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I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COMMISSION REGULATION (EC) No 404/2009**of 15 May 2009****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules for Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector ⁽²⁾, and in particular Article 138(1) thereof,

Whereas:

Regulation (EC) No 1580/2007 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 16 May 2009.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 15 May 2009.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	JO	73,9
	MA	48,9
	MK	80,5
	TN	115,0
	TR	101,0
	ZZ	83,9
0707 00 05	JO	155,5
	MA	32,7
	TR	148,4
	ZZ	112,2
0709 90 70	JO	216,7
	TR	120,2
	ZZ	168,5
0805 10 20	EG	42,4
	IL	55,0
	MA	48,3
	TN	49,2
	TR	99,9
	US	49,3
	ZZ	57,4
0805 50 10	AR	50,9
	TR	47,7
	ZA	59,1
	ZZ	52,6
0808 10 80	AR	81,8
	BR	75,3
	CL	76,2
	CN	97,7
	MK	42,0
	NZ	104,1
	US	128,1
	UY	71,7
	ZA	85,7
	ZZ	84,7

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 405/2009**of 15 May 2009****fixing the import duties in the cereals sector applicable from 16 May 2009**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 in respect of import duties in the cereals sector ⁽²⁾, and in particular Article 2(1) thereof,

Whereas:

- (1) Article 136(1) of Regulation (EC) No 1234/2007 states that the import duty on products falling within CN codes 1001 10 00, 1001 90 91, ex 1001 90 99 (high quality common wheat), 1002, ex 1005 other than hybrid seed, and ex 1007 other than hybrids for sowing, is to be equal to the intervention price valid for such products on importation increased by 55 %, minus the cif import price applicable to the consignment in question. However, that duty may not exceed the rate of duty in the Common Customs Tariff.

- (2) Article 136(2) of Regulation (EC) No 1234/2007 lays down that, for the purposes of calculating the import duty referred to in paragraph 1 of that Article, representative cif import prices are to be established on a regular basis for the products in question.

- (3) Under Article 2(2) of Regulation (EC) No 1249/96, the price to be used for the calculation of the import duty on products of CN codes 1001 10 00, 1001 90 91, ex 1001 90 99 (high quality common wheat), 1002 00, 1005 10 90, 1005 90 00 and 1007 00 90 is the daily cif representative import price determined as specified in Article 4 of that Regulation.

- (4) Import duties should be fixed for the period from 16 May 2009 and should apply until new import duties are fixed and enter into force,

HAS ADOPTED THIS REGULATION:

Article 1

From 16 May 2009, the import duties in the cereals sector referred to in Article 136(1) of Regulation (EC) No 1234/2007 shall be those fixed in Annex I to this Regulation on the basis of the information contained in Annex II.

Article 2

This Regulation shall enter into force on 16 May 2009.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 15 May 2009.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 161, 29.6.1996, p. 125.

ANNEX I

Import duties on the products referred to in Article 136(1) of Regulation (EC) No 1234/2007 applicable from 16 May 2009

CN code	Description	Import duties ⁽¹⁾ (EUR/t)
1001 10 00	Durum wheat, high quality	0,00
	medium quality	0,00
	low quality	0,00
1001 90 91	Common wheat seed	0,00
ex 1001 90 99	High quality common wheat, other than for sowing	0,00
1002 00 00	Rye	40,83
1005 10 90	Maize seed other than hybrid	12,13
1005 90 00	Maize, other than seed ⁽²⁾	12,13
1007 00 90	Grain sorghum other than hybrids for sowing	40,83

⁽¹⁾ For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal the importer may benefit, under Article 2(4) of Regulation (EC) No 1249/96, from a reduction in the duty of:

- 3 EUR/t, where the port of unloading is on the Mediterranean Sea, or
- 2 EUR/t, where the port of unloading is in Denmark, Estonia, Ireland, Latvia, Lithuania, Poland, Finland, Sweden, the United Kingdom or the Atlantic coast of the Iberian peninsula.

⁽²⁾ The importer may benefit from a flatrate reduction of EUR 24 per tonne where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

ANNEX II

Factors for calculating the duties laid down in Annex I

1.5.2009-14.5.2009

1. Averages over the reference period referred to in Article 2(2) of Regulation (EC) No 1249/96:

(EUR/t)

	Common wheat ⁽¹⁾	Maize	Durum wheat, high quality	Durum wheat, medium quality ⁽²⁾	Durum wheat, low quality ⁽³⁾	Barley
Exchange	Minneapolis	Chicago	—	—	—	—
Quotation	203,46	122,31	—	—	—	—
Fob price USA	—	—	209,29	199,29	179,29	104,36
Gulf of Mexico premium	—	11,25	—	—	—	—
Great Lakes premium	15,02	—	—	—	—	—

⁽¹⁾ Premium of 14 EUR/t incorporated (Article 4(3) of Regulation (EC) No 1249/96).⁽²⁾ Discount of 10 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).⁽³⁾ Discount of 30 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).

2. Averages over the reference period referred to in Article 2(2) of Regulation (EC) No 1249/96:

Freight costs: Gulf of Mexico–Rotterdam: 16,34 EUR/t

Freight costs: Great Lakes–Rotterdam: 16,83 EUR/t

DIRECTIVES

DIRECTIVE 2009/23/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 23 April 2009

on non-automatic weighing instruments

(Codified version)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) Council Directive 90/384/EEC of 20 June 1990 on the harmonisation of the laws of the Member States relating to non-automatic weighing instruments ⁽³⁾ has been substantially amended ⁽⁴⁾. In the interests of clarity and rationality the said Directive should be codified.
- (2) Member States have the responsibility of protecting the public against incorrect results of weighing operations by means of non-automatic weighing instruments when used for certain categories of applications.
- (3) In each Member State, mandatory provisions fix in particular the necessary performance requirements of non-automatic weighing instruments by specifying metrological and technical requirements, together with

inspection procedures before and after going into service. These mandatory provisions do not necessarily lead to different levels of protection from one Member State to another but do, by their disparity, impede trade within the Community.

- (4) This Directive should set out mandatory and essential requirements as regards metrology and performance in relation to non-automatic weighing instruments. To facilitate proof of conformity with the essential requirements, it is necessary to have harmonised standards at European level, in particular as to the metrological, design and construction characteristics, so that instruments complying with those harmonised standards may be assumed to conform to the essential requirements. These standards, harmonised at European level, are drawn up by private bodies and must remain non-mandatory texts. For that purpose the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (Cenelec) and the European Telecommunications Standards Institute (ETSI) are recognised as the competent bodies for the adoption of harmonised standards in accordance with the general guidelines ⁽⁵⁾ for cooperation between the Commission, the European Free Trade Association (EFTA) and those three bodies, signed on 28 March 2003.
- (5) A series of Directives designed to remove technical barriers to trade in accordance with the principles established in the Council Resolution of 7 May 1985 on a new approach to technical harmonisation and standards ⁽⁶⁾ has been adopted; each of those Directives provides for the affixing of the 'CE' conformity marking. In its communication of 15 June 1989 ⁽⁷⁾ on a global approach to certification and testing, the Commission proposed that common rules be drawn up concerning a 'CE' conformity marking with a single design. In its Resolution of 21 December 1989 on a global approach to conformity assessment ⁽⁸⁾, the Council approved as a guiding principle the adoption of a consistent approach such as this with regard to the use of the 'CE' conformity marking. The two basic elements of the new approach which should be applied are the essential requirements and the conformity assessment procedures.

⁽¹⁾ OJ C 44, 16.2.2008, p. 33.

⁽²⁾ Opinion of the European Parliament of 11 December 2007 (OJ C 323 E, 18.12.2008, p. 57) and Council Decision of 23 March 2009.

⁽³⁾ OJ L 189, 20.7.1990, p. 1.

⁽⁴⁾ See Annex VII, Part A.

⁽⁵⁾ OJ C 91, 16.4.2003, p. 7.

⁽⁶⁾ OJ C 136, 4.6.1985, p. 1.

⁽⁷⁾ OJ C 267, 19.10.1989, p. 3.

⁽⁸⁾ OJ C 10, 16.1.1990, p. 1.

- (6) Assessment of conformity with the relevant metrological and technical provisions is necessary to provide effective protection for users and third parties. The existing conformity assessment procedures differ from one Member State to another. To avoid multiple assessments of conformity, which are in effect barriers to the free movement of the instruments, arrangements should be made for the mutual recognition of conformity assessment procedures by the Member States. To facilitate the mutual recognition of conformity assessment procedures, Community procedures should be set up, together with criteria for the designation of the bodies responsible for carrying out tasks pertaining to the conformity assessment procedures.
- (7) It is therefore essential to ensure that such designated bodies ensure a high level of quality throughout the Community.
- (8) The presence on a non-automatic weighing instrument of the 'CE' conformity marking or of the sticker bearing the letter 'M' should indicate that there is a presumption that it satisfies the provisions of this Directive and therefore make it unnecessary to repeat the assessments of conformity already carried out.
- (9) This Directive should be without prejudice to the obligations of the Member States relating to the time limits for transposition into national law and application of the Directives set out in Annex VII, Part B,
- (iv) determination of mass in the practice of medicine for weighing patients for the purposes of monitoring, diagnosis and medical treatment;
- (v) determination of mass for making up medicines on prescription in a pharmacy and determination of mass in analyses carried out in medical and pharmaceutical laboratories;
- (vi) determination of price on the basis of mass for the purposes of direct sales to the public and the making-up of prepackages;
- (b) all applications other than those listed in point (a).

Article 2

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

1. 'weighing instrument': a measuring instrument serving to determine the mass of a body by using the action of gravity on that body. A weighing instrument may also serve to determine other mass-related magnitudes, quantities, parameters or characteristics;
2. 'non-automatic weighing instrument' or 'instrument': a weighing instrument requiring the intervention of an operator during weighing;
3. 'harmonised standard': a technical specification (European standard or harmonised document) adopted by the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (Cenelec), or the European Telecommunications Standards Institute (ETSI), or by two or three of those bodies, upon a remit from the Commission in accordance with Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations⁽¹⁾ and the general guidelines for cooperation between the Commission, the European Free Trade Association (EFTA) and those three bodies, signed on 28 March 2003.

Article 3

1. Member States shall take all steps to ensure that only instruments that meet the requirements of this Directive may be placed on the market.
2. Member States shall take all steps to ensure that instruments may not be brought into service for the uses referred to in point (a) of Article 1(2) unless they meet the requirements of this Directive and accordingly bear the 'CE' conformity marking provided for in Article 11.

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER 1

SCOPE, PLACING ON THE MARKET AND FREE MOVEMENT

Article 1

1. This Directive shall apply to all non-automatic weighing instruments.
2. For the purposes of this Directive, the following categories of use of non-automatic weighing instruments shall be distinguished:
 - (a) (i) determination of mass for commercial transactions;
 - (ii) determination of mass for the calculation of a toll, tariff, tax, bonus, penalty, remuneration, indemnity or similar type of payment;
 - (iii) determination of mass for the application of laws or regulations or for an expert opinion given in court proceedings;

⁽¹⁾ OJ L 204, 21.7.1998, p. 37.

Article 4

Instruments used for the applications listed in point (a) of Article 1(2) must satisfy the essential requirements set out in Annex I.

In cases where the instrument includes, or is connected to, devices which are not used for the applications listed in point (a) of Article 1(2), such devices shall not be subject to those essential requirements.

Article 5

1. Member States shall not impede the placing on the market of instruments which meet the requirements of this Directive.
2. Member States shall not impede the putting into service, for the uses referred to in point (a) of Article 1(2), of instruments which meet the requirements of this Directive.

Article 6

1. Member States shall presume conformity with the essential requirements set out in Annex I in respect of instruments which comply with the relevant national standards implementing the harmonised standards that meet those requirements.

2. The Commission shall publish the references of the harmonised standards referred to in paragraph 1 in the *Official Journal of the European Union*.

Member States shall publish the references of the national standards referred to in paragraph 1.

Article 7

Where a Member State or the Commission considers that the harmonised standards referred to in Article 6(1) do not fully meet the essential requirements set out in Annex I, the Commission or the Member State concerned shall bring the matter before the Standing Committee set up under Article 5 of Directive 98/34/EC, hereinafter referred to as 'the Committee', giving its reasons for doing so.

The Committee shall deliver an opinion without delay.

In the light of the Committee's opinion, the Commission shall inform the Member States whether or not it is necessary to withdraw those standards from the publications referred to in Article 6(2).

Article 8

1. Where a Member State considers that instruments bearing the 'CE' conformity marking referred to in Annex II, points 2, 3 and 4, do not meet the requirements of this Directive when properly installed and used for the purposes for which they are intended, it shall take all appropriate measures to withdraw those instruments from the market or to prohibit or restrict their being put into service and/or placed on the market.

The Member State concerned shall immediately inform the Commission of any such measure, indicating the reasons for its decision, and in particular whether non-compliance is due to:

- (a) failure to meet the essential requirements set out in Annex I, where instruments do not meet the harmonised standards referred to in Article 6(1);
- (b) incorrect application of the harmonised standards referred to in Article 6(1);
- (c) shortcomings in the harmonised standards referred to in Article 6(1) themselves.

2. The Commission shall enter into consultation with the parties concerned as soon as possible.

After such consultation the Commission shall immediately inform the Member State which took the action of the result. Should it find that the measure is justified it shall immediately inform the other Member States.

If the decision is attributed to shortcomings in the standards, the Commission, after consulting the parties concerned, shall bring the matter before the Committee within two months if the Member State which has taken the measures intends to maintain them, and shall subsequently initiate the procedures referred to in Article 7.

3. Where an instrument which does not comply bears the 'CE' conformity marking, the competent Member State shall take appropriate action against whomsoever has affixed the marking and shall inform the Commission and the other Member States thereof.

4. The Commission shall ensure that the Member States are kept informed of the progress and outcome of this procedure.

CHAPTER 2

CONFORMITY ASSESSMENT

Article 9

1. The conformity of instruments to the essential requirements set out in Annex I may be certified by either of the following procedures as selected by the applicant:

- (a) EC type examination as referred to in Annex II, point 1, followed either by the EC declaration of type conformity (guarantee of production quality) as referred to in Annex II, point 2, or by the EC verification as referred to in Annex II, point 3.

However, EC type examination shall not be compulsory for instruments which do not use electronic devices and the load-measuring device of which does not use a spring to balance the load;

- (b) EC unit verification as referred to in Annex II, point 4.

2. The documents and correspondence relating to the procedures referred to in paragraph 1 shall be drafted in an official language of the Member State where the said procedures are carried out, or in a language accepted by the body notified in accordance with Article 10(1).

3. Where the instruments are subject to other Directives covering other aspects and which also provide for the affixing of the 'CE' conformity marking, that marking shall indicate that the instruments in question are also presumed to conform to the provisions of those other Directives.

However, where one or more of the Directives which apply to the instruments allow the manufacturer, during a transitional period, to choose which arrangements to apply, the 'CE' conformity marking shall indicate conformity only to the Directives applied by the manufacturer. In this case, particulars of publication in the *Official Journal of the European Union* of the Directives applied must be given in the documents, notices or instructions required by the Directives and accompanying such instruments.

Article 10

1. Member States shall notify the Commission and the other Member States of the bodies which they have appointed to carry out the procedures referred to in Article 9 together with the specific tasks which these bodies have been appointed to carry out and the identification numbers assigned to them beforehand by the Commission.

The Commission shall publish in the *Official Journal of the European Union* a list of the notified bodies and their identification numbers and the tasks for which they have been notified. The Commission shall ensure that this list is kept up to date.

2. Member States shall apply the minimum criteria set out in Annex V for the designation of bodies. Bodies which satisfy the criteria fixed by the relevant harmonised standards shall be presumed to satisfy the criteria set out in that Annex.

3. A Member State which has designated a body shall cancel the designation if the body no longer meets the criteria for designation referred to in paragraph 2. It shall immediately inform the other Member States and the Commission thereof and withdraw the notification.

CHAPTER 3

'CE' CONFORMITY MARKING AND INSCRIPTIONS

Article 11

1. The 'CE' conformity marking and the required supplementary data as described in Annex IV, point 1, shall be affixed in a clearly visible, easily legible and indelible form to instruments for which EC conformity has been established.

2. The inscriptions referred to in Annex IV, point 2, shall be affixed in a clearly visible, easily legible and indelible form to all other instruments.

3. The affixing on the instruments of markings which are likely to deceive third parties as to the meaning and form of the 'CE' conformity marking shall be prohibited. Any other marking may be affixed to the instruments provided that the visibility and legibility of the 'CE' conformity marking is not thereby reduced.

Article 12

Without prejudice to Article 8:

(a) where a Member State establishes that the 'CE' conformity marking has been affixed unduly, the manufacturer or his authorised representative established within the Community shall be obliged to make the instrument conform as regards the provisions concerning the 'CE' conformity marking and to end the infringement under the conditions imposed by the Member State;

(b) where non-conformity continues, the Member State must take all appropriate measures to restrict or prohibit the placing on the market of the instrument in question or to ensure that it is withdrawn from the market in accordance with the procedures laid down in Article 8.

Article 13

Where an instrument which is used for any of the applications referred to in point (a) of Article 1(2) includes, or is connected to, devices that have not been subject to conformity assessment as referred to in Article 9, each of those devices shall bear the symbol restricting its use as defined by Annex IV, point 3. That symbol shall be affixed to the devices in a clearly visible and indelible form.

CHAPTER 4

FINAL PROVISIONS*Article 14*

Member States shall take all steps to ensure that instruments bearing the 'CE' conformity marking attesting conformity with the requirements of this Directive continue to conform to those requirements.

Article 15

Any decision taken pursuant to this Directive and resulting in restrictions on the putting into service of an instrument shall state the exact grounds on which it is based.

Such a decision shall be notified without delay to the party concerned, who shall at the same time be informed of the judicial remedies available to him under the laws in force in the Member State in question and of the time limits to which such remedies are subject.

Article 16

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

Article 17

Directive 90/384/EEC, as amended by the Directive listed in Annex VII, Part A, is repealed, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law and application of the Directives set out in Annex VII, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex VIII.

Article 18

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

Article 19

This Directive is addressed to the Member States.

Done at Strasbourg, 23 April 2009.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

P. NEČAS

ANNEX I

ESSENTIAL REQUIREMENTS

The terminology used is that of the International Organisation of Legal Metrology.

Preliminary observation

Where an instrument includes, or is connected to, more than one indicating or printing device used for the applications listed in point (a) of Article 1(2), those devices which repeat the results of the weighing operation and which cannot influence the correct functioning of the instrument shall not be subject to the essential requirements if the weighing results are printed or recorded correctly and indelibly by a part of the instrument which meets the essential requirements and the results are accessible to both parties concerned by the measurement. However, in the case of instruments used for direct sales to the public, display and printing devices for the vendor and the customer must fulfil the essential requirements.

METROLOGICAL REQUIREMENTS

1. Units of mass

The units of mass used shall be the legal units within the meaning of Council Directive 80/181/EEC of 20 December 1979 on the approximation of the laws of the Member States relating to units of measurement ⁽¹⁾.

Subject to compliance with this condition, the following units are permitted:

- SI units: kilogram, microgram, milligram, gram, tonne,
- imperial unit: troy ounce, if weighing precious metals,
- other non-SI unit: metric carat, if weighing precious stones.

For instruments that make use of the imperial unit of mass referred to above, the relevant essential requirements specified below shall be converted to that unit, using simple interpolation.

2. Accuracy classes

2.1. The following accuracy classes have been defined:

- I special
- II high
- III medium
- III ordinary

The specifications of these classes are given in Table 1.

Table 1

Accuracy classes

Class	Verification scale interval (e)		Minimum capacity (Min)	Number of verification scale intervals $n = \frac{\text{Max}}{e}$	
			minimum value	minimum value	maximum value
I	0,001	$g \leq e$	100 e	50 000	—
II	0,001	$g \leq e \leq 0,05 \text{ g}$	20 e	100	100 000
	0,1	$g \leq e$	50 e	5 000	100 000
III	0,1	$g \leq e \leq 2 \text{ g}$	20 e	100	10 000
	5	$g \leq e$	20 e	500	10 000
III	5	$g \leq e$	10 e	100	1 000

The minimum capacity is reduced to 5 e for instruments in classes II and III for determining a conveying tariff.

⁽¹⁾ OJ L 39, 15.2.1980, p. 40.

2.2. Scale intervals

2.2.1. The actual scale interval (d) and the verification scale interval (e) shall be in the form:

$$1 \times 10^k, 2 \times 10^k, \text{ or } 5 \times 10^k \text{ mass units,}$$

k being any integer or zero.

2.2.2. For all instruments other than those with auxiliary indicating devices:

$$d = e.$$

2.2.3. For instruments with auxiliary indicating devices the following conditions apply:

$$e = 1 \times 10^k \text{ g,}$$

$$d < e \leq 10 d,$$

except for instruments of class I with $d < 10^{-4} \text{ g}$, for which $e = 10^{-3} \text{ g}$.

3. Classification

3.1. Instruments with one weighing range

Instruments equipped with an auxiliary indicating device shall belong to class I or class II. For these instruments the minimum capacity lower limits for these two classes are obtained from Table 1 by replacement in column 3 of the verification scale interval (e) by the actual scale interval (d).

If $d < 10^{-4} \text{ g}$, the maximum capacity of class I may be less than 50 000 e.

3.2. Instruments with multiple weighing ranges

Multiple weighing ranges are permitted, provided they are clearly indicated on the instrument. Each individual weighing range is classified according to point 3.1. If the weighing ranges fall into different accuracy classes the instrument shall comply with the severest of the requirements that apply for the accuracy classes in which the weighing ranges fall.

3.3. Multi-interval instruments

3.3.1. Instruments with one weighing range may have several partial weighing ranges (multi-interval instruments).

Multi-interval instruments shall not be equipped with an auxiliary indicating device.

3.3.2. Each partial weighing range i of multi-interval instruments is defined by:

- its verification scale interval e_i with $e_{(i+1)} > e_i$
- its maximum capacity Max_i with $\text{Max}_r = \text{Max}$
- its minimum capacity Min_i with $\text{Min}_i = \text{Max}_{(i-1)}$
and $\text{Min}_1 = \text{Min}$

where:

$$i = 1, 2, \dots, r,$$

i = partial weighing range number,

r = the total number of partial weighing ranges.

All capacities are capacities of net load, irrespective of the value of any tare used.

3.3.3. The partial weighing ranges are classified according to Table 2. All partial weighing ranges shall fall into the same accuracy class, that class being the instrument's accuracy class.

Table 2

Multi-interval instruments

$i = 1, 2, \dots, r$

i = partial weighing range number

r = total number of partial weighing ranges

Class	Verification scale interval (e)	Minimum capacity (Min)	Number of verification scale intervals	
		Minimum value	Minimum value ⁽¹⁾ $n = \frac{\text{Max}_i}{e_{(i+1)}}$	Maximum value $n = \frac{\text{Max}_i}{e_i}$
I	0,001 $g \leq e_i$	100 e_1	50 000	—
II	0,001 $g \leq e_i \leq 0,05 \text{ g}$	20 e_1	5 000	100 000
	0,1 $g \leq e_i$	50 e_1	5 000	100 000
III	0,1 $g \leq e_i$	20 e_1	500	10 000
IIII	5 $g \leq e_i$	10 e_1	50	1 000

⁽¹⁾ For $i = r$, the corresponding column of Table 1 applies, with e replaced by e_r .

4. Accuracy

- 4.1. On implementation of the procedures laid down in Article 9, the error of indication shall not exceed the maximum permissible error of indication as shown in Table 3. In case of digital indication the error of indication shall be corrected for the rounding error.

The maximum permissible errors apply to the net value and tare value for all possible loads, excluding preset tare values.

Table 3

Maximum permissible errors

Load				Maximum permissible error
Class I	Class II	Class III	Class IIII	
$0 \leq m \leq 50\,000 \text{ e}$	$0 \leq m \leq 5\,000 \text{ e}$	$0 \leq m \leq 500 \text{ e}$	$0 \leq m \leq 50 \text{ e}$	$\pm 0,5 \text{ e}$
$50\,000 \text{ e} < m \leq 200\,000 \text{ e}$	$5\,000 \text{ e} < m \leq 20\,000 \text{ e}$	$500 \text{ e} < m \leq 2\,000 \text{ e}$	$50 \text{ e} < m \leq 200 \text{ e}$	$\pm 1,0 \text{ e}$
$200\,000 \text{ e} < m$	$20\,000 \text{ e} < m \leq 100\,000 \text{ e}$	$2\,000 \text{ e} < m \leq 10\,000 \text{ e}$	$200 \text{ e} < m \leq 1\,000 \text{ e}$	$\pm 1,5 \text{ e}$

- 4.2. The maximum permissible errors in service are twice the maximum permissible errors fixed in Section 4.1.

5. Weighing results of an instrument shall be repeatable, and shall be reproducible by the other indicating devices used and in accordance with other methods of balancing used.

The weighing results shall be sufficiently insensitive to changes in the position of the load on the load receptor.

6. The instrument shall react to small variations in the load.

7. Influence quantities and time
- 7.1. Instruments of classes II, III and IIII, liable to be used in a tilted position, shall be sufficiently insensitive to the degree of tilting that can occur in normal use.
- 7.2. The instruments shall meet the metrological requirements within the temperature range specified by the manufacturer. The value of this range shall be at least equal to:
- 5 °C for an instrument in class I,
 - 15 °C for an instrument in class II,
 - 30 °C for an instrument in class III or IIII.

In the absence of a manufacturer's specification, the temperature range of – 10 °C to + 40 °C applies.

- 7.3. Instruments operated from a mains power supply shall meet the metrological requirements under conditions of power supply within the limits of normal fluctuation.
- Instruments operated from battery power shall indicate whenever the voltage drops below the minimum required value and shall under those circumstances either continue to function correctly or be automatically put out of service.
- 7.4. Electronic instruments, except those in class I and in class II if e is less than 1 g, shall meet the metrological requirements under conditions of high relative humidity at the upper limit of their temperature range.
- 7.5. Loading an instrument in class II, III or IIII for a prolonged period of time shall have a negligible influence on the indication at load or on the zero indication immediately after removal of the load.
- 7.6. Under other conditions the instruments shall either continue to function correctly or be automatically put out of service.

Design and construction

8. General requirements
- 8.1. Design and construction of the instruments shall be such that the instruments will preserve their metrological qualities when properly used and installed and when used in an environment for which they are intended. The value of the mass must be indicated.
- 8.2. When exposed to disturbances, electronic instruments shall not display the effects of significant faults, or shall automatically detect and indicate them.
- Upon automatic detection of a significant fault, electronic instruments shall provide a visual or audible alarm that shall continue until the user takes corrective action or the fault disappears.
- 8.3. The requirements of points 8.1 and 8.2 shall be met on a lasting basis during a period of time that is normal in view of the intended use of such instruments.
- Digital electronic devices shall always exercise adequate control of the correct operation of the measuring process, of the indicating device, and of all data storage and data transfer.
- Upon automatic detection of a significant durability error, electronic instruments shall provide a visual or audible alarm that shall continue until the user takes corrective action or the error disappears.
- 8.4. When external equipment is connected to an electronic instrument through an appropriate interface the metrological qualities of the instrument shall not be adversely influenced.
- 8.5. The instruments shall have no characteristics likely to facilitate fraudulent use, whereas possibilities for unintentional misuse shall be minimal. Components that may not be dismantled or adjusted by the user shall be secured against such actions.
- 8.6. Instruments shall be designed to permit ready execution of the statutory controls laid down by this Directive.

9. Indication of weighing results and other weight values

The indication of the weighing results and other weight values shall be accurate, unambiguous and non-misleading and the indicating device shall permit easy reading of the indication under normal conditions of use.

The names and symbols of the units referred to in point 1 of this Annex shall comply with the provisions of Directive 80/181/EEC with the addition of the symbol for the metric carat which shall be the symbol 'ct'.

Indication shall be impossible above the maximum capacity (Max), increased by 9 e.

An auxiliary indicating device is permitted only to the right of the decimal mark. An extended indicating device may be used only temporarily, and printing shall be inhibited during its functioning.

Secondary indications may be shown, provided that they cannot be mistaken for primary indications.

10. Printing of weighing results and other weight values

Printed results shall be correct, suitably identified and unambiguous. The printing shall be clear, legible, non-erasable and durable.

11. Levelling

When appropriate, instruments shall be fitted with a levelling device and a level indicator, sufficiently sensitive to allow proper installation.

12. Zeroing

Instruments may be equipped with zeroing devices. The operation of these devices shall result in accurate zeroing and shall not cause incorrect measuring results.

13. Tare devices and preset tare devices

The instruments may have one or more tare devices and a preset tare device. The operation of the tare devices shall result in accurate zeroing and shall ensure correct net weighing. The operation of the preset tare device shall ensure correct determination of the calculated net value.

14. Instruments for direct sales to the public, with a maximum capacity not greater than 100 kg: additional requirements

Instruments for direct sale to the public shall show all essential information about the weighing operation and, in the case of price-indicating instruments, shall clearly show the customer the price calculation of the product to be purchased.

The price to pay, if indicated, shall be accurate.

Price-computing instruments shall display the essential indications long enough for the customer to read them properly.

Price-computing instruments may perform functions other than per-article weighing and price computation only if all indications related to all transactions are printed clearly and unambiguously and are conveniently arranged on a ticket or label for the customer.

Instruments shall bear no characteristics that can cause, directly or indirectly, indications the interpretation of which is not easy or straightforward.

Instruments shall safeguard customers against incorrect sales transactions due to their malfunctioning.

Auxiliary indicating devices and extended indicating devices are not permitted.

Supplementary devices are permitted only if they cannot lead to fraudulent use.

Instruments similar to those normally used for direct sales to the public which do not satisfy the requirements of this Section must carry near to the display the indelible marking 'Not to be used for direct sale to the public'.

15. Price labelling instruments

Price labelling instruments shall meet the requirements of price indicating instruments for direct sale to the public, as far as applicable to the instrument in question. The printing of a price label shall be impossible below a minimum capacity.

ANNEX II

CONFORMITY ASSESSMENT PROCEDURES

1. EC type-examination

- 1.1. EC type-examination is the procedure whereby a notified body verifies and certifies that an instrument, representative of the production envisaged, meets the requirements of this Directive.
- 1.2. The application for EC type-examination shall be lodged with a single notified body by the manufacturer or his authorised representative established within the Community.

The application shall include:

- the name and address of the manufacturer and, if the application is lodged by the authorised representative, his name and address in addition,
- a written declaration that the application has not been lodged with any other notified body,
- the design documentation, as described in Annex III.

The applicant shall place at the disposal of the notified body an instrument, representative of the production envisaged, hereinafter the 'type'.

1.3. The notified body shall:

- 1.3.1. examine the design documentation and verify that the type has been manufactured in accordance with that documentation;
- 1.3.2. agree with the applicant on the location where the examinations and/or tests shall be carried out;
- 1.3.3. perform or have performed the appropriate examinations and/or tests to check whether the solutions adopted by the manufacturer meet the essential requirements where the harmonised standards referred to in Article 6(1) have not been applied;
- 1.3.4. perform or have performed the appropriate examinations and/or tests to check whether, where the manufacturer has chosen to apply the relevant standards, these standards have been applied effectively, thereby assuring conformity with the essential requirements.

- 1.4. Where the type complies with the provisions of this Directive, the notified body shall issue an EC type-approval certificate to the applicant. The certificate shall contain the conclusions of the examination, conditions (if any) for its validity, the necessary data for identification of the approved instrument and, if relevant, a description of its functioning. All the relevant technical elements such as drawings and layouts shall be annexed to the EC type-approval certificate.

The certificate shall have a validity period of 10 years from the date of its issue, and may be renewed for subsequent periods of 10 years each.

In the event of fundamental changes to the design of the instrument, e.g. as a result of the application of new techniques, the validity of the certificate may be limited to two years and extended by three years.

- 1.5. Each notified body shall periodically make available to all Member States the list of:

- applications received for EC type-examination,
- EC type-approval certificates issued,
- applications for type-certificates refused,
- additions and amendments relating to documents already issued.

Each notified body shall moreover inform all the Member States forthwith of withdrawals of EC type-approval certificates.

Each Member State shall make this information available to the bodies which it has notified.

- 1.6. The other notified bodies may receive a copy of the certificates together with the annexes to them.
- 1.7. The applicant shall keep the notified body that has issued the EC type-approval certificate informed of any modification to the approved type.

Modifications to the approved type must receive additional approval from the notified body that issued the EC type-approval certificate where such changes influence conformity with the essential requirements of this Directive or the prescribed conditions for use of the instrument. This additional approval is given in the form of an addition to the original EC type-approval certificate.

2. EC declaration of type conformity (guarantee of production quality)
- 2.1. The EC declaration of type conformity (guarantee of production quality) is the procedure whereby the manufacturer who satisfies the obligations of point 2.2 declares that the instruments concerned are, where applicable, in conformity with the type as described in the EC type-approval certificate and that they satisfy the requirements of this Directive.

The manufacturer or his authorised representative established within the Community shall affix the 'CE' conformity marking to each instrument and the inscriptions provided for in Annex IV and shall draw up a written declaration of conformity.

The 'CE' conformity marking shall be accompanied by the identification number of the notified body responsible for the EC surveillance referred to in point 2.4.

- 2.2. The manufacturer shall have adequately implemented a quality system as specified in point 2.3 and shall be subject to EC surveillance as specified in point 2.4.
- 2.3. Quality system
- 2.3.1. The manufacturer shall lodge an application for approval of his quality system with a notified body.

The application shall include:

- an undertaking to carry out the obligations arising from the approved quality system,
- an undertaking to maintain the approved quality system to ensure its continuing suitability and effectiveness.

The manufacturer shall make available to the notified body all relevant information, in particular the quality system's documentation and the design documentation of the instrument.

- 2.3.2. The quality system shall ensure conformity of the instruments with the type as described in the EC type-approval certificate and with the requirement(s) of this Directive.

All the elements, requirements and provisions adopted by the manufacturer shall be documented in a systematic and orderly manner in the form of written rules, procedures and instructions. This quality system documentation shall ensure a proper understanding of the quality programmes, plans, manuals and records.

It shall contain in particular an adequate description of:

- the quality objectives and the organisational structure, responsibilities and powers of the management with regard to product quality,
- the manufacturing process, the quality control and assurance techniques and the systematic measures that will be used,

- the examinations and tests that will be carried out before, during and after manufacture, and the frequency with which they will be carried out,
- the means to monitor the achievement of the required product quality and the effective operation of the quality system.

- 2.3.3. The notified body shall examine and evaluate the quality system to determine whether it satisfies the requirements referred to in point 2.3.2. It shall presume conformity with these requirements in respect of quality systems that implement the corresponding harmonised standard.

It shall notify its decision to the manufacturer and inform the other notified bodies thereof. The notification to the manufacturer shall contain the conclusions of the examination and, in the event of refusal, the justification for the decision.

- 2.3.4. The manufacturer or his authorised representative shall keep the notified body that has approved the quality system informed of any updating of the quality assurance system in relation to changes brought about by, e.g. new technologies and new quality concepts.

- 2.3.5. Any notified body that withdraws approval of a quality system shall so inform the other notified bodies.

2.4. EC surveillance

- 2.4.1. The purpose of EC surveillance is to make sure that the manufacturer duly fulfils the obligations arising out of the approved quality system.

- 2.4.2. The manufacturer shall grant the notified body access for inspection purposes to the manufacture, inspection, testing and storage premises and shall provide it with all necessary information, in particular:

- the quality system documentation,
- the design documentation,
- the quality records, e.g. the inspection reports and tests and calibration data, reports on the qualifications of the personnel concerned, etc.

The notified body shall periodically carry out audits in order to ensure that the manufacturer is maintaining and applying the quality system; it shall provide the manufacturer with an audit report.

In addition, the notified body may carry out unscheduled visits to the manufacturer. During such visits, the notified body may carry out full or partial audits. It shall provide the manufacturer with a report on the visit, and, where appropriate, an audit report.

- 2.4.3. The notified body shall ensure that the manufacturer maintains and applies the approved quality system.

3. EC verification

- 3.1. EC verification is the procedure whereby the manufacturer or his authorised representative established within the Community ensures and declares that the instruments which have been checked in accordance with point 3.3 are, where applicable, in conformity with the type described in the EC type-examination certificate and that they satisfy the requirements of this Directive.

- 3.2. The manufacturer shall take all necessary measures in order that the manufacturing process ensures conformity of the instruments, where applicable, with the type as described in the EC type-examination certificate and with the requirements of this Directive which apply to them. The manufacturer or his authorised representative established within the Community shall affix the 'CE' conformity marking to each instrument and draw up a written declaration of conformity.

- 3.3. The notified body shall carry out the appropriate examinations and tests in order to check the conformity of the product to the requirements of this Directive by examination and testing of every instrument, as specified in point 3.5.

- 3.4. For instruments not subject to EC type-approval, the documents relating to the design of the instrument, as set out in Annex III, must be accessible to the notified body should the latter so request.
- 3.5. Verification by checking and testing of each instrument
- 3.5.1. All instruments shall be individually examined and appropriate tests, as set out in the relevant harmonised standards referred to in Article 6(1), or equivalent tests, shall be carried out in order to verify their conformity, where applicable, with the type as described in the EC type-examination certificate and the requirements of this Directive.
- 3.5.2. The notified body shall affix, or cause to be affixed, its identification number on each instrument the conformity of which to requirements has been established, and shall draw up a written certificate of conformity relating to the tests carried out.
- 3.5.3. The manufacturer or his authorised representative shall ensure that he is able to supply the notified body's certificates of conformity on request.
4. EC unit verification
- 4.1. EC unit verification is the procedure whereby the manufacturer or his authorised representative established within the Community ensures and declares that the instrument, generally designed for a specific application, which has been issued with the certificate referred to in point 4.2 conforms to the requirements of this Directive that apply to it. The manufacturer or his authorised representative shall affix the 'CE' conformity marking to the instrument and shall draw up a written declaration of conformity.
- 4.2. The notified body shall examine the instrument and carry out the appropriate tests, as set out in the relevant harmonised standard(s) referred to in Article 6(1), or equivalent tests, in order to ensure its conformity with the relevant requirements of this Directive.
- The notified body shall affix, or cause to be affixed, its identification number to the instrument the conformity of which to requirements has been established, and shall draw up a written certificate of conformity concerning the tests carried out.
- 4.3. The aim of the technical documentation relating to the design of the instrument, as referred to in Annex III, is to enable conformity with the requirements of this Directive to be assessed and the design, manufacture and operation of the instrument to be understood. It must be accessible to the notified body.
- 4.4. The manufacturer or his authorised representative shall ensure that he is able to supply the notified body's certificates of conformity on request.
5. Common provisions
- 5.1. The EC declaration of type conformity (guarantee of production quality), the EC verification, and the EC unit verification may be carried out at the manufacturer's works or any other location if transport to the place of use does not require dismantling of the instrument, if the putting into service at the place of use does not require assembly of the instrument or other technical installation work likely to affect the instrument's performance, and if the gravity value at the place of putting into service is taken into consideration or if the instrument's performance is insensitive to gravity variations. In all other cases, they shall be carried out at the place of use of the instrument.
- 5.2. If the instrument's performance is sensitive to gravity variations the procedures referred to in point 5.1 may be carried out in two stages, with the second stage comprising all examinations and tests of which the outcome is gravity-dependent, and the first stage all other examinations and tests. The second stage shall be carried out at the place of use of the instrument. If a Member State has established gravity zones on its territory the expression 'at the place of use of the instrument' may be read as 'in the gravity zone of use of the instrument'.
- 5.2.1. Where a manufacturer has opted for execution in two stages of one of the procedures mentioned in point 5.1, and where these two stages will be carried out by different parties, an instrument which has undergone the first stage of the procedure shall bear the identification number of the notified body involved in that stage.

- 5.2.2. The party which has carried out the first stage of the procedure shall issue for each of the instruments a certificate containing the data necessary for identification of the instrument and specifying the examinations and tests that have been carried out.

The party which carries out the second stage of the procedure shall carry out those examinations and tests that have not yet been carried out.

The manufacturer or his authorised representative shall ensure that he is able to supply the notified body's certificates of conformity on request.

- 5.2.3. A manufacturer who has opted for the EC declaration of type conformity (guarantee of production quality) in the first stage may either use this same procedure in the second stage or decide to continue in the second stage with EC verification.

- 5.2.4. The 'CE' conformity marking shall be affixed to the instrument on completion of the second stage, along with the identification number of the notified body which took part in the second stage.
-

*ANNEX III***DESIGN TECHNICAL DOCUMENTATION**

The technical documentation must render the design, manufacture and operation of the product intelligible and enable an assessment to be made of its conformity with the requirements of this Directive.

The documentation shall include in so far as relevant for assessment:

- a general description of the type,
 - conceptual designs and manufacturing drawings and plans of components, sub-assemblies, circuits, etc.,
 - descriptions and explanations necessary for the understanding of the above, including the operation of the instrument,
 - a list of the harmonised standards referred to in Article 6(1), applied in full or in part, and descriptions of the solutions adopted to meet the essential requirements where the harmonised standards referred to in Article 6(1) have not been applied,
 - results of design calculations made and of examinations, etc.,
 - test reports,
 - the EC type-approval certificates and the results of relevant tests on instruments containing parts identical to those in the design.
-

ANNEX IV

'CE' CONFORMITY MARKING AND INSCRIPTIONS

1. Instruments subject to the EC conformity assessment procedure

1.1. These instruments must bear:

- (a) — the 'CE' conformity marking comprising the 'CE' symbol as described in Annex VI,
 - the identification number(s) of the notified body/bodies that has/have carried out the EC surveillance or the EC verification.

The abovementioned marking and inscriptions shall be affixed to the instrument and distinctly grouped together;

- (b) a green sticker at least 12,5 mm × 12,5 mm square bearing a capital letter 'M' printed in black;

(c) the following inscriptions:

- the number of the EC type-approval certificate, where appropriate,
- the manufacturer's mark or name,
- the accuracy class, enclosed in an oval or in two horizontal lines joined by two half circles,
- maximum capacity, in the form Max ...,
- minimum capacity, in the form Min ...,
- verification scale interval, in the form $e = \dots$,
- the last two digits of the year in which the 'CE' conformity marking was affixed,

plus, when applicable:

- serial number,
- for instruments consisting of separate but associated units: identification mark on each unit,
- scale interval if it is different from e , in the form $d = \dots$,
- maximum additive tare effect, in the form $T = + \dots$,
- maximum subtractive tare effect if it is different from Max, in the form $T = - \dots$,
- tare interval if it is different from d , in the form $d_T = \dots$,
- maximum safe load if it is different from Max, in the form Lim ...,
- the special temperature limits, in the form ... °C/... °C,
- ratio between load receptor and load.

- 1.2. The instruments shall have adequate facilities for the affixing of the 'CE' conformity marking and/or inscriptions. These shall be such that it shall be impossible to remove the marking and inscriptions without damaging them, and that the marking and inscriptions shall be visible when the instrument is in its regular operating position.
- 1.3. Where a data plate is used it shall be possible to seal the plate unless it cannot be removed without being destroyed. If the data plate is sealable it shall be possible to apply a control mark to it.
- 1.4. The inscriptions Max, Min, *e*, and *d*, shall also be shown near the display of the result if they are not already located there.
- 1.5. Each load measuring device which is connected or can be connected to one or more load receptors shall bear the relevant inscriptions relating to the said load receptors.
2. Other instruments

The other instruments must bear:

- the manufacturer's mark or name,
- maximum capacity, in the form Max

Those instruments may not bear the stickers provided for in point 1.1(b).

3. Restrictive use symbol specified in Article 13

That symbol shall be constituted by a capital letter 'M' printed in black on a red background at least 25 mm × 25 mm square with two intersecting diagonals forming a cross.

ANNEX V

The minimum criteria to be applied by member states when designating bodies for the carrying-out of tasks pertaining to the procedures referred to in article 9

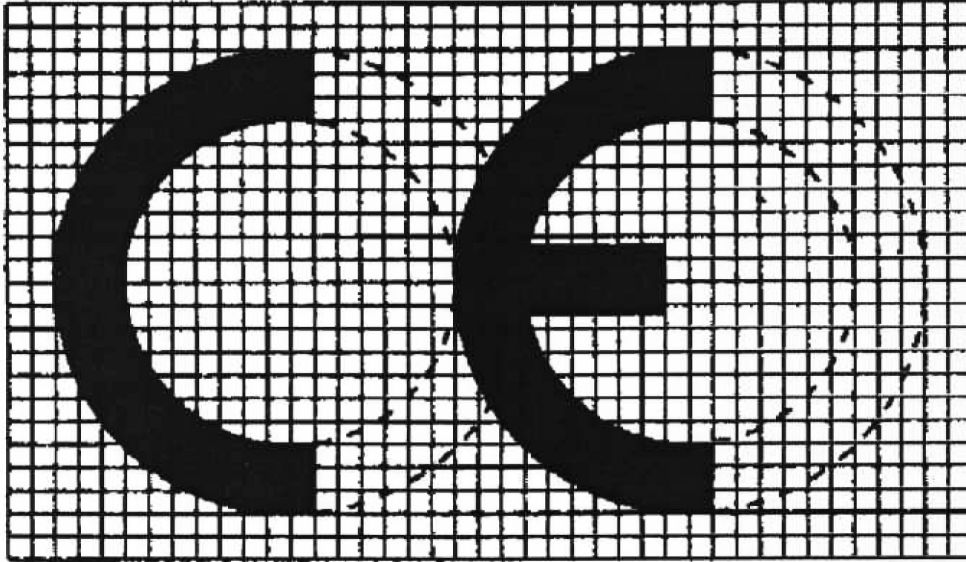
1. The bodies shall have at their disposal the necessary personnel, means and equipment.
2. The personnel of the bodies shall have technical competence and professional integrity.
3. The bodies shall work independently of all circles, groups or persons having a direct or indirect interest in non-automatic weighing instruments as regards the carrying-out of the tests, the preparation of the reports, the issuing of the certificates and the surveillance required by this Directive.
4. The personnel of the bodies shall respect professional confidentiality.
5. The bodies shall take out a civil liability insurance if their civil liability is not covered by the State under national law.

The fulfilment of the conditions under points 1 and 2 shall be periodically verified by the Member States.

ANNEX VI

'CE' CONFORMITY MARKING

- The 'CE' conformity marking shall consist of the initials 'CE' taking the following form:



- If the 'CE' conformity marking is reduced or enlarged the proportions given in the above graduated drawing must be respected.
- The various components of the 'CE' conformity marking must have substantially the same vertical dimension, which may not be less than 5 mm.

ANNEX VII

PART A

Repealed Directive with its amendment

(referred to in Article 17)

Council Directive 90/384/EEC
(OJ L 189, 20.7.1990, p. 1)

Council Directive 93/68/EEC
(OJ L 220, 30.8.1993, p. 1)

Article 1, point 7, and Article 8 only

PART B

List of time limits for transposition into national law and application

(referred to in Article 17)

Directive	Time limit for transposition	Date of application
90/384/EEC	30 June 1992	1 January 1993 ⁽¹⁾
93/68/EEC	30 June 1994	1 January 1995 ⁽²⁾

⁽¹⁾ In accordance with Article 15(3) of Directive 90/384/EEC Member States shall permit, during a period of 10 years from the date on which they apply the laws, regulations and administrative provisions adopted by the Member States in order to transpose that Directive into national law, the placing on the market and/or putting into service of instruments which conform to the rules in force before 1 January 1993.

⁽²⁾ In accordance with Article 14(2) of Directive 93/68/EEC: 'Until 1 January 1997, Member States shall allow the placing on the market and the bringing into service of products which comply with the marking arrangements in force before 1 January 1995'.

ANNEX VIII

CORRELATION TABLE

Directive 90/384/EEC	This Directive
Recital 5, last sentence	Article 2, point (3)
Article 1(1), first subparagraph	Article 2, point (1)
Article 1(1), second subparagraph	Article 2, point (2)
Article 1(1), third subparagraph	Article 1(1)
Article 1(2), introductory wording	Article 1(2), introductory wording
Article 1(2), point (a)(1)	Article 1(2), point (a)(i)
Article 1(2), point (a)(2)	Article 1(2), point (a)(ii)
Article 1(2), point (a)(3)	Article 1(2), point (a)(iii)
Article 1(2), point (a)(4)	Article 1(2), point (a)(iv)
Article 1(2), point (a)(5)	Article 1(2), point (a)(v)
Article 1(2), point (a)(6)	Article 1(2), point (a)(vi)
Article 1(2), point (b)	Article 1(2), point (b)
Article 2	Article 3
Article 3	Article 4
Article 4	Article 5
Article 5	Article 6
Article 6, first paragraph, first sentence	Article 7, first paragraph
Article 6, first paragraph, second sentence	Article 7, second paragraph
Article 6, second paragraph	Article 7, third paragraph
Article 7	Article 8
Article 8(1) and (2)	Article 9(1) and (2)
Article 8(3), point (a)	Article 9(3), first subparagraph
Article 8(3), point (b)	Article 9(3), second subparagraph
Article 9	Article 10
Article 10	Article 11
Article 11	Article 12
Article 12	Article 13
Article 13	Article 14
Article 14, first sentence	Article 15, first paragraph
Article 14, second sentence	Article 15, second paragraph
Article 15(1) to (3)	—
Article 15(4)	Article 16
Article 15(5)	—
—	Article 17
—	Article 18
Article 16	Article 19
Annexes I to VI	Annexes I to VI
—	Annex VII
—	Annex VIII

DIRECTIVE 2009/38/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 6 May 2009****on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees****(Recast)****(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 137 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having consulted the Committee of the Regions,

Acting in accordance with the procedure referred to in Article 251 of the Treaty ⁽²⁾,

Whereas:

(1) A number of substantive changes are to be made to Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees ⁽³⁾. In the interests of clarity, that Directive should be recast.

(2) Pursuant to Article 15 of Directive 94/45/EC, the Commission has, in consultation with the Member States and with management and labour at European level, reviewed the operation of that Directive and, in particular, examined whether the workforce size thresholds are appropriate, with a view to proposing suitable amendments where necessary.

(3) Having consulted the Member States and management and labour at European level, the Commission submitted, on 4 April 2000, a report on the application of Directive 94/45/EC to the European Parliament and to the Council.

(4) Pursuant to Article 138(2) of the Treaty, the Commission consulted management and labour at Community level on the possible direction of Community action in this area.

(5) Following this consultation, the Commission considered that Community action was advisable and again consulted management and labour at Community level on the content of the planned proposal, pursuant to Article 138(3) of the Treaty.

(6) Following this second phase of consultation, management and labour have not informed the Commission of their shared wish to initiate the process which might lead to the conclusion of an agreement, as provided for in Article 138(4) of the Treaty.

(7) It is necessary to modernise Community legislation on transnational information and consultation of employees with a view to ensuring the effectiveness of employees' transnational information and consultation rights, increasing the proportion of European Works Councils established while enabling the continuous functioning of existing agreements, resolving the problems encountered in the practical application of Directive 94/45/EC and remedying the lack of legal certainty resulting from some of its provisions or the absence of certain provisions, and ensuring that Community legislative instruments on information and consultation of employees are better linked.

(8) Pursuant to Article 136 of the Treaty, one particular objective of the Community and the Member States is to promote dialogue between management and labour.

(9) This Directive is part of the Community framework intended to support and complement the action taken by Member States in the field of information and consultation of employees. This framework should keep to a minimum the burden on undertakings or establishments while ensuring the effective exercise of the rights granted.

⁽¹⁾ Opinion of 4 December 2008 (not yet published in the Official Journal).

⁽²⁾ Opinion of the European Parliament of 16 December 2008 (not yet published in the Official Journal) and Council Decision of 17 December 2008.

⁽³⁾ OJ L 254, 30.9.1994, p. 64.

- (10) The functioning of the internal market involves a process of concentrations of undertakings, cross-border mergers, take-overs, joint ventures and, consequently, a transnationalisation of undertakings and groups of undertakings. If economic activities are to develop in a harmonious fashion, undertakings and groups of undertakings operating in two or more Member States must inform and consult the representatives of those of their employees who are affected by their decisions.
- (11) Procedures for informing and consulting employees as embodied in legislation or practice in the Member States are often not geared to the transnational structure of the entity which takes the decisions affecting those employees. This may lead to the unequal treatment of employees affected by decisions within one and the same undertaking or group of undertakings.
- (12) Appropriate provisions must be adopted to ensure that the employees of Community-scale undertakings or Community-scale groups of undertakings are properly informed and consulted when decisions which affect them are taken in a Member State other than that in which they are employed.
- (13) In order to guarantee that the employees of undertakings or groups of undertakings operating in two or more Member States are properly informed and consulted, it is necessary to set up European Works Councils or to create other suitable procedures for the transnational information and consultation of employees.
- (14) The arrangements for informing and consulting employees need to be defined and implemented in such a way as to ensure their effectiveness with regard to the provisions of this Directive. To that end, informing and consulting the European Works Council should make it possible for it to give an opinion to the undertaking in a timely fashion, without calling into question the ability of undertakings to adapt. Only dialogue at the level where directions are prepared and effective involvement of employees' representatives make it possible to anticipate and manage change.
- (15) Workers and their representatives must be guaranteed information and consultation at the relevant level of management and representation, according to the subject under discussion. To achieve this, the competence and scope of action of a European Works Council must be distinct from that of national representative bodies and must be limited to transnational matters.
- (16) The transnational character of a matter should be determined by taking account of both the scope of its potential effects, and the level of management and representation that it involves. For this purpose, matters which concern the entire undertaking or group or at least two Member States are considered to be transnational. These include matters which, regardless of the number of Member States involved, are of importance for the European workforce in terms of the scope of their potential effects or which involve transfers of activities between Member States.
- (17) It is necessary to have a definition of 'controlling undertaking' relating solely to this Directive, without prejudice to the definitions of 'group' or 'control' in other acts.
- (18) The mechanisms for informing and consulting employees in undertakings or groups of undertakings operating in two or more Member States must encompass all of the establishments or, as the case may be, the group's undertakings located within the Member States, regardless of whether the undertaking or the group's controlling undertaking has its central management inside or outside the territory of the Member States.
- (19) In accordance with the principle of autonomy of the parties, it is for the representatives of employees and the management of the undertaking or the group's controlling undertaking to determine by agreement the nature, composition, the function, mode of operation, procedures and financial resources of European Works Councils or other information and consultation procedures so as to suit their own particular circumstances.
- (20) In accordance with the principle of subsidiarity, it is for the Member States to determine who the employees' representatives are and in particular to provide, if they consider appropriate, for a balanced representation of different categories of employees.
- (21) It is necessary to clarify the concepts of information and consultation of employees, in accordance with the definitions in the most recent Directives on this subject and those which apply within a national framework, with the objectives of reinforcing the effectiveness of dialogue at transnational level, permitting suitable linkage between the national and transnational levels of dialogue and ensuring the legal certainty required for the application of this Directive.
- (22) The definition of 'information' needs to take account of the goal of allowing employees representatives to carry out an appropriate examination, which implies that the information be provided at such time, in such fashion and with such content as are appropriate without slowing down the decision-making process in undertakings.

- (23) The definition of 'consultation' needs to take account of the goal of allowing for the expression of an opinion which will be useful to the decision-making process, which implies that the consultation must take place at such time, in such fashion and with such content as are appropriate.
- (24) The information and consultation provisions laid down in this Directive must be implemented in the case of an undertaking or a group's controlling undertaking which has its central management outside the territory of the Member States by its representative agent, to be designated if necessary, in one of the Member States or, in the absence of such an agent, by the establishment or controlled undertaking employing the greatest number of employees in the Member States.
- (25) The responsibility of undertakings or groups of undertakings in the transmission of the information required to commence negotiations must be specified in a way that enables employees to determine whether the undertaking or group of undertakings where they work is a Community-scale undertaking or group of undertakings and to make the necessary contacts to draw up a request to commence negotiations.
- (26) The special negotiating body must represent employees from the various Member States in a balanced fashion. Employees' representatives must be able to cooperate to define their positions in relation to negotiations with the central management.
- (27) Recognition must be given to the role that recognised trade union organisations can play in negotiating and renegotiating the constituent agreements of European Works Councils, providing support to employees' representatives who express a need for such support. In order to enable them to monitor the establishment of new European Works Councils and promote best practice, competent trade union and employers' organisations recognised as European social partners shall be informed of the commencement of negotiations. Recognised competent European trade union and employers' organisations are those social partner organisations that are consulted by the Commission under Article 138 of the Treaty. The list of those organisations is updated and published by the Commission.
- (28) The agreements governing the establishment and operation of European Works Councils must include the methods for modifying, terminating, or renegotiating them when necessary, particularly where the make-up or structure of the undertaking or group of undertakings is modified.
- (29) Such agreements must lay down the arrangements for linking the national and transnational levels of information and consultation of employees appropriate for the particular conditions of the undertaking or group of undertakings. The arrangements must be defined in such a way that they respect the competences and areas of action of the employee representation bodies, in particular with regard to anticipating and managing change.
- (30) Those agreements must provide, where necessary, for the establishment and operation of a select committee in order to permit coordination and greater effectiveness of the regular activities of the European Works Council, together with information and consultation at the earliest opportunity where exceptional circumstances arise.
- (31) Employees' representatives may decide not to seek the setting-up of a European Works Council or the parties concerned may decide on other procedures for the transnational information and consultation of employees.
- (32) Provision should be made for certain subsidiary requirements to apply should the parties so decide or in the event of the central management refusing to initiate negotiations or in the absence of agreement subsequent to such negotiations.
- (33) In order to perform their representative role fully and to ensure that the European Works Council is useful, employees' representatives must report to the employees whom they represent and must be able to receive the training they require.
- (34) Provision should be made for the employees' representatives acting within the framework of this Directive to enjoy, when exercising their functions, the same protection and guarantees as those provided to employees' representatives by the legislation and/or practice of the country of employment. They must not be subject to any discrimination as a result of the lawful exercise of their activities and must enjoy adequate protection as regards dismissal and other sanctions.
- (35) The Member States must take appropriate measures in the event of failure to comply with the obligations laid down in this Directive.
- (36) In accordance with the general principles of Community law, administrative or judicial procedures, as well as sanctions that are effective, dissuasive and proportionate in relation to the seriousness of the offence, should be applicable in cases of infringement of the obligations arising from this Directive.

- (37) For reasons of effectiveness, consistency and legal certainty, there is a need for linkage between the Directives and the levels of informing and consulting employees established by Community and national law and/or practice. Priority must be given to negotiations on these procedures for linking information within each undertaking or group of undertakings. If there are no agreements on this subject and where decisions likely to lead to substantial changes in work organisation or contractual relations are envisaged, the process must be conducted at both national and European level in such a way that it respects the competences and areas of action of the employee representation bodies. Opinions expressed by the European Works Council should be without prejudice to the competence of the central management to carry out the necessary consultations in accordance with the schedules provided for in national legislation and/or practice. National legislation and/or practice may have to be adapted to ensure that the European Works Council can, where applicable, receive information earlier or at the same time as the national employee representation bodies, but must not reduce the general level of protection of employees.
- (38) This Directive should be without prejudice to the information and consultation procedures referred to in Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community⁽¹⁾ and to the specific procedures referred to in Article 2 of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies⁽²⁾ and Article 7 of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses⁽³⁾.
- (39) Special treatment should be accorded to Community-scale undertakings and groups of undertakings in which there existed, on 22 September 1996, an agreement, covering the entire workforce, providing for the transnational information and consultation of employees.
- (40) Where the structure of the undertaking or group of undertakings changes significantly, for example, due to a merger, acquisition or division, the existing European Works Council(s) must be adapted. This adaptation must be carried out as a priority pursuant to the clauses of the applicable agreement, if such clauses permit the required adaptation to be carried out. If this is not the case and a request establishing the need is made, negotiations, in which the members of the existing European Works Council(s) must be involved, will commence on a new agreement. In order to permit the information and consultation of employees during the often decisive period when the structure is changed, the existing European Works Council(s) must be able to continue to operate, possibly with adaptations, until a new agreement is concluded. Once a new agreement is signed, the previously established councils must be dissolved, and the agreements instituting them must be terminated, regardless of their provisions on validity or termination.
- (41) Unless this adaptation clause is applied, the agreements in force should be allowed to continue in order to avoid their obligatory renegotiation when this would be unnecessary. Provision should be made so that, as long as agreements concluded prior to 22 September 1996 under Article 13(1) of Directive 94/45/EC or under Article 3(1) of Directive 97/74/EC⁽⁴⁾ remain in force, the obligations arising from this Directive should not apply to them. Furthermore, this Directive does not establish a general obligation to renegotiate agreements concluded pursuant to Article 6 of Directive 94/45/EC between 22 September 1996 and 5 June 2011.
- (42) Without prejudice to the possibility of the parties to decide otherwise, a European Works Council set up in the absence of agreement between the parties must, in order to fulfil the objective of this Directive, be kept informed and consulted on the activities of the undertaking or group of undertakings so that it may assess the possible impact on employees' interests in at least two different Member States. To that end, the undertaking or controlling undertaking must be required to communicate to the employees' appointed representatives general information concerning the interests of employees and information relating more specifically to those aspects of the activities of the undertaking or group of undertakings which affect employees' interests. The European Works Council must be able to deliver an opinion at the end of the meeting.
- (43) Certain decisions having a significant effect on the interests of employees must be the subject of information and consultation of the employees' appointed representatives as soon as possible.

⁽¹⁾ OJ L 80, 23.3.2002, p. 29.

⁽²⁾ OJ L 225, 12.8.1998, p. 16.

⁽³⁾ OJ L 82, 22.3.2001, p. 16.

⁽⁴⁾ Council Directive 97/74/EC of 15 December 1997 extending, to the United Kingdom of Great Britain and Northern Ireland, Directive 94/45/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (OJ L 10, 16.1.1998, p. 22).

- (44) The content of the subsidiary requirements which apply in the absence of an agreement and serve as a reference in the negotiations must be clarified and adapted to developments in the needs and practices relating to transnational information and consultation. A distinction should be made between fields where information must be provided and fields where the European Works Council must also be consulted, which involves the possibility of obtaining a reasoned response to any opinions expressed. To enable the select committee to play the necessary coordinating role and to deal effectively with exceptional circumstances, that committee must be able to have up to five members and be able to consult regularly.
- (45) Since the objective of this Directive, namely the improvement of the right to information and to consultation of employees in Community-scale undertakings and Community-scale groups of undertakings, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (46) This Directive respects fundamental rights and observes in particular the principles recognised by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for the right of workers or their representatives to be guaranteed information and consultation in good time at the appropriate levels in the cases and under the conditions provided for by Community law and national laws and practices (Article 27 of the Charter of Fundamental Rights of the European Union).
- (47) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directives. The obligation to transpose the provisions which are unchanged arises under the earlier Directives.
- (48) In accordance with point 34 of the Interinstitutional Agreement on better law-making ⁽¹⁾, Member States are encouraged to draw up, for themselves and in the interests of the Community, tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
- (49) This Directive should be without prejudice to the obligations of the Member States relating to the time limits set out in Annex II, Part B for transposition into national law and application of the Directives,

HAVE ADOPTED THIS DIRECTIVE:

SECTION I

GENERAL

Article 1

Objective

1. The purpose of this Directive is to improve the right to information and to consultation of employees in Community-scale undertakings and Community-scale groups of undertakings.
2. To that end, a European Works Council or a procedure for informing and consulting employees shall be established in every Community-scale undertaking and every Community-scale group of undertakings, where requested in the manner laid down in Article 5(1), with the purpose of informing and consulting employees. The arrangements for informing and consulting employees shall be defined and implemented in such a way as to ensure their effectiveness and to enable the undertaking or group of undertakings to take decisions effectively.
3. Information and consultation of employees must occur at the relevant level of management and representation, according to the subject under discussion. To achieve that, the competence of the European Works Council and the scope of the information and consultation procedure for employees governed by this Directive shall be limited to transnational issues.
4. Matters shall be considered to be transnational where they concern the Community-scale undertaking or Community-scale group of undertakings as a whole, or at least two undertakings or establishments of the undertaking or group situated in two different Member States.
5. Notwithstanding paragraph 2, where a Community-scale group of undertakings within the meaning of Article 2(1)(c) comprises one or more undertakings or groups of undertakings which are Community-scale undertakings or Community-scale groups of undertakings within the meaning of Article 2(1)(a) or (c), a European Works Council shall be established at the level of the group unless the agreements referred to in Article 6 provide otherwise.
6. Unless a wider scope is provided for in the agreements referred to in Article 6, the powers and competence of European Works Councils and the scope of information and consultation procedures established to achieve the purpose specified in paragraph 1 shall, in the case of a Community-scale undertaking, cover all the establishments located within the Member States and, in the case of a Community-scale group of undertakings, all group undertakings located within the Member States.

⁽¹⁾ OJ C 321, 31.12.2003, p. 1.

7. Member States may provide that this Directive shall not apply to merchant navy crews.

Article 2

Definitions

1. For the purposes of this Directive:

(a) 'Community-scale undertaking' means any undertaking with at least 1 000 employees within the Member States and at least 150 employees in each of at least two Member States;

(b) 'group of undertakings' means a controlling undertaking and its controlled undertakings;

(c) 'Community-scale group of undertakings' means a group of undertakings with the following characteristics:

— at least 1 000 employees within the Member States,

— at least two group undertakings in different Member States,

and

— at least one group undertaking with at least 150 employees in one Member State and at least one other group undertaking with at least 150 employees in another Member State;

(d) 'employees' representatives' means the employees' representatives provided for by national law and/or practice;

(e) 'central management' means the central management of the Community-scale undertaking or, in the case of a Community-scale group of undertakings, of the controlling undertaking;

(f) 'information' means transmission of data by the employer to the employees' representatives in order to enable them to acquaint themselves with the subject matter and to examine it; information shall be given at such time, in such fashion and with such content as are appropriate to enable employees' representatives to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultations with the competent organ of the Community-scale undertaking or Community-scale group of undertakings;

(g) 'consultation' means the establishment of dialogue and exchange of views between employees' representatives and

central management or any more appropriate level of management, at such time, in such fashion and with such content as enables employees' representatives to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of the management, and within a reasonable time, which may be taken into account within the Community-scale undertaking or Community-scale group of undertakings;

(h) 'European Works Council' means a council established in accordance with Article 1(2) or the provisions of Annex I, with the purpose of informing and consulting employees;

(i) 'special negotiating body' means the body established in accordance with Article 5(2) to negotiate with the central management regarding the establishment of a European Works Council or a procedure for informing and consulting employees in accordance with Article 1(2).

2. For the purposes of this Directive, the prescribed thresholds for the size of the workforce shall be based on the average number of employees, including part-time employees, employed during the previous two years calculated according to national legislation and/or practice.

Article 3

Definition of 'controlling undertaking'

1. For the purposes of this Directive, 'controlling undertaking' means an undertaking which can exercise a dominant influence over another undertaking (the controlled undertaking) by virtue, for example, of ownership, financial participation or the rules which govern it.

2. The ability to exercise a dominant influence shall be presumed, without prejudice to proof to the contrary, when an undertaking, in relation to another undertaking directly or indirectly:

(a) holds a majority of that undertaking's subscribed capital;

(b) controls a majority of the votes attached to that undertaking's issued share capital;

or

(c) can appoint more than half of the members of that undertaking's administrative, management or supervisory body.

3. For the purposes of paragraph 2, a controlling undertaking's rights as regards voting and appointment shall include the rights of any other controlled undertaking and those of any person or body acting in his or its own name but on behalf of the controlling undertaking or of any other controlled undertaking.

4. Notwithstanding paragraphs 1 and 2, an undertaking shall not be deemed to be a 'controlling undertaking' with respect to another undertaking in which it has holdings where the former undertaking is a company referred to in Article 3(5)(a) or (c) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ⁽¹⁾.

5. A dominant influence shall not be presumed to be exercised solely by virtue of the fact that an office holder is exercising his functions, according to the law of a Member State relating to liquidation, winding up, insolvency, cessation of payments, compositions or analogous proceedings.

6. The law applicable in order to determine whether an undertaking is a controlling undertaking shall be the law of the Member State which governs that undertaking.

Where the law governing that undertaking is not that of a Member State, the law applicable shall be the law of the Member State within whose territory the representative of the undertaking or, in the absence of such a representative, the central management of the group undertaking which employs the greatest number of employees is situated.

7. Where, in the case of a conflict of laws in the application of paragraph 2, two or more undertakings from a group satisfy one or more of the criteria laid down in that paragraph, the undertaking which satisfies the criterion laid down in point (c) thereof shall be regarded as the controlling undertaking, without prejudice to proof that another undertaking is able to exercise a dominant influence.

SECTION II

ESTABLISHMENT OF A EUROPEAN WORKS COUNCIL OR AN EMPLOYEE INFORMATION AND CONSULTATION PROCEDURE

Article 4

Responsibility for the establishment of a European Works Council or an employee information and consultation procedure

1. The central management shall be responsible for creating the conditions and means necessary for the setting-up of a European Works Council or an information and consultation procedure, as provided for in Article 1(2), in a Community-scale undertaking and a Community-scale group of undertakings.

2. Where the central management is not situated in a Member State, the central management's representative agent in a Member State, to be designated if necessary, shall take on the responsibility referred to in paragraph 1.

In the absence of such a representative, the management of the establishment or group undertaking employing the greatest number of employees in any one Member State shall take on the responsibility referred to in paragraph 1.

3. For the purposes of this Directive, the representative or representatives or, in the absence of any such representatives, the management referred to in the second subparagraph of paragraph 2, shall be regarded as the central management.

4. The management of every undertaking belonging to the Community-scale group of undertakings and the central management or the deemed central management within the meaning of the second subparagraph of paragraph 2 of the Community-scale undertaking or group of undertakings shall be responsible for obtaining and transmitting to the parties concerned by the application of this Directive the information required for commencing the negotiations referred to in Article 5, and in particular the information concerning the structure of the undertaking or the group and its workforce. This obligation shall relate in particular to the information on the number of employees referred to in Article 2(1)(a) and (c).

Article 5

Special negotiating body

1. In order to achieve the objective set out in Article 1(1), the central management shall initiate negotiations for the establishment of a European Works Council or an information and consultation procedure on its own initiative or at the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States.

2. For this purpose, a special negotiating body shall be established in accordance with the following guidelines:

(a) The Member States shall determine the method to be used for the election or appointment of the members of the special negotiating body who are to be elected or appointed in their territories.

Member States shall provide that employees in undertakings and/or establishments in which there are no employees' representatives through no fault of their own, have the right to elect or appoint members of the special negotiating body.

⁽¹⁾ OJ L 24, 29.1.2004, p. 1.

The second subparagraph shall be without prejudice to national legislation and/or practice laying down thresholds for the establishment of employee representation bodies.

(b) The members of the special negotiating body shall be elected or appointed in proportion to the number of employees employed in each Member State by the Community-scale undertaking or Community-scale group of undertakings, by allocating in respect of each Member State one seat per portion of employees employed in that Member State amounting to 10 %, or a fraction thereof, of the number of employees employed in all the Member States taken together;

(c) The central management and local management and the competent European workers' and employers' organisations shall be informed of the composition of the special negotiating body and of the start of the negotiations.

3. The special negotiating body shall have the task of determining, with the central management, by written agreement, the scope, composition, functions, and term of office of the European Works Council(s) or the arrangements for implementing a procedure for the information and consultation of employees.

4. With a view to the conclusion of an agreement in accordance with Article 6, the central management shall convene a meeting with the special negotiating body. It shall inform the local managements accordingly.

Before and after any meeting with the central management, the special negotiating body shall be entitled to meet without representatives of the central management being present, using any necessary means for communication.

For the purpose of the negotiations, the special negotiating body may request assistance from experts of its choice which can include representatives of competent recognised Community-level trade union organisations. Such experts and such trade union representatives may be present at negotiation meetings in an advisory capacity at the request of the special negotiating body.

5. The special negotiating body may decide, by at least two-thirds of the votes, not to open negotiations in accordance with paragraph 4, or to terminate the negotiations already opened.

Such a decision shall stop the procedure to conclude the agreement referred to in Article 6. Where such a decision has been taken, the provisions in Annex I shall not apply.

A new request to convene the special negotiating body may be made at the earliest two years after the abovementioned decision unless the parties concerned lay down a shorter period.

6. Any expenses relating to the negotiations referred to in paragraphs 3 and 4 shall be borne by the central management so as to enable the special negotiating body to carry out its task in an appropriate manner.

In compliance with this principle, Member States may lay down budgetary rules regarding the operation of the special negotiating body. They may in particular limit the funding to cover one expert only.

Article 6

Content of the agreement

1. The central management and the special negotiating body must negotiate in a spirit of cooperation with a view to reaching an agreement on the detailed arrangements for implementing the information and consultation of employees provided for in Article 1(1).

2. Without prejudice to the autonomy of the parties, the agreement referred to in paragraph 1 and effected in writing between the central management and the special negotiating body shall determine:

(a) the undertakings of the Community-scale group of undertakings or the establishments of the Community-scale undertaking which are covered by the agreement;

(b) the composition of the European Works Council, the number of members, the allocation of seats, taking into account where possible the need for balanced representation of employees with regard to their activities, category and gender, and the term of office;

(c) the functions and the procedure for information and consultation of the European Works Council and the arrangements for linking information and consultation of the European Works Council and national employee representation bodies, in accordance with the principles set out in Article 1(3);

(d) the venue, frequency and duration of meetings of the European Works Council;

(e) where necessary, the composition, the appointment procedure, the functions and the procedural rules of the select committee set up within the European Works Council;

(f) the financial and material resources to be allocated to the European Works Council;

(g) the date of entry into force of the agreement and its duration, the arrangements for amending or terminating the agreement and the cases in which the agreement shall be renegotiated and the procedure for its renegotiation, including, where necessary, where the structure of the Community-scale undertaking or Community-scale group of undertakings changes.

3. The central management and the special negotiating body may decide, in writing, to establish one or more information and consultation procedures instead of a European Works Council.

The agreement must stipulate by what method the employees' representatives shall have the right to meet to discuss the information conveyed to them.

This information shall relate in particular to transnational questions which significantly affect workers' interests.

4. The agreements referred to in paragraphs 2 and 3 shall not, unless provision is made otherwise therein, be subject to the subsidiary requirements of Annex I.

5. For the purposes of concluding the agreements referred to in paragraphs 2 and 3, the special negotiating body shall act by a majority of its members.

Article 7

Subsidiary requirements

1. In order to achieve the objective set out in Article 1(1), the subsidiary requirements laid down by the legislation of the Member State in which the central management is situated shall apply:

- where the central management and the special negotiating body so decide,
- where the central management refuses to commence negotiations within six months of the request referred to in Article 5(1),

or

- where, after three years from the date of this request, they are unable to conclude an agreement as laid down in Article 6 and the special negotiating body has not taken the decision provided for in Article 5(5).

2. The subsidiary requirements referred to in paragraph 1 as adopted in the legislation of the Member States must satisfy the provisions set out in Annex I.

SECTION III

MISCELLANEOUS PROVISIONS

Article 8

Confidential information

1. Member States shall provide that members of special negotiating bodies or of European Works Councils and any experts who assist them are not authorised to reveal any information which has expressly been provided to them in confidence.

The same shall apply to employees' representatives in the framework of an information and consultation procedure.

That obligation shall continue to apply, wherever the persons referred to in the first and second subparagraphs are, even after the expiry of their terms of office.

2. Each Member State shall provide, in specific cases and under the conditions and limits laid down by national legislation, that the central management situated in its territory is not obliged to transmit information when its nature is such that, according to objective criteria, it would seriously harm the functioning of the undertakings concerned or would be prejudicial to them.

A Member State may make such dispensation subject to prior administrative or judicial authorisation.

3. Each Member State may lay down particular provisions for the central management of undertakings in its territory which pursue directly and essentially the aim of ideological guidance with respect to information and the expression of opinions, on condition that, at the date of adoption of this Directive such particular provisions already exist in the national legislation.

Article 9

Operation of the European Works Council and the information and consultation procedure for workers

The central management and the European Works Council shall work in a spirit of cooperation with due regard to their reciprocal rights and obligations.

The same shall apply to cooperation between the central management and employees' representatives in the framework of an information and consultation procedure for workers.

Article 10

Role and protection of employees' representatives

1. Without prejudice to the competence of other bodies or organisations in this respect, the members of the European Works Council shall have the means required to apply the rights arising from this Directive, to represent collectively the interests of the employees of the Community-scale undertaking or Community-scale group of undertakings.

2. Without prejudice to Article 8, the members of the European Works Council shall inform the representatives of the employees of the establishments or of the undertakings of a Community-scale group of undertakings or, in the absence of representatives, the workforce as a whole, of the content and outcome of the information and consultation procedure carried out in accordance with this Directive.

3. Members of special negotiating bodies, members of European Works Councils and employees' representatives exercising their functions under the procedure referred to in Article 6(3) shall, in the exercise of their functions, enjoy protection and guarantees similar to those provided for employees' representatives by the national legislation and/or practice in force in their country of employment.

This shall apply in particular to attendance at meetings of special negotiating bodies or European Works Councils or any other meetings within the framework of the agreement referred to in Article 6(3), and the payment of wages for members who are on the staff of the Community-scale undertaking or the Community-scale group of undertakings for the period of absence necessary for the performance of their duties.

4. In so far as this is necessary for the exercise of their representative duties in an international environment, the members of the special negotiating body and of the European Works Council shall be provided with training without loss of wages.

Article 11

Compliance with this Directive

1. Each Member State shall ensure that the management of establishments of a Community-scale undertaking and the management of undertakings which form part of a Community-scale group of undertakings which are situated within its territory and their employees' representatives or, as the case may be, employees abide by the obligations laid down

by this Directive, regardless of whether or not the central management is situated within its territory.

2. Member States shall provide for appropriate measures in the event of failure to comply with this Directive; in particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from this Directive to be enforced.

3. Where Member States apply Article 8, they shall make provision for administrative or judicial appeal procedures which the employees' representatives may initiate when the central management requires confidentiality or does not give information in accordance with that Article.

Such procedures may include procedures designed to protect the confidentiality of the information in question.

Article 12

Relationship with other Community and national provisions

1. Information and consultation of the European Works Council shall be linked to those of the national employee representation bodies, with due regard to the competences and areas of action of each and to the principles set out in Article 1(3).

2. The arrangements for the links between the information and consultation of the European Works Council and national employee representation bodies shall be established by the agreement referred to in Article 6. That agreement shall be without prejudice to the provisions of national law and/or practice on the information and consultation of employees.

3. Where no such arrangements have been defined by agreement, the Member States shall ensure that the processes of informing and consulting are conducted in the European Works Council as well as in the national employee representation bodies in cases where decisions likely to lead to substantial changes in work organisation or contractual relations are envisaged.

4. This Directive shall be without prejudice to the information and consultation procedures referred to in Directive 2002/14/EC and to the specific procedures referred to in Article 2 of Directive 98/59/EC and Article 7 of Directive 2001/23/EC.

5. Implementation of this Directive shall not be sufficient grounds for any regression in relation to the situation which already prevails in each Member State and in relation to the general level of protection of workers in the areas to which it applies.

*Article 13***Adaptation**

Where the structure of the Community-scale undertaking or Community-scale group of undertakings changes significantly, and either in the absence of provisions established by the agreements in force or in the event of conflicts between the relevant provisions of two or more applicable agreements, the central management shall initiate the negotiations referred to in Article 5 on its own initiative or at the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States.

At least three members of the existing European Works Council or of each of the existing European Works Councils shall be members of the special negotiating body, in addition to the members elected or appointed pursuant to Article 5(2).

During the negotiations, the existing European Works Council(s) shall continue to operate in accordance with any arrangements adapted by agreement between the members of the European Works Council(s) and the central management.

*Article 14***Agreements in force**

1. Without prejudice to Article 13, the obligations arising from this Directive shall not apply to Community-scale undertakings or Community-scale groups of undertakings in which, either

- (a) an agreement or agreements covering the entire workforce, providing for the transnational information and consultation of employees have been concluded pursuant to Article 13(1) of Directive 94/45/EC or Article 3(1) of Directive 97/74/EC, or where such agreements are adjusted because of changes in the structure of the undertakings or groups of undertakings;

or

- (b) an agreement concluded pursuant to Article 6 of Directive 94/45/EC is signed or revised between 5 June 2009 and 5 June 2011.

The national law applicable when the agreement is signed or revised shall continue to apply to the undertakings or groups of undertakings referred to in point (b) of the first subparagraph.

2. Upon expiry of the agreements referred to in paragraph 1, the parties to those agreements may decide jointly to renew or revise them. Where this is not the case, the provisions of this Directive shall apply.

*Article 15***Report**

No later than 5 June 2016, the Commission shall report to the European Parliament, the Council and the European Economic and Social Committee on the implementation of this Directive, making appropriate proposals where necessary.

*Article 16***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 1(2), (3) and (4), Article 2(1), points (f) and (g), Articles 3(4), Article 4(4), Article 5(2), points (b) and (c), Article 5(4), Article 6(2), points (b), (c), (e) and (g), and Articles 10, 12, 13 and 14, as well as Annex I, point 1(a), (c) and (d) and points 2 and 3, no later than 5 June 2011 or shall ensure that management and labour introduce on that date the required provisions by way of agreement, the Member States being obliged to take all necessary steps enabling them at all times to guarantee the results imposed by this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

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

*Article 17***Repeal**

Directive 94/45/EC, as amended by the Directives listed in Annex II, Part A, is repealed with effect from 6 June 2011 without prejudice to the obligations of the Member States relating to the time limit for transposition into national law of the Directives set out in Annex II, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex III.

*Article 18***Entry into force**

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 1(1), (5), (6) and (7), Article 2(1), points (a) to (e), (h) and (i), Article 2(2), Articles 3(1), (2), (3), (5), (6) and (7), Article 4(1), (2) and (3), Article 5(1), (3), (5) and (6), Article 5(2), point (a), Article 6(1), Article 6(2), points (a), (d) and (f), and Article 6(3), (4) and (5), and Articles 7, 8, 9 and 11, as well as Annex I, point 1(b), (e) and (f), and points 4, 5 and 6, shall apply from 6 June 2011.

Article 19

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 6 May 2009.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

J. KOHOUT

ANNEX I

SUBSIDIARY REQUIREMENTS

(referred to in Article 7)

1. In order to achieve the objective set out in Article 1(1) and in the cases provided for in Article 7(1), the establishment, composition and competence of a European Works Council shall be governed by the following rules:

- (a) The competence of the European Works Council shall be determined in accordance with Article 1(3).

The information of the European Works Council shall relate in particular to the structure, economic and financial situation, probable development and production and sales of the Community-scale undertaking or group of undertakings. The information and consultation of the European Works Council shall relate in particular to the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.

The consultation shall be conducted in such a way that the employees' representatives can meet with the central management and obtain a response, and the reasons for that response, to any opinion they might express;

- (b) The European Works Council shall be composed of employees of the Community-scale undertaking or Community-scale group of undertakings elected or appointed from their number by the employees' representatives or, in the absence thereof, by the entire body of employees.

The election or appointment of members of the European Works Council shall be carried out in accordance with national legislation and/or practice;

- (c) The members of the European Works Council shall be elected or appointed in proportion to the number of employees employed in each Member State by the Community-scale undertaking or Community-scale group of undertakings, by allocating in respect of each Member State one seat per portion of employees employed in that Member State amounting to 10 %, or a fraction thereof, of the number of employees employed in all the Member States taken together;

- (d) To ensure that it can coordinate its activities, the European Works Council shall elect a select committee from among its members, comprising at most five members, which must benefit from conditions enabling it to exercise its activities on a regular basis.

It shall adopt its own rules of procedure;

- (e) The central management and any other more appropriate level of management shall be informed of the composition of the European Works Council;

- (f) Four years after the European Works Council is established it shall examine whether to open negotiations for the conclusion of the agreement referred to in Article 6 or to continue to apply the subsidiary requirements adopted in accordance with this Annex.

Articles 6 and 7 shall apply, *mutatis mutandis*, if a decision has been taken to negotiate an agreement according to Article 6, in which case 'special negotiating body' shall be replaced by 'European Works Council'.

2. The European Works Council shall have the right to meet with the central management once a year, to be informed and consulted, on the basis of a report drawn up by the central management, on the progress of the business of the Community-scale undertaking or Community-scale group of undertakings and its prospects. The local managements shall be informed accordingly.

3. Where there are exceptional circumstances or decisions affecting the employees' interests to a considerable extent, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies, the select committee or, where no such committee exists, the European Works Council shall have the right to be informed. It shall have the right to meet, at its request, the central management, or any other more appropriate level of management within the Community-scale undertaking or group of undertakings having its own powers of decision, so as to be informed and consulted.

Those members of the European Works Council who have been elected or appointed by the establishments and/or undertakings which are directly concerned by the circumstances or decisions in question shall also have the right to participate where a meeting is organised with the select committee.

This information and consultation meeting shall take place as soon as possible on the basis of a report drawn up by the central management or any other appropriate level of management of the Community-scale undertaking or group of undertakings, on which an opinion may be delivered at the end of the meeting or within a reasonable time.

This meeting shall not affect the prerogatives of the central management.

The information and consultation procedures provided for in the above circumstances shall be carried out without prejudice to Article 1(2) and Article 8.

4. The Member States may lay down rules on the chairing of information and consultation meetings.

Before any meeting with the central management, the European Works Council or the select committee, where necessary enlarged in accordance with the second paragraph of point 3, shall be entitled to meet without the management concerned being present.

5. The European Works Council or the select committee may be assisted by experts of its choice, in so far as this is necessary for it to carry out its tasks.
6. The operating expenses of the European Works Council shall be borne by the central management.

The central management concerned shall provide the members of the European Works Council with such financial and material resources as enable them to perform their duties in an appropriate manner.

In particular, the cost of organising meetings and arranging for interpretation facilities and the accommodation and travelling expenses of members of the European Works Council and its select committee shall be met by the central management unless otherwise agreed.

In compliance with these principles, the Member States may lay down budgetary rules regarding the operation of the European Works Council. They may in particular limit funding to cover one expert only.

ANNEX II

PART A

Repealed Directive with its successive amendments
(referred to in Article 17)

Council Directive 94/45/EC	(OJ L 254, 30.9.1994, p. 64)
Council Directive 97/74/EC	(OJ L 10, 16.1.1998, p. 22)
Council Directive 2006/109/EC	(OJ L 363, 20.12.2006, p. 416)

PART B

Time limits for transposition into national law
(referred to in Article 17)

Directive	Time limit for transposition
94/45/EC	22.9.1996
97/74/EC	15.12.1999
2006/109/EC	1.1.2007

ANNEX III

Correlation table

Directive 94/45/EC	This Directive
Article 1(1)	Article 1(1)
Article 1(2)	Article 1(2), first sentence
—	Article 1(2), second sentence
—	Article 1(3) and (4)
Article 1(3)	Article 1(5)
Article 1(4)	Article 1(6)
Article 1(5)	Article 1(7)
Article 2(1)(a) to (e)	Article 2(1)(a) to (e)
—	Article 2(1)(f)
Article 2(1)(f)	Article 2(1)(g)
Article 2(1)(g) and (h)	Article 2(1)(h) and (i)
Article 2(2)	Article 2(2)
Article 3	Article 3
Article 4(1)(2) and (3)	Article 4(1)(2) and (3)
Article 11(2)	Article 4(4)
Article 5(1) and (2)(a)	Article 5(1) and (2)(a)
Article 5(2)(b) and (c)	Article 5(2)(b)
Article 5(2)(d)	Article 5(2)(c)
Article 5(3)	Article 5(3)
Article 5(4), first subparagraph	Article 5(4), first subparagraph
—	Article 5(4), second subparagraph
Article 5(4), second subparagraph	Article 5(4), third subparagraph
Article 5(5) and (6)	Article 5(5) and (6)
Article 6(1) and (2)(a)	Article 6(1) and (2)(a)
Article 6(2)(b)	Article 6(2)(b)
Article 6(2)(c)	Article 6(2)(c)
Article 6(2)(d)	Article 6(2)(d)
—	Article 6(2)(e)
Article 6(2)(e)	Article 6(2)(f)
Article 6(2)(f)	Article 6(2)(g)
Article 6(3)(4) and (5)	Article 6(3)(4) and (5)
Article 7	Article 7

Directive 94/45/EC	This Directive
Article 8	Article 8
Article 9	Article 9
—	Article 10(1) and (2)
Article 10	Article 10(3)
—	Article 10(4)
Article 11(1)	Article 11(1)
Article 11(2)	Article 4(4)
Article 11(3)	Article 11(2)
Article 11(4)	Article 11(3)
Article 12(1) and (2)	—
—	Article 12(1) to (5)
—	Article 13
Article 13(1)	Article 14(1)
Article 13(2)	Article 14(2)
—	Article 15
Article 14	Article 16
—	Article 17
—	Article 18
Article 16	Article 19
Annex	Annex I
Point 1, introductory wording	Point 1, introductory wording
Point 1(a) (partly) and point 2, second paragraph (partly)	Point 1(a) (partly)
Point 1(b)	Point 1(b)
Point 1(c) (partly) and point 1(d)	Point 1(c)
Point 1(c) (partly)	Point 1(d)
Point 1(e)	Point 1(e)
Point 1(f)	Point 1(f)
Point 2, first paragraph	Point 2
Point 3	Point 3
Point 4	Point 4
Point 5	—
Point 6	Point 5
Point 7	Point 6
—	Annexes II and III

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 15 May 2009

on appointment of three members of the Standards Advice Review Group created by the Decision 2006/505/EC setting up a Standards Advice Review Group to advise the Commission on the objectivity and neutrality of the European Financial Reporting Advisory Group's (EFRAG's) opinions

(2009/386/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Decision 2006/505/EC of 14 July 2006 setting up a Standards Advice Review Group to advise the Commission on the objectivity and neutrality of the European Financial Reporting Advisory Group's (EFRAG's) opinions ⁽¹⁾, and in particular Article 3 thereof,

Whereas:

- (1) According to Article 3 of the Decision 2006/505/EC, the Commission shall appoint a maximum of seven members of the Standards Advice Review Group from independent experts whose experience and competence in the accounting area, in particular in financial reporting issues, are widely recognised at Community level.
- (2) With Decision 2007/73/EC ⁽²⁾, the Commission appointed the seven members of the Standards Advice Review Group on 8 February 2007 for a three-year renewable term of office. In order to enable an orderly

rotation of Group membership, the Group may decide on partial replacement of the members in groups of two or three. The Group has decided to replace three Members in 2009,

HAS DECIDED AS FOLLOWS:

Article 1

The Commission herewith appoints three members of the Standards Advice Review Group, whose names are reproduced in the Annex.

Article 2

This Decision shall take effect on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, 15 May 2009.

For the Commission

Charlie McCREEVY

Member of the Commission

⁽¹⁾ OJ L 199, 21.7.2006, p. 33.

⁽²⁾ OJ L 32, 6.2.2007, p. 181.

ANNEX

LIST OF MEMBERS

Rien VAN HOEPEN

Bernard RAFFOURNIER

Mari PAANANEN

RECOMMENDATIONS

COMMISSION

COMMISSION RECOMMENDATION

of 12 May 2009

on the implementation of privacy and data protection principles in applications supported by radio-frequency identification*(notified under document number C(2009) 3200)**(2009/387/EC)*

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

reader or writer and the tag, such that this interaction can happen without the individual concerned being aware of it.

Having regard to the Treaty establishing the European Community, and in particular Article 211 thereof,

After consulting the European Data Protection Supervisor,

Whereas:

(1) Radio frequency identification (RFID) marks a new development in the information society where objects equipped with microelectronics that can process data automatically will increasingly become an integral part of every day life.

(2) RFID is progressively becoming more common, and hence a part of individuals' lives in a variety of domains such as logistics ⁽¹⁾, healthcare, public transport, the retail trade, in particular for improved product safety and faster product recalls, entertainment, work, road toll management, luggage management, and travel documents.

(3) RFID technology has the potential to become a new motor for growth and jobs and thus make a powerful contribution to the Lisbon Strategy, as it holds great promise in economic terms, where it can bring about new business opportunities, cost reduction and increased efficiency, in particular in tackling counterfeiting and in managing e-waste, hazardous materials, and the recycling of products at their end of life.

(4) RFID technology enables the processing of data, including personal data, over short distances without physical contact or visible interaction between the

(5) RFID applications hold the potential to process data relating to an identified or identifiable natural person, a natural person being identified directly or indirectly. They can process personal data stored on the tag such as a person's name, birth date or address or biometric data or data connecting a specific RFID item number to personal data stored elsewhere in the system. Furthermore, the potential exists for this technology to be used to monitor individuals through their possession of one or more items that contain an RFID item number.

(6) Because of its potential to be both ubiquitous and practically invisible, particular attention to privacy and data protection issues is required in the deployment of RFID. Consequently, privacy and information security features should be built into RFID applications before their widespread use (principle of 'security and privacy-by-design').

(7) RFID will only be able to deliver its numerous economic and societal benefits if effective measures are in place to safeguard personal data protection, privacy and the associated ethical principles that are central to the debate on public acceptance of RFID.

(8) Member States and stakeholders should, especially in this initial phase of RFID implementation, make further efforts to ensure that RFID applications are monitored and the rights and freedoms of individuals are respected.

⁽¹⁾ COM(2007) 607 final.

- (9) The Commission communication of 15 March 2007 'Radio frequency identification (RFID) in Europe: steps towards a policy framework' ⁽¹⁾ announced that clarification and guidance would be provided on the data protection and privacy aspects of RFID applications through one or more Commission Recommendations.
- (10) The rights and obligations concerning the protection of personal data and the free movement of such data, as provided for by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽²⁾ and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) ⁽³⁾ are fully applicable to the use of RFID applications that process personal data.
- (11) The principles laid down in Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity ⁽⁴⁾ should be applied in the development of RFID applications.
- (12) The Opinion of the European Data Protection Supervisor ⁽⁵⁾ provides guidance as to how to handle products that contain tags which are provided to individuals and calls for privacy and security impact assessments to identify and develop 'best available techniques' to safeguard the privacy and security of RFID systems.
- (13) RFID application operators should take all reasonable steps to ensure that data does not relate to an identified or identifiable natural person through any means likely to be used by either the RFID application operator or any other person, unless such data is processed in compliance with the applicable principles and legal rules on data protection.
- (14) The Commission communication of 2 May 2007 'Promoting data protection by privacy enhancing technologies (PETs)' ⁽⁶⁾ sets out clear actions to achieve the goal of minimising the processing of personal data and using anonymous or pseudonymous data wherever possible by supporting the development of PETs and their use by data controllers and individuals.
- (15) The Commission communication of 31 May 2006 'A strategy for a secure information society — "Dialogue, partnership and empowerment"' ⁽⁷⁾ acknowledges that diversity, openness, interoperability, usability and competition are key drivers for a secure information society, highlights the role of Member States and public administrations in improving awareness and in promoting good security practices, and invites private-sector stakeholders to take initiatives to work towards affordable security certification schemes for products, processes and services addressing EU-specific needs, in particular with respect to privacy.
- (16) The Council Resolution of 22 March 2007 on a strategy for a secure information society in Europe ⁽⁸⁾ invites Member States to give due attention to the need to prevent and fight new and existing security threats to electronic communications networks.
- (17) A framework developed at Community level for conducting privacy and data protection impact assessments will ensure that the provisions of this Recommendation are followed coherently across Member States. The development of such framework should build on existing practices and experiences gained in Member States, in third countries and in the work conducted by the European Network and Information Security Agency (ENISA) ⁽⁹⁾.
- (18) The Commission will ensure the development of guidelines at Community level on information security management for RFID applications, building on existing practices and experiences gained in Member States and third countries. Member States should contribute to that process and encourage private entities and public authorities to participate.
- (19) An assessment of the privacy and data protection impacts carried by the operator prior to the implementation of an RFID application will provide the information required for appropriate protective measures. Such measures will need to be monitored and reviewed throughout the lifetime of the RFID application.
- (20) In the retail trade sector, an assessment of the privacy and data protection impacts of products containing tags which are sold to consumers should provide the necessary information to determine whether there is a likely threat to privacy or the protection of personal data.

⁽¹⁾ COM(2007) 96 final.

⁽²⁾ OJ L 281, 23.11.1995, p. 31.

⁽³⁾ OJ L 201, 31.7.2002, p. 37.

⁽⁴⁾ OJ L 91, 7.4.1999, p. 10.

⁽⁵⁾ OJ C 101, 23.4.2008, p. 1.

⁽⁶⁾ COM(2007) 228 final.

⁽⁷⁾ COM(2006) 251 final.

⁽⁸⁾ OJ C 68, 24.3.2007, p. 1.

⁽⁹⁾ Article 2(1) of Regulation (EC) No 460/2004 of the European Parliament and of the Council (OJ L 77, 13.3.2004, p. 1).

- (21) The use of international standards, such as those developed by the International Organisation for Standardisation (ISO), codes of conduct and best practices which are compliant with the EU regulatory framework can help to manage information security and privacy measures throughout the whole RFID-enabled business process.
- (22) RFID applications with implications for the general public, such as electronic ticketing in public transport, require appropriate protective measures. RFID applications that affect individuals by processing, for example, biometric identification data or health-related data, are especially critical with regard to information security and privacy and therefore require specific attention.
- (23) Society as a whole needs to be aware of the obligations and rights that are applicable in relation to the use of RFID applications. The parties that deploy the technology therefore have a responsibility to provide individuals with information on the use of these applications.
- (24) Raising awareness among the public and small and medium-sized enterprises (SMEs) about the features and capabilities of RFID will help allow this technology to fulfil its economic promise while at the same time mitigating the risks of it being used to the detriment of the public interest, thus enhancing its acceptability.
- (25) The Commission will contribute to the implementation of this Recommendation directly and indirectly by facilitating dialogue and cooperation among stakeholders, in particular through the Competitiveness and Innovation Framework Programme (CIP) established by Decision No 1639/2006/EC of the European Parliament and of the Council⁽¹⁾ and Seventh Framework Research Programme (FP7) established by Decision No 1982/2006/EC of the European Parliament and of the Council⁽²⁾.
- (26) Research and development on low-cost privacy-enhancing technologies and information security technologies is essential at Community level to promote a wider take-up of these technologies under acceptable conditions.
- (27) This Recommendation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Recommendation seeks to ensure full respect for private and family life and the protection of personal data,

HEREBY RECOMMENDS:

Scope

1. This Recommendation provides guidance to Member States on the design and operation of RFID applications in a lawful, ethical and socially and politically acceptable way, respecting the right to privacy and ensuring protection of personal data.
2. This Recommendation provides guidance on measures to be taken for the deployment of RFID applications to ensure that national legislation implementing Directives 95/46/EC, 1999/5/EC and 2002/58/EC is, where applicable, respected when such applications are deployed.

Definitions

3. For the purposes of this Recommendation the definitions set out in Directive 95/46/EC should apply. The following definitions should also apply:
 - (a) 'radio frequency identification (RFID)' means the use of electromagnetic radiating waves or reactive field coupling in the radio frequency portion of the spectrum to communicate to or from a tag through a variety of modulation and encoding schemes to uniquely read the identity of a radio frequency tag or other data stored on it;
 - (b) 'RFID tag' or 'tag' means either a RFID device having the ability to produce a radio signal or a RFID device which re-couples, back-scatters or reflects (depending on the type of device) and modulates a carrier signal received from a reader or writer;
 - (c) 'RFID reader or writer' or 'reader' means a fixed or mobile data capture and identification device using a radio frequency electromagnetic wave or reactive field coupling to stimulate and effect a modulated data response from a tag or group of tags;
 - (d) 'RFID application' or 'application' means an application that processes data through the use of tags and readers, and which is supported by a back-end system and a networked communication infrastructure;
 - (e) 'RFID application operator' or 'operator' means the natural or legal person, public authority, agency, or any other body, which, alone or jointly with others, determines the purposes and means of operating an application, including controllers of personal data using an RFID application;

⁽¹⁾ OJ L 310, 9.11.2006, p. 15.

⁽²⁾ OJ L 412, 30.12.2006, p. 1.

- (f) 'information security' means preservation of the confidentiality, integrity and availability of information;
- (g) 'monitoring' means any activity carried out for the purpose of detecting, observing, copying or recording the location, movement, activities or state of an individual.

Privacy and data protection impact assessments

4. Member States should ensure that industry, in collaboration with relevant civil society stakeholders, develops a framework for privacy and data protection impact assessments. This framework should be submitted for endorsement to the Article 29 Data Protection Working Party within 12 months from the publication of this Recommendation in the *Official Journal of the European Union*.
5. Member States should ensure that operators, notwithstanding their other obligations pursuant to Directive 95/46/EC:
 - (a) conduct an assessment of the implications of the application implementation for the protection of personal data and privacy, including whether the application could be used to monitor an individual. The level of detail of the assessment should be appropriate to the privacy risks possibly associated with the application;
 - (b) take appropriate technical and organisational measures to ensure the protection of personal data and privacy;
 - (c) designate a person or group of persons responsible for reviewing the assessments and the continued appropriateness of the technical and organisational measures to ensure the protection of personal data and privacy;
 - (d) make available the assessment to the competent authority at least six weeks before the deployment of the application;
 - (e) once the framework for privacy and data protection impact assessments as set out in point 4 is available, implement the above provisions in accordance with it.

Information security

6. Member States should support the Commission in identifying those applications that might raise information

security threats with implications for the general public. For such applications, Member States should ensure that operators, together with national competent authorities and civil society organisations, develop new schemes, or apply existing schemes, such as certification or operator self-assessment, in order to demonstrate that an appropriate level of information security and protection of privacy is established in relation to the assessed risks.

Information and transparency on RFID use

7. Without prejudice to the obligations of data controllers, in accordance with Directives 95/46/EC and 2002/58/EC, Member States should ensure that operators develop and publish a concise, accurate and easy to understand information policy for each of their applications. The policy should at least include:
 - (a) the identity and address of the operators;
 - (b) the purpose of the application;
 - (c) what data are to be processed by the application, in particular if personal data will be processed, and whether the location of tags will be monitored;
 - (d) a summary of the privacy and data protection impact assessment;
 - (e) the likely privacy risks, if any, relating to the use of tags in the application and the measures that individuals can take to mitigate these risks.
8. Member States should ensure that operators take steps to inform individuals of the presence of readers on the basis of a common European sign, developed by European standardisation organisations, with the support of concerned stakeholders. The sign should include the identity of the operator and a point of contact for individuals to obtain the information policy for the application.

RFID applications used in the retail trade

9. On the basis of a common European sign, developed by European standardisation organisations, with the support of concerned stakeholders, operators should inform individuals of the presence of tags that are placed on or embedded in products.

10. When conducting the privacy and data protection impact assessment as referred to in points 4 and 5, the operator of an application should specifically determine whether tags placed on or embedded in products sold to consumers through retailers who are not operators of that application represent a likely threat to privacy or the protection of personal data.
11. Retailers should deactivate or remove at the point of sale tags used in their application unless consumers, after being informed of the policy referred to in point 7, give their consent to keep tags operational. Deactivation of the tags should be understood as any process that stops those interactions of a tag with its environment which do not require the active involvement of the consumer. Deactivation or removal of tags by the retailer should be done immediately and free of charge for the consumer. Consumers should be able to verify that the deactivation or removal is effective.
12. Point 11 should not apply if the privacy and data protection impact assessment concludes that tags that are used in a retail application and would remain operational after the point of sale do not represent a likely threat to privacy or the protection of personal data. Nevertheless, retailers should make available free of charge an easy means to, immediately or at a later stage, deactivate or remove these tags.
13. Deactivation or removal of tags should not entail any reduction or termination of the legal obligations of the retailer or manufacturer towards the consumer.
14. Points 11 and 12 should apply only to retailers that are operators.

Awareness raising actions

15. Member States, in collaboration with industry, the Commission and other stakeholders, should take appropriate measures to inform and raise awareness among public authorities and companies, in particular SMEs, of the potential benefits and risks associated with the use of RFID technology. Specific attention should be given to information security and privacy aspects.
16. Member States, in collaboration with industry, civil society associations, the Commission and other relevant stake-

holders, should identify and provide examples of good practice in the implementation of RFID applications to inform and raise awareness among the general public. They should also take appropriate measures, such as large-scale pilot projects, to increase public awareness of RFID technology, its benefits, risks and implications of use, as a prerequisite for wider take-up of this technology.

Research and development

17. Member States should cooperate with industry, relevant civil society stakeholders and the Commission to stimulate and support the introduction of the 'security and privacy by design' principle at an early stage in the development of RFID applications.

Follow-up

18. Member States should take all necessary measures to bring this Recommendation to the attention of all stakeholders which are involved in the design and operation of RFID applications within the Community.
19. Member States should inform the Commission at the latest 24 months following the publication of this Recommendation in the *Official Journal of the European Union* of action taken in response to this Recommendation.
20. Within three years from the publication of this Recommendation in the *Official Journal of the European Union*, the Commission will provide a report on the implementation of this Recommendation, its effectiveness and its impact on operators and consumers, in particular as regards the measures recommended in points 9 to 14.

Addressees

21. This Recommendation is addressed to the Member States.

Done at Brussels, 12 May 2009.

For the Commission

Viviane REDING

Member of the Commission

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