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COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the access to Community External Assistance

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. BACKGROUND

This Regulation is one of the responses to the permanent concern on enhancing the effectiveness of aid and reducing the transaction costs that are attached to the implementation of the Community external assistance.

1.1. Nature of the issue

Although accurate figures are hard to come by, a consensus has emerged on the international scene that 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. Also it is difficult to precisely measure the benefit of untying, the World Bank and the Development Assistance Committee of the Organisation for Economic Co-operation and Development (OECD/DAC) have produced estimations with a substantial ratio in terms of gain through better value for money.

It is useful to recall that untying is not pursued as a goal as such but as a goal to achieve higher impact at lower cost. It is important to have an understanding of the opportunities and constraints of increasing access to procurement to ensure an intelligent use of the concept. Therefore, progress towards further untying will have to be accompanied by impact assessments and studies.

The untying of aid has been treated so far mainly as a donor driven process establishing access among donors by donors. It is important to place the debate in the context of the participation of developing countries to the implementation of aid.

A substantial part of EC aid assistance is implemented through aid modalities that are directly managed by the recipient country, such as budget support or sector support. Those instruments are de facto not subject to EC award of procurement or grant. They are not concerned by this regulation.

1.2. Situation regarding the European Union

Regarding the Member States

Despite differences in the approaches and modalities, there is a general consensus amongst the Member States on the benefit of increasing access to development assistance procurement. Indeed, all Member States are committed to the OECD/DAC Recommendation on untying and report on its implementation. Due to the existence of the single market development assistance procurement in all Member States is open in principle to other Member States. Moreover, almost half of the Member States have introduced measures to completely open the access to their development assistance.

Regarding Community aid

Community aid has been open to a significant extent for more than 25 years. Indeed, the European Community has a long track record in dealing with this concept, due to its specific relationship with the Member States and to an increasing degree, to beneficiary countries. Some elements of openness were included in its development programmes since the first Yaoundé Convention in 1963. Moreover, Community aid is progressively directed at balance of payments and budgetary support, which, by definition, is entirely untied.

1.3. Commitment made in Barcelona

On the 14th of March 2002, in its conclusions relating to the preparation of the Conference in Monterrey and in order to improve the efficiency of ODA, the General Affairs Council held in parallel to the European Council of Barcelona stated in the paragraph 7, c) of its conclusions that the European Union will *“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”*.

In response, to this commitment, the Commission adopted in November 2002 a Communication “*untying: enhancing the effectiveness of aid*”. The approach proposed was based on the necessity of a further opening of Community aid while maintaining the access of the partner country as a key target and supporting strengthening regional integration and capacity building. It established the links with the DAC Recommendation while going further that.

The Council and the European Parliament supported the approach proposed and requested the Commission to introduce proposals for relevant changes in the Community External Assistance.

1.4. The Commission’s response

Due to the legal nature of the instruments falling under the European Development Fund and those falling under the EC budget, two parallel processes are necessary.

First, a mandate for introducing the relevant changes in the Cotonou agreement was presented in the package of proposed revisions to the Cotonou Agreement for 2005 and accepted by the GAERC on 23 February 2004.

Second, this proposal presents one single regulation defining the access to all Community aid to be implemented in all basic acts governing external assistance that fall under the EC budget. In the future, all instruments will contain a simple reference to this regulation.

The approach with regards to further opening of Community aid presented in this regulation will also be taken into account in future proposals by the Commission on the rationalisation of its external relations into six instruments. Forthcoming proposals will come up in the framework set up by the recent Commission Communication “*Building our common Future. Policy challenges and Budgetary means of the Enlarged Union 2007-2013*”¹.

2. THE CHOICE OF LEGAL BASIS

The choice of legal basis is consistent with the Treaty establishing the European Community and its Title XX that founds a European Development Cooperation, in particular its articles 179 and 181A. The texts adopted with the legal basis of Article 308 come from now on under the new Article 181A, introduced by the Nice Treaty. The proposed regulation must be adopted by the co-decision procedure provided for in Article 251 of the Treaty.

3. SUBSIDIARITY AND PROPORTIONALITY: JUSTIFICATION AND

¹ COM(2004) 101 Final, of 10.2.2004

ADDED VALUE

The powers attributed to the European Commission must be exercised in accordance with Article 5 of the EC Treaty that is if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. The proposal for a Regulation satisfies these criteria.

Subsidiarity

The prime objective of the proposed Regulation is to define the principle and conditions for the access of persons and goods to instruments managed by the EC. It can only de facto be achieved by the Community.

Proportionality

The form of Community action must be the simplest that will enable the objective of the proposal to be attained and effectively implemented. In this spirit, the legal instrument chosen is a horizontal regulation amending in once all Community instruments.

ARTICLE-BY-ARTICLE COMMENTARY

Article 1

The purpose of this regulation is to establish the access to the instruments listed in Annex I financing the Community external assistance, for persons (article 2) and goods (article 3). It defines criteria (article 4), specific cases (articles 5 and article 7) and derogations (articles 6). The scope of this regulation does not cover all Community external assistance instruments such as the macro financial assistance directly managed by the recipient country of aid.

Article 2

This article clarifies the meaning of the terms and concepts used. They must be understood with the meaning carried out in the Financial Regulation and its Implementing Modalities.

Article 3

This article defines the access of legal persons based on their nationality. It specifies various categories

a) Concerning nationals of developing and transition countries

- instruments with a thematic scope are open for all developing and transition countries in addition to those already mentioned in the specific instruments. They are listed in Annex I, Part A.
- instruments with a geographical scope are open only to the nationals of countries of the region as defined on the instruments, as one of the objective of those instrument is to strengthen regional integration and capacity building in a regional context. They are listed in Annex I, Part B.

b) Concerning the donors

- instruments are open by principle to the nationals from Member States, from the candidate countries (as recognised by the EC), and from the Countries of the EEA. This represents a total of 30 countries.
- instruments are open to the nationals from other DAC member countries on the basis of reciprocity. It concerns Australia, Canada, Japan, New-Zealand, Switzerland and USA.

The definition of developing and transition countries is based on the OECD/DAC lists. Those lists are updated on a yearly basis in January by the OECD/DAC and are based on internationally agreed criteria. Those lists are presented in the Annex II. A specific procedure is foreseen to regularly bring this Regulation in line with the latest OECD/DAC list.

Article 4

The eligibility of supplies and materials follows the same logic as the one defining the access of legal persons. In fact there was no clear mention in the past concerning the rules of origin. This situation created difficulties in the field. This addition aims at establishing legal clarity.

Rules of origin are understood as they are defined in the normal EC context and through the relevant provisions in force in the Community.

Article 5

This article defines the criteria of reciprocity as the condition for providing access to EC instruments for donors that have not been granted direct access.

- (1) The granting of reciprocity is not only based on the official declaration by a donor of its intention to provide equal access but also on the reality of this access. The concept of reciprocity must not only be understood as equality in the access but also as comparability of the aid to which the access is granted, including its volume. In order to stay operational this analysis must be done at an aggregated level (at sector, recipient country, or donor level).
- (2) The decision of granting the reciprocity will be taken in accordance with the applicable comitology procedures. It is not intended to establish a new committee but to use the existing committees relevant for each of the instruments concerned. In order to remain operational, the granting of reciprocity should be done at an aggregated level (country or region level) and for a minimum period of one year.
- (3) It is important to ensure the consistency of this regulation with the commitment to implement the DAC Recommendation on the untying of aid to the Least Developed Countries. As all DAC donors have agreed to be bound by this recommendation, reciprocity is in fact established for the scope of the DAC Recommendation. Reciprocity will therefore be granted on principle for the scope of this Recommendation. This applies to aid to Least Developed Countries (as defined by the DAC). The relevant part of the DAC Recommendation defining the scope of the Recommendation is presented in Annex IV.
- (4) It is important, in the context of ownership that the beneficiary countries have an opportunity to express their views on the granting of reciprocity and that room for

consultation is left.

Article 6

This article is a standard clause in Community Assistance Regulations providing for substantiated and exceptional derogations.

Article 7

This article clarifies the situation regarding operations channelled through international organisations, regional organisations and co-financed with third countries. This article is not an innovation and does correspond to the current practice in many areas. This article therefore tries to clarify this.

Article 8

The Financial Regulation, its implementing modalities and the basic act governing humanitarian assistance contain specific derogatory measures to respond to the emergency and urgent nature of humanitarian crises. These derogations to the general rules on procurement and grant contracts allow for an immediate response within pre-established frameworks. Specific measures are therefore required to introduce further opening of procurement in the humanitarian field, while maintaining the existing efficient mechanisms. They are presented in this article. They state that the beneficiaries of humanitarian grants have the obligation to apply the same rules contained in this regulation when implementing the procurement financed by those grants.

Article 9

The Rapid Reaction Mechanism requires specific measures to respond to the emergency of civilian crisis management. It is proposed that the access to this mechanism is open to all relevant actors without criteria of nationality.

Article 10

This regulation is a horizontal regulation amending the instrument of the external assistance financed under the EC budget listed in Annex I. All the instruments concerned as well as all the amendments introduced in each of those instruments are presented in Annex I.

Article 11

This article specifies the date on which the regulation will enter into force.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the 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 Article 179 and 181A thereof,

Having regard to the proposal from the Commission²,

Having regard to the opinion of the European Economic and Social Committee³,

Having regard to the opinion of the Committee of the Regions⁴,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁵,

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.
- (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"⁶. The Members States of the European Community adopted those recommendations and the European Commission recognised the spirit of this Recommendation as a guidance for Community aid.
- (3) On 14 March 2002, the General Affairs Council held in conjunction with the European Council in Barcelona in preparation to the International Conference on Financing for Development, convened in Monterrey on 18-22 March 2002, concluded that the European Union 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."

² OJ C , , p. .

³ OJ C , , p. .

⁴ OJ C , , p. .

⁵ OJ C , , p. .

⁶ OECD/DAC 2001 Report, 2002, Volume 3, N°1, p.46

- (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”⁷. 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 a Conclusion on the untying of aid dated 20 May 2003⁸ the Council underlined the need to further untie Community aid. It agreed to the modalities detailed on the aforementioned Communication and decided on the options proposed.
- (6) On 4 September 2003, a Resolution from the European Parliament on the untying of aid⁹ noted the need to further untie Community aid. It supported the modalities detailed in the afore-mentioned Communication and agreed to the options proposed. It highlighted the need for further debate towards more untying on the base of complementary studies and documented proposals.
- (7) Several elements need to be addressed in order to define the access to Community External Assistance. The rules of eligibility defined the access of persons in Article 3. The rules of origin defined the access of supplies and materials purchased by eligible person in Article 4. The access of a specific category of persons is allowed in Article 3 under the condition of reciprocity. The definition and modalities of implementation of reciprocity are contained in Article 5. Derogations and their implementation are defined in Article 6. Specific provisions concerning the operations financed through an international organisation, a regional organisation, or co-financed with a third country, are defined in Article 7. Specific provisions for the purposes of humanitarian aid are defined in Article 8.
- (8) The basic acts ruling the External Assistance define, in conjunction with the provisions of the EC Financial Regulation, the access to Community External Assistance. The requested modifications to the access to Community aid impose amendments to all those instruments. In order to rationalise in a coherent manner those changes, the requested amendments are proposed in one single horizontal regulation. All the modifications to all basic acts concerned are listed in the Annex of this regulation.

HAVE ADOPTED THIS REGULATION:

Article 1

Scope

This regulation establishes the rules for the access of interested parties to Community external assistance instruments financed by the general budget of the European Union listed in Annex I.

Article 2

⁷ COM(2002)/639 final

⁸ SEC(91)2273 final;

⁹ A5/2003/190, Bulletin/2003/9, 1.6.64

Definition

For the interpretation of the terms used in this regulation, reference is made to the Council Regulation (EC, Euratom) N° 1605/2002 on the financial Regulation applicable to the general budget of the European Communities (“Financial Regulation”) and to the Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 which lays down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities¹⁰.

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 nationals of Member States of the European Community, or who are nationals of an official candidate country as recognised by the European Community, or who are nationals of 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 nationals of a developing or transition country, as defined by the Development Assistance Committee of the Organisation for Economic Co-operation and Development (OECD/DAC) lists, contained in the Annex II, in addition to those legal persons already eligible by virtue of the respective instrument.
- (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 nationals of a developing or transition country as defined by the OECD/DAC lists, contained in the Annex II, and which are expressly mentioned as eligible, as well as to those already mentioned as eligible by the respective instrument.
- (4) Participation in the award of procurement or grant contracts financed under a Community instrument shall be open to all legal persons who are nationals of any other country than those referred in paragraphs 1, 2 and 3 of this Article, where the reciprocal access to their external assistance has been established pursuant to Article 5.
- (5) The eligibility rules in this article do not apply to the experts proposed by tenderers taking part in the award of procurement contracts. Those experts can be of any nationality.
- (6) Participation in the award of procurement or grant contracts financed under a Community instrument shall be open to international organisations.
- (7) The above is without prejudice to the categories of organisations eligible to any contract, nor to the derogatory provision foreseen in article 114(1) of the “Financial

¹⁰ OJ L 357/1, 31.12.2002

Regulation”.

Article 4

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 Article 3 herein. Origin for the purpose of this Regulation is defined in the relevant Community legislation on rules of origin for customs purposes.

Article 5

Reciprocity with third countries

- (1) Reciprocal access to EC external assistance shall be granted for a country falling under the scope of Article 3 (4), whenever such country grants eligibility on equal terms to the Member States of the European Union.
- (2) The granting of reciprocal access to EC external assistance shall be based on a comparison between the EU and other donors and shall be done at entire sector level, as defined by the OECD/DAC categories, or entire country level, either donor or recipient. The decision of granting this 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 EC 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 the Council Decision 1999/468/EC¹¹ under the procedures and relevant committee ruling the instrument concerned. Such a decision shall be in force for a minimum period of one year.
- (4) Reciprocal access to EC external assistance shall be automatically granted in accordance with Point II a) of the 2001 Recommendations of the OECD/DAC on Untying of Official Development Assistance to the Least Developed Countries, referred in Annex IV, to the third countries listed in Annex III.
- (5) The beneficiary countries, shall be consulted to the maximum extent in the process described in paragraphs (1) to (3).

Article 6

Derogations from the rules of eligibility and origin

- (1) In duly substantiated exceptional cases, the Commission may extend eligibility, to nationals from a country not eligible according to Article 3.

¹¹ OJ L 231, 29.08.2001

- (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 provided in paragraph 1) and 2) can be justified on the basis of products' and services' unavailability in concerned countries' markets, 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 7

Operations involving international institutions or third countries

- (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 according to Article 3 as well as to all legal persons who are eligible according to the rules of such organisation, care being taken for guaranteeing equal treatment to all donors. The same rules apply for supplies and materials.
- (2) Whenever Community funding covers an operation co-financed with a third country, subject to reciprocity as defined in Article 5, or with a regional organisation, participation in the appropriate contractual procedures shall be open to all legal persons who are eligible according to Article 3 as well as to all legal persons who are nationals of such third country or countries member of this regional organisation. The same rules apply for supplies and materials.
- (3) The eligibility rules in this article do not apply to the experts proposed by tenderers taking part in the award of procurement contracts. Those experts can be of any country.

Article 8

Humanitarian aid

- (1) For the purposes of humanitarian aid, within the meaning of Council regulation (EC) N° 1257/96¹², the provisions of Article 3 herein 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 requires the award of procurement contracts.

Article 9

Rapid Reaction Mechanism

¹² OJEC, L 248/1 of 16.9.2002

- (1) For the purposes of civilian crisis management, within the meaning of Council Regulation (EC) No 381/20 creating a rapid-reaction mechanism¹³, the partners eligible shall originate from any country.
- (2) The article 6(4)(b) of above mentioned Council Regulation (EC) No 381/2001 is replaced by the following “have their main Headquarters in a Community Member States or in any other country”.

Article 10

Implementation of the regulation

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

Article 11

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 Brussels,

For the European Parliament
The President

For the Council
The President

¹³ OJ, L 57/5, 27.2.2001

ANNEX I

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

PART A. Community instruments with a thematic scope

(1) Regulation 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 countries¹⁴.

- 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 the EC Regulation n°XXXX°”.
- Article 8 (1) is replaced by the following “The eligibility for participation in tendering procedures under this Regulation is defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.
- Article 8 (2) is replaced by the following “The origin of supplies and materials purchased under this Regulation is defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.

(2) Regulation No 1567/2003 of the European Parliament and of the Council of 5 July 2003 on aid for policies and actions on reproductive and sexual health and rights in developing countries¹⁵.

- 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 the EC Regulation n°XXXX”.
- Article 8 (1) is replaced by the following “The eligibility for participation in tendering procedures under this Regulation is defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.
- Article 8 (2) is replaced by the following “The origin of supplies and materials purchased under this Regulation is defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.

(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 countries¹⁶.

- Article 4 (2) is replaced by the following “The eligibility for participation in tendering procedures under this Regulation is defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.
- 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 the EC Regulation n°XXXX”.

¹⁴ OJ L 224/7, 6.9.2003

¹⁵ OJ L 224/1, 6.9.2003

¹⁶ OJ, L 234/1, 1.9.2001

(4) Council Regulation (EC) No 1725/2001 of 23 July 2001 concerning action against anti-personnel landmines in third countries other than developing countries¹⁷.

- Article 4 (2) is complemented by the following “The eligibility for participation in tendering procedures under this Regulation is defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.
- 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 the EC Regulation n°XXXX”.

(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 countries¹⁸.

- Article 8 (8) is replaced by the following “The eligibility for participation in tendering procedures under this Regulation is defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.
- Article 8 (9) is replaced by the following “The origin of supplies and materials purchased under this Regulation is defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.
- 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 the EC Regulation n°XXXX”.

(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 countries¹⁹.

- Article 9 (8) is replaced by the following “The eligibility for participation in tendering procedures under this Regulation is defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.
- Article 9 (9) is replaced by the following “The origin of supplies and materials purchased under this Regulation is defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.
- 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 the EC Regulation n°XXXX”.

(7) Council Regulation (EC) No 975/1999 of 29 April 1999 laying down the requirements for the implementation of development co-operation 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

¹⁷ OJ, L 234/6, 1.9.2001

¹⁸ OJ, L 288/1, 15.11.2000

¹⁹ OJ, L 288/6, 15.11.2000

freedoms²⁰.

- Article 5 is replaced by the following “The eligibility for grant contracts is defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”
- Article 8 (1) is replaced by the following “The eligibility for participation in tendering procedures under this Regulation is defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.
- Article 8 (2) is replaced by the following “The origin of supplies and materials purchased under this Regulation is defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.

(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 countries²¹.

- Article 5 (1): The following sentence is added: “In addition to the rules laid down herein, eligibility for grant contracts is also governed by the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.
- Article 6 is complemented by the following “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 EC Regulation n°XXXX. 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”.
- Article 9 (1) is complemented by the following “The eligibility for participation in tendering procedures under this Regulation is defined according to the rules of nationality and origin and their derogations laid down in this Regulation, as well as those contained in the EC Regulation n°XXXX”.
- Article 9 (2) is complemented by the following “In addition to the rules laid down herein, the origin of supplies and materials purchased under this Regulation is defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.

(9) Council Regulation (EC) No 2836/98 of 22 December 1998 on integrating of gender issues in development co-operation²².

- 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 the EC Regulation n°XXXX”.

²⁰ OJ, L 120/1, 8.5.1999

²¹ OJ, L 120/8, 8.5.1999

²² OJ, L 354/5, 30.12.1998

- Article 7 (6) is replaced by the following “The eligibility for participation in tendering procedures under this Regulation is defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.
- Article 7 (7) is replaced by the following “The origin of supplies and materials purchased under this Regulation is defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.

(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 countries²³.

- Article 3 (1) (second indent) is replaced by the following: “They must have an Headquarter in an eligible country and the Headquarters must be the main centre for decisions relating to the co-financed operations, as defined in the EC Regulation n°XXXX”.
- Article 3 (1) (third indent) is replaced by the following “The majority of their funding must originate in an eligible country as defined in the EC Regulation n°XXXX”.
- Article 3 (3) is added “The origin of supplies and materials purchased under this Regulation is defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.

(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 aid²⁴.

- Article 2 (1) is replaced by the following “The eligibility for participation in tendering procedures under this Regulation is defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.
- Article 4 (1 and 2) is replaced by the following “The origin of supplies and materials purchased under this Regulation is defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.
- Article 4 (3 and 4) is deleted.

(12) Council Regulation (EC) No 2046/97 of 13 October 1997 on north-south co-operation in the campaign against drugs and drug addiction²⁵.

- Article 5 is replaced by the following: “The cooperation partners eligible for financial support under this Regulation shall be regional and international organizations, in particular UNDCP, non-governmental organizations, national, provincial and local government departments and agencies, community-based organizations, institutes and public and private operators. The eligibility for grant contracts is defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”
- Article 6 (5): The following sentence is added: “Participation in contractual procedures

²³ OJ L 213/1, 30.7.1998

²⁴ OJ, L 346, 17.12.1997

²⁵ OJ, L 287, 21.10.1997

implemented through an international organisation or co-financed with a third country is defined in the EC Regulation n°XXXX”.

- Article 9 (7) is replaced by the following “The eligibility for participation in tendering procedures under this Regulation is defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.
- Article 9 (8) is deleted and replaced by “The origin of supplies and materials purchased under this Regulation is defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.

(13) Council Regulation (EC) No 2258/96 of 22 November 1996 on rehabilitation and reconstruction operations in developing countries²⁶.

- 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 the EC Regulation n°XXXX”.
- Article 6 (7) is replaced by the following “The eligibility for participation in tendering procedures under this Regulation is defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.
- Article 6 (8) is replaced by the following “The origin of supplies and materials purchased under this Regulation is defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.

(14) Council Regulation (EC) N° 1292/96 of 27.06.1996 on food-aid policy and food-aid management and special operations in support of food security *amended by Regulation (EC) No 1726/2001 of the European Parliament and of the Council of 23 July 2001 amending Article 21 of Council Regulation (EC) No 1292/96 on food-aid policy and food-aid management and special operations in support of food security*²⁷.

- 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.
- The eligibility for grant contracts is defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX.
2. Non-profit-making non-governmental organizations (NGOs) eligible for direct or indirect Community financing for the implementation of operations under this Regulation must meet the following criteria:
(a) if they are non-governmental organizations, they must be autonomous organizations in an eligible country under the laws in force in that country;
(b) they must have their headquarters in an eligible State. This headquarters must be the

²⁶ OJ L 306, 28.11.1996

²⁷ OJ L 166, 05.07.1996

effective decision-making centre for all co-financed operations;

(c) 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) undertake to comply with the conditions laid down by the Commission for the allocation of food aid.”

- 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 the EC Regulation n°XXXX”.
- Article 11 (1) is replaced by the following deleted and replaced by “Products shall be mobilized 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, or in countries. The origin of supplies and materials purchased under this Regulation is defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”
- Article 11 (3) is deleted.
- Article 11 (4) becomes Article 11 (3).
- Article 17 (first indent) is replaced by the following “The eligibility for participation in tendering procedures under this Regulation is defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.

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 and *amending* Regulations (EEC) No 3906/89, (EC) No 1267/1999, (EC) No 1268/1999 and (EC) No 555/2000²⁸.

- Article 8 (7) – the first and second indents are complemented by the following “The eligibility for participation in tendering procedures under this Regulation is further defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.
- Article 8 (7 third indent) is complemented by the following “Participation in contractual procedures implemented through an international organisation or co-financed with a third country is further defined in the EC Regulation n°XXXX”.
- Article 8 (8) is complemented by the following “The origin of supplies and materials purchased under this Regulation is further defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.

²⁸ OJ, L 342/1, 27.12.2001

(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 Turkey²⁹.

- Article 5 (5): The following sentence is added: “In addition to the rules laid down in this Regulation, participation in contractual procedures implemented through an international organisation or co-financed with a third country is also defined in the EC Regulation n°XXXX”.
- Article 6 (7) is complemented by the following “The eligibility for participation in tendering procedures under this Regulation is further defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.
- Article 6 (8) is complemented by the following “The origin of supplies and materials purchased under this Regulation is further defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.

(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 countries³⁰.

- Article 7 (3): The following sentence is added: “In addition to the rules laid down in this Regulation, participation in contractual procedures implemented through an international organisation or co-financed with a third country is also defined in the EC Regulation n°XXXX”.
- Article 10 (2) is complemented by the following “Community assistance is available to partners who have their main office in a country eligible under this Regulation, as well as under EC Regulation n°XXXX, 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”.
- Article 13 (1) is complemented by the following “The eligibility for participation in tendering procedures under this Regulation is further defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.
- Article 13 (2) is complemented by the following “The origin of supplies and materials purchased under this Regulation is further defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.

(18) Council Regulation (EC) No 2666/2000 of 5 December 2000 (CARDS) on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia, repealing Regulation (EC) No 1628/96 and amending Regulations (EEC) No 3906/89 and (EEC) No 1360/90 and Decisions 97/256/EC and 1999/311/EC³¹.

- Article 7 (3) is complemented by the following “The eligibility for participation in tendering procedures under this Regulation is further defined according to the rules of nationality and

²⁹ OJ L 39/1, 9.2.2001

³⁰ OJ, L 287/3, 31.10.2001

³¹ OJ, L 306/1, 7.12.2000

origin and their derogations, as contained in the EC Regulation n°XXXX”.

- Article 7 (4): is deleted and replaced by “Participation in contractual procedures implemented through an international organisation or co-financed with a third country is defined in the EC Regulation n°XXXX”.

(19) Regulation (EC) No 1726/2000 of the European Parliament and of the Council of 29 June 2000 on development co-operation with South Africa³².

- Article 7 (6) is replaced by the following “The eligibility for participation in tendering procedures under this Regulation is defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.
- Article 7 (7) is replaced by the following “The origin of supplies and materials purchased under this Regulation is defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.

(20) Council Regulation (EC, Euratom) No 99/2000 (TACIS) of 29 December 1999 concerning the provision of assistance to the partner States in Eastern Europe and Central Asia³³.

- Article 11 (3) is complemented by the following “In addition to the rules laid down in this Regulation, the origin of supplies and materials purchased under this Regulation is defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.
- Article 11 (4) is complemented by the following “The eligibility for participation in tendering procedures under this Regulation is further defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.
- Article 11 (5): The following sentence is added: “In addition to the rules laid down in this Regulation, participation in contractual procedures implemented through an international organisation or co-financed with a third country is further defined in the EC Regulation n°XXXX”.

(21) Council Regulation (EC) No 1267/1999 of 21 June 1999 establishing an Instrument for Structural Policies for Pre-Accession³⁴.

- Article 6a (1) is complemented by the following “The eligibility for participation in tendering procedures under this Regulation is further defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.
- Article 6a (2) is complemented by the following “Participation in contractual procedures implemented through an international organisation or co-financed with a third country is further defined in the EC Regulation n°XXXX”.

(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

³² OJ, L 198/1, 4.8.2000

³³ OJ, L 12/1, 18.1.2000

³⁴ OJ, L 161/73, 26.6.1999

countries of Central and Eastern Europe in the pre-accession period³⁵.

- Article 3 (3) is complemented by the following “The eligibility for participation in tendering procedures under this Regulation is defined according to the rules of nationality and origin and their derogations laid down herein, as well as in the EC Regulation n°XXXX”.

(23) In Council Regulation (EEC) No. 1488/96 of 23 July 1996 (MEDA) on financial and technical measures to accompany the reform of economic and social structures in the framework of the Euro-Mediterranean Partnership³⁶.

- Article 8 (1) is complemented by the following “The eligibility for participation in tendering procedures under this Regulation is defined according to the rules of nationality and origin and their derogations laid down herein, as well as in EC Regulation n°XXXX”.
- Article 8 (8): is complemented by the following “Participation in contractual procedures implemented through an international organisation or co-financed with a third country is defined in the EC Regulation n°XXXX”.

(24) Council Regulation (EC) No 1734/94 of 11 July 1994 on financial and technical cooperation with the Occupied Territories *amended by* Council Regulation (EC) No 2840/98 of 21 December 1998³⁷.

- Article 2 (4): The following sentence is added: “In addition to the rules laid down herein, participation in contractual procedures implemented through an international organisation is further defined in the EC Regulation n°XXXX”.

(25) In Council Regulation (EEC) No 1762/92 of 29 June 1992 (MEDA) on the implementation of the Protocols on financial and technical cooperation concluded by the Community with Mediterranean non-member countries³⁸.

- Article 2 (1): The following sentence is added: “In addition to the rules laid down herein, participation in contractual procedures implemented through an international organisation or co-financed with a third country is further defined in the EC Regulation n°XXXX”.

(26) Council Regulation (EEC) No 443/92 of 25 February 1992 (ALA) on financial and technical assistance to, and economic cooperation with, the developing countries in Asia and Latin America³⁹.

- Article 9: The following sentence is added: “In addition to the rules laid down herein, participation in contractual procedures implemented through an international organisation or co-financed with a third country is further defined in the EC Regulation n°XXXX”.
- Article 13 is complemented by the following “In addition to the rules laid down herein, the eligibility for participation in tendering procedures under this Regulation is further defined according to the rules of nationality and origin and their derogations, as contained in the EC Regulation n°XXXX”.

³⁵ OJ, L 331/51, 23.12.1999

³⁶ OJ, L 189, 30.07.1996

³⁷ OJ, L 182, 16.07.1994

³⁸ OJ, L 181, 01.07.1992

³⁹ OJ, L 052, 27.02.1992

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 Gabon 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 of 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).