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Access to Community external assistance *I**

European Parliament legislative resolution on the proposal for a regulation of the European Parliament and of the Council on the access to Community External Assistance (COM(2004)0313 – C6-0032/2004 – 2004/0099(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2004)0313)¹,
 - having regard to Article 251(2) and Article 179 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0032/2004),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Development and the opinion of the Committee on Foreign Affairs (A6-0182/2005),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

¹ Not yet published in OJ.

Position of the European Parliament adopted at first reading on 23 June 2005 with a view to the adoption of Regulation (EC) No.../2005 of the European Parliament and of the Council *on access to Community external assistance*

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the *Commission*,

Having regard to the opinion of the European Economic and Social Committee¹,

Having *consulted* the Committee of the *Regions*,

Acting in accordance with the procedure laid down in Article 251 of the Treaty²,

Whereas:

- (1) The practice of tying the granting of aid, directly or indirectly, to the purchase of goods and services procured by means of that aid in the donor country reduces its effectiveness and is not coherent with a pro-poor development policy. The untying of aid is not an aim in itself, but should be used as a tool to cross-fertilise other elements in the fight against poverty such as ownership, regional integration and capacity building, ***with a focus on empowering local and regional suppliers of goods and services in developing countries.***
- (2) In March 2001, the Development Assistance Committee of the Organisation for Economic Co-operation and Development (OECD/DAC) adopted a “Recommendation on Untying Official Development Assistance to the Least Developed Countries”³. The *Member States adopted* those recommendations and *the Commission* recognised the spirit of this Recommendation as a guidance for Community aid.

¹ OJ C 157, 28.6.2005, p. 99.

² *Position of the European Parliament of 23 June 2005.*

³ OECD/DAC 2001 Report, 2002, Volume 3, N°1, p. 46.

- (3) On 14 March 2002, the General Affairs Council held in conjunction with the European Council in Barcelona in preparation for the International Conference on Financing for Development, convened in Monterrey on 18-22 March 2002, concluded that the European Union (EU) would "implement the DAC recommendation on untying of aid to Least Developed Countries and continue discussions in view of further untying bilateral aid. The EU will also consider steps towards further untying of Community aid while maintaining the existing system of price preferences of the EU-ACP framework."
- (4) On 18 November 2002, the Commission adopted a communication to the European Parliament and to the Council on "Untying: *Enhancing the effectiveness of aid*". It presented the Commission's views on the issue and possible options for the implementation of the *above-mentioned* Barcelona commitment within the EU Aid Assistance system.
- (5) In its *Conclusions on the Untying of Aid of 20 May 2003* the Council underlined the need to further untie Community aid. It agreed to the modalities detailed on the *above-mentioned* Communication and decided on the options proposed.
- (6) On 4 September 2003, *the European Parliament adopted a resolution on the above-mentioned Commission communication*¹, in which it noted the need to further untie Community aid. It supported the modalities detailed in *that* Communication and agreed to the options proposed. It highlighted the need for further debate geared towards more untying on the *basis of further studies and documented proposals, and called explicitly for "a clear preference for local and regional cooperation, prioritising - in ranking order - suppliers from the recipient country, neighbouring developing countries and other developing countries", in order to strengthen the efforts of the recipient countries to improve their own production at national, regional, local and family level, as well as actions aimed at improving the availability and accessibility to the public of foodstuffs and basic services, consistent with local habits and production and trading systems.*

¹ OJ C 76 E, 25.3.2004, p. 474.

- (7) Several elements need to be addressed in order to *define access* to Community *external assistance*. The rules of eligibility governing access by persons are *laid down* in Article 3. The rules governing the ***engagement of experts*** and the origin of supplies and materials purchased by eligible persons are *laid down* in **Articles 4 and 5 respectively**. **The** definition and modalities of implementation of reciprocity are contained in Article 6. Derogations and their implementation are *provided for* in Article 7. Specific provisions *concerning operations* financed through an international organisation or a regional organisation, or co-financed with a third country, are *laid down* in Article 8. Specific provisions *concerning humanitarian aid* are *laid down* in Article 9.
- (8) Access to Community external assistance is defined in the basic acts regulating such assistance, in conjunction with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities¹ ("*the Financial Regulation*"). The changes made by this Regulation to access to Community aid entail amendments to all those ***instruments***. **All** the modifications to all *the* basic acts concerned are listed in Annex I to this Regulation.
- (9) **When awarding tenders under a Community instrument, special consideration will be given to respect for internationally agreed core labour standards of the International Labour Organization (ILO), e.g. the conventions on freedom of association and collective bargaining, elimination of forced and compulsory labour, elimination of discrimination in respect of employment and occupation, and the abolition of child labour.**

¹ OJ L 248, 16.9.2002, p. 1.

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

HAVE ADOPTED THIS REGULATION:

Article 1

Scope

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

Article 2

Definition

For the interpretation of the terms used in this *Regulation*, reference is made to *the Financial Regulation and to Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002¹ laying down detailed rules for the implementation of the Financial Regulation.*

¹ OJ L 357, 31.12.2002, p. 1.

Article 3

Rules of eligibility

1. Participation in the award of procurement or grant contracts financed under a Community *instrument shall* be open to all legal persons who are *established in a Member State* of the European Community, *in* an official candidate country as recognised by the European Community *or in* a Member State of the European Economic Area.
2. Participation in the award of procurement or grant contracts financed under a Community instrument with thematic scope, as defined in Annex I, Part A, shall be open to all legal persons who are *established in a **developing country***, as *specified in the OECD/DAC **list** contained **in Annex II***, in addition to those legal persons already eligible by virtue of *the instrument concerned*.
3. Participation in the award of procurement or grant contracts financed under a Community instrument with geographical scope, as defined in Annex I, Part B, shall be open to all legal persons who are *established in a **developing country*** as *specified in the OECD/DAC **list** contained **in Annex II** and who* are expressly mentioned as eligible, *and* to those already *stated to be* eligible by *the instrument concerned*.
4. Participation in the award of procurement or grant contracts financed under a Community instrument shall be open to all legal persons who are *established in any country other* than those referred in paragraphs 1, 2 and 3, *where reciprocal* access to their external assistance has been established pursuant to **Article 6**.

5. ***Participation*** in the award of procurement or grant contracts financed under a Community instrument shall be open to international organisations.
6. The above is without prejudice to the categories of organisations eligible *for the award of any contract, or to the derogation contained in Article 114(1) of the Financial Regulation.*

Article 4

Experts

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

Article 5

Rules of origin

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

Article 6

Reciprocity with third countries

1. Reciprocal access to *the Community's* external assistance shall be granted for a country falling *within* the scope of Article 3(4), whenever such country grants eligibility on equal terms to the Member States *and to the recipient country concerned*.
2. The granting of reciprocal access to *the Community's* external assistance shall be based on a comparison between the EU and other donors and shall *proceed at sectoral* level, as defined by the OECD/DAC categories, or *at* country level, *whether the country concerned is a* donor or a recipient *country*. The decision *to grant such* reciprocity to a donor country shall be based on the transparency, consistency and proportionality of the aid provided by that donor, including its qualitative and quantitative nature.
3. Reciprocal access to *the Community's* external assistance shall be established by means of a specific decision concerning a given country or a given regional group of countries. Such a decision shall be adopted in accordance *with Council* Decision 1999/468/EC of 28 June 1999 *laying down the procedures for the exercise of implementing powers conferred on the Commission*¹ under the procedures and relevant committee *associated with the act* concerned. *The right of the European Parliament to be regularly informed pursuant to Article 7(3) of that Decision shall be fully respected*. Such a decision shall *run* for a minimum period of one year.

¹ OJ L 184, 17.7.1999, p. 23.

4. Reciprocal access to *the Community's* external assistance *in the Least Developed Countries as listed in Annex II* shall be automatically *granted to* the third countries listed in Annex III.
5. The *recipient* countries shall be *consulted in* the *procedure* described in paragraphs *1, 2 and 3*.

Article 7

Derogations from the rules of eligibility and origin

1. In duly substantiated exceptional cases, the Commission may extend *eligibility to legal persons* from a country not eligible *under* Article 3.
2. In duly substantiated exceptional cases, the Commission may allow the purchase of supplies and materials originating from a country not eligible under Article 3.
3. Derogations *as provided for* in *paragraphs 1 and 2* may be justified on the basis of *the unavailability of* products and services in *the markets of the countries concerned*, for reasons of extreme urgency, or if the eligibility rules would make the realisation of a project, a programme or an action impossible or exceedingly difficult.

Article 8

Operations involving international institutions or *co-financing*

1. Whenever Community funding covers an operation implemented through an international organisation, participation in the appropriate contractual procedures shall be open to all legal persons who are eligible *pursuant* to Article 3 as well as to all legal persons who are eligible *pursuant* to the rules of *that* organisation, care being taken *to ensure that* equal treatment *is afforded* to all donors. The same rules *shall* apply *in respect of* supplies, materials *and experts*.
2. Whenever Community funding covers an operation co-financed with a third country, subject to reciprocity as defined in *Article 6*, or with a regional organisation, *or a Member State*, participation in the appropriate contractual procedures shall be open to all legal persons who are eligible *pursuant* to Article 3 as well as to all legal persons who are *eligible under the rules* of such *a* third country, regional organisation *or Member State*. The same rules *shall* apply *in respect of* supplies, materials *and experts*.
3. *As far as food aid operations are concerned, the application of this Article shall be limited to emergency operations.*

Article 9

Humanitarian aid *and* NGOs

1. For the purposes of humanitarian aid, within the meaning of Council *Regulation* (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid¹ *and for the purposes of aid channelled directly through NGOs, within the meaning of Council Regulation (EC) No 1658/98 of 17 July 1998 on co-financing operations with European non-governmental development organisations (NGOs) in fields of interest to the developing countries*², the provisions of Article 3 shall not apply to the eligibility criteria established for the selection of grant beneficiaries.
2. Beneficiaries of these grants shall abide by the rules established in this *Regulation* where the implementation of the assisted humanitarian action *and aid channelled directly through NGOs within the meaning of Regulation (EC) No 1658/98* requires the award of procurement contracts.

Article 10

Respect for core principles and strengthening local markets

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

¹ OJ L 163, 2.7.1996, p. 1. Regulation as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

² OJ L 213, 30.7.1998, p. 1. Regulation as amended by Regulation (EC) No 1882/2003.

2. *Tenderers who have been awarded contracts shall respect internationally agreed core labour standards, e.g. the ILO core labour standards, conventions on freedom of association and collective bargaining, elimination of forced and compulsory labour, elimination of discrimination in respect of employment and occupation, and the abolition of child labour.*
3. *Access by developing countries to Community external assistance shall be rendered possible by all such technical assistance as is deemed appropriate.*

Article 11

Implementation of the Regulation

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

Article 12

Entry into force

This Regulation shall enter into force on the day following 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

ANNEX I

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

PART A. Community instruments with a thematic scope

- (1) Regulation (EC) No 1568/2003 of the European Parliament and of the Council of 15 July 2003 on aid to fight poverty diseases (HIV/AIDS, tuberculosis and malaria) in developing countries¹:
 - *in Article 5(3) the following sentence is added: “Participation in contractual procedures implemented through an international organisation or co-financed with a third country is defined in Regulation (EC) No/2005 of the European Parliament and of the Council of on access to Community external assistance”.*
 - *Article 8(1) is replaced by the following: “Eligibility for participation in tendering procedures under this Regulation shall be determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 [on access to Community external assistance]”.*
 - *Article 8(2) is replaced by the following: “The origin of supplies and materials purchased under this Regulation shall be determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 [on access to Community external assistance]”.*

¹ OJ L 224, 6.9.2003, p. 7.

- (2) Regulation (EC) No 1567/2003 of the European Parliament and of the Council of 15 July 2003 on aid for policies and actions on reproductive and sexual health and rights in developing countries¹:
- in Article 5(3) the following sentence is added: “Participation in contractual procedures implemented through an international organisation or co-financed with a third country is defined in Regulation (EC) No/2005 of the European Parliament and of the Council on access to Community external assistance”.
 - Article 8(1) is replaced by the following: “Eligibility for participation in tendering procedures under this Regulation shall be determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 [on access to Community external assistance]”.
 - Article 8(2) is replaced by the following: “The origin of supplies and materials purchased under this Regulation shall be determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 [on access to Community external assistance]”.
- (3) Regulation (EC) No 1724/2001 of the European Parliament and of the Council of 23 July 2001 concerning action against anti-personnel landmines in developing countries²:
- Article 4(2) is replaced by the following: “Eligibility for participation in tendering procedures under this Regulation shall be determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 of the European Parliament and of the Council of on access to Community external assistance”.
 - in Article 8(2) the following sentence is added: “Participation in contractual procedures implemented through an international organisation or co-financed with a third country is defined in Regulation (EC) No/2005 [on access to Community external assistance]”.

¹ OJ L 224, 6.9.2003, p. 1.

² OJ L 234, 1.9.2001, p. 1

- (4) Council Regulation (EC) No 1725/2001 of 23 July 2001 concerning action against anti-personnel landmines in third countries other than developing countries¹:
- *in Article 4(2) the following sentence is added: “Eligibility for participation in tendering procedures under this Regulation shall be determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 of the European Parliament and of the Council of on access to Community external assistance”.*
 - *in Article 7(3) the following sentence is added: “Participation in contractual procedures implemented through an international organisation or co-financed with a third country is defined in Regulation (EC) No/2005 [on access to Community external assistance]”.*
- (5) Regulation (EC) No 2493/2000 of the European Parliament and of the Council of 7 November 2000 on measures to promote the full integration of the environmental dimension in the development process of developing countries²:
- *in Article 5(3) the following sentence is added: “Participation in contractual procedures implemented through an international organisation or co-financed with a third country is defined in Regulation (EC) No/2005 of the European Parliament and of the Council of on access to Community external assistance”.*
 - *Article 8(8) is replaced by the following: “Eligibility for participation in tendering procedures under this Regulation shall be determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 [on access to Community external assistance]”.*
 - *Article 8(9) is replaced by the following: “The origin of supplies and materials purchased under this Regulation shall be determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 [on access to Community external assistance]”.*

¹ OJ L 234, 1.9.2001, p. 6.

² OJ L 288, 15.11.2000, p. 1.

- (6) Regulation (EC) No 2494/2000 of the European Parliament and of the Council of 7 November 2000 on measures to promote the conservation and sustainable management of tropical forests and other forests in developing countries¹:
- *in Article 6(3) the following sentence is added: “Participation in contractual procedures implemented through an international organisation or co-financed with a third country is defined in Regulation (EC) No/2005 of the European Parliament and of the Council of on access to Community external assistance”.*
 - *Article 9(8) is replaced by the following: “Eligibility for participation in tendering procedures under this Regulation shall be determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 [on access to Community external assistance]”.*
 - *Article 9(9) is replaced by the following: “The origin of supplies and materials purchased under this Regulation shall be determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 [on access to Community external assistance]”.*
- (7) Council Regulation (EC) No 975/1999 of 29 April 1999 laying down the requirements for the implementation of development cooperation operations which contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms²:
- *Article 5 is replaced by the following: “Eligibility for grant contracts shall be determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 of the European Parliament and of the Council of on access to Community external assistance”.*

¹ OJ L 288, 15.11.2000, p. 6.

² OJ L 120, 8.5.1999, p. 1. Regulation as last amended by Regulation (EC) No 2240/2004 of the European Parliament and of the Council (OJ L 390, 31.12.2004, p. 3).

- Article 8(1) is replaced by the following: “*Eligibility for participation in tendering procedures under this Regulation shall be determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 [on access to Community external assistance]*”.
 - Article 8(2) is replaced by the following: “*The origin of supplies and materials purchased under this Regulation shall be determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 [on access to Community external assistance]*”.
- (8) Council Regulation (EC) No 976/1999 of 29 April 1999 laying down the requirements for the implementation of Community operations, other than those of development cooperation, which, within the framework of Community cooperation policy, contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms in third countries¹:
- *in Article 5(1) the following sentence is added: “Eligibility for grant contracts shall be further determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 of the European Parliament and of the Council of on access to Community external assistance”.*
 - *in Article 6 the following shall be added: “To be eligible for Community aid, the partners referred to in Article 5(1) must have their main headquarters in a country eligible for Community aid under this Regulation, as well as under Regulation (EC) No/2005 [on access to Community external assistance]. Such headquarters must be the effective decision-making centre for all operations financed under this Regulation. Exceptionally, the headquarters may be in another third country”.*

¹ OJ L 120, 8.5.1999, p. 8. Regulation as last amended by Regulation (EC) No 2242/2004 (OJ L 390, 31.12.2004, p. 21).

- in Article 9(1) the following sentence shall be added: “Eligibility for participation in tendering procedures under this Regulation shall be determined in accordance with the rules of nationality and origin, and the derogations therefrom, laid down in this Regulation, as well as those contained in Regulation (EC) No/2005 [on access to Community external assistance]”.
 - in Article 9(2) the following sentence shall be added: “The origin of supplies and materials purchased under this Regulation shall be further determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 [on access to Community external assistance]”.
- (9) Council Regulation (EC) No 2836/98 of 22 December 1998 on integrating of gender issues in development cooperation¹:
- in Article 5(4) the following sentence is added: “Participation in contractual procedures implemented through an international organisation or co-financed with a third country is defined in Regulation (EC) No/2005 of the European Parliament and of the Council of on access to Community external assistance”.
 - Article 7(6) is replaced by the following: “Eligibility for participation in tendering procedures under this Regulation shall be determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No...../2005 [on access to Community external assistance]”.
 - Article 7(7) is replaced by the following: “The origin of supplies and materials purchased under this Regulation shall be determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 [on access to Community external assistance]”.

¹ OJ L 354, 30.12.1998, p. 5. Regulation as amended by Regulation (EC) No 1882/2003.

- (10) Council Regulation (EC) No 1658/98 of 17 July 1998 on co-financing operations with European non-governmental organisations (NGOs) in fields of interest to the developing countries¹:
- Article 3(1) (second indent) is replaced by the following: “They must have a *headquarters* in an eligible country and the *headquarters* must be the main centre for decisions relating to the co-financed operations, as defined in *Regulation (EC) No/2005 of the European Parliament and of the Council of on access to Community external assistance*”.
 - Article 3(1) (third indent) is replaced by the following: “The majority of their funding must originate in an eligible country as defined in *Regulation (EC) No/2005 [on access to Community external assistance]*”.
 - Article 3(3) is added *as follows*: “The origin of supplies and materials purchased under this Regulation *shall be determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 [on access to Community external assistance]*”.
- (11) Commission Regulation (EC) No 2519/97 of 16 December 1997 laying down general rules for the mobilization of products to be supplied under Council Regulation (EC) No 1292/96 as Community food aid²:
- Article 2(1) is replaced by the *following*: “*Eligibility* for participation in tendering procedures under this Regulation *shall be determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 of the European Parliament and of the Council of on access to Community external assistance*”.

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

² OJ L 346, 17.12.1997, p. 23.

- Article 4(1) and (2) is replaced by the following: “The origin of supplies and materials purchased under this Regulation *shall be determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 [on access to Community external assistance]*”.
 - Article 4(3) and (4) is deleted.
- (12) Council Regulation (EC) No 2046/97 of 13 October 1997 on north-south *cooperation* in the campaign against drugs and drug addiction¹:
- Article 5 is replaced by the following: “The cooperation partners eligible for financial support under this Regulation shall be regional and international *organisations*, in particular UNDCP, non-governmental *organisations*, national, provincial and local government departments and agencies, community-based *organisations*, institutes and public and private *operators*. *Eligibility for grant contracts shall be determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 of the European Parliament and of the Council of on access to Community external assistance*”.
 - in Article 6(5) the following sentence is added: “Participation in contractual procedures implemented through an international organisation or co-financed with a third country is defined in *Regulation (EC) No/2005 [on access to Community external assistance]*”.
 - Article 9(7) is replaced by the following: “*Eligibility for participation in tendering procedures under this Regulation shall be determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 [on access to Community external assistance]*”.

¹ OJ L 287, 21.10.1997, p. 1.

- Article 9(8) *is replaced by the following*: “The origin of supplies and materials purchased under this Regulation *shall be determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 [on access to Community external assistance]*”.
- (13) Council Regulation (EC) No 2258/96 of 22 November 1996 on rehabilitation and reconstruction operations in developing countries¹:
- *in Article 4(4) the following sentence is added*: “Participation in contractual procedures implemented through an international organisation or co-financed with a third country is defined in *Regulation (EC) No/2005 of the European Parliament and of the Council of on access to Community external assistance*”.
 - Article 6(7) is replaced by the following: “*Eligibility for participation in tendering procedures under this Regulation shall be determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 [on access to Community external assistance]*”.
 - Article 6(8) is replaced by the following: “The origin of supplies and materials purchased under this Regulation *shall be determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 [on access to Community external assistance]*”.

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

(14) Council Regulation (EC) No 1292/96 of 27 June 1996 on food-aid policy and food-aid management and special operations in support of food *security*¹:

– Article 9 is replaced by the following:

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

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

Eligibility for grant contracts shall be determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 of the European Parliament and of the Council of on access to Community external assistance.

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

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

- (a) if they are *NGOs*, they must be autonomous *organisations* in an eligible country under the laws in force in that country;
 - (b) they must have their headquarters in an eligible *country*. This headquarters must be the effective decision-making centre for all co-financed operations;
 - (c) *they must* show that they can successfully carry out food-aid operations; in particular through:
 - their administrative and financial management capacity,
 - their technical and logistical capacity to handle the proposed operation,
 - the results of operations implemented by the relevant NGOs carried out with Community finance or finance from the Member States,
 - their experience in the field of food aid and food security,
 - their presence in the recipient country and their knowledge of that country or of developing countries;
 - (d) *they must* undertake to comply with the conditions laid down by the Commission for the allocation of food aid.”
- in Article 10(2) *the* following sentence is added: “Participation in contractual procedures implemented through an international organisation or co-financed with a third country is defined in *Regulation (EC) No/2005 [on access to Community external assistance]*”.
 - Article 11(1) is replaced by the *following*: “*Products* shall be *mobilised* in the recipient country or in one of the developing countries (listed in the Annex), if possible one belonging to the same geographical region as the recipient *country*. *The* origin of supplies and materials purchased under this Regulation *shall be determined in accordance with* the rules of nationality and origin, and *the* derogations *therefrom, contained in Regulation (EC) No/2005 [on access to Community external assistance]*”.

- Article 11(3) is deleted.
- Article 11(4) becomes Article 11(3).
- Article 17 (first indent) is replaced by the following: “*Eligibility for participation in tendering procedures under this Regulation shall be determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 [on access to Community external assistance]*”.

PART B. Community instruments with a geographical scope

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

- in Article 8(7) the following sentence is added to the first subparagraph: “*Eligibility for participation in tendering procedures under this Regulation shall be further determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 of the European Parliament and of the Council of on access to Community external assistance*”.
- in Article 8(7) the following sentence is added to the second subparagraph: “*Participation in contractual procedures implemented through an international organisation or co-financed with a third country is further defined in Regulation (EC) No/2005 [on access to Community external assistance]*”.

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

- *in Article 8 the following sentence shall be added to paragraph 8 : “The origin of supplies and materials purchased under this Regulation shall be further defined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 [on access to Community external assistance]”.*
- (16) Regulation (EC) No 257/2001 of the European Parliament and of the Council of 22 January 2001 regarding the implementation of measures to promote economic and social development in Turkey¹:
- *in Article 5(5) the following sentence is added: “Participation in contractual procedures implemented through an international organisation or co-financed with a third country is also defined in Regulation (EC) No/2005 of the European Parliament and of the Council of on access to Community external assistance”.*
 - *in Article 6(7) the following sentence is added: “Eligibility for participation in tendering procedures under this Regulation shall be further determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 [on access to Community external assistance]”.*
 - *in Article 6(8) the following sentence is added: “The origin of supplies and materials purchased under this Regulation shall be further defined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 [on access to Community external assistance]”.*

¹ OJ L 39, 9.2.2001, p. 1.

(17) Regulation (EC) No 2130/2001 of the European Parliament and of the Council of 29 October 2001 on operations to aid uprooted people in Asia and Latin American developing countries¹:

- *in Article 7(3): the following sentence is added: “Participation in contractual procedures implemented through an international organisation or co-financed with a third country is also defined in Regulation (EC) No/2005 of the European Parliament and of the Council of on access to Community external assistance”.*
- *in Article 10(2) the following sentence is added: “Community assistance is available to partners who have their main office in a country eligible under this Regulation, as well as under Regulation (EC) No/2005 [on access to Community external assistance], provided that this office is the actual centre directing operations relating to their business activities. In exceptional cases, this office may be located in another third country”.*
- *in Article 13(1) the following sentence is added: “Eligibility for participation in tendering procedures under this Regulation shall be further determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 [on access to Community external assistance]”.*
- *in Article 13(2) the following sentence is added: “The origin of supplies and materials purchased under this Regulation shall be further determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 [on access to Community external assistance]”.*

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

- (18) Council Regulation (EC) No 2666/2000 of 5 December 2000 *on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia*¹:
- *in Article 7(3) the following sentence is added: “Eligibility for participation in tendering procedures under this Regulation shall be further determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 of the European Parliament and of the Council of on access to Community external assistance”.*
 - *Article 7(4): is replaced by the following: “Participation in contractual procedures implemented through an international organisation or co-financed with a third country is defined in Regulation (EC) No/2005 [on access to Community external assistance]”.*
- (19) Regulation (EC) No 1726/2000 of the European Parliament and of the Council of 29 June 2000 *on development cooperation with South Africa*²:
- *Article 7 (6) is replaced by the following: “Eligibility for participation in tendering procedures under this Regulation shall be determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 of the European Parliament and of the Council of on access to Community external assistance”.*
 - *Article 7(7) is replaced by the following: “The origin of supplies and materials purchased under this Regulation shall be determined in accordance with the rules of nationality and origin, and derogations therefrom, contained in Regulation (EC) No/2005 [on access to Community external assistance]”.*

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

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

(20) Council Regulation (EC, Euratom) No 99/2000 of 29 December 1999 concerning the provision of assistance to the partner States in Eastern Europe and Central Asia¹:

- *in Article 11(3) the following sentence is added: “The origin of supplies and materials purchased under this Regulation shall be further determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 of the European Parliament and of the Council of on access to Community external assistance”.*
- *in Article 11(4) the following sentence is added: “Eligibility for participation in tendering procedures under this Regulation shall be further determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 [on access to Community external assistance]”.*
- *in Article 11(5) the following sentence is added: “Participation in contractual procedures implemented through an international organisation or co-financed with a third country is further defined in Regulation (EC) No/2005 [on access to Community external assistance]”.*

(21) Council Regulation (EC) No 1267/1999 of 21 June 1999 establishing an Instrument for Structural Policies for Pre-accession²:

- *in Article 6a(1) the following sentence is added: “Eligibility for participation in tendering procedures under this Regulation shall be further determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 of the European Parliament and of the Council of on access to Community external assistance”.*

¹ OJ L 12, 18.1.2000, p. 1.

² OJ L 161, 26.6.1999, p. 73. Regulation as last amended by Regulation (EC) No 2257/2004.

- *in Article 6a(2) the following sentence is added: “Participation in contractual procedures implemented through an international organisation or co-financed with a third country is further defined in Regulation (EC) No/2005 [on access to Community external assistance]”.*
- (22) Council Regulation (EC) No 1268/1999 of 21 June 1999 on Community support for pre-accession measures for agriculture and rural development in the applicant countries of *central* and *eastern* Europe in the pre-accession period¹:
- *in Article 3(3) the following sentence is added: “Eligibility for participation in tendering procedures under this Regulation shall be determined in accordance with the rules of nationality and origin and the derogations therefrom laid down herein, as well as in Regulation (EC) No/2005 of the European Parliament and of the Council of on access to Community external assistance”.*
- (23) Council Regulation (EC) No 1488/96 of 23 July 1996 on financial and technical measures to accompany (MEDA) the reform of economic and social structures in the framework of the Euro-Mediterranean Partnership²:
- *in Article 8(1) the following sentence is added: “Eligibility for participation in tendering procedures under this Regulation shall be determined in accordance with the rules of nationality and origin and the derogations therefrom laid down herein, as well as in Regulation (EC) No/2005 of the European Parliament and of the Council of on access to Community external assistance”.*
 - *in Article 8(8) the following sentence is added: “Participation in contractual procedures implemented through an international organisation or co-financed with a third country is defined in Regulation (EC) No/2005 [on access to Community external assistance]”.*

¹ OJ L 161, 26.6.1999, p. 87. Regulation as last amended by Regulation (EC) No 2257/2004.

² OJ L 189, 30.7.1996, p. 1.

- (24) Council Regulation (EC) No 1734/94 of 11 July 1994 on financial and technical cooperation with the Occupied Territories¹:
- in Article 2(4) the following sentence is added: “Participation in contractual procedures implemented through an international organisation is further defined in Regulation (EC) No/2005 of the European Parliament and of the Council of on access to Community external assistance”.
- (25) Council Regulation (EEC) No 1762/92 of 29 June 1992 on the implementation of the Protocols on financial and technical cooperation concluded by the Community with Mediterranean non-member countries²:
- in Article 2(1) the following sentence is added: “Participation in contractual procedures implemented through an international organisation or co-financed with a third country is further defined in Regulation (EC) No/2005 of the European Parliament and of the Council of on access to Community external assistance”.
- (26) Council Regulation (EEC) No 443/92 of 25 February 1992 on financial and technical assistance to, and economic cooperation with, the developing countries in Asia and Latin America³:
- in Article 9 the following sentence is added: “Participation in contractual procedures implemented through an international organisation or co-financed with a third country is further defined in Regulation (EC) No/2005 of the European Parliament and of the Council of on access to Community external assistance”.

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

² OJ L 181, 1.7.1992, p. 1.

³ OJ L 52, 27.2.1992, p. 1. Regulation as last amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

- *in Article 13 the following sentence is added: “Eligibility for participation in tendering procedures under this Regulation shall be further determined in accordance with the rules of nationality and origin, and the derogations therefrom, contained in Regulation (EC) No/2005 [on access to Community external assistance]”.*

ANNEX II

DAC List of Aid Recipients - As at 1 January 2003

Part I: Developing Countries and Territories (Official Development Assistance)					Part II: Countries and Territories in Transition (Official Aid)		
Least Developed Countries (LDCs)	Other Low-Income Countries (Other LICs) (per capita GNI < \$745 in 2001)	Lower Middle-Income Countries (LMICs) (per capita GNI \$746-\$2975 in 2001)		Upper Middle-Income Countries (UMICs) (per capita GNI \$2976-\$9205 in 2001)	High-Income Countries (HICs) (per capita GNI > \$9206 in 2001)	Central and Eastern European Countries and New Independent States of the former Soviet Union (CEECs/NIS)	More Advanced Developing Countries and Territories
Afghanistan Angola Bangladesh Benin Bhutan Burkina Faso Burundi Cambodia Cape Verde Central African Republic Chad Comoros Congo, Dem. Rep. Djibouti Equatorial Guinea Eritrea Ethiopia Gambia Guinea Guinea-Bissau Haiti Kiribati Laos Lesotho Liberia Madagascar Malawi Maldives Mali Mauritania Mozambique Myanmar Nepal Niger Rwanda Samoa Sao Tome and Principe Senegal Sierra Leone Solomon Islands Somalia Sudan Tanzania Timor-Leste Togo Tuvalu Uganda Vanuatu Yemen Zambia	*Armenia *Azerbaijan Cameroon Congo, Rep. Côte d'Ivoire *Georgia Ghana India Indonesia Kenya Korea, Democratic Republic *Kyrgyz Rep. *Moldova Mongolia Nicaragua Nigeria Pakistan Papua New Guinea *Tajikistan *Uzbekistan Viet Nam Zimbabwe	*Albania Algeria Belize Bolivia Bosnia and Herzegovina China Colombia Cuba Dominican Republic Ecuador Egypt El Salvador Fiji Guatemala Guyana Honduras Iran Iraq Jamaica Jordan *Kazakhstan Macedonia (former Yugoslav Republic) Marshall Islands Micronesia, Federated States Morocco Namibia Nine	Palestinian Administered Areas Paraguay Peru Philippines Serbia & Montenegro South Africa Sri Lanka St Vincent & Grenadines Suriname Swaziland Syria Thailand *Tokelau Tonga Tunisia Turkey *Turkmenistan *Wallis and Futuna	Botswana Brazil Chile Cook Islands Costa Rica Croatia Dominica Cabo Verde Grenada Lebanon Malaysia Mauritius • Mayotte Nauru Panama • St Helena St Lucia Venezuela Threshold for World Bank Loan Eligibility (\$5185 in 2001) • Anguilla Antigua and Barbuda Argentina Barbados Mexico • Montserrat Oman Palau Islands Saudi Arabia Seychelles St Kitts and Nevis Trinidad and Tobago • Turks and Caicos Islands Uruguay	Bahrain	*Belarus *Bulgaria *Czech Republic *Estonia *Hungary *Latvia *Lithuania *Poland *Romania *Russia *Slovak Republic *Ukraine	• Aruba Bahamas • Bermuda Brunei • Cayman Islands Chinese Taipei Cyprus • Falkland Islands • French Polynesia • Gibraltar • Hong Kong, China Israel Korea Kuwait Libya • Macao Malta • Netherlands Antilles • New Caledonia Qatar Singapore Slovenia United Arab Emirates • Virgin Islands (UK)

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

• Territory.

ANNEX III

List of OECD/DAC Members

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

ANNEX IV

Extracts *from* the

Recommendation on Untying Official Development Assistance to the Least Developed Countries by the Development Assistance Committee of the Organisation for Economic Co-operation and Development (OECD/DAC), March 2001

II. Implementation

a) Coverage

7. Untying is a complex process. Different approaches are required for different categories of ODA, and actions by Members to implement the Recommendation will vary in coverage and timing. Bearing this in mind, DAC Members will untie their ODA to the Least Developed Countries to the greatest extent possible and in accordance with the criteria and procedures set out in this Recommendation:

- i) DAC Members agree to untie, by 1 January 2002, ODA to the Least Developed Countries in the following areas: balance of payments and structural adjustment support; debt forgiveness; sector and multi-sector programme assistance; investment project aid; import and commodity support; commercial services contracts, and ODA to Non-Governmental Organisations for procurement related activities.
- ii) In respect of investment-related technical co-operation and free standing technical cooperation, it is recognised that DAC Members' policies may be guided by the importance of maintaining a basic sense of national involvement in donor countries alongside the objective of calling upon partner countries' expertise, bearing in mind the objectives and principles of this Recommendation. Free-standing technical co-operation is excluded from the coverage of the Recommendation.
- iii) In respect of food aid, it is recognised that DAC Members' policies may be guided by the discussions and agreements in other international fora governing the provision of food aid, bearing in mind the objectives and principles of this Recommendation.

8. This Recommendation does not apply to activities with a value of less than SDR 700,000 (SDR 130,000 in the case of investment-related technical co-operation).