrum for wireless broadband through the Radio Spectrum Policy Programme, and calls on the Member States to make available the 800MHz band by 2013, while respecting existing services;

25. Recalls that the digital world and ICT are engines of innovation and that access to high speed broadband is therefore an essential pre-condition in all European Innovation Partnerships (EIPs), as it enhances cooperation and participation by citizens;

26. Highlights the importance of public pre-commercial procurement of R&D-based solutions for the aforementioned sectors as a means to stimulate a virtuous cycle of technological development and demand for high-speed broadband services;

27. Takes the view that the public funding earmarked for broadband services can be an effective lever to boost the competitiveness of EU regions if it is channelled into the development of up-to-date, new-generation infrastructure with a high transmission capacity in areas that have a major broadband connection deficit; believes that such areas, in particular those with a large industrial base and a high population density, could very swiftly benefit from the innovative and creative potential of new services available to individuals and businesses;

28. Considers that the extension of broadband networks, primarily in rural areas, will facilitate better communications, particularly for persons with reduced mobility or living in isolated conditions, as well as improving access to services and encouraging the development of SMEs in rural areas, thereby helping to create new jobs and develop new services in these localities;

29. Regrets that the EUR 1 billion in funding announced in 2008 in the European economic recovery plan with reference to 100 % broadband coverage by the end of 2010 has not been allocated and that this objective has not been achieved; calls on the Commission and the Member States to allocate the necessary amounts to achieve the target of ensuring 100 % broadband coverage by 2013 when the current multi-annual financial framework is reviewed;

30. Stresses the urgent need to establish a competitive digital single market working as a spearhead to open up the internal market for all EU citizens; calls for the establishment of a ‘one-stop-shop’ for VAT in each Member State in order to facilitate cross-border e-commerce for SMEs and entrepreneurs;

31. Maintains that the strong demand for connectivity, which simultaneously boosts the profile of the EU online economy, contributes to EU network readiness and responds to the societal changes taking place within the single market, should be backed by the appropriate funds and solid competition infrastructure needed for realisation of the European Broadband project;

32. Emphasises that broadband services are key to the competitiveness of EU industry and greatly contribute to EU economic growth, social cohesion and quality employment, as well as to the participation of all regions and social groups in digital life in the EU; believes that the successful implementation of the ‘Broadband Package’ is critical to tackling unemployment, particularly among young people, by the provision of smart, sustainable and inclusive growth in Europe as envisaged by the Europe 2020 strategy;

33. Welcomes the Commission’s initiative to convene a Digital Assembly in June 2011;
Incentivising investment and competition

34. Highlights the need for measures by Member States and the industry sector aimed at achieving broadband for all, to be focused on the demand side and to avoid distorting the market or creating an undue burden on the sector;

35. Notes that the potential risks involved in building costly next-generation broadband infrastructure are high, with long payback periods; states that regulation should not dissuade investment in this infrastructure and should ensure that all market players have sufficient incentives to invest;

36. Stresses that the cost of infrastructure investments needs to be financed by the market; notes, however, that, where open infrastructure is unlikely to be installed through market forces within a reasonable period, the broadband state aid framework and targeted use of Community funds, including through the EIB, structural funds and EAFRD, may be the most progressive complementary means of accelerating broadband roll-out; calls on the Commission in its review of the state aid guidelines on broadband to provide a stable and consistent framework which supports competition and efficient investment in open networks and to allow the flexible allocation of EU funds within the respective programming periods;

37. Supports all measures that will help reduce the cost of civil engineering and stresses the need for innovative services to stimulate take-up; underlines the need to promote new skills and competencies to provide innovative services and to adapt to technological change, and considers that investment in new, open and competitive networks must be underpinned by measures taken by local, regional and national authorities so as to reduce costs; calls for public (national and EU) funds to be earmarked for the development of broadband communications infrastructures in isolated, sparsely populated or outlying areas which are insufficiently attractive to providers in cost-benefit terms;

38. Highlights the need for better guidance on broadband investment for local and regional authorities in order to encourage the full absorption of EU funds, as expenditure figures for the Structural Funds suggest that the regions have difficulty in absorbing the available funds and targeting them on broadband projects; considers that state aid for broadband investment should be used in synergy with structural funds to stimulate local entrepreneurship and the local economy, create local jobs and promote competition in the telecom market; believes that to make maximum use of limited public funding, whether by the Member States directly or via the EU, such funding needs to have a clear focus on those projects where it can be expected to have the maximum effect in private investment in order to further increase both coverage and capacity; emphasises the need for public funds or preferential loans, in accordance with the Commission’s guidance on state aid, which should be targeted towards future-proof, long-lasting and open infrastructures which support competition and consumer choice;

39. Stresses that actions in this area are undertaken predominantly at local level, and endorses the Commission’s efforts to develop and improve mechanisms that will enable local actors to obtain relevant information to reduce investment costs; considers that, for broadband plans to become fully operational, not only must the Commission and the Member States cooperate, but regional and local authorities must also be involved in devising the plans;

40. Recognises that regulatory certainty is needed to promote investment and address barriers in next-generation networks, and encourages the national regulatory authorities (NRAs) to pursue pro-competitive policies ensuring transparency and non-discrimination on the wholesale telecom market, which would enable all competitors to have fair access to the infrastructure; calls on Member States to comply with
EU telecoms rules and on NRAs to implement the NGA recommendation; calls on the Commission to apply more elements incentivising investment within the regulatory framework and to provide stimulus to use synergies from infrastructure projects;

41. Highlights the importance of competitive markets in achieving affordable broadband, and emphasises the need for swift implementation by Member States and NRAs of the revised EU telecoms framework and the Recommendation on Next Generation Access;

42. Notes the need for clear guidelines to Member States to ensure funds are directed in a timely manner at key broadband objectives while respecting cost efficiency and proportionality of the measures;

43. Calls for the establishment of an investment-friendly framework for NGA and high-speed (mobile and satellite) wireless access that, inter alia, ensures legal certainty and promotes investment, competition and technology-neutrality, leaving technology choices to the market;

44. Calls on Member States to ensure non-discriminatory access to civil works and to facilitate access to ducts, thereby lowering the investment threshold substantially;

45. Calls on the Commission, supported by the Member States, to map unserved and underserved areas;

46. Notes that in order to maximise broadband availability and adoption, EU policy must encourage the deployment of efficient and affordable networks, applications, access equipment, services and content; encourages Member States to develop e-government, e-democracy, e-learning and e-health services, which will boost the demand for broadband;

47. Stresses that where market forces are capable of delivering competitive broadband access, government policy should promote private-sector investment and innovation by removing barriers to deployment;

48. Supports the Commission’s work with the European Investment Bank (EIB) to improve funding of fast and ultra-fast networks, and emphasises the need for such funding to be directed towards open infrastructure projects supporting a diversity of services;

49. Welcomes the Commission’s proposal to explore new financing sources and innovative financing instruments; to that end supports the creation of an EU project bonds system which, in collaboration with the EIB and guaranteed by the EU budget, will respond to the current financing gap resulting from reluctance on the part of private investors and the serious constraints on national budgets; urges the Commission, therefore, to move forward as soon as possible with concrete legislative proposals for the implementation of this alternative source of financing for major infrastructure projects carrying European added value;

50. Continues to encourage appropriate public-sector investment and organisational models, in particular involving local authorities, public-private partnerships and tax incentive schemes for the roll-out of fast and ultra-fast networks; stresses the importance of government policies being coordinated at all levels;
51. Calls on the Commission and the Member States to agree on an EU Broadband Deployment Pact with a view to coordinating national and European funding programmes and private investment more effectively, in accordance with the Commission's State Aid Guidelines, targeting rural areas in particular, and ensuring the necessary coordination with consistent output indicators on an EU-wide scale;

52. Calls for the establishment of a single high-level EU task force with representation of all relevant stakeholders, including users and providers of electronic networks and services, NRAs and BEREC, to assist in developing a future ICT infrastructure strategy and specific information society services;

53. Calls on the Commission to safeguard the principles of the neutrality and openness of the internet and to promote the ability of end-users to access and distribute information and run applications and services of their choice; instructs the Commission to assess whether the implementation of the revised EU telecoms framework requires specific guidance rules;

54. Calls on the Member States to establish what measures can be taken to facilitate market penetration by new operators with a view to encouraging a competitive environment;

55. Emphasises that regulatory measures taken by Members States regarding the imposition of functional separation should only be taken as an exceptional measure after an analysis of the expected impact on the regulatory authority, the undertaking, in particular its workforce and its incentives to invest in its network; this impact assessment should be discussed with all stakeholders, including the representatives of the workforce;

Consumer benefits

56. Notes the Commission's intention to produce guidance on costing and non-discrimination, key principles in the EU framework, and encourages the Commission to support competition in fast and ultra-fast networks and allow all operators fair access to the infrastructure, in order to ensure a wide choice of services, fair network access rates and affordable prices for consumers, and to incentivise efficient investment and rapid switchover to fast and ultra-fast networks;

57. Calls on the Commission and the Member States to address social digital exclusion and other impediments that have kept some populations offline, particularly low-income communities and people with disabilities, and to require all relevant stakeholders to provide: training and public access to broadband services, economic assistance for the acquisition of broadband services and equipment, and incentives for the development of technology and content aimed at specific users’ needs;

58. Calls on the Commission, in order to achieve feasible interactive services and enable monitoring of the broadband targets, to specify more qualitative characteristics of broadband access, including download and upload speeds, latencies, speeds experienced by users and the characteristics needed for the efficient performance of such services; welcomes the Commission's work on developing a methodology to measure relevant aspects of actual user experience;

59. Stresses the difference between theoretical network speeds and actual user experience since the user experience is also linked to website capacity and congestion etc; calls on the Commission in conjunction with BEREC to refine its measurements of delivered broadband speeds and adjust its targets accordingly, and calls on BEREC to develop EU guidelines to ensure that advertised broadband speeds appropriately reflect the average up- and download speeds users can actually expect and to ensure comprehensive consumer
information about the services offered, in order to secure transparency on the benefits of new technology, promote comparability and enhance competition; asks BEREC to ensure that typical broadband speeds experienced by consumers are advertised fairly in the interests of transparency on the benefits of new technology for upload and download; calls on NRAs to take measures against providers that do not comply with BEREC recommendations;

60. Reiterates the importance of future high-speed services that will deliver the EU’s energy efficiency and safety objectives and other communications capabilities (e.g. efficient and intelligent transport systems, and person-to-person, person-to-machine and machine-to-machine communication systems);

61. Notes that new fibre-optics networks offer consumers high-quality access at consistently higher speeds than existing technology; believes that it would be expedient to prioritise the development of fibre-optics-based broadband in areas where it represents the most economic and sustainable solution in the long term;

62. Asks the Commission to present a report annually to Parliament on broadband offerings and choice effectively available to users in the EU, as well as on progress towards implementing the framework for electronic communications and the NGA recommendation;

63. Calls on the Commission to coordinate best practices among the Member States in the field of publicly accessible, free, high-speed WiFi networks in public transport;

64. Emphasises that the development of new information and communications technologies, together with broadband internet, is a great opportunity to further improve communication and dialogue between the citizens and institutions of the European Union;

65. Calls on the Commission to come up with more detailed assessments regarding the impact that certain broadband-related technologies, in particular person-to-person, person-to-machine and machine-to-machine communication systems, could have on health; emphasises the need for the EU to constantly monitor and assess the health risks of wireless internet so that citizens are not exposed to health-damaging radiation;

E-Initiatives: promoting demand

66. Calls for specific measures to be taken to ensure that SMEs can fully enjoy the potential of broadband in the fields of e-commerce and e-procurement; calls on the Commission to exchange best practices and to consider taking on board a specific programme for SMEs and broadband connectivity as part of the Digital Agenda;

67. Stresses that, in order to optimise its impact and its benefits to society, broadband deployment should be coupled with demand-awareness information and educational programmes;

68. Calls on the Member States to step up efforts to address e-skills shortages at all educational levels and through lifelong education for all citizens, with a special focus on those with poor IT skills; points out that investment in broadband in the EU can only be successful if the technical investment goes hand in hand with investment in citizens’ IT skills; emphasises the role of new technologies in education and notes that technological literacy is henceforth not only an objective but also an essential tool for achieving lifelong learning and social cohesion;
69. Calls on the Member States and industry to empower people to develop new skills through comprehensive re-skilling and training programmes and to accompany technological change by active labour market policies;

70. Calls on the Member States to take heed of the Commission’s recommendations in its e-government action plan by using e-procurement, adopting an open strategy for access to public sector data, promoting electronic identity and ensuring pan-European and worldwide signature interoperability; recalls that all actions should be directed towards simplifying bureaucratic interaction with public administrations;

71. Calls on the Commission to accelerate public procurement operations using online resources and electronic invoicing (e-invoice initiative);

72. Supports initiatives such as e-health and a pan-European health information infrastructure to enhance patients’ autonomy and quality of life; states that, in view of the ageing EU population, such services should be accessible anywhere, anytime, including over mobile devices and should above all be affordable; believes that in order to implement the pan-European health information infrastructure of a patient-centred health system, the following actions need to be realised:

— implementation of EU-wide agreements between EU health authorities on standards that will enable integrated access to relevant information in the European health information infrastructure; authorities at all levels – local, national and EU – need to be involved,

— implementation of the European Health Information Infrastructure; this will entail a large-scale development effort to facilitate the integration of information kept in various locations, as well as the implementation of core patient-centred services to support patients, by providing treatment authorisation and payment, anywhere and anytime;

73. Supports innovative broadband services directed towards the maritime sector, and welcomes the discussion by the Commission and the Member States on a new e-maritime initiative building on the SafeSeaNet project, which, it is envisaged, will also address information related to logistics, customs, border control, environment, fishing operations, communications, and security and safety issues;

74. Calls on the Commission to promote the use of the latest generation of satellites as an innovative use of broadband communications in projects of European added value, including furthering the use of the Global Maritime Distress and Safety system, and the new-generation Broadband Global Area Network and maritime FleetBroadband services;

75. Recalls the need to connect the Digital Agenda with the provisions of new growth-generating services such as e-trade, e-health, e-learning, and e-banking;

76. Underlines the importance of a robust privacy framework for the EU and welcomes the ongoing review of the Data Protection Directive;

77. Instructs its President to forward this resolution to the Council and the Commission.
Personal data protection in the European Union

P7_TA(2011)0323

European Parliament resolution of 6 July 2011 on a comprehensive approach on personal data protection in the European Union (2011/2025(INI))

(2013/C 33 E/10)

The European Parliament,

— having regard to the Treaty on the Functioning of the European Union, and in particular Article 16 thereof,

— having regard to the Charter of Fundamental Rights of the European Union, in particular its Articles 7 and 8, and to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), in particular Article 8 on the protection of private and family life and Article 13 on effective remedy,

— having regard to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (1),

— having regard to Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (2),

— 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 data (3),


— having regard to Council of Europe Convention 108 of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data that Directive 95/46/EC develops and the additional protocol thereto of 8 November 2001 regarding supervisory authorities and transborder data flows, and to the Committee of Ministers' recommendations to Member States, in particular Recommendation No. R (87) 15 regulating the use of personal data in the police sector and Recommendation CM/Rec. (2010)13 on the protection of individuals with regard to automatic processing of personal data in the context of profiling,

— having regard to the Guidelines for the regulation of computerised personal data files issued by the United Nations General Assembly in 1990,

— having regard to the Commission communication to Parliament, the Council, the Economic and Social Committee and the Committee of the Regions entitled ‘A comprehensive approach on personal data protection in the European Union’ (COM(2010)0609),

Wednesday 6 July 2011

having regard to the Council conclusions concerning the Commission communication entitled ‘A comprehensive approach on personal data protection in the European Union’ (1),

— having regard to the opinion of the European Data Protection Supervisor (EDPS) of 14 January 2011 concerning the Commission communication entitled ‘A comprehensive approach on personal data protection in the European Union’,

— having regard to the joint contribution by the Article 29 Data Protection Working Party and the Working Party on Police and Justice to the consultation of the European Commission on the legal framework for the fundamental right to protection of personal data entitled ‘The Future of Privacy’ (2),

— having regard to Opinion 8/2010 of the Article 29 Data Protection Working Party concerning applicable law (3),

— having regard to its previous resolutions on data protection and its resolution on the Stockholm Programme (4),

— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Industry, Research and Energy, the Committee on the Internal Market and Consumer Protection, the Committee on Culture and Education and the Committee on Legal Affairs (A7-0244/2011),

A. whereas the Data Protection Directive 95/46/EC and the EU Telecoms Package Directive 2009/140/EC make the free flow of personal data within the internal market possible,

B. whereas data protection legislation in the EU, the Member States and beyond has developed a legal tradition that must be maintained and further elaborated,

C. whereas the core principle of the 95/46/EC Data Protection Directive remain valid, but different approaches in Member States' implementation and enforcement thereof have been observed; whereas the EU must equip itself — after a thorough impact assessment — with a comprehensive, coherent, modern, high-level framework able to protect effectively individuals' fundamental rights, in particular privacy, with regard to any processing of personal data of individuals within and beyond the EU in all circumstances, in order to face the numerous challenges facing data protection, such as those caused by globalisation, technological development, enhanced online activity, uses related to more and more activities, and security concerns (e.g. the fight against terrorism); whereas a data protection framework such as this can increase legal certainty, keep the administrative burden to a minimum, provide a level playing field for economic operators, boost the digital single market and trigger trust in the behaviour of data controllers and enforcement authorities,

(2) 02356/09/EN WP 168.
(3) 0836/10/EN WP 179.
D. whereas violations of data protection provisions can lead to serious risks for the fundamental rights of individuals and the values of the Member States, so that the Union and the Member States must take effective measures against such violations; whereas such violations lead to a lack of trust on the part of individuals that will weaken expedient use of the new technologies, and whereas misuse and abuse of personal data should therefore be punishable by appropriate, severe and dissuasive sanctions, including criminal sanctions,

E. whereas other relevant fundamental rights enshrined in the Charter and other objectives set out in the EU Treaties, such as the right to freedom of expression and information and the principle of transparency, must be fully taken into account when ensuring the fundamental right to protection of personal data,

F. whereas the new legal basis set out in Article 16 TFEU and the recognition in Article 8 of the Charter of Fundamental Rights of the right to protection of personal data and in Article 7 thereof of the right to respect for private and family life as an autonomous rights fully necessitate and support a comprehensive approach to data protection in all fields in which personal data are processed, including the field of police and judicial cooperation in criminal matters, the field of Common Foreign and Security Policy (CFSP) without prejudice to the specific rules laid down in Article 39 TEU, and the field of data processing by EU institutions and bodies,

G. whereas it is of the utmost importance that a series of key elements is taken into account when legislative solutions are being considered, consisting in effective protection given under all circumstances, independently of political preferences within a certain time frame; whereas the framework must be stable over a long period, and limitations on the exercise of the right, where and if needed, must be exceptional, in accordance with the law, strictly necessary and proportionate, and must never affect the essential elements of the right itself,

H. whereas the collection, analysis, exchange and misuse of data and the risk of ‘profiling’, stimulated by technical developments, have reached unprecedented dimensions and consequently necessitate strong data protection rules, such as applicable law and the definition of the responsibilities of all interested parties in terms of the implementation of EU data protection legislation; whereas loyalty cards (club cards, discount cards, advantage cards etc.) are being used more and more frequently by companies and in commerce, and are, or can be, used for customer profiling,

I. whereas citizens do not shop online with the same security as they do offline, owing to fears of identity theft and lack of transparency as to how their personal information will be processed and used,

J. whereas technology is increasingly making it possible to create, send, process and store personal data anywhere and at any time in many different forms, and whereas, against this background, it is crucially important that data subjects retain effective control over their own data,

K. whereas the fundamental rights to data protection and privacy include the protection of persons from possible surveillance and abuse of their data by the state itself, as well as by private entities,

L. whereas privacy and security are possible and are both of key importance for citizens, so that there is no need to chose between being free and being safe,
M. whereas children deserve specific protection, as they may be less aware of risks, consequences, safeguards and rights in relation to the processing of personal data; whereas young people divulge personal data on social networking sites which are spreading rapidly on the internet;

N. whereas effective control by the data subject and by national data protection authorities requires transparent behaviour on the part of data controllers;

O. whereas not all data controllers are online businesses and thus new data protection rules must cover both the online and the offline environment, while taking possible differences between them into account;

P. whereas national data protection authorities are subject to widely diverging rules in the 27 Member States, particularly with regard to their status, resources and powers;

Q. whereas a strong European and international data protection regime is the necessary foundation for the flow of personal data across borders, and whereas current differences in data protection legislation and enforcement are affecting the protection of fundamental rights and individual freedoms, legal security and clarity in contractual relations, the development of e-commerce and e-business, consumer trust in the system, cross-border transactions, the global economy and the single European market; whereas, in this context, the exchange of data is of importance in enabling and ensuring public security at national and international level; whereas necessity, proportionality, purpose limitation, oversight and adequacy are preconditions for exchange;

R. whereas current rules and conditions governing the transfer of personal data from EU to third countries have lead to different approaches and practices in various Member States; whereas it is imperative that data subjects’ rights are fully enforced in third countries where personal data are transferred and processed;

Fully engaging with a comprehensive approach

1. Strongly welcomes and supports the Commission communication entitled ‘A comprehensive approach on personal data protection in the European Union’ and its focus on strengthening existing arrangements, putting forward new principles and mechanisms and ensuring coherence and high standards of data protection in the new setting offered by the entry into force of the Lisbon Treaty (Article 16 TFEU) and the now binding Charter of Fundamental Rights, particularly its Article 8;

2. Emphasises that the standards and principles set out in Directive 95/46/EC represent an ideal starting point and should be further elaborated, extended and enforced, as part of a modern data protection law;

3. Underlines the importance of Article 9 of Directive 95/46/EC, which obliges Member States to provide for exemptions from data protection rules when personal data are used solely for journalistic purposes or the purpose of artistic or literary expression; in this context calls on the Commission to ensure that these exemptions are maintained and that every effort is made to evaluate the need for developing these exceptions further in the light of any new provisions in order to protect freedom of the press;
4. Stresses that the technologically neutral approach of Directive 95/46/EC should be maintained as a principle of a new framework;

5. Recognises that technological developments have on the one hand created new threats to the protection of personal data and on the other led to a vast increase in the use of information technologies for everyday and normally harmless purposes, and that these developments mean that a thorough evaluation of the current data protection rules is required in order to ensure that (i) the rules still provide a high level of protection, (ii) the rules still strike a fair balance between the right to protection of personal data and the right to freedom of speech and information, and (iii) the rules do not unnecessarily hinder everyday processing of personal data, which is typically harmless;

6. Considers it imperative to extend the application of the general data protection rules to the areas of police and judicial cooperation, including processing at domestic level, taking particular account of the questionable trend towards systematic re-use of private-sector personal data for law enforcement purposes, while also allowing, where strictly necessary and proportionate in a democratic society, for narrowly tailored and harmonised limitations to certain data protection rights of the individual;

7. Emphasises the need for the processing of personal data by institutions and bodies of the European Union, which is governed by Regulation (EC) No 45/2001, to be included within the scope of the new framework;

8. Recognises that additional, enhanced measures may be needed in order to specify how the general principles set up by the comprehensive framework apply to specific sectors' activities and data processing, as already done in the case of the e-Privacy Directive, but insists that such sector-specific rules should in no circumstances lower the level of protection provided by the framework legislation, but should strictly define exceptional, necessary, legitimate, narrowly tailored derogations to general data protection principles;

9. Calls on the Commission to ensure that the current revision of EU data protection legislation will provide for:

— full harmonisation at the highest level providing legal certainty and a uniform high level standard of protection of individuals in all circumstances,

— further clarification of the rules on applicable law with a view to delivering a uniform degree of protection for individuals irrespective of the geographical location of the data controller, also covering enforcement of data protection rules by authorities or in courts;

10. Takes the view that the revised data protection regime, while fully enforcing the rights to privacy and data protection, should keep bureaucratic and financial burdens to a minimum and provide instruments enabling conglomerates perceived as single entities to act as such rather than as a multitude of separate undertakings; encourages the Commission to conduct impact assessments and carefully evaluate the costs of new measures;

**Strengthening individuals' rights**

11. Calls on the Commission to reinforce existing principles and elements such as transparency, data minimisation and purpose limitation, informed, prior and explicit consent, data breach notification and the data subjects' rights, as set out in Directive 95/46/EC, improving their implementation in Member States, particularly as regards the 'global online environment';
12. Underlines the fact that consent should be considered valid only when it is unambiguous, informed, freely given, specific and explicit, and that adequate mechanisms to record users’ consent or revocation of consent must be implemented;

13. Points to the fact that voluntary consent cannot be assumed in the field of labour contracts;

14. Is concerned about the abuses stemming from online behavioural targeting and points out that, under the directive on privacy and electronic communications, the prior explicit consent of the person concerned is required for the display of cookies and for further monitoring of his or her web-browsing behaviour for the purpose of delivering personalised advertisements;

15. Fully supports the introduction of a general transparency principle, as well as the use of transparency-enhancing technologies and the development of standard privacy notices enabling individuals to exercise control over their own data; stresses that information on data processing must be provided in clear, plain language and in a manner that is easily understandable and accessible;

16. Underlines, furthermore, the importance of improving the means of exercising, and awareness of, the rights of access, of rectification, of erasure and blocking of data, of clarifying in detail and codifying the ‘right to be forgotten’(*) and of enabling data portability(**), while ensuring that full technical and organisational feasibility is developed and in place to allow for the exercise of those rights; stresses that individuals need sufficient control of their online data to enable them to use the internet responsibly;

17. Stresses that citizens must be able to exercise their data rights free of charge; calls on companies to refrain from any attempts to add unneeded barriers to the right of access, or to amend or delete personal data; stresses that data subjects must be put in a position to know at any time what data have been stored, by whom, when, for what purpose and for what time period, and how they are being processed; emphasises that data subjects must be able to have data deleted, corrected or blocked in an unbureaucratic way and that they must be informed of any misuse of data or data breach; demands also that data be disclosed at the request of the person concerned and deleted, at the latest, when the person requests it; underlines the need to communicate clearly to data subjects the level of data protection in third countries; emphasises that the right of access includes not only full access to processed data about oneself, including its source and recipients, but also intelligible information about the logic involved in any automatic processing; emphasises that the latter will become even more important with profiling and data-mining;

18. Points out that profiling is a major trend in the digital world, owing not least to the growing importance of social networks and integrated internet business models; calls on the Commission, therefore, to include provisions on profiling, while clearly defining the terms ‘profile’ and ‘profiling’;

19. Reiterates the need to enhance obligations of data controllers with regard to provision of information to data subjects, and welcomes the attention given by the Communication to awareness-raising activities directed at the general public and also, more specifically, at young people; emphasises the need for specific procedures to deal with vulnerable persons, in particular children and the elderly; encourages the various actors to undertake such awareness-raising activities, and supports the Commission’s proposal to co-finance awareness-raising measures on data protection via the Union budget; calls for the efficient dissemination in each Member State of information concerning the rights and obligations of natural and legal persons regarding the collection, processing, storage and forwarding of personal data;

(*) There must be clear and precise identification of all the relevant elements underpinning this right.
(**) Portability of personal data will facilitate the smooth functioning of both the single market and the internet and its characteristic openness and interconnectivity.
20. Points to the need to provide for specific forms of protection for vulnerable persons, especially children, for instance by requiring a high level of data protection to be used as the default setting and by taking appropriate specific measures to protect their personal data;

21. Stresses the importance of data protection legislation acknowledging the need to specifically protect children and minors – in the light, inter alia, of increased access for children to internet and digital content – and emphasises that media literacy must become part of formal education with a view to teaching children and minors how to act responsibly in the online environment; to this end, particular attention should be given to provisions on the collection and further processing of children’s data, the reinforcement of the purpose limitation principle in relation to children’s data and to how children’s consent is sought, and on protection against behavioural advertising (1);

22. Supports further clarification and reinforcement of guarantees on the processing of sensitive data, and calls for reflection on the need to deal with new categories such as genetic and biometric data, especially in the context of technological (e.g. cloud computing) and societal developments;

23. Stresses that personal data concerning a user’s professional situation which is given to their employer should not be published or forwarded to third parties without the prior permission of the person concerned;

Further advancing the internal market dimension and ensuring better enforcement of data protection rules

24. Notes that data protection should play an ever greater role in the internal market, and stresses that effective protection of the right to privacy is essential to gaining individuals’ confidence, which is needed in order to unlock the full growth potential of the digital single market; reminds the Commission that common principles and rules for both goods and services are a prerequisite for a single digital market, as services are an important part of the digital market;

25. Reiterates its call on the Commission to clarify the rules related to applicable law in the field of personal data protection;

26. Considers it essential to reinforce data controllers’ obligations to ensure compliance with data protection legislation by having in place, inter alia, proactive mechanisms and procedures, and welcomes the other directions suggested by the Commission communication;

27. Recalls that in this context special attention must be paid to data controllers who are subject to professional secrecy obligations and that the building of special structures for data protection supervision should be considered in their case;

28. Welcomes and supports the Commission’s consideration of the introduction of a principle of accountability, as it is of key importance in ensuring that data controllers act in accordance with their responsibility; at the same time calls on the Commission to carefully examine how such a principle could be implemented in practice and to assess the consequences thereof;

(1) Consideration could be given to an age threshold for children below which parental consent is sought and to age verification mechanisms.
29. Welcomes the possibility of making the appointment of organisation data protection officers mandatory, as the experience of EU Member States which already have data protection officers shows that the concept has proved successful; points out, however, that this must be carefully assessed in the case of small and micro-enterprises with a view of avoiding excessive costs or burden upon them;

30. Also welcomes, in this context, the efforts being made to simplify and harmonise the current notification system:

31. Considers it essential to make Privacy Impact Assessments mandatory in order to identify privacy risks, foresee problems, and bring forward proactive solutions;

32. Considers it of utmost importance that data subjects' rights are enforceable; notes that class-action lawsuits could be introduced as a tool for individuals to collectively defend their data rights and seek reimbursement of damages resulting from a data breach; notes, however, that any such introduction must be subject to limits in order to avoid abuses; asks the Commission to clarify the relationship between this communication on data protection and the current public consultation on collective redress; calls therefore for a collective redress mechanism for breach of data protection rules to allow data subjects to get compensation for the damages suffered;

33. Highlights the need for proper harmonised enforcement across the EU; calls on the Commission to provide in its legislative proposal for severe and dissuasive sanctions, including criminal sanctions, for misuse and abuse of personal data;

34. Encourages the Commission to introduce a system of mandatory general personal data breach notifications by extending it to sectors other than the telecommunications sector, while ensuring that (a) it does not become a routine alert for all sorts of breaches, but relates mainly to those that may impact negatively on the individual and (b) that all breaches without exception are logged and at the disposal of data protection or other appropriate authorities for inspection and evaluation, thus ensuring a level playing field and uniform protection for all individuals;

35. Sees in the concepts of ‘privacy by design’ and ‘privacy by default’ a strengthening of data protection, and supports their concrete application and further development as well as the need to promote the use of Privacy Enhancing Technologies; highlights the need for any implementation of ‘privacy by design’ to be based on sound and concrete criteria and definitions in order to protect individuals' right to privacy and data protection, and to ensure legal certainty, transparency, a level playing field and free movement; believes that ‘privacy by design’ should be based on the principle of data minimisation, meaning that all products, services and systems should be built in such a way as to collect, use and transmit only the personal data that are absolutely necessary to their functioning;

36. Notes that the development and broader use of cloud computing raises new challenges in terms of privacy and protection of personal data; calls, therefore, for clarification of the capacities of data controllers, data processors and hosts in order better to allocate the corresponding legal responsibilities and to ensure that data subjects know where their data are stored, who has access to their data, who decides on the use to which the personal data will be put, and what kind of back-up and recovery processes are in place;
37. Calls on the Commission, therefore, to take due account of data protection issues related to cloud computing when revising Directive 95/46/EC, and to ensure that data protection rules apply to all interested parties, including telecom operators and non telecom operators;

38. Calls on the Commission to ensure that all internet operators assume their responsibilities with regard to data protection, and urges advertising-space agencies and publishers to clearly inform internet users in advance about the collection of any data relating to them;

39. Welcomes the newly signed agreement on a Privacy and Data Protection Impact Assessment Framework for Radio Frequency Identification (RFID) applications, which seeks to ensure consumer privacy before RFID tags are introduced onto a given market;

40. Supports the efforts to further advance self-regulatory initiatives – such as codes of conduct – and the reflection on setting up voluntary EU certification schemes, as complementary steps to legislative measures, while maintaining that the EU data protection regime is based on legislation setting high-level guarantees: calls on the Commission to carry out an impact assessment of self-regulatory initiatives as tools for better enforcement of data protection rules;

41. Believes that any certification or seal scheme must be of guaranteed integrity and trustworthiness, technology-neutral, globally recognisable and affordable, so as not to create barriers to entry;

42. Is in favour of further clarifying, strengthening and harmonising the status and powers of national data protection authorities, and of exploring ways to ensure more consistent application of EU data protection rules across the internal market: emphasises, furthermore, the importance of ensuring coherence among the competencies of the EDPS, the national data protection authorities and Working Party 29;

43. Emphasises in this context that the role and powers of the Article 29 Working Party should be strengthened in order to improve coordination and cooperation among the Data Protection Authorities of the Member States, especially in terms of the need to safeguard uniform application of data protection rules;

44. Calls on the Commission to clarify in the new legal framework the essential notion of independence of national data protection authorities in the sense of absence of any external influence (1); stresses that the national data protection authorities should be given the necessary resources and be vested with harmonised investigative and sanctioning powers;

**Strengthening the global dimension of data protection**

45. Calls on the Commission to streamline and strengthen current procedures for international data transfers – legally binding agreements and binding corporate rules – and to define on the basis of the personal data protection principles referred to above the ambitious core EU data protection aspects to be used in international agreements: stresses that the provisions of EU personal data protection agreements with third countries should give European citizens the same level of personal data protection as that provided within the European Union;

(1) In line with Article 16 TFEU and Article 8 of the Charter.
Wednesday 6 July 2011

46. Takes the view that the adequacy procedure of the Commission would benefit from further clarification and stricter implementation, enforcement and monitoring, and that the criteria and requirements for assessing the level of data protection in a third country or an international organisation should be better specified taking into account the new threats to privacy and personal data;

47. Calls on the Commission to assess carefully the effectiveness and correct application of the Safe Harbour Principles;

48. Welcomes the Commission’s stance on reciprocity in levels of protection regarding data subjects whose data are exported to, or held in, third countries; calls on the Commission to take decisive steps towards enhanced regulatory cooperation with third countries with a view to clarifying the applicable rules and the convergence of EU and third-country data protection legislation; calls on the Commission to bring this forward as a priority agenda item in the relaunched Transatlantic Economic Council;

49. Supports the Commission’s efforts to enhance cooperation with third countries and international organisations, including the United Nations, the Council of Europe and the OECD, as well as with standardisation organisations such as the European Committee for Standardisation (CEN), the International Organisation for Standardisation (ISO), the World Wide Web Consortium (W3C) and the Internet Engineering Task Force (IETF); encourages the development of international standards (1), while ensuring that there is coherence among initiatives for international standards and current revisions in the EU, the OECD and the Council of Europe;

* *

50. Instructs its President to forward this resolution to the Council and the Commission.


Commission Work Programme 2012

P7_TA(2011)0327


(2013/C 33 E/11)

The European Parliament,

— having regard to the Commission Communication on the Commission Work Programme for 2011 (COM(2010)0623/2),

— having regard to the existing Framework Agreement on relations between the European Parliament and the Commission, in particular Annex 4 thereto,

— having regard to the outcome of the regular dialogue of all Commissioners with the parliamentary committees and the summary report of the Conference of Committee Chairs of 7 June 2011 forwarded to the Conference of Presidents,
— having regard to its resolution of 8 June 2011 on Investing in the future: a new Multiannual Financial Framework (MFF) for a competitive, sustainable and inclusive Europe (1),

— having regard to its resolution of 23 June 2011 on the CAP towards 2020: Meeting the food, natural resources and territorial challenges of the future (2),

— having regard to its resolution of 6 July 2011 on the financial, economic and social crisis: recommendations concerning the measures and initiatives to be taken (3),

— having regard to Rule 110(4) of its Rules of Procedure,

A. whereas a review of the Framework Agreement is to be carried out by the end of 2011 in the light of practical experience, which will also provide an opportunity to improve internal working methods, e.g. as regards the regular dialogue, improving transparency and streamlining input from the committees, whilst drawing on available experience to the full in order to provide a sound basis for the preparation of Parliament’s priorities,

B. whereas the financial crisis and the measures taken to address it are still having significant effects on the economies of the Member States and the stability of the eurozone,

C. whereas the Commission must act to the fullest extent of its legal powers and political authority; whereas the European Union cannot function effectively unless the Commission identifies, gives practical expression to and promotes the general interest of its Member States and citizens and efficiently performs its duty of overseeing the implementation of the Treaties and EU law,

D. whereas the Commission has a key role in shaping the EU’s future and should use its next work programme to promote the Union’s objectives and values, strengthen ownership of the EU project, lift the EU out of the crisis and ensure that it is represented and maintains its respected position in the world,

E. whereas one of the challenges facing the Commission when drafting its programme is to fight against its own long-established sectoral approach and instead create synergies between policies, ensure coherence between objectives and methods, and mainstream observance of core principles such as non-discrimination, respect for fundamental rights and equality before the law into all its legislative or non-legislative measures,

RESTORING GROWTH FOR JOBS: ACCELERATING TOWARDS 2020

1. Recalls that the EU budget needs to reflect the EU’s policy priorities; reiterates the need to introduce new own resources and to increase investment at EU level to help achieve the objectives of the EU2020 Strategy;

2. Calls, therefore, for open and constructive dialogue and cooperation to be initiated at EU level on the purpose, scope and direction of the Union’s multiannual financial framework (MFF) and the reform of its revenue system, including a conference on own resources involving Members of the European Parliament and the national parliaments;

(2) Texts adopted, P7_TA(2011)0297.
(3) Texts adopted, P7_TA(2011)0331.
3. Recalls its guidelines for the MFF after 2013, as adopted in the report by its Special Committee on the budgetary challenges and budgetary resources for a sustainable Union after 2013 entitled 'Investing in the future: a new Multiannual Financial Framework (MFF) for a competitive, sustainable and inclusive Europe'; recalls that Parliament's consent, given on the basis of a report of the Committee on Budgets, is compulsory for the adoption of the MFF by the Council; recalls that, in accordance with Articles 312(5) and 324 of the Treaty on the Functioning of the European Union (TFEU), the European Parliament must be properly involved in the process of negotiating the next MFF;

4. Urges the Council and Commission to comply with the Treaty of Lisbon and make every effort to swiftly reach an agreement with Parliament on a practical working method for the next MFF negotiating process; recalls the link between a reform of revenue and a reform of expenditure, and calls, accordingly, for a firm commitment to discuss, in the context of the next MFF negotiations, the proposals on new own resources;

5. Calls for the proposals on the Common Strategic Framework (CSF) covering the Cohesion Fund, the European Regional Development Fund (ERDF), the European Agricultural Fund for Rural Development (EAFRD) and the European Fisheries Fund (EFF) to be presented as early as possible, and calls on the Commission to put forward a proposal for a European Parliament and Council regulation, having as its legal basis Articles 289(1) and 294 of the Treaty on the Functioning of the European Union; also urges the Commission to present a new proposal for a European Parliament and Council regulation on the European Union Solidarity Fund;

6. Highlights the importance of putting forward as a matter of urgency the proposal concerning the European Social Fund as a key tool in combating unemployment and reducing social inequalities and poverty by improving education and vocational training; considers that greater emphasis should be placed on youth unemployment, which is alarmingly high, and on the problem of early school-leavers;

7. Calls on the Commission to continue its work and cooperation with Parliament and the Council on improving the quality of legislation; in this context, also calls on the Commission and Council to ensure that correlation tables are systematically included in all legislative acts to clearly demonstrate how EU law is being transposed into national law and that it is being applied effectively;

8. Emphasises the crucial importance of the proper and timely implementation of EU law through Member States' national legislation, and urges the Commission to use its executive power and, if necessary, open infringement proceedings to ensure proper transposition and effective enforcement;

9. Urges the Commission to bring the acquis into line with the provisions of Articles 290 and 291 TFEU as soon as possible, in accordance with a clear timetable, and therefore calls on it to submit the requisite legislative texts;

Financial Market regulation: completing the reform

10. Stresses that the economic crisis still remains to be addressed by means of the development of an economic governance framework with the power to enforce fiscal discipline and coordination, stabilise monetary union and raise the level of investment in productive jobs; urges the Commission to put forward as soon as possible proposals for a permanent crisis mechanism managed under Union rules, a feasibility study on the setting-up of a system for the common issuance of European sovereign bonds on the basis of joint and several liability and proposals to fully integrate the EU2020 strategy into the stability framework and for a single external representation arrangement for the eurozone;
11. Points out that, as regards financial regulation, measures to improve the resilience of the financial system and the capacity to absorb losses need to be accompanied by measures to stop the build-up of risk and measures to reduce the costs of failure; underlines, in this respect, the need for better monitoring of risk accumulation by banks, the separation of banking activities and utility functions, and robust proposals to handle bank failures in a more orderly way; underlines, furthermore, in this context the need to regulate entities intimately linked to banking systems and providing similar functions but not subject to the same regulation (‘shadow banking’);

12. Calls on the Commission to put forward as a matter of urgency:

— a proposal for a directive on markets in financial instruments (MIFID), which would establish a regulatory framework for securities trading, trading venues and the conduct of business by investment firms, and

— a robust proposal on crisis management for banks/credit institutions, once the banking stress tests currently under way have been concluded;

13. Calls on the Commission to present to Parliament in 2012:

— further proposals to integrate retail banking, which is still strongly national in character, with a view to fully exploiting the advantages of an EU-wide financial market to the benefit of consumers and businesses,

— a proposal for a crisis-resolution mechanism for insurance companies;

14. Stresses the need to keep the focus on investor protection and investor confidence; considers that initiatives to restore confidence in the financial system are essential and should entail a wide-ranging review of due diligence practices, moral hazard in cross-border groups, the incentive and remuneration system and the broader transparency and accountability of the financial system;

15. Stresses the credit rating agencies’ significant role in the development and worsening of the eurozone debt crisis and the implications for the European banking sector; urges the Commission, therefore, to propose without delay a revised legislative framework to enhance regulation and supervision of the credit rating agencies; considers that the creation of a European Credit Rating Agency would introduce a welcome plurality of approaches;

**Smart growth**

16. Strongly encourages the Commission to submit a legislative proposal for the next Framework Programme for research, technological development and demonstration activities by the end of this year that promotes public-private partnerships, reduces red tape, improves the multidisciplinary approach and increases the participation of smaller players and innovative firms in projects; considers it necessary to increase the R&D budget for the next financing period so that the EU does not fall even further behind its competitors, given the massive increase in R&D spending in some other regions of the world (such as the USA and, especially, China), and in order to fully support the objectives of the EU 2020 Strategy;

17. Urges the Commission to implement a more risk-tolerant and trust-based approach to its R&D programmes in order to reduce red tape and increase the participation of innovative firms in projects;
18. Highlights the need to mobilise financing for high-speed network investments; stresses that broadband for all is essential for Europe to compete globally and to ensure that no European is left behind;

19. Calls on the Commission in its 2012 Work Programme to work closely with Member States to ensure correct and timely transposition of the 2009 reforms to the communications framework legislation; notes, in particular, the need to enforce market access obligations and other consumer benefits, including enhanced contract and price information and number portability measures;

20. Notes the need to address in the 2012 Work Programme a number of areas responding to new technology developments, while enhancing the Digital Single Market; these should include ‘cloud computing’, the ‘Internet of Things’, e-signatures and cyber security;

21. Expects the Commission to ensure that the measures to cut data roaming charges will become fully effective in 2012;

22. Stresses the importance of an ICT strategy and of completing the European Digital Single Market, which will provide huge growth opportunities for industries and SMEs in cross-border commerce, bring people closer together, reshape the way in which they work and live, provide new tools for education and training, and improve access to public services and open data; asks the Commission, therefore, to increase support for ICT so that the EU can lead the way in emerging markets such as health technologies and greener transport and electricity networks;

23. Recalls the growing importance of intellectual property rights (IPR) for the economic growth and creative potential of Europe and stresses that adequate protection of those rights must be guaranteed; calls on the Commission to provide prompt follow-up with concrete review proposals in this field; stresses the importance of IPR for the cultural and creative industries and for access to cultural goods and services;

**Sustainable growth**

24. Calls on the Commission to improve its climate strategy in order to foster the EU's leading role in combating climate change and at the same time to strengthen the EU's competitiveness and achieve a balanced international agreement;

25. Calls for a comprehensive EU external energy strategy that incorporates raw materials and rare earths issues and prioritises open, global markets; calls also for a sustainable, competitive and integrated EU energy policy under which the variety and relative share of energy sources and security of energy supply would be addressed together as part of a cohesive approach, and considers the completion of the internal energy market to be of pivotal importance to European competitiveness and growth; calls on the Commission to step up the development of an integrated European energy network by coming forward with the proposals highlighted in its energy infrastructure package;

26. With a view to achieving the objective of a single market in energy in 2014, calls on the Commission to monitor the implementation of EU legislation in the fields of energy and energy efficiency and to adopt the relevant implementing measures without delay, and urges the Commission to introduce any new proposals needed to achieve these goals;
27. Calls for an urgent revision of the Nuclear Safety Directive with a view to its strengthening, namely by taking into account the results of the stress tests implemented in the aftermath of the Fukushima accident;

28. Calls on the Commission to bring forward a proposal for the 7th Community Environment Action Programme and for a strong integrated biodiversity strategy;

29. Considers that the CAP reform should ensure that the CAP is closely aligned with the goals of the EU 2020 Strategy and that sustainability is placed at the heart of the CAP in order to secure the long-term viability of European food production, while also enhancing farmers’ competitiveness and innovation capacity, promoting rural development, maintaining the diversity of farming types and production and avoiding red tape;

30. Urges the Commission to assess the functioning of the Early Warning and Response System and the Rapid Alert System for Food and Feed with a view to addressing possible shortcomings;

31. Calls on the Commission to bring forward a legislative proposal to prohibit the placing on the market of foods derived from cloned animals and their offspring, and requests the Commission to submit a new legislative proposal on novel foods;

32. Expresses strong regret at the delay in the TEN-T guidelines and the airport package proposals; welcomes the White Paper on the Future of Transport and urges the Commission to come forward with the legislative proposals envisaged therein as soon as possible; considers that an integrated and interoperable European railway market still remains to be achieved, and believes that priority shall be given to timely revision of the TEN-T guidelines in order to develop a comprehensive multimodal transport network with efficient co-modality and interoperability; asks the Commission, therefore, to bring forward a legislative proposal on the railway sector and on the extension of the competences of the European Railway Agency in the field of certification and safety; insists there is a pressing need for better financing of the TEN-Ts and for improving coordination via cohesion funding;

33. Insists on the need for a European Charter for passenger rights in all modes of transport to be introduced by the Commission in 2012;

34. Insists on the need for full implementation of the Single European Sky, including the establishing of the Functional Airspace Blocks and SESAR to meet future airspace capacity and safety needs; deplores the failure to ensure the gradual lifting of restrictions on liquids, aerosols and gels in air passenger transport, which should remain a priority for the Commission;

35. Stresses the need for a comprehensive and ambitious reform of the common fisheries policy, rejecting calls for re-nationalisation, and for this to include the integration of an ecosystem approach, regionalisation, clearly defined measures for small-scale fisheries, a new impetus for the European aquaculture sector and serious efforts to combat illegal, unregulated and unreported fishing and discards; expresses its concern that the Commission might not bring forward a new proposal on technical measures before 2013, when the existing transitional measures will expire;

**Inclusive growth**

36. Welcomes the flagship initiatives on new skills for new jobs and the platform on poverty, but considers there to be too few legislative proposals in the field of employment and social affairs; calls on the Commission to bring forward a new social strategy in line with the main advances of the Lisbon Treaty
while respecting the principles of subsidiarity and social dialogue in the field of wages and pensions and, in keeping with Article 153(5) TFEU, to respect the competences of the Member States and social partners and ensure the democratic legitimacy of the process through the involvement of the European Parliament;

37. Calls for a strong EU-wide cohesion policy post-2013 and for the preparations for that future cohesion policy to streamline existing funds and programmes, ensure adequate financial resources and align the policy with the objectives of the EU2020 Strategy, while creating added value via synergies with other internal policies; expects the Commission to play a constructive mediating role throughout the procedures relating to the adoption of regulations covering cohesion policy, respecting the principle of co-decision, with a view to reaching an agreement in the legislative procedure as early as possible in order to prevent unfortunate delays and effectively overcome inherent start-up difficulties that might arise in the implementation of cohesion policy operational programmes for the next programming period;

38. Supports initiatives aimed at reconciling work and family life and believes that the Commission should submit legislative proposals to address different types of leave – i.e. paternity, adoption and filial leave – and establish a European strategy based on best practices in the Member States aimed at creating the conditions for achieving the employment rate targets set in the EU2020 Strategy; welcomes the initiatives taken by the Commission to close the gender pay gap, but expresses regret that this pay gap remains a real challenge to be overcome, and reiterates its request for a strong commitment to addressing the multiple causes of pay inequalities between women and men through the revision of the existing legislation;

39. Expresses regret that the Commission has still not brought forward a legislative proposal to fight violence against women within the framework of a comprehensive strategy with an adequate approximation of penalties;

40. Expresses regret at the lack of a proposal and initiatives in the public health field and calls on the Commission to bring forward a legislative proposal on advanced therapy medicinal products; welcomes the Commission's intention to amend, in 2012, Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work; stresses that new factors and dates point to the need for a change and therefore urges the Commission to present the amending act as a matter of urgency, while also considering an extension of the scope of that directive in order to diminish the risk from substances toxic to reproduction and their presence in products, and to safeguard health and safety at work for European workers;

41. Stresses that importance should be attached to the new multiannual programmes in the field of education, culture, audiovisual media, youth, sport and citizenship, which are key to the success of the EU2020 Strategy and to preserving multicultural and linguistic diversity in the EU, and which are a powerful force for social cohesion and integration; considers that actions and measures based on an adequate and efficient budgetary framework must be taken in order to guarantee that these well-established programmes continue to respond to the needs of the European public after 2013;

**Tapping the potential of the Single Market for growth**

42. Calls on the Commission to be more systematic when applying the 'SME test', which has not been applied properly and consistently in all new legislative proposals, particularly at national level; calls therefore on the Commission to put forward minimum standards and requirements, based on best practice, for the SME test to be applied at EU and national level;
43. Reiterates its support for the Single Market Act but urges the Commission to come forward with a proposal to modernise and simplify public procurement procedures for contracting authorities and SMEs, including the improvement of living and working conditions;

44. Welcomes the Commission's proposals in its 2012 Work Programme to review consumer policy and legislative strategy, integrating initiatives across all the Commission's relevant services; notes, in particular, the need to ensure that consumers across the European Union receive the full protection offered by key legislation, such as the unfair commercial practices and consumer credit directives;

45. Calls on the Commission to come up with an ambitious reform of the Professional Qualifications Directive to promote true mobility of workers in the EU by simplifying procedures for automatic recognition whilst respecting patient safety, increasing new graduates' mobility and reviewing some regulated professions or parts of it;

46. Calls on the Commission to deliver a 'justice for growth' programme, improving access to justice for businesses and consumers and asks the Commission therefore to bring forward, as a priority, its proposal on alternative dispute resolution in civil and commercial matters as announced;

**PURSuing THE CITIZENS' AGENDA: FREEDOM, SECURITY AND JUSTICE**

47. Regrets the absence of a legislative proposal on enhanced intra-EU solidarity in the field of asylum, and notes that work should continue on the asylum package in order to establish a common European asylum system guaranteeing a high level of protection and full respect for fundamental rights and preventing asylum law from being instrumentalised for other objectives;

48. Is concerned by the failure to correctly implement the existing acquis on asylum (Dublin, Eurodac, reception procedure and qualification directive for protection of asylum seekers), meaning that common European standards are not guaranteed, thereby also undermining the sense of solidarity;

49. Notes the Commission's 'victims package' and considers it highly important to strengthen the rights of and support for victims of terrorism and crime in the EU;

50. Calls, therefore, on the Commission to ensure that the Schengen acquis is fully respected and that any proposal by the Commission should be dealt with using the European method; recognises the need for smart external borders and the necessity for better management of the external borders and an effective and credible external borders policy; considers that the control of access to EU territory is one of the core functions of an area without internal borders, that border control of the EU’s external border must be continuously improved to respond to new migration and security challenges, and this is why a balanced visa policy must be established; calls in this context on the Commission to complete the establishment of the SIS II system, VIS and Eurodac, as well as the new IT agency; recalls that the effective and integrated management of EU external and internal borders and a Visa policy are closely connected and an essential tool for migration and asylum policy, including mobility and avoiding abuses; regrets that SIS II is still not operational and invites the Commission to step up efforts to put the system in place, and will continue to closely monitor the allocation of the EU budget thereto;
51. Takes a positive view of amending the Sirene Manual, updating the Common Practical Handbook for Border Guards, the further development of a European border surveillance system (Eurosur) and the establishment of a system of European border guards in accordance with the Stockholm Programme;

52. Welcomes the Commission’s initiative to further clarify the conditions under which Member States’ authorities are entitled to carry out border surveillance activities, to share operational information and to cooperate with each other and with Frontex; shares the idea that Frontex will play a major role in border control management and welcomes the agreement on the modification of its legal framework to enable it to be more effective in terms of its operational capacity on the external border;

53. Believes strongly that the forthcoming proposals on a review of Directive 95/46/EC and of the Data Retention Directive should be ambitious, going beyond the insufficient protection offered by the Framework Decision on data protection in the former third pillar; stresses the importance of addressing key cyber security and privacy issues in relation to cloud computing and the ‘Internet of things’; stresses that data protection should be ambitious also in the context of fighting terrorism; calls on the Commission to respect EU data protection when negotiating with third countries, stressing that Parliament will carefully scrutinise all proposals, including EU-PNR and an EU system for extraction of financial data and any EU PNR agreements with third countries (with negotiations currently under way with the US, Canada and Australia) for their compliance with fundamental rights;

EUROPE IN THE WORLD: PULLING OUR WEIGHT ON THE GLOBAL STAGE

54. Emphasises that the values, principles and commitments upon which the EU has been built should be the core guiding principles of a united foreign policy; stresses that the Commission must fully cooperate with the European External Action Service, not only concerning enlargement, development, trade and humanitarian aid, but also on external aspects of internal policies, ensuring greater policy coherence in the EU’s action, notably between trade policy and industrial policy, in order to use trade as a genuine instrument for growth and job creation in Europe; emphasises the importance of the HR/VP in establishing a coherent and united foreign policy;

55. Calls for a strengthened European military capability through increased pooling of resources in order to improve the EU’s ability to respond quickly and effectively to external crises and to strengthen transatlantic security;

European Neighbourhood Policy

56. Emphasises that revision of the external financial assistance instruments should be seen as an opportunity to strengthen European external policy, particularly during the current process of transition towards democracy in the Southern Neighbourhood; calls for more flexibility and rapidity in disbursing financial assistance to eligible countries in crisis situations; stresses the need for the Commission to strengthen the capacities of the beneficiary countries to assume ownership of the assistance and in this way maximise its impact; asks the Commission to build on lessons learnt from the previous generation of external financial instruments and address the concerns raised by the Court of Auditors;

57. Welcomes the Commission’s review of the European Neighbourhood Policy and expects concrete proposals on how to further develop the two multilateral dimensions of the ENP, drawing particular attention to the Arab countries that are aspiring to democracy; emphasises that a new impetus is necessary;
welcomes the proposals set out in the Commission Communication from May 2011 on the ENP review and calls for a speedy implementation of concrete measures to re-engage with the EU’s close neighbours; stresses that the EU’s commitment to closer links with its neighbours will be made up by a combination of increased financial assistance, reinforced democracy support, market access and improved mobility; asks for a review of the Union for the Mediterranean, based on an evaluation of current shortcomings and in view of recent events linked to the Arab Spring;

**EU enlargement**

58. Expects the Commission to continue its work on the accession negotiations; emphasises that, following the successful conclusion of the negotiations with Croatia, preparation of negotiations should continue with other candidate countries in the Western Balkans, stressing at the same time that these countries need to take all steps to fully and rigorously comply with all the Copenhagen criteria; in addition, particular attention should be given to the situation in Bosnia and Herzegovina and to the efforts to find a solution to the name dispute of the Former Yugoslav Republic of Macedonia; hopes that the ongoing talks on Cyprus will lead to a comprehensive settlement, expects Turkey to contribute to this process by fulfilling its obligations under the Ankara Protocol;

59. Urges the Commission to engage with Kosovo to establish a visa liberalisation road map as soon as possible, as Kosovo is the only part of the Western Balkans having a visa regime with the EU; welcomes in this respect the recent agreement between Serbia and Kosovo;

**A comprehensive trade policy**

60. Supports the efforts made by the Commission in all ongoing bilateral and regional trade negotiations in order to achieve a positive outcome for comprehensive and balanced trade agreements in 2012, which would significantly enhance EU trade perspectives and EU companies' opportunities worldwide; considers nevertheless that sustained EU efforts are needed to take advantage of the window of opportunity opened in 2011 in multilateral negotiations of the Doha Round which should pave the way for world economic stability;

61. Considers that the European Union should reinforce its trade links with the other big economic and political players in the world, in particular the US, China, Russia, India, Japan and the BRIC countries, by using the existing cooperation means and instruments and expanding them whenever possible; calls on the Commission to ensure an enhanced association of Parliament in ongoing negotiations and in the definition of negotiating mandates for investment agreements; calls for the Commission to conclude negotiations on ongoing bilateral and regional free trade agreements, and to propose accompanying effective safeguard regulations; notes that these shall be considered as a complementary strategy and not as an alternative to the multilateral framework;

62. Considers that the elimination of trade and investment barriers worldwide remains a key issue and an essential element of EU world trade strategy; notes, in this respect, that the recent 2011 Commission Report on Trade and Investment Barriers shows significant and unjustified barriers in our relations with strategic partners which limit market access to the major third countries; reiterates therefore its call to the Commission to be focused and tough in pursuing this agenda and to continue to fight against unjustified protectionist measures, while ensuring that trade policy remains a tool for job creation inside and outside Europe; calls on the Commission to make further efforts to identify and progressively eliminate non-tariff barriers to transatlantic trade and investment, notably in the area of mutual recognition and standardisation, making optimal use of the Transatlantic Economic Council, as a means to achieve a transatlantic market by 2015;
Wednesday 6 July 2011

63. Calls on the Commission to promote the inclusion in all trade agreements of binding provisions concerning human rights, social and environmental standards, as specified in several own-initiative reports adopted in 2010;

**Development policies and humanitarian aid**

64. Requests that the Commission put forward an initiative in 2012 on the innovative financing of official development assistance (ODA), in order to fulfil commitments concerning the Millennium Development Goals; furthermore, calls for legislative proposals to address further tax havens, illicit flows of capital and misuse of price transfer as a follow-up to the Communication on 'Promoting Good Governance in Tax Matters';

65. Asks the Commission to present a communication with concrete proposals on building an efficient link between humanitarian assistance and development, which should take into account the flexibility to allow linking relief, rehabilitation and development (LRRD) to take place in transition situations; supports the expansion of school meals programmes to cover all children in hunger hotspots, using locally produced foods and ending user fees for primary schools and essential health services, compensated by increased donor aid as necessary;

66. Calls on the Commission to bring forward a legislative initiative to bring transparency to the extractive industries through legally binding measures at EU level, in order to allow developing countries access to revenues generated by their natural resources to help lift their communities out of poverty;

* *

67. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.

---

**Legislation on Transmissible Spongiform Encephalopathies (TSE) and on related feed and food controls**

P7_TA(2011)0328

European Parliament resolution of 6 July 2011 on EU legislation on Transmissible Spongiform Encephalopathies (TSE) and on related feed and food controls - implementation and outlook (2010/2249(INI))

(2013/C 33 E/12)

The European Parliament,


— having regard to the Report from the Commission to the European Parliament and to the Council of 25 August 2010 on the overall operation of official controls in the Member States on food safety, animal health and animal welfare, and plant health (COM(2010)0441),


— having regard to its resolution of 8 March 2011 on the EU protein deficit: what solution for a long-standing problem? (*****)

— having regard to the Commission Decision amending Decision 2009/719/EC authorising certain Member States to revise their annual BSE monitoring programmes


— having regard to Rule 48 of its Rules of Procedure

— having regard to the report of the Committee on the Environment, Public Health and Food Safety (A7-0195/2011)

A. whereas the occurrence of BSE in the European Union had reached epidemic proportions in the mid 1990s which led to the introduction of a series of measures aimed at the eradication of BSE and other TSEs,

B. whereas the number of positive BSE cases in the EU has decreased from 2 167 cases in 2001 to 67 cases in 2009; whereas, in the light of this decreasing number of cases, the legislation implemented during this period can be viewed as having contributed to the eradication of BSE and other TSEs in the EU and whereas, hand-in-hand with this declining epidemiological trend, the legislative provisions should be adapted in line with the actual situation in terms of risk,

C. whereas, in view of the continuous declining number of BSE cases, the legislation on TSEs has been modified in recent years and consideration could be given to future changes while ensuring and maintaining the high level of animal and public health in the European Union; whereas these changes could include measures relating to SRM removal, review of the total feed ban provisions, eradication of scrapie, cohort culling and surveillance,

D. whereas an increase in domestic protein crop production is indispensable in order to lower the dependence on soy imports and other protein sources,

General remarks

1. Welcomes the Commission's TSE Road Map 2 - A Strategy Paper on Transmissible Spongiform Encephalopathies and its proposals for certain revisions of the current TSE legislation regime in the European Union; underlines, however, that certain provisions need thorough assessment and will only be supported under certain conditions;

2. Underlines the importance of ensuring that the significant decline in BSE cases in the European Union does not lead to less stringent TSE measures or to a reduction in the strict control and surveillance mechanisms in the EU; takes note of the contribution of past and current TSE legislation to the eradication of TSEs in the EU;

BSE surveillance

3. Takes note of the increase in age limits for TSE testing of bovine animals above 72 months in 22 Member States as introduced by the above-mentioned Commission Decision amending Decision 2009/719/EC authorising certain Member States to revise their annual BSE monitoring programmes;

4. Urges the Commission to increase the age limits in the remaining Member States only if supported by sound risk assessments in order not to jeopardise a high level of animal health and consumer protection;

5. Underlines that the surveillance mechanism is an important instrument in monitoring TSE in the EU; expresses its concern about another rise in the age limits for testing in bovine animals in view in particular of the sample size testing which will govern the BSE monitoring system in bovine animals from January 2013; calls on the Commission to inform Parliament about progress and new findings on the sample sizes to be chosen;

6. Urges the Commission to maintain the testing of risk animals as an important element in continuing to monitor the trend of BSE cases in the EU and ensuring the early detection of any possible re-occurrence in the future;
Revision of the Feed ban

7. Supports - particularly in the light of the existing protein deficit in the EU - the Commission proposal to lift the provisions banning the feeding of processed animal proteins to non-ruminants, provided that this applies to non-herbivores only, and that:

— the processed animal proteins are only derived from species which are not linked to TSEs,

— the production and sterilisation methods used for processed animal proteins comply with the highest safety standards and with the rules laid down in the animal by-products Regulation and use the newest and safest technology available,

— the existing prohibitions on intra-species recycling (‘cannibalism’) remain in place,

— production channels for processed animal proteins derived from different species be completely separated,

— the separation of these production channels be controlled by the competent authorities in the Member States and audited by the Commission,

— before the lifting of the feed ban is implemented, a reliable species specific method is in place to identify the species origin of the proteins in animal feed containing processed animal proteins so that intra-species recycling and the presence of ruminant processed animal proteins can be excluded, and

— that the production of processed animal proteins from category 1 or category 2 material be prohibited and that only category 3 material fit for human consumption be used for the production of processed animal proteins;

8. Stresses that these measures must go hand in hand with a CAP aimed at linking crop and livestock production, the adequate use of grassland areas, increasing domestic protein production and supporting crop rotation systems;

9. Urges the Commission to introduce measures which ensure that, if the feed ban is to be lifted, the possibility of cross-contamination of non-ruminant material with ruminant material through transportation channels is excluded;

10. Calls on the Commission to investigate the need for separate authorisation for slaughterhouses in which both non-ruminant and ruminant animal by-products are produced, so as to ensure a clear separation of these by-products;

11. Rejects the use of processed animal proteins derived from non-ruminants or ruminants in feed for ruminants;

12. Calls on the Commission to assess the need to control imports of processed animal proteins in order to ensure that intra-species recycling, the use of category 1 and 2 material and violations of hygiene rules can be excluded; underlines that regular and unannounced on-site checks are also necessary to this end;
13. Is in favour of critically examining the setting of a tolerance level for insignificant amounts of non-
authorised, non-ruminant animal proteins in feeding stuffs caused through adventitious and technically
unavoidable contamination, provided that a method of determining the proportion of these proteins is
available;

**SRM list**

14. Expects the Commission to maintain the strict standards contained in the EU SRM list; emphasises
that these strict standards shall not be weakened by any attempts of the OIE to align EU standards to the
OIE list;

15. Urges the Commission to consider modifications to the EU SRM list only if supported by scientific
facts, under the application of the precautionary principle, if risks to human and animal health can be
excluded and if the safety of the food and feed chain can be guaranteed;

**Research on TSEs**

16. Urges the Commission to further encourage genetic control of scrapie in sheep through breeding and
rearing programmes aimed at avoiding inbreeding or genetic drift;

17. Urges the Commission to put into place measures to encourage ongoing research on scrapie
resistance in goats and on atypical scrapie as this could contribute to the eradication of TSEs in the EU;

18. Calls on the Commission to encourage ongoing research to develop ante-mortem and post-mortem
rapid BSE-diagnostic tests;

19. Dismisses the Commission proposal to reduce EU funding for research on TSEs;

**Cohort culling**

20. Takes note of the Commission proposal to review the current cohort culling policy in the event of
the occurrence of BSE in bovine herds; stresses that, prior to any change to the cohort culling policy, the
following aspects must be taken into account in order to maintain a high level of consumer trust: (1)
consumer protection, (2) any risks to human and animal health and (3) continuing the practice of enabling
risk managers and legislators to take the necessary immediate action in the case of a re-emergence of BSE in
the EU;

**Food and feed safety**

in the Member States in food safety, animal health and animal welfare, and plant health; points out that the
report reveals certain shortcomings with regard to the quality of reports from the Member States and urges
the Member States to improve the quality of reporting by improving the conduct of national audits with a
view to ensuring fulfilment of the regulatory requirements, by singling out cases of non-compliance and by
enhancing the performance of control authorities and food business operators; calls on the Commission to
execute efficient monitoring of the controls performed by the Member States;
22. Expresses its concern about the contamination of food and feed, e.g. with dioxin, and calls on the Member States to enforce and apply existing regulations on food and feed controls and risk management very strictly and if needed, to strengthen those rules and ensure harmonised implementation by using common guidelines across the internal market;

23. Calls on the Commission and the Member States to take measures to ensure that the requirements laid down in Regulation (EC) No 1069/2009 and in implementing Regulation (EU) No 142/2011 relating to the treatment of animal by-products prior to their transformation into biogas and the use or disposal of digestion residues are complied with and illegal diversion into the feed chain is prevented; urges the Commission to monitor the way in which the current rules are implemented in the Member States to ensure a closed circuit for this activity;

Mechanically separated meat

24. Expresses its concern about current EU legislation and implementation in the Member States on mechanically separated meat;

25. Calls on the Member States to review their implementation of definitions of mechanically separated meat in line with the existing rules;

26. Calls for mandatory labelling of mechanically separated meat in food in order to better inform consumers so they can make informed choices;

27. Asks the Commission to inform third countries about any changes made to the TSE Regulation and measures related to TSEs;

* * *

28. Instructs its President to forward this implementation report to the Council and the Commission.

Aviation security with a special focus on security scanners

P7_TA(2011)0329

European Parliament resolution of 6 July 2011 on aviation security, with a special focus on security scanners (2010/2154(INI))

(2013/C 33 E/13)

The European Parliament,

— having regard to the communication from the Commission to the European Parliament and the Council on the use of security scanners at EU airports (COM(2010)0311),

— having regard to its resolution of 23 October 2008 on the impact of aviation security measures and body scanners on human rights, privacy, personal dignity and data protection (1),

Wednesday 6 July 2011


— having regard to Commission Regulation (EU) No 185/2010 of 4 March 2010 laying down measures for the implementation of the common basic standards on aviation security (3),

— having regard to the fifth report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the implementation of Regulation (EC) No 2320/2002 establishing common rules in the field of civil aviation security (COM(2010)0725),

— having regard to its position of 5 May 2010 on the proposal for a directive of the European Parliament and of the Council on aviation security charges (4),

— having regard to Council Recommendation 1999/519/EC of 12 July 1999 on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz) (5),

— having regard to Directive 2004/40/EC of the European Parliament and of the Council of 29 April 2004 on the minimum health and safety requirements regarding exposure of workers to the risks arising from physical agents (electromagnetic fields) (18th individual directive within the meaning of Article 16(1) of Directive 89/391/EEC) (6),


— having regard to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (8),

— having regard to Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation (9),

— having regard to the opinion of the European Economic and Social Committee’s Section for Transport, Energy, Infrastructure and the Information Society on the communication from the Commission to the European Parliament and the Council on the use of security scanners at EU airports.

(4) OJ C 81 E, 15.3.2011, p. 164.
— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on Transport and Tourism and the opinions of the Committee on the Environment, Public Health and Food Safety and the Committee on Civil Liberties, Justice and Home Affairs (A7-0216/2011),

**Security scanners**

A. whereas security scanner is the generic term used for a technology that is capable of detecting metallic and non-metallic objects hidden in clothing; whereas detection performance lies in the scanner's ability to detect any prohibited object that the person screened may be carrying concealed in their clothing,

B. whereas the EU's legal framework for aviation security provides for various screening methods and technologies that are considered capable of detecting prohibited items hidden in clothing, from which the Member States choose one or more; whereas security scanners do not currently figure on that list,

C. whereas a number of Member States are currently using security scanners on a temporary basis - for a maximum of 30 months - at their airports, thereby exercising their right to conduct trials with new technologies (Chapter 12.8 of the annex to Commission Regulation (EU) No 185/2010),

D. whereas Member States are entitled to apply more stringent measures than the common basic standards required by European legislation and may thus introduce security scanners on their territory; whereas, in this case, they must act on the basis of a risk assessment and in compliance with EU law; whereas these measures must be relevant, objective, non-discriminatory and proportional to the risk that is being addressed (Article 6 of Regulation (EC) No 300/2008),

E. whereas the introduction of security scanners by the Member States in either of the above two cases makes genuine one-stop security impossible; whereas if the present situation continues the operating conditions that apply to the Member States will not be uniform and will therefore not benefit passengers,

F. whereas the discussion about security scanners should not be held separately from the general debate on an integrated overall security policy for Europe's airports,

G. whereas health is an asset to be preserved and a right to be protected; whereas exposure to ionising radiation represents a risk that should be avoided; whereas, therefore, scanners using ionising radiation whose effects are cumulative and harmful to human health should not be permitted in the European Union,

H. whereas both EU legislation and the laws of the Member States already lay down rules on protection against health hazards that may arise from the use of technologies emitting ionising radiation and on limits for exposure to such radiation; whereas, therefore, scanners using ionising radiation should be prohibited in the European Union,

I. whereas the Commission consulted the European Data Protection Supervisor, the Article 29 Working Party and the European Fundamental Rights Agency, and their replies contain significant elements regarding the conditions under which the use of security scanners at airports could comply with the protection of fundamental rights,
J. whereas concerns over health and the right to privacy, freedom of thought, conscience and religion, non-discrimination and data protection need to be addressed in terms of both the technology involved and its use before the introduction of security scanners can be considered,

K. whereas security scanners, in addition to ensuring a greater level of security than current equipment, should help speed up checks on passengers and cut waiting times,

**Financing aviation security**

L. whereas the Council has not yet stated its standpoint on Parliament's position on the directive on aviation security charges,

**Security measures for cargo**

M. whereas the most recent terrorist plots uncovered by the intelligence services aimed to use cargo to carry out attacks,

N. whereas not only passengers but also cargo and mail are and must be subject to the appropriate security measures,

O. whereas cargo and mail loaded on to passenger planes present a target for terrorist attacks; whereas, given that the level of security for cargo and mail is much lower than for passengers, security measures must be tightened for mail and cargo which is loaded on to passenger planes,

P. whereas security measures concern not only airports but the entire supply chain,

Q. whereas postal operators play an important role in the field of aviation security in managing mail and parcels, and whereas, pursuant to European legislation, they have invested significant sums of money and introduced new technologies to guarantee compliance with international and European security standards,

**International relations**

R. whereas international coordination on aviation security measures is needed in order to guarantee a high level of protection, whilst avoiding a situation where passengers are subjected to successive checks, with the restrictions and additional costs these entail,

**Training of security staff**

S. whereas initial and further training for security staff is crucial in order to guarantee a high level of aviation security, which must in turn be compatible with a way of treating passengers that preserves their dignity as individuals and protects their personal data,

T. Whereas social, education and training standards for security staff should be integrated into the review of Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports (1),

General considerations

1. Takes the view that an integrated approach to aviation security is needed, with one-stop security so that passengers, luggage and cargo arriving at an EU airport from another EU airport do not need to be screened again;

2. Takes the view that some scanning methods that are effective and quick for passengers, given the time taken at checkpoints, constitute added value in the field of aviation security;

3. Calls on the Commission to research the use of other techniques for detecting explosives, including solid materials, in the field of aviation security;

4. Calls on the Commission and Member States to develop an integrated risk-analysis system for passengers who may with good reason be suspected of being a security threat and for checks on luggage and cargo, based on all available, reliable information, in particular that provided by the police, intelligence services, customs and transport undertakings; takes the view that the entire system should be informed by the search for effectiveness, and in full compliance with Article 21 of the EU Charter of Fundamental Rights on Non-discrimination and in line with EU legislation on data protection;

5. Calls on the Commission and Member States to ensure effective cooperation, security management and exchange of information among all the authorities and services involved, and between the authorities and security and air transport undertakings, at both European and national level;

6. Calls on the Commission to revise regularly the list of authorised screening methods and the conditions and minimum standards for their implementation, to take account of possible problems, practical experience and technological progress, in order to provide a high level of detection performance and protection of passengers’ and workers’ rights and interests, in keeping with that progress;

7. Emphasises the importance of the fight against terrorism and organised crime, which constitute threats to the security of the European Union, as already identified in the Stockholm Programme, and to that end supports, in this context only, the use of security measures designed to prevent terrorist incidents that are prescribed by law, effective, necessary in a free and open democratic society, proportionate to the aim pursued and fully consistent with the EU Charter of Fundamental Rights and the European Convention on Human Rights (ECHR); recalls that the confidence of citizens in their institutions is essential and that a fair balance must therefore be struck between the need to ensure security and the safeguarding of fundamental rights and freedoms;

8. Stresses, in that connection, that any counterterrorism measure should be fully consistent with fundamental rights and the obligations of the European Union, which are necessary in a democratic society, and must be proportionate, strictly necessary, prescribed by law and thus restricted to their specified purpose;

Security scanners

9. Calls on the Commission to propose adding security scanners to the list of authorised screening methods, under the condition that it will be accompanied with appropriate rules and common minimum standards for their use, as set out in this resolution, only if the impact assessment that the European Parliament requested in 2008 has first been carried out which demonstrates that the devices do not constitute a risk to passenger health, personal data, the individual dignity and privacy of passengers and the effectiveness of these scanners;
10. Believes that the use of security scanners must be regulated by common EU rules, procedures and standards that not only lay down detection performance criteria, but also impose the necessary safeguards to protect the health and fundamental rights and interests of passengers, workers, crew members and security staff;

11. Believes that security scanners should serve to speed up the pace and tempo of checks at airports and reduce inconvenience to passengers, and thus calls on the Commission to take this aspect into account in its proposed legislation;

12. Proposes, more specifically, that the Commission, having established common rules on the use of security scanners, should revise these rules on a regular basis and when necessary, to adapt the provisions on the protection of health, privacy, personal data and fundamental rights to technological progress;

**Necessity and proportionality**

13. Believes that the escalating terrorist threat means that public authorities must take the protective and preventive measures demanded by democratic societies;

14. Considers that the detection performance of security scanners is higher than that offered by current metal detectors, particularly with regard to non-metallic objects and liquids, whilst full hand-search is more likely to cause more irritation, waste more time and face more opposition than a scanner;

15. Takes the view that the use of security scanners, provided that the appropriate safeguards are in place, is preferable to other less demanding methods which would not guarantee a similar degree of protection; recalls that, in the area of aviation security, the use of intelligence in a broad sense and well-educated airport security staff should remain our core priorities;

16. Takes the view that concerns and demands regarding privacy and health can be resolved with the technology and methods available; considers that the technology now being developed is promising and that the best available technology ought to be used;

17. Takes the view that the installation of security scanners, or the decision not to install them, falls within the responsibility and freedom of decision of the EU Member States; considers, however, that further harmonisation of the use of scanners is needed in order to create a coherent European aviation security area;

18. Takes the view that when Member States install security scanners, they must comply with the minimum standards and requirements set by the EU for all the Member States, without prejudice to the latter’s right to apply more stringent measures;

19. Considers that Member States should supplement control points and security staff in order to ensure that passengers are not affected by the deployment of security scanners;

20. Takes the view that people undergoing checks should be given a choice as to whether use security scanners whereby if they refuse, they would be obliged to submit to alternative screening methods that guarantee the same level of effectiveness as security scanners and full respect for their rights and dignity; stresses that such a refusal should not give rise to any suspicion of the passenger;
Health

21. Points out that European and national legislation must be applied in accordance with the ALARA (As Low As Reasonably Achievable) principle in particular;

22. Calls on the Member States to deploy technology which is the least harmful to human health and which offers acceptable solutions to the public's privacy concerns;

23. Takes the view that exposure to doses of cumulative ionising radiation cannot be acceptable; believes, therefore, that any form of technology using ionising radiation should be explicitly excluded from use in security screening;

24. Calls on the Commission to examine the possibility, under the next research framework programme, of using technology that is completely harmless to all members of the public and which at the same time guarantees aviation security;

25. Calls on the Member States to periodically monitor the long-term effects of exposure to security scanners, taking new scientific developments into account, and to check that the equipment has been correctly installed and is properly used and operated;

26. Insists that proper account be taken of specific cases and that fair and personalised treatment be given to passengers who are vulnerable in terms of health and the ability to communicate, such as pregnant women, children, elderly people, people with disabilities, and people with implanted medical devices (e.g. orthopaedic prostheses and pacemakers), as well as all persons having with them the medicines and/or medical devices they need to maintain their health (e.g. syringes, insulin);

Body images

27. Believes that only stick figures should be used and insists that no body images may be produced;

28. Stresses that data generated by the scanning process must not be used for purposes other than that of detecting prohibited objects, may be used only for the amount of time necessary for the screening process, must be destroyed immediately after each person has passed through the security control and may not be stored;

Prohibition of discrimination

29. Takes the view that the operating rules must ensure that a random process of selection is applied and passengers must not be selected to pass through a security scanner on the basis of discriminatory criteria;

30. Stresses that any form of profiling based on, for example, sex, race, colour, ethnicity, genetic features, language, religion or belief is unacceptable as part of the procedure concerning selection for or refusal of a security scan;

Data protection

31. Considers that all security scanners should make use of a stick figure to protect passengers' identities and to ensure that they cannot be identified through images of any part of their body;
32. Stresses that the technology used must not have the capacity to store or save data;

33. Recalls that the use of security scanners must comply with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

34. Emphasises that those Member States which decide to use security scanners should be able, in keeping with the principle of subsidiarity, to apply more rigid standards than those defined in the European legislation on the protection of citizens and their personal data;

**Information for people scanned**

35. Takes the view that people undergoing checks should receive comprehensive information in advance, particularly regarding the operation of the scanner concerned, the conditions in place to protect the right to dignity, privacy and data protection and the option of refusing to pass through the scanner;

36. Calls for Commission information campaigns on air passenger rights to include a section which also details passengers' rights regarding security screening and security scanners;

**Treatment of people scanned**

37. Calls on the Commission and Member States to ensure that security staff receive special training in the use of security scanners in such a way as to respect passengers' fundamental rights, personal dignity, data protection and health; in that connection, considers that a code of conduct could be a very useful tool for the security staff in charge of scanners;

**Financing aviation security**

38. Recalls its position of 5 May 2010 on aviation security charges;

39. Takes the view that security charges should be transparent, that they should be used only to cover security costs and that Member States which decide to apply more stringent measures should finance the ensuing additional costs;

40. Urges the Council to immediately adopt a position on aviation security charges at first reading, given that legislation on aviation security and legislation on aviation security charges are closely linked;

41. Recommends that every passenger's ticket should show the cost of security measures;

**Ban on liquids, aerosols and gels (LAG)**

42. Reiterates and upholds its standpoint that the ban on carrying liquids should come to an end in 2013, as laid down in EU law; therefore urges all parties concerned, the Commission, the Member States and the industry, to work closely together in order to ensure that the restrictions on the carriage of liquids on board aircraft are removed, for the benefit of passengers;
43. Invites Member States and airports to take all necessary action to ensure that adequate technology is available in good time so that the scheduled end of the ban on carrying liquids does not have the effect of undermining security;

44. Takes the view, in this context, that all those involved should take the necessary action to make the transition from a ban on carrying liquids, aerosols and gels to checks on those items as satisfactory and uniform as possible, guaranteeing passengers’ rights at all times;

**Security measures for cargo**

45. Takes the view that, on the basis of a risk analysis, checks on cargo and mail should be proportional to the threats posed by their transport and that adequate security should be guaranteed, particularly where cargo and mail are carried in passenger planes;

46. Recalls that 100% scanning of cargo is not practicable; asks the Member States to continue their efforts to implement Regulation (EC) No 300/2008, and the corresponding Commission Regulation (EU) No 185/2010, in order to enhance security throughout the entire supply chain;

47. Takes the view that the level of security for cargo still varies from one Member State to another and that, with a view to achieving one-stop security, the Member States should ensure that the existing measures relating to European cargo and mail are correctly applied and that regulated agents approved by another Member State are recognised;

48. Believes that the Member States’ security measures for air cargo and mail and the Commission’s inspection of these measures have been stepped up, and therefore considers it absolutely essential to draw up a technical report with a view to identifying the weaknesses of the current cargo system and possible ways of remedying them;

49. Calls on the Commission and Member States to strengthen screening and inspections concerning air cargo, including those relating to the validation of regulated agents for known consignors; stresses the need, to this end, to have more inspectors available at national level;

50. Stresses the potential of customs information for calculating the risk associated with specific consignments, and asks the Commission to continue its work on the possible use of customs-related electronic systems for aviation security purposes; in particular by making use of the EU’s Import Control System to improve cooperation between customs authorities;

51. Asks the Commission to take all the necessary steps to ensure the safe transport of cargo originating in third countries, starting at the airport of origin, and to lay down criteria for determining high-risk cargo, identifying the responsibility of each of the various agents;

52. Asks the Commission to ensure that the security programme takes account of the specific characteristics of all the players affected and reconciles security measures relating to the exchange of mail and cargo with the need to ensure a dynamic economy that continues to encourage trade, service quality and the development of e-commerce;

53. Calls on the Commission to propose a harmonised system for the initial and further training of security staff in relation to cargo, in order to remain abreast of the latest technical developments in the field of security;
International relations

54. Calls on the Commission and Member States to work with the International Civil Aviation Organisation (ICAO) and third countries on risk assessment and intelligence systems in the field of aviation security;

55. Calls on the Commission and Member States to promote global regulatory standards within the framework of the ICAO in order to support the efforts made by third countries to implement those standards, move towards the mutual recognition of security measures and pursue the objective of effective one-stop security;

* * *

56. Believes that the comitology procedure is inappropriate in the aviation security sector, at least for measures having an impact on citizens’ rights, and calls for Parliament to be fully involved through codecision;

57. Expects the Commission to submit a legislative proposal in the course of the current parliamentary term on adapting Regulation (EC) No 300/2008, taking account of the Commission’s own statement of 16 December 2010 in the context of the adoption of the regulation of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers;

58. Instructs its President to forward this resolution to the Council and the Commission.

Women and business leadership

P7_TA(2011)0330

European Parliament resolution of 6 July 2011 on women and business leadership (2010/2115(INI))

(2013/C 33 E/14)

The European Parliament,

— having regard to the Fourth World Conference on Women, held in Beijing in September 1995, the Declaration and Platform for Action adopted in Beijing and the subsequent documents adopted at the United Nations Beijing +5, Beijing +10 and Beijing +15 Special Sessions, on 9 June 2000, 11 March 2005 and 12 March 2010 respectively, on further actions and initiatives to implement the Beijing Declaration and Platform for Action,

— having regard to the 1979 UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),

— having regard to the Universal Declaration of Human Rights of 1948,

— having regard to the Charter of Fundamental Rights of the European Union, in particular Articles 1, 2, 3, 4, 5, 21 and 23 thereof,

— having regard to Article 2 of the Treaty on European Union, which sets out the values common to the Member States, including pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men,
— having regard to Article 19 of the Treaty on the Functioning of the European Union, which refers to combating gender discrimination,

— having regard to the Commission report on Progress on Equality between Women and Men 2011,

— having regard to the Commission communication of 27 October 2010 entitled ‘Towards a Single Market Act for a highly competitive social market economy: 50 proposals for improving our work, business and exchanges with one another’ (COM(2010)0608),


— having regard to the Commission Green Paper of 6 June 2010 on corporate governance in financial institutions and remuneration policies (COM(2010)0284),


— having regard to the European Pact for Gender Equality adopted by the European Council in March 2006, and the new European Pact for Gender Equality adopted by the European Council on 7 March 2011,

— having regard to Council Recommendation 96/694/EC on the balanced participation of women and men in the decision-making process,

— having regard to the annual meeting of the World Economic Forum, held from 26 to 29 January 2011 in Davos, and the programme entitled ‘Women Leaders and Gender Parity’,

— having regard to its resolution of 11 May 2011 on corporate governance in financial institutions (1),

— having regard to its resolution of 8 March 2011 on equality between women and men in the European Union - 2010 (2),


— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on Women’s Rights and Gender Equality (A7-0210/2011),

A. whereas gender equality is a fundamental principle of the European Union, enshrined in the Treaty on European Union and ranking among its objectives and tasks, and whereas the Union has set itself the specific task of mainstreaming gender equality in all its activities,

(1) Texts adopted, P7_TA(2011)0223.
(2) Texts adopted, P7_TA(2011)0085.
whereas one of the Union's primary objectives should be to afford competent and qualified women access to jobs that are currently difficult for them to obtain, by removing the persistent barriers and gender inequalities that prevent women from advancing in their careers,

whereas gender equality in employment must entail the advancement of men and women, without distinction, both within the labour market generally and in terms of their promotion to management posts at all levels, in the interests of social justice and of making full use of women's skills so as to strengthen the economy in the process, and must afford women the same career development prospects as men,

whereas, in 2008, 59.5% of university qualifications awarded in the EU went to women, whereas women outnumber men in business, management and law faculties, but whereas, however, the proportion of women in the highest decision-making bodies of the largest publicly listed firms was only 10.9% in 2009,

whereas other possible factors impeding women's representation may be a combination of sex-based discrimination, stereotypical behaviour patterns that tend to persist within companies and limited mentoring provision for women with management potential,

whereas studies produced by the Commission and the private sector have demonstrated a correlation between companies' improved commercial and financial performance and the presence of women in their decision-making bodies: whereas the clear message is that meaningful representation of women at management level actually serves to enhance performance and commercial competitiveness,

whereas it is therefore essential to introduce methods such as case studies and exchanges of good practice in this field, as well as affirmative action, in order to achieve optimal use of female human resources at all levels within companies,

whereas, however – albeit with differences from country to country and between different occupational sectors – women currently make up only 10% of the membership of boards of directors of the largest listed companies in the EU, and only 3% of the CEOs of such companies are women, whereas the gender pay gap is still as high as 17.5% for the EU as a whole, and also applies to leadership positions,

whereas the number of women in corporate boardrooms is currently increasing by only half a percentage point per year; whereas at this slow rate it will take another 50 years before corporate boardrooms contain at least 40% of each gender,

whereas chambers of commerce and industry and the organisations that represent trade unions and employers have a long way to go to achieve a balanced representation of men and women, and this mirrors the low proportion of women in corporate management bodies; whereas, however, chambers of commerce and industry and the organisations that represent trade unions and employers can contribute to the dissemination and exchange of good practice in this respect,

whereas it is incumbent on policymakers at both EU and Member State level and on companies to remove the barriers to women joining the labour market generally and management bodies in particular, and to offer women equal opportunities so that they can obtain senior posts, with a view to ensuring that all existing resources are efficiently utilised, that women's skills and strengths are channelled to best effect, that the best possible use is made of the Union's human potential, and that the EU's core values are defended, given that equality is a fundamental principle,
L. whereas the proactive initiatives and measures taken by the private sector to increase female representation – such as in-company human-resources development with a view to improved career support for women, or the creation of networks, beyond the bounds of the company, to encourage women's participation and advancement as well as regular exchanges of good practice – have proved useful and should be encouraged even if they are not yet sufficient to alter the status quo within companies, and women remain under-represented at management level,

M. whereas the Commission has announced that it will present legislative measures to ensure that publicly listed companies take effective measures to reach equal representation of women and men in boards, in case self-regulation fails to do so within the next 12 months,

1. Welcomes the measures announced by the Commission on 1 March 2011, and in particular the Commission's intention to propose European legislation in 2012 if companies do not manage to achieve through voluntary measures the targets of 30 % women on company boards by 2015 and 40 % by 2020,

2. Urges companies to reach the critical threshold of 30 % female membership of management bodies by 2015 and 40 % by 2020,

3. Notes the clear progress on women's representation in Norway since the adoption in 2003 of legislation requiring a minimum of 40 % of both women and men on boards of listed companies with a workforce of more than 500 and making provision for effective sanctions for non-compliance;

4. Stresses that companies are required to ensure equal treatment of and equal opportunities for men and women at work and with this aim in view measures should be adopted to prevent any kind of discrimination;

5. Welcomes the initiatives of Member States such as France, the Netherlands and Spain in setting thresholds, which companies have to achieve, for women's representation on management bodies, and is following the debate about women's representation in other Member States, such as Belgium, Germany and Italy; notes that demonstrating political will is the only way of speeding up the process of getting binding measures adopted to help ensure the balanced representation women and men in corporate management bodies;

6. Welcomes Finland's Corporate Governance Code, under which firms' decision-taking bodies must contain both male and female representatives and there must be public disclosure of any non-compliance; notes that, because of the code, the proportion of women on Finnish firms' decision-taking bodies is now 25 % and that, since the introduction of the code was announced, the proportion of stock exchange-listed firms with women on supervisory or management boards has increased from 51 % to about 70 %;

7. Insists that recruitment to positions in corporate management bodies must be based on the competence required in the form of skills, qualifications and experience and that the principles of transparency, objectiveness, inclusiveness, effectiveness, non-discrimination and gender equality must be observed in corporate recruitment policies;

8. Takes the view that consideration should be given to introducing effective rules to prevent people from holding multiple positions on boards of directors, both in order to free up posts for women and to help ensure the effectiveness and independence of board members of medium-sized and large companies;

9. Stresses that public enterprises listed on stock exchanges should set an example in implementing balanced representation of women and men on their boards and in management positions at all levels,
10. Invites the Member States and the Commission to implement new policies to enable more women to become involved in managing companies, in particular by:

(a) initiating a dialogue, not limited to the issue of quotas, with the boards of large companies and with the social partners about ways of increasing female representation, which could take place annually;

(b) supporting initiatives to assess and promote male-female equality on recruitment committees and in other areas, e.g. with regard to wage differentials, job classification, training and career patterns;

(c) promoting corporate social responsibility for European companies, with a commitment to ensuring managerial responsibility for women and family-friendly services;

(d) supporting cultural measures to orient young women more towards scientific and technological studies, as called for by the United Nations Economic and Social Council;

(e) introducing specific measures and arrangements for the provision of high-quality and affordable services, for example childcare and care of the elderly and other dependent persons, fiscal incentives for companies or other compensation to help women and men employed by businesses to balance family and work commitments;

(f) developing women’s individual capabilities in-house, by means of specific further-training courses and other forms of professional support, such as dedicated mentoring and networking in order to prepare them effectively for management duties at all levels;

(g) developing training on gender equality and non-discrimination;

(h) promoting precise and quantifiable commitments on the part of companies;

(i) encouraging all stakeholders to set up initiatives to change the way women are perceived and women’s self-perception in the work field, so as to enable more women to take on leadership responsibilities on the operational side of the business, and not just on the functional side; takes the view that such initiatives should aim at encouraging girls and young women to consider a broader spectrum of careers with the support of teachers, family members and various role models, and presenting female leadership positively in the European media;

(j) identifying ways to increase the representation of women from particularly under-represented groups, such as those from an immigrant or ethnic-minority background;

11. Emphasises the problem of pay differentials within companies and, in particular, differences between the salaries of women in management positions and those received by their male counterparts; calls on Member States and the Commission to take measures to tackle the lingering pay inequality connected with traditional stereotypes which affect career development and are partly responsible for women’s under-representation on corporate management bodies;

12. Considers in particular that companies required to submit unabridged profit and loss accounts should be required to achieve balanced representation of women and men on their boards within a reasonable time frame;
13. Encourages companies to adopt and implement corporate governance codes as a means of promoting gender equality on company boards, utilising peer pressure to influence organisations from within and implementing the ‘comply or explain’ rule, obliging companies to clarify why there is not at least one woman on the board;

14. Takes the view that the Member States and the Commission should set up initiatives designed to address the fairer sharing of family care responsibilities not only within the family, but also between the family and society and reduce the disparities in the salaries earned by women and men for the same work; considers that specific measures should be taken to:

(a) address problems in accessing childcare facilities, which should be affordable, accountable and local,

(b) introduce flexible work practices to enhance organisational capacity and maximise women's contribution; such practices must gain support and cooperation from across the workforce; leadership is therefore needed to challenge cultural attitudes and traditional principles of good business and to usher in new ways of thinking about the role of men and women in society, sustainable workforce planning, social capital and responsibility towards the community;

15. Encourages senior corporate managers to raise their staffs' awareness of the career patterns of men and women and to become personally involved in career monitoring and support programmes for female executives in their companies;

16. Calls on the Commission to:

(a) present, as soon as possible, comprehensive current data on female representation within all types of companies in the EU and on the compulsory and non-compulsory measures taken by the business sector as well as those recently adopted by the Member States with a view to increasing such representation,

(b) following this exercise, and if the steps taken by companies and the Member States are found to be inadequate, to propose legislation, including quotas, by 2012 to increase female representation in corporate management bodies to 30% by 2015 and to 40% by 2020, while taking account of the Member States' responsibilities and of their economic, structural (i.e. company-size related), legal and regional specificities;

17. Invites the Commission to present a road map setting out specific, measurable and attainable targets for the achievement of balanced representation in enterprises of all sizes, and calls on the Commission to draw up a specific guide for small and medium-sized enterprises;

18. Calls on the Commission to set up a website dedicated to good practice in this area, with a view to disseminating and exchanging best practice; stresses the importance of establishing a communication strategy in order to inform the public and the social partners effectively about the significance of such measures; therefore invites the Commission and Member States to launch targeted information campaigns;

19. Instructs its President to forward this resolution to the Council, the Commission, and the governments of the Member States.
Financial, economic and social crisis: measures and initiatives to be taken

P7_TA(2011)0331

European Parliament resolution of 6 July 2011 on the financial, economic and social crisis: recommendations concerning the measures and initiatives to be taken (2010/2242(INI))

(2013/C 33 E/15)

The European Parliament,

— having regard to its decision of 7 October 2009 (1) on setting up a special committee on the financial, economic and social crisis (‘the CRIS Committee’), and its powers, numerical composition and term of office, adopted under Rule 184 of its Rules of Procedure,

— having regard to its decision of 16 June 2010 to prolong the mandate of the CRIS Committee until 31 July 2011 (2),

— having regard to its resolution of 20 October 2010 on the financial, economic and social crisis: recommendations concerning measures and initiatives to be taken (mid-term report) (3),

— having regard to its resolution of 8 March 2011 on innovative financing at global and European level (4),

— having regard to the ongoing legislative agenda of the European Union, notably with regard to Treaty change, economic governance, the Single Market Act and energy policies,

— having regard to its conclusions following the proposals of its Special Committee on the Policy Challenges and Budgetary Resources for a Sustainable European Union after 2013 (SURE) concerning the new multiannual financial framework,

— having regard to the contributions received from the following national parliamentary bodies: the Austrian Bundesrat, the Austrian Nationalrat, the Belgian Senate and House of Representatives, the National Assembly of Bulgaria, the Senate of the Czech Republic, the Chamber of Deputies of the Czech Republic, the Danish Folketinget, the Finnish Eduskunta, the French Assemblée Nationale, the German Bundestag, the German Bundesrat, the Greek Vouli Ton Ellinon, the National Assembly of Hungary, the Italian Chamber of Deputies, the Italian Senato della Repubblica, the Latvian Saeima, the Lithuanian Seimas, the House of Representatives of the Netherlands, the Polish Sejm, the Polish Senate, the Assembly of the Republic of Portugal, the Romanian Chamber of Deputies, the Romanian Senate, the National Council of Slovakia, the National Assembly of the Republic of Slovenia, the Swedish Riksdagen, and the UK House of Lords and House of Commons,

— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Special Committee on the Financial, Economic and Social Crisis (A7-0228/2011),

(2) OJ C 257 E, 24.9.2010, p. 211.
A. whereas the social costs of the crisis are high, with employment falling in the EU by 1.8%, resulting in unemployment for 23 million economically active people (9.6% of the total), a youth unemployment rate of 21%, uncertain prospects of an upturn in employment levels and 17% of EU citizens at risk of falling into poverty (1),

B. whereas the popular uprisings on the southern shores of the Mediterranean Sea and in the Middle East may be seen as a consequence of, inter alia, economic and social deficiencies, inequalities and high unemployment affecting the younger educated generation in particular, and whereas they serve as a reminder of the value of democracy and as evidence that globalisation demands comprehensive responses concerning the recognition and observance of basic rights and freedoms and the redressing of inequalities between countries and between different levels of society in each country,

C. whereas three years after the collapse of Lehman Brothers, some steps have been taken to counter the financial crisis; whereas, however, further work is needed to establish a sustainable financial sector able to cope with excessive speculative behaviour and to finance the real economy, preferably through funding long-term investment needs and the creation of jobs; whereas the economic governance reforms have not sufficiently addressed the issue of imbalances at global and EU level,

D. whereas the financial crisis has triggered an economic and social crisis leading in some countries to a political crisis,

E. whereas output is forecast by the European Commission to fall by about 4.8% of GDP by 2013 and, over the next decade, to be significantly lower than over the last 20 years (2),

F. whereas the crisis reveals a lack of trust, confidence and vision within the EU,

G. whereas further building on the social market economy and its values is an essential goal of the European Union,

H. whereas the number of people living in relative prosperity has increased, but economic and social gaps have at the same time widened,

I. whereas the global financial crisis has had a severe impact on progress towards achieving the Millennium Development Goals (MDGs), and, in particular, the goal of halving global poverty by 2015,

J. whereas the crisis has made clear the need for progress towards establishing a genuine economic governance of the Union, consisting of a systematic set of policies designed to ensure sustainable growth, good stable jobs, budgetary discipline, the correction of excessive macro-economic imbalances, competitiveness and productivity in the EU’s economy, and stricter regulation and supervision of financial markets, as well as a suitable mechanism for resolving the financial crisis,


K. whereas the European Parliament, in its resolution of 8 June 2011 on 'Investing in the future: a new Multiannual Financial Framework (MFF) for a competitive, sustainable and inclusive Europe', clearly stated that regardless of realisable savings, the EU budget, at its current overall level of 1 % of GNI, is not capable of closing the financing gap deriving from additional financing needs arising from the Treaty and from existing policy priorities and commitments; whereas the European Parliament is therefore convinced that an increase of at least 5 % in resources is needed for the next MFF as compared to the 2013 level,

L. whereas in the same resolution, the European Parliament notes that the own resources ceiling has been unchanged since 1993; believes that the own resources ceiling might require some progressive adjustment as Member States confer more competences on, and fix more objectives for the Union; considers that while the current ceiling of own resources set unanimously by the Council provides sufficient budgetary leeway to meet the most pressing Union challenges but that it would still be insufficient for the EU Budget to become a real tool for European economic governance or to contribute in a major way to investing in the Europe 2020 strategy at EU level,

M. whereas in order for sustainable growth to be guaranteed in the Union and for the objectives of the Europe 2020 strategy to be achieved, it is necessary to redeploy unused payment appropriations to joint programmes targeting growth, competitiveness and employment, and to leverage EIB loans and set up a project bond market that attracts public and private investors and can be used to fund joint projects of interest to the Union as a whole (bonds for specific projects),

I. European sovereign debt and the euro crisis, including the mutual issuance of public debt and Eurobonds

1. Recalls the triangle of inter-linked vulnerabilities, whereby the unbalanced fiscal policy of some Member States has amplified the pre-crisis public deficits and the financial crisis has contributed significantly to a further ballooning of those deficits, followed by tensions in sovereign debt markets in some Member States;

2. Stresses that, following the downgrading of the sovereign debt of Greece, Ireland and Portugal by credit rating agencies, there has been a spill-over effect across the eurozone countries and a shift in portfolios reflecting speculative and risk-averse behaviour by investors and that, as a consequence of this, market funding at sustainable rates has become inaccessible to Greece, Ireland and Portugal, resulting in the provision of financial assistance under EU-IMF programmes;

3. Considers that the International Labour Organization (ILO) should be involved in the EU-IMF financial assistance programmes;

4. Recalls that credit rating agencies played a significant role in the build-up to the financial crisis through the assignment of faulty ratings to structured finance instruments which had to be downgraded; agrees with the principles set out by the Financial Stability Board in October 2010 giving general guidance on how to reduce reliance on external credit ratings, and calls on the Commission to take into due consideration the public consultation that ended in January 2011;

5. Calls for a transparent audit of public debt to be carried out in order to determine its origin and to ascertain the identity of the main holders of debt securities and the amounts involved;
6. Notes that bilateral or multilateral approaches by Member States pose a threat to economic integration, financial stability and the credibility of the euro, and welcomes the principle of the European semester of economic policy coordination, the aim of which is to overcome excessive internal imbalances within the EU;

7. Underlines the fact that the sovereign debt crisis has revealed the risks posed by intra-European imbalances; stresses the need for the EU to react as one, to develop a much closer coordination of fiscal policies and, where appropriate, a common one with a sufficient EU budget funded partly through own resources, and to put in place adequate provisions for crisis management and economic convergence;

8. Highlights the need to rationalise Member States’ expenditures through the EU budget, notably in areas where the EU has more added value than national budgets;

9. Underlines that Member States’ growth perspectives should be seen as a crucial element for the definition of the relative level of interest rates attached to that sovereign debt, in particular with respect to the assistance provided by the European Financial Stability Facility (EFSF) and, from 2013, by the European Stability Mechanism (ESM);

10. Recognises the efforts which the highly indebted Member States are making to bring about budget consolidation and structural reforms;

11. Stresses that parent banks originating in Member States also bear their share of responsibility for the irresponsible lending practices engaged in by their subsidiary banks in other EU Member States, which contributed inter alia to the real-estate bubbles in Spain, Ireland and Latvia, and the resulting budgetary difficulties which are currently being experienced by those Member States; notes, therefore, that the provision of financial assistance to those indebted Member States, were it to become necessary, would serve not only their particular interests but also the interests of those Member States in which the parent banks failed to develop responsible lending practices in their subsidiary banks in the first place;

12. Underlines that all Member States have systemic importance; calls for a comprehensive, socially inclusive and cohesive reform package addressing the weaknesses of the financial system; calls for the development of the concept of a European Treasury to strengthen the economic pillar of EMU; calls, moreover, for measures to overcome the current lack of competitiveness through appropriate structural reforms, addressing the objectives of the Europe 2020 strategy and the fundamental causes underlying the public debt crisis wherever necessary; points out that the Member States need to return to sustainable public finances and growth rates, based on sound policies for quality public expenditure and fair and efficient revenue collection;

13. Calls on the Commission to carry out an investigation into a future system of Eurobonds, with a view to determining the conditions under which such a system would be beneficial to all participating Member States and to the eurozone as a whole; points out that Eurobonds would offer a viable alternative to the US dollar bond market, and that they could foster integration of the European sovereign debt market, lower borrowing costs, increase liquidity, budgetary discipline and compliance with the Stability and Growth Pact (SGP), promote coordinated structural reforms, and make capital markets more stable, which will foster the idea of the euro as a global ‘safe haven’; recalls that the common issuance of Eurobonds requires a further move towards a common economic and fiscal policy;
14. Stresses, therefore, that when Eurobonds are to be issued, their issuance should be limited to a debt ratio of 60% of GDP under joint and several liability as senior sovereign debt, and should be linked to incentives to reduce sovereign debt to that level; suggests that the overarching aim of Eurobonds should be to reduce sovereign debt and to avoid moral hazard and prevent speculation against the euro; notes that access to such Eurobonds would require agreement on, and implementation of, measurable programmes of debt reduction;

15. Notes that there is political agreement on revising Article 125 of the Treaty on the Functioning of the European Union (TFEU) in order to transform the temporary EFSF system into a permanent ESM by 2013; calls for the ESM to be converted into a European Debt Agency at a later stage and for Parliament to be given a consistent role in this modification of the Treaty;

16. Regrets the lack of social responsibility demonstrated by financial sector professionals by not forfeiting part of their bonuses for at least one year and instead donating them to a social project, such as the alleviation of youth unemployment in the Union;

II. Global imbalances and governance

17. Recalls that both some developed and emerging economies, such as the US and China, contribute to global imbalances; welcomes active participation and further integration of China into the global economic governance system;

18. Notes that over half of the global economy is located outside the EU, the USA and Japan, this being a recent and unprecedented reversal of the situation previously prevailing;

19. Stresses that rebalancing global demand requires an asymmetric approach: countries with large external surpluses (e.g. China) need to diversify the drivers of growth and boost internal demand, whereas countries with large deficits (e.g. the USA) need to increase domestic savings and complete structural reforms;

20. Stresses that the financial markets must serve sustainable development of the real economy;

21. Supports the G20 in its efforts to regulate commodity derivatives markets; calls on the Commission to address price volatility in agricultural markets, to fully implement all framework measures agreed on at G20 level and to combat excessive and harmful speculation, notably through the upcoming financial market legislation to be introduced in the EU, and the revision of the Market Abuse Directive (1) and the Markets in Financial Instruments Directive (2);

22. Recalls the importance of raw materials for the European Union, as well as food security and price stability worldwide, especially for developing countries, and the inflationary pressures which food scarcity and price instability cause globally; accordingly, calls on the European Union to step up efforts to reduce dependency on raw materials by speedily improving efficiency standards, as well as to enhance the production and use of renewable materials; notes that, in order to contribute to food security and price stability, sustainable modes of production need to be generalised while supply side-management

---

mechanisms need to be re-introduced; to that end, calls for further transparency and reciprocity in trade; warns, moreover, against protectionist tendencies in the field of strategic raw materials;

23. Calls for better regulation of credit default swaps;

24. Takes note of the tendency for very large amounts of private investment to go into emerging economies, with inward flows of close to USD 1 trillion expected in 2011 (1); calls on the IMF to develop a framework to prevent the formation of speculative bubbles by supervising global capital flows and to take appropriate measures in order to prevent harmful developments; recognises that capital controls are no substitute for appropriate economic policies and should be employed only as a last resort; stresses the need for countries to take steps in parallel to counter the formation of such bubbles;

25. Notes the possible risks, in terms of non-optimal conditions for long-term financing of the real economy, of the ongoing concentration of financial market actors, including financial institutions and exchanges; calls in this respect on the European Systemic Risk Board to closely monitor the development of any systemic risks resulting from concentration in the financial markets;

26. Underlines the fact that, whilst the EU has a balanced current account and does not contribute to global imbalances, it would be strongly affected by a disorderly correction of imbalances through a depreciation of the US dollar; notes that the EU must coordinate its polices on trade and currency imbalances closely with the USA with a view to avoiding a rapid depreciation of the dollar; urges the USA, as well as major world actors, to ensure that currency management becomes a multilateral endeavour involving all major world currencies; welcomes the fact that indicators for global imbalances have been announced, and calls for such indicators to be taken fully into account in the formulation of macro-economic policies;

27. Stresses that the EU needs to address a number of challenges in order to improve its role as a global player, namely a lack of competitiveness and convergence, insufficient financial stability, weak internal rates of employment and growth, internal imbalances increasing with the deepening of the internal market and EMU, and a lack of political weight at international level due, inter alia, to the lack of coherence of its representation in international organisations, which could be improved by implementing measures to ensure the unified representation of the euro internationally, as stated in the Treaty;

28. Recalls that the EU must speak with one voice, have a single representative on the IMF board in the mid-term, notably for the eurozone, and, where appropriate, fully represent Member States and globally advocate democracy, human rights, the rule of law, decent work and living conditions, good governance, sustainable development, free and fair trade, and climate goals in keeping with its internal agenda, as well as fighting against corruption, tax fraud, tax evasion and tax havens;

29. Considers that Europe should aim at achieving a balanced, free and fair global trade agreement in order to reduce contrasts between emerging economies and developed ones; calls for the dismantling of trade barriers; regards the absence of a global trade agreement as a major handicap, since emerging economies are blocked by developed ones on agricultural exports projects and emerging ones block services from the advanced economies;

(1) IMF Staff Position Note, 19 February 2010, SPN/10/04, Capital Inflows: The Role of Controls.
30. Stresses the need to open up public procurement markets, on a transparent and reciprocal basis;

31. Stresses the importance of the spirit of reciprocity, and the mutual benefits to be gained, in the EU’s relations with its main strategic partners; considers in this regard that the EU should ask itself whether it might not be expedient to equip itself with tools with which to examine the state aid-related economic practices of third countries and to assess any behaviour which might have the aim of transferring key technologies outside EU territory;

32. Notes that, at present, the International Accounting Standards Board (IASB) requires combined balancing of accounts only at regional level; calls for the adoption of accounting rules which require all businesses and foundations to keep accounts per country, and for the promotion of international tax cooperation by means of agreements between authorities on exchanging information;

33. Recalls its insistence on a far-reaching reform of global economic and financial governance, in order to promote transparency and accountability and to ensure coherence between the policies of the international economic and financial institutions; calls for the Bretton Woods institutions and other existing economic governance bodies, including the G20, to be integrated, as a first step towards a global economic governance structure, into the UN system, where they should engage with the World Trade Organisation (WTO), with the ILO and with a world climate organisation that needs to be created;

34. Calls for the prompt adoption by the G20 countries of global and coordinated policy measures to contribute to strong, stable and balanced global sustainable growth; calls for the involvement of those countries’ respective parliaments with a view to increasing legitimacy and accountability; calls, moreover, for a reform of, and more financial resources for, the IMF in order to enhance its transparency and accountability and render it more democratic, while strengthening its role in the economic and financial surveillance of its members, with a view to setting up a credible safety net to combat global imbalances;

35. Calls for new financial assistance arrangements to be introduced, as follows:

— a reformed IMF could act as a global lender of last resort and could counteract the need of individual countries to accumulate currency reserves if its ability to deliver short-term liquidity and stronger financial safety nets were strengthened;

— MDGs: the current crisis has highlighted the need to create incentives for financial markets to promote long-term investment and sustainable development; the financial role for the multilateral and bilateral development banks and organisations should be updated and upgraded in response to the increased financing demands from developing countries; revenues from the financial transaction tax could be used in part to finance achievement of the MDGs and will be needed to meet climate change commitments; the importance of other financing for development instruments should be continuously explored, especially debt restructuring, cancellation of the debts of the poorest countries and promotion of remittance flows; the commitments in relation to foreseeable official development assistance should be reiterated and additional innovative sources of financing, aimed at closing the financing gap caused by shrinking economies in the developing world, should be explored; the Member States should reaffirm their pledge to assign 0.7% of their GNI to development aid aimed at financing achievement of the MDGs;

— the EU must identify political priorities and agree on funding for closer Euro-Mediterranean cooperation following the upheavals and accompanying developments in the South Mediterranean partner countries; it is necessary in this context for European project bonds to be extended to Euro-Mediterranean projects in the fields of sustainable transport and energy, the digital agenda and education, thereby creating added value for both sides of the Mediterranean;
III. The case for a new monetary system

36. Recalls that no country or block of countries would benefit from a ‘currency war’, which could reverse any efforts made by EU citizens in response to the need to reduce sovereign debt and to carry out structural reforms; notes that the euro has prevented the onset of a currency crisis of the kind historically often associated with financial crises; recalls that the multilateral trade system (WTO) rules do not cover capital flows and are not matched by a multilateral monetary system;

37. Recalls the Korea G20 goal of building a more stable and resilient international monetary system (IMS); recognises the global concern about the functioning of the IMS and calls for a major leap forward to be taken as a matter of urgency; requests, therefore, that the IMS be reformed in such a way as to ensure systematic and comprehensive macroeconomic cooperation with sustainable and balanced global growth;

38. Stresses that the IMS should address inter alia:

— exchange rates: the first step would be to pursue policies that allow exchange rates to adjust gradually and sufficiently to changing macroeconomic fundamentals;

— reserve currency: reforms to the international reserve system would be needed to avoid a situation in which reserves lead to global imbalances; the current dollar-based international reserve system could be gradually replaced by a multilateral system centred on Special Drawing Rights (SDRs) representing a broad basket of currencies from across the globe, notably the Chinese renminbi and the Brazilian real;

— capital flows: a multilateral system of rules would need to be adopted to favour long-term movements of capital, to facilitate non-speculative capital outflows, to avoid disruptive effects in fragmented securities markets and to ensure transparent, open and smooth functioning of treasury bond markets, while avoiding their misuse as vehicles for the promotion of mercantilist or beggar-thy-neighbour policies;

39. Furthermore, calls for thought to be given – in the long term – to the possibility of creating a global reserve currency initially based on the development and transformation of SDRs and of the IMF;

IV. Increasing the competitiveness and sustainability of the EU and implementing the Europe 2020 strategy by fostering innovation and long-term investment for jobs and growth

Competitiveness, convergence and the Europe 2020 strategy

40. Calls for full and consistent account to be taken of the Europe 2020 strategy objectives and the need to overcome all EU internal imbalances when defining the content of the European semester;

41. Emphasises the importance of mutually supportive Union policies in fulfilling the Europe 2020 strategy of smart, sustainable and inclusive growth and jobs, backed up by the diverse tools of, inter alia, future-oriented education, environment, climate and energy strategies, resource efficiency, renewed agricultural policy, cohesion policy, innovation and R&D strategies, a renewed EU budget and greater alignment between national budgets in support of these common goals;
42. Stresses that the sustainability element of the Europe 2020 strategy needs to be mainstreamed across all relevant policy fields in order for the EU to regain world leadership; underlines that, if Europe is to remain competitive in the global economy, it must take the lead in the eco-friendly transformation towards a resource-efficient, sustainable society; emphasises that large-scale investment in eco-friendly infrastructures, renewable energies and energy efficiency is an excellent way of stimulating the recovery and promoting long-term growth and job creation;

43. Recalls that the full potential of the single market has not yet been realised, and that renewed political determination and resolute action are required with a view to unlocking its full potential for sustainable and socially inclusive growth and jobs; underlines the need to further develop the European service sector and to enhance trade in services;

44. Emphasises that the success of the Europe 2020 strategy depends on the commitment of the EU as a whole, and on ownership by Member States, national parliaments, local and regional authorities and social partners; recalls the importance of a strong and properly functioning social dialogue and collective agreements within the framework of the Europe 2020 strategy, as well as the promotion of a genuine European social dialogue on macroeconomic policies and measures; notes that these measures should be pursued in order to achieve broad consensus on the way forward;

45. Notes the growing powers and responsibilities of regional and local authorities; recalls that two thirds of public investment in Europe remains at sub-national level; notes that the choice of the level at which public investment is made and executed has a very significant impact on its efficiency; stresses, therefore, the importance of ensuring that public investment takes place at the most efficient level of governance;

46. Urges the national parliaments and governments of the Member States, when engaging in national decision-making, to act in a responsible manner vis-à-vis the EU and to include the EU dimension in their national discussions;

47. Stresses that fiscal consolidation must be accompanied by medium- and long-term targets such as those identified by the Europe 2020 strategy, especially with regard to job creation, social inclusion, investment in infrastructure, resource efficiency, ecological transformation of the economy and a knowledge-based economy, so as to increase competitiveness and social, economic and territorial cohesion; notes that the various national and EU policies should provide coherent support for the strategy and that budget discipline can, if imposed without a well-defined strategy, undermine growth prospects, reduce competitiveness and seriously harm the economy in the long run; recalls that, as the open method of coordination has failed, the Europe 2020 strategy should include binding targets drawn up by the Commission for Member States with maximum and minimum values to be applied to certain macroeconomic aspects of their economies;

48. Calls for a strict financial audit of all Member States, to be initiated by the Commission in close cooperation with Eurostat, in order to determine their actual financial status, thereby enabling fact-based decisions to be taken with regard to the Europe 2020 strategy and regional and cohesion projects; calls for scrutiny of all funding programmes in the European Union and of national and regional subsidies; recommends intensification of the projects and programmes, the success of which is vital, and in turn the eradication of ineffectual subsidies and economic development schemes;

49. Points out that women, in particular, are at greater risk of experiencing poverty; notes that child poverty has increased in a number of Member States during the crisis; underlines that this is unacceptable and that the negative trends must be reversed; consequently, calls on, in particular, the existing non-governmental organisations to be developed into a solid network for the eradication of child poverty by means of child-centred approaches, child-specific targets and a strong focus on their rights;
50. Notes that solid welfare systems are important economic stabilisers in bad times; stresses, therefore, that while there is a need to consolidate public finances, there is also a convincing case for safeguarding public-sector services and maintaining existing levels of social protection accordingly; calls for the adoption of measures to reduce income inequalities, in particular, by tackling youth unemployment;

51. Underlines that the economic downturn should not slow down progress on reconciliation policies concerning the work-life balance, particularly those facilitating women’s access to the labour market;

52. Notes the challenges arising from the crisis, with a major downturn in economic activity, a decline in the growth rate, brought about by a strong rise in structural and long-term unemployment, and a fall in rates of public and private investment, as well as increased competition from emerging economies;

53. Recognises that, to overcome the current imbalances inside the EU, a ‘one-size-fits-all’ approach will not be enough and that, in order to be effective, economic policy coordination will need to take proper account of the starting-points of the different EU national economies and their specific characteristics; stresses the need for economic coordination and progress in restoring sound finances;

54. Calls for greater compatibility and complementarity between national budgets and the EU budget; takes the view that the next multiannual financial framework must focus on the key priority areas of the Europe 2020 strategy and should ensure adequate financing of the flagship initiatives in the fields in which the EU has shared competence with Member States, which can provide strong European added value;

55. Emphasises that both agricultural and cohesion policies must play a key role in support of the Europe 2020 strategy; is convinced that the reform of the common agricultural policy (CAP) has to be pursued in the context of addressing global challenges; believes that the success of the Europe 2020 strategy is premised on ensuring the coherence of EU policies, including such diverse aspects as aligning the national and EU budgets, including the CAP, and the Cohesion Funds, e.g. by guaranteeing a fair allocation of resources between Member States and regions, based on clear aims designed to enhance convergence and foster competitiveness, while putting emphasis on those Member States and regions in greatest need and policies such as education, innovation and R&D spending;

56. Recalls, moreover, that the Europe 2020 strategy will only be credible if it is backed up by adequate financial resources, and therefore supports:

— the adoption of consistent conclusions in the context of the next multiannual financial framework and an EU budget focusing on policies that contribute to the achievement of the Europe 2020 strategy objectives;

— the attribution of EU funds on the basis of their economic, social and environmental relevance and effectiveness; funds not taken up by Members States could be reallocated to sustainable public investment at EU level for joint projects or programmes promoting growth, competitiveness and employment, such as investment in infrastructure, education and training, innovation, research and development;

— the provision of technical assistance geared to improving take-up of the funds and effective delivery of investment projects;
— a more prominent role for the European Investment Bank (EIB) in enhancing the catalytic role and leverage function of structural funds;

— the further development and optimum use of innovative financing instruments, involving notably the EIB and the European Investment Fund (EIF), as well as the European Bank for Reconstruction and Development (EBRD) (e.g. blending grants and loans, venture capital instruments, new forms of risk-sharing and guarantees);

— moves to drive private savings towards long-term investment through appropriate incentives and mechanisms;

— development of innovative long-term investment financing involving both public and private funds;

— the introduction of project bonds in order to tap private capital to meet the needs of Europe's infrastructural challenges;

— action to ensure the availability of significantly larger amounts of venture capital linked to long-term investment;

— action to ensure easier access to funding and less red tape, especially for small and medium-sized enterprises (SMEs), while upholding strict transparency standards;

Energy and transport policies and the internal market

57. Regards the establishment of a European Energy Community as a key political project for the fulfilment of the Europe 2020 goals of furthering the transition to renewable energies while maximising energy efficiency, increasing the EU's energy independence and establishing a genuine interconnected energy market; emphasises the importance of the external dimension of its energy policy;

58. Believes that relationships between countries producing oil and natural gas and consumer countries, above all the countries of Europe, should be reinforced, also taking into account the recent developments in the political landscape in the Mediterranean; considers that a common policy for sustainable energy and procurement of raw materials needs to be implemented as a matter of urgency, so as to avoid adverse effects that could delay the recovery and the future development of the European economy;

59. Emphasises the key role that mainstreaming the principles of resource efficiency into all EU policies plays in ensuring the EU's competitiveness, including the development of innovative new products and services and new ways to reduce inputs, minimise waste, improve management of resource stocks, change consumption patterns, improve logistics and ensure that production processes, management and business methods are optimised in such a way as to ensure that the life-cycle approach of designing products and services in a 'cradle to grave' manner is applied;

60. Recalls that access to energy and raw materials, and the efficient use thereof, are vital in order to ensure the overall competitiveness of the EU; stresses that in order to stay competitive in the long term, the EU must be a world leader in the promotion of energy savings and efficiency, research into and investment in new eco-friendly technologies, the diversification and rationalisation of energy supply and the development and increased use of renewable sources of energy; recalls that reducing dependency on imports of energy and raw materials contributes to ensuring the competitiveness of the EU, while also helping to achieve the EU inflation target;
61. Stresses that close attention must be given to sustainable transport policy, in particular extension of the European transport networks, while improved access to those networks for less-favoured regions with the help of the Structural and Cohesion Fund would contribute substantially to consolidating the single market; underlines the importance of having an efficient and interconnected transport system that facilitates the free movement of people, goods and services and promotes growth; underlines the importance of Trans-European transport networks (TEN-T) in providing substantial European added value, as they help to remove bottlenecks, eliminate physical obstacles such as differences between rail gauges, and ensure cross-border infrastructure;

62. Considers the Single Market Act to be a key political initiative that underpins the foundations of the Europe 2020 goals and the flagship initiatives aimed at fully exploiting the internal market’s growth potential and completing the single market, in the spirit of the Monti report; underlines that the crisis has clearly shown the importance of strengthening the EU’s industrial base and innovation potential by facilitating market access and mobility and combating social and territorial fragmentation throughout the EU;

Mobility and migration

63. Emphasises that both the major uprisings in our neighbouring regions and demographic developments within the EU call for a common migration policy; stresses that greater access to labour markets and mobility must be encouraged by granting equal employment and social conditions and rights for all, including the recognition of professional qualifications and diplomas across the EU, together with the transferability of social security rights and the portability of pension rights in order to strengthen the European single market;

64. Considers that the Schengen Agreement remains an exceptional achievement for EU citizens and that it should be safeguarded; demands that cooperation in that regard be further strengthened; expresses its great concern over hypothetical changes to the Schengen rules; insists on the need for Parliament to be duly involved in the legislative process and stresses the importance of preventing Member States from taking any unilateral decisions in that field; recalls that the adoption of the Schengen Agreement represented a step towards greater EU integration and that the principle of freedom of movement for persons must be safeguarded;

SMEs, innovation and R&D

65. Calls for a common EU immigration policy and welcomes the Commission’s proposals to open up more legal ways of coming to the EU to work; stresses the need for a reform of the current Blue Card system (by expanding it to cover a far greater number of jobs and professions); notes that employers in the EU are increasingly dependent on people from countries outside Europe coming to the EU to take up jobs in sectors such as agriculture, horticulture, tourism, caring for the elderly and nursing, as fewer and fewer EU citizens are available to work in those sectors; believes that the Commission’s proposal on seasonal workers needs to provide those workers, who are often vulnerable and exposed, with better conditions and a secure legal status in order to protect them from exploitation;

66. Recommends that the Commission encourage and facilitate more equity funding for SMEs, through either venture capital or share listing, more assistance from the structural funds, and less reliance on debt, especially in high-tech start-up companies, which are in great need of capital for R&D; stresses the need to strengthen the Competitiveness and Innovation Framework Programme (CIP) guarantee instrument and to simplify access to funding for SMEs; points out that it is particularly necessary to encourage and support women entrepreneurs;
Wednesday 6 July 2011

67. Recognises the role of the social economy (third sector) in Europe and its significance in fostering innovation; emphasises the need to have strategic green and resource-efficient public procurement policies in Europe in order to support an equal and competitive innovation sector;

68. Urges giving the EIB and the EIF a leading role at the European level in freeing up funds for SMEs by using more streamlined and clearer procedures, thereby working with the financial institutions of the Member States and avoiding the establishment of schemes parallel to already existing structures at national level, so that SMEs can easily find their accustomed point of entry; recommends that the EIB/EIF should act as a filter, focusing on the priority sectors within the Europe 2020 strategy strengthening the economy, employment, environmental sustainability and resource efficiency, acting as a mentor to selected groups of SMEs, and taking part in discussions with banks and their risk management teams with a view helping SMEs to obtain long-term loans; calls for full use to be made of the EIB’s capacity to provide funding;

69. Calls on the Member States to speed up their implementation of the measures set out in the Small Business Act (2008) and in the review thereof, published by the Commission on 23 February 2011, in order to reduce administrative burdens, facilitate SMEs’ access to financing and support the internationalisation of SMEs;

70. Stresses that the next generation of EU funding programmes must systematically support innovative and job-creating SMEs, both within the internal market and globally; highlights the need to facilitate the swift creation of undertakings using new technologies, improve their funding, reduce administrative burdens and promote their internationalisation; takes the view that it would be highly desirable to recognise the key role played by the system of industrial cooperative and retail banks, which ensure the optimisation of the strategy to assist and provide real support to the SME sector;

Taxation

71. Stresses that both EMU and the internal market require a stronger coordination of national tax policies; emphasises that the quality of taxation should be improved so as to provide the right incentives for employment, innovation and long-term investment; asks the Commission to analyse, in the context of the European semester, the resilience of the Member States’ tax systems so that their tax reforms are resistant to economic fluctuations and do not unnecessarily rely on tax bases that are very cyclical or known to be prone to bubbles;

72. Supports the Commission in its efforts to tackle harmful tax competition, tax avoidance or fraud and tax havens, both in the EU and at international level, to improve tax collection systems and to introduce a common consolidated corporate tax base with subsequent indicative tax ranges as well as a specific and simplified taxation system for SMEs; welcomes the VAT strategy that is to be presented by the Commission with a view to establishing a fraud-proof system;

73. Notes that combating tax fraud and tax evasion and improving tax collection, also in relation to third countries, needs to be an essential aspect of the current efforts of Member States aimed at budgetary consolidation;

74. Believes such a move to be critical in the current context, in which Member States need to consolidate their budgets; notes that tax competition is acceptable as long as it does not jeopardise the capacity of Member States to collect the revenue they may fairly expect, and recalls that solutions should be devised to minimise harmful tax competition;
75. Believes that the allocation of EU funds should take into account the taxation strategy of Member States and their willingness to cooperate in combating tax evasion and promoting closer tax coordination;

76. Recognises the absence of a common definition of tax havens; calls for at least a single European agreed definition, pending agreement on a definition at global level;

77. Calls on the Member States, given the imperative need to fight corruption and with a view to bringing about a genuine financial recovery, to ensure that their criminal law provides that, in the context of work carried out, the use of corruption, bribes and other mechanisms aimed at securing illicit advantages will cause the paying agency to cancel payment or, where such payment has already been made, to request the restitution of an amount equal to double the sum paid;

Employment

78. Stresses that new jobs and better jobs are a precondition for achieving a fair, green and smart growth strategy, and accordingly calls for:

— new jobs to be created in sectors based on innovation, research and development, such as the energy and environmental sectors, in a manner which ensures a gender-balanced approach;

— measures to improve the effectiveness of existing EU support for direct job creation available to Member States under the European Social Fund;

— actions making it easier to participate in the labour market for women (in particular by means of a consistent increase in affordable childcare services), older workers (without affecting their retirement and social rights) and regular immigrants, and to reduce unemployment, especially among young people;

— measures to upgrade the quality of education and vocational training, and the effective promotion of lifelong learning and entrepreneurship, with a view to strengthening the employability of workers and developing a competitive human capital;

— the development of employment opportunities and social inclusion programmes for the most vulnerable groups, such as the Roma and people with disabilities;

— sustainable, high-quality jobs providing a decent income in agriculture and rural areas;

— action to tackle undeclared work;

79. Points out that most of the unemployment in those Member States where fiscal austerity measures are currently being implemented is caused by the decline in overall economic activity, with an alarming increase in the long-term unemployment rate; notes that long-term unemployment needs to be urgently addressed as it can severely harm long-term growth in the countries concerned and may consequently reduce the competitiveness of the entire Union;
80. Notes that, as a result of the current crisis, the EU labour market could remain fragmented in the long term with, on the one hand, a concentration of high-quality labour in Member States with balanced current accounts and, on the other hand, high unemployment rates and shortages of competitive labour in those Member States which have been hit the hardest by the crisis and which are also the most heavily indebted;

81. Believes that there is still a need to address the issue of corporate governance as regards management incentives for long-term investment and job creation; suggests that an annual report assessing corporate social and environmental responsibility for all listed companies with over 250 employees and a turnover of more than EUR 50 million should be produced;

**Education strategy**

82. Stresses the importance of childhood, vocational, university and adult education for innovation and growth, and underlines the importance of proper implementation of flexicurity; underlines the need to adapt education and training systems in order to better equip people with the knowledge and skills needed to secure higher employment levels, productivity, growth and competitiveness;

83. Proposes the establishment of an EU internship programme analogous to the Erasmus programme, with the full involvement of the private sector; takes the view that such a programme should involve clusters of universities, universities of applied sciences, professional training institutions, industry, financial markets, SMEs and large companies, and that it should give citizens, including vulnerable groups, access to training, particularly in transferable skills in the knowledge-based economy, so as to foster lifelong learning;

84. Strongly supports the introduction of measures to increase the quality of higher education in Europe, *inter alia* by further reducing barriers to student mobility, improving the links between academia and business and fostering a more entrepreneurial mindset in society; proposes the introduction of a European innovation scholarship designed to contribute to the fostering of knowledge and skills employed in innovating sectors, while allowing the establishment of EU networks and cooperation; believes that such a scholarship would address youth in vocational educational programmes, established and specifically implemented in each of the Member States;

85. Stresses the need to create conditions, at European and national level, for the private and public sectors to increase R&D investment; notes that university funding takes place predominantly through national budgets, already under pressure of consolidation; consequently, encourages Member States to ensure that their respective systems of university funding are designed in such a way as to enhance Europe's capacity for technological development, innovation and job creation;

86. Considers that, in order to encourage Member States to invest more in the educational field, special consideration should be given to public spending on education, research and vocational training in the context of assessing Member States' medium-term budgetary objectives;

87. Supports the call by the European University Association (EUA) for public investment in higher education to be increased to 3 % of GDP; believes that this target requires a qualitative evaluation of such expenditure in the context of assessing the SGP;

88. Calls for the improvement of education for jobs not requiring university studies by the development of apprenticeship;
V. Re-thinking the EU: beyond European economic governance

89. Emphasises that the European Union is at a crossroads: either the Member States decide to join forces in deepening integration or, owing to stagnation at the decision-making level and divergences at the economic level, the EU could drift apart;

90. Warns of the risks of retreating into a fragmented Union vulnerable to protectionism and populism;

91. Calls for a deeper democratic political Union in which the EU institutions are given a stronger role in both the design and the implementation of common policies; emphasises the importance of strengthening the democratic legitimacy and control of the Union;

92. Stresses the importance of respecting the principles underlying the European project, namely, equality of Member States, solidarity, cohesion and cooperation; draws attention to the need to stick to those principles by effectively addressing internal imbalances and moving towards substantial convergence through coordination between eurozone and non-eurozone Member States;

93. Underlines the need for a stronger European Commission, made more accountable to Parliament and playing a major role as the main voice of the citizens, especially when it comes to providing a forum for public cross-border debates, taking into account the spill-over effect of national decisions in fields such as economic and social governance;

94. Stresses that economic governance, with converging economic, fiscal and social policies, must be organised using the Community method and steered by the Union institutions, with national parliaments being fully involved;

95. Considers the new legislation on the European Systemic Risk Board (ESRB) and the three European Supervisory Authorities to be an initial step in the right direction, but believes that further progress is required in order, in particular, to ensure direct EU-level supervision of systemic institutions such as highly leveraged entities and enforcement of a single set of rules; stresses the need to provide the new authorities with human and financial resources commensurate with their adequate growing responsibilities;

96. Believes that, alongside surveillance aimed at ensuring financial stability, there is a need for mechanisms for the surveillance and prevention of potential bubbles, and for optimum allocation of capital in the light of the macroeconomic challenges and objectives, and also a need for investment in the real economy; considers, in addition, that taxation policy needs to be used as a tool for this purpose;

97. Requests the Commission to put forward additional proposals for the regulation of financial market structures whose size, systemic integration, complexity or interconnectedness may jeopardise financial stability and the capacity of regulators to resist their demands, incorporating measures enabling supervisors to have an overview of their activities, including the shadow banking system and their level of leverage; calls on the Commission to consider regulatory options such as capping or disincentivising size as well as business models;

98. Stresses that tackling the public debt crisis and increasing the EU's competitiveness, convergence and solidarity require a shift of competences and spending towards the Union, whereby the burden on national budgets would be considerably eased, and stresses the need to create significant synergies between national budgets and the EU budget, allowing for optimal use and allocation of existing fiscal resources on all levels, while respecting the principle of subsidiarity to support strong regions and states;
99. Concludes that, in order to achieve political union and economic integration commensurate with monetary union, in line with the priorities agreed by the European Council, the EU needs a budget of sufficient size to accommodate the euro in a sustainable way, providing the currency with a relevant budget space on the level of political organisation at which it is issued;

100. Recalls that reports preceding the realisation of monetary union – notably the McDougall report, which analysed the conditions necessary for the implementation of the Werner plan – affirmed that the volume of such a budget would have to be between 2.5 and 10 percent of Union GNI, depending on whether and which re-allocation functions would be assumed by the Union budget, that the budget would need to be financed on the basis of own resources, and that it should be used to finance policies and measures in the fields of foreign, security and defence policy, the energy and transport sectors, development cooperation and R&D, and that national budgets would be reduced correspondingly in order to achieve tax neutrality for citizens and businesses;

101. Emphasises the need to strike a better balance between economic and social policies, including the reinforcement and institutionalisation of the macroeconomic social dialogue;

102. Recalls that the European Union derives its legitimacy from the democratic values which it projects, the aims which it pursues and the powers, instruments and institutions which it possesses; takes the view that deepening European economic integration is necessary in order to ensure the stability of the eurozone and of the Union as a whole, and that this will require further developments regarding the external representation of the eurozone, qualified majority voting on a corporate tax base, measures to combat tax evasion and tax avoidance, possible mutual issuance of sovereign debt and Eurobonds to stimulate fiscal discipline, the EU’s borrowing capacity, a better balance between economic and social policies, own resources for the EU budget and the roles of national parliaments and the European Parliament;

103. Believes that political decisions on economic governance should not endanger the commitments agreed at EU level reflecting the goals and interests of all Member States, and that such decisions should be anchored in the Treaty and be pursued with the full institutional involvement and scrutiny of the European Commission and of Parliament;

104. Calls for a comprehensive strategy in response to the challenges facing the Union, with reinforced economic governance forming the cornerstone of that response; also calls for the maintenance of resolve in pursuing fiscal consolidation, sustainable growth, the enhancement of structural reforms and the overhauling of the banking sector; takes note of the Euro Plus Pact proposed by the Council as one element of the economic governance package negotiated between Parliament and the Council;

105. Calls for the Euratom Treaty to be superseded by a European Energy Community;

106. Considers that, alongside the treaty changes required for the stability mechanism, these interconnected issues should be dealt with in a Convention to be convened in accordance with Article 48(3) of the Treaty on European Union;

107. Believes that, if they are not, it will be necessary to move to enhanced cooperation under Article 329 of the TFEU, in order to enable the eurozone to function in a democratic and efficient manner;
108. Recalls that a European response to the crisis must be based on deepening European integration,
pursuit of the community method, the consolidation of interparliamentary dialogue, the promotion of social
dialogue, the strengthening of the welfare state by supporting social inclusion, job creation and sustainable
growth, and the further building of the social market economy and its values, as an essential goal of the
European Union, so as to rally all citizens around the European project based on the values enshrined in the
Treaties and in the European Charter of Fundamental Rights;

* *

* *

109. Instructs its President to forward this resolution to the Council, the Commission, the President of
the European Council, the President of the Eurogroup, the European Central Bank, the European Investment
Bank, the European Bank for Reconstruction and Development, the European Economic and Social
Committee, the Committee of the Regions, the governments and parliaments of the Member States and
the social partners.
Thursday 7 July 2011

Situation in Syria, Yemen and Bahrain in the context of the situation in the Arab world and North Africa

P7_TA(2011)0333

European Parliament resolution of 7 July 2011 on the situation in Syria, Yemen and Bahrain in the context of the situation in the Arab world and North Africa

(2013/C 33 E/16)

The European Parliament,

— having regard to its previous resolutions on Syria, Yemen and Bahrain, in particular that of 7 April 2011 on the situation in Syria, Bahrain and Yemen (1),

— having regard to its resolution of 24 March 2011 on European Union relations with the Gulf Cooperation Council (2),

— having regard to its resolution on the review of the European Neighbourhood Policy - Southern Dimension of 7 April 2011 (3),

— having regard to the statements by the Vice-President of the Commission/High Representative (VP/HR) on Syria of 18, 22, 24 and 26 March, 23 April and 6 and 11 June 2011; on Yemen of 10, 12 and 18 March, 27 April, 11, 26 and 31 May and 3 June 2011, and on Bahrain of 10, 12 and 18 March; 3 May and 1 July 2011,

— having regard to the declaration by the VP/HR on behalf of the EU on Syria of 29 April 2011,

— having regard to the Joint Communication entitled ‘A new response to a changing Neighbourhood’ of 25 May 2011, which complements the Joint Communication on ‘A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean’ of 8 March 2011,

— having regard to the declaration on the Southern Neighbourhood issued at the European Council meeting of 23 and 24 June 2011,

— having regard to the Human Rights Council resolution on Syria of 29 April 2011,


— having regard to the conclusions of the Foreign Affairs Council of 23 May and 20 June 2011,

— having regard to the statement of 3 June 2011 by the UN Secretary-General on Syria,

— having regard to the statement of 23 June 2011 by the UN Secretary-General on the sentences imposed on 21 Bahraini political activists, human rights defenders and opposition leaders,

— having regard to the preliminary report of the High Commissioner for Human Rights on Syria of 14 June 2011,

(1) Texts adopted, P7_TA(2011)0148.
(2) Texts adopted, P7_TA(2011)0109.
(3) Texts adopted, P7_TA(2011)0134.
— having regard to the Universal Declaration of Human Rights of 1948,

— having regard to the United Nations Convention of the Rights of the Child of 1990,

— having regard to the International Covenant on Civil and Political Rights of 1966,

— having regard to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1975,

— having regard to the EU Guidelines on Human Rights Defenders of 2004, as updated in 2008,

— having regard to Rule 110(4) of its Rules of Procedure,

A. whereas peaceful demonstrators in countries in North Africa and the Middle East have expressed legitimate democratic aspirations and strong calls for institutional, political, economic and social reforms aimed at achieving genuine democracy, fighting corruption and nepotism, ensuring respect for the rule of law, human rights and fundamental freedoms, reducing social inequalities and creating better economic and social conditions,

B. whereas the Joint Communication entitled ‘A new response to a changing Neighbourhood’ of 25 May 2011 takes a new approach, reviewing the implementation of the basic principles governing the Union’s external action, namely the universal values of human rights, democracy and the rule of law, which are at the centre of the Neighbourhood Policy, whilst reflecting the need for the EU to support democratic change in North Africa and in the Middle East,

C. whereas, since the beginning of the crackdown in Syria in March 2011, violence has been escalating and the security forces have been responding to the continuous protests with mass arrests and increasing brutality, killing more than 400 civilians in the Daraa governorate alone and possibly more than 1 000 in total across Syria,

D. whereas recent videos, which were broadcast worldwide, showed disturbing images of arbitrarily detained Syrian children who had been victims of torture or ill-treatment, which in some cases had led to their death, as in the tragic case of Hamza al-Khateeb, a 13-year-old boy; whereas, in addition, the use of live ammunition against demonstrators has already resulted in the deaths of at least 30 children, as reported by UNICEF, the UN children’s agency, on 31 May 2011,

E. whereas in his third address of 20 June 2011 President Bashar al-Assad said that a national dialogue would shape Syria’s future; whereas, despite repeated commitments to implement political reform and change in Syria, the authorities have failed to take any credible step to fulfil them; whereas more than 800 cases of forced disappearances and 11 000 cases of arbitrary detention have already been documented by human rights organisations,

F. whereas on 23 June 2011, in view of the gravity of the situation in Syria, the Council adopted a decision and a regulation imposing restrictive measures on seven additional persons added to the list drawn up on 9 May 2011, introducing special measures, such as a visa ban and a freezing of assets, and also imposed an embargo on arms and equipment which might be used for internal repression against four entities associated with the Syrian regime,
G. whereas the Association Agreement between the European Community and its Member States, of the one part, and the Syrian Arab Republic, of the other part, has never been signed; whereas the signing of this Agreement has been delayed at Syria’s request since October 2009 and the Council had already decided not to take further steps; whereas respect for human rights and fundamental freedoms constitutes an essential part of this Agreement,

H. whereas there is a serious risk of an increase in violent attacks by extremist groups, including armed jihadi groups; whereas it is important to ensure protection for the various religious communities in Syria, including the large number of Iraqi refugees that have arrived in the country,

I. whereas, after the siege in Daraa, security forces launched a large-scale military operation and campaign of arbitrary arrests in neighbouring towns; whereas an estimated 12 000 Syrians from Jisr al-Shughour and surrounding areas have crossed the Syrian-Turkish border, fearing reprisals by the security forces, and according to the Red Crescent 17 000 more are waiting to cross the border,

Yemen

J. whereas the situation in Yemen remains of deep concern following months of violence and turmoil that have inflicted substantial suffering on the Yemeni people, resulting in large-scale loss of life and serious injuries, the imprisonment of protesters and a more serious economic and political crisis in the country,

K. whereas the Gulf Cooperation Council (GCC) has initiated a plan for the peaceful transfer of power, which has not been signed by the President of Yemen, Ali Abdullah Saleh,

L. whereas during recent attacks on his compound on 3 June 2011, President Saleh was seriously injured and is now receiving medical treatment in Saudi Arabia; whereas power has been temporarily transferred to the Vice-President of the country, Abd Rabbuh Mansur Hadi,

M. whereas Yemen is the poorest country in the Middle East, with widespread malnutrition, dwindling oil reserves, a growing population, weak central government, worsening water shortages and little investment in the country’s economy; whereas there is serious concern that the Yemeni State will disintegrate, with a fragile truce having been in force since February with the Shiite rebels in the North, a secessionist movement in the South and many al-Qaeda fighters reportedly using Yemen as a sanctuary,

Bahrain

N. whereas the state of national safety in Bahrain was lifted on 1 June 2011 and King Hamad Bin Isa al-Khalifa made a call for a national dialogue, which began on 2 July 2011,

O. whereas on 29 June 2011 an independent commission with an international independent component was set up by King Hamad in order to investigate human rights violations during recent government crackdowns on pro-reform protesters,

P. whereas on 22 June 2011 Bahrain’s National Safety Court, a military court, announced its verdict against 21 Bahraini opposition activists, including seven in absentia; whereas eight opposition activists were sentenced to life in prison and 13 received jail sentences of up to 15 years for ‘plotting to topple the government’; whereas many other political activists, human rights defenders and journalists were detained during the recent pro-reform protests, and whereas according to human rights organisations they have been tortured, ill-treated and harassed,
Q. whereas on 22 May 2011 the death sentences imposed on Ali Abdullah Hassan al-Sankis and Abdulaziz Abduridha Ibrahim Hussain for killing two policemen during anti-government protests in Bahrain were upheld by the National Safety Court of Appeal; whereas the executions have been postponed until September,

R. whereas 47 Bahraini doctors and nurses have been accused of ‘incitement to overthrow the regime by force’ and are facing trial by a Bahraini military court; whereas the medical professionals treated all injured people equally, in keeping with the ethical code for their profession,

S. whereas following the request from the Bahraini Government foreign forces under the banner of the Gulf Cooperation Council (GCC) have been deployed in Bahrain,

1. Strongly condemns the disproportionate use of force by the regimes against peaceful demonstrators and deplors the large number of persons killed and wounded; extends its condolences to the families of the victims and wounded; calls for an immediate end to the bloodshed and the release of the people arrested; calls for an investigation into the killings, arrests and alleged use of torture;

2. Praises the people for the courage they have demonstrated in their peaceful fight for democratic change, in particular the women, who have been and often still are at the forefront of the protests;

3. Calls on the political leaderships of the Arab countries to honour their commitments by engaging without delay or precondition in an open and constructive political dialogue, involving all democratic political parties and movements and representatives of civil society, aimed at paving the way for genuine democracy and the implementation of real, ambitious and significant institutional, political, economic and social reforms, which are essential for long-term stability and development in these countries and in the region as a whole;

Syria

4. Strongly condemns the escalation of violence in Syria and the continuing serious violations of human rights, including the sieges imposed on a number of cities, such as Daraa, Jisr al-Shughour and Hama, mass arrests, extrajudicial killings, arbitrary detention, allegations of forced disappearances and torture;

5. Deplores the fact that the lifting of the state of emergency announced on 21 April 2011 and that other reforms promised by President Assad have not been implemented and that political prisoners remain in detention despite the recent amnesty announced by the President; urges the Syrian authorities to lift the siege of affected towns without delay and allow immediate and unhindered access for humanitarian agencies and workers;

6. Urges the Syrian authorities and President Bashar al-Assad to put an end to the killings of unarmed protestors and to immediately release all detained demonstrators, journalists, human rights defenders and political prisoners; calls for all democratic forces and civil society actors to be involved in an immediate and genuine political process in order to contribute to a democratic transition in Syria based on a concrete agenda for fundamental reforms and respect for human rights and the rule of law;

7. Calls on the Syrian authorities to allow the foreign press into the country to verify all claims that ‘armed gangs of extremists’ are firing at the security forces first, which is the regime’s justification for the unacceptable bloodbath that is taking place; calls on the Syrian authorities to cooperate fully with and provide unhindered access to the office of the High Commissioner and to other UN mechanisms;
8. Urges the Syrian authorities to immediately release all children arrested during the repression of the demonstrations or in related events, to thoroughly investigate reported cases of violence against children and to refrain from any further arrests of and violence against children or any other breach of children’s rights;

9. Welcomes the Council’s decision to impose restrictive measures on Syria and persons responsible for the violent repression against the civilian population, to suspend all preparations for new bilateral cooperation programmes, to suspend the ongoing bilateral programmes with the Syrian authorities under the European Neighbourhood and Partnership Instrument (ENPI) and the MEDA instrument, to invite the European Investment Bank (EIB) not to approve new financing operations in Syria for the time being, to consider suspending further Community assistance to Syria in the light of developments and not to take further steps with regard to the Association Agreement with Syria; supports the set of smart sanctions adopted by the Council, and calls on the Council to take a strong diplomatic initiative to persuade other countries to adopt the same sanctions; takes the view that the Council should continue to extend targeted sanctions to all persons and entities linked to the regime with the view to weakening and isolating them, paving the way for a democratic transition;

10. Strongly supports the EU’s diplomatic efforts with its partners in the international community to ensure that the UN Security Council (UNSC) condemns the ongoing violence in Syria, rejects impunity and urges the Syrian authorities to meet the legitimate aspirations of the Syrian people; regrets the fact that these efforts have not been successful so far and that a resolution could not be introduced; calls on the EU Member States and the VP/HR to continue working with their international partners to secure the involvement of the UNSC in the situation in Syria and the implementation by the Syrian authorities of their responsibility to protect the Syrian population;

11. Welcomes Turkey’s policy of maintaining open borders for Syrian refugees and the rapid mobilisation of the Red Crescent’s resources;

12. Welcomes the acknowledgement by the EU of the efforts by Turkey and other regional partners to deal with the various aspects of the crisis, in particular the humanitarian aspects, and states that it will work with them to address the situation in Syria; calls on Turkey and the EU to step up their foreign policy coordination and strongly encourages the pursuit of concerted efforts in support of democratisation and development in the Middle East and North Africa;

13. Calls on the Council and the Commission to immediately provide aid and support to the Turkish and Lebanese authorities in their efforts to manage the humanitarian crisis on their borders with Syria, including by setting up a humanitarian corridor at UN level;

14. Calls on the VP/HR, the Council and the Commission to encourage the emerging democratic opposition movements inside and outside the country; calls, in that connection, for an urgent start to be made on a genuine political dialogue leading to an in-depth democratic transition in Syria;

Yemen

15. Strongly condemns the recent armed attacks in Yemen, including the attack of 3 June 2011 on the presidential compound; calls on all parties to cease all hostilities, respect human rights and abide by a permanent ceasefire;
16. Welcomes Vice-President Abd Rabbuh Mansur Hadi's commitment to respect the ceasefire, to demilitarise Yemen's cities, and to ensure proper protection for any further peaceful protests and demonstrations;

17. Expresses its solidarity with the people of Yemen, welcomes their aspirations for democratic change in their country and supports the efforts of the GCC in as much as these are directed at finding a negotiated solution, which implies the resignation of President Saleh and his of family members who remain in positions of power, within the framework of a more inclusive political system geared towards poverty alleviation and improved living conditions for the majority of the population;

18. Deplores the failure by the Yemeni authorities to ensure the safe passage of diplomats from the Embassy of the United Arab Emirates in Sana'a on 22 May 2011, including the GCC Secretary-General, and the Ambassadors of GCC member states, the EU, the United Kingdom and the United States; calls on the Yemeni authorities to fully respect the Vienna Convention on Diplomatic Relations;

19. Expresses its concern at the lack of any progress reports from the high-level committee appointed by the Yemeni Government to investigate the attack on protestors on 18 March 2011 in Sana'a, in which 54 people were killed and more than 300 injured; reiterates its call on the VP/HR to support the calls for an international independent investigation into the incident;

20. Welcomes the mission of the Office of the High Commissioner for Human Rights (OHCHR) to Yemen, which assessed the human rights situation in that country and will make recommendations to the Yemeni Government and to the international community;

Bahrain

21. Condemns the repression in Bahrain and urges the immediate and unconditional release of all peaceful demonstrators, including political activists, journalists and human rights defenders, and of the 47 Bahraini doctors and nurses who were acting under professional duty; expresses its strong concern at the life sentences for eight opposition activists and at the 15-year prison sentences for 13 others;

22. Welcomes the lifting of the 'state of national safety' in Bahrain as well as the call made by King Hamad Bin Isa al-Khalifa for a national dialogue; considers that the national dialogue launched by King Hamad can only be possible with the participation of all political forces, including the opposition and civil society, with the aim of paving the way for genuine democracy and political reforms in Bahrain;

23. Calls on the Bahraini authorities to commute the death sentences of Ali Abdullah Hassan al-Sankis and Abdulaziz Abdulridha Ibrahim Hussain, and to reinstate the de facto moratorium on capital punishment;

24. Takes positive note of King Hamad's decision to set up an independent commission to investigate human rights violations during recent government crackdowns on pro-reform protesters; urges full impartiality and transparency for the commission and calls on the Bahraini Government not to interfere in its work;
25. Welcomes the setting-up of a Ministry for Human Rights and Social Development in Bahrain, and calls on that ministry to act in accordance with international human rights standards and obligations;

26. Expresses its concern at the presence of foreign troops under the GCC banner in Bahrain; reiterates its call on the GCC to contribute resources as a regional collective player in order to act constructively and mediate in the interest of peaceful reforms in Bahrain;

Arab world and North Africa

27. Supports the democratic transition process in Egypt and Tunisia, as the first examples of the current process of democratisation and new wave of participation by citizens, and notably youth, in the Arab world; strongly supports the aspirations of people for freedom, human rights and democracy; calls for a transparent, fair and free election process in both countries that takes into account their individual circumstances; calls on the international community to make further efforts to sustain and encourage the process of political reform in the countries of North Africa and the Middle East;

28. Reiterates the commitment of the international community to protect civilians in Libya, including through the intensification of pressure on the Libyan regime, and to support the building of a democratic Libyan state; welcomes the EU's decision to step up its sanctions against the regime by adding six port authorities under the regime's control to the EU asset-freeze list; reiterates its call on Colonel Muammar Mohammed Abu Minyar Gaddafi to relinquish power immediately;

29. Expresses concern at the hardship faced by the people of Libya owing to a shortage of food, lack of access to medical aid and lack of cash flows to pay salaries and to meet various administrative needs; calls on the VP/HR and EU Member States to act urgently to make part of the frozen Libyan assets available to the Transitional National Council, under the authorisation and supervision of the UN Security Council Sanctions Committee, so that emergency needs can be met;

30. Calls on the Council and the VP/HR to take further initiatives to work out a solution to the conflict, taking into account the recent ICC arrest warrant issued against Colonel Gaddafi, his son Saif al-Islam Gaddafi and Abdullah al-Sanussi;

31.Welcomes the process of reforms in Morocco, and in particular the proposed constitutional reform that has been submitted to a referendum, as a step in the right direction for the opening-up of the system of governance, modernisation and democratisation; calls on the political parties in Morocco to play an active part in this process of change; stresses that the public, civil society organisations and political parties should remain at the centre of the continuing implementation process of the reforms, and notes that Morocco was the first country in the region to be granted Advanced Status in relations with the EU;

32. Takes note of the positive announcement by the President of Algeria on the launch of the process of democratisation and on ensuring the better governance of that country, including the lifting of the state of emergency and a planned constitutional reform; underlines the need to accelerate these initiatives and calls for a strong commitment from the Algerian authorities to this process of reforms, which should be inclusive and open to civil society;

33. Welcomes the commitment to political reforms of Jordan, and in particular the review of the Jordanian Constitution and the work of the National Dialogue Committee; commends the efforts made by the Jordanian authorities and emphasises the need for the concrete implementation of reforms; notes that the EU agreed to grant Jordan ‘Advanced Status’ partnership in 2010;
34. Stresses that the right to freedom of thought, conscience and religion is a fundamental human right which should be guaranteed by the authorities; urges the authorities to provide reliable and efficient protection for the religious denominations present in their countries and to ensure the personal safety and physical integrity of members of all religious denominations;

35. Strongly supports the Council’s position that the European Neighbourhood Policy will have to be equal to the new challenges in the Southern Neighbourhood; welcomes the commitment of the EU and Member States to accompany and support concrete efforts by the governments genuinely engaged in political and economic reforms, as well as civil societies; welcomes the setting-up of the Task Force for the Southern Mediterranean by the VP/HR;

36. Calls on the Commission and the Council to follow a differentiated approach based on the ‘more for more’ policy as set out in the Joint Communication of 25 May 2011 with regard to Southern Mediterranean countries, under which real progress on democracy, free and fair elections and, above all, human rights should be rewarded;

37. Calls on the European Union to continue to provide the necessary humanitarian aid to the displaced people of the region, many of whom now live as refugees on the borders of their countries;

38. Welcomes the ‘Deauville Partnership’ with the people of the region launched by the members of the G8; notes that the first ‘Partnership Countries’ will be Egypt and Tunisia; calls on the Council and the EU Member States to coordinate their efforts with the members of the G8 who stand ready to extend this Partnership to all countries in the region engaging in a transition towards free, democratic and tolerant societies;

* *

39. Instructs its President to forward this resolution to the Council, the Commission, the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy, the governments and parliaments of the Member States, the Government and Parliament of the Syrian Arab Republic, the Government and Parliament of the Republic of Yemen, the Government and Parliament of the Republic of Turkey, the Government and Parliament of the Kingdom of Bahrain, the Transitional National Council, the Government and Parliament of the Kingdom of Morocco, the Government and Parliament of the People’s Democratic Republic of Algeria, the Government and Parliament of the Kingdom of Jordan, the Government of the Arab Republic of Egypt, the Government of the Tunisian Republic, the Secretary-General of the GCC and the Secretary-General of the Union for the Mediterranean.

EU external policies in favour of democratisation

P7_TA(2011)0334

European Parliament resolution of 7 July 2011 on EU external policies in favour of democratisation (2011/2032(INI))

(2013/C 33 E/17)

The European Parliament,

— having regard to the Universal Declaration of Human Rights, in particular Article 21 thereof, and to the International Covenant on Civil and Political Rights, in particular Article 25 thereof,

— having regard to the UN Convention on the Rights of the Child,
— having regard to the 1979 UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),

— having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms and to the OSCE commitments agreed upon in Copenhagen in 1990 and at the 1999 Istanbul Summit, at which all OSCE participating States undertook to invite international observers, and specifically the Office for Democratic Institutions and Human Rights (ODIHR), to their elections,

— having regard to the African Charter on Human and Peoples' Rights and to the American Convention on Human Rights,

— having regard to ILO Convention 169 of 7 June 1989 on Indigenous and Tribal Peoples,

— having regard to Articles 2, 6, 8 and 21 of the Treaty on European Union,

— having regard to the Charter of Fundamental Rights of the European Union, proclaimed in Strasbourg on 12 December 2007,

— having regard to Articles 8, 9 and 96 of the ACP-EC Partnership Agreement (2000),

— having regard to the United Nations General Assembly resolution of 4 December 2000 entitled ‘Promoting and consolidating democracy’ (1), and to the latter’s resolution of 20 December 2004 entitled ‘Enhancing the role of regional, subregional and other organisations and arrangements in promoting and consolidating democracy’ (2),


— having regard to its resolution of 20 September 1996 on the Commission communication on the inclusion of respect for democratic principles and human rights in agreements between the Community and third countries (3), and to its resolution of 14 February 2006 on the human rights and democracy clause in European Union agreements (4),

— having regard to its resolution of 15 March 2001 on the Commission communication entitled ‘EU Election Assistance and Observation’ (5),

— having regard to its resolution of 25 April 2002 on the Commission communication entitled ‘The European Union’s role in promoting human rights and democratisation in third countries’ (6),

— having regard to its resolution of 8 May 2008 entitled ‘EU election observation missions: objectives, practices and future challenges’ (7),

— having regard to its resolution of 22 October 2009 on democracy building in the EU’s external relations (8),

— having regard to its resolution of 25 March 2010 on the effects of the global financial and economic crisis on developing countries and on development cooperation (9),

(1) A/RES/55/96.
(2) A/RES/59/201.
(8) OJ C 265 E, 30.9.2010, p. 3.
(9) OJ C 4 E, 7.1.2011, p. 34.
— having regard to its resolution of 21 September 2010 entitled ‘Poverty reduction and job creation in developing countries: the way forward’, in particular paragraphs 71, 72 and 73 thereof (1),

— having regard to its resolution of 25 November 2010 on corporate social responsibility in international trade agreements (2),

— having regard to its resolution of 25 November 2010 on human rights and social and environmental standards in international trade agreements (3),


— having regard to its resolution of 8 March 2011 entitled ‘Tax and development – cooperating with developing countries on promoting good governance in tax matters’ (5),

— having regard to its resolution of 5 April 2011 entitled ‘Migration flows arising from instability: scope and role of EU foreign policy’ (6),

— having regard to all the agreements concluded between the EU and third countries and to the human rights and democracy clauses contained therein,

— having regard to the Council conclusions of 18 May 2009 on ‘Support to democratic governance: towards an enhanced EU framework’,

— having regard to the two sets of Council conclusions on ‘Democracy support in the EU’s external relations’; those of 17 November 2009 and those of 13 December 2010 containing the 2010 progress report and list of pilot countries,

— having regard to the Commission/Council General Secretariat joint paper on ‘Democracy building in EU external relations’ (SEC(2009)1095),

— having regard to the joint communication to the European Council, the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions entitled ‘A partnership for democracy and shared prosperity with the southern Mediterranean’ (COM(2011)0200),

— having regard to the conclusions of the Copenhagen European Council of 22 June 1993,

— having regard to the thematic and geographic financial instruments of the European Commission concerning democratisation, human rights and human trafficking (such as AENEAS, its successor the Thematic Programme for Migration and Asylum, MIEUX, EIDHR, TAIEX, ENPI etc.),

— having regard to the report of 21 March 2011 by the Special Representative of the Secretary-General of the UN on the issue of human rights and transnational corporations and other business enterprises (7),

— having regard to the creation of a post of Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy (VP/HR) and an operational European External Action Service (EEAS) as of 1 January 2011,

having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on Foreign Affairs and the opinions of the Committee on Development and of the Committee on Women’s Rights and Gender Equality (A7-0231/2011),

A. whereas the EU treaties proclaim human rights and democracy as founding values of the Union and as principles and objectives of the Union’s external action, which the latter must promote as universal,

B. whereas democracy is the best safeguard of human rights and fundamental freedoms, tolerance of all groups in society and equality of opportunity for each person,

C. whereas democracy has evolved into a universal value, but democratic systems may vary in form and shape, as exemplified by the EU 27 Member States’ different but equally valid forms of democracy, shaped by history, culture and circumstances, and by the EU itself, representing a form of supranational democracy that is unique in the world; whereas no single model of, and no one blueprint for, democracy exists, but there is shared agreement on the essential elements of democracy,

D. whereas these are defined in two United Nations General Assembly resolutions (1),

E. whereas human rights and democracy are inextricably connected, and only in a democracy can individuals fully enjoy their human rights and fundamental freedoms; and whereas only when human rights are respected can democracy exist,

F. whereas the rule of law must prevail, ensuring equality before the law, recognition of private property rights and the absence of arbitrary interference by public authorities, both in law and in practice, and therefore requires public institutions to exercise their powers through transparent and accountable elected and public officials, with an independent and impartial judiciary,

G. whereas equality and non-discrimination are of vital importance; and whereas everyone is entitled to the enjoyment of all human rights without discrimination as to race, gender, sexual orientation, language, religion, political or other opinions, national or social origin, birth or other status; whereas democracy should ensure the rights of all, including the rights of persons belonging to minorities, of indigenous people and other vulnerable groups; whereas the ability of men and women to participate on equal terms in political life and in decision-making is a prerequisite for genuine democracy,

H. whereas democratic governance encompasses among other things the protection of human rights and fundamental freedoms, access to justice, an important role for parliaments and local authorities in decision-making, and transparent management of public finances; whereas the accountability of leaders and public officials to citizens is an essential element of democracy; whereas, in this context, the fight against corruption is crucial; and whereas democratic governance also entails civilian control of the security sector,

I. whereas all citizens have the right to vote periodically in free and fair elections and to run for public office,

(1) A/RES/55/96 and A/RES/59/201.
J. whereas freedom of opinion and expression on political, social, and economic matters, defined broadly, without the risk of state punishment, is a universal right, as is the possibility of seeking out diverse sources of information,

K. whereas all citizens have the right to form independent associations and organisations, including independent political parties and interest groups,

L. whereas political parties and the range of political views, interests and regional or communal affiliations that they represent are of vital importance; whereas political parties need to operate free from interference by government and executive officials; whereas elected representatives, whether they support or oppose the government, need the authority and resources to debate and approve legislation and national budgets, and to hold government to account for the conduct of public administration and the use of funds; whereas strong parliaments, as the public forum for negotiating peacefully competitive concepts of political and social order, and national legislative decision-making bodies are key to the experience of inclusive democracy,

M. whereas civil society organisations and non-state actors are a vital building block in a well-functioning democracy and play an important role in establishing a democratic culture deeply rooted in society; whereas they steer public demands and hold public authorities accountable for their actions,

N. whereas independent and diverse media are essential for ensuring that a wide range of opinions and viewpoints are expressed and communicated to the public; and whereas free access to information and communication and uncensored access to the internet (internet freedom) are universal rights and indispensable for ensuring transparency and accountability in public life,

O. whereas education in democratic values is important to sustaining democracy, as is age-appropriate participation in decision-making inside educational institutions,

P. whereas the EU institutions must take these essential elements of democracy as building blocks for the EU’s support in specific areas to assist third countries in following their own path to democracy,

Q. whereas these elements are reflected in the 2009 and 2010 Council conclusions on ‘Democracy support in the EU’s external relations’,

R. whereas EU accession to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) will strengthen the European system of human rights protection and boost the EU’s position vis-à-vis third countries,

S. whereas it is of the utmost importance to reaffirm that civil, political, economic, social and cultural rights are interdependent and mutually reinforcing, and that only the enforcement of all of these can contribute to the founding of a genuine democracy; whereas democracy is the best means of guaranteeing and protecting human rights and enabling sustainable economic development; whereas the active participation of civil society in, and its contribution to, processes of governance is of crucial importance, and while too often it remains neglected,

T. whereas, in its Agenda for Action on Democracy Support in EU External Relations, the Council stated that it wished to improve the coherence and effectiveness of its support, but whereas limited progress has been made in that respect,
U. whereas the Union has at its disposal a wide range of instruments for supporting democracy and human rights (including political, economic and trade agreements and partnerships, which contain clauses on human rights and democracy, the special incentive arrangement for sustainable development and good governance (GSP*), political dialogues, Common Foreign and Security Policy (CFSP) actions, European Security and Defence Policy (ESDP) missions, specialised financing instruments, twinning projects and observation missions); but whereas it is essential to develop a coherent and results-oriented Human Rights and Democracy policy based on a standard methodology tailored to the situation in each country, which removes existing inconsistencies and double standards in EU external policies in favour of democratisation and avoids introducing any new ones, pays particular attention to the specific needs of fragile and post-conflict situations and promotes democracy, human rights and development as interlinked objectives,

V. whereas the EU should be more sensitive to the social, political, economic and strategic realities of a country when deciding whether to award or withdraw trading preferences such as GSP*,

W. whereas the EU should intensify its efforts to promote democracy-related norms and elements through its activities within international organisations and should continue to promote effective implementation of the commitments and obligations undertaken within and through the fora in which EU Member States participate,

X. whereas major challenges persist with regard to monitoring and implementing the legally binding human rights clauses in the EU’s international agreements; whereas the suspension of an international agreement between the Union and its partner country in response to severe violations of human rights or democracy is a tool which exists to be used in certain situations; whereas, despite frequent breaches of the human rights and democracy clause and the failure of some third countries to honour the commitments made in the relevant international agreements, the governments of the countries in question are rarely penalised or held sufficiently accountable even in the face of gross human rights violations; whereas the EU’s failure to employ this tool consistently undermines the Union’s credibility as a strong and resolute actor on the international stage,

Y. whereas sanctions must be chosen in a fair, measured and intelligent way, and whereas the people of the country concerned must in no circumstances be the primary victims of these sanctions,

Z. whereas the Union has a genuine policy of incentives in this area with a view to providing leverage for reform, but whereas the full potential of these incentives has not been exploited, for political reasons and in particular because of a lack of consensus throughout the EU on the importance of promoting democracy and respect for human rights as opposed to other priorities; whereas in theory there is no structural or legal impediment to the coordinated use of the external financing instruments to support democratisation,

AA. whereas Resolution 63/168 adopted by the United Nations General Assembly on 18 December 2008 calls for a global moratorium on the use of the death penalty; whereas the death penalty is still used as a method of punishment in many countries of the world and in some cases even on minors,

AB. whereas the European Instrument for Democracy and Human Rights (EIDHR) is central to European policy by virtue of its focus on measures which cannot be implemented through bilateral cooperation instruments,
AC. whereas the EIDHR finances EU election observation missions, which are a crucial tool for interaction in the area of democratic consolidation, but whereas in many cases their recommendations have not been adequately followed up or implemented,

AD. whereas this situation may stem from a lack of political commitment on the part of the governments of the countries which host EU election observation missions and from the inability of the Commission and the Member States to ensure that the recommendations are followed up with specific support programmes, in particular for newly elected parliaments,

AE. whereas the European Parliament does not yet have at its disposal sufficiently detailed studies which would enable it to assess the scope of the support for democracy provided by the Union, including its Member States; whereas this is partly the result of transparency, document-access and consultation issues which have not yet been resolved by the Council,

AF. whereas the only way to achieve the objectives of genuine democratisation, genuine respect for human rights and genuinely better economic prospects for local populations is to apply a principle of full conditionality; whereas this principle of conditionality should be defined together with beneficiary countries, in close consultation not only with governments but also with civil society, and with due respect for the real needs of local populations,

AG. whereas political parties and freely and fairly elected parliaments are centrally important to each democracy and democratisation process, and whereas support for, and application of, the EIDHR has not yet corresponded to the importance of these actors in the past,

AH. whereas the work of UN Women is crucial to supporting women in their contribution to, and participation in, the process of democratisation,

AI. whereas there is widespread consensus among the EU institutions as to the multi-dimensional, complex and long-term nature of democracy, but whereas the Commission and the Member States have not taken the full electoral cycle into account when programming and implementing measures in support of democracy,

AJ. whereas in states undergoing democratisation, women and young children are particularly vulnerable to human trafficking, including for purposes of prostitution,

**Need for a paradigm shift**

1. Believes that only democracies based on the rule of law can function as a foundation for balanced structural partnerships between third countries and the EU that are also in keeping with the needs and interests of both parties and their respective populations;

2. Stresses that partnerships based on dialogue and consultation enhance ownership of democracy-building processes and elements of democratic governance; calls on all EU institutions to make greater efforts to use these dialogues in a more coherent, consistent and coordinated manner;

3. Considers that the EU’s role as a ‘soft power’ in the international system can only be consolidated if protection of human rights constitutes a real priority for it in its policy towards third countries;
4. Points out that it is essential, if the EU is to have a credible, consistent foreign policy and support the development of democracy, that an exemplary policy of respect for human rights and democracy is always pursued within the EU and its Member States, both now and in the future;

5. Considers that combating poverty and removing obstacles to countries’ development can make a decisive contribution to democratic processes;

6. Notes that the events unfolding in North Africa and the Middle East have demonstrated the limitations of a focus on security – notably the fight against irregular migration – and stability, which has failed to reduce poverty and social injustice; stresses that ‘security versus democracy’ is a false dilemma since there can be no human security in a society without a democratic and accountable government; believes that, although there has been economic growth, its benefits have not been distributed fairly; considers therefore that the question of social justice and the fight against inequalities has to become an essential objective of the Union’s external policy, as it is an indispensable factor in the building of a peaceful, prosperous and democratic society;

7. Highlights the need for a paradigm shift aimed at genuine consolidation of democracy on the basis of endogenous, sustainable and comprehensive development that benefits the population and respects the rule of law and basic human rights and freedoms; takes the view that the EU must encourage the establishment of an environment conducive to the development of a democratic society;

8. Stresses that democracy as a system of government provides mechanisms for allocating political power and managing conflict which are essential for stable and peaceful societies; notes, however, that democracy must be home-grown and cannot be artificially imposed by outside agents; argues that the EU, together with the international community, can play an active role in supporting democratic consolidation processes;

9. Considers that if a democratisation process is to be successful, it is crucial that it should address the social and economic development of the country concerned, in order to ensure that the inhabitants’ basic rights, such as the right to education, health and employment, are met;

10. Takes the view that the experience of democratic transition following the collapse of communist dictatorships in Central and Eastern Europe should be shared with the newly emerging democratic forces in North Africa and the wider Middle East; encourages the Commission and the EEAS to be more actively engaged in the unfolding democratisation process in this important neighbouring region; encourages European parties to develop party-to-party cooperation programmes with emerging partners in all neighbourhood regions;

11. Emphasises that priority must now be given to making greater and more vigorous practical use of the Union’s existing range of instruments and incentives, brought together in strategies tailored to the situation in each country, and to the elimination of inconsistencies and double standards in their implementation, which undermine perceptions of Europe and the latter’s ability to implement a strong, consistent external policy; stresses that such an approach requires a genuine change of policy whereby democracy, the rule of law and human rights become a cornerstone of the Union’s external policy, not only being translated into policy objectives, but also becoming part of its articulation and its very structure;

12. Calls for international agreements, country strategy papers, action plans, the GSP+ programme and all other contractual relations between the Union and third countries to be tightened up by means of more clearly worded clauses on human rights, democracy, the right of indigenous peoples to be consulted before decisions are taken, good governance, specific mechanisms in the event of non-compliance (based, at the very least, on those set out in the Cotonou Agreement), commitments coupled with specific, measurable, achievable, time-bound criteria for assessing the progress made, and a specific timetable for implementation; regrets that despite the human rights clauses in the Cotonou Agreement, the EU often turns a blind eye to
continuing systematic human rights violations committed by some Cotonou partner governments, adopting a 'business as usual' relationship; calls on the Commission to adopt consistent policies aimed at discouraging human rights violations, such as reducing the financial envelopes for governments that fail to respect democracy and human rights, thus denying them budget support, while increasing financial resources to strengthen civil society which bypass those governments;

13. Recalls that the objectives of the common commercial policy should be fully coordinated with the EU's overall objectives; points out that, pursuant to Article 207 of the Treaty on the Functioning of the European Union, the EU’s common commercial policy must be conducted 'in the context of the principles and objectives of the Union's external action', and that, pursuant to Article 3 of the Treaty on European Union, it must contribute, inter alia, to sustainable development, the eradication of poverty and the protection of human rights;

14. Emphasises the importance of constant monitoring of implementation of the agreements, and calls in this respect for the use of impact studies on human rights and democracy in addition to those on sustainable development in order to ensure continuing evaluation of the agreements;

15. Notes that democratic principles and values can be further encouraged by promoting ratification of the Rome Statute of the ICC, giving priority to the regions that are underrepresented, in order to reinforce its universal character and the fight against impunity, genocide, war crimes and crimes against humanity;

16. Deplores the fact that the Commission only very rarely implements mechanisms providing for the withdrawal of GSP+ preferences in the event of breaches of the related agreements; condemns the attitude adopted by the Commission, which, despite mutually corroborating reports from a number of international organisations, is refusing to open investigations into several countries which enjoy GSP+ status and which are strongly suspected of not observing agreements they have signed;

17. Recalls the firm position adopted by Parliament in favour of including in all free trade agreements legally binding clauses on social and environmental aspects and respect for human rights, taking as a minimum basis the list of conventions contained in the GSP+ Regulation;

18. Reaffirms that the European Parliament must supervise these aspects more closely; calls, therefore, on the Council and Commission to involve the European Parliament at every stage in the negotiation, conclusion, application and suspension of international agreements with third countries, including the process of defining the negotiating mandate for new agreements (in particular as regards the promotion of human rights), in dialogue within association councils or any other equivalent political body responsible for overseeing an agreement (as regards the honouring of commitments relating to democratisation), and in the process of deciding whether to launch consultation or suspend an agreement;

19. Considers that lessons must be learned from the past as regards the decision-making process on upgrading relations with partner countries; stresses that advanced status must only be granted if clear human rights and democracy requirements are met by partner countries; calls once again for a clear consultation mechanism which guarantees that Parliament will be kept fully informed at all levels of the negotiations;

20. Believes that the monitoring of the human rights situation in each country derives its legitimacy primarily from the United Nations framework, and reiterates the need for European countries to adopt a common position in all UN bodies; calls on the Commission and the EEAS, nevertheless, to present regular, comprehensive reports on third countries' implementation of commitments relating to democracy and human rights which are specifically included in agreements with the Union;
21. Reaffirms the continuous support of the EU for the work of the UN High Commissioner for Human Rights, UN Women and UNICEF; urges the Council, the Commission and the Member States to collaborate closely with the Human Rights Council;

22. Calls also on the EU, in such a sensitive field as democratisation, to base its strategies on a detailed analysis of the scope for reform in third countries and of the political will of leaders to engage in such a process, and to identify possible log jams in order to determine the most appropriate strategies; takes the view that this identification process should be based on regular exchanges of views with all democratic forces in a country, in order to ensure that it is rooted in mutual confidence and knowledge;

23. Notes that European aid channelled as budget support to authoritarian states does not always guarantee democratic development and that it is the outputs of aid, rather than the inputs, on which our assessment of aid effectiveness should focus;

24. Recommends, in the case of the most problematic partnerships, that the Union refrain from isolating the countries concerned, and that it instead conduct relations with them on the basis of appropriate, effective conditionality, serving as a genuine incentive to democratic reform, compliance with the rules of good governance and respect for human rights, and that the Union verify that such cooperation genuinely benefits the population; endorses the ‘more for more’ approach outlined in the communication entitled ‘A partnership for democracy and shared prosperity with the southern Mediterranean’; believes that, by the same token, the Union should not hesitate to reassign funds previously earmarked for countries whose governments fail to honour their commitments in the area of democratic governance to countries that have made more progress in meeting the commitments entered into within the Euro-Mediterranean Partnership and the Eastern Partnership, and calls for stronger emphasis on promoting democracy in partnership and neighbourhood policies;

25. Calls on the Union not to hesitate to impose appropriate, proportionate and smart sanctions targeted against the regime’s main authorities – while providing support for the population and increasing direct assistance to strengthen civil society – on countries which fail to honour their commitments with regard to human rights, good governance and democratisation, giving due consideration, before taking any action, to the impact of such sanctions on the populations of the beneficiary countries; stresses that cooperation with third countries must be based on the premise of equal, mutual respect between countries; calls for the creation of a financial support network, under the aegis of a Euro-Mediterranean Bank, to promote technical and entrepreneurial development initiatives;

26. Stresses, however, that this approach, together with the upcoming revised European Neighbourhood Policy (ENP), implies that the differentiated approach can only be a valuable and credible instrument if it requires the same human rights and democracy objectives for all ENP partner countries; stresses that the EU would lose its credibility once again by making a difference between ‘minimum standards’ to be respected by the most difficult countries and more ambitious standards for the most advanced countries;

27. Calls on the Council and the EEAS to mainstream the use of ‘smart’ sanctions, and threats thereof, as an instrument of EU human rights policy vis-à-vis the most repressive regimes; is convinced that selective punitive measures, such as asset freezes and travel bans imposed on high-ranking individuals, can and should be deployed in a way that does not impede further diplomatic engagement, bilateral trade, provision of EU assistance, and people-to-people contacts; reiterates, however, that in order to serve as an effective deterrent against human rights abuses, targeted sanctions should be applied systematically, consistently and with the broadest possible international cooperation;

28. Calls on the EU and Member States, whenever necessary, to put pressure on the governments of states known for their bad human rights track records, in order to improve the human rights situation in these states and thus accelerate the process of democratisation;
29. Would welcome the establishment of a forum bringing together national parliaments and the European Parliament to consider foreign policy issues, particularly regarding sensitive subjects such as human rights and democracy;

**Further developing the political dimension**

30. Considers that a global, coherent approach is required, based on targeted strategies relating to development, human rights, good governance, social inclusion, promotion of women and minorities and religious tolerance, as an additional instrument of EU foreign policy, and that this is essential as a means of combining the two approaches to promoting democracy, namely the developmental approach, which focuses on socio-economic progress for all and pro-poor growth, and the political approach, which supports political pluralism, parliamentary democracy and respect for the rule of law, human rights and basic freedoms and for a functioning civil society; stresses that such support for the political dimension in third countries must consist in pluralist capacity-building support – notably with regard to the independence and integrity of the judiciary and to good governance mechanisms, including the fight against corruption – and institutional support rather than interference; stresses the added value supplied by former Members of the European Parliament in the EU’s measures to promote democratisation;

31. Calls for improvements in the mainstreaming of human rights, democracy, democratic governance and the rule of law in all EU external relations activities, in line with existing and new commitments, both from an institutional perspective and in policy and geographical/thematic instruments;

32. Calls on the EU and the Member States to continue upholding the apolitical nature of humanitarian aid provided during the democratisation process;

33. Acknowledges the efforts made by the Union to support certain groups of actors working towards democratic reforms, including human rights defenders and independent media; stresses the need to strengthen political pluralism with a view to promoting democratic transition; calls for systematic support for new, freely and fairly elected parliaments, especially in countries in transition and those to which the EU has sent election observation missions; considers that such support should not only be financed automatically by the EIDHR but also by geographic instruments;

34. Welcomes the decision by the Commission and the High Representative to support the establishment of a European Endowment for Democracy (EED), as a flexible and expert tool to support political actors striving for democratic change in non-democratic countries and countries in transition, in particular within the EU’s eastern and southern neighbourhood; stresses that the future EED should complement the EIDHR and other democratisation tools and external financial instruments already in force, in terms of its objectives and financial and managerial modalities; supports the idea of decentralising ownership of the EU democracy support policy by twinning EU democracy actors with their counterparts in target countries; calls upon the EEAS, the Commission and the incoming Polish presidency to present a clear demarcation of the competences of a future EED in relation to these instruments and frameworks; insists on a right of scrutiny and involvement for the European Parliament in the process of setting up the EED and in its functioning, in the determination of annual objectives, priorities, expected results and financial allocations in broad terms, and in the implementation and monitoring of activities;

35. Encourages aid donors to treat democracy-building as a political and moral imperative, rather than simply a technical exercise, and to develop their local knowledge of the recipient countries so that aid can be targeted effectively to suit local circumstances;

36. Stresses that, in order to be completely legitimate and rooted in the will of the people, any strategy for promoting democracy must be based on dialogue with as wide a range of local actors as possible; urges the Council, the EEAS and the Commission to conduct wide-ranging and in-depth consultations with all stakeholders;
37. Welcomes the Instrument for Stability's effective, immediate and integrated response to situations of crisis and instability in third countries, and its assistance in establishing the necessary conditions for the implementation of the policies supported by the other instruments, namely the Instrument for Pre-Accession Assistance, the European Neighbourhood and Partnership Instrument, the Development Cooperation Instrument and the Economic Cooperation Instrument;

38. Stresses the importance, for the democratisation of any society, of protecting the rights of girls and women, including the rights to equal treatment and education; firmly supports all initiatives, incentives and capacity-building measures included in EU external policies with a view to promoting participation by women in decision-making at all levels in both the public and the private sphere; highlights the fact that equal participation by women and men in all spheres of life is a crucial element of democracy and that women's participation in development constitutes a fundamental and universally accepted value and precondition for socioeconomic development and good democratic governance; therefore urges the EU institutions to make gender equality a priority on their agenda for democracy promotion; stresses the importance of supporting defenders of women's rights and female parliamentarians, inter alia by developing gender budgeting capacities; in particular, calls on the EU to support financially, and provide capacity-building to, women's rights organisations and female political candidates; supports mainstreaming and reinforcing gender equality issues in thematic priorities and through the use of participatory approaches in programme design and development, with an emphasis on combating gender stereotypes and all forms of discrimination and violence against women;

39. Proposes that the mandate of the Election Coordination Group (ECG) be enlarged to include democracy support policies, without prejudice to the competencies of the relevant committees, and encourages the Office for the Promotion of Parliamentary Democracy (OPPD) to cooperate closely with the ECG;

40. Calls on the EEAS and the EU delegations to acknowledge the importance of increasing EU delegation officials' awareness of of democracy actions, particularly support for parliaments;

41. Underlines the importance of mainstreaming democratisation policies in all the European Parliament's work as well as in that of its delegations; also recognises the importance of global interparliamentary cooperation on democratisation policies through fora such as Parliamentarians for Global Action;

42. Emphasises the role that legitimate democratic political parties, genuine social movements and a free press can play in safeguarding the public interest by overseeing the transparency and accountability of governments, thereby enabling states to protect human rights and promote social and economic development;

43. Underlines the important role of third countries' civil society and parliaments in democratic budget oversight, and is convinced that any direct budget support provided by the Union has to be complemented by technical and political reinforcement of the oversight capacity of national parliaments; maintains that the Union should actively inform third countries' parliaments of the scope of EU cooperation; encourages the OPPD to take an active role in supporting parliaments with regard to democratic budgetary supervision; warmly welcomes, in this connection, the stepping up of cooperation with Eastern Partnership parliaments within the Euronest assembly, which held its constituent meeting on 3 May 2011, and has great expectations of such cooperation; draws attention to the significance of this European Parliament initiative as an important aspect of EU external policies in favour of democratisation;
44. Acknowledges the efforts made by the OPPD to assist and support parliaments in new and emerging democracies, as well as regional parliaments; acknowledges the OPPD’s contribution to building the institutional and administrative capacity of the parliaments of new and emerging democracies and its cooperation with UNDP and the IPU in this regard; encourages the OPPD to work towards a global consensus on basic standards of good parliamentary practice;

45. Considers it essential that, in future, civil society directly contribute to the processes of good governance and thus to supervising the implementation of agreements; urges, in this connection, the Commission and the Council to set up a structured monitoring mechanism of the EU’s international agreements which involves all components of third countries’ civil society, including non-state actors and social partners, in the process of evaluating the implementation of agreements;

46. Welcomes the Union’s decision to develop country strategies in the area of human rights; stresses that these should also cover aspects of democratisation, and calls for their prompt implementation so that the Union can rapidly prepare a joint analysis of the situation and needs in each country, together with an action plan stating how the full use of EU instruments will complement these strategies; stresses, at the same time, that the new strategies and the way in which they are implemented must result in the removal of existing inconsistencies and double standards in EU external policies in favour of human rights and democratisation and must not introduce any new ones; notes that the country strategy papers should shape all external policies pertaining to the country concerned, as well as shaping the use of EU instruments; calls for the country strategy papers to be made available to Parliament;

47. Calls on the EU to link future financial commitments to the progress made by third countries in the implementation of human rights strategies and real democratic progress;

48. Underlines the need to build strong coalitions with other actors on the world stage such as the African Union and the Arab League in order to promote democratic values more effectively; urges the EU to actively pursue these coalitions, in particular with the United States of America, in the realm of the common efforts of the EU and the USA to better coordinate their development policies;

49. Welcomes the creation of a Human Rights and Democracy Directorate within the EEAS, and calls on the Vice-President of the Commission/High Representative to ensure that the EU’s external representations each have a contact person for human rights and democracy;

50. Promotes the role of women as peacemakers in preventing and resolving conflicts, and seeks their active involvement for the benefit of society;

51. Supports regional programmes to protect the most vulnerable individuals, particularly for the benefit of children, women and older people;

52. Firmly believes that empowering individuals, notably women, and civil society through education, training and awareness-raising, while facilitating effective advocacy for all human rights, including social, economic and cultural rights, is an essential complement to the development and implementation of democratisation policies and programmes, for which the necessary funding should be ensured;
53. Calls upon the Council and Commission to develop a political strategy in relation to EU election observation missions, including submission of the political blueprint associated with each mission; demands that, two years after each mission, an assessment of the democratic progress made and those aspects needing further improvement be submitted during Parliament’s annual human rights debate with the High Representative/Vice-President; reaffirms the benefits of calling on former parliamentarians to make their competence and experience available to election observation missions or their follow-up;

54. Stresses, especially in view of the limited funds available, the importance of choosing priority countries for election observation missions on the basis of a mission’s potential for real impact on the promotion of genuine long-term democratisation; calls on the EEAS to adopt a highly selective approach to choosing such countries; points out that the Election Observation Coordination Group, which is consulted regarding the Union’s annual programme of election observation missions, has laid down detailed criteria in this area; calls for increased vigilance over compliance with the methodology and rules laid down at international level, particularly concerning the independence and effectiveness of the mission;

55. Stresses the importance, at the end of each election observation mission, of drawing up realistic and achievable recommendations; calls on the EU institutions and the Member States to align themselves with the conclusions, and for the Commission, the EEAS and the Member States to place special emphasis on supporting the implementation of such recommendations by means of cooperation; stresses the importance of proper monitoring of the implementation of such recommendations; requests that the dissemination and monitoring of these recommendations be entrusted to the EU Delegations, and the necessary means provided; stresses the need for close cooperation with the signatories of the Declaration of Principles for International Election Observation in order to strengthen the effectiveness of worldwide election work;

56. Considers that the EP’s standing delegations and the joint parliamentary assemblies should play a significantly enhanced role in following up the recommendations of election observation missions and analysing progress with regard to human rights and democracy;

57. Stresses the importance of a political support process which does not simply focus on the period immediately before and after elections, but is based on continuity; in this connection, applauds the valuable work carried out by political foundations;

58. Emphasises that governments must be held accountable for human rights violations, bad governance, corruption and misappropriation of national resources intended to be used for the benefit of the whole of society; in this context, calls on the Council, the Commission and the Member States to continue to make efforts to promote good governance and to fight impunity, including by demanding full cooperation from third countries with the International Criminal Court (ICC), and ensuring new agreements contain commitments to the Rome Statute;

59. Calls on the relevant EU institutions to retain and strengthen the EIDHR and improve and streamline other existing instruments and frameworks aimed at democracy support in third countries;

Supporting civil society

60. Stresses the need for a decentralised approach which complements the political dimension and is better able to take account of the realities of daily life in the countries concerned, by means of support for both local and regional organisations, which help to consolidate democracy by creating fora for dialogue and exchange of good practice with the Union and also with other partner countries in the same region;
61. Proposes developing a more open and active policy of supporting driving forces in society and those encouraging civic participation; suggests fostering the influence of civil society by means of specific programmes and by incorporating this concept into existing programmes;

62. Emphasises the need to enhance civil society capacities through education and awareness-raising, and to enable them to participate in political processes; stresses that a close partnership between the public and private sectors, as well as the empowerment of oversight institutions, including national parliaments, are key to promoting democracy;

63. Calls for targeted support for non-extremist social movements, genuinely independent media and political parties working for democracy in authoritarian states and new democracies, in order to promote public participation, support sustainable multi-party systems and improve human rights; takes the view that the European Instrument for Democracy and Human Rights should have a key role to play in this regard;

64. Calls for support for the broad participation of all stakeholders in countries’ development and encourages all parts of society to take part in democracy-building; acknowledges the vital role played by NGOs and other non-state actors in the promotion of democracy, social justice and human rights;

65. Supports the established practice of looking for innovative ways to involve civil society, political parties, the media and other non-governmental political players in the EU’s dialogues with third countries; reiterates its support for the freedom, protection and promotion of the media, for the reduction of the digital divide and for the facilitation of internet access;

66. Supports funding for civil society through the EIDHR and allocating funds to local NGO projects; suggests allocating progressively more funds if the situation in the country is such that there is a civil society and democracy on the road to success;

67. Underlines the fact that access to information and independent media is crucial to fostering public demand for democratic reforms, and therefore calls for increased support in the areas of promoting the freedom of ‘old’ and ‘new’ media, protecting independent journalists, reducing the digital divide and facilitating internet access;

68. Applauds steps taken by EU Member States in support of democratisation around the world, such as the programme for cooperation between Ombudsmen from Eastern Partnership countries 2009-2013 that was jointly set up by the Polish and French Ombudsmen with a view to enhancing the ability of Ombudsmen’s offices, government bodies and non-governmental organisations in Eastern Partnership countries to protect individual rights and build democratic states based on the rule of law; stresses the need for such action to be coordinated within the EU and for the EU institutions to draw on the experience gained in connection therewith;

69. Reaffirms the commitment of the EU to combating human trafficking, and calls on the Commission to pay special attention to states undergoing democratisation, since their populations are especially vulnerable to being subjected to human trafficking; asks for close cooperation between DG DEVCO, DG ENLAR, DG HOME and the EU Anti-Trafficking Coordinator on the matter;
70. Recognises the importance of cooperation between the EU and the Council of Europe on democratisation around the world; welcomes the commencement of joint EU and Council of Europe programmes in support of democracy, good governance and stability in Eastern Partnership countries;

* *

* *

71. Instructs its President to forward this resolution to the Council, the Commission, the EEAS and the governments and parliaments of the Member States.

Preparations for the Russian State Duma elections in December

P7_TA(2011)0335

European Parliament resolution of 7 July 2011 on the preparations for the Russian State Duma elections in December 2011

(2013/C 33 E/18)

The European Parliament,

— having regard to the Partnership and Cooperation Agreement between the European Union and the Russian Federation, which entered into force in 1997 and has been extended pending its replacement by a new agreement,

— having regard to the ongoing negotiations for a new agreement providing a new comprehensive framework for EU-Russia relations, as well as to the ‘Partnership for Modernisation’ initiated in 2010,

— having regard to its previous reports and resolutions on Russia and on EU-Russia relations, in particular its resolutions of 9 June 2011 on the EU-Russia Summit (1), of 17 February 2011 on the rule of law in Russia (2), of 17 June 2010 on the conclusions of the EU/Russia Summit (3), of 12 November 2009 (4) prior to the EU-Russia Summit held in Stockholm on 18 November 2009, and its resolutions of 17 September 2009 on the murder of human rights activists in Russia (5) and on external aspects of energy security (6),

— having regard to the EU-Russia human rights consultations, particularly the latest meeting held in this context on the 4 May 2011,

— having regard to the decision of the Russian Ministry of Justice on 22 June 2011 to refuse the application for official registration of the People’s Freedom Party (PARNAS), and to previous similar cases, which will make it impossible for these parties to participate in the elections,

— having regard to the statement by the High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the Commission (HR/VP), Catherine Ashton, of 22 June 2011 on party registration in Russia,

— having regard to the obligation to uphold democratic principles entailed by Russia’s membership in the Council of Europe and as a signatory of the European Convention of Human Rights,

— having regard to the outcome of the EU-Russia Summit held in Nizhny Novgorod on 9-10 June 2011,

— having regard to Rule 110(4) of its Rules of Procedure,

(1) Texts adopted, P7_TA(2011)0268.
(2) Texts adopted, P7_TA(2011)0066.
A. whereas political pluralism is a cornerstone of democracy and modern society, and a source of political legitimacy,

B. whereas on 12 April 2011 the European Court of Human Rights expressed its criticism over the cumbersome registration procedures for political parties in Russia, which do not comply with the European Convention on Human Rights,

C. whereas ODIHR observers visited Russia during the 2003 parliamentary election and advised that a standard OSCE mission should start work six weeks before the elections and comprise 60 long-term and 400 short-term observers,

D. whereas there remains concern about developments in the Russian Federation with regard to respect for and the protection of human rights and respect for commonly agreed democratic principles, rules and procedures; whereas the Russian Federation is a full member of the Council of Europe, the Organisation for Security and Cooperation in Europe and the UN, and has therefore committed itself to the principles of democracy and respect for human rights as promoted by these organisations,

1. Reaffirms its belief that Russia remains one of European Union’s most important partners in building strategic cooperation, sharing not only economic and trade interests but also the objective of acting closely together in the common neighbourhood, as well as at global level;

2. Reconfirms its resolution of 9 June 2011 on the EU-Russia Summit in Nizhny Novgorod;

3. Deplores the decision by the Russian authorities to reject the registration of the People’s Freedom Party (PARNAS) for the forthcoming Duma elections in December 2011; calls on the Russian authorities to guarantee free and fair elections and to withdraw all decisions and rules that oppose this principle;

4. Reaffirms its concerns regarding the difficulties faced by the political parties in registering for elections, which effectively constrain political competition in Russia, reduce the choice available to its electorate and show that there are still real obstacles to political pluralism in the country;

5. Emphasises that the State Duma elections should be based on the implementation of election standards set by the Council of Europe and the OSCE; urges the Russian authorities to allow the OSCE/Council of Europe long-term election observation mission and to cooperate fully with it from its earliest stage, and calls on the HR/VP to insist on the establishment of a mission for this purpose; calls for close cooperation by said observation mission with civil society and the monitoring groups;

6. Deplores the six-month travel ban imposed on Boris Nemtsov on 5 July 2011 and calls for it to be lifted immediately;

7. Expresses its concern about the proposal of a draft law, to be discussed in the Duma, which would enable Russian courts to ignore the rulings of the European Court of Human Rights in some areas, such an initiative contradicting the basic principles of the European Convention on Human Rights; welcomes the recent decision of the Russian Duma not to consider the draft law for the time being and hopes it will finally renounce that initiative;

8. Instructs its President to forward this resolution to the High Representative of the Union for Foreign Affairs and Security Policy/Vice President of the Commission, the Commission, the governments and parliaments of the Member States, the OSCE, the Council of Europe and the President, Government and Parliament of the Russian Federation.
Changes to Schengen

P7_TA(2011)0336

European Parliament resolution of 7 July 2011 on changes to Schengen

(2013/C 33 E/19)

The European Parliament,

— having regard to Article 2 TEU and Articles 3, 18, 20, 21, 67, 77 and 80 TFEU,

— having regard to Article 45 of the Charter of Fundamental Rights of the European Union,

— having regard to the Schengen Agreement of 14 June 1985,

— having regard to the Convention implementing the Schengen Agreement, of 19 June 1990,

— having regard to Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (1),


— having regard to the proposal for a Regulation of the European Parliament and of the Council on the establishment of an evaluation mechanism to verify application of the Schengen acquis (COM(2010)0624),

— having regard to the draft report on the proposal for a regulation of the European Parliament and of the Council on the establishment of an evaluation mechanism to verify application of the Schengen acquis (PE460.834),

— having regard to its resolution of 2 April 2009 on the application of Directive 2004/38/EC on the right to citizens of the Union and their family members to move and reside freely within the territory of the Member States (3),

— having regard to the Commission communication of 4 May 2011 on migration (COM(2011)0248),

— having regard to the conclusions of the Justice and Home Affairs Council of 9 June 2011,

— having regard to the conclusions of the European Council of 24 June 2011,

— having regard to Rule 110(4) of its Rules of Procedure,

A. whereas the creation of the Schengen area and the integration of the Schengen acquis into the EU framework is one of the greatest achievements of the European integration process, marked by the removal of controls on persons at internal borders and unprecedented freedom of movement for a population of more than 400 million people over an area of 4 312 099 km²,

(3) OJ C 137 E, 27.5.2010, p. 6.
B. whereas freedom of movement has become one of the pillars of EU citizenship and one of the foundations of the EU as an area of freedom, security and justice, enshrining the right to move and reside freely in all Member States while enjoying the same rights, protections and guarantees, including the ban on all forms of discrimination based on nationality,

C. whereas, according to the Schengen Borders Code and Article 45 of the EU Charter of Fundamental Rights, freedom of movement in the EU may, under specific conditions, also be extended to third-country nationals legally resident in the EU,

Recent events

D. whereas, especially in the last year, there has been a massive displacement of people from several North African countries; whereas the Schengen system has recently come under pressure, with some Member States considering the reintroduction of national border controls in the face of the sudden influx of migrants,

E. whereas on 4 May 2011 the Commission presented several initiatives for a more structured approach to migration, taking into account in particular the recent developments in the Mediterranean region and including a proposal on Schengen; whereas the European Council conclusions of 23-24 June 2011 ask the Commission to present a proposal on a 'safeguard mechanism' in order to respond to 'exceptional circumstances' that might put the Schengen cooperation at risk,

Schengen Borders Code/migration policy

F. whereas the Schengen rules governing the movement of persons across internal borders are defined in the Schengen Borders Code, Articles 23 to 26 of which set out measures and procedures for the temporary reintroduction of internal border controls, but whereas such controls, being of a unilateral nature, do not allow the collective EU interest to prevail,

G. whereas the creation of the Schengen area defined a common external border, which the EU has a joint responsibility to manage under Article 80 TFEU; whereas the EU has not yet fully complied with this requirement, although it has sought to establish effective controls and cooperation between customs, police and judicial authorities, to develop a common immigration, asylum and visa policy and to establish the second-generation Schengen Information System (SIS II) and the Visa Information System (VIS),

Evaluation mechanism

H. whereas the abolition of internal border controls requires the Member States to have complete trust in one another's capacity to implement fully the accompanying measures allowing such controls to be lifted; whereas the security of the Schengen area depends on the rigour and effectiveness with which each Member State carries out controls at its external borders, as well as on the quality and speed of exchanges of information via the SIS; whereas the inadequate functioning of any of these elements presents a risk to the security of the EU as a whole,

I. whereas it is essential to evaluate the Member States' compliance with the Schengen acquis in order to ensure the smooth functioning of the Schengen area; whereas the evaluation mechanism based on the Schengen Evaluation Working Group (SCH-EVAL), a purely intergovernmental body, has not proven sufficiently effective,
J. whereas the double standards currently operating in respect of Schengen, whereby high demands are placed on all candidate countries while those countries already belonging to the Schengen area are treated very complacently, should be abolished,

K. whereas a new evaluation mechanism is set out in the proposal for a Regulation establishing an evaluation mechanism to verify application of the Schengen acquis, which is currently being examined by the EP under the ordinary legislative procedure; whereas this mechanism already specifies procedures, principles and tools for supporting and assessing the Member States’ compliance with the Schengen acquis, including in the face of unforeseen events,

Co-decision

L. whereas Article 77 TFEU states that Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning, inter alia, the checks to which persons crossing external borders are subject in the absence of any controls of persons, whatever their nationality, when crossing internal borders,

Importance of Schengen

1. Stresses that free movement of people within the Schengen area has been one of the biggest achievements of European integration, that Schengen has a positive impact on the lives of hundreds of thousands of EU citizens, both by making border crossing convenient and by boosting the economy, and that freedom of movement is a fundamental right and a pillar of EU citizenship, the conditions for the exercise of which are laid down in the Treaties and in Directive 2004/38/EC;

Schengen governance/evaluation mechanism

2. Strongly recommends strengthening the Schengen governance in order to help ensure that each Member State can effectively control its section of the EU’s external borders, to reinforce mutual trust and to build confidence in the effectiveness of the EU system of migration management; firmly stresses the need for greater solidarity towards those Member States facing the greatest influx of migrants in order to help them deal with extraordinary situations of this nature;

3. Believes that the new Schengen evaluation mechanism currently being discussed within Parliament will be part of the answer, insofar as it ensures effective monitoring of any attempt to introduce illegal internal border controls and reinforces mutual trust; also believes that the new Schengen evaluation system already makes it possible to request and obtain support for Member States with a view to ensuring compliance with the Schengen acquis in the event of exceptional pressure on the EU’s external borders;

4. Stresses the need to ensure the proper implementation and application of the Schengen rules by the Member States even after their accession; points out that this also means helping, at an early stage, those Member States facing problems so that they can remedy their deficiencies with practical support from the EU agencies; is of the opinion that the existing evaluation mechanism should be reinforced and made into an EU system;

5. Believes that the effectiveness of the evaluation mechanism lies in the possibility of sanctions in the event that deficiencies persist and jeopardise the overall security of the Schengen area; recalls that the primary purpose of such sanctions is dissuasion;
Schengen Borders Code

6. Believes that the necessary conditions for the temporary reintroduction of internal border controls in exceptional circumstances are already clearly set out in Regulation (EC) No 562/2006 (Schengen Borders Code), Articles 23, 24 and 25 of which provide for the possibility of reintroducing internal border controls only where there is a serious threat to public policy or internal security; calls on the Commission to present an initiative aimed at defining the strict application of these Articles by the Member States;

7. Is therefore of the opinion that any new additional exemptions from the current rules, such as new grounds for reintroducing border controls on an 'exceptional' basis would definitely not reinforce the Schengen system; points out that on no account can the influx of migrants and asylum seekers at external borders per se be considered an additional ground for the reintroduction of border controls;

8. Strongly regrets the attempt by several Member States to reintroduce border controls, which clearly jeopardises the very spirit of the Schengen acquis;

9. Is of the opinion that the recent problems with Schengen are rooted in a reluctance to implement common European policies in other fields, most crucially a common European asylum and migration system (which would include tackling irregular immigration and fighting organised crime);

10. Reiterates that it is of the utmost importance to make progress in this respect, given that the deadline for establishing a common European asylum system has been set for 2012;

11. Reaffirms its firm opposition to any new Schengen mechanism with objectives other than those of enhancing freedom of movement and reinforcing EU governance of the Schengen area;

Co-decision

12. Stresses that any attempt to move away from Article 77 TFEU as the proper legal basis for all measures in this field will be considered to be a deviation from the EU Treaties, and reserves the right to use all available legal remedies if necessary;

* *
* *

13. Instructs its President to forward this resolution to the Council, the Commission, the Council of Europe and the governments and parliaments of the Member States.
Parliamentary cooperation in the field of CFSP/CSDP

P7_TA(2011)0337

European Parliament resolution of 7 July 2011 on the European Parliament's approach to implementing Articles 9 and 10 of Protocol 1 to the Lisbon Treaty as regards parliamentary cooperation in the field of CFSP/CSDP

(2013/C 33 E/20)

The European Parliament,

— having regard to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and in particular to Articles 9 and 10 of Protocol 1 thereto on the role of national parliaments in the European Union,

— having regard to its position of 8 July 2010 on the proposal for a Council decision establishing the organisation and functioning of the European External Action Service (1) and to the annexed declaration by the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy (VP/HR) on political accountability (2),

— having regard to its resolution of 11 May 2011 on the annual report from the Council to the European Parliament on the main aspects and basic choices of the Common Foreign and Security Policy (CFSP) in 2009, presented to the European Parliament in application of Part II, Section G, paragraph 43 of the Interinstitutional Agreement of 17 May 2006 (3), and in particular to paragraph 18 of that resolution,

— having regard to its resolution of 11 May 2011 on the development of the Common Security and Defence Policy (CSDP) following the entry into force of the Lisbon Treaty (4), and in particular to paragraphs 12, 13 and 14 thereof,

— having regard to the Conference of Speakers of the Parliaments of the EU held in Brussels on 4 and 5 April 2011,

— having regard to the contribution and conclusions of the XLV COSAC meeting held in Budapest from 29 to 31 May 2011,

— having regard to Rule 110(2) of its Rules of Procedure,

A. whereas Article 9 of Protocol 1 stipulates that the organisation and promotion of any form of effective and regular interparliamentary cooperation must be determined jointly by the European Parliament and national parliaments,

B. whereas, as a member of the College of Commissioners, the VP/HR is subject to a vote of consent by the European Parliament,

(2) Ibid, Annex II.
(3) Texts adopted, P7_TA(2011)0227.
C. whereas the European Parliament codecides with the Council on the EU budget for external action, including the budget for CFSP and CSDP civilian missions and the administrative costs arising from EU military coordination,

D. whereas, in accordance with the Treaty, the European Parliament is regularly consulted on the main aspects and basic choices of the CFSP and whereas its consent is required in order to translate EU strategies into laws and to conclude international agreements, including agreements relating mainly to the CFSP, the one exception being agreements relating solely to the CFSP,

1. Recalls that the European Parliament is a source of democratic legitimacy for the CFSP and the CSDP, over which it exercises political scrutiny;

2. Is convinced at the same time that strengthened interparliamentary cooperation in the area of CFSP and CSDP would reinforce parliamentary influence over the political choices made by the EU and its States, owing to the European Parliament’s responsibilities for the common policies of the Union, including the CFSP/CSDP, and to the prerogatives each national parliament enjoys in national security and defence policy decisions;

3. Regrets the lack of agreement at the EU Speakers’ Conference of 4 and 5 April 2011 and looks forward to supporting the efforts of the Polish Presidency to reach an agreement between the European Parliament and national parliaments on new forms of interparliamentary cooperation in this field;

4. Confirms its position as set out in the relevant reports, and in particular:

— that, in accordance with Article 9 of Protocol 1 of the Lisbon Treaty, ‘the European Parliament and national Parliaments shall together determine the organisation and promotion of effective and regular interparliamentary cooperation within the Union’, in order to promote co-ownership in the organisation and exercise of effective and regular interparliamentary cooperation;

— that its own representation in any new form of interparliamentary cooperation should be of a scale which reflects the range and importance of its role in scrutinising CFSP/CSDP, recognises the common European nature of such policies and satisfies the need to reflect the political and geographic pluralism of the House;

— that, in the pursuit of added value as well as in order to contain costs, the Secretariat and premises of the European Parliament are in principle available to support the organisation and hosting of the interparliamentary meetings;

— that the conclusions of the interparliamentary meetings shall not be binding on the participating parties;

5. Instructs its President to forward this resolution to the Polish Presidency of the Conference of Speakers of the EU Parliaments, the Presidents of the parliaments of the EU and the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy.
Scheme for food distribution to the most deprived persons in the Union

P7_TA(2011)0338

European Parliament resolution of 7 July 2011 on the Scheme for food distribution to the most deprived persons in the Union

(2013/C 33 E/21)

The European Parliament,

— having regard to Article 27 of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (1) and to Commission Regulation (EC) No 983/2008 of 3 October 2008 adopting the plan allocating to the Member States resources to be charged to the 2009 budget year for the supply of food from intervention stocks for the benefit of the most deprived persons in the Community (2),


— having regard to the judgment of the Court of Justice of the European Union (CJEU) in Case T-576/08,

— having regard to Commission Implementing Regulation (EU) No 562/2011 of 10 June 2011 adopting the plan allocating to the Member States resources to be charged to the 2012 budget year for the supply of food from intervention stocks for the benefit of the most deprived persons in the European Union and derogating from certain provisions of Regulation (EU) No 807/2010 (3),

— having regard to its position of 26 March 2009 on the proposal for a Council regulation amending Regulation (EC) No 1290/2005 on the financing of the common agricultural policy and Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) as regards food distribution to the most deprived persons in the Community (4),

— having regard to Parliament’s declaration of 4 April 2006 (5) on this scheme, to its resolution of 22 May 2008 (6), to its position of 26 March 2009 and to Commission proposal COM(2010)0486,

— having regard to Council Recommendation 92/441/EEC on common criteria concerning sufficient resources and social assistance in social protection systems,

— having regard to Rule 110(4) of its Rules of Procedure,

A. whereas the Commission estimates that 43 million people in the EU are at risk of food poverty,

— having regard to Article 27 of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (7) and to Commission Regulation (EC) No 983/2008 of 3 October 2008 adopting the plan allocating to the Member States resources to be charged to the 2009 budget year for the supply of food from intervention stocks for the benefit of the most deprived persons in the Community (8),


— having regard to the judgment of the Court of Justice of the European Union (CJEU) in Case T-576/08,

— having regard to Commission Implementing Regulation (EU) No 562/2011 of 10 June 2011 adopting the plan allocating to the Member States resources to be charged to the 2012 budget year for the supply of food from intervention stocks for the benefit of the most deprived persons in the European Union and derogating from certain provisions of Regulation (EU) No 807/2010 (9),

— having regard to its position of 26 March 2009 on the proposal for a Council regulation amending Regulation (EC) No 1290/2005 on the financing of the common agricultural policy and Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) as regards food distribution to the most deprived persons in the Community (10),

— having regard to Parliament’s declaration of 4 April 2006 (11) on this scheme, to its resolution of 22 May 2008 (12), to its position of 26 March 2009 and to Commission proposal COM(2010)0486,

— having regard to Council Recommendation 92/441/EEC on common criteria concerning sufficient resources and social assistance in social protection systems,

— having regard to Rule 110(4) of its Rules of Procedure,

A. whereas the Commission estimates that 43 million people in the EU are at risk of food poverty,
B. whereas the economic and financial crisis and soaring food prices are putting more people at risk of food poverty,

C. whereas the Commission estimates that 80 million people in the EU are at risk of poverty and that due to the financial and economic crisis the number of people affected by poverty could increase; whereas one of the five priorities of the EU 2020 Strategy is to reduce poverty and social exclusion in the European Union,

D. whereas the Scheme for food distribution to the most deprived persons in the Union, set up in 1987 under the common agricultural policy (CAP), provides currently food aid for 13 million people suffering from poverty in 19 Member States and has distribution chains involving some 240 food banks and charities,

E. whereas the EU intervention stocks have been reduced to a large extent,

F. whereas the scheme increasingly relied on market purchases as a consequence of the reframing of the CAP, which had led to reduced levels of intervention stocks, the traditional source of supplies for the scheme,

G. whereas the CJEU has ruled that Article 2 of Regulation (EC) No 983/2008, dealing with additional purchases of food on the market, should be annulled,

H. whereas following the CJEU ruling the Commission proposal for 2012 includes a sudden reduction in funding from EUR 500 million in 2011 to EUR 113 million in 2012,

I. whereas the CAP and its related schemes and the Structural Funds, including the European Social Fund (ESF), will enter a new funding period in 2014,

1. Stresses that halting an existing and functioning aid scheme abruptly without prior notice or preparation has a major impact on the most vulnerable EU citizens and is not a reliable funding practice;

2. Calls, therefore, on the Commission and Council to develop a transitional solution for the remaining years of the funding period (2012 and 2013) so as to avoid an immediate and sharp cutback in food aid as a result of the reduction in funding from EUR 500 million to EUR 113 million and ensure that people dependent on food aid do not suffer from food poverty;

3. Calls on the Commission and the Council, therefore, to find a way of continuing the MDP scheme for the remaining years of the funding period (2012 and 2013) and the new funding period 2014 - 2020 on a legal basis that cannot be contested by the CJEU, maintaining the EUR 500 million annual financial ceiling so as to ensure that people dependent on food aid will not suffer from food poverty;

4. Calls in the long term on all stakeholders to assess carefully the appropriateness of the food aid scheme, in particular as an element of the CAP, in the context of the new funding period as from 2014;
5. Notes the announcement by Commissioner Ciolos on 29 June 2011 of the proposal to transfer the most deprived persons scheme away from the CAP, and notes that appropriate funding must be ensured;

6. Recalls that programmes for deprived persons have to be implemented in the light of the proceedings before the Court of First Instance, as the Commission rightly pointed out in its statement of estimates for the budget year 2012; notes that the Court, in its Judgment T-576/08 of 13 April 2011, stated that only the supply of food from intervention stocks shall be covered by this programme, as opposed to causing expenditure by buying food supplies on the market; considers that, as a result of the Judgment, Article 2 of Regulation (EC) 983/2008 cannot be used as a legal basis for food distribution for the needy;

7. Asks the Commission to propose a modification of the regulation for the most deprived persons scheme in order to find a solution to the current deadlock on this issue at Council level; considers that the most appropriate legal basis should be found for the next financial programming period;

8. Stresses that the right to food is a basic and fundamental human right and is achieved when all people, at all times, have physical and economically-feasible access to suitable, safe and nutritious food to meet their dietary needs and preferences for an active and healthy life; points out that poor nutrition has a negative influence on health;

9. Underlines that high-quality and healthy nutrition is especially important for children and contributes towards satisfying their developmental and educational needs;

10. Welcomes the initiative of the European Commission and of the agencies of the United Nations to put up a common front against food insecurity and malnutrition throughout the world;

11. Stresses that farmers need to be guaranteed a decent and fair income and remuneration for their work; points out that farmers in many regions are struggling financially; urges the Commission to address the issue of rural poverty and collapse of rural communities;

12. Believes that, in the context of enhancing food security and creating sustainable production and supply systems, minimising food waste remains crucial in the long term;

13. Stresses the importance of providing aid at European level to the most vulnerable and deprived members of society, especially in light of the current economic, financial and social crisis;

14. Recalls that one of the five objectives of the EU 2020 Strategy is the reduction of poverty and social exclusion in the European Union; stresses that in order to combat poverty, an integrated policy is needed linking decent incomes and working and living conditions and access to all fundamental rights: political, economic, social and cultural; considers that food-aid measures could be one element in a larger integrated policy to combat poverty; acknowledges that one side effect of poverty is often malnutrition and food poverty;

15. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.
Progress on mine action

P7_TA(2011)0339


(2013/C 33 E/22)

The European Parliament,

— having regard to the Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (henceforth the Mine Ban Treaty) of 3 December 1997, which entered into force on 1 March 1999,

— having regard to the 1980 Convention on Certain Conventional Weapons (CCW) and the protocols thereto, especially Amended Protocol II on Landmines, Booby-Traps, and Other Devices and Protocol V on Explosive Remnants of War,

— having regard to its most recent resolutions of 22 April 2004 on anti-personnel landmines (\(^1\)), of 7 July 2005 on a mine-free world (\(^2\)), of 19 January 2006 on disability and development (\(^3\)), of 13 December 2007 on the 10th anniversary of the Mine Ban Treaty (\(^4\)), and of 6 September 2001 on measures to promote a commitment by non-State actors to a total ban on anti-personnel landmines (\(^5\)),


— having regard to the ‘Cartagena Action Plan 2010-2014: Ending the Suffering Caused by Anti-personnel Mines’ adopted at the Second Review Conference of the 1997 Ottawa Convention, which took place in Cartagena, Colombia, from 30 November to 4 December 2009,

— having regard to the Commission Guidelines on European Community Mine Action 2008-2013,

— having regard to its numerous resolutions on cluster munitions, most recently that of 8 July 2010 (\(^8\)), and on the Oslo Convention on Cluster Munitions signed by 94 states, which came into force on 1 August 2010,

— having regard to the 2009 United Nations Mine Action Service Report,

— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on Foreign Affairs (A7-0211/2011),

\(^{\text{(1)}}\) OJ C 104 E, 30.4.2004, p. 1075.
\(^{\text{(2)}}\) OJ C 157 E, 6.7.2006, p. 473.
A. whereas the EU has been actively engaged in mine action, especially since its Joint Action of 1995, and is committed to the goal of a total ban on and the elimination of anti-personnel landmines (APL) worldwide; whereas the EU is a leading supporter of and contributor to mine action, which is among its human rights, humanitarian and development aid priorities,

B. whereas 'mine action' includes survey, detection, marking and clearance of anti-personnel landmines (APL) and other explosive remnants of war (ERW) – including abandoned ordnance (AO), unexploded ordnance (UXO), cluster munition remnants and improvised explosive devices (IED); as well as mine and ERW risk education and training programmes especially for children, victim assistance, stockpile destruction and advocacy aimed at promoting the universalisation of relevant international conventions and treaties in order to put an end to the production, trade and use of APL,

C. whereas the persistence of APL and ERW, including IED and cluster munitions remnants, in addition to inflicting loss of human life, especially among civilian populations, represents a serious obstacle to post-conflict reconstruction in afflicted countries, and may serve as raw material for IED,

D. whereas, by 1 December 2010, 156 States had formally agreed to be bound by the Mine Ban Treaty,

E. whereas in 1999 there were an estimated 18 000 casualties from APL and other ERW and by 2009 this had fallen to around 4 000, according to the Landmine and Cluster Munition Monitors; whereas 70 % of these casualties are estimated to be civilians, a third of whom are children, and whereas so many people worldwide continue to be afflicted by APL and ERW,

F. whereas only two governments – in Burma/Myanmar and Libya – have recently laid APL, no exports or state transfers of APL have been recorded, and only three states are thought to be continuing their manufacture, but insurgent groups such as the FARC are continuing to produce their own devices,

G. whereas most armed forces have ceased using APL, but various armed non-state actors continue to use APL, along with victim-activated IED and cluster munitions,

H. whereas more than 90 countries are still affected by APL and other ERW to some degree but the most seriously afflicted are Afghanistan, Colombia, Pakistan, Myanmar, Cambodia and Laos,

I. whereas, in the first instance, it is the responsibility of affected states to address the problems of APL and ERW on their territory before, during and after a conflict,

J. whereas little military manpower has been committed to mine clearance in many afflicted countries where conflict has ceased but where large local armed forces remain,

K. whereas the need for victim assistance will continue long after the APL threat has been removed,
L. whereas the international community has responded magnificently to the challenge of the APL tragedy, contributing some USD 3,9 billion to mine action between 1999 and 2009, and whereas the lead contributors have been the US (USD 902,4 million), the EC (USD 521,9 million), Japan (USD 336,9 million), Norway (USD 342,7 million), Canada (USD 259,8 million), the UK (USD 220,6 million), Germany (USD 206,9 million) and the Netherlands (USD 201,9 million),

M. whereas the perception of a mine threat is often greater than the reality and it has been calculated that only 2 % of land that is subject to the costly process of physical ‘clearance’ is actually contaminated with APL or other ERW; whereas there are clear indications on inefficient use of allocated funds for mine action; noting further that better survey methodologies and understanding of survey results can and have in recent years dramatically reduced the need for full clearance of suspected hazardous areas,

N. whereas the techniques and technology of explosive detection, in spite of much investment, have not greatly advanced and there is a new imperative, given the increasing use of IED,

O. whereas risk reduction education is a key element in helping people, especially children, in mine-affected regions to live more safely and to learn about the dangers of APL and ERW,

**Global efforts on mine action**

1. Applauds the progress that has been made in mine action over the past decade but emphasises that efforts need to be refocused and intensified if the APL threat is to be eliminated within a finite period;

2. Strongly welcomes the fact that 156 countries have now signed and ratified the Mine Ban Treaty, including 23 EU Member States, but regrets that some 37 countries have still not signed; urges all non-party states to accede to the Mine Ban Treaty and the Convention on Cluster Munitions; urges, in particular, those EU Member States that have yet to accede to the Treaty to do so and encourages greater synergy between the various international instruments;

3. Strongly welcomes the fact that 56 countries have now joined the Convention on Cluster Munitions, including 15 EU Member States; welcomes, also, the adoption of the 2010 Vientiane Declaration and its action plan; calls on the EU and its Member States to promote the universalisation and implementation of both the MBT and the CCM;

4. Supports fully the implementation of the Cartagena Action Plan, that provides for a detailed five-year plan of commitments in all areas of mine action, and calls on the Council to adopt a decision in support of this Plan as soon as possible;

5. Stresses the need to find synergy between the various dimensions of mine action, with special regard to humanitarian and development aspects, also by increasing local ownership of and participation in related projects, in order to better respond to the needs of the people directly affected;
6. Recognises the great contribution made by international donors, international agencies and NGOs to combating the scourge of APL and the dedication and sacrifice of both international and local personnel;

7. Welcomes the fact that a further seven countries announced completion of their clearance activities in 2009 and 2010, bringing the total number of states having done so to 16;

8. Recognises that the US has been the leading global sponsor of mine action, strongly supporting international programmes to clear mined areas and to help victims, and has already complied with most of the key provisions of the Mine Ban Treaty, and therefore encourages the US to accede to the Treaty;

9. Urges Russia to accede to the Mine Ban Treaty, noting that Russia, previously a major source of APL, long recorded as a mine user, was removed from the 2010 list after declaring that it had halted deployment;

10. Reminds Treaty states of their international obligation to destroy APL stockpiles; is concerned that China and Russia have the largest stockpiles of APL with an estimated 100 million and 24.5 million respectively; urges the EU to include in the negotiations with Russia and China the issue of destroying their existing stockpiles and rapid accession to the Mine Ban Treaty, and calls furthermore for the EU to continue promoting the universalisation of the Mine Ban Treaty and other relevant conventions, also by including the issue of mine action in its political dialogue and agreements signed with third countries;

11. Deplores the continued use of APL by insurgent and terrorist groups and other non-state actors; in this regard, points to the situation in Colombia, where the FARC is estimated to be the most prolific user of APL among rebel groups anywhere in the world;

**Case study – Afghanistan**

12. Notes that the widespread and indiscriminate use of APL during more than three decades of conflict has meant that Afghanistan is one of the world's most heavily contaminated countries, further afflicted by the use of IED by the Taliban;

13. Deplores the fact that, despite more than a decade of clearance by the world's largest and most highly funded humanitarian demining programme, Afghanistan still has one of the highest casualty rates in the world, and expresses grave concern that of 508 APL and other ERW casualties between 1 March 2009 and 1 March 2010, over half were children;

14. Recognises that the ongoing conflict in many areas renders mine clearance exceptionally hazardous and that the Taliban has targeted UN offices and both local and international personnel;

15. Notes that some USD 80 million were donated by the international community for mine action in Afghanistan in 2009 and that since 2002 the EU's financial and technical assistance,amounting to EUR 89 million, has helped to clear approximately 240 km$^2$ of APL in the country, making land economically accessible and enabling properties to be reconstructed and families to return home; underlines the need for more focus on victim assistance and mine risk education;
16. Welcomes the fact that operations rely almost exclusively on some 10 000 local personnel with international support, strengthening the ownership component of the process;

17. Expresses concern at the apparent unwillingness of the Afghan Government at central and provincial levels to assume responsibility for mine action;

**Case study – Angola**

18. Some 30 years of conflict have meant that Angola, like Afghanistan, is one of the most APL-afflicted countries;

19. Notes that the CNIDAH has been well established as the national authority for mine action but donor countries have little leverage, and that the government has access to its own substantial financial resources, particularly from oil revenue;

20. Is deeply concerned by the many structural problems highlighted by the Commission’s 2009 evaluation, for example the inefficiencies of the EUR 2.7 million spent on 22 personnel at the CNIDAH; urges the EU to monitor, control and evaluate the effective use of money and to ensure that the allocated budget is used in an efficient and targeted manner to achieve the necessary result of cleared land;

21. Regrets the fact that, despite the completion of a national survey in 2007 and a major mine action programme, the extent of the APL/ERW threat is still not known with confidence and that, at current rates of progress, it will take 100 years to clear the country; underlines the urgent need to establish a different relationship between government and international donors, to devote more national resources to the problem, introducing improved area reduction techniques and increased national mine clearance capacity, so that land can be more rapidly released for productive use;

**Case study – Bosnia**

22. Regrets that, 16 years after the end of conflict in Bosnia and Herzegovina (BiH), there is still a high level of APL/ERW contamination, with about 11 000 minefields and an estimated 220 000 active APL and ERW throughout the country, representing a serious challenge to security and an impediment to economic and social development;

23. Notes the improvements in mine action management through the establishment of the BiH Mine Action Centre, but regrets that BiH has fallen far behind the funding and clearance targets laid out in its extension request under the Mine Ban Treaty;

24. Recognises that resource mobilisation poses major challenges for the government and that the Mine Action Strategy 2009–2019 has yet to be adopted; regrets that the government’s principal body in charge of mine action, the Demining Commission, has not met with donor representatives based in Sarajevo for some years and that its members have not attended international meetings of the Mine Ban Treaty since the treaty’s Second Review Conference in 2009; urges the government to take full ownership of mine action to ensure its strategic planning and management;
25. Congratulates the Slovenian-based International Trust Fund for Demining and Mine Victims assistance (ITFD) on its contribution to mine action in BiH, and emphasises the need for its focus to remain on BiH until that problem is fully overcome;

26. Notes that 33 accredited demining organisations operate in BiH but that greater use could be made of military manpower;

27. Applauds EUFOR ALTHEA and its Mines Risk Education Instructors for having provided training to several thousands of people, and encourages them to continue their efforts;

**Victim assistance**

28. Recognises that the lives and livelihoods of APL and other ERW casualties are marked forever, that they are mainly civilian, often come from the poorest people in some of the poorest countries and require targeted and continuing medical and social support and assistance over many years, even when there are no further casualties;

29. Welcomes the fact that, through mine action, the rate of casualties has been drastically reduced but much regrets the fact that civilians made up 70% of all casualties in 2009 and especially deplores the high proportion of child casualties;

30. Regrets that landmine survivors or their representative organisations participated in the implementation of victim assistance in less than half of the affected countries, and agrees that such survivors' views and rights must be fully respected; urges the international community and the EU to significantly increase the proportion of its funding available for victim assistance but not at the expense of mine clearance;

**Progress in mine detection and survey techniques**

31. Recognises that local people in mine-afflicted areas are the best initial indicators of where a mine threat exists;

32. Notes that - even if advances have been made in mine detection technology, training and techniques - rapid, reliable, cost effective solutions remain elusive and that techniques using manual probes inevitably remain in widespread use; acknowledges the important contribution of the UN International Mine Action Standards (IMAS) in enhancing the safety and efficiency of mine action by setting standards and providing guidance, as well as the role of the UN Mine Action Service in coordinating mine action efforts;

33. Notes that the most fruitful prospects for technical advances in detection lie in tailor-made methods based on the combination of a number of technologies, in order to avoid casualties and perform demining with minimal environmental impact;

34. Recognises that properly conducted survey is only as valuable as the accuracy and efficiency of subsequent reporting and that donors need to ensure that their funding of such activity is well spent;
35. Calls for the Commission to allocate further research funding to mine survey and detection technologies and techniques, in close international cooperation with those specialising in this field, and to use funds available in the context of Framework Programme 7 and the Security Research sector;

Towards an end to the APL threat

36. Is concerned that some of the countries which suffer from APL affliction are relying too much on international financial assistance for mine action and not deploying enough of their own resources in manpower or revenue; calls on the EU to ensure greater involvement of the affected countries and to remind those countries of their responsibilities, and calls for the situation in Angola, in particular, to be scrutinised in order to mobilise a greater national contribution;

37. Is concerned at the diversion of resources into 'mine clearance' in areas where there is little threat in humanitarian or economic development terms, or where there is a perception of a threat but no reality, to the detriment of a focus on areas of high threat to life; calls for greater emphasis on improved planning and management of operations and more accurate initial survey and reporting of suspect areas;

38. Expresses concern at the poor security and control of military magazines holding weapons and explosive ordnance, including landmines, particularly in countries in revolt and disorder;

39. Believes that the international community should focus its attention on those countries least able to help themselves and on mine clearance and assistance to victims, and that the aim should be to move more rapidly to a situation where countries can be declared free of mine threat to life and economic development;

40. Urges donors to provide funding with more effective targeting, monitoring and evaluation;

41. Believes that efforts should be concentrated on generating and developing greater local capacity, this may include specially trained local personnel on a structured and professional basis or greater use of military units in post conflict situations, specifically trained for humanitarian demining;

42. Calls for improved national planning, drawing on best practice, and enhanced international coordination of mine action that more effectively targets resources to areas of priority need while maintaining light bureaucratic structures;

43. Regrets that there is no reliable census of the current number of victims of APL/ERW/JED and urges that a proper analysis be made as a guide to targeting resources more effectively, with greater consideration being given to the needs of victims and their families;

44. Regrets that, since the elimination of the EU’s dedicated budget line in 2007, the EU has lacked an instrument that is flexible and multi-country in nature, responding coherently to mine action priorities, and that there is, in quantitative terms, a drop in overall EU funding for mine action; calls therefore for the restoration of a more dedicated approach, with one budget line under one lead directorate that will signal the strength of the EU’s continued commitment to mine action, which needs to take into account the specific needs of individual countries as laid down in Country Strategy Papers and, at the same time, the fact that in some countries the existence of landmines has become a structural issue and thus an issue for EU development policy;
45. Regrets that so far neither the exceptional assistance (Article 3) nor the long-term component (Article 4) of the Instrument for Stability have been used for the funding of mine action programmes;

46. Stresses the capacity for mine action to make significant contributions to post-conflict disarmament, demobilisation and rehabilitation, not least by providing highly respected training and work for former combatants;

47. Calls for donors to standardise their methods of monitoring and evaluating the cost effectiveness of mine actions, so that they are more open to comparison and scrutiny on a country-by-country basis, and through the agency of MASG, to identify and propagate best practice;

48. Calls on the Commission to update its 'Guidelines on European Community Mine Action 2008-2013', to reflect proposed changes in the institutional and funding architecture, to ensure more rapid and flexible dispersal of funds, to provide clear instructions to access funding, focusing on the most urgent priorities and best practice, to foresee 'packages' of assistance to enable the most needy countries to comply with their Mine Ban Treaty obligations and to monitor and evaluate properly the effectiveness of funding;

49. Underlines that mine action should form a compulsory element of country strategies where mines are known to exist and/or to be stockpiled;

50. Is convinced that through better international coordination and prioritisation, improved management, survey and demining practices, better monitoring and reporting, and more astute and better use of funds, a world free of the APL threat to life, livelihood and economic development is a realistic possibility within a finite period;

*   *

51. Instructs its President to forward this resolution to the Council and Member State governments, the European External Action Service and the Commission, the United Nations, the President of the United States and the US Congress, the governments of the most mine-affected countries and international NGOs.

Democratic Republic of Congo and the mass rapes in the province of South Kivu

P7_TA(2011)0340

European Parliament resolution of 7 July 2011 on the Democratic Republic of Congo and the mass rapes in the province of South Kivu

(2013/C 33 E/23)

The European Parliament,

— having regard to its earlier resolutions on the Democratic Republic of Congo,

— having regard to the Cotonou Partnership Agreement signed in June 2000,
— having regard to the EU Guidelines on violence and discrimination against women and girls,

— having regard to the Rome Statute of the International Criminal Court, adopted in 1998, and particularly Articles 7 and 8 thereof, which define rape, sexual slavery, enforced prostitution, forced pregnancy and forced sterilisation or any form of sexual violence as crimes against humanity and war crimes and equate them with a form of torture and a serious war crime, whether or not such acts are systematically perpetrated during international or internal conflicts,


— having regard to UN Security Council Resolution 1925 (2010) defining the mandate of the UN mission in the DRC (MONUSCO),

— having regard to UN Security Council Resolution 1991 of 28 June 2011 to extend the mandate of MONUSCO,

— having regard to the statement of 23 June 2011 by the UN Secretary-General's Special Representative on Sexual Violence in Conflict, Margot Wallström,

— having regard to the final communiqué of the 6th Regional Meeting of the ACP-EU Joint Parliamentary Assembly in Yaoundé, Cameroon, on 28 and 29 April 2011,

— having regard to the law on sexual violence adopted by the DRC Parliament in 2006, which was designed to speed up the prosecution of rape cases and impose stiffer penalties,

— having regard to Rule 122(5) of its Rules of Procedure,

A. whereas 170 persons were the victims of rape or physical violence between 10 and 12 June 2011 in the villages of Nakiele and Abala in the province of South Kivu; whereas members of the same armed group responsible were previously implicated in mass rape, arrests and lootings in the same area in January 2011,

B. whereas the security situation in South Kivu remains extremely unstable and the disruption affecting the eastern DRC have led to an increase in human rights violations and war crimes, including sexual violence against women, mass rape and related act of torture, massacre of civilians, and the widespread enlisting of child soldiers committed by armed rebel groups as well as by government army and police forces,

C. whereas rape, used as a weapon of war by combatants to intimidate, punish and control their victims, has become horrifically widespread in the eastern DRC since the launching of military operations in 2009; whereas atrocities against women are structured around rape, gang rape, sexual slavery and murder, which has far-reaching consequences on the physical and psychological destruction of women,

D. whereas on 29 June 2011 the UN Security Council decided to extend the UN Mission to the DRC (MONUSCO) for a further year, and whereas this mission has a mandate authorising it to use all necessary means to protect civilians against violations of international law and human rights,
E. whereas the victims of rape are faced with a serious shortage of infrastructure and are unable to benefit from adequate medical assistance or care; whereas women are deliberately attacked in public, which often costs them their place in society and their ability to care for their children, and whereas the risks of contamination with the AIDS virus are considerable; whereas the only emergency medical response is that provided by the many NGOs working in the area, whose coordination and access to victims are no longer assured,

F. whereas the inability of the DRC to bring to justice members of its own army and armed groups for crimes under international law has fostered a culture of impunity; whereas the Congolese army does not possess sufficient human, technical or financial resources to carry out its duties in the eastern provinces of the DRC and to guarantee the protection of the population,

G. whereas the implementation of the law on sexual violence adopted by the DRC Parliament in 2006 is very limited,

H. whereas the media have an essential role to play to ensure that awareness of the issues remains high and to alert public opinion,

1. Roundly condemns the mass rapes, acts of sexual violence and other human rights violations perpetrated between 10 and 12 June 2011 in the South Kivu region; shares in the pain and sorrow of all victims of sexual violence, especially mass rape, that have been committed repeatedly in the eastern part of the DRC over the past four years;

2. Calls on the government of the DRC to consider the fight against mass rape and sexual violence against women as a national priority;

3. Welcomes the UN's decision to carry out an inquiry into these events; calls for immediate, independent and impartial investigations to be conducted into these crimes in accordance with international standards; deplores the fact that war criminals are still holding high command positions; calls for effective and immediate measures to ensure the protection of victims and witnesses during and after those investigations;

4. Demands that the Commission and the Democratic Republic of Congo review the DRC's Country Strategy Paper and the National Indicative Programme of the 10th EDF (2008-2013) with the objective of making the issue of mass rape and sexual violence against women into a national priority to combat impunity;

5. Is disturbed at the risk that acts of sexual violence may become routine; stresses that it is incumbent on the government of the DRC to guarantee security on its territory and protect civilians; reminds President Kabila that he has personally undertaken to pursue a zero-tolerance policy towards sexual violence and to prosecute the perpetrators of war crimes and crimes against humanity committed in the country, and to cooperate with the International Criminal Court and the countries in the region;

6. Welcomes the action of the NGOs bringing aid to the victims of violence and war crimes, particularly the medical aid provided by certain hospitals such as Panzi hospital in Bukavu; stresses that the majority of the victims of sexual aggression are not receiving the necessary medical, social or legal aid; suggests that a comprehensive programme of assistance to victims and their reintegration into Congolese society and the labour market be worked out by the Government of the DRC; calls on the Commission to release additional funds to combat sexual violence and to work to create houses for the victims of sexual violence in sensitive areas; suggests that a pilot project be set up to improve medical assistance to victims of sexual violence in the DRC;
7. Is concerned that the Gender-Based Violence (GBV) Sub-Cluster, which was intended to coordinate the humanitarian response to sexual violence, was abolished a year and a half ago owing to a lack of leadership from the UN Population Fund; calls, therefore, for the recasting of the humanitarian coordination system on the ground;

8. Expresses its concern that MONUSCO could not use its mandate and rules of engagement more actively to provide protection against such mass rapes, including the atrocities committed by its own forces; recognises, however, that its presence remains indispensable to humanitarian aid accessibility; insists that MONUSCO's mandate and rules of engagement should be carried out with determination to guarantee the safety of the population more effectively; welcomes the decision to extend the mission's mandate to 30 June 2012;

9. Calls on the EU and its Member States to support the activities of the EUSEC RD and EUPOL RD missions; calls for issues relating to combating sexual violence to be fully integrated into joint security and defence operations;

10. Remains deeply concerned at the current humanitarian situation in the DRC and at the under-funding in this region owing to the reduction in funding from certain bilateral donors; deeply regrets the fact that, at present, the funds allocated are reaching only few victims; calls on the Commission to maintain the funding allocated to humanitarian aid in the eastern DRC;

11. Calls on the Commission to come forward with a legislative proposal on conflict minerals which fuel the war and mass rape in the DRC, with a view to combating impunity, similar to the Dodd-Frank Act (especially section 1502), which imposes new reporting requirement on manufactured products for which 'conflict minerals' are used;

12. Notes that the conflict resolution plan for South Kivu, which gives priority to the military solution, has proved to be a failure; considers that the solution to this conflict must be political and regrets the lack of courage on the part of the international community; considers that the time has come to go beyond condemnation and that responsibilities should be assumed by the Congolese government, by the EU and the UN to take concrete actions to end these atrocities; stresses that, if nothing changes, humanitarian workers will have to be present on the ground for a long time to come;

13. Instructs its President to forward this resolution to the Council, the Commission, the Commission Vice-President / EU High Representative for Foreign Affairs and Security policy, the African Union, the governments of the countries of the Great Lakes region, the President, Prime Minister and Parliament of the DRC, the Secretary-General of the United Nations, the UN Special Representative on Sexual Violence in Conflict, the UN Security Council and the UN Human Rights Council.

Indonesia, including attacks on minorities

P7_TA(2011)0341

European Parliament resolution of 7 July 2011 on Indonesia, including attacks on minorities

(2013/C 33 E/24)

The European Parliament,

— having regard to its resolution of 16 December 2010 on the Annual Report on Human Rights in the World 2009 and the European Union’s policy on the matter (1),

Thursday 7 July 2011

— having regard to Indonesia’s election to the United Nations Human Rights Council (UNHRC) in May 2011; whereas UNHRC members are required to uphold the highest standards regarding the promotion and protection of human rights,

— having regard to Indonesia’s chairmanship of ASEAN in 2011, the ASEAN Charter, which entered into force on 15 December 2008, and the creation of the ASEAN Intergovernmental Commission on Human Rights on 23 October 2009,

— having regard to the International Covenant on Civil and Political Rights, which Indonesia ratified in 2006,

— having regard to Chapter 29 of the Indonesian Constitution, which guarantees freedom of religion,

— having regard to Articles 156 and 156(a) of the Indonesian Criminal Code prohibiting blasphemy, heresy and religious defamation,

— having regard to Presidential Decree No 1/PNPS/1965 on the prevention of blasphemy and abuse of religions,

— having regard to the EU statement of 8 February 2011 on the recent attacks on and killings of Ahmadis in Banten province,

— having regard to the EU-Indonesia Partnership and Cooperation Agreement (PCA) and the first round of the Human Rights Dialogue held in that framework, which took place in June 2010 in Jakarta,

— having regard to Rule 122(5) of its Rules of Procedure,

A. whereas Indonesia is the world’s largest predominantly Muslim nation, and whereas Indonesia’s tradition of pluralism, cultural harmony, religious freedom and social justice is enshrined in the national ideology of ‘Pancasila’,

B. whereas there has been a significant increase in the incidence of attacks against religious minorities, particularly Ahmadis, who consider themselves Muslims, but also against Christians, Buddhists and progressive civil society organisations,

C. whereas, following the ban on the dissemination of Ahmadi Muslim teachings in 2008, the Indonesian Minister for Religious Affairs has repeatedly called for the imposition of a total ban on the Ahmadiyya Muslim community, a step which has already been taken by three provinces, West Java, South Sulawesi and West Sumatra; whereas on 6 February 2011 a mob of at least 1 500 people attacked 20 Ahmadi Muslims in Cikeusik, in Banten province, killing three of them and severely injuring several others, prompting a condemnation and a call for an investigation by the President of Indonesia,

D. whereas, following this attack, on 8 February 2011 hundreds of people set fire to three churches and attacked a priest in the Central Java city of Temanggung after a Christian charged with insulting Islam was sentenced to five years’ imprisonment, instead of being condemned to death as expected by the attackers, and whereas the Communion of Churches in Indonesia has recorded 430 attacks against Christian churches over the past six years,

E. whereas over 150 individuals have already been arrested or detained under Articles 156 and 156(a) of the Indonesian Criminal Code, and whereas there is evidence to show that local blasphemy, heresy and religious defamation by-laws are being used by extremists to clamp down on religious freedom and to stir up intercommunity tensions and violence,
F. whereas on 19 April 2010 the Indonesian Constitutional Court upheld the blasphemy and heresy laws and rejected the request for their repeal which had been submitted by four prominent Islamic scholars and at least seven Indonesian civil society and human rights organisations and supported by at least 40 other organisations,

G. whereas there are credible reports, namely by the National Commission on Human Rights, of human rights violations by members of the security forces in Indonesia, including torture and other forms of ill-treatment and the unnecessary and excessive use of force, in particular on Papua and Maluku Islands; whereas those responsible are rarely brought to account before an independent court,

1. Welcomes the joint statement issued on 24 May 2011 by the President, the Speaker of the House of Representatives, the Speaker of the Regional Representatives’ Council, the Speaker of the People’s Consultative Assembly, the Chief Justices of the Supreme Court and Constitutional Court and other senior officials calling for ‘Pancasila’ to be upheld and for the protection of pluralism;

2. Underlines the progress Indonesia has made in the area of the implementation of democracy and the rule of law in recent years, and attaches great importance to maintaining and deepening harmonious relations between the European Union and Indonesia in many areas, as reflected in the EU-Indonesia PCA;

3. Applauds the pledges given by Indonesia ahead of its election to the UNHRC on 20 May 2011, including that of ratifying all major human rights instruments, in particular the International Convention for the Protection of All Persons from Enforced Disappearance;

4. Express grave concern at the incidents of violence against religious minorities, particularly Ahmadi Muslims, Christians, Baha’is and Buddhists; is concerned that violations of religious freedom undermine the human rights guaranteed in the Indonesian Constitution, including the prohibition of discrimination and freedom of expression, opinion and peaceful assembly;

5. Calls on the Indonesian Government, namely the Minister of Religious Affairs, and the Indonesian judiciary to guarantee that the rule of law is implemented and upheld and that the perpetrators of religious violence and hatred are brought to justice;

6. Express deep concern at the local blasphemy, heresy and religious defamation by-laws, which are open to misuse, and at the 2008 Joint Ministerial Decree prohibiting the dissemination of Ahmadiyya Muslim teachings, and calls on the Indonesian authorities to repeal or revise them;

7. Applauds the work of Indonesian civil society, including Muslim, Christian and secular think tanks, human rights organisations and counter-extremism organisations, in promoting pluralism, religious freedom, religious harmony and human rights;

8. Urges the Indonesian Government to follow the recommendations made by the UN High Commissioner for Human Rights and, in particular, to invite the UN Special Rapporteur for freedom of religion and belief to visit the country;

9. Welcomes the investigation conducted into the deadly February 2011 attacks on the Ahmadiyya community in Western Java, which has led to the regional and provincial police chiefs being replaced, charges being brought against nine police officers for neglecting their duties and 14 other people being brought to trial for the crimes committed, and calls for independent monitoring of the trials of those charged in order to ensure that justice is done for all parties involved;
10. Calls on the Indonesian authorities to investigate allegations of human rights violations by members of the security forces and to prosecute those found responsible, including persons with command responsibility;

11. Calls for the immediate and unconditional release of all prisoners of conscience who have been arrested and charged merely on the basis of their involvement in peaceful political protest, which is contrary to the spirit of the 2001 Special Autonomy Law that granted Papuans, Maluku and other ethnic and religious minorities the right to express their cultural identity;

12. Calls on the EU delegation and Member States’ diplomatic missions to continue to closely monitor the human rights situation, in particular in sensitive regions such as Papua, the Moluccas and Aceh;

13. Emphasises the importance of including a human rights dimension, with a special focus on religious freedom and respect for minorities, in the political dialogue in the framework of the EU-Indonesia PCA;

14. Call on the Member States and the Commission to support Indonesian civil society and human rights organisations which are actively promoting democracy, tolerance and peaceful co-existence between different ethnic and religious groups;

15. Instructs its President to forward this resolution to the Government and Parliament of Indonesia, the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy, the Commission, the governments and parliaments of the Member States, the ASEAN Intergovernmental Commission on Human Rights and the UN Human Rights Council.

India, in particular the death sentence on Davinder Pal Singh

P7_TA(2011)0342

European Parliament resolution of 7 July 2011 on India, in particular the death sentence on Davinder Pal Singh

(2013/C 33 E/25)

The European Parliament,

— having regard to United Nations General Assembly Resolution 63/168, which calls for the implementation of United Nations General Assembly Resolution 62/149 of 18 December 2007, whereby 106 countries voted in favour of a resolution calling for a worldwide moratorium on death sentences and executions, with 34 abstentions and only 46 votes against the resolution,

— having regard to United Nations General Assembly Resolution 65/206 of 21 December 2010 on a moratorium on the use of the death penalty,

— having regard to the EU Guidelines on the Death Penalty,

— having regard to its resolution of 27 September 2007 on a universal moratorium on the death penalty (1),

— having regard to the 1994 Cooperation Agreement between the European Community and the Republic of India,

— having regard to the EU-India Thematic Dialogue on Human Rights,

— having regard to Article 2 of the Charter of Fundamental Rights of the European Union,

— having regard to its resolution of 7 October 2010 on the World day against the death penalty (1),

— having regard to Rule 122(5) of its Rules of Procedure,

A. whereas in 2011 – up to May – executions have taken place in only nine countries, which is a clear indication that there is increasing global recognition of the cruel and inhumane nature of capital punishment,

B. whereas India has not implemented the death penalty since 2004,

C. whereas clearance has been given for the execution of two convicts,

D. whereas, on the recommendation of the Union Home Ministry, the President of India, Pratibha Patil, has rejected the review petitions filed under Article 72 of the Indian Constitution on behalf of Davinder Pal Singh Bhullar, of Punjab, and Mahendra Nath Das, of Assam,

E. whereas Mahendra Nath Das was sentenced to death in 1997 after being convicted of murder charges, whereas all legal remedies have been exhausted and whereas his execution has been suspended until 21 July 2011 by the Gauhati High Court in Assam (north-east India), as the Indian Government has sought time to respond to the Court,

F. whereas Davinder Pal Singh Bhullar was sentenced to death on 29 August 2001 after being found guilty of involvement in the 1993 bombing of the Youth Congress Office in New Delhi,

G. whereas the circumstances surrounding the return of Davinder Pal Singh Bhullar to India from Germany and the prolonged stay on death row of Mahendra Nath Das raise questions,

H. whereas India, when presenting its candidacy for the Human Rights Council ahead of the elections of 20 May 2011, pledged to uphold the highest standards in terms of promoting and protecting human rights,

1. Expresses grave concern that the Government of India may revive the application of the death penalty after a seven-year de facto moratorium, thereby bucking the worldwide trend towards the abolition of capital punishment;

2. Reiterates its firm support for the UN General Assembly’s call to establish a moratorium on executions with a view to abolishing the death penalty;

3. Urgently appeals to the Government of India not to execute Davinder Pal Singh Bhullar or Mahendra Nath Das, and to commute their death sentences;

4. Calls on the Indian authorities to deal with the cases of Davinder Pal Singh Bhullar and Mahendra Nath Das case in a particularly transparent manner;

5. Calls on the Government and Parliament of India to adopt legislation introducing a permanent moratorium on executions with the goal of abolishing the death penalty in the near future;

6. Instructs its President to forward this resolution to the President, Government and Parliament of India, India's Minister for Law and Justice, India's Home Minister, the UN High Commissioner for Human Rights, the High Representative of the Union for Foreign Affairs and Security Policy, the Commission, and the governments and parliaments of the Member States.
III

(Preparatory acts)

EUROPEAN PARLIAMENT

Mobilisation of Globalisation Adjustment Fund: Odense Steel Shipyard/Denmark

P7_TA(2011)0300


(2013/C 33 E/26)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2011)0251 – C7-0114/2011),

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


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

— having regard to the report of the Committee on Budgets (A7-0234/2011),

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

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

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

D. whereas Denmark has requested assistance in respect of cases concerning 1 356 redundancies (of which 950 targeted for assistance) in the enterprise Odense Steel Shipyard operating in shipyard sector in the municipality of Odense located in the region of Southern Denmark,

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

1. Requests the institutions involved to make the necessary efforts to improve procedural and budgetary arrangements in order to accelerate the mobilisation of the EGF; appreciates in this sense the improved procedure put in place by the Commission, following Parliament's request for accelerating the release of grants, aimed at presenting to the budgetary authority the Commission's assessment on the eligibility of an EGF application together with the proposal to mobilise the EGF; hopes that further improvements in the procedure will be made within the framework of the upcoming review of the EGF and that greater efficiency, transparency and visibility of the EGF will be achieved;

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

3. Stresses that, in accordance with Article 6 of the EGF Regulation, it should be ensured that the EGF supports the reintegration of individual redundant workers into employment; reiterates that assistance from the EGF must not replace actions which are the responsibility of companies by virtue of national law or collective agreements, nor measures restructuring companies or sectors;

4. Notes that the information provided on the coordinated package of personalised services to be funded from the EGF includes information on the complementarity with actions funded by the Structural Funds; reiterates its call to the Commission to present a comparative evaluation of those data in its annual reports as well;

5. Welcomes the fact that following repeated requests from Parliament, for the first time the 2011 budget shows payment appropriations of EUR 47 608 950 on the EGF budget line 04 05 01; reminds that the EGF was created as a separate specific instrument with its own objectives and deadlines and that it therefore deserves a dedicated allocation, which will avoid transfers from other budget lines, as happened in the past, which could be detrimental to the achievement of the various policies objectives;

6. Approves the decision annexed to this resolution;

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

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

---

**ANNEX**

**DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

on the mobilisation of the European Globalisation Adjustment Fund in accordance with point 28 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (application EGF/2010/025 DK/Odense Steel Shipyard from Denmark)

(The text of this annex is not reproduced here since it corresponds to the final act, Decision 2011/468/EU.)
Mobilisation of the EU Solidarity Fund - flooding in Slovenia, Croatia and the Czech Republic in 2010

P7_TA(2011)0301


The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2011)0155 – C7-0081/2011),

— having regard to the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (1) (IIA of 17 May 2006), and in particular point 26 thereof,


— having regard to the Joint Declaration of the European Parliament, the Council and the Commission, adopted during the conciliation meeting on 17 July 2008 on the Solidarity Fund,

— having regard to the letter of the Committee on Regional Development,

— having regard to the report of the Committee on Budgets (A7-0238/2011),

1. Approves the decision annexed to this resolution;

2. Recalls that point 26 of the IIA of 17 May 2006 foresees that where there is scope for reallocating appropriations under the heading requiring additional expenditure, the Commission shall take this into account when making the necessary proposal;

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

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


ANNEX

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on mobilisation of the European Union Solidarity Fund, in accordance with point 26 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management

(The text of this annex is not reproduced here since it corresponds to the final act, Decision 2011/535(EU).)
Draft amending budget No 2/2011: flooding in Slovenia, Croatia and the Czech Republic in 2010

P7_TA(2011)0302


(2013/C 33 E/28)

The European Parliament,

— having regard to the Treaty on the Functioning of the European Union and in particular Article 314 thereof and to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

— 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 Communities (¹), and particularly Articles 37 and 38 thereof,

— having regard to the general budget of the European Union for the financial year 2011, as definitively adopted on 15 December 2010 (²),

— having regard to the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (³),


— having regard to Council’s position on Draft amending budget No 2/2011, which the Council established on 24 May 2011 (10522/2011 – C7-0137/2011),

— having regard to Rule 75b of its Rules of Procedure,

— having regard to the report of the Committee on Budgets (A7-0233/2011),

A. whereas Draft amending budget No 2/2011 to the general budget 2011 aims at mobilising the EU Solidarity Fund (EUSF) for an amount of EUR 19,5 million in commitment and payment appropriations following the heavy rainfall that hit Slovenia, Croatia and Czech Republic in August and September 2010,

B. whereas the purpose of this Draft amending budget is to formally enter this budgetary adjustment into the 2011 budget,

C. whereas the Joint Statement on payment appropriations annexed to the budget for the financial year 2011 foresaw the submission of an amending budget “if the appropriations entered in the 2011 budget are insufficient to cover expenditure”,

D. whereas the Council has decided to redeploy appropriations from budget items on the sole basis of low implementation rates, without taking into account that implementation of completion budget lines require further measures as regards controls and that not all Member States have taken the appropriate measures to facilitate the closures,

E. whereas the negative reserve established by the Council for Draft amending budget No 1/2011 is only pragmatic, and does not provide a sustainable and financially sound solution to address the issue of unexpected needs in payment appropriations, as underlined by Parliament (1),

F. whereas the Commission has not yet presented a solution for drawing upon the negative reserve, despite both Parliament's resolution on Draft amending budget No 1/2011 and the Council's call to the Commission to present it "as soon as possible",

G. whereas payment appropriations decided for the European Globalisation Adjustment Fund (EGF) will most likely not be sufficient for the needs for the whole year 2011, and will therefore require a reinforcement,

H. whereas the implementation of payments for some major energy projects in 2011 was revised downwards in June 2011, due mainly to operational delays, and whereas these appropriations can be used for other purposes;

1. Notes Council's position on Draft amending budget No 2/2011;

2. Considers the redeployments adopted by Council in contradiction with the Joint Statement on payment appropriations, to which it attaches value and feels committed;

3. Decides to amend Council's position on Draft Amending Budget No 2/2011 as shown below, with a view to:
   — covering the needs ensuing from the mobilisation of the EUSF;
   — drawing upon the negative reserve;
   — reinforcing payments appropriations for the EGF;

4. Instructs its President to forward this resolution, together with Parliament's amendment, to the Council, the Commission and the national parliaments.

## Amendment 1

### SECTION III — COMMISSION

### EXPENDITURE — EXPENDITURE

### Figures

<table>
<thead>
<tr>
<th>Title</th>
<th>Heading</th>
<th>Budget 2011</th>
<th>Parliament position No. 2/2011</th>
<th>New amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Commitments</td>
<td>Payments</td>
<td>Commitments</td>
</tr>
<tr>
<td>01</td>
<td>Economic and financial affairs</td>
<td>524 283 196</td>
<td>341 387 137</td>
<td>524 283 196</td>
</tr>
<tr>
<td></td>
<td>01 01</td>
<td>40 929</td>
<td>40 929</td>
<td>40 929</td>
</tr>
<tr>
<td></td>
<td>01 02</td>
<td>524 324 125</td>
<td>341 428 066</td>
<td>524 324 125</td>
</tr>
<tr>
<td>02</td>
<td>Enterprise</td>
<td>1 055 561 122</td>
<td>1 209 465 022</td>
<td>1 055 561 122</td>
</tr>
<tr>
<td></td>
<td>02 01</td>
<td>52 772</td>
<td>52 772</td>
<td>52 772</td>
</tr>
<tr>
<td></td>
<td>02 02</td>
<td>1 055 613 894</td>
<td>1 209 517 794</td>
<td>1 055 613 894</td>
</tr>
<tr>
<td>03</td>
<td>Competition</td>
<td>93 403 671</td>
<td>93 403 671</td>
<td>93 403 671</td>
</tr>
<tr>
<td></td>
<td>03 01</td>
<td>56 917</td>
<td>56 917</td>
<td>56 917</td>
</tr>
<tr>
<td></td>
<td>03 02</td>
<td>93 460 588</td>
<td>93 460 588</td>
<td>93 460 588</td>
</tr>
<tr>
<td>04</td>
<td>Employment and social affairs</td>
<td>11 398 325 662</td>
<td>9 163 443 236</td>
<td>50 000 000</td>
</tr>
<tr>
<td></td>
<td>04 01</td>
<td>44 335</td>
<td>44 335</td>
<td>44 335</td>
</tr>
<tr>
<td></td>
<td>04 02</td>
<td>11 398 369 997</td>
<td>9 163 487 571</td>
<td>11 398 369 997</td>
</tr>
<tr>
<td>05</td>
<td>Agriculture and rural development</td>
<td>57 292 184 763</td>
<td>55 269 004 060</td>
<td>57 292 184 763</td>
</tr>
<tr>
<td></td>
<td>05 01</td>
<td>74 532</td>
<td>74 532</td>
<td>74 532</td>
</tr>
<tr>
<td></td>
<td>05 02</td>
<td>57 292 259 295</td>
<td>55 269 078 592</td>
<td>57 292 259 295</td>
</tr>
<tr>
<td>06</td>
<td>Mobility and transport</td>
<td>1 546 683 351</td>
<td>1 141 803 775</td>
<td>1 546 683 351</td>
</tr>
<tr>
<td></td>
<td>06 01</td>
<td>25 609</td>
<td>25 609</td>
<td>25 609</td>
</tr>
<tr>
<td></td>
<td>06 02</td>
<td>1 546 708 960</td>
<td>1 141 829 384</td>
<td>1 546 708 960</td>
</tr>
<tr>
<td>07</td>
<td>Environment and climate action</td>
<td>470 550 540</td>
<td>390 290 122</td>
<td>470 550 540</td>
</tr>
<tr>
<td></td>
<td>07 01</td>
<td>44 853</td>
<td>44 853</td>
<td>44 853</td>
</tr>
<tr>
<td></td>
<td>07 02</td>
<td>470 595 393</td>
<td>390 334 975</td>
<td>470 595 393</td>
</tr>
<tr>
<td>Title</td>
<td>Heading</td>
<td>Budget 2011</td>
<td>Parliament position No. 2/2011</td>
<td>New amount</td>
</tr>
<tr>
<td>-------</td>
<td>---------</td>
<td>-------------</td>
<td>--------------------------------</td>
<td>------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Commitments</td>
<td>Payments</td>
<td>Commitments</td>
</tr>
<tr>
<td>08</td>
<td>Research</td>
<td>5 334 630 545</td>
<td>4 117 083 880</td>
<td>5 334 630 545</td>
</tr>
<tr>
<td>09</td>
<td>Information society and media</td>
<td>1 538 552 441</td>
<td>1 334 275 234</td>
<td>1 538 552 441</td>
</tr>
<tr>
<td>10</td>
<td>Direct research</td>
<td>394 978 000</td>
<td>396 209 233</td>
<td>394 978 000</td>
</tr>
<tr>
<td>11</td>
<td>Maritime affairs and fisheries</td>
<td>948 592 229</td>
<td>719 026 792</td>
<td>948 592 229</td>
</tr>
<tr>
<td>12</td>
<td>Internal market</td>
<td>94 868 629</td>
<td>93 358 064</td>
<td>94 868 629</td>
</tr>
<tr>
<td>13</td>
<td>Regional policy</td>
<td>40 565 228 265</td>
<td>33 499 601 033</td>
<td>19 546 647</td>
</tr>
<tr>
<td>14</td>
<td>Taxation and customs union</td>
<td>142 229 539</td>
<td>114 783 765</td>
<td>142 229 539</td>
</tr>
<tr>
<td>15</td>
<td>Education and culture</td>
<td>2 428 691 266</td>
<td>1 996 401 080</td>
<td>2 428 691 266</td>
</tr>
<tr>
<td>16</td>
<td>Communication</td>
<td>273 374 552</td>
<td>253 374 552</td>
<td>273 374 552</td>
</tr>
<tr>
<td>17</td>
<td>Health and consumer protection</td>
<td>692 021 626</td>
<td>596 046 062</td>
<td>692 021 626</td>
</tr>
<tr>
<td>Title</td>
<td>Budget 2011</td>
<td>Parliament position No. 2/2011</td>
<td>New amount</td>
<td></td>
</tr>
<tr>
<td>-------</td>
<td>-------------</td>
<td>--------------------------------</td>
<td>------------</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Commitments</td>
<td>Payments</td>
<td>Commitments</td>
<td>Payments</td>
</tr>
<tr>
<td>18</td>
<td></td>
<td></td>
<td>1 193 910 768</td>
<td>871 707 680</td>
</tr>
<tr>
<td></td>
<td>40 01 40, 40 02 41</td>
<td></td>
<td>16 479 335</td>
<td>13 005 028</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1 210 390 103</td>
<td>884 712 708</td>
</tr>
<tr>
<td>19</td>
<td>External relations</td>
<td></td>
<td>4 270 665 587</td>
<td>3 378 255 172</td>
</tr>
<tr>
<td></td>
<td>40 01 40, 40 02 41</td>
<td></td>
<td>44 005 106</td>
<td>6 441 836</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>4 314 670 693</td>
<td>3 384 697 008</td>
</tr>
<tr>
<td>20</td>
<td>Trade</td>
<td></td>
<td>105 067 905</td>
<td>104 422 321</td>
</tr>
<tr>
<td></td>
<td>40 01 40</td>
<td></td>
<td>34 787</td>
<td>34 787</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>105 102 692</td>
<td>104 457 108</td>
</tr>
<tr>
<td>21</td>
<td>Development and relations with African, Caribbean and Pacific (ACP) States</td>
<td></td>
<td>1 433 111 933</td>
<td>1 392 926 690</td>
</tr>
<tr>
<td></td>
<td>40 01 40, 40 02 41</td>
<td></td>
<td>1 542 170 108</td>
<td>1 479 662 739</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1 123 357 217</td>
<td>1 012 513 363</td>
</tr>
<tr>
<td></td>
<td>40 01 40</td>
<td></td>
<td>17 764</td>
<td>17 764</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1 123 374 981</td>
<td>1 012 531 127</td>
</tr>
<tr>
<td>22</td>
<td>Enlargement</td>
<td></td>
<td>878 195 432</td>
<td>838 516 019</td>
</tr>
<tr>
<td></td>
<td>40 01 40</td>
<td></td>
<td>14 878</td>
<td>14 878</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>878 210 310</td>
<td>838 530 897</td>
</tr>
<tr>
<td>23</td>
<td>Humanitarian aid</td>
<td></td>
<td>190 812 414</td>
<td>190 812 414</td>
</tr>
<tr>
<td></td>
<td>40 01 40</td>
<td></td>
<td>565 027</td>
<td>565 027</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>191 377 441</td>
<td>191 377 441</td>
</tr>
<tr>
<td>24</td>
<td>Fight against fraud</td>
<td></td>
<td>1 018 708 135</td>
<td>1 017 153 328</td>
</tr>
<tr>
<td></td>
<td>40 01 40, 40 02 41</td>
<td></td>
<td>78 381</td>
<td>78 381</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1 018 786 516</td>
<td>1 017 231 709</td>
</tr>
<tr>
<td>Title</td>
<td>Heading</td>
<td>Budget 2011</td>
<td>Parliament position No. 2/2011</td>
<td>New amount</td>
</tr>
<tr>
<td>-----------------------</td>
<td>-------------------------------------------------------------------------</td>
<td>--------------</td>
<td>--------------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>27 Budget</td>
<td></td>
<td>69 440 094</td>
<td>69 440 094</td>
<td>69 440 094</td>
</tr>
<tr>
<td></td>
<td></td>
<td>30 939</td>
<td>30 939</td>
<td>30 939</td>
</tr>
<tr>
<td>28 Audit</td>
<td></td>
<td>69 471 033</td>
<td>69 471 033</td>
<td>69 471 033</td>
</tr>
<tr>
<td></td>
<td></td>
<td>11 399 202</td>
<td>11 399 202</td>
<td>11 399 202</td>
</tr>
<tr>
<td>29 Statistics</td>
<td></td>
<td>7 105</td>
<td>7 105</td>
<td>7 105</td>
</tr>
<tr>
<td></td>
<td></td>
<td>11 406 307</td>
<td>11 406 307</td>
<td>11 406 307</td>
</tr>
<tr>
<td>30 Pensions and related expenditure</td>
<td></td>
<td>1 278 009 000</td>
<td>1 278 009 000</td>
<td>1 278 009 000</td>
</tr>
<tr>
<td>31 Language services</td>
<td></td>
<td>393 145 161</td>
<td>393 145 161</td>
<td>393 145 161</td>
</tr>
<tr>
<td></td>
<td></td>
<td>699 658 311</td>
<td>699 658 311</td>
<td>699 658 311</td>
</tr>
<tr>
<td>32 Energy</td>
<td></td>
<td>97 129 000</td>
<td>182 388 893</td>
<td>259 909 297</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1 535 110 306</td>
<td>– 251 935 540</td>
<td>1 283 174 766</td>
</tr>
<tr>
<td></td>
<td></td>
<td>41 299</td>
<td>1 283 174 766</td>
<td>41 299</td>
</tr>
<tr>
<td>40 Reserves</td>
<td></td>
<td>95 925 690</td>
<td>95 925 690</td>
<td>95 925 690</td>
</tr>
<tr>
<td></td>
<td></td>
<td>44 335</td>
<td>44 335</td>
<td>44 335</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>138 440 114 943</td>
<td>122 938 920 666</td>
<td>138 459 661 590</td>
</tr>
<tr>
<td></td>
<td></td>
<td>19 546 647</td>
<td></td>
<td>123 098 829 963</td>
</tr>
</tbody>
</table>

**TITLE 04 — EMPLOYMENT AND SOCIAL AFFAIRS**

Figures

<table>
<thead>
<tr>
<th>Title Chapter</th>
<th>Heading</th>
<th>FF</th>
<th>Budget 2011</th>
<th>Parliament position No. 2/2011</th>
<th>New amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>04 01</td>
<td>Administrative expenditure of the 'Employment and social affairs' policy area</td>
<td></td>
<td>95 925 690</td>
<td>95 925 690</td>
<td>95 925 690</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>44 335</td>
<td>44 335</td>
<td>44 335</td>
</tr>
<tr>
<td>Title Chapter</td>
<td>Heading</td>
<td>FF</td>
<td>Budget 2011</td>
<td>Parliament position No. 2/2011</td>
<td>New amount</td>
</tr>
<tr>
<td>---------------</td>
<td>----------------------------------------------------------------------</td>
<td>----</td>
<td>-------------</td>
<td>-------------------------------</td>
<td>------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Commitments</td>
<td>Payments</td>
<td>Commitments</td>
</tr>
<tr>
<td></td>
<td></td>
<td>95 970 025</td>
<td>95 970 025</td>
<td></td>
<td>95 970 025</td>
</tr>
<tr>
<td>04 02</td>
<td>European Social Fund</td>
<td>1</td>
<td>10 963 813 972</td>
<td>8 743 950 522</td>
<td>10 963 813 972</td>
</tr>
<tr>
<td>04 03</td>
<td>Working in Europe — Social dialogue and mobility</td>
<td>1</td>
<td>79 130 000</td>
<td>64 266 181</td>
<td>79 130 000</td>
</tr>
<tr>
<td>04 04</td>
<td>Employment, social solidarity and gender equality</td>
<td>157 056 000</td>
<td>151 704 616</td>
<td></td>
<td>157 056 000</td>
</tr>
<tr>
<td>04 05</td>
<td>European Globalisation Adjustment Fund (EGF)</td>
<td>1</td>
<td>p.m. 47 608 950</td>
<td>50 000 000</td>
<td>p.m. 97 608 950</td>
</tr>
<tr>
<td>04 06</td>
<td>Instrument for Pre-Accession Assistance (IPA) — Human resources development</td>
<td>4</td>
<td>102 400 000</td>
<td>59 987 277</td>
<td>102 400 000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Commitments</td>
<td>Payments</td>
<td>Commitments</td>
</tr>
<tr>
<td></td>
<td></td>
<td>11 398 325 662</td>
<td>9 163 443 236</td>
<td></td>
<td>11 398 325 662</td>
</tr>
<tr>
<td></td>
<td></td>
<td>40 01 40, 40 02 41</td>
<td>44 335</td>
<td>44 335</td>
<td>44 335</td>
</tr>
<tr>
<td></td>
<td></td>
<td>11 398 369 997</td>
<td>9 163 487 571</td>
<td></td>
<td>11 398 369 997</td>
</tr>
</tbody>
</table>

**CHAPTER 04 05 — EUROPEAN GLOBALISATION ADJUSTMENT FUND (EGF)**

**Figures**

<table>
<thead>
<tr>
<th>Title Chapter</th>
<th>Heading</th>
<th>FF</th>
<th>Budget 2011</th>
<th>Parliament position No. 2/2011</th>
<th>New amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Commitments</td>
<td>Payments</td>
<td>Commitments</td>
</tr>
<tr>
<td>04 05</td>
<td>European Globalisation Adjustment Fund (EGF)</td>
<td>1.1</td>
<td>p.m. 47 608 950</td>
<td>50 000 000</td>
<td>p.m. 97 608 950</td>
</tr>
<tr>
<td>04 05 01</td>
<td>European Globalisation Adjustment Fund (EGF)</td>
<td></td>
<td>p.m. 47 608 950</td>
<td>50 000 000</td>
<td>p.m. 97 608 950</td>
</tr>
</tbody>
</table>

Chapter 04 05 — Total
Article 04 05 01 — European Globalisation Adjustment Fund (EGF)

Figures

<table>
<thead>
<tr>
<th>Budget 2011</th>
<th>Parliament position No. 2/2011</th>
<th>New amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commitments</td>
<td>Payments</td>
<td>Commitments</td>
</tr>
<tr>
<td>p.m.</td>
<td>47 608 950</td>
<td>50 000 000</td>
</tr>
</tbody>
</table>

Remarks

This appropriation is intended to cover the European Globalisation Adjustment Fund (EGF) so as to enable the Union to provide temporary and targeted support for workers made redundant as a result of major structural changes in world trade patterns due to globalisation where these redundancies have a significant adverse impact on the regional or local economy. For applications submitted before 31 December 2011, it may also be used to provide support to workers made redundant as a direct result of the global financial and economic crisis.

The maximum amount of expenditure from the Fund shall be EUR 500 000 000 per year.

The aim of this reserve, in accordance with point 28 of the Interinstitutional Agreement of 17 May 2006, is to provide additional temporary support for workers who suffer from the consequences of major structural changes in world trade patterns and to assist them with their reintegration into the labour market.

The actions undertaken by the European Globalisation Adjustment Fund should be complementary to those of the European Social Fund without creating double structures.

The methods for entering the appropriations in this reserve and for mobilising the Fund are laid down in point 28 of the Interinstitutional Agreement of 17 May 2006 and in Article 12 of Regulation (EC) No 1927/2006.

Legal basis


Reference acts

<table>
<thead>
<tr>
<th>Title Chapter</th>
<th>Heading</th>
<th>FF</th>
<th>Budget 2011</th>
<th>Parliament position No. 2/2011</th>
<th>New amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Commitments</td>
<td>Payments</td>
<td>Commitments</td>
</tr>
<tr>
<td>13 01</td>
<td>Administrative expenditure of the ‘Regional policy’ policy area</td>
<td>40 01 40</td>
<td>88 430 098 88 430 098</td>
<td>43 816 43 816</td>
<td>88 430 098 88 430 098</td>
</tr>
<tr>
<td>13 02</td>
<td>European Regional Development Fund and other regional operations</td>
<td>1</td>
<td>28 742 233 077 25 165 081 196</td>
<td>28 742 233 077 25 165 081 196</td>
<td>88 473 914 88 473 914</td>
</tr>
<tr>
<td>13 03</td>
<td>Cohesion Fund</td>
<td>1</td>
<td>11 073 646 193 7 625 295 593</td>
<td>11 073 646 193 7 625 295 593</td>
<td>13 04</td>
</tr>
<tr>
<td>13 05</td>
<td>Pre-accession operations related to the structural policies</td>
<td></td>
<td>478 530 004 438 405 253</td>
<td>478 530 004 438 405 253</td>
<td>13 06</td>
</tr>
<tr>
<td>13 06</td>
<td>Solidarity Fund</td>
<td></td>
<td>182 388 893 182 388 893</td>
<td>19 546 647 19 546 647</td>
<td>201 935 540 201 935 540</td>
</tr>
<tr>
<td></td>
<td>Title 13 — Total</td>
<td></td>
<td>40 565 228 265 33 499 601 033</td>
<td>19 546 647 19 546 647</td>
<td>40 584 774 912 33 519 147 680</td>
</tr>
<tr>
<td></td>
<td>40 01 40</td>
<td></td>
<td>43 816 43 816</td>
<td>43 816 43 816</td>
<td>40 565 272 081 33 499 644 849</td>
</tr>
</tbody>
</table>

**CHAPTER 13 06 — SOLIDARITY FUND**

<table>
<thead>
<tr>
<th>Title Chapter Article Item</th>
<th>Heading</th>
<th>FF</th>
<th>Budget 2011</th>
<th>Parliament position No. 2/2011</th>
<th>New amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Commitments</td>
<td>Payments</td>
<td>Commitments</td>
</tr>
<tr>
<td>13 06</td>
<td>Solidarity Fund</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13 06 01</td>
<td>European Union Solidarity Fund — Member States</td>
<td>3.2</td>
<td>178 562 910 178 562 910</td>
<td>18 371 576 18 371 576</td>
<td>196 934 486 196 934 486</td>
</tr>
<tr>
<td>13 06 02</td>
<td>European Union Solidarity Fund — Countries negotiating for accession</td>
<td>4</td>
<td>3 825 983 3 825 983</td>
<td>1 175 071 1 175 071</td>
<td>5 001 054 5 001 054</td>
</tr>
<tr>
<td></td>
<td>Chapter 13 06 — Total</td>
<td></td>
<td>182 388 893 182 388 893</td>
<td>19 546 647 19 546 647</td>
<td>201 935 540 201 935 540</td>
</tr>
</tbody>
</table>
Article 13 06 01 — European Union Solidarity Fund — Member States

Figures

<table>
<thead>
<tr>
<th>Budget 2011</th>
<th>Parliament position No. 2/2011</th>
<th>New amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commitments</td>
<td>Payments</td>
<td>Commitments</td>
</tr>
<tr>
<td>178 562 910</td>
<td>178 562 910</td>
<td>18 371 576</td>
</tr>
</tbody>
</table>

Remarks

This article is intended to record appropriations resulting from the mobilisation of the European Union Solidarity Fund in the event of natural disasters in the Member States. Allocation of the appropriations will be decided on in an amending budget with the sole purpose of mobilising the European Union Solidarity Fund.

Legal basis


Reference acts


Article 13 06 02 — European Union Solidarity Fund — Countries negotiating for accession

Figures

<table>
<thead>
<tr>
<th>Budget 2011</th>
<th>Parliament position No. 2/2011</th>
<th>New amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commitments</td>
<td>Payments</td>
<td>Commitments</td>
</tr>
<tr>
<td>3 825 983</td>
<td>3 825 983</td>
<td>1 175 071</td>
</tr>
</tbody>
</table>

Remarks

This article is intended to record appropriations resulting from the mobilisation of the European Union Solidarity Fund in the event of natural disasters in countries involved in accession negotiations with the Union. Allocation of the appropriations will be decided on in an amending budget with the sole purpose of mobilising the European Union Solidarity Fund.

Legal basis

Reference acts


### TITLE 32 — ENERGY

#### Figures

<table>
<thead>
<tr>
<th>Title Chapter</th>
<th>Heading</th>
<th>FF</th>
<th>Budget 2011</th>
<th>Parliament position No. 2/2011</th>
<th>New amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>FF</td>
<td>Commitments</td>
<td>Payments</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>FF</td>
<td>Commitments</td>
<td>Payments</td>
<td>Commitments</td>
</tr>
<tr>
<td>32 01</td>
<td>Administrative expenditure of the 'Energy' policy area</td>
<td>40 01 40</td>
<td>77 046 009</td>
<td>77 046 009</td>
<td>77 046 009</td>
</tr>
<tr>
<td>32 03</td>
<td>Trans-European networks</td>
<td>1</td>
<td>77 087 308</td>
<td>77 087 308</td>
<td>77 087 308</td>
</tr>
<tr>
<td>32 04</td>
<td>Conventional and renewable energies</td>
<td>1</td>
<td>125 688 003</td>
<td>1 080 982 371</td>
<td>– 251 935 540</td>
</tr>
<tr>
<td>32 05</td>
<td>Nuclear energy</td>
<td>1</td>
<td>280 578 000</td>
<td>209 479 379</td>
<td>280 578 000</td>
</tr>
<tr>
<td>32 06</td>
<td>Research related to energy</td>
<td>1</td>
<td>192 155 000</td>
<td>147 130 699</td>
<td>192 155 000</td>
</tr>
<tr>
<td></td>
<td><strong>Title 32 — Total</strong></td>
<td>40 01 40, 40 02 41</td>
<td>699 617 012</td>
<td>1 535 110 306</td>
<td>– 251 935 540</td>
</tr>
<tr>
<td></td>
<td></td>
<td>41 299</td>
<td>699 658 311</td>
<td>1 535 151 605</td>
<td>699 658 311</td>
</tr>
</tbody>
</table>

#### CHAPTER 32 04 — CONVENTIONAL AND RENEWABLE ENERGIES

#### Figures

<table>
<thead>
<tr>
<th>Title Chapter Article Item</th>
<th>Heading</th>
<th>FF</th>
<th>Budget 2011</th>
<th>Parliament position No. 2/2011</th>
<th>New amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>32 04</td>
<td>Conventional and renewable energies</td>
<td>32 04 01</td>
<td>Completion of the 'Intelligent Energy — Europe' programme (2003 to 2006)</td>
<td></td>
<td>1.1</td>
</tr>
<tr>
<td>32 04 02</td>
<td>Completion of the 'Intelligent Energy — Europe' programme (2003 to 2006): external strand — Coopener</td>
<td>4</td>
<td>—</td>
<td>95 218</td>
<td></td>
</tr>
<tr>
<td>32 04 03</td>
<td>Support activities to the European energy policy and internal energy market</td>
<td>1.1</td>
<td>3 000 000</td>
<td>3 332 626</td>
<td></td>
</tr>
<tr>
<td>Title Chapter Article item</td>
<td>Heading</td>
<td>FF</td>
<td>Budget 2011</td>
<td>Parliament position No. 2/2011</td>
<td>New amount</td>
</tr>
<tr>
<td>---------------------------</td>
<td>---------</td>
<td>----</td>
<td>-------------</td>
<td>-------------------------------</td>
<td>------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>FF</td>
<td>Commitments</td>
<td>Payments</td>
<td>Commitments</td>
</tr>
<tr>
<td>32 04 04</td>
<td>Completion of the Energy framework programme (1999 to 2002) — Conventional and renewable energy</td>
<td>1.1</td>
<td>—</td>
<td>p.m.</td>
<td>—</td>
</tr>
<tr>
<td>32 04 05</td>
<td>European Strategic Energy Technology Plan (SET-Plan)</td>
<td>1.1</td>
<td>p.m.</td>
<td>p.m.</td>
<td>p.m.</td>
</tr>
<tr>
<td>32 04 06</td>
<td>Competitiveness and Innovation Framework Programme — 'Intelligent Energy — Europe' programme</td>
<td>1.1</td>
<td>114 499 000</td>
<td>39 039 339</td>
<td>114 499 000</td>
</tr>
<tr>
<td>32 04 07</td>
<td>Pilot project — Energy security — Biofuels</td>
<td>1.1</td>
<td>p.m.</td>
<td>1 500 000</td>
<td>p.m.</td>
</tr>
<tr>
<td>32 04 08</td>
<td>Pilot project — Portplus — Sustainable energy plan for ports</td>
<td>1.1</td>
<td>p.m.</td>
<td>p.m.</td>
<td>p.m.</td>
</tr>
<tr>
<td>32 04 09</td>
<td>Preparatory action — Investment fund for renewable energy and biorefineries from waste and residues</td>
<td>1.1</td>
<td>p.m.</td>
<td>p.m.</td>
<td>p.m.</td>
</tr>
<tr>
<td>32 04 10</td>
<td>European Agency for the Cooperation of Energy Regulators</td>
<td>1.1</td>
<td>4 017 000</td>
<td>4 017 000</td>
<td>4 017 000</td>
</tr>
<tr>
<td>32 04 10 01</td>
<td>European Agency for the Cooperation of Energy Regulators — Contribution to Titles 1 and 2</td>
<td>1.1</td>
<td>983 000</td>
<td>983 000</td>
<td>983 000</td>
</tr>
<tr>
<td>32 04 10 02</td>
<td>European Agency for the Cooperation of Energy Regulators — Contribution to Title 3</td>
<td>1.1</td>
<td>5 000 000</td>
<td>5 000 000</td>
<td>5 000 000</td>
</tr>
<tr>
<td>Article 32 04 10 — Subtotal</td>
<td></td>
<td></td>
<td>5 000 000</td>
<td>5 000 000</td>
<td>5 000 000</td>
</tr>
<tr>
<td>32 04 11</td>
<td>Energy Community</td>
<td>4</td>
<td>2 939 003</td>
<td>2 798 457</td>
<td>2 939 003</td>
</tr>
<tr>
<td>32 04 12</td>
<td>Pilot project — European framework programme for the development and exchange of experience on sustainable urban development</td>
<td>1.1</td>
<td>p.m.</td>
<td>300 000</td>
<td>p.m.</td>
</tr>
<tr>
<td>32 04 13</td>
<td>Preparatory action — European islands for a common energy policy</td>
<td>1.1</td>
<td>p.m.</td>
<td>500 000</td>
<td>p.m.</td>
</tr>
<tr>
<td>32 04 14</td>
<td>Energy projects to aid economic recovery</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>32 04 14 01</td>
<td>Energy projects to aid economic recovery — Energy networks</td>
<td>1.1</td>
<td>p.m.</td>
<td>732 955 589</td>
<td>– 251 935 540</td>
</tr>
<tr>
<td>32 04 14 02</td>
<td>Energy projects to aid economic recovery — Carbon Capture and Storage (CCS)</td>
<td>1.1</td>
<td>p.m.</td>
<td>247 566 539</td>
<td>p.m.</td>
</tr>
<tr>
<td>Title Chapter Article Item</td>
<td>Heading</td>
<td>FF</td>
<td>Budget 2011 Commitments</td>
<td>Payments</td>
<td>Parliament position No. 2/2011 Commitments</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>--------------------------------------------------------------------------</td>
<td>----</td>
<td>-------------------------</td>
<td>----------</td>
<td>-----------------------------------------</td>
</tr>
<tr>
<td>32 04 14 03</td>
<td>Energy projects to aid economic recovery — European offshore wind grid system</td>
<td>1.1</td>
<td>p.m.</td>
<td>42 848 055</td>
<td>p.m.</td>
</tr>
<tr>
<td>32 04 14 04</td>
<td>Energy projects to aid economic recovery - Energy efficiency and renewable initiatives</td>
<td>1.1</td>
<td>p.m.</td>
<td>p.m.</td>
<td>p.m.</td>
</tr>
<tr>
<td></td>
<td><strong>Article 32 04 14 — Subtotal</strong></td>
<td></td>
<td>p.m.</td>
<td>1 023 370 183</td>
<td>– 251 935 540</td>
</tr>
<tr>
<td>32 04 15</td>
<td><strong>Pilot projects in the field of waste recuperation and its valorisation for clean energy</strong></td>
<td>1.1</td>
<td>p.m.</td>
<td>p.m.</td>
<td>p.m.</td>
</tr>
<tr>
<td>32 04 16</td>
<td><strong>Security of energy installations and infrastructures</strong></td>
<td>1.1</td>
<td>250 000</td>
<td>476 089</td>
<td>250 000</td>
</tr>
<tr>
<td><strong>Chapter 32 04 — Total</strong></td>
<td></td>
<td></td>
<td><strong>125 688 003</strong></td>
<td><strong>1 080 982 371</strong></td>
<td><strong>– 251 935 540</strong></td>
</tr>
</tbody>
</table>
**Article 32 04 14 — Energy projects to aid economic recovery**

Item 32 04 14 01 — Energy projects to aid economic recovery — Energy networks

**Figures**

<table>
<thead>
<tr>
<th>Budget 2011</th>
<th>Parliament position No. 2/2011</th>
<th>New amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commitments</td>
<td>Payments</td>
<td>Commitments</td>
</tr>
<tr>
<td>p.m. 732 955 589</td>
<td>– 251 935 540</td>
<td>p.m. 481 020 049</td>
</tr>
</tbody>
</table>

**Remarks**

*Former Item 06 04 14 01*

This appropriation is intended to cover the costs of gas and electricity infrastructure projects having the highest Union added value.

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

This appropriation should also serve to promote connection and integration of renewable energy resources and to strengthen economic and social cohesion with less-favoured and island regions of the Union.

It is intended to cover the financing of the second step of the economic recovery plan as agreed between the two arms of the budgetary authority on 2 April 2009. Its financing is conditional on an agreement by the budgetary authority and should be made available as provided for in points 21, 22 and 23 of the Inter-institutional Agreement of 17 May 2006 on budgetary discipline and sound financial management, without prejudice to the financial envelopes of the codecision programmes and the European Parliament’s priorities.

If the Commission’s annual report to the European Parliament and to the Council on the implementation of the economic recovery plan identifies serious risks for implementing the priority projects, the Commission shall recommend measures to offset those risks, and shall where appropriate and consistent with the economic recovery plan, make additional proposals for the projects already referred to in Regulation (EC) No 663/2009.

**Legal basis**

### TITLE 40 — RESERVES

#### Figures

<table>
<thead>
<tr>
<th>Title Chapter</th>
<th>Heading</th>
<th>FF</th>
<th>Budget 2011</th>
<th>Parliament position No. 2/2011</th>
<th>New amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Commitments</td>
<td>Payments</td>
<td></td>
</tr>
<tr>
<td>40 01</td>
<td>Reserves for administrative expenditure</td>
<td>5</td>
<td>1 834 000</td>
<td>1 834 000</td>
<td>1 834 000</td>
</tr>
<tr>
<td>40 02</td>
<td>Reserves for financial interventions</td>
<td></td>
<td>975 295 000</td>
<td>258 075 297</td>
<td>975 295 000</td>
</tr>
<tr>
<td>40 03</td>
<td>Negative reserve</td>
<td></td>
<td>p.m.</td>
<td>– 182 388 893</td>
<td>182 388 893</td>
</tr>
</tbody>
</table>

#### Title 40 — Total

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th>977 129 000</th>
<th>77 520 404</th>
<th>182 388 893</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Commitments</td>
<td>Payments</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1 834 000</td>
<td>1 834 000</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>975 295 000</td>
<td>258 075 297</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>p.m.</td>
<td>– 182 388 893</td>
<td></td>
</tr>
</tbody>
</table>

### CHAPTER 40 03 — NEGATIVE RESERVE

#### Figures

<table>
<thead>
<tr>
<th>Title Chapter Article Item</th>
<th>Heading</th>
<th>FF</th>
<th>Budget 2011</th>
<th>Parliament position No. 2/2011</th>
<th>New amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>40 03</td>
<td>Negative reserve</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>40 03 01</td>
<td>Negative reserve (Heading 3b: Citizenship)</td>
<td>3.2</td>
<td>p.m.</td>
<td>– 178 562 910</td>
<td>3.2</td>
</tr>
<tr>
<td>40 03 02</td>
<td>Negative reserve (Heading 4. EU as a Global Player)</td>
<td>4</td>
<td>p.m.</td>
<td>– 3 825 983</td>
<td>4.8</td>
</tr>
</tbody>
</table>

#### Chapter 40 03 — Total

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th>p.m.</th>
<th>– 182 388 893</th>
<th>p.m.</th>
</tr>
</thead>
</table>
**Article 40 03 01 — Negative reserve (Heading 3b: Citizenship)**

*Figures*

<table>
<thead>
<tr>
<th>Budget 2011</th>
<th>Parliament position No. 2/2011</th>
<th>New amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commitments</td>
<td>Payments</td>
<td>Commitments</td>
</tr>
<tr>
<td>p.m.</td>
<td>– 178 562 910</td>
<td>178 562 910</td>
</tr>
</tbody>
</table>

*Remarks*

*New article*

This article is intended to cover EUR 178 562 910 payment appropriations entered under article 13 06 01 — European Union Solidarity Fund — Member States.

The principle of a negative reserve is provided for in Article 44 of the Financial Regulation. This reserve must be drawn upon before the end of the financial year by means of transfer in accordance with the procedure laid down in Articles 23 and 24 of the Financial Regulation.

*Legal basis*


**Article 40 03 02 — Negative reserve (Heading 4. EU as a Global Player)**

*Figures*

<table>
<thead>
<tr>
<th>Budget 2011</th>
<th>Parliament position No. 2/2011</th>
<th>New amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commitments</td>
<td>Payments</td>
<td>Commitments</td>
</tr>
<tr>
<td>p.m.</td>
<td>– 3 825 983</td>
<td>3 825 983</td>
</tr>
</tbody>
</table>

*Remarks*

*New article*

This article is intended to cover EUR 3 825 983 payment appropriations entered under article 13 06 02 — European Union Solidarity Fund — Countries negotiating for accession.

The principle of a negative reserve is provided for in Article 44 of the Financial Regulation. This reserve must be drawn upon before the end of the financial year by means of transfer in accordance with the procedure laid down in Articles 23 and 24 of the Financial Regulation.

*Legal basis*

Mobilisation of Globalisation Adjustment Fund: LM Glasfiber company/Denmark

P7_TA(2011)0303


(2013/C 33 E/29)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2011)0258 – C7-0112/2011),

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


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

— having regard to the report of the Committee on Budgets (A7-0235/2011),

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

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

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

D. whereas Denmark has requested assistance in respect of cases concerning 1 650 redundancies (of which 825 targeted for assistance) in the enterprise LM Glasfiber operating in the NACE Revision 2 Division 28 (Manufacture of machinery and equipment) in three municipalities located in the Southern part of Denmark (Syddanmark),

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

1. Requests the institutions involved to make the necessary efforts to improve procedural and budgetary arrangements in order to accelerate the mobilisation of the EGF; appreciates in this sense the improved procedure put in place by the Commission, following Parliament's request for accelerating the release of grants, aimed at presenting to the budgetary authority the Commission's assessment on the eligibility of an EGF application together with the proposal to mobilise the EGF; hopes that further improvements in the procedure will be made within the framework of the upcoming review of the EGF and that greater efficiency, transparency and visibility of the EGF will be achieved;

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

3. Stresses that, in accordance with Article 6 of the EGF Regulation, it should be ensured that the EGF supports the reintegration of individual redundant workers into employment; reiterates that assistance from the EGF must not replace actions which are the responsibility of companies by virtue of national law or collective agreements, nor measures restructuring companies or sectors;

4. Notes that the information provided on the coordinated package of personalised services to be funded from the EGF includes information on the complementarity with actions funded by the Structural Funds; reiterates its call to the Commission to present a comparative evaluation of those data in its annual reports as well;

5. Welcomes the fact that following repeated requests from Parliament, for the first time the 2011 budget shows payment appropriations of EUR 47,608,950 on the EGF budget line 04 05 01; recalls that the EGF was created as a separate specific instrument with its own objectives and deadlines and that it therefore deserves a dedicated allocation, which will avoid transfers from other budget lines, as happened in the past, which could be detrimental to the achievement of the various policies objectives;

6. Approves the decision annexed to this resolution;

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

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

ANNEX

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the mobilisation of the European Globalisation Adjustment Fund in accordance with point 28 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (application EGF/2010/022 DK/LM Glasfiber from Denmark)

(The text of this annex is not reproduced here since it corresponds to the final act, Decision 2011/469/EU.)
Agency for the operational management of large-scale IT systems in the area of freedom, security and justice

P7_TA(2011)0304

European Parliament legislative resolution of 5 July 2011 on the amended proposal for a regulation of the European Parliament and of the Council establishing an Agency for the operational management of large-scale IT systems in the area of freedom, security and justice


(2013/C 33 E/30)

(Ordinary legislative procedure: first reading)

The European Parliament,

— having regard to the amended Commission proposal to Parliament and the Council (COM(2010)0093),

— having regard to Article 294(2), and Article 74, Article 77(2)(a) and (b), Article 78(2)(e), Article 79(2)(c), Article 82(1)(d), Article 85(1), Article 87(2)(a) and Article 88(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0046/2009),

— having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,

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

— having regard to the Opinion of the European Data Protection Supervisor of 7 December 2009 (1),

— having regard to the undertaking given by the Council representative by letter of 9 June 2011 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

— having regard to Rules 55 and 37 of its Rules of Procedure,

— having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Budgets and the Committee on Budgetary Control (A7-0241/2011),

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

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

3. 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;

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

Position of the European Parliament adopted at first reading on 5 July 2011 with a view to the adoption of Regulation (EU) No …/2011 of the European Parliament and of the Council establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice

(As an agreement was reached between Parliament and Council, Parliament’s position corresponds to the final legislative act, Regulation (EU) No 1077/2011.)

ANNEX TO THE LEGISLATIVE RESOLUTION

Joint Statement of the European Parliament and the Council

The European Parliament and the Council recognise the particular circumstances underlying the specific arrangement on the seat and sites of the Agency and the fact that it does not prejudice the Conclusions of the Representatives of the Member States meeting at Head of State or Government level in Brussels on 13 December 2003 (1) notably as regards the priority to be given to the Member States, which have acceded to the EU in 2004 and 2007, in the distribution of the seats of offices or agencies to be set up in the future.

(1) See 05381/2004, p. 27.

Products that may benefit from exemption from or a reduction in dock dues *

European Parliament legislative resolution of 5 July 2011 on the proposal for a Council decision amending Decision 2004/162/EC as regards the products that may benefit from exemption from or a reduction in dock dues (COM(2010)0749 – C7-0022/2011 – 2010/0359(CNS))

(Special legislative procedure – consultation)

The European Parliament,

— having regard to the Commission proposal to the Council (COM(2010)0749),

— having regard to Article 349 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C7-0022/2011),

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

— having regard to the report of the Committee on Regional Development (A7-0199/2011),

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 substantially to amend the text approved by Parliament;

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


P7_TA(2011)0308


(2013/C 33 E/32)

The European Parliament,

— having regard to Articles 310 and 314 of the Treaty on the Functioning of the European Union and Article 106a of the Treaty establishing the European Atomic Energy Community,

— 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 Communities (¹) (the Financial Regulation), and particularly Article 15(3) and Articles 37 and 38 thereof,

— having regard to the general budget of the European Union for the financial year 2011, as definitively adopted on 15 December 2010 (²),

— having regard to the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (³),


— having regard to Rules 75b and 75e of its Rules of Procedure,

— having regard to the report of the Committee on Budgets (A7-0254/2011),

A. whereas Draft amending budget No 3/2011 aims to enter in the 2011 budget the surplus from the 2010 financial year, amounting to EUR 4 539 394 283,

B. whereas the main components of that surplus are a positive outturn on income of more than EUR 1,8 billion (EUR 1 800 000 000), an under-spend in expenditure of EUR 2,72 billion, and a positive exchange rate difference of EUR 22,3 million,

C. whereas the major part of the income side (EUR 1,28 billion out of EUR 1,8 billion) comes from interest on late payments and fines,

D. whereas the difference between voted budget 2011 (EUR 122,96 billion) and implemented or carried over appropriations (EUR 120,97 billion) is a result of cancelled appropriations (EUR 740 million), mostly because of non-adoption of Draft amending budget No 10/2010,

E. whereas the under-spend of EUR 2,72 billion results from under-implementation of programmes, from under-implementation of non-mobilised reserves, from under-implementation in other sections of the budget, and from under-execution of credits carried over from 2009 to 2010,

1. Takes note of Draft amending budget No 3/2011, devoted solely to the budgeting of the 2010 surplus, in accordance with Article 15 of the Financial Regulation;

2. Is firmly convinced that the part of income calculated from interest on late payments and fines is not to be considered as a surplus and should therefore not be deducted from the Member States’ contributions (own resources based on GNI);

3. Considers, on the contrary, that such income, stemming from the enforcement of EU competition policy, should be directly put back and reinvested in the EU budget; is determined to promote and defend this principle in the forthcoming negotiations on annual and multiannual budgets;

4. Approves, however, Council’s position on Draft amending budget No 3/2011 unamended and instructs its President to declare that Amending budget No 2/2011 has been definitively adopted and arrange for its publication in the Official Journal of the European Union;

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

---

**Enforcement of consumer protection laws ***I**

P7_TA(2011)0309


(2013/C 33 E/33)

(Ordinary legislative procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2010)0791),

— having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0012/2011),

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

— having regard to the opinion of the Economic and Social Committee of 5 May 2011 (1),

— having regard to the undertaking given by the Council representative by letter of 22 June 2011 to approve Parliament’s position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

— having regard to Rules 55 of its Rules of Procedure,

(1) Not yet published in the Official Journal.
having regard to the report of the Committee on the Internal Market and Consumer Protection (A7-0201/2011),

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

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


(As an agreement was reached between Parliament and Council, Parliament’s position corresponds to the final legislative act, Regulation (EU) No 954/2011.)

Derivatives, central counterparties and trade repositories ***I


(2013/C 33 E/34)

(Ordinary legislative procedure: first reading)

[Amendment No 1 unless indicated otherwise]

AMENDMENTS BY PARLIAMENT (*)

to the Commission proposal

(1) The matter was then referred back to committee pursuant to Rule 57(2), second subparagraph (A7-0223/2011).
(2) Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol □
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on OTC derivatives, central counterparties and trade repositories

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

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

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

Having regard to the opinion of the European Central Bank (2),

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) At the request of the Commission, a report published on 25 February 2009 by a high-level group of experts chaired by J. de Larosière concluded that the supervisory framework needed to be strengthened to reduce the risk and severity of future financial crisis and recommended far-reaching reforms to the structure of supervision of the financial sector in the Union, including the creation of a European System of Financial Supervisors, comprising three European Supervisory Authorities, one each for the banking, insurance and occupational pensions and the securities and markets sectors, and the creation of a European Systemic Risk Board.

(2) The Commission Communication of 4 March 2009 entitled "Driving European Recovery" proposed to strengthen the Union's regulatory framework for financial services. In its Communication of 3 July 2009 entitled "Ensuring efficient, safe and sound derivatives markets", the Commission assessed the role of derivatives in the financial crisis, and, in its Communication of 20 October 2009 entitled "Ensuring efficient, safe and sound derivative markets: Future policy actions", the Commission outlined the actions it intends to take to reduce the risks associated with derivatives.

(3) On 23 September 2009, the Commission adopted proposals for three Regulations establishing the European System of Financial Supervision, including the creation of three European Supervisory Authorities (ESAs) to contribute to a consistent application of Union legislation and to the establishment of high quality common regulatory and supervisory standards and practices, namely the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council (3) (EBA), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council (4), (EIOPA) and the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (5) (ESMA) Those authorities have a crucial role to play in safeguarding the stability of the financial sector. It is therefore essential to continuously ensure that the development of their work is a matter of high political priority and that they are adequately resourced.

(1) OJ C 54, 19.2.2011, p. 44.
(2) OJ C 57, 23.2.2011, p. 1
(5) OJ L 331, 15.12.2010, p. 84.
(4) Over-the-counter (OTC) derivatives lack transparency as they are privately negotiated contracts and any information concerning them is usually only available to the contracting parties. They create a complex web of interdependence which can make it difficult to identify the nature and level of risks involved. The financial crisis has demonstrated that such characteristics increase uncertainty in times of market stress and accordingly, pose risks to financial stability. This Regulation lays down conditions for mitigating those risks and improving the transparency of derivative contracts.

(5) At the 26 September 2009 summit in Pittsburgh, the G20 Leaders agreed that all standardised OTC derivative contracts should be cleared through central counterparties (CCP) by the end of 2012 and that OTC derivative contracts should be reported to trade repositories. In June 2010, the G20 Leaders in Toronto reaffirmed their commitment and also committed to accelerate the implementation of strong measures to improve transparency and regulatory oversight of OTC derivatives in an internationally consistent and non-discriminatory way with a view to improving the OTC derivatives market and creating more powerful tools to hold firms to account for the risks they take. The Commission will endeavour to ensure that those commitments are implemented in a similar way by our international partners.

(6) The European Council, in its Conclusions of 2 December 2009, agreed that there was a need to substantially improve the mitigation of counterparty credit risk and that it was important to improve transparency, efficiency and integrity for derivative transactions. The European Parliament resolution of 15 June 2010 on "Derivatives markets: future policy actions" called for mandatory clearing and reporting of OTC derivatives.

(7) ESMA should act within the scope of this Regulation by safeguarding the stability of financial markets in emergency situations and ensuring the consistent application of Union rules by national supervisory authorities and settling disagreements between them. It is also entrusted with developing legally binding regulatory technical standards and has a central role in the authorisation and monitoring of CCPs and trade repositories.


(8a) The Commission, in its Communication of 2 February 2011 entitled “Tackling the challenges in commodity markets and on raw materials”, identified the increased financialisation of international raw material markets as a strategical challenge to Union’s economies. The Commission reaffirmed the need for more transparency in the trading of raw materials as well as the positive potential effect of position limits in derivative trading in commodities. With a view to achieving an effective decrease of the unhealthily high trading volume in raw material markets, the Commission should, in particular, assess the effects of restricting admission to trade on raw materials stock exchanges to physical traders only, excluding financial institutions. In the incoming reviews of Directive 2004/39/EC and Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (2), the Commission should, in particular, address the problem of price volatility on food and agricultural markets and provide for appropriate requirements to prevent systemic risks and manipulative practices, including margin requirements, position limits and punitive disgorgement of profits.

(2) OJ L 96, 12.4.2003, p. 16.
Incentives to promote the use of CCPs have not proven to be sufficient to ensure that standardised OTC derivatives are in fact cleared. Mandatory CCP clearing requirements for those OTC derivatives that can be cleared are therefore necessary.

It is likely that Member States will adopt divergent national measures which could create obstacles to the smooth functioning of the internal market and be to the detriment of market participants and financial stability. A uniform application of the clearing obligation in the Union is also necessary to ensure a high level of investor protection and to create a level playing field between market participants.

Ensuring that the clearing obligation reduces systemic risk requires a process of identification of eligible classes of derivatives that should be subject to that obligation. That process should take into account that not all CCP-cleared OTC derivatives can be considered suitable for mandatory CCP clearing.

This Regulation sets out the criteria for determining the eligibility to the clearing obligation. In view of its pivotal role, ESMA should decide, after consulting the Commission and the European Systemic Risk Board established by Regulation (EU) No 1092/2010 of the European Parliament and the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (ESRB), whether a class of derivatives meets the eligibility criteria, whether the clearing obligation should be applied and from when the clearing obligation should take effect, including, where appropriate, any 'phase-in' implementation standards. A gradual implementation of the clearing obligation could be either in terms of proportion of the eligible classes that are to be cleared, or in terms of the types of market participants that are to comply with the clearing obligation. Bilateral clearing should continue to be authorised if the requirements for clearing are not met for certain categories of derivatives within a class of derivatives, as is sometimes the case for covered bonds.

In determining whether a class of derivatives is to be subject to clearing requirements, ESMA should aim for a reduction in systemic risk and avoidance of systemic repercussions. This includes taking into account in the assessment factors such as the future date from which the clearing obligation takes effect, the interconnectedness of the relevant class of derivative in the market, the level of contractual and economic standardisation of contracts, the effect on the performance and competitiveness of EU companies in the global markets, the operational and risk management ability of CCPs to handle the volume and obligations of this directive, the degree of settlement risk and counterparty credit risk and the impact of cost on the real economy and investment in particular.

The characteristics of the foreign exchange market (daily volume of the transaction, currency pairs, importance of third country transactions, settlement risk addressed through a robust existing mechanism) call for an appropriate regime that would rely notably on preliminary international convergence and mutual recognition of the relevant infrastructure.

In drafting delegated acts and technical implementing standards, special consideration should be given to the needs of long-term savings institutions to provide long-term savings products to consumers. To that end this Regulation should not result in excessive costs for long-term savings institutions. One of the tools by which to achieve that objective is the proper application of the proportionality principle.

For long-term savings institutions, the posting of government and high-quality corporate bonds as an alternative to cash should be permitted to cover initial and variation margins.

For an OTC derivative contract to be cleared, it is necessary for both parties to that contract to consent. Therefore, exemptions to the clearing obligation should be narrowly tailored as they would reduce the effectiveness of the obligation and the benefits of CCP clearing and may lead to regulatory arbitrage between groups of market participants. Nevertheless, the Commission and ESMA should ensure that mandatory clearing arrangements also protect investors.

In general, the obligations under this Regulation should apply only to future transactions, thereby making a smooth transition possible and enhancing the stability of the system while reducing the need for subsequent adjustments. In that connection, clearing and reporting obligations should be dealt with in different ways. Whilst a retrospective clearing obligation is hardly feasible on legal grounds, given the need for post-collateralisation, the same is not true of a retrospective reporting obligation. In this case, on the basis of the results of an impact study, and using rules tailored to classes of derivatives, technical requirements and remaining periods to maturity, a retrospective reporting obligation could be laid down.

OTC derivatives that are not considered suitable for CCP clearing still entail counterparty credit risk and therefore, rules should be established to manage that risk. Those rules should be only applicable to the market participants that are subject to the clearing obligation.

It is important that necessarily different treatment of non-financial counterparties extends from this Regulation to Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (1) and Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions (2). Counterparties who are not mandated to clear centrally should not face higher capital charges on continued bilateral arrangements.

The regulatory capital charge for financial counterparties dealing in OTC derivatives which are cleared bilaterally and not in a central clearing house should be able to be calculated in relation to the levels of potential loss associated with the risk of default, measured for each counterparty.


(15a) The activities of UCITS which carry out only low-volume derivatives transactions should therefore be assessed in order to determine on what precise basis they should be classified as financial counterparties within the meaning of this Regulation. In that connection, steps should be taken to prevent distortions of competition and reduce the scope for abuse. For that reason, the clearing threshold for non-financial counterparties should not automatically be applied to UCITS. Instead, a narrowly defined derogation should be considered and introduced.

(15b) UCITS should be within the scope of this Regulation, as the diversified investment policies of UCITS also include transactions in derivative contracts. UCITS have in recent years considerably grown and represent an estimated 50 % of Union GDP, having also a global systemic importance considering their significant investment capacity.

(15c) Pension funds as defined in Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (3) with a risk-averse risk-profile and that use derivatives to hedge their pension liability risks should be made subject to the reporting obligations and the risk-mitigation techniques for OTC derivative contracts not cleared by a CCP as laid down in this Regulation. Those pensions should not, however, be subject to the clearing obligation in order to avoid disproportionate costs for pensioners.

(16) Where appropriate, rules applicable to financial counterparties should also apply to non-financial counterparties. It is recognised that non-financial counterparties use OTC contracts in order to cover themselves against commercial risks directly linked to their commercial activities. Consequently, in determining whether a non-financial counterparty should be subject to the clearing obligation, consideration should be given to the purpose for which that non-financial counterparty uses OTC derivatives and to the size of the exposures that it has in those instruments. Non-financial counterparties should explain the use of derivatives through their annual report or other appropriate means. When establishing the threshold for the clearing obligation, ESMA should consult all relevant authorities, such as regulators responsible for commodity markets, and the non-financial counterparties, in order to ensure that the particularities of those sectors are fully taken into account. Moreover, by 31 December 2013, the Commission should assess the systemic importance of the transactions of non-financial firms in OTC derivatives in different sectors, including in the energy sector. Should a comparable set of EU rules tailored to individual sectors come into force, the Commission should immediately consider whether the sector should be removed from the scope of this Regulation and should put forward appropriate legislative proposals.

(16a) The clearing threshold for non-financial counterparties is a very important figure for all market participants. Both qualitative and quantitative criteria should be assessed and given a suitable weighting when the clearing threshold is set. In that connection, appropriate efforts should be made to standardise OTC contracts to a considerable extent and to recognise the importance of risk mitigation for non-financial counterparties in the context of their normal business activity. The introduction of thresholds based on the relevance of the undertaking for the market as a whole or for an OTC market segment could be supplemented by the use of operational risk ratios.

(16b) With a view to exempting small and medium-sized enterprises (SMEs) from the clearing obligation, consideration should also be given to sector-specific OTC clearing thresholds based on the total volume of contracts concluded by an undertaking. In addition, ESMA should examine whether a de minimis rule might be introduced for SMEs in connection with the reporting obligation.

(16c) The Commission should ensure that the necessary and appropriate use of OTC derivatives by non-financial counterparties to hedge market risks arising from business operations is not undermined in terms of pricing or availability by future legislative proposals.

(17) A contract entered into by a fund, whether managed by a fund manager or not, should be considered within the scope of this Regulation.

(18) Central banks and other national bodies performing similar functions, other public bodies charged with or intervening in the management of the public debt, and multilateral development banks listed in Section 4.2 of Part 1 of Annex VI to Directive 2006/48/EC, the Bank for International Settlements and certain of the public sector entities defined in Article 4(18) of Directive 2006/48/EC should be excluded from the scope of this Regulation in order to avoid limiting their powers to intervene to stabilise the market, if and when required. Consideration should be given in advance to the issue of whether it would be responsible to grant a derogation from clearing to public sector entities within the meaning of Article 4(18) of Directive 2006/48/EC which are owned by central governments and are covered by an explicit guarantee arrangement entered into by that central government which is equivalent to assumption of liability.

(19) As not all market participants that are subject to the clearing obligation are able to become clearing members of the CCP (or clients of clearing members), they should have the possibility to access CCPs as clients or through investment firms or credit institutions that are themselves clients.

(20) The introduction of a clearing obligation along with a process to establish which CCPs can be used for the purpose of that obligation may lead to unintended competitive distortions of the OTC derivatives market. For example, a CCP could refuse to clear transactions executed on certain trading venues because the CCP is owned by a competing trading venue. In order to avoid such discriminatory practices, CCPs should clear transactions executed in different venues to the extent that those venues comply with the operational and technical requirements established by the CCP, without reference to the contract documents on the basis of which the parties concluded the relevant OTC derivatives transaction, provided that the documents are consistent with market standards. Generally, the Commission should continue to monitor closely the evolution of the OTC derivatives market and should, where necessary, intervene in order to prevent such competitive distortions from occurring in the internal market.

(21) In order to identify the relevant classes of OTC derivatives that should be subject to the clearing obligation, the thresholds and systemically relevant non-financial counterparties, reliable data is needed. Therefore, for regulatory purposes, it is important that a uniform OTC derivatives data reporting requirement is established at Union level. Moreover, a retrospective reporting obligation is needed, to the largest possible extent, for both financial counterparties and non-financial counterparties over the threshold, in order to provide ESMA with comparative data. If such retrospective reporting is not feasible for any classes of OTC derivatives, an appropriate justification should be provided to the respective trade repository.
It is important that market participants report all details regarding OTC derivative contracts they have entered into to trade repositories. As a result, information on the risks inherent in OTC derivatives markets will be centrally stored and easily accessible to ESMA, the relevant competent authorities and the relevant central banks of the European System of Central Banks (ESCB). The Commission and ESMA should consider extending the applicability of the reporting obligation to embedded derivatives.

Institutions for occupational retirement provision as defined in Article 6(a) of Directive 2003/41/EC or arrangements offering similar level of risk mitigation and recognised under national law for the purpose of retirement provision using derivative contracts that are objectively measurable as reducing risks directly related to the solvency of the institution that operate a pension scheme should be subject to the provisions for bilateral collateralisation as set out in this Regulation to be reviewed in 2014.

In order to allow for a comprehensive overview of the market and for assessing systemic risk, both cleared and non-cleared contracts should be reported to trade repositories.

ESMA, EIOPA and EBA should be provided with adequate resources in order to effectively perform the tasks they are given in this Regulation.

The obligation to report any amendment to or termination of a contract should apply to the original counterparties to that contract and to any other entities reporting on behalf of the original counterparties. A counterparty or its employees, who reports the full details of a contract to a trade repository on behalf of another counterparty in accordance with this Regulation should not be in breach of any restriction on disclosure.

There should be effective, proportionate and dissuasive penalties with regard to the clearing and reporting obligations. Member States should enforce those penalties in a manner that does not reduce the effectiveness of those rules. Member States should ensure that the penalties imposed are publicly disclosed and that assessment reports on the effectiveness of existing rules are published at regular intervals.

Authorisation of a CCP should be conditional on a minimum amount of initial capital. Capital, together with retained earnings and reserves of a CCP, should be proportionate to the size and activity of the CCP at all times in order to ensure that it is adequately capitalised against operational or residual risks and that it is able to conduct an orderly winding down or restructuring of its operations if necessary.

As this Regulation introduces a legal obligation to clear through specific CCPs for regulatory purposes, it is essential to ensure that those CCPs are safe and sound and comply at all times with the stringent organisational, business conduct, and prudential requirements established by this Regulation. In order to ensure uniform application of this Regulation, those requirements should apply to the clearing of all financial instruments in which the CCPs deal.

The relevant competent authority should satisfy itself that a CCP maintains sufficient available financial resources (which should include a minimum contribution of own funds of the CCP), in accordance with guidelines issued by ESMA.

It is therefore necessary, for regulatory and harmonisation purposes, to ensure that financial counterparties only use CCPs which comply with the requirements laid down in this Regulation.
Direct rules regarding the authorisation and supervision of CCPs are an essential corollary to the obligation to clear OTC derivatives. It is appropriate that competent authorities retain the responsibility for all aspects of the authorisation and the supervision of CCPs, including the responsibility to verify that the applicant CCP is compliant with this Regulation and with Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (1), in view of the fact that those national competent authorities remain best placed to examine how the CCPs operate on a daily basis, to carry out regular reviews and to take appropriate action, where necessary.

Where a CCP risks insolvency, the fiscal responsibility may lie predominantly with the Member State in which it is established. It follows that authorisation and supervision of that CCP should be exercised by the relevant competent authority of that Member State. However, since a CCP’s clearing members may be established in different Member States and they will be the first to be impacted by the CCP’s default, it is imperative that ESMA should be involved in the authorisation and supervisory process. This will avoid divergent national measures or practices and obstacles to the internal market. ESMA should involve other competent authorities in the Member States concerned in the work of preparing recommendations and decisions.

It is necessary to reinforce provisions on exchange of information between competent authorities and to strengthen the duties of assistance and cooperation between them. For the exchange of information, strict professional secrecy is needed. It is essential, due to the wide impact of OTC derivative contracts, that other regulatory authorities have access to information necessary to the exercise of their functions.

Nothing in this Regulation should attempt to restrict or impede a CCP in one jurisdiction from clearing a product denominated in the currency of another Member State or the currency of a third country, or to require a CCP to have a banking licence in order to have access to day-to-day central bank liquidity.

In view of the global nature of financial markets, agreements with CCPs established in third countries on the provision of clearing services within the Union are necessary. Such agreements should cover the authorisation by ESMA and the competent authority of the Member State in which the CCP concerned intends to provide clearing services of authorisation of a CCP established in a third country or the granting by the Commission of an exemption from the authorisation conditions and procedure, provided that the Commission has recognised the legal and supervisory framework of that third country as equivalent to the Union framework and that the requisite conditions are met. In this context, agreements with the Union’s major international partners will be of particular importance in order to ensure a global level playing field and ensure financial stability.

On 16 September 2010, the European Council agreed on the need for the Union to promote its interest and values more assertively and in a spirit of reciprocity and mutual benefit in the context of the Union’s external relations and to take steps, inter alia, to secure greater market access for European business and deepen regulatory cooperation with major trading partners.

CCPs should have robust governance arrangements, senior management of good repute and independent members on its board, irrespective of its ownership structure. At least one-third, and no less than two, members of the board should be independent members. Those independent members should not act as independent members in more than one other CCP. Their remuneration should not be linked in any way with the performance of the CCP. However, different governance arrangements and ownership structures of a CCP may influence a CCP’s willingness or ability to

clear certain products. It is thus appropriate that the independent members of the board and the risk committee to be established by the CCP should address any potential conflict of interests within a CCP. Clearing members and clients need to be adequately represented as decisions taken by the CCP may have an impact on them.

(34) A CCP may outsource functions other than its risk management functions, but only where those outsourced functions do not impact on the proper operation of the CCP and on its ability to manage risks. **Outsourcing of functions should be approved by the risk committee of the CCP.**

(35) The participation requirements for a CCP should therefore be transparent, proportionate, and non-discriminatory and should allow for remote access to the extent that this does not expose the CCP to additional risks.

(36) Clients of clearing members that clear their OTC derivatives with CCPs should be granted a high level of protection. The actual level of protection depends on the level of segregation that those clients choose. Intermediaries should segregate their assets from those of their clients. For this reason, CCPs should keep updated and easily identifiable records. **In addition, the accounts of members in default should be transferable to other members.**

(36a) **Any form of legal uncertainty regarding the effectiveness and enforceability of a CCP’s rules and procedures governing the demarcation of the assets and obligations of the clearing members and their clients and the transfer of positions in response to pre-determined events would undermine the stability of a CCP. The events whose nature is such as to trigger a transfer of positions should be specified in advance in order to safeguard the scope of the protection provided.**

(37) A CCP should have a sound risk management framework to manage credit risks, liquidity risks, operational and other risks, including the risks that it bears or poses to other entities as a result of interdependencies. A CCP should have adequate procedures and mechanisms in place to deal with the default of a clearing member. In order to minimise the contagion risk of such a default, the CCP should have in place stringent participation requirements, collect appropriate initial margins and maintain a default fund and other financial resources to cover potential losses. **The development of a highly robust risk management should remain the primary objective of a CCP. However, it may adapt its features to the specific activities and risk profiles of the clients of the clearing members, and if deemed appropriate, may include in the scope of the highly liquid assets accepted as collateral at least cash and government bonds subject to adequate haircuts.**

(37a) **CCPs’ risk management strategies should be sound, and should not transfer risk to the taxpayer.**

(37b) **The Financial Stability Board has identified CCPs as systemically important institutions. There is no common practice internationally or within the Union regarding conditions under which CCPs may access central bank liquidity facilities or may need to be licensed as credit institutions. The implementation of the clearing obligation required by this Regulation may increase the systemic importance of CCPs and the need for liquidity. The Commission should therefore be invited to take into account the results of any ongoing work between central banks, to assess, in cooperation with the ESCB, the possible need for measures to facilitate CCPs’ access to central bank liquidity facilities in one or more currencies and to report to the European Parliament and the Council.**
Margin calls and haircuts on collateral may have procyclical effects. CCPs, competent authorities and ESMA should therefore adopt measures to prevent and control possible procyclical effects in risk management practices adopted by CCPs, to the extent that a CCP's soundness and financial security is not negatively affected.

Exposure management is an essential part of the clearing process. Access to, and use of, the relevant pricing sources should be granted to provide clearing services in general. Such pricing sources should include those related to indices that are used as references to derivatives or other financial instruments.

Margins are the primary line of defence for a CCP. Although CCPs should invest the margins received in a safe and prudent manner, they should make particular efforts to ensure adequate protection of margins to guarantee that they are returned in a timely manner to the non-defaulting clearing members or to an interoperable CCP where the CCP collecting these margins defaults.

Access to adequate liquidity resources is essential for a CCP. It is possible for such liquidity to derive from access to central bank liquidity, creditworthy and reliable commercial bank liquidity, or a combination of both.

The "European Code of Conduct for Clearing and Settlement" of 7 November 2006 (1) established a voluntary framework for setting up links between CCPs and trade repositories. However, the post-trade sector remains fragmented along national lines, making cross-border trades more costly and hindering harmonisation. It is therefore necessary to lay down the conditions for the establishment of interoperable arrangements between CCPs to the extent these do not expose the relevant CCPs to risks that are not appropriately managed.

Interoperability arrangements can, in general, be tools for greater integration of the post-trading market within the Union and regulation should be provided for. However, interoperability arrangements may expose CCPs to additional risks. Given the additional complexities involved in an interoperability arrangement between CCPs clearing OTC derivative contracts, it is appropriate at this stage to require a grace period of three years between receiving clearing authorisation for derivatives and eligibility to apply for authorisation for interoperability as well as to restrict the scope of subsequent interoperability arrangements to cash securities. However, by 30 September 2014, ESMA should submit a report to the Commission on whether and when an extension of that scope to other financial instruments would be appropriate.

Trade repositories collect data for regulatory purposes that are relevant to authorities in all Member States. ESMA should assume responsibility for the registration, withdrawal and surveillance of trade repositories.

Given that regulators, CCPs and other market participants rely on the data maintained by trade repositories, it is necessary to ensure that those trade repositories are subject to strict record-keeping and data management requirements.

Transparency of prices and fees associated with the services provided by CCPs, their members and trade repositories is necessary to enable market participants to make an informed choice.

There are areas within financial services and trading of derivative contracts where commercial and intellectual property rights may also exist. In instances where these relate to products or services which have become or impact upon industry standards there should be a requirement for licences to be available on proportionate FRAND (Fair, Reasonable and Non-Discriminatory) terms.

ESMA should be able to propose to the Commission to impose periodic penalty payments. The purpose of those periodic penalty payments should be to achieve that an infringement established by ESMA is put to an end, that complete and correct information which ESMA has requested is supplied or that trade repositories, CCPs, their members or other persons submit to an investigation. Moreover, for deterrence purposes and to compel trade repositories, CCPs and their members to comply with this Regulation, the Commission should also be able to impose fines, following a request of ESMA, where intentionally or negligently, specific provisions of this Regulation have been breached. The fine should be dissuasive and proportionate to the nature and seriousness of the breach, the duration of the breach and the economic capacity of the trade repository, CCP or member concerned.

In order to effectively survey trade repositories, CCPs and their members, ESMA should have the right to conduct investigations and on-site-inspections.

It is essential that Member States and ESMA protect the right to privacy of natural persons when processing personal data, in accordance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and of the freedom of movement of such data.

It is important to ensure international convergence of requirements for CCPs and trade repositories. This Regulation follows the recommendations developed by CPSS-IOSCO and ESCB-CESR and creates a Union framework in which CCPs can operate safely. ESMA should consider these developments when drawing up the regulatory technical standards as well as the guidelines and recommendations foreseen in this Regulation.

The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union and the power to endorse regulatory technical standards in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 should be delegated to the Commission in respect of the details to be included in the notification to ESMA and in the register and the criteria for the decision of ESMA on the eligibility for the clearing obligation, on the information and clearing threshold, on the maximum time lag regarding the contract, on liquidity, on the minimum content of governance rules, on details of record keeping, on minimum content of business continuity plan and the services guaranteed, on percentages and time horizon for margin requirements, on extreme market conditions, on highly liquid collateral and haircuts, on highly liquid financial instruments and concentration limits, on details for performance of tests, on details concerning the application of a trade repository for registration with ESMA, on lines and on details concerning the information that a trade repository should make available, as referred to in this Regulation. In defining the delegated acts, the Commission should make use of the expertise of the relevant ESAs (ESMA, EBA and EIOPA). In view of the expertise of ESMA regarding issues concerning securities and securities markets, ESMA should play a central role in advising the Commission on the preparation of the delegated acts. However, where appropriate, ESMA should consult EBA and EIOPA. [Am. 16]

As part of the preparation for the establishment of technical guidelines and regulatory technical standards, and in particular when setting the clearing threshold for non-financial counterparties under this Regulation, ESMA should organise public hearings of market participants.

In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission’s exercise of implementing powers (1).

Since the objectives of this Regulation, namely to lay down uniform requirements for OTC derivative contracts and to also lay down uniform requirements for the performance of activities of CCPs and trade repositories, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

In view of the rules regarding interoperable systems, it was deemed appropriate to amend Directive 98/26/EC to protect the rights of a system operator that provides collateral security to a receiving system operator in the event of insolvency proceedings against that receiving system operator.

To ensure coherent and effective legislation and due to the close links between trading and post-trading, this Regulation should be aligned with Directive 2004/39/EC, which will determine the appropriate trading venue requirements to be imposed on the venues on which derivatives as defined in EMIR are executed. Those requirements may include transparency, access, order execution, surveillance, robustness and system safety as well as other necessary requirements.

The sale of complex derivative products to local public authorities calls for special attention. The Commission should include specific proposals in the incoming review of Directive 2004/39/EC to address this concern. These proposals will include specific due diligence, information and disclosure requirements.

HAVE ADOPTED THIS REGULATION:

Title I
Subject matter, scope and definitions

Article 1
Subject matter and scope

1. This Regulation lays down uniform requirements for derivative contracts, **specific provisions to improve the transparency and risk management of the OTC derivatives market as well as** uniform requirements for the performance of activities of CCPs and trade repositories.

In order to ensure consistent application of this Regulation, ESMA shall develop draft regulatory technical standards to lay down guidelines for the interpretation and application, for the purposes of this Regulation, of points (4) to (10) of Section C of Annex I to Directive 2004/39/EC.

ESMA shall submit those draft regulatory technical standards to the Commission by 30 June 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010. [Am.18]

2. This Regulation shall apply to CCPs and their clearing members, financial counterparties and to trade repositories. It shall apply to non-financial counterparties where so provided.

3. Title V shall apply only to transferable securities and money-market instruments, as defined in point (18)(a) and (b) and point (19) of Article 4(1) of Directive 2004/39/EC.

4. The clearing obligations of this Regulation shall not apply to:

(a) the members of the ESCB and other national bodies performing similar functions and other public bodies charged with or intervening in the management of the public debt;

(b) multilateral development banks, as listed under Section 4.2 of Part 1 of Annex VI to Directive 2006/48/EC.

(ba) the Bank for International Settlements.

4a. Further derogations from this Regulation shall require the adoption of a specific regulation of the European Parliament and of the Council drawn up on the basis of international standards and equivalent Union sectoral rules.

Article 2

Definitions

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

(1) 'central counterparty' or 'CCP' means an entity that legally interposes itself between the counterparties to the contracts traded within one or more financial markets, becoming the buyer to every seller and the seller to every buyer and which is responsible for the operation of a clearing system;

(2) 'trade repository' means an entity that centrally collects and maintains the records of derivatives;

(3) 'clearing' means the process by which a third party interposes itself, directly or indirectly, between the transaction counterparties in order to assume their rights and obligations;

(4) 'class of derivatives' means a subset of derivatives sharing common and essential characteristics which include at least the relationship with the underlying asset, the type of underlying asset, the pay-off profile and currency of notional. Derivatives belonging to the same class may have different maturities;

(5) 'OTC derivatives' means derivative contracts whose execution does not take place on a regulated market or on a third-country market considered as equivalent to a regulated market or on any other organised trading venue established under Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading in a regulated market (1) that clears such contracts through a CCP.

"regulated market" means a multilateral system as defined in Article 4(1)(14) of Directive 2004/39/EC;

"multilateral trading facility" or "MTF" means a multilateral system as defined in Article 4(1)(15) of Directive 2004/39/EC;

'financial counterparty' means an undertaking established in the Union which is an authorised investment firm as set out in Directive 2004/39/EC, an authorised credit institution as defined in Directive 2006/48/EC, an authorised insurance undertaking as defined in Directive 73/239/EEC, an authorised reinsurance undertaking as defined in Directive 2005/68/EC, an authorised UCITS as defined in Directive 2009/65/EC, an authorised institution for occupational retirement provision as defined in Directive 2003/41/EC or an authorised alternative investment fund as defined in Directive 2011/61/EU;

'non-financial counterparty' means an undertaking established in the Union other than the entities referred to in points (1) and (6);

'occupational pension scheme' means a pension scheme established pursuant to Directive 2003/41/EC, including the authorised entities responsible for managing IORP and acting on their behalf referred to in Article 2(1) of that Directive or the appointed investment managers pursuant to Article 19(1) of that Directive or any other arrangement recognised under national law as a scheme established for the purposes of retirement provision;

'counterparty credit risk' means the risk that the counterparty to a transaction defaults before the final settlement of the transaction's cash flows;

'interoperability arrangement' means an arrangement between two or more CCPs that involves a cross-system execution of transactions;

'competent authority' means the authority designated by each Member State in accordance with Article 18 or one or more of the ESAs; [Am.5]

'clearing member' means an undertaking which participates in a CCP and which is responsible for discharging the financial obligations arising from that participation;

'client' means an undertaking with a direct or indirect contractual relationship with a clearing member of a CCP or one of its affiliates which enables that undertaking to clear transactions through that clearing member's use of that CCP;

'qualifying holding' means any direct or indirect holding in a CCP or trade repository which represents at least 10% of the capital or of the voting rights, as set out in Articles 9 and 10 of Directive 2004/109/EC, taking into account the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, or which makes it possible to exercise a significant influence over the management of the CCP or trade repository in which that holding subsists;

'parent undertaking' means a parent undertaking within the meaning of Articles 1 and 2 of the Seventh Council Directive 83/349/EEC based on the Article 54(3)(g) of the treaty on consolidated accounts (1);

---

(15) ‘subsidiary’ means a subsidiary undertaking within the meaning of Articles 1 and 2 of Directive 83/349/EEC, including any subsidiary of a subsidiary undertaking of an ultimate parent undertaking;

(16) ‘control’ means control as defined in Article 1 of Directive 83/349/EEC;

(17) ‘close links’ means a situation in which two or more natural or legal persons are linked by:

(a) participation which means the ownership, direct or by way of control, of 20 % or more of the voting rights or capital of an undertaking,

(b) control which means the relationship between a parent undertaking and a subsidiary, in all the cases referred to in Article 1(1) and (2) of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking or any subsidiary undertaking of a subsidiary undertaking also being considered a subsidiary of the parent undertaking which is at the head of those undertakings.

A situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship shall also be regarded as constituting a close link between such persons.

(18) 'capital' means capital within the meaning of Article 22 of Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions in so far it has been paid up, plus the related share premium accounts, it fully absorbs losses in going concern situations, and in the event of bankruptcy or liquidation ranks after all other claims;

(19) 'reserves' means reserves as set out in Article 9 of Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (1) and profits and losses brought forward as a result of the application of the final profit or loss;

(20) ‘the board’ means the administrative or supervisory board, or both, in accordance with national company law;

(21) ‘independent member of the board’ means a member of the board that has no previous or present business, family or other relationship that raises a conflict of interest with the CCP, its controlling shareholder(s) or management or its clearing members or management;

(22) ‘senior management’ means the person or persons who effectively direct the business of the CCP and the executive member or members the board;

(22a) ‘third-country clearing counterparties’ means undertakings established in third countries that are considered as equivalent to financial counterparties or to the non-financial counterparties referred to in Article 7(2); such equivalence shall be deemed to apply where an undertaking established in a third country would, were it established within the Union, be classified as a financial counterparty or a non-financial counterparty referred to in Article 7(2);

(22b) ‘segregation’ shall mean at least that the assets and positions of one person shall not be used to discharge the liabilities of or claims against any other person from whom it is intended that he is segregated, and shall not be available for such purposes, especially in the event of a clearing member’s insolvency;

(22c) ‘trade compression’ means the process of legally substituting a given set of derivative contracts with a different set of contracts characterised, from the perspective of each participant to the process, by:

(a) a lower number of contracts and aggregated notional value; and

(b) the same or a similar risk profile as the original set of derivative contracts;

(22d) ‘acting in concert’ means acting in concert as defined in Article 10(a) of Directive 2004/109/EC.

2. In order to ensure consistent application of point (22a) of paragraph 1, ESMA shall develop draft regulatory technical standards specifying in greater detail the criteria to be used in the classification of undertakings from third countries as third-country clearing counterparties.

ESMA shall submit those draft regulatory technical standards to the Commission by 30 June 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Title II
Clearing, reporting and risk mitigation of OTC Derivatives

Article 3
Clearing obligations

1. A financial counterparty or a non-financial counterparty referred to in Article 7(2) shall clear all OTC derivative contracts which are considered eligible pursuant to Article 4 and are concluded with other financial counterparties or non-financial counterparties referred to in Article 7(2) in the relevant CCPs listed in the register as referred to in Article 4(4).

That clearing obligation shall also apply to financial counterparties and to the non-financial counterparties referred to in the first subparagraph which enter into eligible OTC derivative contracts with third-country clearing counterparties.

OTC derivatives contracts entered into before the date from which the clearing obligation takes effect for that class of derivatives are exempted from the clearing obligation.

That clearing obligation shall apply to all OTC derivative contracts which, following publication of ESMA decision pursuant to Article 4(2)(a), are classified as derivatives eligible for the clearing obligation.

(1a) There shall be no clearing obligation in the case of derivative contracts between subsidiary undertakings of the same parent company or between a parent company and a subsidiary undertaking. ‘Parent companies’ and ‘subsidiary companies’ for the purposes of this provision shall be companies thus defined under the relevant EU rules. This derogation shall not affect the reporting obligation under Article 6 or the obligations in relation to risk mitigation techniques under Article 8.

The exemptions shall only apply where the parent company concerned has first notified the competent authority of its home Member State in writing that they intend to make use of the exemption. The notification shall be made not less than thirty calendar days before the use the exemption. The competent authority shall ensure that the exemption is only used for derivative contracts that fulfil all of the following conditions:
(a) derivative contracts between subsidiary undertakings of the same parent company or between a parent company and a subsidiary undertaking are justified for economic reasons

(b) the use of the exemption does not increase systemic risk in the financial system

(c) there are no legal restrictions to capital flows between the subsidiary undertakings of the same parent company or between the parent company and the subsidiary undertaking.

2. For the purpose of complying with the clearing obligation under paragraph 1, financial counterparties and the non-financial counterparties referred to in Article 7(2) shall become either a clearing member or shall clear their transactions in the CCP through an investment firm or credit institution subject to the requirements of Directive 2004/39/EC.

Article 4

Eligibility for the clearing obligation

1. Where a competent authority has authorised a CCP to clear a class of derivatives under Article 10 or 11, it shall immediately notify ESMA of that authorisation and request a decision on the eligibility for the clearing obligation referred to in Article 3.

1a. Where a CCP established in a third country has been recognised in accordance with Article 23, the relevant competent authority of the third country shall make available to ESMA, in application of the cooperative arrangements as referred to in Article 23(4), the classes of derivative contracts for which that CCP has been granted the right to provide clearing services to clearing members and/or clients established in the Union.

2. ESMA, after receiving the notification and request referred to in paragraph 1, shall, within six months, address a decision to the requesting competent authority stating the following:

(a) whether that class of derivatives is eligible for the clearing obligation pursuant to Article 3;

(b) the future date from which the clearing obligation takes effect, including the timeframe in which counterparties or categories of counterparties become subject to the clearing obligation. This date shall be no earlier than the date on which the clearing obligation is imposed;

(ba) whether and subject to what conditions the clearing obligation applies in the case of transactions with persons in third countries.

Before taking a decision, ESMA shall conduct a public consultation with the market participants and non-market participants with expertise or interest in the subject and shall contact the ESRB and the competent authorities of third countries. A summary of this consultation shall be published within a month and additional information about the public consultations as well as other consultations shall be available on request.

2a. ESMA shall, on its own initiative, in accordance with the criteria set out in paragraph 3 and after conducting a public consultation and consulting the ESRB, and, where appropriate, the supervisory authorities of third countries, identify and notify to the Commission the classes of derivative contracts that should be considered eligible for the clearing obligation, but for which no CCP has yet received authorisation.
After identifying such a class of derivative contracts, ESMA shall publish a call for development of proposals for the clearing of that class of derivative contracts.

3. ESMA shall base its decision on the following criteria:

(a) reduction of systemic risk in the financial system, including potential failures of highly interconnected counterparties to meet their payment obligations and a lack of transparency concerning positions;

(b) the liquidity of contracts;

(c) the availability of fair, reliable and generally accepted pricing sources.

In applying the above criteria ESMA shall also take account of international consensus.

Before taking a decision, ESMA shall conduct a public consultation and, where appropriate, consult with the competent authorities of third countries.

4. ESMA shall promptly publish any decision under paragraph 2 in a register. That register shall contain the eligible classes of derivatives and the CCPs authorised to clear them. ESMA shall regularly update that register.

ESMA shall regularly review its decisions and shall amend them where necessary.

5. ESMA shall, on its own initiative and after consulting the ESRB, identify and notify to the Commission the class of derivatives contracts that should be included in its public register, and eligible for the obligation to clear, but for which no CCP has yet received authorisation. Having identified such a category of class of derivatives, ESMA shall publish a call for the development of proposals by CCPs to clear them and publish a list for which such a call has been made.

5a. A class of derivatives shall cease to be considered eligible for the clearing obligation if there is no longer a CCP which is authorised or recognised by ESMA as authorised to clear them under this Regulation, or if no CCP is willing to clear that class of derivatives.

6. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the following:

(a) the details to be included in the notification referred to in paragraph 1;

(b) the criteria referred to in paragraph 3;

(c) the details to be included in the register referred to in paragraph 4.

The details in paragraph 4 shall at least correctly and unequivocally identify the class of derivatives subject to the clearing obligation.

ESMA shall submit those draft regulatory technical standards to the Commission by 30 June 2012.
Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Before taking a decision under paragraph 1, ESMA shall conduct a public consultation with the market participants. [Am. 20]

Article 4a

In order to promote effective and consistent global regulation of derivative contracts, the Commission may submit proposals to the Council for an appropriate mandate for negotiation with a view to obtaining an agreement on the effective equivalent legislation applicable to transactions executed in a third country by financial counterparties and non-financial counterparties referred to in Article 7.

Article 4b

Public register

1. For the purpose of the clearing obligation, ESMA shall establish and manage a public register. The register shall be publicly available on ESMA’s website.

2. The register shall reflect at least:
   (a) the classes of derivative contracts that are subject to the clearing obligation pursuant to Article 3;
   (b) the CCPs that can be used for the purpose of the clearing obligation;
   (c) the dates from which the clearing obligation takes effect, including any phased-in implementation;
   (d) the classes of derivatives identified by ESMA in accordance with Article 4(5).

3. Where a competent authority, or the relevant competent authority of a third country, has withdrawn the authorisation to clear a given class of derivative contracts, ESMA shall immediately remove such CCP from the register in relation to that class of derivatives.

4. The register shall be regularly updated by ESMA.

5. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to specify the details to be included in the public register referred to in paragraph 1.

ESMA shall submit any such draft implementing technical standards to the Commission by 30 June 2012.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.[Am. 19]

Article 5

Access to a CCP

1. A CCP that has been authorised to clear eligible OTC derivative contracts shall accept clearing such contracts on a transparent, fair and non-discriminatory basis regardless of the venue of execution and based where possible on international open industry standards, insofar as this does not adversely affect risk mitigation. In order to avoid discriminatory practices, CCPs shall accept to clear transactions executed in different venues, to the extent that those venues comply with the operational, technical and legal requirements established by, or applicable to, the CCP as well as its access and risk management requirements, without reference to the contract documents on the basis of which the parties concluded the relevant OTC derivatives transaction.
1a. The CCP shall provide a clear negative or positive response to the trading venue requesting authorisation to clear an OTC derivative contract within three months of processing their request.

In the event of a CCP refusal to clear an OTC derivative contract from a trading venue, the venue receives a fully reasoned and explained response.

Following a rejected application, the trading venue may put in a new request for access following a minimum of three months waiting period.

In case of disagreement, ESMA shall settle any disputes between competent authorities in accordance with Article 19 of Regulation (EU) No 1095/2010.

1b. For the purpose of the reports to the Commission and the European Parliament referred to in Article 68, ESMA shall monitor access to CCPs and the effects on competitiveness of certain practices, including the use of exclusive licensing practices.

Article 6

Reporting obligation

1. All derivative contracts shall be reported to a trade repository registered in accordance with Article 51. Counterparties shall report the details of any derivative contract they have entered into and any material modification, novation or termination of the contract. The details shall be reported no later than the working day following the conclusion, modification, novation or termination of the contract, except where provided in acts adopted under paragraph 5. The agreed termination of a contract or lapsing of a transaction – as opposed to its premature termination – shall not be considered as a modification. Information concerning derivative transactions shall be reported no later than one business day after the execution of a transaction or after a subsequent modification. A ‘business day’ for these purposes means a day that is a business day for both contracting parties and, in the case of a contract subject to CCP clearing, for the CCP concerned. They shall also maintain for a period of five years a recordkeeping of all the information needed to report.

Third parties shall be authorised to carry out the reporting provided for in paragraph 1 for the original counterparties, provided it is ensured that no details of the contract are reported twice.

The reporting obligations under subparagraph 1 can be satisfied by the CCP where the derivative contracts subject to the clearing obligation are cleared. When derivative contracts are subject to a process of trade compression, the reporting obligations under subparagraph 1 shall be satisfied by the operator of the trade compression service.

ESMA shall be empowered to examine whether a retrospective reporting obligation in respect of OTC derivative contracts can be introduced if the information in question is essential to the supervisory authorities. ESMA shall take the following criteria into account in reaching its decision:

(a) the technical requirements for submission of a report (notably whether transactions have been recorded electronically);

(b) the remaining times to maturity of outstanding transactions.

Before taking a decision, ESMA shall conduct a public consultation with the market participants. [Ams. 14 and 15]
2. All reporting shall be carried out, where possible, based on international industry open standards.

3. A counterparty which is subject to the reporting obligation may delegate the reporting of the details of the derivative contract to the other counterparty or a third party.

A counterparty that reports the full details of a contract to a trade repository on behalf of another counterparty shall not be considered in breach of any restriction on disclosure of information imposed by that contract or by any legislative, regulatory or administrative provision.

No liability resulting from that disclosure shall fall on the reporting entity or its directors or employees or other persons acting on its behalf.

4. In order to ensure consistent application of this Article, ESMA shall, in cooperation with EBA, the ESCB and the ESRB, develop draft regulatory technical standards to determine the details and type of the reports referred to in paragraphs 1 and 2 for the different classes, groups or categories of derivatives and for any retrospective effect including the modalities for back-loading and reporting of electronically recorded trades for all derivatives as well as criteria and conditions for retrospective reporting of outstanding derivative contracts entered into prior to the entry into force of this Regulation.

Those reports shall contain at least:

(a) the parties to the contract and, where different, the beneficiary of the rights and obligations arising from it are appropriately identified;

(b) the main characteristics of the contract, including the type, underlying, maturity, exercise, delivery date, price data and notional value;

(ba) for derivatives that do not conform to a standard format, there shall be a placeholder format permitting competent authorities to detect the existence of such a trade and take any required regulatory measures;

(bb) a unique contract identifier.

ESMA, in coordination with EBA, EIOPA and the ESRB, shall submit those drafts to the Commission by 30 June 2012.


Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010. [Am. 19]


(1) OJ L …
5. In order to ensure uniform conditions of application of paragraphs 1 and 2, ESMA shall, in coordination with EBA, EIOPA and the ESRB, develop draft implementing technical standards to determine the format and frequency of the reports referred to in paragraphs 1 and 2 for the different classes of derivatives.

ESMA shall submit such draft implementing technical standards to the Commission by 30 June 2012.

Where the draft regulatory technical standards concern wholesale energy products within the meaning of Regulation (EU) No …/2011 [on energy market integrity and transparency], ESMA shall consult the Agency for the ACER.

Power is conferred on the Commission to adopt the draft implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No°1095/2010.

Article 7

Non-financial counterparties

1. A non-financial counterparty shall be subject to the reporting obligation set out in Article 6(1).

2. Where a non-financial counterparty takes positions in OTC derivative contracts such that the rolling average position over 50 business days exceeds the threshold to be determined pursuant to paragraph 3(b), it shall subject to the clearing obligation set out in Article 3.

The clearing obligation shall subsist as long as the non-financial counterparty’s net positions and exposures in OTC derivative contracts exceed the clearing threshold and shall end once these net positions and exposures are below the clearing threshold over a specified time period.

The competent authority designated in accordance with Article 48 of Directive 2004/39/EC shall ensure that the obligation under the first subparagraph is met.

Discharge of the clearing obligation referred to in subparagraph 1 shall be completed within six months.

2a. In calculating the positions referred to in paragraph 2, OTC derivative contracts entered into by a non-financial counterparty that are objectively measurable as directly linked to the hedging of commercial or treasury financing activity of that counterparty shall not be taken into account.

3. In order to ensure consistent application of this Article, ESMA shall, after consulting EBA, the ESRB and other relevant authorities, develop draft regulatory technical standards specifying:

(b) the clearing threshold;

(ba) criteria for establishing which OTC derivative contracts are objectively measurable as directly linked to the commercial or treasury financing activity.

Those thresholds shall be determined taking into account the systemic relevance of the sum of net positions and exposures by counterparty per class of derivatives.

**Number of the Regulation (COM(2010)0726).**
ESMA shall, after consulting EBA, the ESRB and other relevant authorities, submit those draft regulatory standards to the Commission by 30 June 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) 1095/2010. [Am. 19]

In preparing for determination of the clearing threshold and the criteria for establishing which OTC derivative contracts are objectively measurable as directly linked to commercial or treasury financing activity, ESMA will engage in public consultations and give non-financial counterparties the chance to state their views.

5. The Commission, after consulting the ESAs and other relevant authorities, shall periodically review the thresholds referred to in paragraph 3 and amend them, where necessary.

Article 8

Risk mitigation techniques for OTC derivative contracts not cleared by a CCP

1. Financial counterparties or the non-financial counterparties referred to in Article 7(2), that enter into an OTC derivative contract not cleared by a CCP, shall ensure with due diligence that appropriate prudential procedures and arrangements are in place to measure, monitor and mitigate operational, market and credit risk, including at least:

(a) adequate electronic means ensuring the timely confirmation of the terms of the OTC derivative contract;

(b) standardised processes which are robust, resilient and auditable in order to reconcile portfolios, to manage the associated risk and to identify disputes between parties early and resolve them, and to monitor the value of outstanding contracts.

For the purposes of point (b), the value of outstanding contracts shall be marked-to-market on a daily basis and risk management procedures shall require the timely, accurate and appropriately segregated exchange of collateral or capital-backing commensurate with the risk, in accordance with the applicable regulatory capital requirements for financial counterparties.

Financial counterparties and the non-financial counterparties referred to in Article 7(2) shall offer counterparties the option of segregation of initial margin at the outset of the contract.

ESMA shall regularly monitor the activity in derivatives not eligible for clearing in order to identify cases where a particular class of contracts may pose systemic risk. ESMA, after consulting ESRB, shall take action in order to prevent the further accumulation of contracts in such a class.

The competent authority and ESMA shall ensure that prudential procedures and arrangements aim to prevent regulatory arbitrage between cleared and non-cleared derivative transactions and reflect risk transfers arising from derivatives contracts.

ESMA and competent authorities shall review margin standards in order to prevent regulatory arbitrage in conformity with Article 37.
1b For pension scheme investments under Directive 2003/41/EC or a scheme where the law of the Member State recognises the scheme for retirement planning, resilient bilateral collateralisation of derivatives used for risk mitigation shall take account of counterparty creditworthiness. Capital requirements in prudential regulation shall be in line with those of centrally cleared contracts.

2. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying guidelines for appropriate prudential procedures and arrangements and margin standards referred in paragraph 1, as well as the maximum time lag between the conclusion of an OTC derivative contract and the confirmation referred to in paragraph 1(a).

ESMA shall submit those draft regulatory technical standards to the Commission by 30 June 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010. [Am. 19]

3. In order to ensure consistent application of this Article, the ESAs shall develop common draft regulatory technical standards specifying the arrangements and levels of collateral and capital required for compliance with paragraph 1(b) and the second subparagraph of paragraph 1.

The ESAs shall submit those common draft regulatory technical standards to the Commission by 30 June 2012.

Depending on the legal nature of the counterparty, power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 or Regulation (EU) No 1095/2010. [Am. 19]

Article 9
Penalties

1. Member States – taking into consideration the Commission’s Communication of 8 December 2010 on reinforcing sanctioning regimes in the financial services sector and after consulting ESMA – shall lay down the rules on penalties applicable to infringements of the rules under this Title and shall take all measures necessary to ensure that they are implemented. Those penalties shall include at least administrative fines. The penalties provided for shall be effective, proportionate and dissuasive.

2. Member States shall ensure that the competent authorities responsible for the supervision of financial, and, where appropriate, non-financial counterparties disclose every penalty that has been imposed for infringements of Articles 3 to 8 to the public, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved. Member States shall, at regular intervals, publish assessment reports on the effectiveness of the penalty rules being applied.

By 30 June 2012, the Member States shall notify the rules referred to in paragraph 1 to the Commission. They shall notify the Commission of any subsequent amendment thereto without delay.

3. The Commission, with the assistance of ESMA, shall verify that the administrative penalties referred to in paragraph 1 and the thresholds referred to in Article 7 (1) and (2) are effectively and consistently applied.
3a. An infringement of the rules under this Title shall not affect the validity of an OTC derivative contract or the possibility for the parties to enforce the provisions of an OTC derivative contract. An infringement of the rules under this Title shall not give rise to any right to compensation from a party to an OTC derivative contract.

Title III
Authorisation and supervision of CCPs

Chapter 1
Conditions and Procedures for the Authorisation of a CCP

Article 10
Authorisation of a CCP

1. Where a CCP that is a legal person established in the Union and has access to adequate liquidity intends to perform its services and activities, it shall apply for authorisation to the competent authority of the Member State where it is established.

Such liquidity could result from access to central bank liquidity or to creditworthy and reliable commercial bank liquidity, or a combination of both. Access to liquidity could result from an authorisation granted in accordance with Article 6 of Directive 2006/48/EC or other appropriate arrangements.

2. The authorisation shall be effective for the entire territory of the Union.

3. The authorisation to the CCP shall be granted only for activities linked to clearing and shall specify the services or activities which the CCP is authorised to provide or perform including the classes of financial instruments covered by the authorisation.

4. A CCP shall comply at all times with the conditions necessary for the initial authorisation.

A CCP shall, without undue delay, notify the competent authority of any material changes affecting the conditions for the initial authorisation.

5. In order to ensure consistent application of this Article, ESMA shall, after consulting EBA, develop draft regulatory technical standards specifying the criteria for adequate liquidity referred to in paragraph 1.

ESMA shall, after consulting EBA, submit those draft regulatory technical standards to the Commission by 30 June 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010. [Am. 19]

Article 11
Extension of activities and services

1. A CCP wishing to extend its business to additional services or activities not covered by the initial authorisation shall submit a request for extension. The offering of clearing services in a different currency or in financial instruments that significantly differ in their risk characteristics from those for which the CCP has already been authorised shall be considered an extension of that authorisation.
The extension of an authorisation shall follow the procedure under Article 13.

2. Where a CCP wishes to extend its business into a Member State other than where it is established, the competent authority of the Member State of establishment shall immediately notify the competent authority of that other Member State.

Article 12
Capital requirements

1. A CCP shall have a permanent and available initial capital of at least EUR 10 million to be authorised pursuant to Article 10.

2. Capital, together with retained earnings and reserves of a CCP, shall be proportionate to the size and risk involved in the CCP’s business operations. It shall at all times be sufficient to ensure an orderly winding-down or restructuring of the activities over an appropriate time span and that the CCP is adequately protected against operational and residual risks.

3. In order to ensure consistent application of this Article, ESMA shall, in close cooperation with the ESCB and after consulting EBA, develop draft regulatory technical standards specifying requirements regarding the capital, retained earnings and reserves of a CCP referred to in paragraph 2, including the frequency or timing when these shall be updated.

ESMA shall, in close cooperation with the ESCB and after consulting EBA, submit those draft regulatory technical standards by 30 June 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010. [Am. 19]

Article 13
Procedure for granting and refusing authorisation

1. The competent authority shall only grant authorisation where it is fully satisfied that the applicant CCP complies with all the requirements set out in this Regulation and the requirements adopted pursuant to Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (1), and on condition that a positive opinion as referred to in Article 15 has been delivered by ESMA.

2. For the initial authorisation, the applicant CCP shall provide all information necessary to enable the competent authority to satisfy itself that the applicant CCP has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations set out in this Regulation. The competent authority shall immediately transmit all information received from the applicant CCP to ESMA and the college referred to in Article 14(1).

3. For the initial authorisation, within four months of the submission of a complete application the competent authority shall inform the applicant CCP in writing whether the authorisation has been granted.

For authorisation for an extension of activities and services, within two months of the submission of a complete application the competent authority shall inform the applicant CCP in writing whether the authorisation has been granted.

Article 14

Cooperation

1. The competent authority of the CCP's Member State of establishment shall, in cooperation with ESMA, establish a college in order to facilitate the exercise of the tasks referred to in Articles 10, 11, 46 and 48.

The college shall be chaired by ESMA and consist of no more than seven members, including the competent authority of the Member State of establishment of the CCP and the authority responsible for the oversight of the CCP and the central banks of issue of the most relevant currencies of the financial instruments cleared as well as the competent authorities responsible for the supervision of the clearing members of the CCP established in the three Member States with the largest contributions to the default fund of the CCP referred to in Article 40 on an aggregate basis.

2. The college shall, without prejudice to the responsibilities of the competent authorities under this Regulation, ensure:

(a) the preparation of the opinion referred to in Article 15;

(b) the exchange of information, including requests for information pursuant to Article 21;

(d) the coordination of supervisory examination programmes based on a risk assessment of the CCP;

(e) the improvement of efficiency of supervision by removing unnecessary duplication of supervisory requirements;

(f) consistency in the application of supervisory practices;

(g) the determination of procedures and contingency plans to address emergency situations, as referred to in Article 22.

3. The establishment and functioning of the college shall be based on a written agreement among all its members.

That agreement shall in particular determine the practical arrangements for cooperation between the competent authority and ESMA and may determine tasks to be entrusted to the competent authority of the Member State of establishment of a CCP or ESMA.

If a majority of the members of the college considers that the competent authority of the Member State of establishment of the CCP is not exercising its responsibilities in an appropriate manner and that it constitutes a threat to financial stability, ESMA shall issue a decision as to whether it considers the supervision by the competent authority of the Member State of establishment of the CCP to be appropriate and constitutes a threat to financial stability.

If ESMA considers that the supervision is inappropriate, ESMA may impose corrective measures on competent authorities in accordance with Regulation (EU) No. 1095/2010.

3a. In order to ensure consistent application of this Article, ESMA shall, in close cooperation with the ESCB and after consulting EBA, develop draft regulatory technical standards specifying the risk assessment referred to in Article 14(2) and Article 15(1).
ESMA shall, in close cooperation with the ESCB and after consulting EBA, submit those draft regulatory technical standards to the Commission by 30 June 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010. [Am. 19]

Article 15

Opinion of the college

1. For the purposes of the initial authorisation, the competent authority of the Member State where the CCP is established shall conduct a risk assessment of the CCP and submit a report to ESMA within four months of the submission of a complete application by the CCP.

1a. For the purposes of authorization for extension of activities and services, the competent authority of the Member State where the CCP is established shall conduct a risk assessment of the extension of activities and services on the CCP and submit a report to the college within one month.

The college shall reach an opinion, on the basis of that report, as to whether the level of the risks assessed is conducive to the safe functioning of the CCP within one month of receiving it.

2. A positive or negative opinion of the college requires agreement among a simple majority of members, including the competent authority of the Member State where the CCP is established, with the assessment of the competent authority of the Member State where the CCP is established. In case of delay or disagreement, ESMA shall facilitate the adoption of an opinion in accordance with its settlement of disagreement powers under Article 19 of Regulation (EU) No 1095/2010 and its general coordination function under Article 21 of the same Regulation.

Article 16

Withdrawal of authorisation

1. The competent authority of the Member State of establishment shall withdraw the authorisation in any of the following circumstances:

(a) where the CCP has not made use of the authorisation within 12 months, expressly renounces the authorisation or has provided no services or performed no activity for the preceding six months;

(b) where the CCP has obtained the authorisation by making false statements or by any other irregular means;

(c) where the CCP is no longer in compliance with the conditions under which authorisation was granted;

(d) has seriously and repeatedly infringed the requirements set out in this Regulation.

1a. The procedure for the decision to withdraw the authorisation shall require a positive opinion of the same college as referred to in the original authorisation as well as a positive opinion from ESMA.

2. ESMA may, at any time, request that the competent authority of the Member State where the CCP is established examine whether the CCP is still in compliance with the conditions under which the authorisation is granted.

3. The competent authority may limit the withdrawal to a particular service, activity, or financial instrument. A decision on withdrawal shall apply throughout the territory of the Union.
Article 17

Review and evaluation

The competent authorities shall, at least on an annual basis, review the arrangements, strategies, processes and mechanisms implemented by a CCP with respect to compliance with this Regulation and evaluate the market, operational and liquidity risks to which the CCP is, or might be, exposed.

The review and evaluation shall have regard to the size, systemic importance, nature, scale and complexity of the activities of the CCP as well as the criteria identified in Article 4(3).

The competent authority shall call upon a CCP which is not complying with the requirements of this Regulation to take the necessary measures.

The CCP shall be subject to on-site inspection by ESMA.

Chapter 2

Supervision and oversight of CCPs

Article 18

Competent authorities

1. Each Member State shall designate the competent authority responsible for carrying out the duties resulting from this Regulation for the authorisation, supervision and oversight of CCPs established in its territory and shall inform the Commission and ESMA thereof.

2. Each Member State shall ensure that the competent authority has the supervisory and investigatory powers necessary for the exercise of their functions.

3. Each Member State shall ensure that appropriate administrative measures, in conformity with national law, can be taken or imposed against the natural or legal persons responsible where the provisions in this Regulation have not been complied with.

Those measures shall be effective, proportionate and dissuasive.

4. ESMA shall publish a list of the competent authorities designated in accordance with paragraph 1 on its website.

Article 18a

Professional secrecy

1. The obligation of professional secrecy shall apply to all persons who work or have worked for the competent authorities designated in accordance with Article 18, ESMA, or auditors and experts instructed by the competent authorities or ESMA. No confidential information they may receive in the course of their duties may be divulged to any person or authority whatsoever, except in summary or aggregate form such that an individual CCP, trade repository or any other person cannot be identified, without prejudice to cases covered by criminal law or taxation or the other provisions of this Regulation.
2. Where a CCP has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties may be divulged in civil or commercial proceedings where necessary for carrying out the proceeding.

3. Without prejudice to cases covered by criminal law and tax law, the competent authorities, ESMA, bodies or natural or legal persons other than competent authorities which receive confidential information pursuant to this Regulation may use it only in the performance of their duties and for the exercise of their functions, in the case of the competent authorities, within the scope of this Regulation or, in the case of other authorities, bodies or natural or legal persons, for the purpose for which such information was provided to them or in the context of administrative or judicial proceedings specifically related to the exercise of those functions, or both. Where ESMA, the competent authority or another authority, body or person communicating information consents thereto, the authority receiving the information may use it for other non-commercial purposes.

4. Any confidential information received, exchanged or transmitted pursuant to this Regulation shall be subject to the conditions of professional secrecy laid down in paragraphs 1, 2 and 3. However, those conditions shall not prevent ESMA, the competent authorities or the relevant central banks from exchanging or transmitting confidential information in accordance with this Regulation and with other legislation applicable to investment firms, credit institutions, pension funds, UCITS, AIFMs, insurance and reinsurance intermediaries, insurance undertakings, regulated markets or market operators or otherwise with the consent of the competent authority or other authority or body or natural or legal person that communicated the information.

5. Paragraphs 1, 2 and 3 shall not prevent the competent authorities from exchanging or transmitting confidential information, in accordance with national law, that has not been received from a competent authority of another Member State.

Chapter 3
Cooperation
Article 19
Cooperation between authorities

1. Competent authorities shall cooperate closely with each other, with ESMA and, if necessary, with the ESCB. ESMA shall be provided with adequate resources by the EU institutions in order to effectively perform the tasks it is allocated in this Regulation.

2. The competent authorities shall, in the exercise of their general duties, duly consider the potential impact of their decisions on the stability of the financial system in all other Member States concerned, in particular the emergency situations referred to in Article 22, based on the available information at the time.

Article 21
Exchange of information

1. Competent authorities shall provide ESMA and one another with the information required for the purposes of carrying out their duties under this Regulation.

2. Competent authorities and other bodies or natural and legal persons receiving confidential information in the exercise of their duties under this Regulation shall only use it in the course of their duties and shall not be permitted to publish or otherwise make available any such confidential information for any other purpose except as expressly set out in this Regulation.
3. ESMA shall transmit confidential information relevant to the performance of their tasks to the competent authorities responsible for the supervision of the CCPs. Competent authorities and other relevant authorities shall communicate the necessary information for the exercise of their duties set out in this Regulation to ESMA and other competent authorities.

4. Competent authorities shall communicate information to the central banks of the ESCB where such information is relevant for the exercise of their duties.

Article 22
Emergency situations

The competent authority or any other authority shall inform ESMA and other relevant authorities without undue delay of any emergency situation relating to a CCP, including developments in financial markets, which may have an adverse effect on market liquidity and the stability of the financial system in any of the Member States where the CCP or one of its clearing members are established.

Chapter 4
Relations with third countries

Article 23
Third countries

1. A CCP established in a third country may provide clearing services to entities established in the Union only where that CCP is recognised by ESMA.

The authorisation or extension or withdrawal of the authorisation shall be subject to the conditions and procedures laid down in Articles 10 to 16.

Third-country CCPs shall be subject to review by a process of similar rigueur to the one EU CCPs are subject to.

The Commission may adopt a decision wholly or partially granting an exemption from authorisation conditions and procedures provided that this is done on a reciprocal basis and that the following conditions are met:

(a) the Commission has adopted a decision in accordance with paragraph 3; and

(b) comparable exemptions are granted, in the third country concerned, to CCPs established in the Union.

2. ESMA shall, in consultation with the competent authorities within the Union and with EBA and relevant members of the ESCB of the Member States in which the CCP provides or intends to provide clearing services and the relevant members of the ESCB responsible for the oversight of the CCPs with whom interoperability arrangements have been established, recognise a CCP from a third country, where the following conditions are met:

(a) the Commission has adopted a delegated act in accordance with paragraph 3; or

(b) the CCP is authorised in, and is subject to, effective supervision in that third country;
(ba) the third country is the subject of a decision by the Commission stating that the standards to prevent money laundering and terrorist financing meet the Financial Action Task Force requirements and are to the same effect as the requirements set out in Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (1);

(bb) the third country has signed an agreement with the home Member State of the authorised CCP which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including, if any, multilateral tax agreements;

(bc) the risk management standards of the CCP have been reviewed by ESMA and assessed as compliant with the standards set under Title IV;

(bd) it has sufficient elements to consider that the third country's legal framework is not discriminatory vis-à-vis EU legal entities;

(be) the third country applies reciprocal access conditions for EU-based CCPs and a mutual recognition regime has been implemented in that third country;

(bf) the conditions imposed on the third country's CCPs shall preserve a level playing field between EU CCPs and that third country's CCPs.

3. The Commission shall adopt delegated acts in accordance with Article 68 and on the basis of a joint opinion provided by ESMA, EBA, the ESCB and the competent authorities responsible for the supervision of the three clearing members established in the Member states with the largest contributions to the default fund of the CCP, determining that the legal and supervisory arrangements of a third country ensure that CCPs authorised in that third country comply with legally binding requirements which are equivalent to the requirements resulting from this Regulation and that these CCPs are subject to effective supervision and enforcement in that third country on an ongoing basis.

4. ESMA, EBA, the ESCB and the competent authorities responsible for the supervision of the three clearing members established in the Member States with the largest contributions to the default fund of the CCP shall establish cooperation arrangements with the relevant competent authorities of third countries whose legal and supervisory frameworks have been recognised as equivalent to this Regulation in accordance with paragraph 3. Such arrangements shall specify at least:

(a) the mechanism for the exchange of information between ESMA, the competent authorities pursuant to paragraph 1 and the competent authorities of third countries concerned;

(b) the procedures concerning the coordination of supervisory activities.

(ba) the procedures relating to the withdrawal of the authorisation granted to the CCP.

Title IV
Requirements for CCPs

Chapter 1
Organisational Requirements

Article 24

General provisions

1. A CCP shall have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate internal control mechanisms, including sound administrative and accounting procedures.

2. A CCP shall adopt policies and procedures which are sufficiently effective so as to ensure compliance with this Regulation, including compliance of its managers and employees with all the provisions of this Regulation.

3. A CCP shall maintain and operate an organisational structure that ensures continuity and orderly functioning in the performance of its services and activities. It shall employ appropriate and proportionate systems, resources and procedures.

4. A CCP shall maintain a clear separation between the reporting lines for risk management and those for the other operations of the CCP.

5. A CCP shall adopt, implement and maintain a remuneration policy which promotes sound and effective risk management and which does not create incentives to relax risk standards.

6. A CCP shall maintain information technology systems adequate to deal with the complexity, variety and type of services and activities performed so as to ensure high standards of security and the integrity and confidentiality of the information maintained.

6a. A CCP shall ensure that trade or client information received in respect of OTC derivative contracts that are cleared pursuant to the requirements of this Regulation is used solely to meet its requirements and is not used or exploited commercially, other than with the prior written consent of the client to whom it belongs.

7. A CCP shall make its governance arrangements and the rules governing the CCP, including admission criteria for clearing membership, available publicly without charge.

8. The CCP shall be subject to frequent and independent audits. The results of these audits shall be communicated to the board and made available to the competent authority.

9. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the minimum content of the rules and governance arrangements referred to in paragraphs (1) to (8).

ESMA shall submit those draft regulatory technical standards to the Commission by 30 June 2012.
Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010. [Am. 19]

Article 25

Senior Management and the Board

1. The senior management shall be of sufficiently good repute and experience so as to ensure the sound and prudent management of the CCP.

2. A CCP shall have a board of which at least one third, but no less than two, of its members are independent. The clients of the clearing members shall be represented in the Board. The compensation of the independent and other non-executive members of the board shall not be linked to the business performance of the CCP.

The members of the board, including its independent members, shall be of sufficiently good repute and have adequate expertise in financial services, risk management and clearing services.

3. A CCP shall clearly determine the roles and responsibilities of the board and shall make the minutes of the board meetings available to the competent authority and auditors.

Article 26

Risk committee

1. A CCP shall establish a risk committee, which shall be composed of various groups of representatives, including representatives of its clearing members, the clients of its clearing members and independent experts and representatives of the competent authority of the CCP, provided that client representatives are different from clearing member representatives. None of the groups of representatives shall have a majority in the risk committee. The risk committee may invite employees of the CCP to attend risk committee meetings in a non-voting capacity. The advice of the risk committee shall be independent from any direct influence by the management of the CCP.

2. A CCP shall clearly determine the mandate, the governance arrangements to ensure its independence, the operational procedures, the admission criteria and the election mechanism for risk committee members. The governance arrangements shall be publicly available to the competent authorities and shall, at least, determine that the risk committee is chaired by an independent expert, reports directly to the board or, where there is a dual organisational structure, the executive board, and holds regular meetings.

3. The risk committee shall advise the board or, where there is a dual organisational structure, the executive board on any arrangements that may impact the risk management of the CCP, such as, but not limited to, a significant change in its risk model, the default procedures, the criteria for accepting clearing members or the clearing of new classes of instruments or outsourcing of functions. The advice of the risk committee is not required for the daily operations of the CCP. Reasonable efforts shall be made to consult the risk committee in emergency situations.

4. Without prejudice to the right of competent authorities to be duly informed, the members of the risk committee shall be bound by confidentiality. Where the chairman of the risk committee determines that a member has an actual or potential conflict of interest on a particular matter, that member shall not be allowed to vote on that matter.
5. A CCP shall promptly inform the competent authority of any decision in which the board decides not to follow the advice of the risk committee.

6. A CCP shall allow the clients of clearing members to be members of the risk committee or, alternatively, it shall establish appropriate consultation mechanisms that ensure that the interests of the clients of clearing members are adequately represented.

Article 27

Record keeping

1. A CCP shall maintain, for a period of at least five years, all the records on the services and activity provided so as to enable the competent authority to monitor the CCP’s compliance with the requirements under this Regulation.

2. A CCP shall maintain, for a period of at least five years following the termination of a contract, all information on all contracts it has processed. That information shall at a minimum enable the identification of the original terms of a transaction before clearing by that CCP.

3. A CCP shall make the records and information referred to in paragraphs 1 and 2 and all information on the positions of cleared contracts, irrespective of the venue where the transactions were executed, available upon request to the competent authority and to ESMA.

4. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the details of the records and information to be retained as referred to in paragraphs 1 and 2, and, where appropriate, a longer time length for the maintenance of records.

ESMA shall submit those draft regulatory technical standards to the Commission by 30 June 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010. [Am. 19]

5. In order to ensure uniform conditions of application of paragraphs 1 and 2, ESMA shall develop draft implementing technical standards to determine the format of the records and information to be retained. ESMA shall submit those draft implementing technical standards to the Commission by 30 June 2012.

Power is conferred on the Commission to adopt the draft implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 28

Shareholders and members with qualifying holdings

1. The competent authority shall not authorise a CCP until it has been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and of the amounts of those holdings.
2. The competent authority shall refuse authorisation to a CCP where it is not satisfied as to the suitability of the shareholders or members that have qualifying holdings in the CCP, taking into account the need to ensure the sound and prudent management of a CCP.

3. Where close links exist between the CCP and other natural or legal persons, the competent authority shall grant authorisation only where those links do not prevent the effective exercise of the supervisory functions of the competent authority.

4. Where the persons referred to in paragraph 1 exercise an influence which is likely to be prejudicial to the sound and prudent management of the CCP, the competent authority shall take appropriate measures to terminate that situation or withdraw the authorisation of the CCP.

5. The competent authority shall refuse authorisation where the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the CCP has close links, or difficulties involved in their enforcement, prevent the effective exercise of the supervisory functions of the competent authority.

Article 29

Information to competent authorities

1. A CCP shall notify the competent authority of the Member State in which the CCP is established of any changes to its management, and shall provide the competent authority with all the information necessary to assess whether the board members are of sufficiently good repute and sufficiently experienced.

Where the conduct of a member of the board is likely to be prejudicial to the sound and prudent management of the CCP, the competent authority shall take appropriate measures, including removing that member from the board.

2. Any natural or legal person or such persons acting in concert (hereinafter referred to as ‘the proposed acquirer’), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in a CCP or to further increase, directly or indirectly, such a qualifying holding in a CCP as a result of which the proportion of the voting rights or of the capital held would reach or exceed 10%, 20%, 30% or 50% or so that the CCP would become its subsidiary (hereinafter referred to as ‘the proposed acquisition’), shall first notify in writing the competent authorities of the CCP in which they are seeking to acquire or increase a qualifying holding, indicating the size of the intended holding and relevant information, as referred to in Article 30(4).

Any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in a CCP (hereinafter referred to as ‘the proposed vendor’) shall first notify the competent authority in writing thereof, indicating the size of such holding. Such a person shall likewise notify the competent authority where he has taken a decision to reduce his qualifying holding so that the proportion of the voting rights or of the capital held would fall below 10%, 20%, 30% or 50% or so that the CCP would cease to be his subsidiary.

The competent authority shall, promptly and in any event within two working days following receipt of the notification as referred to in this paragraph, as well as following receipt of the information referred to in paragraph 3, acknowledge receipt in writing thereof to the proposed acquirer or vendor.

The competent authority shall have a maximum of sixty working days as from the date of the written acknowledgement of receipt of the notification and all documents required to be attached to the notification on the basis of the list referred to in Article 30(4) (hereinafter referred to as ‘the assessment period’), to carry out the assessment provided for in Article 30(1) (hereinafter referred to as ‘the assessment’).
The competent authority shall inform the proposed acquirer or vendor of the date of the expiry of the assessment period at the time of acknowledging receipt.

3. The competent authority may, during the assessment period, where necessary, but no later than on the 50th working day of the assessment period, request any further information that is necessary to complete the assessment. Such request shall be made in writing and shall specify the additional information needed.

For the period between the date of request for information by the competent authority and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. The interruption shall not exceed 20 working days. Any further requests by the competent authority for completion or clarification of the information shall be at its discretion but may not result in an interruption of the assessment period.

4. The competent authority may extend the interruption referred to in the second subparagraph of paragraph 3 up to 30 working days where the proposed acquirer or vendor is either of the following:

(a) situated or regulated outside the Union;


5. Where the competent authority, upon completion of the assessment, decides to oppose the proposed acquisition, it shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing and provide the reasons for that decision. Subject to national law, an appropriate statement of the reasons for the decision may be made accessible to the public at the request of the proposed acquirer. However, Member States may allow a competent authority to make such disclosure in the absence of a request by the proposed acquirer.

6. Where the competent authority does not oppose the proposed acquisition within the assessment period, it shall be deemed to be approved.

7. The competent authority may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

8. Member States shall not impose requirements for notification to, and approval by, the competent authority of direct or indirect acquisitions of voting rights or capital that are more stringent than those set out in this Regulation.

Article 30
Assessment

1. Where assessing the notification provided for in Article 29(2) and the information referred to in Article 29(3), the competent authority shall, in order to ensure the sound and prudent management of the CCP in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the CCP, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

(a) the reputation and financial soundness of the proposed acquirer;
(b) the reputation and experience of any person who will direct the business of the CCP as a result of the proposed acquisition;
(c) whether the CCP will be able to comply and continue to comply with the provisions set out in this Regulation;
(d) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

Where assessing the financial soundness of the proposed acquirer, the competent authority shall pay particular attention to the type of business pursued and envisaged in the CCP in which the acquisition is proposed.

Where assessing the CCP’s ability to comply with this Regulation, the competent authority shall pay particular attention to whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, to effectively exchange information among the competent authorities and to determine the allocation of responsibilities among the competent authorities.

2. The competent authorities may oppose the proposed acquisition only where there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or where the information provided by the proposed acquirer is incomplete.

3. Member States shall neither impose any prior conditions in respect of the level of holding that shall be acquired nor allow their competent authorities to examine the proposed acquisition in terms of the economic needs of the market.

4. Member States shall make publicly available a list specifying the information that is necessary to carry out the assessment and that shall be provided to the competent authorities at the time of notification referred to in Article 29(2). The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition. Member States shall not require information that is not relevant for a prudential assessment.

5. Notwithstanding Article 29(2), (3) and (4), where two or more proposals to acquire or increase qualifying holdings in the same CCP have been notified to the competent authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.

6. The relevant competent authorities shall work in full consultation with each other when carrying out the assessment where the proposed acquirer is one of the following:

(a) another CCP, a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm, market operator, an operator of a securities settlement system, a UCITS management company or an AIFM authorised in another Member State;

(b) the parent undertaking of another CCP, a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm, market operator, an operator of a securities settlement system, a UCITS management company or an AIFM authorised in another Member State;
(c) a natural or legal person controlling another CCP, a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm, market operator, an operator of a securities settlement system, a UCITS management company or an AIFM authorised in another Member State.

7. The competent authorities shall, without undue delay, provide each other with any information which is essential or relevant for the assessment. The competent authorities shall, upon request, communicate all relevant information to each other and shall communicate all essential information at their own initiative. A decision by the competent authority that has authorised the CCP in which the acquisition is proposed shall indicate any views or reservations expressed by the competent authority responsible for the proposed acquirer.

Article 31
Conflicts of interest

1. A CCP shall maintain and operate effective written organisational and administrative arrangements to identify and manage any potential conflicts of interest between itself, including its managers, employees, or any person directly or indirectly linked to them by control or close links and its clearing members or their clients or between them. It shall maintain and implement adequate resolution procedures for the removal of conflicts of interest.

2. Where the organisational or administrative arrangements of a CCP to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a clearing member or client will be prevented, it shall clearly disclose the general nature or sources of conflicts of interest to the clearing member before accepting new transactions from that clearing member.

3. Where the CCP is a parent undertaking or a subsidiary, the written arrangements shall also take into account any circumstances, of which the CCP is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other undertakings with which it has a parent undertaking or a subsidiary relationship.

4. The written arrangements established in accordance with paragraph 1 shall include the following:

(a) the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more clearing members or clients;

(b) procedures to be followed and measures to be adopted in order to manage such conflicts.

5. A CCP shall take all reasonable steps to prevent any misuse of the information held in its systems and shall prevent the use of that information for other business activities. Sensitive information recorded in one CCP shall not be used for commercial use by any other natural or legal person that has a parent undertaking or a subsidiary relationship with that CCP.

Article 32
Business continuity

1. A CCP shall establish, implement and maintain an adequate business continuity policy and disaster recovery plan aiming at ensuring the preservation of its functions, the timely recovery of operations and the fulfilment of the CCP’s obligations. Such a plan shall at a minimum allow for the recovery of all transactions at the time of disruption to allow the CCP to continue to operate with certainty and to complete settlement on the scheduled dates.
1a. A CCP shall establish, implement and maintain an adequate procedure ensuring the timely and orderly settlement or transfer of clients' assets in the event of a withdrawal of authorisation consequent to a decision under Article 16.

2. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the minimum content of the business continuity plan and the minimum level of services that the disaster recovery plan shall guarantee.

ESMA shall submit those draft regulatory technical standards to the Commission by 30 June 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010. [Am. 19]

Article 32a

Straight-through Processing

1. With the aim of promoting straight-through processing (STP) across the entire transaction flow, CCPs shall use or accommodate in their systems to the participants and market infrastructures they interface with, in their communication procedures with participants and with the market infrastructures they interface with, the relevant international communication procedures and standards for messaging and reference data in order to facilitate efficient clearing and settlement across systems.

2. In order to ensure consistent application, ESMA shall develop draft regulatory technical standards specifying the process for defining which international communication procedures and standards for messaging and reference data are to be considered relevant for the purposes of paragraph 1.

ESMA shall submit those draft regulatory technical standards to the Commission by 30 June 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010. [Am. 19]

Article 33

Outsourcing

1. Where a CCP outsources operational functions, services or activities, it shall remain fully responsible for discharging all of its obligations under this Regulation and shall comply at all times with the following conditions:

(a) outsourcing does not result in the delegation of its responsibility;

(b) the relationship and obligations of the CCP towards its clearing members or where relevant their clients are not altered;

(c) the conditions for the authorisation of the CCP do not effectively change;
Chapter 2
Conduct of Business Rules

Article 34

General provisions

1. When providing services to its clearing members, and where relevant, to their clients, a CCP shall act fairly and professionally in accordance with the best interests of such clearing members and clients and sound risk management.

2. A CCP shall have accessible, transparent and fair rules for the prompt handling of complaints.
Article 35

Participation requirements

1. A CCP shall establish the categories of admissible clearing members and the admission criteria. Such criteria shall be non-discriminatory, transparent and objective so as to ensure fair and open access to the CCP and shall ensure that clearing members have sufficient financial resources and operational capacity to meet the obligations arising from participation in a CCP. Criteria that restrict access shall only be permitted to the extent that their objective is to control the risk for the CCP. Financial institutions shall not be restricted from becoming clearing members in an uncompetitive or unreasonable way.

2. A CCP shall ensure that the application of the criteria referred to in paragraph 1 is met on an ongoing basis and shall have timely access to the information relevant for the assessment. A CCP shall conduct, at least once a year, a comprehensive review of the compliance with the provisions in this Article by its clearing members.

3. Clearing members that clear transactions on behalf of their clients shall have the necessary additional financial resources and operational capacity to perform this activity. The CCP’s rules for clearing members shall allow it to gather basic information to identify, monitor and manage relevant concentrations of risk related to the provision of services to clients. Clearing members shall, upon request, inform the CCP about the criteria and arrangements they adopt to allow their clients to access the services of the CCP. Responsibility for client supervision and obligations shall remain with clearing members. Those criteria shall be non-discriminatory.

4. A CCP shall have objective and transparent procedures for the suspension and orderly exit of clearing members that no longer meet the criteria referred to in paragraph 1.

5. A CCP may only deny access to clearing members meeting the criteria referred to in paragraph 1 where it is duly justified in writing and based on a comprehensive risk analysis.

6. A CCP may impose specific additional obligations on clearing members, such as, but not limited to, the participation in auctions of a defaulting clearing member’s position. Such additional obligations shall be proportional to the risk brought by the clearing member and shall not restrict participation to certain categories of clearing members.

Article 36

Transparency

1. A CCP shall publicly disclose the prices and fees associated with the services it provides. It shall disclose the prices and fees of each service and function provided separately, including discounts and rebates and the conditions to benefit from those reductions. It shall allow its clearing members and, where relevant, their clients, separate access to specific services.

2. A CCP shall disclose to clearing members and clients the economic risks associated with the services provided.

3. A CCP shall disclose to its clearing members and competent authority the price information used to calculate its end of day exposures with its clearing members.
A CCP shall publicly disclose the volumes of the cleared transactions for each class of instruments cleared by the CCP on an aggregated basis.

3a. A CCP shall publicly disclose the operational and technical requirements related to the communication protocols covering content and message formats it uses to interact with third-parties, including those referred to in Article 5.

3b. A CCP shall publicly disclose any breaches by clearing members of the criteria referred to in Article 35(1) and (2), except in the case that the competent authority, after consulting ESMA, considers that such disclosure would constitute a threat to financial stability or to market confidence.

Article 37
Segregation and portability

1. A CCP shall keep records and accounts that shall enable it, at any time and without delay, to identify and segregate the assets and positions of one clearing member from the assets and positions of any other clearing member and from its own assets. Where a CCP deposits assets and funds with a third party, it shall ensure that assets and funds belonging to a clearing member are kept separately from the assets and funds belonging to the CCP or other clearing members and from assets and funds belonging to that third party.

2. A clearing member shall distinguish in separate accounts with the CCP the positions of the clearing member from those of its clients.

2a. Clearing members shall distinguish in separate accounts with the CCP the positions of each client (full segregation). Clients shall be given by clearing members the possibility to have their positions recorded in omnibus accounts with the CCP by making a written request to that effect.

3. The CCP and clearing members shall publically disclose the levels of protection and the costs associated with the different levels of segregation they provide. Details of the different levels of segregation shall include a description of the main legal implications of the respective levels of segregation offered including information on the relevant jurisdictions’ applicable insolvency law. The CCP shall require the clearing members to inform their clients of these risks and costs.

3a. A CCP shall keep records that shall enable it, at any time and without delay, to identify the assets posted in relation to each account kept in accordance with this Article.

3b. A CCP shall structure its arrangements to ensure that where full segregation applies it can facilitate the transfer of the positions and collateral of clients of a defaulting member to one or more other participants.


5. Member States shall ensure that their insolvency laws include derogations sufficient to allow CCPs to meet the objectives and requirements of these provisions.
**Chapter 3**

**Prudential Requirements**

**Article 38**

Exposure management

A CCP shall measure and assess its liquidity and credit exposures to each clearing member and, where relevant, to another CCP with whom it has concluded an interoperable arrangement, on a near to real time basis. A CCP **shall, to the extent practicable, identify, monitor and manage the potential risks arising from clearing members clearing transactions on behalf of clients. A CCP shall have access in a timely manner and on a non discriminatory basis to the relevant pricing sources to effectively measure its exposures. This shall be done on a reasonable cost basis and respecting international property rights.**

**Article 39**

Margin requirements

1. A CCP shall impose, call and collect margins to limit its credit exposures from its clearing members, and where relevant, from CCPs which have interoperable arrangements. **Competent authorities shall ensure that CCPs respect minimum margin standards as specified in paragraph 5. These minimum standards shall be calibrated in accordance with the risk level and shall be regularly revised to reflect current market conditions and in particular in response to emergency situations where it is concluded that doing so will mitigate systemic risks.** Such margins shall be sufficient to cover potential exposures that the CCP estimates will occur until the liquidation of the relevant positions. They shall be sufficient to cover losses that result from at least 99 % of the exposures movements over an appropriate time horizon and they shall ensure that a CCP fully collateralises its exposures with all its clearing members, and where relevant with CCPs which have interoperable arrangements, at least on a daily basis.

In accordance with Article 9(5) of Regulation (EU) No 1095/2010, ESMA may recalibrate margin requirements in emergency situations when doing so will mitigate systemic risk.

2. A CCP shall adopt models and parameters in setting its margin requirements that capture the risk characteristics of the products cleared and take into account the interval between margin collections, market liquidity and the possibility of changes over the duration of the transaction. The models and parameters shall be validated by the competent authority and subject to **an opinion in accordance with** Article 15.

3. A CCP shall call and collect margins on an intraday basis, at least when pre-defined thresholds are breached.
3a. A CCP shall call and collect margins that are adequate to cover the positions registered in each account kept in accordance with Article 37 with respect to specific financial instruments. A CCP may calculate margins with respect to a portfolio of financial instruments only when the price correlation among the financial instruments included in the portfolio is high and stable.

5. In order to ensure consistent application of this Article, ESMA shall, after consulting EBA, develop draft regulatory technical standards specifying the appropriate percentage and time horizon, as referred to in paragraph 1, to be considered for the different classes of financial instruments and the conditions referred to in paragraph 3a.

ESMA shall, after consulting EBA, submit those draft regulatory technical standards to the Commission by 30 June 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010. [Am. 19]

Article 40

Default fund

1. To further limit its credit exposures to its clearing members, a CCP shall maintain a default fund to cover losses that exceed the losses to be covered by margin requirements as referred to in Article 39, arising from the default, including the opening of an insolvency procedure, of one or more clearing members.

2. A CCP shall establish the minimum size of contributions to the default fund and the criteria to calculate the contributions of the single clearing members. The contributions shall be proportional to the exposures of each clearing member, in order to ensure that the contributions to the default fund at least enable the CCP to withstand the default of the two clearing members to which it has the largest exposures.

2a. A CCP shall develop scenarios of extreme but plausible market conditions. The scenarios shall include the most volatile periods that have been experienced by the markets for which the CCP provides its services and a range of potential future scenarios. They shall take into account sudden sales of financial resources and rapid reductions in market liquidity. The size of the default fund shall include the margins calculated, in compliance with Article 39, on the positions stemming from the hypothesised scenarios.

In calculating credit exposures to its clearing members, a CCP shall take into account:

(a) the exposures of each clearing member, as registered on each account kept in accordance with Article 37; and

(b) whether or not profits on proprietary positions can be used to cover losses on clients’ positions.

3. A CCP may establish more than one default fund for the different classes of instruments it clears.
3a. In order to ensure consistent application of this Article, ESMA shall, in close cooperation with the ESCB and after consulting EBA, develop draft regulatory technical standards specifying the details of default funds referred to in paragraphs 1 and 3.

ESMA shall, in close cooperation with the ESCB and after consulting EBA, submit those draft regulatory technical standards to the Commission by 30 June 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010. [Am. 19]

Article 41

Other risk controls

1. In addition to the capital required in Article 12, a CCP shall maintain sufficient available financial resources to cover potential losses that exceed the losses to be covered by margin requirements and the default fund. Such resources may include any other clearing fund provided by clearing members or other parties, loss sharing arrangements, insurance arrangements, the own funds of a CCP, parental guarantees or similar provisions. Such resources shall be freely available to the CCP and shall not be used to cover the operating losses.

2. The default fund referred to in Article 40 and the other financial resources referred to in paragraph 1 shall at all times enable the CCP to withstand potential losses in extreme but plausible market conditions. A CCP shall develop scenarios of such extreme but plausible market conditions.

3. A CCP shall measure its potential liquidity needs. A CCP shall at all times have access to adequate liquidity to perform its services and activities. To that end, a CCP shall obtain the necessary credit lines or similar arrangements to cover its liquidity needs in case the financial resources at its disposal are not immediately available. Each clearing member, parent undertaking or subsidiary of the clearing member may not provide more than 25% of the credit lines needed by the CCP.

4. A CCP may require non-defaulting clearing members to provide additional funds in the event of a default of another clearing member. The clearing members of a CCP shall have limited exposures toward the CCP.

5. In order to ensure consistent application of this Article, ESMA shall, after consulting EBA, develop draft regulatory technical standards specifying the extreme conditions referred to in paragraph 2 that the CCP shall withstand.

ESMA shall, after consulting EBA, submit those draft regulatory technical standards to the Commission by 30 June 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010. [Am. 19]

Article 42

Default waterfall

1. A CCP shall use the margins posted by a defaulting clearing member prior to other financial resources in covering losses.
2. Where the margins posted by the defaulting clearing member are not sufficient to cover the losses incurred by the CCP, the CCP shall use the default fund contribution of the defaulting member to cover these losses.

3. A CCP shall use contributions to the default fund and other contributions of non-defaulting clearing members only after having exhausted the contributions of the defaulting clearing member and the CCP’s own funds referred to in Article 41(1).

4. A CCP shall not be allowed to use the margins posted by non-defaulting clearing members to cover the losses resulting from the default of another clearing member.

Article 43
Collateral requirements

1. A CCP shall accept highly liquid collateral, such as cash, gold, government and high-quality corporate bonds, with minimal credit and market risk to cover its initial and ongoing exposure to its clearing members. For non-financial counterparties, CCPs may accept bank guarantees taking into account such guarantees in exposure to a bank that is a clearing member. It shall apply adequate haircuts to asset values that reflect the potential for their value to decline over the interval between their last revaluation and the time by which they can reasonably be assumed to be liquidated. It shall take into account the liquidity risk following the default of a market participant and the concentration risk on certain assets that may result in establishing the acceptable collateral and the relevant haircuts. These minimum standards shall be calibrated in accordance with the risk level and shall be regularly revised to reflect market conditions and in particular in response to emergency situations where it is concluded that doing so will mitigate systemic risk.

2. A CCP may accept, where appropriate and sufficiently prudent, the underlying of the derivative contract or the financial instrument that originate the CCP exposure as collateral to cover its margin requirements.

3. In order to ensure consistent application of this Article, ESMA shall, after consulting, EBA and the ESRB, develop draft regulatory technical standards specifying the type of collateral that can be considered highly liquid and the haircuts referred to in paragraph 1.

ESMA shall, after consulting EBA and the ESRB, submit those draft regulatory technical standards to the Commission by 30 June 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010. [Am. 19]

Article 44
Investment policy

1. A CCP shall only invest its financial resources in highly liquid financial instruments with minimal market and credit risk, for example in reserves with an EU central bank. The investments shall be capable of being liquidated rapidly with minimal adverse price effect.
1a. The amount of capital, together with the earnings and reserves of a CCP which are not invested in accordance with paragraph 1, shall not be considered for the purposes of Article 12(2).

2. Financial instruments posted as margins shall be deposited with operators of securities settlement systems that ensure non-discriminatory access to CCPs and the full protection of those instruments. A CCP shall have prompt access to the financial instruments when required. CCPs shall have robust controls over the re-hypothecation of clearing members’ collateral, subject to review by ESMA.

3. A CCP shall not invest its capital or the sums arising from the requirements referred to in Articles 39, 40 and 41 in its own securities or those of its parent or subsidiary undertaking.

4. A CCP shall take into account its overall credit risk exposures to individual obligors in making its investment decisions and shall ensure that its overall risk exposure to any individual obligor remains within acceptable concentration limits.

5. In order to ensure consistent application of this Article, ESMA shall, after consulting, EBA, develop draft regulatory technical standards specifying the highly liquid financial instruments referred to in paragraph 1 and the concentration limits referred to in paragraph 4.

ESMA shall, after consulting EBA, submit those draft regulatory technical standards to the Commission by 30 June 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010. [Am. 19]

Article 45

Default procedures

1. A CCP shall have detailed procedures in place to be followed where a clearing member does not comply with the requirements laid down in Article 35 within the time limit and according to the procedures established by the CCP. The CCP shall outline in detail the procedures to be followed in the event the insolvency of a clearing member is not established by the CCP. These procedures shall be reviewed annually.

2. A CCP shall take prompt action to contain losses and liquidity pressures resulting from defaults and shall ensure that the closing out of any clearing member’s positions does not disrupt its operations or expose the non-defaulting clearing members to losses that they cannot anticipate or control.

3. The CCP shall promptly inform the competent authority. That competent authority shall immediately inform the authority responsible for the supervision of the defaulting clearing member where the CCP considers that the clearing member will not be able to meet its future obligations and when the CCP intends to declare its default.

4. A CCP shall establish that its default procedures are enforceable. It shall take all the reasonable steps to ensure that it has the legal powers to liquidate the proprietary positions of the defaulting clearing member and to transfer or liquidate the client’s positions of the defaulting clearing member.
Article 46

Review of models, stress testing and back testing

1. A CCP shall regularly review the models and parameters adopted to calculate its margin requirements, default fund contributions, collateral requirements and other risk control mechanisms. It shall subject the models to rigorous and frequent stress tests to assess their resilience in extreme but plausible market conditions and shall perform back tests to assess the reliability of the methodology adopted. The CCP shall inform the competent authority of the results of the tests performed and shall obtain its validation before adopting any change to the models and parameters.

2. A CCP shall regularly test the key aspects of its default procedures and take all the reasonable steps to ensure that all clearing members understand them and have appropriate arrangements in place to respond to a default event.

2a. ESMA shall provide information on the results of the stress tests referred to in paragraph 1 to the ESAs in order to enable them to assess the exposure of financial undertakings to the default of CCPs.

3. A CCP shall publicly disclose key information on its risk management model and assumptions adopted to perform the stress tests referred to in paragraph 1 and the outcome of the stress tests except in the case that the competent authority, after consulting ESMA, considers that such disclosure would constitute a threat to financial stability.

4. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the following:

(a) the type of tests to be undertaken for different classes of financial instruments and portfolios;

(b) the involvement of clearing members or other parties in the tests;

(c) the frequency of the tests;

(d) the time horizons of the tests;

(e) the key information referred to in paragraph 3.

ESMA shall, in consultation with EBA, submit those draft regulatory technical standards to the Commission by 30 June 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010. [Am. 19]

Article 47

Settlement

1. A CCP shall, where practical and available, use central bank money to settle its transactions. Where central bank money is not used, steps shall be taken to strictly limit cash settlement risks.
2. A CCP shall clearly state its obligations with respect to deliveries of financial instruments, including whether it has an obligation to make or receive delivery of a financial instrument or whether it indemnifies participants for losses incurred in the delivery process.

3. Where a CCP has an obligation to make or receive deliveries of financial instruments, the CCP shall eliminate principal risk through the use of delivery-versus-payment mechanisms to the extent possible.

**Article 48**

Interoperability arrangements

1. A CCP may enter into an interoperability arrangement with another CCP, where the requirements under Articles 49 and 50 are fulfilled.

1a. In order not to expose CCPs to additional risks, interoperability arrangements shall be restricted to transferable securities and money-market instruments, as defined under point 18(a) and (b) and point 19 of Article 4(1) of Directive 2004/39/EC for the purposes of this Regulation. However, by 30 September 2014, ESMA shall submit a report to the Commission on whether an extension of that scope to other financial instruments would be appropriate.

2. When establishing an interoperability arrangement with another CCP for the purpose of providing services to a particular trading venue, the CCP shall have non-discriminatory access to the data that it needs for the performance of its functions from that particular trading venue and to the relevant settlement system.

3. Entering into an interoperability arrangement or accessing a data feed or a settlement system referred to in paragraphs 1 and 2 shall only be restricted, directly or indirectly, to control any risk arising from that arrangement or access.

**Article 48a**

CCP access to trade feeds

1. A CCP shall have the right to non-discriminatory access to the data feed of any particular trading venue and access to any relevant settlement system that it needs for the performance of its duties.

2. For the purpose of the reports to the Commission and the European Parliament referred to in Article 68, ESMA shall monitor access to CCPs and the effects on competitiveness of certain practices, including the use of exclusive licensing practices.

**Article 49**

Risk management

1. CCPs that enter into an interoperability arrangement shall:

   (a) put in place adequate policies, procedures and systems to effectively identify, monitor and manage the additional risks arising from the arrangement so that they can meet their obligations in a timely manner;

   (b) agree on their respective rights and obligations, including the applicable law governing their relationships;
(c) identify, monitor and effectively manage credit and liquidity risks so that a default of a clearing member of one CCP does not affect an interoperable CCP;

(d) identify, monitor and address potential interdependences and correlations that arise from an interoperability arrangement that may affect credit and liquidity risks related to clearing member concentrations and pooled financial resources.

For the purposes of point (b) of the first subparagraph, CCPs shall use the same rules concerning the moment of entry of transfer orders into their respective systems and the moment of irrevocability, as set out in Directive 98/26/EC where relevant.

For the purposes of point (c) of the first subparagraph, the terms of the arrangement shall outline the process for managing the consequences of the default where one of the CCPs with which an interoperability arrangement has been concluded is in default.

For the purposes of point (d) of the first subparagraph, CCPs shall have robust controls over the re-hypothecation of clearing members’ collateral under the arrangement, if permitted by their competent authorities. The arrangement shall outline how these risks have been addressed taking into account sufficient coverage and the need to limit contagion.

2. Where the risk management models used by the CCPs to cover their exposure to their clearing members as well as their reciprocal exposures are different, the CCPs shall identify those differences, assess risks that may arise therefrom and take measures, including securing additional financial resources, that limit their impact on the interoperability arrangement as well as their potential consequences in terms of contagion risks and ensure that these differences do not affect each CCP’s ability to manage the consequences of the default of a clearing member.

Article 49a

Provision of margins among CCPs

1. A CCP shall segregate the collateral received by CCPs with which it has entered into an interoperability arrangement.

2. Collateral received in the form of cash shall be held in segregated accounts.

3. Collateral received in the form of financial instruments shall be held in segregated accounts with operators of securities settlement systems notified under Directive 98/26/EC.

4. Collateral segregated under paragraphs 1, 2 and 3 shall be available to the receiving CCP only in case of default of the CCP which has provided the collateral in the context of an interoperability arrangement.

5. In case of default of the CCP which has received the collateral in the context of an interoperability arrangement, the collateral segregated under paragraphs 1, 2 and 3 shall be readily returned to the providing CCP.

Article 50

Approval of interoperability arrangements

1. An interoperability arrangement shall be subject to the prior approval of the competent authorities of the CCPs involved. The procedure under Article 13 shall apply.
2. The competent authorities shall only grant approval of the interoperability arrangement where the CCPs involved have been authorised to clear under the procedure set out in Article 13 and have continuously fulfilled their role in clearing the derivative contracts under that authorisation in accordance with supervisory requirements for a period of at least three years, the requirements set out in Article 49 are met and the technical conditions for clearing transactions under the terms of the arrangement allow for a smooth and orderly functioning of financial markets and the arrangement does not undermine the effectiveness of supervision.

3. Where a competent authority considers that the requirements set out in paragraph 2 are not met, it shall provide explanations in writing regarding its risk considerations to the other competent authorities and the CCPs involved. It shall also notify ESMA, which shall issue an opinion on the effective validity of the risk considerations as grounds for denial of an interoperability arrangement. ESMA’s opinion shall be made available to all the CCPs involved. Where ESMA’s assessment differs from the assessment of the relevant competent authority, this authority shall reconsider its position, taking into account the opinion of ESMA.

4. By 30 June 2012, ESMA shall issue guidelines or recommendations with a view to establishing consistent, efficient and effective assessments of interoperability arrangements, in accordance with the procedure laid down in Article 8 of Regulation (EU) No 1095/2010.
3. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the details of the application for registration to ESMA referred to in paragraph 1.

**ESMA shall submit those draft regulatory technical standards to the Commission by 30 June 2012.**

**Power is delegated to the Commission to adopt the** regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010. [Am. 19]

4. In order to ensure uniform application of paragraph 1, ESMA shall develop draft implementing technical standards determining the format of the application for registration to ESMA.

**ESMA shall submit those draft implementing technical standards to the Commission by 30 June 2012.**

**Power is conferred on the Commission to adopt the draft** implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

---

**Article 53**

Examination of the application

1. ESMA shall, within 40 working days from the notification referred to in the third subparagraph of Article 52(2), examine the application for registration based on the compliance of the trade repository with the requirements set out in Articles 64 to 67 and adopt a fully reasoned decision for registration or refusal.

2. The decision issued by ESMA pursuant to paragraph 1 shall take effect on the fifth working day following its adoption.

---

**Article 54**

Notification of the decision

1. Where ESMA adopts a decision to register, refuse registration or withdraw registration, it shall notify the trade repository within five working days with a fully reasoned explanation of its decision.

2. ESMA shall communicate any decision taken in accordance with paragraph 1 to the Commission.

3. ESMA shall publish on its website a list of trade repositories registered in accordance with this Regulation. That list shall be updated within five working days following the adoption of a decision under paragraph 1.

---

**Article 55**

Fines

1. ESMA may by decision impose on a trade repository a fine where, intentionally or negligently, the trade repository has infringed Article 63(1), Article 64, Article 65, Article 66 and Article 67(1) and (2) of this Regulation.

2. The fines referred to in paragraph 1 shall be dissuasive and proportionate to the nature and seriousness of the breach, the duration of the breach and the economic capacity of the trade repository concerned.
3. Notwithstanding paragraph 2, where the trade repository has directly or indirectly gained a quantifiable financial benefit from the breach, the amount of the fine has to be at least equal to that benefit.

4. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards concerning:

(a) detailed criteria for establishing the amount of the fine;

(b) the procedures for enquiries, associated measures and reporting, as well as rules of procedure for decision-making, including provisions on rights of defence, access to the file, legal representation, confidentiality and temporal provisions and the quantification and collection of the fines.

ESMA shall submit those draft regulatory technical standards to the Commission by 30 June 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010. [Am. 6]

Article 56

Periodic penalty payments

1. ESMA’s Board of Supervisors shall by decision impose periodic penalty payments in order to compel:

(a) a trade repository to put an end to an infringement;

(b) persons involved in trade repositories or related third parties to supply complete information which has been requested;

(c) persons involved in trade repositories or related third parties to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation;

(d) persons involved in trade repositories or related third parties to submit to an on-site inspection.

2. The periodic penalty payments provided for shall be effective and proportionate. The amount of the periodic penalty payments shall be imposed for each day of delay.

2a. Notwithstanding paragraph 2, the amount of the periodic penalty payments shall be 3% of the average daily turnover in the preceding business year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.

2b. A periodic penalty payment shall be imposed for a maximum period of six months following the notification of ESMA’s decision. Following that six-month period, ESMA shall consider the measures.
Article 57

Hearing of the persons concerned

1. Before taking any decision on a fine or periodic penalty payment as provided for in Articles 55 and 56, ESMA shall give the persons concerned the opportunity to be heard on the matters to which the Commission has taken objection.

ESMA shall base its decisions only on objections on which the persons concerned have been able to comment.

2. The rights of defence of the persons concerned shall be fully respected in the proceedings.

Those persons shall be entitled to have access to ESMA’s file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information and ESMA’s internal documents. [Am. 8]

Article 58

Provisions common to fines and periodic penalty payments

1. ESMA shall disclose to the public every fine and periodic penalty payment that has been imposed in accordance with Articles 55 and 56.

2. Fines and periodic penalty payments imposed pursuant to Articles 55 and 56 are of an administrative nature.

2a. Where ESMA decides to impose no fines or penalty payments, it shall inform the Commission, the competent authorities of the Member State, the European Parliament and the Council accordingly and shall set out the reasons for its decision. [Am. 9 Rev]

Article 59

Review by the Court of Justice

The Court of Justice of the European Union shall have unlimited jurisdiction to review decisions whereby ESMA has imposed a fine or a periodic penalty payment. The Court of Justice may annul, reduce or increase the fine or periodic penalty payment imposed. [Am. 10]

Article 60

Withdrawal of registration

1. ESMA shall withdraw the registration of a trade repository in any of the following circumstances:

(a) the trade repository expressly renounces the registration or has provided no services for the preceding six months;

(b) the trade repository has obtained the registration by making false statements or by any other irregular means;

(c) the trade repository no longer meets the conditions under which it was registered;

(d) the trade repository has seriously or repeatedly infringed the provisions of this Regulation.

2. The competent authority of a Member State in which the trade repository performs its services and activities and which considers that one of the conditions referred to in paragraph 1 has been met may request ESMA to examine whether the conditions for withdrawal of registration are met. Where ESMA decides not to withdraw the registration of the trade repository concerned, it shall provide full reasons.
2a. **ESMA shall take all necessary steps to ensure the orderly substitution of the trade repository from which registration has been withdrawn, including the transfer of data to other trade repositories and the redirection of reporting flows to other trade repositories.**

**Article 61**

Surveillance of Trade Repositories

1. ESMA shall monitor the application of Articles 64 to 67.

2. In order to carry out the duties set out in Articles 51 to 60, 62 and 63, ESMA shall have the power to:

   (a) access any document in any form and to receive or take a copy thereof;

   (b) demand information from any person and, if necessary, summon and question a person with a view to obtaining information;

   (c) carry out on-site inspections with or without prior announcement;

   (d) require records of telephone and data traffic.

**Chapter 2**

Relations with third countries

**Article 62**

International agreements

The Commission shall, where appropriate, submit proposals to the Council for the negotiation of international agreements with one or more third countries regarding mutual access to, and exchange of information on, OTC derivative contracts held in trade repositories which are established in third countries, where that information is relevant for the exercise of the duties of competent authorities under this Regulation.

**Article 63**

Equivalence and recognition

1. A trade repository established in a third country may provide its services and activities to entities established in the Union for the purposes of Article 6 only where that trade repository is **separately established in the Union**, recognised by ESMA.

2. ESMA shall recognise a trade repository from a third country **only** where the following conditions are met:

   (a) the trade repository is authorised in and is subject to effective surveillance in that third country;

   (b) the Commission has adopted a decision in accordance with paragraph 3;

   (c) the Union has entered into an international agreement with that third country, as referred to in Article 62;

   (d) cooperation arrangements have been established pursuant to paragraph 4 to ensure that Union authorities have immediate and continuous access to all the necessary information.
(da) the third country is the subject of a decision by the Commission stating that the standards to prevent money laundering and terrorist financing meet the Financial Action Task Force requirements and are to the same effect as the requirements set out in Directive 2005/60/EC;

(db) the third country has signed an agreement with the home Member State of the authorised CCP which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including, if any, multilateral tax agreements;

(dc) the relevant authorities of the third country that has entered into an international agreement with the Union as referred to in Article 62 provided that they agree to indemnify the trade repository and the EU authorities for any expenses arising from litigation relating to the information provided by the trade repository;

(dd) the third country applies reciprocal access conditions for EU-based trade repositories and a mutual recognition regime has been implemented in that third country.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article -68, determining that the legal and supervisory arrangements of a third country ensure that trade repositories authorised in that third country comply with legally binding requirements which are equivalent to the requirements set out in this Regulation and that these trade repositories are subject to effective supervision and enforcement in that third country on an ongoing basis.

4. ESMA shall establish cooperation arrangements with the relevant competent authorities of third countries whose legal and supervisory frameworks have been considered equivalent to this Regulation in accordance with paragraph 3. Such arrangements shall ensure that Union authorities have immediate and continuous access to all the information needed for the exercise of their duties and direct access to trade repositories in third-country jurisdictions. Those arrangements shall specify at least:

(a) the mechanism for the exchange of information between ESMA, any other Union authorities that exercise responsibilities in accordance with this Regulation, the competent authorities of third countries concerned and the trade repositories of third countries concerned; this mechanism shall include on-site inspections of third-country trade repositories by ESMA;

(b) the procedures concerning the coordination of supervisory activities.

Title VII
Requirements for trade repositories

Article 64

General requirements

1. A trade repository shall have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility and adequate internal control mechanisms, including sound administrative and accounting procedures, which prevent any disclosure of confidential information.

2. A trade repository shall establish adequate policies and procedures sufficient to ensure its compliance, including of its managers and employees, with all the provisions of this Regulation.
3. A trade repository shall maintain and operate an adequate organisational structure to ensure continuity and orderly functioning of the trade repository in the performance of its services and activities. It shall employ appropriate and proportionate systems, resources and procedures.

4. The senior management and members of the board of a trade repository shall be of sufficiently good repute and experience so as to ensure the sound and prudent management of the trade repository.

5. A trade repository shall have objective, non-discriminatory and publicly disclosed requirements for access and participation. Criteria that restrict access shall only be permitted to the extent that their objective is to control the risk to the data maintained by a trade repository.

6. A trade repository shall publicly disclose the prices and fees associated with the services it provides. It shall disclose the prices and fees of single services and functions provided separately, including discounts and rebates and the conditions to benefit from those reductions. It shall allow reporting entities to access specific services separately. The prices and fees charged by a trade repository shall not be higher than the cost incurred by the trade repository.

Article 65
Operational reliability

1. A trade repository shall identify sources of operational risk and minimise them through the development of appropriate systems, controls and procedures. Such systems shall be reliable and secure, and have adequate capacity to handle the information received.

2. A trade repository shall establish, implement and maintain an adequate business continuity policy and disaster recovery plan aiming at ensuring the maintenance of its functions, the timely recovery of operations and the fulfilment of the trade repository’s obligations. Such a plan shall at least provide for the establishment of backup facilities.

Article 66
Safeguarding and recording

1. A trade repository shall ensure the confidentiality, integrity and protection of the information received under Article 6. No commercial use may be made of any information without the consent of both counterparties to the derivative contract.

2. A trade repository shall promptly record the information received under Article 6 and shall maintain it for at least ten years following the termination of the relevant contracts. It shall employ timely and efficient record keeping procedures to document changes to recorded information.

3. A trade repository shall calculate the positions by class of derivatives and by reporting entity based on the details of the derivative contracts reported in accordance with Article 6.

4. A trade repository shall allow the parties to a contract to access and correct the information on that contract at all times.

5. A trade repository shall take all reasonable steps to prevent any misuse of the information maintained in its systems and shall prevent the use of that information held for other business activities.
Confidential information recorded in one trade repository shall not be used for commercial use by any other natural or legal person that has a parent undertaking or a subsidiary relationship with the trade repository.

Article 67
Transparency and data availability

1. A trade repository shall regularly, and in an easily accessible way, publish aggregate positions by class of derivatives on the contracts reported to it, such reporting utilising international open industry standards where possible.

Trade repositories shall ensure that all the competent authorities have direct access to such details of derivative contracts as they require in order to carry out their tasks.

2. A trade repository shall make the necessary information available to the following entities, provided that access to such information is strictly necessary to enable them to fulfil their respective responsibilities and mandates:

(a) ESMA;

(aa) the ESRB;

(b) the competent authorities supervising undertakings subject to the reporting obligation under Article 6;

(c) the competent authority supervising CCPs accessing the trade repository;

(ca) the competent authority supervising the venues of execution of the reported contracts;

(d) the relevant central banks of the ESCB;

(da) the public in an aggregate way every week in a meaningful format to allow non-participants to be duly informed about concrete figures of volume, positions, prices and value, as well as trends, risks and other relevant information that increases the transparency of the OTC derivative markets.

Power is delegated to ESMA to establish and review the criteria for publication and to decide whether such publication is better issued by the relevant national or Union authorities.

3. ESMA shall share the information necessary for the exercise of their duties with other relevant competent authorities.

4. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the details of the information referred to in paragraphs 1 and 2 as well as operational standards required in order to aggregate and compare data across repositories and when it is necessary for the authorities referred to in paragraph 2 to have access to that information. Those draft regulatory technical standards shall aim to ensure that the information published under paragraph 1 is not capable of identifying a party to any contract.
ESMA shall submit those draft regulatory technical standards to the Commission by 30 June 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010. [Am. 19]

Article 67a

In order to ensure that they can fulfil their mission, trade repositories shall be adequately organised in order to be in a position to give to ESMA and relevant competent authorities direct and immediate access to the details of derivatives contracts as referred to in Article 6.

Title VIII

Transitional and final provisions

Article 68

Delegated acts

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

2. The delegation of power referred to in Articles 23 and 63 shall be conferred to the Commission for an indeterminate period of time.

3. Before adopting a delegated act, the Commission shall endeavour to consult ESMA.

4. A delegation of power referred to in Articles 23 and 63 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. The decision to revoke shall take effect on the day following that of its publication in the Official Journal of the European Union or on a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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

6. A delegated act adopted pursuant to Article 23 or 63 shall enter into force only if no objection has been expressed by either the European Parliament or the Council within a period of three months of notification of the act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament or the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

Article 68

Reports and Review

1. By 31 December 2013, the Commission shall review and report on the institutional and supervisory arrangements under Title III and in particular the role and responsibilities of ESMA. The Commission shall submit the report to the European Parliament and the Council, together with any appropriate proposals.

By the same date, the Commission shall, in coordination with ESMA and the relevant sectoral authorities, assess the systemic importance of the transactions of non-financial firms in OTC derivatives.
2. **ESMA** shall submit reports to the Commission on the application of the clearing obligation under Title II and on *possible future provisions concerning* interoperability arrangements.

Those reports shall be communicated to the Commission by 30 September 2014.

3. The Commission shall, in cooperation with the Member States and ESMA, and after requesting the assessment of the ESCB, draw up an annual report assessing any possible systemic risk and cost implications of interoperability arrangements.

The report shall focus at least on the number and complexity of such arrangements and the adequacy of risk management systems and models. The Commission shall submit the report to the European Parliament and the Council, together with any appropriate proposals.

The ESCB shall provide the Commission with its assessment of any possible systemic risk and cost implications of interoperability arrangements.

3a. By … +, the Commission, in cooperation with ESMA, shall prepare a first general report as well as a first report on specific elements concerning the implementation of this Regulation.

*The Commission, in cooperation with ESMA, shall in particular assess the evolution of CCPs’ policies on collateral margining and securing requirements and their adaptation to the specific activities and risk profiles of their users.*

### Article 68a

**ESMA** shall receive adequate additional funding to effectively perform the regulatory and supervisory tasks which are laid down in this Regulation.

### Article 69

Committee procedure

1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC (1). *That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers (2).*

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply, having regard to the provisions of Article 8 thereof.

### Article 70

Amendment to Directive 98/26/EC

In Article 9(1) of Directive 98/26/EC, the following subparagraph is added:

"Where a system operator has provided collateral security to another system operator in connection with an interoperable system, the rights of the providing system operator to that collateral security shall not be affected by insolvency proceedings against the receiving system operator."

* Three years after the entry into force of this Regulation.

(2) OJ L 55, 28.2.2011, p. 13
Article 70a

Maintenance of website by ESMA

1. ESMA shall maintain a website which provides the following information:

(a) contracts eligible for the clearing obligation under Article 4;

(b) penalties imposed for breaches of Articles 3 to 8;

(c) CCPs authorised to offer services or activities in the Union that are a legal person established in the Union, and the services or activities which they are authorised to provide or perform, including the classes of financial instruments covered by their authorisation;

(d) penalties imposed for breaches of Titles IV and IV;

(e) CCPs authorised to offer services or activities in the Union established in a third country, and the services or activities which they are authorised to provide or perform, including the classes of financial instruments covered by their authorisation;

(f) trade repositories authorised to offer services or activities in the Union;

(g) penalties and fines imposed in accordance with Articles 55 and 56;

(h) the public register referred to in Article 4b.

2. For the purposes of points (b), (c) and (d) of paragraph 1, Member States’ competent authorities shall maintain websites, which shall be linked to by ESMA website.

3. All websites referred to in this Article shall be publicly accessible and regularly updated, and shall provide information in a clear format.

Article 71

Transitional provisions

1. A CCP that has been authorised in its Member State of establishment to provide services before the date of entry into force of this Regulation, or a third-country CCP that has been authorised to provide services in a Member State in accordance with that Member State’s national provisions shall seek authorisation under Article 10 or recognition under Article 23, for the purposes of this Regulation, by … +.

1a. A trade repository that has been authorised in its Member State of establishment to collect and maintain the records of derivatives before the entry into force of this Regulation, or a trade repository established in a third country which is allowed to collect and maintain the records of derivatives transacted in a Member State in accordance with the national law of that Member State before the entry into force of this Regulation, shall seek registration under Article 51 or recognition under Article 63 by … ++.

2. Derivative contracts that have been concluded prior to the date of application of this Regulation’s registration of a trade repository for that particular type of contract shall be reported to that trade repository within 120 days of the date of registration of that trade repository by ESMA.

+ Two years after the entry into force of this Regulation.
++ One year after the entry into force of this Regulation.
2a. Derivative contracts that are objectively measurable as reducing risks directly related to the financial solvency of pension scheme investments under Directive 2003/41/EC or a scheme where the law of the Member State recognises the scheme for retirement planning shall be excluded from the clearing obligation set out in Article 3 for a period of three years after the entry into force of this regulation, where the posting of liquid collateral would result in an undue burden on the investor due to asset conversion requirements. If the report specified under Article 68 demonstrates that for such counterparties, this undue burden remains disproportionate, then the Commission is empowered to extend the derogation in order to ensure resolution of the remaining issues.

This derogation shall not affect the reporting obligation under Article 6 or the obligations in relation to risk mitigation techniques under Article 8(1b).

2b. The obligations of counterparties under Articles 3, 6 and 8 shall become effective six months after publication of the regulatory technical standards, implementing technical standards and guidelines related thereto drafted by ESMA and adopted by the Commission.

Article 71a

Staff and resources of ESMA

By 15 September 2011, ESMA shall assess the staffing and resources needs arising from the assumptions of its powers and duties in accordance with this Regulation and submit a report to the European Parliament, the Council and the Commission.

Article 72

Entry into Force

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

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

Done at […].

For the European Parliament
The President

For the Council
The President

Supplementary supervision of financial entities in a financial conglomerate ***I

P7_TA(2011)0311


(2013/C 33 E/35)

(Ordinary legislative procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2010)0433),
— having regard to Article 294(2) and Article 53(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0203/2010),

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

— having regard to the opinion of the European Central Bank of 28 January 2011 (1),

— having regard to the undertaking given by the Council representative by letter of 17 June 2011 to approve Parliament’s position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

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

— having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs (A7-0097/2011),

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

2. Approves its statement annexed to this resolution;

3. Takes note of the statement of the Council and the statement of the Commission, annexed to this resolution;

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

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


P7_TC1-COD(2010)0232


(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Directive 2011/89/EU.)

ANNEX TO THE LEGISLATIVE RESOLUTION

Statement by the European Parliament

There are particular circumstances in financial services and the European Supervisory Architecture that make correlation tables essential.

Tuesday 5 July 2011

Statement by the Council

It is hereby declared that the agreement reached on this specific case between the Council and the European Parliament in the trilogue of 1 June 2011 concerning the Directive of the European Parliament and of the Council amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate, due to the specificities of this dossier, prejudges neither the position of the Council nor the outcome of inter-institutional negotiations on correlation tables.

Statement by the Commission

The Commission welcomes the outcome of negotiations on this file.

The Commission recalls its commitment towards ensuring that Member States establish correlation tables linking the transposition measures they adopt with the EU directive and communicate them to the Commission in the framework of transposing EU legislation, in the interest of citizens, better law-making and increasing legal transparency and to assist the examination of the conformity of national rules with EU provisions.

The Commission will continue its efforts with a view to finding together with the European Parliament and the Council an appropriate solution to this horizontal institutional issue.

Short selling and certain aspects of credit default swaps


(2013/C 33 E/36)

(Ordinary legislative procedure: first reading)

[Amendment No 1]

AMENDMENTS BY PARLIAMENT (*)

to the Commission proposal

(*) The matter was then referred back to committee pursuant to Rule 57(2), second subparagraph (A7-0055/2011)
(*) Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol □
Having regard to the proposal from the European Commission,

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

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

Having regard to the opinion of the European Central Bank (2),

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) At the height of the financial crisis in September 2008, competent authorities in several Member States and the United States of America adopted emergency measures to restrict or ban short selling in some or all securities. They acted due to concerns that at a time of considerable financial instability, short selling could aggravate the downward spiral in the prices of shares, notably in financial institutions, in a way which could ultimately threaten their viability and create systemic risks. The measures adopted by Member States were divergent as the Union lacks a specific legislative framework for dealing with short selling issues.

(2) To ensure the functioning of the internal market and to improve the conditions of its functioning, in particular the financial markets, and to ensure a high level of consumer and investor protection, it is therefore appropriate to lay down a common framework with regard to the requirements and powers relating to short selling and credit default swaps and to ensure greater coordination and consistency between Member States where measures have to be taken in an exceptional situation. It is necessary to harmonise the framework for short selling and certain aspects of credit default swaps, to prevent the creation of obstacles to the internal market, as it is likely that Member States continue taking divergent measures.

(3) It is appropriate and necessary for the provisions to take the legislative form of a Regulation as some provisions impose direct obligations on private parties to notify and disclose net short positions relating to certain instruments and regarding uncovered short selling. A Regulation is also necessary to confer powers on the European Supervisory Authority (European Securities and Markets Authority) (ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 (3) to coordinate measures taken by competent authorities or to take measures itself.

(4) To set an end to the current fragmented situation in which some Member States have taken divergent measures and to restrict the possibility of divergent measures being taken by competent authorities it is important to address the potential risks arising from short selling and credit default swaps in a harmonised manner. The requirements to be imposed should address the identified risks taking into account differences in the Member States and the potential economic impact of the requirements and without unduly detracting from the benefits that short selling provides to the quality and efficiency of markets by increasing market liquidity (as the short seller sells securities and then later repurchases those securities to cover the short sale) and by allowing investors to act when they believe a security is overvalued short selling leading therefore to the more efficient pricing of securities.

(1) OJ C 84, 17.3.2011, p. 34.
(2) OJ C 91, 23.3.2011, p. 1.
(3) OJ L 331, 15.12.2010, p. 84.
Commodity markets and, in particular, agricultural markets do not fall within the scope of this Regulation. As some risks identified in this Regulation may also occur on those markets and in addition to the communication of the Commission on tackling the challenges in commodity markets and on raw materials, the Commission should, by 1 January 2012, report to the European Parliament and the Council on the risks existing on those markets, taking into account their specificities, and put forward any appropriate proposals. Commodities relevant to the energy sector should be addressed in the Commission’s proposal for a Regulation on energy market integrity and transparency (COM(2010)0726).

The scope of the Regulation should be as broad as possible to provide for a preventive framework to be used in exceptional circumstances. The framework should cover all financial instruments but provide for a proportionate response to the risks that short selling of different instruments may represent. Therefore, it is only in the case of exceptional situations that competent authorities and ESMA should be entitled to take measures concerning all types of financial instruments, going beyond the permanent measures that only apply to particular types of instruments where there are clearly identified risks that such measures need to address.

Enhanced transparency relating to significant net short positions in specific financial instruments is likely to be of benefit to both the regulator and to market participants. For shares admitted to trading on a trading venue in the Union, a two-tier model should be introduced that provides for greater transparency of significant net short positions in shares at the appropriate level. Above a certain threshold notification of a position should be made privately to the regulators concerned to enable them to monitor and, where necessary, investigate short selling that may create systemic risks or be abusive; at a higher threshold, positions should also be publicly disclosed to the market in anonymous form in order to provide useful information to other market participants about significant individual short selling positions in shares.

Disclosure to regulators of significant net short positions relating to sovereign debt would provide important information to assist regulators in monitoring whether such positions are in fact creating systemic risks or being used for abusive purposes. Notification to regulators of significant net short positions relating to sovereign debt in the Union should therefore be provided for. Such a requirement should only include private disclosure to regulators as publication of information to the market for such instruments could have a detrimental effect on sovereign debt markets where liquidity is already impaired.

The notification requirements for sovereign debt should apply to the debt issued by the Union and Member States, including any ministry, department, central bank, agency or instrumentality that issues debt on behalf of a Member State but excluding regional bodies or quasi public bodies that issue debt.

In order to ensure a comprehensive and effective transparency requirement, it is important to include not only short positions created by trading shares, or sovereign debt on trading venues but also short positions created by trading outside trading venues and economic net short positions created by the use of derivatives, such as options, futures, index-related instruments, contracts for differences and spread bets relating to shares or sovereign debt.
To be useful to regulators and the market, any transparency regime should provide complete and accurate information about a natural or legal person's positions. In particular, information provided to the regulator or the market should take into account both short and long positions so as to provide valuable information about the natural or legal person's net short position in shares, sovereign debt and credit default swaps.

The calculation of short position or long position should take into account any form of economic interest which a natural or legal person has in relation to the issued share capital of company or issued sovereign debt of the Member State or the Union. In particular, it should take into account such an interest obtained directly or indirectly through the use of derivatives such as options, futures, contracts for differences and spread bets relating to shares or sovereign debt, and indices, baskets and exchange traded funds. In the case of positions relating to sovereign debt it should also take into account credit default swaps relating to sovereign debt issuers.

In addition to the transparency regime for the reporting of net short positions in shares, a requirement for the marking of sell orders that are executed as short sales as observed at the end of the day should be introduced to provide supplementary information about the volume of short sales of shares executed. Information about short sell transactions should be collated by the firm and communicated to the competent authority at least daily in order to help competent authorities to monitor levels of short selling.

Buying credit default swaps without having a long position in underlying sovereign debt or another position in assets or portfolio of assets whose value is likely to be negatively impacted by a decline in the creditworthiness of the relevant sovereign can be, economically speaking, equivalent to taking a short position on the underlying debt instrument. The calculation of a net short position in relation to sovereign debt should therefore include credit default swaps relating to an obligation of a sovereign debt issuer. The credit default swap position should be taken into account both for the purposes of determining whether a natural or legal person has a significant net short position relating to sovereign debt that needs to be notified to a competent authority.

To enable the ongoing monitoring of positions the transparency obligations should also include notification or disclosure where a change in a net short position results in an increase or decrease above or below certain thresholds.

In order to be effective, it is important that the transparency obligations apply regardless of where the natural or legal person is located, including where the natural or legal person is located outside the Union, but has a significant net short position in a company that has shares admitted to trading on a trading venue in the Union or a net short position in sovereign debt issued by a Member State or the Union.

Uncovered short selling of shares and sovereign debt may increase the potential risk of settlement failure, volatility and market abuse. To reduce such risks it is appropriate to place proportionate restrictions on uncovered short selling taking into account that no systemic risk is created if the borrowing arrangement is made by the end of the trading day. A failure to cover a short position at the end of the trading day should result in sufficiently high penalties so as not to allow the seller to make a profit.
Although settlement discipline is an important component of well-functioning financial markets, the technical details of the settlement discipline regimes should not be included in the scope of this Regulation and should be defined in the appropriate post-trading legislative proposal of the Commission taking into account the work done by the Commission and the working group on harmonisation of settlement cycles on this matter. The Commission should therefore make concrete proposals by the end of 2011, in parallel with a proposal to create a harmonised legal framework for central securities depositories.

Sovereign credit default swaps should be based on the insurable interest principle whilst recognising that there can be interests in a sovereign state other than bond ownership.

Measures relating to sovereign debt and sovereign credit default swaps including increased transparency and restrictions on uncovered short selling should impose requirements which are proportionate and at the same time avoid an adverse impact on the liquidity of sovereign bond markets and sovereign bond repurchase (repo) markets.

Shares are increasingly admitted to trading on different trading venues both within the Union and outside the Union. Many large companies based outside the Union also have shares admitted to trading on a trading venue within the Union. For reasons of efficiency, it is appropriate to exempt securities from certain notification and disclosure requirements, where the principal venue for trading of that instrument is outside the Union.

Market making activities play a crucial role in providing liquidity to markets within the Union and market makers need to take short positions to perform that role. Imposing requirements on such activities could severely inhibit their ability to provide liquidity and have a significant adverse impact on the efficiency of the Union markets. Further market makers would not be expected to take significant short positions except for very brief periods. It is therefore appropriate to exempt natural or legal persons involved in such activities from requirements which may impair their ability to perform such a function and therefore adversely affect the Union markets. In order to capture equivalent third country entities a procedure is necessary to assess the equivalence of the third country markets. The exemption should apply to the different types of market making activity but not to exempt proprietary trading. It is also appropriate to exempt certain primary market operations such as those relating to sovereign debt and stabilisation schemes as they are important activities that assist the efficient functioning of markets. Competent authorities should be notified of the use of exemptions and should have the power to prohibit a natural or legal person from using an exemption if they do not fulfil the relevant criteria in the exemption. Competent authorities should also be able to request information from the natural or legal person to monitor their use of the exemption.

In the case of adverse developments which constitute a serious threat to financial stability or to market confidence in a Member State or the Union, competent authorities should have powers of intervention to require further transparency or to impose temporary restrictions on short selling, credit default swap transactions or other transactions to prevent a disorderly decline in the price of a financial instrument. Such measures could be necessary due to a variety of adverse events or developments including not just financial or economic events but also for example natural disasters or terrorist acts. Furthermore, some adverse events or developments requiring measures could arise simply in one Member State only and not have any cross border implications. The powers need to be flexible enough to deal with a range of different exceptional situations.
While competent authorities will usually be best placed to monitor market conditions and to initially react to an adverse event or development by deciding if a serious threat to financial stability or to market confidence has arisen and whether it is necessary to take measures to address this situation, the powers and the conditions and procedures for their use should be harmonised as far as possible.

In the case of a significant fall in the price of a financial instrument on a trading venue a competent authority should also have the ability to temporarily restrict short selling of the financial instrument on that venue within its own jurisdiction or request to ESMA such restriction in other jurisdictions in order to be able to intervene rapidly where appropriate to prevent a disorderly price fall of the instrument concerned.

Where an adverse event or development extends beyond one Member State or has other cross border implications, close consultation and co-operation between competent authorities is essential. ESMA should perform a key co-ordination role in such a situation and ensure consistency between competent authorities. The composition of ESMA which includes representatives of competent authorities will assist it in its ability to perform such a role.

In addition to co-ordinating measures by competent authorities, ESMA should ensure that measures are only taken by competent authorities where it is necessary and proportionate to do so. ESMA should have the power to give opinions to competent authorities on the use of the powers of intervention.

While competent authorities will often be best placed to monitor and to react quickly to an adverse event or development, ESMA should also have the power to itself take measures where short selling and other related activities threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union, there are cross border implications and sufficient measures have not been taken by competent authorities to address the threat. ESMA should consult the European Systemic Risk Board established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 (ESRB) whenever possible, and other relevant authorities when the measure could have effects beyond the financial markets, as could be the case for commodity derivatives which are used to hedge physical positions.

The powers of ESMA under this Regulation in exceptional situations to restrict short selling and other related activities are conceived in accordance with the powers contained in Article 9(5) of Regulation (EU) No 1095/2010. The powers conferred on ESMA in exceptional situations should be without prejudice to the powers of ESMA in an emergency situation under Article 18 of Regulation (EU) No 1095/2010. In particular, ESMA should be able to adopt individual decisions requiring competent authorities to take measures or individual decisions addressed to financial market participants under that article.

Powers of intervention of competent authorities and ESMA to restrict short selling, credit default swaps and other transactions should only be temporary in nature and should only be exercised for such a period and to the extent necessary to deal with the specific threat.

Because of the specific risks which can arise from the use of credit default swaps, such transactions require close monitoring by competent authorities. In particular, competent authorities should have the power in exceptional cases to require information from natural or legal persons entering into such transactions about the purpose for which the transaction is entered into.

(29) ESMA should be given a general power to conduct an inquiry into an issue or practice relating to short selling or the use of credit default swaps to assess whether that issue or practice poses any potential threat to financial stability or to market confidence. ESMA should publish a report setting out its findings when it conducts such an inquiry and, if it considers that a measure should be introduced at Union level, its decision should be binding on competent authorities.

(30) As some measures may apply to natural or legal persons and actions outside the Union, it is necessary in certain situations that competent authorities and authorities in third countries cooperate. Competent authorities should therefore enter into agreements with authorities in third countries. ESMA should coordinate the development of such cooperation agreements and the exchange between competent authorities of information received from third countries.

(31) This Regulation respects the fundamental rights and observes the principles recognized in particular in the Treaty on the Functioning of the European Union (TFEU) and in the Charter of Fundamental Rights of the European Union (Charter), notably the right to the protection of personal data recognized in Article 16 TFEU and in Article 8 of the Charter. In particular, transparency regarding significant net short positions, including public disclosure above a certain threshold where provided for under this Regulation, is necessary for reasons of financial market stability and investor protection. Such transparency will enable regulators to monitor the use of short selling in connection with abusive strategies and the implications on the well functioning of the markets. In addition, such transparency may help avoiding information asymmetries, ensuring that all market participants are adequately informed about the extent to which short selling is affecting prices. Any exchange or transmission of information by competent authorities should be in accordance with the rules on the transfer of personal data as laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (1). Any exchange or transmission of information by ESMA should be in accordance with the rules on the transfer of personal data as laid down in Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Union institutions and bodies and on the free movement of such data (2), which should be fully applicable to the processing of personal data for the purposes of this Regulation.

(32) Based on guidelines adopted by ESMA and taking into consideration the Commission’s Communication on reinforcing sanctioning regimes in the financial services sector, Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and ensure that they are implemented. The penalties should be effective, proportionate and dissuasive. Ultimately, a harmonised penalties regime should be established in the Union.

(34) In order to […], power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of details concerning calculating short positions, when a natural or legal person has an uncovered position in a credit default swap, notification or disclosure thresholds and further specification of criteria and factors for determining when an adverse event or development creates a serious threat to financial stability or to market confidence in a Member State or the Union. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. ESMA should play a central role in the drafting of delegated acts by delivering advice to the Commission.

(35) The Commission should submit a report to the European Parliament and the Council assessing the appropriateness of the reporting and public disclosure thresholds provided for, the operation of the restrictions and requirements related to the transparency of net short positions and whether any other restrictions or conditions on short selling or credit default swaps are appropriate.

(36) Though national competent authorities are better placed to monitor and have better knowledge of market developments, the overall impact of the problems related to short selling and credit default swaps can only be fully perceived in a Union context. For this reason, the objectives of this Regulation can be better achieved at the Union level; the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(37) Since some Member States have already put in place restrictions on short selling and since delegated acts and binding technical standards are provided for which should be adopted before the framework to be introduced can be usefully applied, it is necessary to provide for a sufficient period of time,

H ave A dopted T his R egulation:

C hapter 1
G eneral P rovisions

A rticle 1
Scope

This Regulation shall apply to the following financial instruments:

(1) financial instruments that are admitted to trading on a trading venue in the Union, including such instruments when traded outside a trading venue;

(2) derivatives set out in Annex I Section C points (4) to (10) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (1) that relate to a financial instrument referred to in paragraph (1) or an issuer of a financial instrument referred to in paragraph (1), including such derivatives when traded outside a trading venue;

(3) debt instruments issued by a Member State or the Union and derivatives set out in Annex I Section C points (4) to (10) of Directive 2004/39/EC that relate to such debt instruments issued by a Member State or the Union or to an obligation of a Member State or the Union.

A rticle 2
Definitions

1. For the purpose of this Regulation, the following definitions shall apply:

(a) "authorised primary dealer" means a natural or legal person who has signed an agreement with an issuer of sovereign debt under which that natural or legal person undertakes to deal as principal in connection with primary and secondary market operations relating to debt issued by that issuer;

(b) "central counterparty" means an entity that legally interposes itself between the counterparties to the contracts traded within one or more financial markets, becoming the buyer to every seller and the seller to every buyer and which is responsible for the operation of a clearing system;

(c) "credit default swap" means a derivative contract in which one party pays a fee to another party in return for compensation or a payment in the event of a default by a reference entity, or a credit event relating to that reference entity and any other derivative contract that has a similar economic effect;

(d) "financial instrument" means an instrument listed in Annex I, Section C of Directive 2004/39/EC;

(e) "home Member State" in relation to a regulated market, an investment firm operating a multilateral trading facility, or any other investment firm, means the home Member State for that regulated market or investment firm within the meaning of Article 4(1)(20) of Directive 2004/39/EC;

(f) "investment firm" means an investment firm within the meaning of Article 4(1)(1) of Directive 2004/39/EC;

(g) "sovereign debt" means a debt instrument issued by the Union, or a Member State including any ministry, department, central bank, agency or instrumentality of the Member State;

(h) "issued share capital" in relation to a company, means the total of ordinary and any preference shares issued by the company but does not include convertible debt securities;

(i) "issued sovereign debt" means:

(i) in relation to a Member State, the total value of sovereign debt issued by the Member State or any ministry, department, central bank, agency or instrumentality of the Member State that has not been redeemed;

(ii) in relation to the Union, the total value of sovereign debt issued by the Union that has not been redeemed;

(j) "local firm" means a firm referred to in Article 2(1)(l) of Directive 2004/39/EC which deals for the account of other members of a market or makes prices for them;

(k) "market making activities" means the activities of an investment firm or a third-country entity or a local firm that is a member of a trading venue or of a market in a third country, whose legal and supervisory framework has been declared equivalent pursuant to Article 15(2), when it deals as principal in a financial instrument, whether traded on or outside a trading venue, in either or both of the following capacities:

(i) by posting firm, simultaneous two-way quotes of comparable size and at competitive prices, with the result of providing liquidity on a regular and ongoing basis to the market;

(ii) as part of its usual business, by fulfilling orders initiated by a client or in response to a client’s request to trade, and by hedging positions arising out of those dealings;
(l) *multilateral trading facility* means a multilateral system within the meaning of Article 4(1)(15) of Directive 2004/39/EC;

(m) *principal venue* in relation to a share means the venue for the trading of that share with the highest turnover;

(n) *regulated market* means a multilateral system within the meaning of Article 4(1)(14) of Directive 2004/39/EC;

(o) *relevant competent authority* means:

(i) in relation to sovereign debt of a Member State or a credit default swap relating to an obligation of a Member State, the competent authority of that Member State;

(ii) in relation to sovereign debt of the Union or a credit default swap relating to an obligation of the Union, the competent authority of the jurisdiction in which the European Financial Stability Facility is established;

(iii) in relation to a financial instrument other than an instrument referred to in point (i) or (ii), the competent authority for that financial instrument as defined in Article 2(7) of Commission Regulation (EC) No 1287/2006(1) and determined in accordance with Articles 9 to 16 of that Regulation;

(iv) in relation to a financial instrument that is not covered under point (i), (ii) or (iii), the competent authority of the Member State in which the financial instrument was first admitted to trading on a trading venue;

(p) *short sale* in relation to a share or debt means any sale of the share or debt which the seller does not own at the time of entering into the agreement to sell including such a sale where at the time of entering into the agreement to sell the seller has borrowed or agreed to borrow the share or debt for delivery at settlement;

(q) *trading day* means a trading day within the meaning of Article 4 of Regulation (EC) No 1287/2006;

(r) *trading venue* means a regulated market or a multilateral trading facility in the Union;

(s) *turnover* of a share, means turnover as defined in Article 2(9) of Regulation (EC) No 1287/2006;

(sa) *uncovered short sale* in relation to a share or debt means a sale of the share or debt which does not fulfil the conditions of Article 12(1).

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 36 specifying the definitions laid down in paragraph 1, in particular specifying when a natural or legal person is considered to own a financial instrument for the purposes of the definition of short sale in paragraph 1(p).

Article 3

Short and long positions

1. For the purposes of this Regulation, a position resulting from either of the following shall be considered a short position relating to the issued share capital of a company or issued sovereign debt of a Member State or the Union:

(a) a short sale of a share issued by the company or a debt instrument issued by the Member State or the Union;

(b) a natural or legal person entering into transaction which creates or relates to a financial instrument other than an instrument referred to in point (a) and the effect or one of the effects of the transaction is to confer a financial advantage on the natural or legal person in the event of a decrease in the price or value of the share or debt instrument.

2. For the purposes of this Regulation, a position resulting from either of the following shall be considered a long position relating to the issued share capital of a company or issued sovereign debt of a Member State or the Union:

(a) holding a share issued by the company or a debt instrument issued by the Member State or the Union;

(b) a natural or legal person entering into a transaction which creates or relates to a financial instrument other than an instrument referred to in point (a) and the effect or one of the effects of the transaction is to confer a financial advantage on the natural or legal person in the event of an increase in the price or value of the share or debt instrument.

3. For the purposes of paragraph 1, the calculation of a short position shall, in respect of any short position held by the relevant person indirectly, including through or by way of any index, basket of securities or any interest in any exchange traded fund or similar entity, be determined by the natural or legal person in question acting reasonably having regard to publicly available information as to the composition of the relevant index or basket of securities, or of the interests held by the relevant exchange traded fund or similar entity. For the avoidance of doubt, in calculating such short position, no person shall be required to obtain any real-time information as to such composition from any person.

For the purposes of paragraph 2, the calculation of a long position shall, for all purposes, include, as long positions, any interests held by the relevant person in any bond or debt security convertible into a share issued by the relevant company.

For the purposes of paragraphs 1 and 2 the calculation of a short position and a long position relating to sovereign debt shall include any credit default swap that relates to an obligation or a credit event relating to a Member State or the Union.

4. For the purposes of this Regulation, the position remaining after deducting any long position that a natural or legal person holds in relation to the issued share capital of a company from any short position that that natural or legal person holds in relation to that capital shall be considered a net short position in relation to the issued share capital of that company.

5. For the purposes of this Regulation, the position remaining after deducting any long position that a natural or legal person holds in relation to the issued sovereign debt of a Member State or the Union from any short position that that natural or legal person holds in relation to the same debt shall be considered a net short position in relation to the issued sovereign debt of a Member State or the Union.
6. The calculation under paragraphs 1 to 5 for sovereign debt shall be for each single Member State or for the Union even if separate entities within the Member State or the Union issue sovereign debt on behalf of the Member State or Union.

In the case of fund management activities, where different investment strategies are pursued in relation to a particular issuer through separate funds managed by the same fund manager, the calculation of net short and net long positions for the purposes of paragraphs 3, 4 and 5 shall take place at the level of each fund. Where the same investment strategy is pursued in relation to a particular issuer through more than one fund, the net short and net long positions in each of those funds shall be aggregated. Where two or more portfolios within the same entity are managed on a discretionary basis pursuing the same investment strategy in relation to a particular issuer those positions should be aggregated for the calculation of net short positions and net long positions. With respect to the management of a client portfolio on a non-discretionary basis, the calculation of the net short position or net long position is the legal responsibility of the client.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 36 specifying:

(a) cases in which a natural or legal person is considered to hold a share or debt instrument for the purposes of paragraph 2;

(b) cases in which a natural or legal person has a net short position for the purposes of paragraphs 4 and 5 and the method of calculation of the position;

(c) the method of calculating positions for the purposes of paragraphs 3, 4 and 5 when different entities in a group have long or short positions or for fund management activities related to separate funds.

Article 4

Uncovered position in a credit default swap

1. For the purposes of this Regulation, a natural or legal person shall be considered to have an uncovered position in a credit default swap relating to an obligation of a Member State or the Union, to the extent that the credit default swap is not serving to hedge against either the risk of default of the issuer where the natural or legal person has a long position in the sovereign debt of that issuer or the risk of decline in the value of any asset or portfolio of assets to the natural or legal person holding such asset or portfolio of assets where the decline of the price of those asset or portfolio of assets has a high correlation with the decline of the price of the obligation of a Member state or the Union in the case of a decline in the creditworthiness of a Member State or the Union. The party under a credit default swap that is obliged to make the payment or pay the compensation in the event of a default or a credit event relating to the reference entity does not by reason of that obligation have an uncovered position for the purposes of this paragraph.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 36 specifying, for the purposes of paragraph 1:

(a) cases in which a credit default swap transaction is considered to be hedging against a default risk and the method of calculation of an uncovered position in a credit default swap;

(b) the method of calculating positions where different entities in a group have long or short positions or for fund management activities related to separate funds.
CHAPTER II

TRANSPARENCY OF NET SHORT POSITIONS

Article 5

Notification to competent authorities of significant net short positions in shares

1. A natural or legal person who has a net short position in relation to the issued share capital of a company that has shares admitted to trading on a trading venue shall notify the relevant competent authority whenever the position reaches or falls below a relevant notification threshold referred to in paragraph 2.

2. A relevant notification threshold is a percentage that equals 0.2% of the value of the issued share capital of the company concerned and each 0.1% above that.

3. If necessary, the European Supervisory Authority (European Securities and Markets Authority) (ESMA) may issue and send to the European Parliament, the Council and the Commission an opinion on adjusting the thresholds referred to in paragraph 2, taking into account the developments in financial markets. The Commission may, within three months of receipt of the opinion of ESMA, by means of delegated acts in accordance with Article 36, modify the thresholds mentioned in paragraph 2, taking into account the developments in financial markets.

3a. Notifications under this Article shall be made in accordance with Article 9 and the calculation of net short positions shall be made in accordance with Article 3.

Article 6

Reporting of short sales to competent authorities

All investment firms and all members of a regulated market or multilateral trading facility shall include in the transaction reports referred to in Article 25(3) of Directive 2004/39/EC a field indicating, for transactions in shares, whether the transaction constitutes a short sale or not. Intermediaries that undertake short sales indicate these as such in the transaction report of such sales at the end of the trading day to the relevant competent authority. That information shall not be disclosed to the public.

The Commission shall be empowered to adopt delegated acts in accordance with Article 36 specifying how such information shall be communicated to competent authorities.

Article 7

Public disclosure of significant net short positions in shares

1. The relevant competent authority shall publish details of the position whenever the position reaches or falls below a relevant publication threshold referred to in paragraph 2. Such disclosure shall not identify the holder of the net short position.

2. A relevant publication threshold is a percentage that equals 0.5% of the value of the issued share capital of the company concerned and each 0.1% above that.

3. If necessary, ESMA may issue and send to the European Parliament, the Council and the Commission an opinion on adjusting the thresholds referred to in paragraph 2, taking into account the developments in financial markets.
The Commission may, within three months of receipt of the opinion of ESMA, by means of delegated acts in accordance with Article 36, modify the thresholds mentioned in paragraph 2, taking into account the developments in financial markets.

3a. Notifications under this Article shall be made in accordance with Article 9 and the calculation of net short positions shall be made in accordance with Article 3.

Article 8

Notification to competent authorities of significant net short positions in sovereign debt and credit default swaps

1. A natural or legal person who has a net short position relating to the issued sovereign debt of a Member State or of the Union shall notify the relevant competent authority whenever such position reaches or falls below a relevant notification threshold for the Member State concerned or the Union.

2. The relevant notification thresholds shall consist of an initial amount and then additional incremental levels in relation to each Member State and the Union, as specified in the measures taken by the Commission in accordance with paragraph 3. ESMA shall publish on its website the notification thresholds for each Member State.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 36 specifying the amounts and incremental levels referred to in paragraph 2, subject to the following conditions:

(a) the thresholds must not be set at such a level as to require notification of positions which are of minimal value;

(b) the total value of outstanding issued sovereign debt for each Member State and the Union, the turnover and the average size of positions held by market participants relating to the sovereign debt of that Member State or the Union must be taken into account.

3a. Notifications under this Article shall be made in accordance with Article 9 and the calculation of net short positions shall be made in accordance with Article 3.

Article 9

Method of notification and disclosure

1. Any notification under Article 5 or 8 shall set out details of the identity of the natural or legal person who has the relevant position, the size of the relevant position, the issuer in relation to which the relevant position is held and the date on which the relevant position was created, changed or ceased to be held.

Any disclosure under Article 7 shall include details, in anonymous form, of the size of the relevant position, the issuer in relation to which the relevant position is held and the date on which the relevant position was created, was changed or ceased to be held.

For the purposes of Articles 5, 7 and 8, natural and legal persons that hold significant net short positions shall keep, for a period of five years, records of the gross positions which make a significant net short position.
2. The relevant time for calculation of a net short position shall be at the end of the trading day, except for automated night trades where the reference should be T+1 on which the natural or legal person has the relevant position. The notification or disclosure shall be made not later than 3.30 pm on the following trading day.

3. The notification of information to a relevant competent authority shall be made in accordance with the system set out in Article 12(1) of Regulation (EC) No 1287/2006.

4. The public disclosure of information set out in Article 7 shall be made in a manner ensuring fast access to information on a non-discriminatory basis. The information shall be made available to the officially appointed mechanism of the home Member State of the issuer of the shares referred to in Article 21(2) of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (1).

5. In order to ensure consistent harmonisation of this Article, ESMA shall develop draft regulatory technical standards specifying the details of the information to be provided for the purposes of paragraph 1. ESMA shall submit drafts for those regulatory technical standards to the Commission by [31 December 2011].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

6. In order to ensure uniform conditions of application of paragraph 4, ESMA shall develop draft implementing technical standards specifying the means by which information may be disclosed to the public. ESMA shall submit drafts for those implementing technical standards to the Commission by [31 December 2011].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 10

Application outside the Union

The notification and disclosure requirements under Articles 5, 7 and 8 apply to natural or legal persons whether domiciled or established within or outside the Union.

Article 11

Information to be provided to ESMA

1. Competent authorities shall provide information in summary form to ESMA on a quarterly basis on net short positions relating to shares or sovereign debt for which it is the relevant competent authority and receives notifications under Articles 5 to 8.

2. ESMA may request at any time, in order to carry out its duties under this Regulation, additional information from a relevant competent authority of a Member State about net short positions relating to shares or sovereign debt.

The competent authority shall provide the requested information to ESMA at the latest within seven calendar days. Where there are adverse events or developments which constitute a serious threat to financial stability or to market confidence in the Member State or in another Member State, the competent authority shall provide the requested information to ESMA within 24 hours.

2a. In order to ensure consistent harmonisation of this Article, ESMA shall develop draft regulatory technical standards specifying the details of the information to be provided in accordance with paragraphs 1 and 2. ESMA shall submit drafts for those regulatory technical standards to the Commission by [31 December 2011].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

2b. In order to ensure uniform conditions of application of paragraph 1, ESMA shall develop draft implementing technical standards defining the format of information to be provided in accordance with paragraphs 1 and 2. ESMA shall submit drafts for those implementing technical standards to the Commission by [31 December 2011].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

CHAPTER III
TREATMENT OF SHORT SALES AND CREDIT DEFAULT SWAPS

Article 12
Restrictions on uncovered short sales and credit default swaps

1. A natural or legal person may only enter into a short sale of a share admitted to trading on a trading venue or a short sale of a sovereign debt instrument where one of the following conditions is fulfilled at the end of the trading day:

(a) the natural or legal person has borrowed the share or sovereign debt instrument;

(b) the natural or legal person has entered into an agreement to borrow the share or sovereign debt instrument;

(c) the natural or legal person has an arrangement with a third party under which that third party has confirmed that the share or sovereign debt instrument has been located and reserved for lending to the natural or legal person so that settlement can be effected when it is due.

1a. A natural or legal person may enter into credit default swap transactions relating to an obligation of a Member State or the Union only where that transaction does not lead to an uncovered position in a credit default swap as referred to in Article 4.

2. In order to ensure consistent harmonisation of this Article, ESMA shall develop draft regulatory technical standards identifying the types of agreements or arrangements that adequately ensure that the share or sovereign debt instrument will be available for settlement. ESMA shall in particular take into account the need to preserve the efficiency of markets especially sovereign bond markets and sovereign bond repurchase markets (repo markets). ESMA shall submit drafts for those regulatory technical standards to the Commission by 31 December 2011.
Article 14

Exemption where the principal trading venue is outside the Union

1. Articles 5, 7, 12 and 13 shall not apply to shares of a company admitted to trading on a trading venue in the Union where the principal venue for the trading of the shares is located in a country outside the Union.

2. The relevant competent authority for shares of a company that are traded on a trading venue in the Union and a venue located outside the Union shall determine, at least every two years, whether the principal venue for the trading of those shares is located outside the Union.

The relevant competent authority shall notify ESMA of any such shares identified as having their principal venue located outside the Union.

ESMA shall publish the list of shares for which the principal venue is located outside the Union every two years. The list shall be effective for a two-year period.

3. In order to ensure consistent harmonisation of this Article, ESMA shall develop draft regulatory technical standards specifying the method for calculation of the turnover to determine the principal venue for the trading of a share. ESMA shall submit drafts for those regulatory technical standards to the Commission by 31 December 2011.

ESMA shall publish the list of shares for which the principal venue is located outside the Union every two years. The list shall be effective for a two-year period.

4. In order to ensure uniform conditions of application of paragraphs 1 and 2 ESMA shall develop draft implementing technical standards to determine:

(a) the date on which and period in respect of which any calculation of the principal venue for a share is to be made;

(b) the date by which the relevant competent authority is to notify ESMA of those shares where the principal venue is outside the Union;

(c) the date from which the list is to be effective following publication by ESMA.

ESMA shall submit drafts for those implementing technical standards to the Commission by [31 December 2011].

Article 15

Exemption for market making and primary market operations

1. Articles 5, 6, 7, 8 and 12 shall not apply to market making activities.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 36, determining that the legal and supervisory framework of a third country ensures that a market authorised in that third country complies with legally binding requirements which are, for the purpose of the application of the exemption set out in paragraph 1, equivalent to the requirements resulting from Title III of Directive 2004/39/EC, from Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (1) and Directive 2004/109/EC, and which are subject to effective supervision and enforcement in that third country.

The legal and supervisory framework of a third country may be considered equivalent where that framework fulfils all the following conditions in that third country:

(a) markets are subject to authorisation and to effective supervision and enforcement on an ongoing basis;

(b) markets have clear and transparent rules regarding admission of securities to trading so that such securities are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable;

(c) security issuers are subject to periodic and ongoing information requirements ensuring a high level of investor protection;

(d) market transparency and integrity are ensured by preventing market abuse in the form of insider dealing and market manipulation.

3. Articles 8 and 12 shall not apply to the activities of a natural or legal person when, acting as an authorised primary dealer pursuant to an agreement with an issuer of sovereign debt, it is dealing as principal in a financial instrument in relation to primary or secondary market operations relating to the sovereign debt.


5. The exemptions referred to in paragraphs 1 and 3 shall apply only where the natural or legal person concerned has first notified the competent authority of its home Member State, in writing that they intend to make use of the exemption. The notification shall be made not less than thirty calendar days before the natural or legal person intends to use the exemption.

6. The competent authority of the home Member State may prohibit the use of the exemption if it considers that the natural or legal person does not satisfy the conditions of the exemption. Any prohibition shall be imposed within the 30 calendar day period referred to in the first subparagraph or subsequently if the competent authority becomes aware that there have been any changes in the circumstances of the person so that they no longer satisfy the conditions.

7. A third-country entity that is not authorised in the Union shall send the notification referred to in paragraph 5 to the competent authority of the main trading venue in the Union in which it trades.

8. A natural or legal person which has given a notification under paragraph 5 shall as soon as possible notify the competent authority of its home Member State in writing where there are any changes affecting its eligibility to use the exemption.

(1) OJ L 96, 12.4.2003, p. 16.
9. The competent authority of the home Member State may request information, in writing, from a natural or legal person operating under the exemptions set out in paragraph 1, 3 or 4 about short positions held or activities conducted under the exemption. The natural or legal person shall provide the information not later than four calendar days after the request is made at the latest.

10. The relevant competent authority shall notify ESMA within two weeks of notification in accordance with paragraph 5 or 8 of any market makers and authorised primary dealers who are making use of the exemption and of any market makers and authorised primary dealers who are no longer making use of the exemption.

11. ESMA shall publish on its website and keep up to date a list of market makers and authorised primary dealers who are using the exemption.

CHAPTER V
POWERS OF INTERVENTION OF COMPETENT AUTHORITIES AND OF ESMA
Section 1
Powers of Competent Authorities

Article 16
Disclosure in exceptional situations

1. The competent authority of a Member State may require natural or legal persons who have net short positions in relation to a specific financial instrument or class of financial instruments to notify it or to disclose to the public details of the position whenever the position reaches or falls below a notification threshold fixed by the competent authority, where both of the following conditions are fulfilled:

(a) there are adverse events or developments which constitute a serious threat to financial stability or to market confidence in the Member State or one or more other Member States;

(b) in the case of public disclosure, the measure will not have a detrimental effect on the efficiency of financial markets which is disproportionate to its benefits.

2. Paragraph 1 shall not apply to financial instruments in respect of which transparency is already required under Articles 5 to 8.

Article 16a
Notification by lenders in exceptional situations

1. The competent authority of a Member State may take the measure referred to in paragraph 2, where both of the following conditions are fulfilled:

(a) there are adverse events or developments which constitute a serious threat to financial stability or to market confidence in the Member State;

(b) the measure will not have a detrimental effect on the efficiency of financial markets which is disproportionate to its benefits.
2. The competent authority of a Member State may require natural or legal persons engaged in the lending of a specific financial instrument or class of financial instruments to notify any significant increase in the fees requested for such lending.

Article 17
Restrictions on short selling and similar transactions in exceptional situations

1. The competent authority of the Member State in which the principal trading venue of a financial instrument is situated, may take the measures referred to in paragraphs 2 or 3, where both of the following conditions are fulfilled:

(a) there are adverse events or developments which constitute a serious threat to financial stability or to market confidence in the Member State or one or more other Member States;

(b) the measures will not have a detrimental effect on the efficiency of financial markets which is disproportionate to its benefits.

2. The competent authority of the Member State may prohibit or impose conditions relating to natural or legal persons entering into:

(a) a short sale; or

(b) a transaction other than a short sale which creates, or relates to, a financial instrument and the effect or one of the effects of that transaction is to confer a financial advantage on the natural or legal person in the event of a decrease in the price or value of another financial instrument.

3. The competent authority of the Member State may prevent natural or legal persons from entering into transactions relating to financial instruments or limit the value of transactions in the financial instrument that may be entered into.

4. A measure under paragraph 2 or 3 may apply to transactions concerning all financial instruments, financial instruments of a specific class or a specific financial instrument. The measure may apply in circumstances or be subject to exceptions specified by the relevant competent authority. Exceptions may in particular be specified to apply to market making activities and primary market activities.

Article 18
Restrictions on credit default swap transactions in exceptional situations

1. The competent authority of a Member State may limit natural or legal persons from entering into credit default swap transactions relating to an obligation issued by its own Member State or limit the value of uncovered credit default swap positions that may be entered into by natural or legal persons that relate to an obligation issued by its own Member State, where both of the following conditions are fulfilled:

(a) there are adverse events or developments which constitute a serious threat to financial stability or to market confidence in the Member State or one or more other Member States;

(b) the measure will not have a detrimental effect on the efficiency of financial markets which is disproportionate to its benefits.
2. A measure taken under paragraph 1 may apply to credit default swap transactions of a specific class or to specific credit default swap transactions. The measure may apply in circumstances or be subject to exceptions specified by the competent authority. Exceptions may in particular be specified to apply to market making activities and primary market activities.

2a. A competent authority which has taken a measure under paragraph 1 may ask ESMA to consider exercising its powers under Article 24(1)(c) if the adverse events or developments addressed require that the measure be introduced at Union level.

Article 19

Power to restrict short selling of financial instruments temporarily in the case of a significant fall in price

1. Where the price of a financial instrument on a trading venue has during a single trading day fallen by the value referred to in paragraph 4 from the closing price on that venue on the previous trading day, the competent authority of the home Member State for that venue shall consider whether it is appropriate to prohibit or restrict natural or legal persons from engaging in short selling of the financial instrument on the trading venue or otherwise limit transactions in that financial instrument on that trading venue in order to prevent a disorderly decline in the price of the financial instrument.

Where the competent authority is satisfied under the first subparagraph that it is appropriate to do so, it shall in the case of a share or debt prohibit or restrict persons from entering into a short sale on the trading venue or in the case of another type of financial instrument, limit transactions in that financial instrument on that trading venue.

2. The measure shall apply for a period not exceeding the end of the trading day following the trading day on which the fall in price occurs. The competent authority of the home Member State may extend the length of the measure if the grounds for taking the measure justify such an extension.

3. The measure shall apply in circumstances or be subject to exceptions specified by the competent authority. Exceptions may in particular be specified to apply to market making activities and primary market activities.

3a. After receiving notification from a competent authority to prohibit or restrict natural or legal persons from engaging in short selling of the financial instrument on the trading venue or otherwise limit transactions in that financial instrument on that trading venue, ESMA shall consider before the beginning of the following trading day whether it is appropriate to extend the measure to all trading venues that trade the financial instrument concerned by the measure in accordance with Article 24.

4. The fall in value shall be 10 % or more in the case of a share and for other classes of financial instruments an amount to be specified by the Commission.

If necessary, ESMA may issue and send to the European Parliament, the Council and the Commission an opinion on adjusting the thresholds referred to in paragraph 4, taking into account the developments in financial markets.

The Commission shall, within three months of receipt of the opinion of ESMA, adopt delegated acts in accordance with Article 36, specifying options related to the period of application of the measure and the fall in value for financial instruments taking into account the specificities of each class of financial instrument and the differences of volatility.
5. **In order to ensure consistent harmonisation of this Article, ESMA shall develop draft** regulatory technical standards specifying the method of calculation of the 10% fall for shares and of the fall in value specified by the Commission as referred to in paragraph 4. ESMA shall submit drafts for those regulatory technical standards to the Commission by 31 December 2011.

*Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.*

**Article 20**

**Period of restrictions**

Any measure imposed under **Articles 16, 16a, 17 and 18** shall be valid for an initial period not exceeding three months from the date of publication of the notice referred to in Article 21.

Any such measure may be renewed for further periods not exceeding three months at a time **if the grounds for taking the measure continue to be applicable. If the measure is not renewed after that three-month period, it shall automatically expire.**

**Article 21**

**Notice of restrictions**

1. A competent authority shall publish on its website notice of any decision to impose or renew any measure referred to in Articles 16 to 19.

2. The notice shall specify at least details of:

   (a) the measures imposed including the instruments and class of transactions to which they apply and their duration;

   (b) the reasons why the competent authority believes it is necessary to impose the measures including the evidence supporting those reasons.

3. A measure under Articles 16 to 19 shall take effect when the notice is published or at a time specified in the notice that is after its publication and shall only apply in relation to a transaction entered into after the measure takes effect.

**Article 22**

**Notification to ESMA and other competent authorities**

1. Before imposing or renewing any measure under Articles 16, 16a, 17 or 18 and before imposing any restriction under Article 19, a competent authority shall notify ESMA and the other competent authorities of the measure it proposes.

2. The notification shall include details of the proposed measures, the class of financial instruments and transactions to which they will apply, the evidence supporting those reasons and when the measures are intended to take effect.

3. Notification of a proposal to impose or renew a measure under Articles 16, 16a, 17 and 18 shall be made not less than 24 hours before the measure is intended to take effect or to be renewed. In exceptional circumstances, a competent authority may make the notification less than 24 hours before the measure is intended to take effect where it is not possible to give 24 hours notice. A notification under Article 19 shall be made before the measure is intended to take effect.
4. A competent authority of a Member State that receives notification under this Article may take measures in accordance with Articles 16 to 19 in that Member State where it is satisfied that the measure is necessary to assist the other competent authority. The competent authority shall also give notice in accordance with paragraphs 1, 2 and 3 where it proposes to take measures.

Section 2
Powers of ESMA

Article 23
Coordination by ESMA

1. ESMA shall perform a facilitation and coordination role in relation to measures taken by competent authorities under Section 1. In particular ESMA shall ensure that a consistent approach is taken by competent authorities regarding measures under Section 1 especially regarding when it is necessary to use powers of intervention under Section 1, the nature of measures imposed and the commencement and duration of any measures.

2. After receiving notification under Article 22 of any measure that is to be imposed or renewed under Article 16, 16a, 17 or 18, ESMA shall within 24 hours issue a decision on whether the measure or proposed measure is necessary to address the exceptional situation. The decision shall state whether ESMA considers that adverse events or developments have arisen which constitute a serious threat to financial stability or to market confidence in one or more Member States, whether the measure or proposed measure is appropriate and proportionate to address the threat and whether the proposed duration of the measures is justified. If ESMA considers that measures by other competent authorities are necessary to address the threat, it shall also state it in the decision and request those competent authorities to introduce such measures within 24 hours. The decision shall be published on ESMA’s website.

3. If ESMA considers that a measure should be introduced at Union level its decision shall be binding on competent authorities and shall be introduced within 24 hours.

3a. ESMA shall regularly review measures under this Article and in any event at least every three months. If a measure is not renewed after that three-month period, it shall automatically expire.

Article 24
ESMA intervention powers

1. In accordance with Article 9(5) of Regulation (EU) No 1095/2010, ESMA shall, where both conditions in paragraph 2 are satisfied, take one or more of the following measures:

(a) require natural or legal persons who have net short positions in relation to a specific financial instrument or class of financial instruments to notify a competent authority or to disclose to the public details of any such position;

(b) prohibit or impose conditions relating to natural or legal persons entering into a short sale or a transaction which creates, or relates to, a financial instrument and the effect or one of the effects of the transaction is to confer a financial advantage on the natural or legal person in the event of a decrease in the price or value of another financial instrument;

(c) limit natural or legal persons from entering into credit default swap transactions relating to an obligation of a Member State or the Union or limit the value of uncovered credit default swap positions that a natural or legal person may enter into relating to an obligation of a Member State or the Union;
(d) prevent natural or legal persons from entering into transactions relating to financial instruments falling within the scope of this Regulation or limit the value of transactions in those financial instrument that may be entered into.

A measure may apply in circumstances or be subject to exceptions specified by the relevant competent authority. Exceptions may in particular be specified to apply to market making activities and primary market activities.

2. ESMA shall take a decision under paragraph 1 only if both of the following conditions are fulfilled:

(a) the measures listed in points (a) to (d) of the first subparagraph of paragraph 1 address a threat to the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union and there are cross border implications;

(b) a competent authority has not taken measures to address the threat or the measures that have been taken do not sufficiently address the threat.

3. When taking measures referred to in paragraph 1 ESMA shall take into account the extent to which the measure:

(a) will significantly address the threat to the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union or significantly improve the ability of competent authorities to monitor the threat;

(b) will not create a risk of regulatory arbitrage;

(c) will not have a detrimental effect on the efficiency of financial markets, including reducing liquidity in those markets or creating uncertainty for market participants, that is disproportionate to the benefits of the measure.

Where a competent authority or competent authorities have taken a measure under Article 16, 16a, 17 or 18, ESMA may take any of the measures referred to in paragraph 1 without issuing the decision provided for in Article 23.

4. Before deciding to impose or renew any measure referred to in paragraph 1, ESMA shall, where appropriate, consult the ESRB and other relevant authorities.

5. Before deciding to impose or renew any measure referred to in paragraph 1, ESMA shall notify competent authorities of the measure it proposes. The notification shall include details of the proposed measures, the class of financial instruments and transactions to which they will apply, the evidence supporting those reasons and when the measures are to take effect.

6. The notification shall be made not less than 24 hours before the measure is to take effect or to be renewed. In exceptional circumstances, ESMA may make the notification less than 24 hours before the measure is intended to take effect where it is not possible to give 24 hours notice.

7. ESMA shall publish on its website notice of any decision to impose or renew any measure referred to in paragraph 1. The notice shall at least specify the following:

(a) the measures imposed including the instruments and class of transactions to which they apply and the duration of the measures;
(b) the reasons why ESMA is of the opinion that it is necessary to impose the measures including the evidence supporting the reasons.

8. A measure shall take effect when the notice is published or at a time specified in the notice that is after its publication and shall only apply in relation to a transaction entered into after the measure takes effect.

9. ESMA shall review its measures referred to in paragraph 1 at appropriate intervals and at least every three months. If a measure is not renewed after that three-month period, it shall automatically expire. Paragraphs 2 to 8 shall apply to a renewal of measures.

10. A measure adopted by ESMA under this Article shall prevail over any previous measure taken by a competent authority under Section 1.

Article 25

Further specification of adverse events or developments

The Commission shall be empowered to adopt delegated acts in accordance with Article 36, specifying criteria and factors to be taken into account by competent authorities and ESMA in determining when the adverse events or developments referred to in Articles 16, 16a, 17, 18 and 23 and the threats referred to in Article 24(2)(a) arise.

CHAPTER VI

ROLE OF COMPETENT AUTHORITIES

Article 26

Competent authorities

Each Member State shall designate a competent authority for the purpose of this Regulation. Those competent authorities shall be public authorities. Member States shall inform the Commission, ESMA and the competent authorities of the other Member States of such designations.

Article 27

Powers of competent authorities

1. In order to fulfil their duties under this Regulation, competent authorities shall have all the supervisory and investigatory powers that are necessary for the exercise of their functions. They shall exercise their powers in any of the following ways:

(a) directly;

(b) in collaboration with other authorities;

(c) by application to the competent judicial authorities.

2. In order to fulfil their duties competent authorities of Member States shall have, in conformity with national law, the following powers:

(a) to gain access to any document in any form and to receive or take a copy thereof;

(b) to require information from any natural or legal person and if necessary to summon and question a natural or legal person with a view to obtaining information;
(c) to carry out on-site inspections with or without announcement;

(d) to require existing telephone and existing data traffic records;

(e) to require the cessation of any practice that is contrary to the provisions in this Regulation;

(f) to require the freezing and/or the sequestration of assets.

3. The competent authorities of Member States shall, without prejudice to points (a) and (b) of paragraph 2, have the power in individual cases to require a natural or legal person entering into a credit default swap transaction to provide the following:

(a) an explanation about the purpose of the transaction and whether it is for the purposes of hedging against a risk or otherwise;

(b) information verifying the underlying risk where the transaction is for hedging purposes.

Article 28

Inquiries by ESMA

ESMA may, on the request of one or more competent authorities, the European Parliament, the Council, or the Commission or on its own initiative conduct an inquiry into a particular issue or practice relating to short selling or relating to the use of credit default swaps to assess whether the issue or practice poses any potential threat to financial stability or market confidence in the Union.

ESMA shall publish a report setting out its findings and any recommendations relating to the issue or practice within three months from the end of the inquiry.

Article 29

Professional secrecy

1. The obligation of professional secrecy shall apply to all natural or legal persons who work or who have worked for the competent authority or for any authority or natural or legal person to whom the competent authority has delegated tasks, including auditors and experts contracted by the competent authority. Confidential information covered by professional secrecy may not be disclosed to any other natural or legal person or authority except when such disclosure is necessary for legal proceedings.

2. All the information exchanged between competent authorities under this Regulation that concerns business or operational conditions and other economical or personal affairs shall for not more than 10 years be considered confidential and be the object of professional secrecy, except when the competent authority states at the time of communication that such information may be disclosed or when such disclosure is necessary for legal proceedings.

Article 30

Obligation to cooperate

The competent authorities of Member States shall cooperate where necessary or expedient for the purposes of this Regulation. In particular, the competent authorities shall, without undue delay, supply each other with information which is relevant for the purposes of carrying out their duties under this Regulation.
Article 30a

Cooperation with ESMA

1. The competent authorities shall cooperate with ESMA for the purposes of this Regulation in accordance with Regulation (EU) No 1095/2010.

2. The competent authorities shall provide, without delay, ESMA with all the information necessary to carry out its duties in accordance with Regulation (EU) No 1095/2010.

Article 31

Cooperation in case of request for on-site inspections or investigations

1. The competent authority of one Member State may request assistance of the competent authority of another Member State with regard to on-site inspections or investigations.

The competent authority shall inform ESMA of any request referred to in the first subparagraph. In the case of an investigation or an inspection with cross-border effect, ESMA shall coordinate the investigation or inspection.

2. Where a competent authority receives a request from a competent authority of another Member State to carry out an on-site inspection or an investigation, it may:

(a) carry out the on-site inspection or investigation itself;

(b) allow the competent authority which submitted the request to participate in an on-site inspection or investigation;

(c) allow the competent authority which submitted the request to carry out the on-site inspection or investigation itself;

(d) appoint auditors or experts to carry out the on-site inspection or investigation;

(e) share specific tasks related to supervisory activities with the other competent authorities.

2a. ESMA may also conduct all necessary on-site inspections with or without prior announcement.

ESMA may require competent authorities of the Member States to carry out specific investigatory tasks and on-site inspections.

Article 32

Cooperation with third countries

1. The competent authorities shall conclude cooperation agreements with competent authorities of third countries concerning the exchange of information with third-country supervisory authorities, the enforcement of obligations arising under this Regulation in third countries and the taking of similar measures by the competent authority to complement measures taken under Articles 16 to 25.

A competent authority shall inform ESMA and the other competent authorities where it proposes to enter into such an agreement.

1a. In accordance with Article 30a, the competent authorities shall transmit information obtained from third-country supervisory authorities to ESMA.
2. ESMA shall coordinate the development of cooperation agreements between the competent authorities of Member States and the relevant third-country supervisory authorities. In accordance with Article 16 of Regulation (EU) No 1095/2010, ESMA shall adopt guidelines for the preparation of a template agreement that shall be used by competent authorities.

ESMA shall also coordinate the exchange between competent authorities of information obtained from third-country supervisory authorities that may be relevant to the taking of measures under Articles 16 to 25.

3. The competent authorities shall conclude cooperation agreements on exchange of information with the third-country supervisory authorities only where the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 29. Such exchange of information shall be intended for the performance of the tasks of those competent authorities.

Article 33
Transfer and retention of personal data

With regard to transfer of personal data between Member States or Member States and a third country, Member States shall apply Directive 95/46/EC. With regard to transfer of personal data by ESMA to Member States or to a third country, ESMA shall comply with Regulation (EC) No 45/2001.

Data shall be retained for a maximum period of five years.

Article 34
Disclosure of information to third countries

The competent authority of a Member State may transfer to the supervisory authority of a third country data and the analysis of data when the conditions laid down in Article 25 or 26 of Directive 95/46/EC are fulfilled and only on a case-by-case basis. The competent authority of the Member State shall be satisfied that the transfer is necessary for the purpose of this Regulation. The transfer of data shall be made only if the third country guarantees that the data will not be transferred to another third country without the express written authorisation of the competent authority of the Member State.

The competent authority of a Member State shall disclose information which is confidential pursuant to Article 29 and which is received from a competent authority of another Member State to a third-country supervisory authority only where the competent authority of the Member State concerned has obtained express agreement of the competent authority which transmitted the information and, where applicable, the information is disclosed solely for the purposes for which that competent authority gave its agreement.

Article 35
Penalties

Based on guidelines adopted by ESMA and taking into consideration the Commission’s Communication on reinforcing sanctioning regimes in the financial services sector, Member States shall, in accordance with the fundamental principles in their national legislation establish rules on administrative measures, sanctions and pecuniary penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The measures, sanctions and penalties provided for shall be effective, proportionate and dissuasive. Where the seller breaches the provisions of Article 12, the penalties shall be sufficiently high so as not to allow the seller to make a profit.

In accordance with Regulation (EU) No 1095/2010, ESMA shall adopt guidelines concerning the type of administrative measures and penalties to be established by Members States.
Member States shall notify the Commission and ESMA of the provisions referred to in the first and second subparagraphs by [1 July 2012] and shall notify them without delay of any subsequent amendment affecting those provisions.

ESMA shall publish on its website and update regularly a list of existing administrative measures and penalties per Member States.

Member States shall provide ESMA annually with aggregated information regarding all administrative measures and penalties imposed. If a competent authority discloses to the public the fact that an administrative measure or a penalty has been imposed, it shall, contemporaneously, notify ESMA thereof.

CHAPTER VII

DELEGATED ACTS

Article 36

Exercise of the delegation

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

2. The delegation of power referred to in Article 2(2), Article 3(7), Article 4(2), Article 5(3), Article 6(2), Article 7(3), Article 8(3), Article 15(2), Article 19(4) and Article 25 shall be conferred on the Commission for an indeterminate period of time.

2a. Before adopting a delegated act, the Commission shall endeavour to consult ESMA.

3. A delegation of power referred to in Article 2(2), Article 3(7), Article 4(2), Article 5(3), Article 6(2), Article 7(3), Article 8(3), Article 15(2), Article 19(4) and Article 25 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. The decision to revoke shall take effect on the day following that of its publication in the Official Journal of the European Union or on a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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

5. A delegated act adopted pursuant to Article 2(2), Article 3(7), Article 4(2), Article 5(3), Article 6(2), Article 7(3), Article 8(3), Article 15(2), Article 19(4) and Article 25 shall enter into force only if no objection has been expressed by either the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.
Article 39

Committee procedure

1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC (1). That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 (2).

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply, having regard to the provisions of Article 8 thereof.

Article 39a

Deadline for the adoption of delegated acts

The Commission shall adopt the delegated acts under Article 2(2), Article 3(7), Article 4(2), Article 5(3), Article 6(2), Article 7(3), Article 8(3), Article 15(2), Article 19(4) and Article 25 by … (*)..

CHAPTER VIII

TRANSITIONAL AND FINAL PROVISIONS

Article 40

Review and report

By 30 June 2013, the Commission shall, in light of discussions with the competent authorities and ESMA, report the European Parliament and the Council on:

(a) the appropriateness of the reporting and disclosure thresholds under Articles 5 and 8;

(aa) the appropriateness of the public disclosure requirement and the disclosure requirement and the disclosure thresholds under Article 7, in particular with regard to their impact on the efficiency and volatility of financial markets;

(ab) whether direct, centralised reporting to ESMA is appropriate;

(b) the operation of the restrictions and requirements in Chapter II;

(c) whether any other restrictions or conditions on short selling or credit default swaps are appropriate.

Article 41

Transitional provision

Existing measures falling within the scope of this Regulation, in force before 15 September 2010, may remain applicable until [1 July 2013] provided that they are notified to the Commission.

(*) Six months after entry into force of this Regulation.
Article 41a

Staff and resource of ESMA

By 31 December 2011, ESMA shall assess the staffing and resources needs arising from the assumption of its powers and duties in accordance with this Regulation and submit a report to the European Parliament, the Council and the Commission.

Article 42

Entry into force

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

It shall apply from [1 July 2012].

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

Done at Brussels,

For the European Parliament

The President

For the Council

The President

Investor-compensation schemes ***I

P7_TA(2011)0313


(2013/C 33 E/37)

(Ordinary legislative procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2010)0371),

— having regard to Article 294(2) and Article 53(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0174/2010),

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

— having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,

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

— having regard to the opinion of the European Central Bank (1),

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

— having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs (A7-0167/2011),

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

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

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

P7_TC1-COD(2010)0199


(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank (1),

Acting in accordance with the ordinary legislative procedure (2),

Whereas:

(1) At the request of the Commission, a report published on 25 February 2009 by a high-level group of experts chaired by J. de Larosière concluded that the supervisory framework needed to be strengthened to reduce the risk and severity of future financial crisis and recommended far-reaching reforms to the structure of supervision of the financial sector in the European Union, including the creation of a European System of Financial Supervisors, comprising three European Supervisory Authorities, one for the securities sector, one for the insurance and occupational pensions sector and one for the banking sector, and the creation of a European Systemic Risk Board. The Commission Communication of 4 March 2009, "Driving European Recovery", proposed to strengthen the Union’s regulatory framework for financial services, and, in particular, to enhance investor protection. The Commission put forward, in September 2009, the legislative package for the creation of the new authorities, including the European Supervisory Authority (European Securities and Markets Authority) (ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (3), in particular to contribute to a consistent application of Union law and to the establishment of high-quality common regulatory and supervisory standards and practices.

(3) OJ L 331, 15.12.2010, p. 84.
It is necessary to amend Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (1) in order to maintain confidence in the financial system and to better protect investors in view of the developments in the legal framework of the Union, the evolution in the financial markets and the problems experienced in the application of that Directive in Member States where investment firms are unable to return assets held on behalf of clients.

At the time of its adoption, Directive 97/9/EC complemented Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (2) to ensure that each Member State would set up an investor-compensation system to guarantee a harmonised minimum level of protection, at least for small investors, in the event of an investment firm being unable to meet its obligations to its clients. When Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (3) repealed Directive 93/22/EEC, it introduced a new list of investment services and activities in order to encompass the full range of investor-oriented activities and to provide for the degree of harmonisation needed to offer investors a high level of protection and to allow investment firms to provide services throughout the Union. Therefore, it is necessary to align Directive 97/9/EC with Directive 2004/39/EC in order to ensure that the provision of all investment services and activities continue to be adequately covered under schemes.

At the time of its adoption, Directive 97/9/EC took into account the coverage and the functioning of deposit-guarantee schemes as regulated under Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (4). Consequently, it is appropriate to continue taking into account any amendment to Directive 94/19/EC.

Investors may not be aware of any limits lacking or limited authorisations of investment firms, thus it is necessary to protect them in situations in which investment firms act without, or in breach of their authorisation, in particular by holding client assets or providing services to a particular type of client without, or in breach of, the conditions of their authorisation. Therefore, schemes should cover clients’ assets which are de facto held by investment firms in connection with any investment business. [Am. 1]

Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (5) allows investment firms to deposit financial instruments held on behalf of clients into accounts opened with a third party. The third party is not necessarily subject to specific regulation and supervision. Notwithstanding compliance with Directive 2006/73/EC, failure of the third party may affect investors’ rights if that third party is not able to return the financial instruments to the investment firm. In order to strengthen investor confidence, it is appropriate to extend compensation under Directive 97/9/EC, without prejudice to applicable national liability regimes, to the inability of an investment firm to return client financial instruments due to the failure of a third party where the financial instruments have been deposited by the investment firm or by its custodians.

(2) OJ L 141, 11.6.1993, p. 27.
Directive 2006/73/EC requires investment firms to place any client funds they receive into one or more accounts opened with a third party. Those third-parties comprise central banks, credit institutions or banks authorised in a third country, or a qualifying money market fund. The strict regime ensured by Directive 2006/73/EC makes it unnecessary to extend coverage to the failure of a third party where funds have been deposited.

As the compensation coverage under Directive 94/19/EC is now higher than the one under this Directive, it is necessary to provide the highest protection to investors in cases where both Directives 94/19/EC and 97/9/EC could cover assets held by banks. Therefore, in those cases, the investor could be covered by Directives 94/19/EC or 97/9/EC, investors should be compensated under Directive 94/19/EC. [Am. 2]

In order to be able to recover the funds paid for compensation, schemes making payments to compensate investors for failure of a depositary or a third party should have the right of subrogation to the rights of the investor, or investment firm or undertakings for collective investment in transferable securities (hereinafter referred to as “UCITS”) in liquidation proceedings for amounts equal to their payments. This Directive should not diminish the responsibility of investment firms or UCITS to recover assets from a depositary or custodian. [Am. 3]

Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (1) requires the UCITS’ assets to be held in safekeeping by a depositary. During 2011, the Commission will make proposals to amend Directive 2009/65/EC to clarify the depositary’s liability where the depositary or one of its sub-custodians defaults and is unable to return the financial instruments held in custody, this affects the value of the UCITS units or shares, in order to increase protection in this situation, unit and share holders in UCITS should benefit from the same level of protection as if they were investing directly into the financial instruments concerned, should the entity holding the financial instruments become unable to return them. Unit holders and share holders in UCITS should receive compensation for the loss of value of the UCITS. At the same time, they should be able to keep the UCITS units or shares in order to preserve their right to redeem them when they consider this is adequate. After completing its review of Directive 2009/65/EC, the Commission should analyse in which situations the failure of a UCITS depositary or a sub-custodian could affect the value of the UCITS units or shares. A report on that analysis should be submitted to the European Parliament and to the Council, together with legislative proposals if necessary. [Am. 4]

Directive 97/9/EC already excludes from any compensation under investor-compensation schemes claims arising out of transactions where a criminal conviction has been obtained for money laundering within the meaning of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (2). It is also appropriate to exclude any claim for compensation where the assets concerned result from conduct prohibited under Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (3) in which the claimant has been involved.

The minimum level of compensation was established in 1997 and has not been modified since then. This level should be increased to EUR 50 000 EUR 100 000 in order to take into account developments in the financial markets and in the Union legislative framework. This amount takes into account the effects of inflation in the Union and the need to better align the level of compensation with the average value of investments held by retail clients in the Member States. In order to increase the protection provided to investors, it is necessary to remove the existing option for Member States to limit or exclude from cover funds in currencies other than those of the Member States. [Am. 5]
In order to ensure investors receive the compensation provided for under Directive 97/9/EC and a comparable level of investor protection across Member States, it is necessary to introduce common rules governing the funding of the investor-compensation schemes. The schemes should be financed in proportion to their liabilities. An appropriate level of pre-funding should be ensured and the schemes should have in place adequate arrangements to assess and reach their target funding level prior to the occurrence of any loss event relevant under Directive 97/9/EC. A common minimum target fund level should be reached as soon as possible and in any event within a five-year period. [Am. 6]

Where necessary, exceptional calls for contributions to the members of the scheme or access to borrowing sources, such as from commercial banks or public institutions on commercial grounds, should ensure a timely coverage of any needs which is not covered by the funds collected from members prior to the occurrence of loss events.

The functioning of the schemes is currently highly differentiated across Member States and this Directive aims at introducing further harmonisation while leaving some flexibility to Member States as to the detailed organisation of the schemes. The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of certain essential features of the functioning of schemes in accordance with Article 290 of the Treaty. In particular delegated acts should be adopted in respect of the method to determine the potential liabilities of the schemes, the factors to be considered in assessing the ability of additional contributions not to jeopardise the stability of the financial system of a Member States, the alternative funding arrangements that schemes must have in place to be able, where necessary, to obtain short-term funding, and the criteria to determine the contributions by entities covered by the schemes. The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty. In particular, the delegated acts should be adopted by which to calculate the target fund level to be established by the schemes and to modify that target fund level, the percentage of the determined ceiling of the funds available for lending between investor-compensation schemes, procedures by which to deal with investors’ claims, and the technical criteria to calculate the loss of value of a UCITS in the circumstances covered by this Directive. The Commission should also be empowered to amend, by means of delegated acts, amendments to the percentage of funds available for lending taking into account the developments in the financial markets. [Am. 7 and Am. 12]

In order to ensure uniform conditions of application of the provisions concerning the financing of the schemes, ESMA should develop draft implementing technical standards regarding the details to be made public by the schemes. [Am. 7]

In order to ensure that investors receive compensation in due time, a last resort borrowing mechanism among investor-compensation schemes in the Union should be established. The system should include the possibility for investor-compensation schemes to borrow funds from other schemes in the exceptional case they face a temporary lack of funding. For this purpose, a portion of ex-ante funding in each scheme should be available for lending to other investor-compensation schemes.

Competent authorities should cooperate closely with each other and with ESMA to detect and prevent fraud, administrative malpractices and operational errors of investment firms in the Union. [Am. 8]
(16b) The Member States should encourage an institutionalised dialogue between consumer-protection organisations and authorities, competent authorities and investor-compensation schemes to prevent further compensation cases arising. The Member States should establish a framework for dialogue in order to detect problems at an early stage and report problems such as dysfunctional market practices, suspect providers, products or company structures to supervision and investor compensation schemes. [Am. 9]

(17) The borrowing mechanism should not impinge on any fiscal responsibility of the Member States. The borrowing schemes should be able to have recourse to the borrowing possibility provided for in this Directive after exhausting the funds collected to reach the target fund level and the additional calls for contribution to their members. While respecting the supervision of investor-compensation schemes by Member States, ESMA should contribute to the achievement of the objective of making it easier for investment firms and UCITS to pursue their activities while at the same time ensuring effective protection for investors. To that end, ESMA should confirm that the conditions of borrowing between investor-compensation schemes laid down in Directive 97/9/EC are fulfilled and should state, within the strict limits set by that Directive, the amounts to be lent by each scheme, the initial interest rate as well as the duration of the loan. In this respect, ESMA should also collect information on investor-compensation schemes, in particular on the amount of covered monies and financial instruments in each scheme, confirmed by the competent authorities. It should inform the other investor-compensation schemes of their obligation to lend. [Am. 10]

(18) In order to simplify the lending process, if more than one scheme is established in a Member State, the Member State should designate one scheme acting as the lending scheme of that Member State and should inform ESMA accordingly. Borrowing should be limited to the coverage of compensation deriving from Directive 97/9/EC.

(19) It is necessary to ensure that the overall funds available for lending may be used to satisfy a plurality of requests from borrowing schemes. For this purpose, no loan should exceed a pre-determined threshold of funds available for lending.

(20) In order to accelerate the compensation process, the determination by a competent authority of the fact that an investment firm is not able to meet its obligations arising out of investors’ claims should be made as soon as possible.

(21) The procedures necessary to establish the validity and the amount of a compensation claim, often depending on national administrative and insolvency laws, may cause long delays in the payments to investors. In order to shorten payment delays, it is necessary to ensure that, in systems or situations where the validity and the amount of the claim depends on insolvency or judicial procedures regarding the entities failing to meet their obligations, the schemes should be able to participate in those procedures. In addition, the obligation to grant a provisional payout of partial compensation should be provided for in the case of delays longer than 12 months in order to allow investors to receive a portion of the compensation claimed. Mechanisms to return the money to the schemes in case it is established that the claim was not valid should be envisaged.

(22) Directive 97/9/EC allows Member States to exclude professional and institutional investors from cover but the relevant list is not aligned with the classification of clients of investment firms under Directive 2004/39/EC. In order to ensure consistency between Directives 97/9/EC and 2004/39/EC, to simplify the assessment for compensation schemes and to limit the possible exclusion, in the case of enterprises, to large undertakings, Directive 97/9/EC should refer to investors who are considered as
professional clients according to Directive 2004/39/EC. In order to ensure an appropriate level of protection for all relevant investors, Member States should be able to bring micro-entities, non-profit organisations and public local authorities within the scope of Directive 97/9/EC. [Am. 11]

(23) [Content of Recital 23 moved to Recital 15]

(24) Directive 97/9/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 97/9/EC

Directive 97/9/EC is amended as follows:

(1) Article 1 is amended as follows:

(a) points 2, 3 and 4 are replaced by the following:


3. 'instruments' shall mean the instruments listed in Section C of Annex I to Directive 2004/39/EC; [Am. 13]

4. 'investor' shall mean, in relation to investment business, any natural or legal person, including micro-entities, non-profit organisations and public local authorities, who has entrusted money or instruments to an investment firm, and in relation to the activities of UCITS, a unit holder or share holder in a UCITS (hereafter "unit holder"); [Am. 14]


(b) [Content of point (b) moved to point (a)]

(c) point 7 is replaced by the following:

"7. 'competent authorities' shall mean 'competent authority' as defined in Article 4(1)(22) of Directive 2004/39/EC and in Article 2(1)(b) of Directive 2009/65/EC of the European Parliament and of the Council (**) (ESMA investor-compensation schemes shall, for the purpose of that regulation, be considered competent authorities under Article 4(3)(iii) thereof; [Am. 15]

(**) OJ L 331, 15.12.2010, p. 84.
the following points are added:

8. "UCITS" means an undertaking as defined in Article 1(2) and (3) of Directive 2009/65/EC. [Am. 15]

9. "depositary" means in relation to UCITS activities, an institution as defined in Article 2(1)(a) of Directive 2009/65/EC. [Am. 16]

10. 'third party' shall mean, in relation to investment business, an institution with whom an investment firm has deposited financial instruments held by it on behalf of its clients as referred to in Article 17 of Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (*) or with whom such an institution has sub-deposited the financial instruments; in relation to a UCITS business, an institution with whom a UCITS depositary has entrusted assets on behalf of the UCITS; [Am. 17]

11. 'low-risk assets' shall mean asset items falling into one of the categories set out in the first and second category of Table 1 of point 14 of Annex I to Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (**) but excluding asset items defined as qualifying items in point 15 of that Annex.


The following paragraph 2 is added:

"2. The provisions of this Directive applying to investment firms shall apply to management companies authorized in accordance with Directive 2009/65/EC, where their authorization also covers the services listed in Article 6(3) of that Directive. [Am. 15]

(2) Article 2 is amended as follows:

(a) the first subparagraph of paragraph 1 is replaced by the following:

"1. Each Member State shall ensure that within its territory one or more investor-compensation schemes are introduced and officially recognised. Except in the circumstances envisaged in the second subparagraph of this Article and in Article 5(3), no investment firm authorised in that Member State or UCITS authorized in that Member State shall carry on investment business or carry on activities as a UCITS, unless it belongs to such a scheme."; [Am. 18]

(b) paragraph 2 is replaced by the following:

"2. An investor-compensation scheme shall provide coverage for investors in relation to investment business in accordance with Article 4 where one of the following conditions is met:

(a) the competent authorities have determined that an investment firm appears for reasons directly related to the financial circumstances of the investment firm or the financial circumstances of any third party with whom financial instruments or monies that do not fall within the scope of Directive 94/19/EC have been deposited by the investment firm, to be unable to meet its obligations arising out of investors' claims and has no early prospect of being able to do so; or
(b) a judicial authority has made a ruling, for reasons directly related to the financial circumstances of the investment firm or the financial circumstances of any third party with whom financial instruments or monies that do not fall within the scope of Directive 94/19/EC have been deposited by the investment firm, which has the effect of suspending investors’ ability to make claims against the firm or the firm’s ability to make claims against the third party. [Am. 19]

Member States shall ensure that competent authorities make the determination referred to in point (a) of the first subparagraph as soon as possible and in any event within three months after first becoming aware that an investment firm has failed to meet its obligations arising out of investors’ claims.

2a. The coverage referred to in paragraph 2 shall be provided in accordance with the legal and contractual conditions applicable for claims arising out of an investment firm’s inability to perform either of the following:

(a) repay money owed or belonging to investors and held on their behalf in connection with investment business;

(b) return to investors any instruments belonging to them and held, administered or managed on their behalf in connection with investment business, provided that the inability of the investment firm or third party is the result of fraud, administrative malpractice, operational error or bad advice, regarding conduct of business obligations when providing investment services to clients. [Am. 20]

Member States shall ensure that investor-compensation schemes provide coverage where financial instruments or monies are held, administered or managed for or on behalf of an investor, irrespective of the type of investment business being carried on by the firm and of whether or not the firm is acting in accordance with any restriction set out in its authorisation.

2b. A scheme shall also provide coverage for UCITS unit holders in accordance with Article 4 where either of the following conditions is met first:

(a) the competent authority has determined that a depositary or a third party to whom the assets of the UCITS are entrusted is unable to meet its obligations to a UCITS, for the time being, for reasons directly related to the financial circumstances of the depositary or the third party and has no early prospect of being able to do so;

(b) a judicial authority has made a ruling, for reasons directly related to the financial circumstances of the depositary or any third party to whom assets of the UCITS are entrusted, which has the effect of suspending the UCITS’ ability to make claims against the depositary or the third party.

Member States shall ensure that the competent authorities make the determination referred to in point (a) of the first subparagraph as soon as possible and in any event within 3 months, after first becoming aware that a depositary or a third party to whom the assets of the UCITS are entrusted has failed to meet its obligations arising out of the UCITS’ claims. [Am. 21]

2c. The coverage referred to in paragraph 2b shall be provided in accordance with the legal and contractual conditions applicable for a claim by a UCITS unit holder for the loss of value of the UCITS unit due to the inability of a depositary or a third party to whom the assets of the UCITS have been entrusted, to perform either of the following:

(a) repay money owed to or belonging to the UCITS and held on its behalf in connection with UCITS activities;
(b) return to the UCITS any instruments belonging to it and held or administered on its behalf in connection with UCITS activities.

(c) [Content of point (c) as amended moved to point (b)]

(d) paragraph 3 is replaced by the following:

"3. Any claim referred to in paragraph 2a on a credit institution which, in a given Member State, would be valid both under this Directive and under Directive 94/19/EC shall be dealt with under Directive 94/19/EC alone. No claim shall be valid more than once under those directives."

(3) Article 3 is replaced by the following:

"Article 3

The following claims shall be excluded from any compensation under investor-compensation schemes:

(a) those arising out of transactions in connection with which a criminal conviction has been obtained for money laundering, as defined in Article 1(2) of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (*) ;

(b) those arising out of conduct that is prohibited under Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (**) shall be excluded from any compensation under investor-compensation schemes; and

(c) those relating to the direct or indirect financing of terrorist groups, which is the subject of Council Recommendation of 9 December 1999 on cooperation in combating the financing of terrorist groups (***) ."

(**) OJ L 96, 12.4.2003, p. 16.

(4) Article 4 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. Member States shall ensure that investor-compensation schemes provide for coverage of EUR 50 000 EUR 100 000 for each investor in respect of the claims referred to in Article 2(2a) or (2c).

Members States in which the coverage is more than EUR 50 000 EUR 100 000 on … (‘) may maintain that level of coverage for no longer than three years from that date. Thereafter, those Member States shall ensure that the level of coverage is EUR 50 000 EUR 100 000.

Member States which convert the amounts expressed in euro into their national currency shall initially use in the conversion the exchange rate prevailing on… (‘).

Member States may round off the amounts resulting from the conversion, provided that such rounding off does not exceed EUR 2 500.

(‘) Date of entry into force of the amending Directive."
Without prejudice to the fourth subparagraph, Member States shall adjust the coverage levels converted into another currency to the amount referred to in this paragraph every five years. Member States may make an earlier adjustment of coverage levels, after having consulted the Commission, following the occurrence of unforeseen events such as currency fluctuations.\footnote{P7_TA-PROV(2011)0313(COR01).}

(b) the following paragraph is inserted:

"1a. The Commission may adjust by means of \textit{shall be empowered to adopt} delegated acts \textit{in accordance with Article 13a to adjust} the coverage referred in paragraph 1, taking into account the following parameters: [Am. 27]

(a) inflation in the Union, on the basis of changes in the harmonised index of consumer prices published by the Commission;

(b) average amount of funds and financial instruments held by investment firms on behalf of retail investors.\footnote{P7_TA-PROV(2011)0313(COR01).};

(c) paragraph 2 is replaced by the following:

"2. A Member State may provide for certain investors to be excluded from coverage by investor-compensation schemes for claims referred to in Article 2(2a) or (2c) or to be granted a lower level of coverage. Those exclusions shall be as listed in Annex 1."; [Am. 22]

(d) paragraph 4 is deleted.

(5) The following articles are inserted:

"Article 4a

1. Member States shall ensure that investor-compensation schemes have in place adequate systems to determine their potential liabilities. Member States shall ensure that investor-compensation schemes are adequately financed in proportion to their liabilities. \textit{Member States shall provide ESMA on a regular basis with relevant information concerning the potential liabilities and the correlated proportional financing}. [Am. 28]

2. Member States shall ensure that each investor-compensation scheme establishes a target fund level of at least 0.5\% of the value of the monies and financial instruments held, administered or managed by the investment firms or UCITS that are covered by the protection of the investor-compensation scheme. The value of the covered monies and financial instruments shall be calculated annually as at 31 December. [Am. 29]

The Commission shall \textit{be empowered to adopt} by means of delegated acts in accordance with Article 13a and subject to the conditions of Articles 13b and 13c, measures to determine the method by which to calculate the value of monies and financial instruments covered by the protection of the investor-compensation schemes in order to determine the target fund level to be established by the schemes and to modify the target fund level taking account of the developments in financial markets.\footnote{P7_TA-PROV(2011)0313(COR01).}
Taking into account the value of the covered monies calculated annually as referred to in the first subparagraph, and taking into account developments in the financial markets and the need to ensure effective compensation for investors, the Commission shall also be empowered to adopt delegated acts in accordance with Article 13a to amend the minimum value of the target fund level. By … (*) the Commission shall submit to the European Parliament and Council a report on the need to adjust the target fund level provided for under this paragraph.

In order allow the Commission to calculate an appropriate target fund level as referred to in the third subparagraph, every Member State shall, on an annual basis, provide the Commission and ESMA with the necessary data regarding the funding of investor-compensation schemes in their territory as at 31 December. Member States shall submit that data to the Commission by 31 March of the following year.

Member States shall also provide the Commission and ESMA with data concerning:

(a) the amount of covered securities and monies held in investment firms on behalf of the investors;
(b) the value of the covered monies and financial instruments held or managed;
(c) the number of clients;
(d) the revenues or income generated by investment businesses;
(e) the level of capital of each investment firm;
(f) the maximum amount of compensation per client;
(g) the average turnover of the securities sale and purchase transactions;
(h) the number of approved persons or traders. [Am. 30]

3. The target fund level shall be financed prior to and irrespective of the occurrence of any event relevant under Article 2(2) or (2b). Member States shall ensure that the target level of funding for each investor-compensation scheme is reached within a ten-year period after the entry into force of this Directive by … (**) and that each investor-compensation scheme adopts and complies with an appropriate planning in order to fulfil this objective. [Am. 21 and 31]

Contributions collected to reach the target fund level shall be invested only in cash deposits and low-risk assets with a residual term to financial maturity of 24 months or less, which can be liquidated within a time limit not exceeding one month.

3a. Each member’s contribution to an investor-compensation scheme shall be determined on the basis of the degree of risk incurred. To achieve a certain level of harmonisation in the application of this paragraph across the Member States, the Commission shall adopt delegated acts in accordance with Article 13a to clarify how the contribution of each member to an investor-compensation scheme is to be determined. [Am. 32]

3b. Competent authorities may reduce the contributions of members of the investor-compensation scheme that voluntarily take additional measures to reduce the operational risk.

(*) Two years from the date of entry into force of the amending Directive.
(**) Five years from the date of entry into force of the amending Directive.
Competent authorities may also reduce the contributions of members of the investor-compensation scheme that provide evidence that sub-custodians used by them meet the same standards to reduce operational risk.

The target fund level of the investor-compensation scheme shall not be affected by any such reduction. [Am. 33]

3c. In order to ensure uniform conditions of application of paragraph 3b, ESMA shall develop draft implementing technical standards to establish the conditions for reducing the contributions to an investor-compensation scheme.

ESMA shall submit those draft implementing technical standards to the Commission on an annual basis.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

The assessment of conditions for risk-based reductions shall be based on criteria such as the volume of monies and financial instruments, capital adequacy, and stability of each member taking into account its legal status and the legal framework applicable at its seat. [Am. 34]

4. Member States shall allow the investor-compensation schemes to make additional calls for contributions by the members of the scheme where the target fund level is insufficient to meet the payment of the compensation claims referred to in Article 9(2). Those additional contributions shall not exceed 0.5 % of the covered monies and financial instruments as referred to in paragraph 2. Those additional contributions shall not jeopardise the stability of the financial system of the Member State concerned and be based on affordability criteria. Member States may call for additional contributions after having consulted ESMA and the European Systemic Risk Board established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (*). [Am. 35]

5. Member States shall ensure that investor-compensation schemes have in place adequate alternative funding arrangements to enable them to obtain short-term funding to meet claims against the scheme once the pre-funded amount has been exhausted. Those arrangements may include borrowing commercial lending arrangements and lending facilities from commercial banks. They may also include borrowing facilities from and public institutions, including from the Member States, provided that those facilities are based on commercial grounds. [Am. 36]

6. Member States shall ensure that the cost of financing investor-compensation schemes is ultimately borne in relation to investment business and only by the investment firms or third-party custodians covered by the scheme and in relation to UCITS activities, by UCITS or their depositaries or third parties that are covered by the scheme. Regular contributions by members shall be raised annually. [Am. 37]

In order to assist the operation of the investor-compensation schemes further, Member States shall ensure that:

(a) the schemes are able to levy their members in order to make payments within the period laid down in Article 9(2), in anticipation of payments and after payments have been made, as appropriate;

(b) competent authorities have the power to take action against any firm that fails to pay a levy on request. [Am. 38]
7. Member States shall annually inform the ESMA of the target fund level, as referred to in paragraph 2, and the level of funding, as referred to in paragraph 3, of the investor-compensation schemes in their territory. This information shall be confirmed by the competent authorities and shall, accompanied by this confirmation, be transmitted to the ESMA annually by 31 January.

Member States shall ensure that the information referred to in the first subparagraph is published on the web-site of the investor-compensation schemes at least on an annual basis.

7a. Member States shall ensure that investor-compensation schemes receive from their members, at any time and in any event at their request, all information necessary to prepare a repayment of investors. [Am. 39]

8. Member States shall ensure that 5% of the ex-ante funding amount of the investor-compensation schemes referred to in paragraph 2 is available for lending to other investor-compensation schemes under the conditions established in Article 4c. Such a funding method shall be used only when ordinary means of financing are not available.

The Commission may amend, by means of delegated acts in accordance with Article 13a and subject to the conditions of Articles 13b and 13c, the percentage of the ex ante funding amount to be made available for lending to other schemes, taking into account the developments in financial markets. [Am. 40]

9. The Commission shall adopt delegated acts in accordance with Article 13a to determine:

(a) the method to determine the potential liabilities of investor-compensation schemes as referred to in paragraph 1 and the risk-based contributions; [Am. 41]

(b) the factors to be considered in assessing the ability of additional contributions as referred to in paragraph 4 to not jeopardise the stability of the financial system of a Member State;

(c) the alternative funding arrangements as referred to in paragraph 5 that investor-compensation schemes must have in place to be able to obtain short term funding if necessary;

(d) the criteria to determine the contributions by entities covered as referred to in paragraph 6.

10. In order to ensure uniform conditions of application of the second subparagraph of paragraph 7, ESMA shall develop draft implementing technical standards to specify the details of the information to be published by the schemes.

ESMA shall submit those draft implementing technical standards to the Commission by 31 December 2012.

Power is conferred on the Commission may to adopt the draft implementing technical standards referred to in the first subparagraph in accordance with Article 7e Article 15 of Regulation (EU) No 1095/2010. [Am. 42]
Article 4b

1. After ... (“+++”), an investor-compensation scheme shall have the right to **may** borrow from all other investor-compensation schemes referred to in Article 2 within the Union subject to the following conditions: [Am. 43]

(a) the borrowing investor-compensation scheme is not able to fulfil its obligations under Article 2(2a) or (2c) because of previous payments made to fulfil those obligations: [Am. 22]

(b) **the borrowing investor-compensation scheme** the situation referred to in point (a) is due to a lack of funds as previously reached the target fund level referred to in Article 4a(3) Article 4a(2): [Am. 44]

(c) the borrowing investor-compensation scheme has made recourse to additional contributions referred in Article 4a(4);

(d) the borrowing investor-compensation scheme has undertaken the legal commitment that the borrowed funds will be used in order to pay claims under Article 2(2a) and (2c); [Am. 22]

(e) [Point moved down as a new third subparagraph]

(f) the borrowing investor-compensation scheme has established the amount of money requested;

(g) the borrowing investor-compensation scheme has informed ESMA, without delay, that it intends to borrow from another investor-compensation scheme, stating how the conditions set out in points (a) to (f) are fulfilled and the amount of money it intends to borrow.

The amount referred to in point (f) of the first subparagraph shall be determined as follows:

[amount of claims to be paid under Article 2(2a) and 2(2c)] − [level of funding as referred to in Article 4a(7)] + [maximum amount of additional contributions referred to in Article 4a(4)] [Am. 22]

The borrowing investor-compensation scheme that has not repaid a loan to other schemes under this Article shall neither borrow from nor lend to other investor-compensation schemes.

The other investor-compensation schemes shall act as lending schemes. For this purpose, Member States in which more than one scheme is established shall designate one scheme to act as its lending scheme and shall inform the ESMA thereof. **Member States shall undertake all necessary steps to ensure that all stakeholders are informed about which scheme is the lending scheme and how it works.** Member States may decide if and how the lending scheme is reimbursed by other investor-compensation schemes established in the same Member State. [Am. 45]

2. The loan shall be granted subject to the following conditions:

(a) subject to the limit established in the second subparagraph, each investor-compensation scheme lends the amount proportionate to the amount of covered monies and financial instruments in each scheme without taking account of the borrowing investor-compensation scheme and the amount is calculated pursuant to the latest information referred to in Article 4a(2);
(b) the borrowing investor-compensation scheme repays the loan within five years.

(c) the interest rate during the credit period is equivalent to the marginal lending facility rate of the European Central Bank during the credit period. [Am. 46]

The total amount lent to each borrowing investor-compensation scheme shall not exceed the 20% of the total amount of the funds available at Union level for lending as referred to in Article 4a(8).

Repayment under point (b) of the first subparagraph may be made in annual instalments and interest shall be due only at the time of repayment.

3. ESMA shall confirm that the conditions referred to in paragraph 1 have been met, state the amounts to be lent by each investor-compensation scheme as calculated pursuant to paragraph 2(a) and the initial interest rate pursuant to paragraph 2(c) as well as the duration of the loan.

ESMA shall transmit its confirmation, together with the information referred to in paragraph 1(g), to the lending schemes within 15 working days of receipt of that information from the borrowing schemes. The lending schemes shall, without delay, but in any event within 15 working days of receipt of the confirmation and information from ESMA, effect payment of the loan to the borrowing investor-compensation scheme.

4. Member States shall ensure that the contributions levied by the borrowing investor-compensation scheme are sufficient to reimburse the amount borrowed and to re-establish the target fund level as soon as possible and in any event within five years of receipt of the loan. [Am. 47]

All other claims shall be subordinate to that of the investor-compensation scheme which granted the loan. Such an investor-compensation scheme shall be considered to be a preferred creditor and shall have first rank of priority among creditors. [Am. 48]

Without prejudice to the second subparagraph, Member States may establish other priorities in preference between different categories of creditors. [Am. 49]

5. In order to facilitate effective cooperation between investor-compensation schemes, the schemes, or, where appropriate, the competent authorities, shall have conclude written cooperation agreements in place. Such agreements shall take into account the requirements set out in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (**). [Am. 50]

The competent authorities shall notify ESMA of the existence and the content of the agreements referred to in the first subparagraph. ESMA may issue opinions on such agreements under Article 8(2)(g) and Article 34 of Regulation (EU) No 1095/2010. If competent authorities or investor-compensation schemes cannot reach an agreement or if there is a dispute about the interpretation of such an agreement, ESMA shall settle disagreements pursuant to Article 19 of Regulation (EU) No 1095/2010.
The absence of the agreements referred to in the first subparagraph shall not affect the claims of investors under Article 2(2a) or (2c). [Am. 22]


(6) Articles 5 and 6 are replaced by the following:

"Article 5

1. If an investment firm, UCITS, depositary or third party required by Article 2(1) to belong to a scheme does not meet its obligations as a member of that scheme, the competent authorities which issued the investment firm authorisation or the UCITS authorization shall be notified and, in cooperation with the investor-compensation scheme, shall take all measures appropriate, including the imposition of penalties, to ensure that the investment firm, UCITS, depositary or third party meets its obligations.

2. If the measures referred to in paragraph 1 fail to secure compliance on the part of the investment firm, UCITS, depositary or third party, the investor-compensation scheme may, subject to the express consent of the competent authorities, give not less than 12 months' notice of its intention of excluding the investment firm, UCITS, depositary or third party from membership of the scheme. The investor-compensation scheme shall continue to provide the coverage referred to in Article 2(2a) and (2c) in respect of investment business or UCITS activities carried on during that period. If, on expiry of that period, the investment firm, UCITS, depositary or third party has still not met its obligations, the investor-compensation scheme may, subject to obtaining the express consent of the competent authorities, exclude that investment firm.

3. An investment firm, UCITS, depositary or third party, excluded from an investor-compensation scheme, may continue to carry on investment business, its UCITS activities or be entrusted with investors' and UCITS financial instruments under the following conditions:

(a) before its exclusion, the investment firm or third party made alternative compensation arrangements ensuring that investors and UCITS would enjoy cover that is at least equivalent to that offered by the officially recognised scheme and that the characteristics of such alternative compensation arrangements are equivalent to those of the officially recognised scheme;

(b) the competent authority responsible for the authorisation of the investment firm or UCITS, has confirmed that the conditions referred to in point (a) are met.

4. If an investment firm or a UCITS the exclusion of which is proposed under paragraph 2 is unable to make alternative arrangements which comply with the conditions imposed in paragraph 3, the competent authorities which issued its authorisation shall:

(a) with respect to the investment firm for which it has issued the authorization, withdraw the authorization without delay;

(b) with respect to the UCITS it has approved, withdraw the authorization that authorisation without delay.

5. If a depositary or a third party, the exclusion of which is proposed under paragraph 2 is unable to make alternative arrangements which comply with the conditions imposed in paragraph 3, it shall not be allowed to be entrusted with investors' or UCITS assets. [Am. 51]
Article 6

After withdrawal of an investment firm’s authorisation or UCITS’ authorisation, the coverage referred to in Article 2(2) shall continue to be provided in respect of investment business transacted up to the time of that withdrawal." [Am. 52]

(7) Articles 8 and 9 are replaced by the following:

"Article 8

1. The coverage provided for in Article 4(1) and (3) shall apply to the investor’s aggregate claim on the same investment firm or the same UCITS under this Directive irrespective of the number of accounts, the currency and location within the Union. [Am. 53]

2. Each investor’s share in joint investment business shall be taken into account in calculating the coverage provided for in Article 4(1) and (3). In the absence of special provisions, claims shall be divided equally amongst investors. [Am. 54]

An investor whose claim cannot be fully covered shall benefit from the same rate of coverage for the aggregate claim. [Am. 55]

Member States may provide that claims relating to joint investment business to which two or more persons are entitled as members of a business partnership, association or grouping of a similar nature which has no legal personality may, for the purpose of calculating the limits provided for in Article 4(1) and (3), be aggregated and treated as if arising from an investment made by a single investor.

3. Where an investor is not entitled to the sums or securities instruments held, the person who is entitled shall receive the compensation, provided that that person has been or can be identified before the date of the determination or ruling referred to in Article 2(2) and (2b).

If two or more persons are entitled, the share of each under the arrangements subject to which the sums or the securities instruments are managed shall be taken into account when the limits laid down in Article 4(1) and (3) are calculated. [Am. 56]

Article 9

1. The investor-compensation scheme shall take appropriate measures to inform investors of a determination or ruling referred to in Article 2(2) and (2b) and, if they are to be compensated, to compensate them as soon as possible. It may fix a period during which investors shall be required to submit their claims. That period shall not be less than five months from the date of the determination or ruling referred to in Article 2(2) and (2b) or from the date on which that determination or ruling is made public. [Am. 21]

The fact that the period referred to in the first subparagraph has expired shall not be invoked by the investor-compensation scheme to deny full coverage to an investor who has been unable to assert his right to compensation in time. [Am. 57]

Investment firms shall disclose on their websites all information concerning the terms and conditions regarding the coverage and the steps to be taken to receive the payment in accordance with this Directive. [Am. 58]

2. The investor-compensation scheme shall be in a position to pay an investor’s claim as soon as possible and in any event within three months of the establishment of the validity and the amount of the claim.
In exceptional circumstances an investor-compensation scheme may apply to the competent authorities for an extension of the time limit. Such an extension shall not exceed three months. Competent authorities shall immediately inform ESMA of any extension granted to an investor-compensation scheme and the circumstances justifying such extension.

Member States shall ensure that investor-compensation schemes may participate in insolvency or judicial procedures that may be relevant in establishing the validity and the amount of a claim.

The third subparagraph shall be without prejudice to investor-compensation schemes being able to adopt other methods to determine the validity or amount of a claim.

If final payment has not been made within nine months of the determination or ruling referred to in Article 2(2) or (2b), Member States shall ensure that the investor-compensation scheme provides, within three months of that determination or ruling, for a provisional payout of partial compensation of not less than one-third of the claim based on an initial assessment of the claim. The balance shall be paid out within three months of the establishment of the validity and the amount of the claim. Member States shall ensure that the investor-compensation scheme has the means to recover amounts provisionally paid out if it is established that the claim was not valid. [Am. 21]

The Commission shall adopt, by means of delegated acts in accordance with Article 13a and subject to the conditions of Articles 13b and 13c, measures to determine the procedure to deal with investors’ claims and the technical criteria to calculate the loss of value of a UCITS as a result of the events mentioned under Article 2(2b) and (2c). [Am. 59]

3. Notwithstanding the time limit laid down in the first subparagraph of paragraph 2, where an investor or any other person entitled to or having an interest in investment business has been charged, in relation to money that is the subject of this Directive, with an offence arising out of or in relation to money laundering as defined in Article 1(2) of Directive 2005/60/EC, arising out of conduct that is prohibited under Directive 2003/6/EC, or relating to the direct or indirect financing of terrorist groups which is the subject of Council Recommendation of 9 December 1999 on cooperation in combating the financing of terrorist groups, the investor-compensation scheme may suspend any payment pending the judgment of the court or determination of a competent authority. [Am. 60]

(8) In Article 10, paragraph 1 is replaced by the following:

"1. Member States shall ensure that each investment firm or UCITS takes appropriate measures to make available to actual and intending investors the information necessary for the identification of the investor-compensation scheme of which the investment firm or UCITS and its branches within the Union are members or any alternative arrangement provided for under the second subparagraph of Article 2(1) or Article 5(3). Investors shall be informed of the provisions of the investor-compensation scheme or any alternative arrangement applicable, including the amount and scope of the coverage offered by the investor-compensation scheme and any rules laid down by the Member States in this regard. That information shall be made available in a readily comprehensible manner. [Am. 61]

Information shall also be given on request concerning the conditions governing compensation and the formalities which must be completed to obtain compensation.

The information provided shall be fair, clear and not misleading and in particular shall explain the situations and claims covered by the relevant investor-compensation scheme and how it applies in cross border situations. The information provided should also give examples of situations and claims not covered under the scheme.
1a. Member States shall ensure that the amount that an investor pays into an investor-compensation scheme is clear and transparent. The amount that each individual investor is charged for a scheme, either as a percentage of their investment or as an amount in addition to the investment, shall be made clear to that actual or intending investor.\[^62\]

(9) Article 12 is replaced by the following:

*Article 12*

1. Without prejudice to any rights under national law, investor-compensation schemes which make payments in order to compensate investors may subrogate to the rights of those involved investors in liquidation proceedings for amounts equal to their payments. \[^63\]

2. In the case of a loss due to the financial circumstances of a third party that holds financial instruments belonging to an investor in relation to investment business, as referred to in Article 2(2), investor-compensation schemes which make payments in order to compensate investors may subrogate to the rights of the investor or investment firm in liquidation proceedings for amounts equal to their payments.

3. In the case, provided for in Article 2(2c), of losses due to the financial circumstances of a depositary or third party to whom the assets of the UCITS have been entrusted, schemes which make payments in order to compensate UCITS unit holders shall have the right of subrogation to the rights of the UCITS holder or UCITS in liquidation proceedings for amounts equal to their payments. \[^64\]

4. If the third party that holds financial instruments belonging to an investor in relation to investment business or the depositary or third party to whom the assets of the UCITS have been entrusted are located in a third country in which the judiciary system does not allow the investor-compensation scheme to subrogate to the rights of the investment firm or the UCITS, Member States shall ensure that the investment firm or the UCITS return to the investor-compensation scheme amounts equal to any payments it receives in the liquidation proceedings.\[^65\]

(10) The following Article is inserted:

*Article 13a*

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

1a. The power to adopt delegated acts referred to in Article 4(1a), subparagraphs 2 and 3 of Article 4a(2), Article 4a(3a), the third subparagraph of Article 4a(3c), Article 4a(9) and the sixth subparagraph of Article 9(2) shall be conferred on the Commission for an indeterminate period of time four years from ... (\(^*\)). The Commission shall draw up a report in respect of the delegation of power not later than six months before the end of the four-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension.

1b. The delegation of power referred to in Article 4(1a), subparagraphs 2 and 3 of Article 4a(2), Article 4a(3a), the third subparagraph of Article 4a(3c), Article 4a(9) and the sixth subparagraph of Article 9(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or on a later date specified therein. It shall not affect the validity of any delegated acts already in force.

\(^*\) Date of entry into force of the amending Directive.
2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

2a. A delegated act adopted pursuant to Article 4(1a), subparagraph 2 and 3 of Article 4a(2), Article 4a(3a), the third subparagraph of Article 4a(3c), Article 4a(9) and the sixth subparagraph of Article 9(2) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of the notification of that act to the European Parliament and the Council or if, before the expire of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

3. The powers to adopt delegated acts are conferred on the Commission subject to the conditions laid down in Articles 13b and 13c.

Article 13b

1. The delegation of power referred to in Article 4a(2), Article 4a(8), Article 4a(9) and Article 9(2) may be revoked by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, stating the delegated powers which could be subject to revocation and the reasons for a revocation.

3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.

Article 13c

1. The European Parliament and the Council may object to the delegated act within a period of two months from the date of notification. At the initiative of the European Parliament or the Council this period shall be extended by one month.

2. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act it shall be published in the Official Journal of the European Union and shall enter into force at the date stated therein.

The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. If the European Parliament or the Council objects to the adopted delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.”.

[Am. 66]

(11) The following Article is inserted:

"Article 14a

The Member States may conclude cooperation agreements on exchange of information with the competent authorities of third countries in accordance with Article 63 of Directive 2004/39/EC and Article 102 of Directive 2009/65/EC.".
(12) Annex I is amended as follows:

(a) point 1 is replaced by the following:


(b) points 2, 3 and 8 are deleted.

Article 2

Transposition

1. Member States shall adopt and publish, by … (*) the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those measures and a correlation table between those provisions and this Directive.

They shall apply those measures from … (**) save for those measures transposing Article 4b, which shall be applied from 31 December 2013.

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

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

2a. By derogation from paragraphs 1 and 2, Member States that benefit under the Accession Treaties from transitional periods regarding the transposition of Article 4 of Directive 97/9/EC shall comply with paragraphs 1 and 2 of that Article from the date when their respective transitional periods expire. [Am. 67]

Article 2a

Report and review

By 31 December 2012, ESMA shall assess the staffing and resources needs arising from the assumption of its powers and duties in accordance with this Directive and submit a report to the European Parliament, the Council and the Commission.

By 31 July 2012, the Commission shall, after an open consultation with the stakeholders, submit to the European Parliament and Council a report analysing the advantages and disadvantages of introducing a system of insurance contracts as a complement or replacement of existing investor-compensation scheme.

In order to ensure the same level of protection for investors, whether they invest directly through investment firms or indirectly through UCITS, the report shall also, in light of the forthcoming Commission proposal on UCITS depositaries and after an open consultation with stakeholders, identify regulatory gaps, including regarding equivalent compensation, and assess the costs and benefits of extending the scope of Directive 97/9/EC to UCITS. If necessary, that report shall include legislative proposals on the practical arrangements for the extension of its scope to UCITS. [Am. 68 and point 2 of the corrigendum (')]

(*) 12 months after the entry into force of this Directive.
(**) 18 months after the entry into force of this Directive.
(’) P7_TA-PROV(2011)0313(COR01).
Entry into force

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

Addressees

This Directive is addressed to the Member States.

Done at

For the European Parliament
The President

For the Council
The President

Possibility for the Member States to restrict or prohibit the cultivation of GMOs in their territory ***I

P7_TA(2011)0314


(2013/C 33 E/38)

(Ordinary legislative procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2010)0375),

— having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0178/2010),

— having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,

— having regard to Article 294(3) and Article 192(1) of the Treaty on the Functioning of the European Union,

— having regard to the opinion of the European Economic and Social Committee of 9 December 2010 (¹),

— having regard to the opinion of the Committee of the Regions of 28 January 2011 (²),

— having regard to Rules 55 and 37 of its Rules of Procedure,

— having regard to the report of the Committee on the Environment, Public Health and Food Safety and the opinion of the Committee on Agriculture and Rural Development (A7-0170/2011),

(¹) OJ C 54, 19.2.2011, p. 51.
(²) OJ C 104, 2.4.2011, p. 62.
1. Adopts its position at first reading hereinafter set out;

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

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

---

P7_TC1-COD(2010)0208

Position of the European Parliament adopted at first reading on 5 July 2011 with a view to the adoption of Regulation (EU) No …/2011 of the European Parliament and of the Council amending Directive 2001/18/EC as regards the possibility for the Member States to restrict or prohibit the cultivation of GMOs in their territory

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

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

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

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

Acting in accordance with the ordinary legislative procedure (3),

Whereas:

(1) Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms (4) and Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed (5) establish a comprehensive legal framework for the authorisation of genetically modified organisms (GMOs), which is fully applicable to GMOs to be used for cultivation purposes throughout the Union as seeds or other plant-propagating material (hereinafter 'GMOs for cultivation').

(2) Those legal acts provide that GMOs for cultivation are to undergo an individual risk assessment before being authorised to be placed on the Union market, taking into account with Annex II to Directive 2001/18/EC, the direct, indirect, immediate and delayed effects, as well as the cumulative long-term effects of GMOs on human health and the environment. The aim of this authorisation procedure is to ensure a high level of protection of human life and health, of animal health and welfare, of the environment and of consumer interests, whilst ensuring the effective functioning of the internal market. A uniform high level of protection of health and the environment should be achieved and maintained throughout the territory of the Union. [Am 2]

(2) OJ C 104, 2.4.2011, p. 62.
The Commission and Member States should ensure, as a priority, the implementation of the Environment Council Conclusions adopted on 4 December 2008, namely a proper implementation of the legal requirements laid down in Annex II to Directive 2001/18/EC for the risk assessment of GMOs. In particular, the long-term environmental effects of GM crops, as well as their potential effects on non-target organisms, should be rigorously assessed; the characteristics of the receiving environments and the geographical areas in which GM crops may be cultivated should be duly taken into account; and the potential environmental consequences brought about by changes in the use of herbicides linked to herbicide-tolerant GM crops should be assessed. More specifically, the Commission should ensure that the revised guidelines on risk assessment of GMOs are adopted. Those guidelines should not be based only on the principle of substantial equivalence or on the concept of a comparative safety assessment, and should make it possible to clearly identify direct and indirect long-term effects, as well as scientific uncertainties. The European Food Safety Authority (EFSA) and the Member States should aim to establish an extensive network of scientific organisations representing all disciplines including those relating to ecological issues, and should cooperate to identify at an early stage any potential divergence between scientific opinions with a view to resolving or clarifying the contentious scientific issues. The Commission and the Member States should ensure that the necessary resources for independent research on the potential risks arising from the deliberate release or the placing on the market of GMOs are secured, and that the enforcement of intellectual property rights does not prevent independent researchers from accessing all relevant material. [Am 44]

There is a need for the precautionary principle to be taken into account in the framework of this Regulation and when implementing it. [Am 46]

(4) Once a GMO is authorised for cultivation purposes in accordance with the Union legislative framework on GMOs and complies, as regards the variety that is to be placed on the market, with the requirements of Union legislation on the marketing of seed and plant propagating material, Member States are not authorised to prohibit, restrict, or impede its free circulation within their territory, except under the conditions defined by Union legislation.

(4a) Given the importance of scientific evidence in taking decisions on the prohibition or authorisation of GMOs, EFSA and the Member States should collect and publish annually the results of research regarding the risk or evidence of any accidental presence, contamination or danger to the environment or human health of GMOs, on a case-by-case basis. Due to the high cost of expert consultation, Member States should promote collaboration between research institutions and national academies. [Am 4]

(5) Experience has shown that cultivation of GMOs is an issue which is more thoroughly addressed by Member States, either at central or at regional and local level. Contrary to issues related to the placing on the market and the import of GMOs, which should remain regulated at Union level to preserve the internal market, cultivation has been acknowledged as might require more flexibility in certain instances as it is an issue with a strong local, regional and/or territorial dimension and an issue of particular importance for the self-determination of Member States. The Union authorisation procedure should not be adversely affected by such flexibility. However, the harmonised environmental and health risks assessment might not address all possible impacts of GMO cultivation in different regions and local ecosystems. In accordance with Article 2(2) of the Treaty on the Functioning of the European Union (TFEU), Member States should therefore be entitled to adopt legally binding acts concerning the effective cultivation of GMOs in their territory after the GMO has been legally authorised to be placed on the Union market. [Am 5]

(6) In this context, it appears appropriate to grant to Member States, in accordance with the principle of subsidiarity, more freedom to decide whether or not they wish to cultivate GM crops on their territory without changing the system of Union authorisations of GMOs and independently of the measures that Member States are required to take by application of Article 26a of Directive 2001/18/EC to avoid the unintended presence of GMOs in other products on their territory and in border areas of neighbouring Member States. [Am 6]

(7) Member States should therefore be authorised to adopt, on a case-by-case basis, measures restricting or prohibiting the cultivation of all or particular GMOs or of groups of GMOs or of all GMOs in all or part of their territory, and amend those measures as they deem appropriate, at all stages of the authorisation, renewal of authorisation or withdrawal from the market of the concerned GMOs. This cultivation is closely linked to land use and the conservation of fauna and flora, areas in which the Member States retain significant powers. The possibility for Member States to adopt such measures should also apply to genetically modified varieties of seed and plant propagating material which are placed on the market in accordance with relevant legislation on the marketing of seeds and plant propagating material and, in particular, in accordance with Directives 2002/53/EC and 2002/55/EC. Any such measures should refer to the cultivation of GMOs only and not to the free circulation and import of genetically modified seeds and plant propagating material, as or in products, and of the products of their harvest. Similarly, they should not affect the cultivation of non-genetically modified varieties of seed and plant propagating material in which adventitious or technically unavoidable traces of EU-authorised GMOs are found. Those measures should allow all operators concerned, including growers, sufficient time to adapt. [Am 7]

(8) In accordance with the legal framework for the authorisation of GMOs, the level of protection of human and animal health and of the environment chosen at Union level cannot be diverged from by a Member State, and this principle must be maintained. However Member States may adopt measures
restricting or prohibiting the cultivation of all or particular GMOs or of groups of GMOs or of all GMOs in all or part of their territory on the basis of grounds relating to the public interest other than those already addressed by the harmonised set of EU rules which already provide for procedures to take into account the risks that a GMO for cultivation may pose on health and the environment. Those measures may be based on grounds relating to environmental or other legitimate factors such as socio-economic impacts, which might arise from the deliberate release or the placing on the market of GMOs where those factors have not been addressed as part of the harmonised procedure provided for in Part C of Directive 2001/18/EC, or in the event of persisting scientific uncertainty. Those measures should be duly justified on scientific grounds or on grounds relating to risk management or other legitimate factors which might arise from the deliberate release or the placing on the market of GMOs. Those measures should furthermore be proportionate and in conformity with the Treaties, in particular as regards the principle of non-discrimination between domestic and imported products and Articles 34 and 36 TFEU, as well as with the relevant international obligations of the Union, notably in the context of the World Trade Organisation. [Am 8, 40]

(8a) Restrictions on or prohibitions of cultivation of GMOs by a Member State should not prevent or restrict the use of authorised GMOs by other Member States, provided effective measures are taken to prevent cross-border contamination. [Am 9]

(8b) Member States should be allowed to base the measures restricting or prohibiting the cultivation of GMOs on duly justified grounds relating to local or regional environmental impacts which might arise from the deliberate release or the placing on the market of GMOs and which are complementary to the environmental impacts examined during the scientific assessment of the impacts on the environment conducted under Part C of Directive 2001/18/EC, or grounds relating to risk management. Those grounds may include the prevention of the development of pesticide resistance amongst weeds and pests; the invasiveness or persistence of a GM variety, or the possibility of interbreeding with domestic cultivated or wild plants; the prevention of negative impacts on the local environment caused by changes in agricultural practices linked to the cultivation of GMOs; the maintenance and development of agricultural practices which offer a better potential to reconcile production with ecosystem sustainability; the maintenance of local biodiversity, including certain habitats and ecosystems, or certain types of natural and landscape features; the absence or lack of adequate data concerning the potential negative impacts of the release of GMOs on the local or regional environment of a Member State, including on biodiversity. Member States should also be allowed to base such measures on grounds relating to socio-economic impacts. Those grounds may include the impracticability or the high costs of coexistence measures or the impossibility of implementing coexistence measures due to specific geographical conditions such as small islands or mountain zones; the need to protect the diversity of agricultural production; the need to ensure seed purity. Member States should also be allowed to base such measures on other grounds that may include land use, town and country planning, or other legitimate factors. [Am 47]

(9) In accordance with the principle of subsidiarity, the purpose of this Regulation is not to harmonise the conditions of cultivation in Member States but to grant freedom flexibility to Member States to invoke other grounds than scientific assessment of health and environmental risks to ban restrict or prohibit the cultivation of GMOs on their territory on grounds relating to environmental or other legitimate factors such as socio-economic impacts, which might arise from the deliberate release or the placing on the market of GMOs where those factors have not been addressed as part of the harmonised procedure provided for in Part C of Directive 2001/18/EC or in the event of persisting scientific uncertainty. One of the purposes of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (1), which is to allow the Commission to consider the adoption of binding acts at Union level, would not be served by the systematic notification of Member States' measures under that Directive. Moreover, since Member States cannot adopt under this Regulation measures restricting or prohibiting the placing on the market of GMOs, and thus this Regulation does not modify the conditions for placing on the market of GMOs authorised under existing legislation, the notification procedure under Directive 98/34/EC does not appear to be the most appropriate channel for providing information to the

Commission. Therefore, by way of derogation, Directive 98/34/EC should not be applicable. A simpler notification system of the national measures prior to their adoption appears to be a more proportionate tool for the Commission to be aware of these measures. Measures which Member States intend to adopt should thus be communicated, together with the reasons for those measures, to the Commission and to the other Member States not later than one month prior to their adoption for information purposes.

(9a) Restrictions on or prohibitions of cultivation of GMOs by Member States should not prevent biotechnology research from being carried out provided that, in carrying out such research, all necessary safety measures are observed.

(10) Article 7(8) and Article 19(8) of Regulation (EC) No 1829/2003 provide that references made in parts A and D of Directive 2001/18/EC to GMOs authorised under part C of that Directive are to be considered as applying equally to GMOs authorised under Regulation (EC) No 1829/2003. Accordingly, measures adopted by the Member States in accordance with this Regulation should also apply to GMOs authorised in accordance with Regulation (EC) No 1829/2003.

(11) Directive 2001/18/EC should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Directive 2001/18/EC

Directive 2001/18/EC is hereby amended as follows:

(1) Article 22 is replaced by the following:

‘Article 22

Free circulation

Without prejudice to Article 23 or Article 26b, Member States shall not prohibit, restrict or impede the placing on the market of GMOs, as or in products, which comply with the requirements of this Directive.’

[Am 12]

(2) In Article 25, the following paragraph is added:

‘5a. Without prejudice to the protection of intellectual property rights, access to material necessary for independent research on potential risks arising from the deliberate release or the placing on the market of GMOs, such as seed material, shall not be restricted or impeded.’

[Am 13]
(3) Article 26a(1) is replaced by the following:

‘1. Member States shall take appropriate measures to avoid the unintended presence of GMOs in other products on their territory and in border areas of neighbouring Member States.’

[Am 14]

(4) The following Article is inserted:

‘Article 26b

Cultivation

Member States may adopt, after a case-by-case examination, measures restricting or prohibiting the cultivation of all or particular GMOs or of groups of GMOs defined by crop or trait or of all GMOs authorised in accordance with Part C of this Directive or Regulation (EC) No 1829/2003, and consisting of genetically modified varieties placed on the market in accordance with relevant Union legislation on the marketing of seed and plant propagating material, in all or part of their territory, provided that:

[Am 40]

(a) those measures are based on

(i) duly justified grounds other than those related to the assessment of the adverse effect on health and environment relating to local or regional environmental impacts which might arise from the deliberate release or the placing on the market of GMOs and which are complementary to the environmental impacts examined during the scientific assessment of the impacts on the environment conducted under Part C of this Directive, or grounds relating to risk management. Those grounds may include:

— the prevention of the development of pesticide resistance amongst weeds and pests;

— the invasiveness or persistence of a GM variety, or the possibility of interbreeding with domestic cultivated or wild plants;

— the prevention of negative impacts on the local environment caused by changes in agricultural practices linked to the cultivation of GMOs;

— the maintenance and development of agricultural practices which offer a better potential to reconcile production with ecosystem sustainability;

— the maintenance of local biodiversity, including certain habitats and ecosystems, or certain types of natural and landscape features;

— the absence or lack of adequate data concerning the potential negative impacts of the release of GMOs on the local or regional environment of a Member State, including on biodiversity;

(ii) grounds relating to socio-economic impacts. Those grounds may include:

— the impracticability or the high costs of coexistence measures or the impossibility of implementing coexistence measures due to specific geographical conditions such as small islands or mountain zones;
— the need to protect the diversity of agricultural production;

— the need to ensure seed purity; or

(iii) other grounds that may include land use, town and country planning, or other legitimate factors; [Am 41]

(aa) in cases where those measures concern GM crops which are already authorised at Union level, Member States ensure that farmers who cultivated such crops legally have sufficient time to finish the current cultivation season; [Am 17]

(ab) those measures have been the subject of a prior independent cost-benefit analysis, taking into account alternatives; [Am 42]

(ac) those measures have been the subject of a prior public consultation lasting at least 30 days; [Am 19] and

(b) those measures are in conformity with the Treaties, in particular the principle of proportionality. [Am 20]

Under the same conditions, regions within Member States may also adopt measures restricting or prohibiting the cultivation of GMOs on their territory. [Am 51]

Member States shall make publicly available any such measures to all operators concerned, including growers, at least six months before the start of the growing season. In the event that the GMO concerned is authorised less than six months before the start of the growing season, Member States shall make those measures publicly available upon their adoption. [Am 43]

Member States shall adopt those measures for a maximum of five years and shall review them when the GMO authorisation is renewed. [Am 22]

By way of derogation from Directive 98/34/EC, Member States that intend to adopt reasoned measures under this Article shall communicate them to the other Member States and to the Commission not later than one month prior to their adoption for information purposes.' [Am 23]

(5) The following Article is inserted:

‘Article 26c

Liability requirements

Member States shall establish a general mandatory system of financial liability and financial guarantees, for example through insurance, which applies to all operators and which ensures that the polluter pays for unintended effects or damage that might occur due to the deliberate release or the placing on the market of GMOs.’ [Am 24]
Article 2

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. [Am 26]

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

Done at

For the European Parliament
The President

For the Council
The President
Travel documents entitling the holder to cross the external borders and which may be endorsed with a visa

P7_TA(2011)0321

European Parliament legislative resolution of 6 July 2011 on the proposal for a decision of the European Parliament and of the Council on the list of travel documents entitling the holder to cross the external borders and which may be endorsed with a visa and on setting up a mechanism for establishing this list (COM(2010)0662 – C7-0365/2010 – 2010/0325(COD))

(2013/C 33 E/39)

(Ordinary legislative procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2010)0662),

— having regard to Article 294(2) and Article 77(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0365/2010),

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

— having regard to the undertaking given by the Council representative by letter of 29 June 2011 to approve Parliament’s position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

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

— having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A7-0237/2011),

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

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

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

P7_TC1-COD(2010)0325

Position of the European Parliament adopted at first reading on 6 July 2011 with a view to the adoption of Decision no.../EU of the European Parliament and of the Council on the list of travel documents which entitle the holder to cross the external borders and which may be endorsed with a visa and on setting up a mechanism for establishing this list

(As an agreement was reached between Parliament and Council, Parliament’s position corresponds to the final legislative act, Decision No 1105/2011/EU.)
Food information to consumers


(Ordinary legislative procedure: second reading)

The European Parliament,

— having regard to the Council position at first reading (17602/1/2010 - C7-0060/2011) (1),
— having regard to the opinion of the European Economic and Social Committee of 18 September 2008 (2),
— having regard to its position at first reading (3) on the Commission proposal to Parliament and the Council (COM(2008)0040),
— having regard to the undertaking given by the Council representative by letter of 22.6.2011 to approve Parliament’s position at second reading, in accordance with Article 294(8)(a) of the Treaty on the Functioning of the European Union,
— having regard to Article 294(7) of the Treaty on the Functioning of the European Union,
— having regard to Rule 66 of its Rules of Procedure,
— having regard to the recommendation for second reading of the Committee on the Environment, Public Health and Food Safety (A7-0177/2011),

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

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

(1) OJ C 102 E, 2.4.2011, p 1.
(2) OJ C 77, 31.3.2009, p. 81.

P7_TC2-COD(2008)0028


(As an agreement was reached between Parliament and Council, Parliament’s position corresponds to the final legislative act, Regulation (EU) No 1169/2011.)
Cross-border exchange of information on road safety related traffic offences

P7_TA(2011)0325


(2013/C 33 E/41)

(Ordinary legislative procedure: second reading)

The European Parliament,

— having regard to the Council position at first reading (17506/1/2010 - C7-0074/2011)),

— having regard to its position at first reading (1) on the Commission proposal to Parliament and the Council (COM(2008)0151),

— having regard to the undertaking given by the Council representative by letter of 22 June 2011 to approve Parliament’s position at second reading, in accordance with Article 294(8)(a) of the Treaty on the Functioning of the European Union,

— having regard to Article 294(7) of the Treaty on the Functioning of the European Union,

— having regard to Rule 66 of its Rules of Procedure,

— having regard to the recommendation for second reading of the Committee on Transport and Tourism (A7-0208/2011),

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

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

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

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

(1) OJ C 45 E, 23.2.2010, p. 149.

P7_TC2-COD(2008)0062


(As an agreement was reached between Parliament and Council, Parliament’s position corresponds to the final legislative act, Directive 2011/82/EU.)
ANNEX

Joint statement by the European Parliament and the Council on correlation tables

The agreement reached between the European Parliament and the Council on the proposal for a Directive facilitating cross-border exchange of information on road safety related traffic offences in the trilogue of 20 June 2011 does not prejudge the outcome of the ongoing inter-institutional discussions on correlation tables.

Commission statement on correlation tables

The Commissions recalls its commitment towards ensuring that Member States establish correlation tables linking the transposition measures they adopt with the EU directive and communicate them to the Commission in the framework of transposing EU legislation, in the interest of citizens, better-law making and increasing legal transparency and to assist the examination of the conformity of national rules with EU provisions.

The Commission regrets the lack of support for the provision included in the proposal for a Directive of the European Parliament and of the Council on a Directive facilitating cross-border enforcement in the field of road safety, which aimed at rendering the establishment of correlation tables obligatory.

The Commission, in a spirit of compromise and in order to ensure the immediate adoption of that proposal, can accept the substitution of the obligatory provision on correlation tables included in the text with a relevant recital encouraging Member States to follow this practice.

However, the position followed by the Commission in this file shall not be considered as a precedent. The Commission will continue its efforts with a view to finding together with the European Parliament and the Council an appropriate solution to this horizontal institutional issue.

Commission statement on road safety guidelines

The Commission will examine the need to develop guidelines at EU level in order to ensure greater convergence in the enforcement of road traffic rules by Member States through comparable methods, practices, standards and frequency of controls, in particular in relation to speeding, drink-driving, non-use of seatbelts and failing to stop at a red traffic light.

Multiannual financial framework for 2007-2013 ***

P7_TA(2011)0326


(2013/C 33 E/42)

(Special legislative procedure – consent)

The European Parliament,

— having regard to the draft Council regulation (16973/3/2010),

— having regard to the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (1),

— having regard to the request for consent submitted by the Council in accordance with Article 312 of the Treaty on the Functioning of the European Union (C7-0024/2011),

— having regard to the questions for oral answer on behalf of its Committee on Budgets to the Council (O-0074/2010 - B7-0310/2010) and to the Commission (O-0075/2010 - B7-0311/2010) of 20 May 2010 and the debate in plenary on 15 June 2010,

— having regard to its resolution of 22 September 2010 on the proposal for a Council regulation laying down the multiannual financial framework for the years 2007-2013 (1),

— having regard to Rules 75 and 81(1) of its Rules of Procedure,

— having regard to the recommendation of the Committee on Budgets (A7-0253/2011),

A. whereas the existing legal instrument laying down the multiannual financial framework needs to be amended following the entry into force of the Treaty of Lisbon,

B. whereas all three institutions have addressed this requirement as follows:

— the Commission has brought forward the so-called "Lisbon Package" involving a proposal for a Council regulation laying down the multiannual financial framework for the years 2007-2013, a draft Interinstitutional Agreement on cooperation in budgetary matters and a proposal to amend the Financial Regulation,

— the Council has established the draft Council regulation laying down the multiannual financial framework for the years 2007-2013,

— Parliament has asked oral questions, adopted a resolution, and attempted to discuss the "Lisbon Package" with the other institutions in trilogues during the 2011 budgetary procedure,

C. whereas Parliament considers that the current Interinstitutional Agreement on budgetary discipline and sound financial management continues to remain in force until the new regulation laying down the multiannual financial framework enters into force, with the exception of the articles which have become obsolete following the entry into force of the Treaty of Lisbon,

D. whereas, despite the efforts of the Belgian and Hungarian presidencies-in-office, the Council has not demonstrated any willingness to enter into negotiations on the Lisbon package, as provided for in Article 312(5) of the Treaty on the Functioning of the European Union,

E. whereas the reduction in the degree of flexibility in the multiannual financial framework proposed by the Council would curtail Parliament's powers and prerogatives in relation to those which it currently enjoys,

F. whereas the Lisbon Treaty was not intended to bring about a reduction in the prerogatives of Parliament, and Parliament is not prepared to accept such a reduction,

1. Declines to consent to the draft Council regulation laying down the multiannual financial framework for the years 2007-2013;

2. Instructs its President to declare the legislative procedure closed and to forward its position to the Council, the Commission and the national parliaments.


(2013/C 33 E/43)

(Ordinary legislative procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to Parliament and the Council (COM(2010)0462),

— having regard to Article 294(2) and Article 153(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0253/2010),

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

— having regard to the opinion of the Committee on Budgets on the proposal’s financial compatibility,

— having regard to the opinion of the European Economic and Social Committee of 21 October 2010 (\(^1\)),

— after consulting the Committee of the Regions,

— having regard to the undertaking given by the Council representative by letter of 18 May 2011 to approve Parliament’s position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

— having regard to Rules 55 and 38 of its Rules of Procedure,

— having regard to the report of the Committee on Employment and Social Affairs and the opinions of the Committee on Regional Development and the Committee on Culture and Education (A7-0061/2011),

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

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

3. 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;

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

\(^1\) OJ C 51, 17.2.2011, p. 55.

(As an agreement was reached between Parliament and Council, Parliament’s position corresponds to the final legislative act, Decision No 940/2011/EU.)

ANNEX

Joint declaration of the European Parliament, the Council and the Commission concerning the budget

As per Article 8, the financial envelope for the implementation of the European Year is at least EUR 5 000 000. EUR 2.3 million will be used from the budget 2011 without utilizing available margins to fund notably communication activities and EU conferences for the European Year, and at least EUR 2.7 million, which shall be reprioritised from existing resources without utilizing the existing margins, will be reserved and made visible in a budget line in the draft budget 2012.
<table>
<thead>
<tr>
<th>Notice No</th>
<th>Contents (continued)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Thursday 7 July 2011</strong></td>
<td></td>
</tr>
<tr>
<td>2013/C 33 E/16</td>
<td>Situation in Syria, Yemen and Bahrain in the context of the situation in the Arab world and North Africa</td>
</tr>
<tr>
<td>European Parliament resolution of 7 July 2011 on the situation in Syria, Yemen and Bahrain in the context of the situation in the Arab world and North Africa</td>
<td>158</td>
</tr>
<tr>
<td>2013/C 33 E/17</td>
<td>EU external policies in favour of democratisation</td>
</tr>
<tr>
<td>European Parliament resolution of 7 July 2011 on EU external policies in favour of democratisation (2011/2032(INI))</td>
<td>165</td>
</tr>
<tr>
<td>2013/C 33 E/18</td>
<td>Preparations for the Russian State Duma elections in December</td>
</tr>
<tr>
<td>European Parliament resolution of 7 July 2011 on the preparations for the Russian State Duma elections in December 2011</td>
<td>180</td>
</tr>
<tr>
<td>2013/C 33 E/19</td>
<td>Changes to Schengen</td>
</tr>
<tr>
<td>European Parliament resolution of 7 July 2011 on changes to Schengen</td>
<td>182</td>
</tr>
<tr>
<td>2013/C 33 E/20</td>
<td>Parliamentary cooperation in the field of CFSP/CSDP</td>
</tr>
<tr>
<td>European Parliament resolution of 7 July 2011 on the European Parliament’s approach to implementing Articles 9 and 10 of Protocol 1 to the Lisbon Treaty as regards parliamentary cooperation in the field of CFSP/CSDP</td>
<td>186</td>
</tr>
<tr>
<td>2013/C 33 E/21</td>
<td>Scheme for food distribution to the most deprived persons in the Union</td>
</tr>
<tr>
<td>European Parliament resolution of 7 July 2011 on the Scheme for food distribution to the most deprived persons in the Union</td>
<td>188</td>
</tr>
<tr>
<td>2013/C 33 E/22</td>
<td>Progress on mine action</td>
</tr>
<tr>
<td>2013/C 33 E/23</td>
<td>Democratic Republic of Congo and the mass rapes in the province of South Kivu</td>
</tr>
<tr>
<td>European Parliament resolution of 7 July 2011 on the Democratic Republic of Congo and the mass rapes in the province of South Kivu</td>
<td>198</td>
</tr>
<tr>
<td>2013/C 33 E/24</td>
<td>Indonesia, including attacks on minorities</td>
</tr>
<tr>
<td>European Parliament resolution of 7 July 2011 on Indonesia, including attacks on minorities</td>
<td>201</td>
</tr>
<tr>
<td>2013/C 33 E/25</td>
<td>India, in particular the death sentence on Davinder Pal Singh</td>
</tr>
<tr>
<td>European Parliament resolution of 7 July 2011 on India, in particular the death sentence on Davinder Pal Singh</td>
<td>204</td>
</tr>
</tbody>
</table>
III  Preparatory acts

EUROPEAN PARLIAMENT

Tuesday 5 July 2011

2013/C 33 E/26 Mobilisation of Globalisation Adjustment Fund: Odense Steel Shipyard/Denmark

ANNEX ................................................................. 208

2013/C 33 E/27 Mobilisation of the EU Solidarity Fund - flooding in Slovenia, Croatia and the Czech Republic in 2010

ANNEX ................................................................. 209

2013/C 33 E/28 Draft amending budget No 2/2011: flooding in Slovenia, Croatia and the Czech Republic in 2010

2013/C 33 E/29 Mobilisation of Globalisation Adjustment Fund: LM Glasfiber company/Denmark

ANNEX ................................................................. 228

2013/C 33 E/30 Agency for the operational management of large-scale IT systems in the area of freedom, security and justice ***1

P7_TC1-COD(2009)0089

ANNEX TO THE LEGISLATIVE RESOLUTION ................................................................. 230

(Continued overleaf)
<table>
<thead>
<tr>
<th>Notice No</th>
<th>Contents (continued)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013/C 33 E/31</td>
<td>Products that may benefit from exemption from or a reduction in dock dues *&lt;br&gt;European Parliament legislative resolution of 5 July 2011 on the proposal for a Council decision amending Decision 2004/162/EC as regards the products that may benefit from exemption from or a reduction in dock dues (COM(2010)0749 – C7-0022/2011 – 2010/0359(CNS))</td>
</tr>
</tbody>
</table>


ANNEX TO THE LEGISLATIVE RESOLUTION 297


(1) Text with EEA relevance
Possibility for the Member States to restrict or prohibit the cultivation of GMOs in their territory


P7_TC1-COD(2010)0208
Position of the European Parliament adopted at first reading on 5 July 2011 with a view to the adoption of Regulation (EU) No .../2011 of the European Parliament and of the Council amending Directive 2001/18/EC as regards the possibility for the Member States to restrict or prohibit the cultivation of GMOs in their territory (1) 351

Wednesday 6 July 2011

Travel documents entitling the holder to cross the external borders and which may be endorsed with a visa

European Parliament legislative resolution of 6 July 2011 on the proposal for a decision of the European Parliament and of the Council on the list of travel documents entitling the holder to cross the external borders and which may be endorsed with a visa and on setting up a mechanism for establishing this list (COM(2010)0662 – C7-0365/2010 – 2010/0325(COD)) ......................................................... 359

P7_TC1-COD(2010)0325
Position of the European Parliament adopted at first reading on 6 July 2011 with a view to the adoption of Decision no .../.../EU of the European Parliament and of the Council on the list of travel documents which entitle the holder to cross the external borders and which may be endorsed with a visa and on setting up a mechanism for establishing this list ................................................................. 359

Food information to consumers


P7_TC2-COD(2008)0028

Cross-border exchange of information on road safety related traffic offences


P7_TC2-COD(2008)0062

ANNEX ................................................................. 362

(1) Text with EEA relevance

(Continued overleaf)
Multiannual financial framework for 2007-2013 ***


Thursday 7 July 2011

European Year for Active Ageing (2012) ***I


P7_TC1-COD(2010)0242


ANNEX ................................................................. 365
### Key to symbols used

<table>
<thead>
<tr>
<th>Symbol</th>
<th>Procedure Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>*</td>
<td>Consultation procedure</td>
</tr>
<tr>
<td>**I</td>
<td>Cooperation procedure: first reading</td>
</tr>
<tr>
<td>**II</td>
<td>Cooperation procedure: second reading</td>
</tr>
<tr>
<td>***</td>
<td>Assent procedure</td>
</tr>
<tr>
<td>****I</td>
<td>Codecision procedure: first reading</td>
</tr>
<tr>
<td>****II</td>
<td>Codecision procedure: second reading</td>
</tr>
<tr>
<td>****III</td>
<td>Codecision procedure: third reading</td>
</tr>
</tbody>
</table>

(The type of procedure is determined by the legal basis proposed by the Commission.)

Political amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ■.

Technical corrections and adaptations by the services: new or replacement text is highlighted in italics and deletions are indicated by the symbol ||.
## 2013 Subscription Prices (excluding VAT, including normal transport charges)

<table>
<thead>
<tr>
<th>Package Description</th>
<th>Languages</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU Official Journal, L + C series, paper edition only</td>
<td>22 official EU languages</td>
<td>EUR 1,300 per year</td>
</tr>
<tr>
<td>EU Official Journal, L + C series, paper + annual DVD</td>
<td>22 official EU languages</td>
<td>EUR 1,420 per year</td>
</tr>
<tr>
<td>EU Official Journal, L series, paper edition only</td>
<td>22 official EU languages</td>
<td>EUR 910 per year</td>
</tr>
<tr>
<td>EU Official Journal, L + C series, monthly DVD (cumulative)</td>
<td>22 official EU languages</td>
<td>EUR 100 per year</td>
</tr>
<tr>
<td>Supplement to the Official Journal (S series), tendering procedures for public contracts, DVD, one edition per week</td>
<td>multilingual: 23 official EU languages</td>
<td>EUR 200 per year</td>
</tr>
<tr>
<td>EU Official Journal, C series — recruitment competitions</td>
<td>Language(s) according to competition(s)</td>
<td>EUR 50 per year</td>
</tr>
</tbody>
</table>

Subscriptions to the *Official Journal of the European Union*, which is published in the official languages of the European Union, are available for 22 language versions. The Official Journal comprises two series, L (Legislation) and C (Information and Notices).

A separate subscription must be taken out for each language version.

In accordance with Council Regulation (EC) No 920/2005, published in Official Journal L 156 of 18 June 2005, the institutions of the European Union are temporarily not bound by the obligation to draft all acts in Irish and publish them in that language. Irish editions of the Official Journal are therefore sold separately.

Subscriptions to the Supplement to the Official Journal (S Series — tendering procedures for public contracts) cover all 23 official language versions on a single multilingual DVD.

On request, subscribers to the *Official Journal of the European Union* can receive the various Annexes to the Official Journal. Subscribers are informed of the publication of Annexes by notices inserted in the *Official Journal of the European Union*.

### Sales and subscriptions

Subscriptions to various priced periodicals, such as the subscription to the *Official Journal of the European Union*, are available from our sales agents. The list of sales agents is available at:


EUR-Lex (http://eur-lex.europa.eu) offers direct access to European Union legislation free of charge. The *Official Journal of the European Union* can be consulted on this website, as can the Treaties, legislation, case-law and preparatory acts.

For further information on the European Union, see: http://europa.eu