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## Information and Notices

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**EN**

## I

(Information)

## COUNCIL

## COMMON POSITION (EC) No 4/2006

adopted by the Council on 23 January 2006

with a view to adopting Directive 2006/.../EC of the European Parliament and of the Council of ...  
on the protection of groundwater against pollution

(2006/C 126 E/01)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(3)</sup>,

Whereas:

(1) Groundwater is a valuable natural resource which should be protected from chemical pollution. This is particularly important for groundwater-dependent ecosystems and for the use of groundwater in water supply for human consumption.

(2) Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme <sup>(4)</sup> includes the objective to achieve water quality levels that do not give rise to significant impacts on, and risks to, human health and the environment.

(3) In order to protect the environment as a whole, and human health in particular, detrimental concentrations of harmful pollutants in groundwater should be avoided, prevented or reduced.

(4) Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy <sup>(5)</sup> sets out general provisions for the protection and conservation of groundwater. As provided for in Article 17 of that Directive, measures to prevent and control groundwater pollution should be adopted, including criteria for assessing good groundwater chemical status and criteria for the identification of significant and sustained upward trends and for the definition of starting points for trend reversals.

(5) Having regard to the need to achieve consistent levels of protection for groundwater, quality standards and threshold values should be established, and methodologies based on a common approach should be developed, in order to provide criteria for the assessment of the chemical status of bodies of groundwater.

(6) Quality standards for nitrates, plant protection products and biocides should be set as Community criteria for the assessment of the chemical status of bodies of groundwater, and consistency should be ensured with Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources <sup>(6)</sup>, Council Directive 91/414/EEC of 15 July 1991 concerning the placing of

<sup>(1)</sup> OJ C 112, 30.4.2004, p. 40.

<sup>(2)</sup> OJ C 109, 30.4.2004, p. 29.

<sup>(3)</sup> Opinion of the European Parliament of 28 April 2005 (OJ C 45 E, 23.2.2006, p. 75), Council common position of 23 January 2006 and Decision of the European Parliament (not yet published in the Official Journal).

<sup>(4)</sup> OJ L 242, 10.9.2002, p. 1.

<sup>(5)</sup> OJ L 327, 22.12.2000, p. 1. Directive as amended by Decision No 2455/2001/EC (OJ L 331, 15.12.2001, p. 1).

<sup>(6)</sup> OJ L 375, 31.12.1991, p. 1. Directive as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

- plant protection products on the market <sup>(1)</sup>, and Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market <sup>(2)</sup> respectively.
- (7) Groundwater chemical status provisions do not apply to high naturally-occurring concentrations of substances or ions or their indicators, contained either in a body of groundwater or in associated bodies of surface water, due to specific hydro-geological conditions, which are not covered by the definition of pollution. Equally, they do not apply to temporary, spatially-limited changes in flow direction and chemical composition, which are not regarded as intrusions.
- (8) Criteria should be established for the identification of any significant and sustained upward trends in pollutant concentrations and for the definition of the starting point for trend reversal, taking into account the likelihood of adverse effects on associated aquatic ecosystems or dependent terrestrial ecosystems.
- (9) Member States should, where possible, use statistical procedures, provided they comply with international standards and contribute to the comparability of results of monitoring between Member States over long periods.
- (10) In accordance with the third indent of Article 22(2) of Directive 2000/60/EC, Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution by certain dangerous substances <sup>(3)</sup> is to be repealed with effect from 22 December 2013. It is necessary to ensure the continuity of the protection provided by Directive 80/68/EEC with regard to measures aimed at preventing or limiting both direct and indirect inputs of pollutants into groundwater.
- (11) It is necessary to distinguish between hazardous substances, inputs of which should be prevented, and other pollutants, inputs of which should be limited. Annex VIII to Directive 2000/60/EC, listing the main pollutants relevant for the water environment, should be used to identify hazardous and non-hazardous substances which present an existing or potential risk of pollution.
- (12) In order to ensure consistent protection of groundwater, Member States sharing bodies of groundwater should coordinate their activities in respect of monitoring, the setting of threshold values, and the identification of relevant hazardous substances.
- (13) In certain circumstances, Member States should be authorised to grant exemptions from measures to prevent or limit the input of pollutants into groundwater.
- (14) It is necessary to provide for transitional measures to apply during the period between the date of implementation of this Directive and the date from which Directive 80/68/EEC is repealed.
- (15) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(4)</sup>,

HAVE ADOPTED THIS DIRECTIVE:

#### Article 1

##### Purpose

1. This Directive establishes specific measures as provided for in Article 17(1) and (2) of Directive 2000/60/EC in order to prevent and control groundwater pollution. These measures include in particular:

- (a) criteria for the assessment of good groundwater chemical status; and
- (b) criteria for the identification and reversal of significant and sustained upward trends and for the definition of starting points for trend reversals.

2. This Directive also complements the provisions preventing or limiting inputs of pollutants into groundwater already contained in Directive 2000/60/EC, and aims to prevent the deterioration of the status of all bodies of groundwater.

#### Article 2

##### Definitions

For the purposes of this Directive, the following definitions shall apply in addition to those laid down in Article 2 of Directive 2000/60/EC:

- (1) 'groundwater quality standard' means an environmental quality standard expressed as the concentration of a particular pollutant, group of pollutants or indicator of pollution in groundwater, which should not be exceeded in order to protect human health and the environment;

<sup>(1)</sup> OJ L 230, 19.8.1991, p. 1. Directive as last amended by Commission Directive 2006/19/EC (OJ L 44, 15.2.2006, p. 15).

<sup>(2)</sup> OJ L 123, 24.4.1998, p. 1. Directive as amended by Regulation (EC) No 1882/2003.

<sup>(3)</sup> OJ L 20, 26.1.1980, p. 43. Directive as amended by Directive 91/692/EEC (OJ L 377, 31.12.1991, p. 48).

<sup>(4)</sup> OJ L 184, 17.7.1999, p. 23.

- (2) 'threshold value' means a groundwater quality standard set by Member States in accordance with Article 3;
- (3) 'significant and sustained upward trend' means any statistically significant increase of concentration of a pollutant, group of pollutants, or indicator of pollution, which presents an environmental risk for which trend reversal is identified as being necessary in accordance with Article 5;
- (4) 'input of pollutants into groundwater' means the direct or indirect introduction of pollutants into groundwater as a result of human activity.

### Article 3

#### Criteria for assessing groundwater chemical status

1. For the purposes of the assessment of the chemical status of a body or a group of bodies of groundwater pursuant to Section 2.3 of Annex V to Directive 2000/60/EC, Member States shall use the following criteria:

- (a) groundwater quality standards as referred to in Annex I;
- (b) threshold values to be established by Member States in accordance with the procedure set out in Part A of Annex II for the pollutants, groups of pollutants and indicators of pollution which, within the territory of a Member State, have been identified as contributing to the characterisation of bodies or groups of bodies of groundwater as being at risk, taking into account at least the list contained in Part B of Annex II.

2. Threshold values can be established at the national level, at the level of the river basin district or the part of the international river basin district falling within the territory of a Member State, or at the level of a body or a group of bodies of groundwater.

3. Member States shall ensure that, for bodies of groundwater shared by two or more Member States and for bodies of groundwater within which groundwater flows across a Member State's boundary, the establishment of threshold values is subject to coordination between the Member States concerned, in accordance with Article 3(4) of Directive 2000/60/EC.

4. Where a body or a group of bodies of groundwater extends beyond the territory of the Community, the Member State(s) concerned shall endeavour to establish threshold values in coordination with the non-Member State(s) concerned, in accordance with Article 3(5) of Directive 2000/60/EC.

5. Member States shall establish threshold values pursuant to paragraph 1(b) for the first time by 22 December 2008 at the latest.

All threshold values established shall be published in the river basin management plans to be submitted in accordance with

Article 13 of Directive 2000/60/EC, and including a summary of the information set out in Part C of Annex II.

6. Member States shall amend the list of threshold values whenever new information on pollutants, groups of pollutants, or indicators of pollution indicates that a threshold value should be set for an additional substance, that an existing threshold value should be amended, or that a threshold value previously removed from the list should be re-inserted, in order to protect human health and the environment.

Threshold values can be removed from the list when the body of groundwater concerned is no longer at risk from the corresponding pollutants, groups of pollutants, or indicators of pollution.

Any such changes to the list of threshold values shall be reported in the context of the periodic review of the river basin management plans.

7. The Commission shall publish a report by 22 December 2009 at the latest on the basis of the information provided by Member States in accordance with paragraph 5.

### Article 4

#### Procedure for assessing groundwater chemical status

1. Member States shall use the procedure described in paragraph 2 to assess the chemical status of a body of groundwater. Where appropriate, Member States may group bodies of groundwater in accordance with Annex V to Directive 2000/60/EC when carrying out this procedure.

2. A body or a group of bodies of groundwater shall be considered to be of good chemical status when:

- (a) the values for the groundwater quality standards listed in Annex I and the relevant threshold values established in accordance with Article 3 and Annex II are not exceeded at any monitoring point in that body or group of bodies of groundwater; or
- (b) the value for a groundwater quality standard or threshold value is exceeded at one or more monitoring points but an appropriate investigation in accordance with Annex III confirms that:

- (i) on the basis of the assessment referred to in paragraph 3 of Annex III, the concentrations of pollutants exceeding the groundwater quality standards or threshold values are not considered to present a significant environmental risk, taking into account, where appropriate, the extent of the body of groundwater which is affected;

- (ii) the other conditions for good groundwater chemical status set out in Table 2.3.2 in Annex V to Directive 2000/60/EC are being met, in accordance with paragraph 4 of Annex III to this Directive;
  - (iii) where appropriate, the requirements of Article 7(3) of Directive 2000/60/EC are being met, in accordance with paragraph 4 of Annex III to this Directive;
  - (iv) the ability of the body of groundwater or of any of the bodies in the group of bodies of groundwater to support human uses has not been significantly impaired by pollution.
3. Member States shall publish a summary of the assessment of groundwater chemical status in the river basin management plans in accordance with Article 13 of Directive 2000/60/EC.

This summary, established at the level of the river basin district or the part of the international river basin district falling within the territory of a Member State, shall also include an explanation as to the manner in which exceedances of groundwater quality standards or threshold values at individual monitoring points have been taken into account in the final assessment.

4. If a body of groundwater is classified as being of good chemical status in accordance with paragraph 2(b), Member States, in accordance with Article 11 of Directive 2000/60/EC, shall take such measures as may be necessary to protect aquatic ecosystems, terrestrial ecosystems and human uses of groundwater dependent on the part of the body of groundwater represented by the monitoring point or points at which the value for a groundwater quality standard or the threshold value has been exceeded.

#### Article 5

### Identification of significant and sustained upward trends and the definition of starting points for trend reversals

1. Member States shall identify any significant and sustained upward trend in concentrations of pollutants, groups of pollutants or indicators of pollution found in bodies or groups of bodies of groundwater identified as being at risk and define the starting point for reversing that trend, in accordance with Annex IV.
2. Member States shall reverse trends which present a significant risk of harm to the quality of aquatic ecosystems or terrestrial ecosystems, to human health, or to actual or potential legitimate uses of the water environment, through the programme of measures referred to in Article 11 of Directive 2000/60/EC, in order progressively to reduce pollution of groundwater.
3. Member States shall define the starting point for trend reversal as a percentage of the level of the groundwater quality

standards set out in Annex I and of the threshold values established pursuant to Article 3, on the basis of the identified trend and the environmental risk associated therewith, in accordance with Part B, paragraph 1 of Annex IV.

4. In the river basin management plans to be submitted in accordance with Article 13 of Directive 2000/60/EC, Member States shall summarise:

- (a) the way in which the trend assessment from individual monitoring points within a body or a group of bodies of groundwater has contributed to identifying, in accordance with Section 2.5 of Annex V to that Directive, that those bodies are subject to a sustained and significant upward trend in concentration of any pollutant or a reversal of that trend; and
- (b) the reasons for the starting points defined pursuant to paragraph 3.

5. Where necessary to assess the impact of existing plumes of pollution in bodies of groundwater that may threaten the achievement of the objectives in Article 4 of Directive 2000/60/EC, and in particular those plumes resulting from point sources and contaminated land, Member States shall carry out additional trend assessments for identified pollutants in order to verify that plumes from contaminated sites do not expand, do not deteriorate the chemical status of the body or group of bodies of groundwater, and do not present a risk for human health and the environment. The results of these assessments shall be summarised in the river basin management plans to be submitted in accordance with Article 13 of Directive 2000/60/EC.

#### Article 6

### Measures to prevent or limit inputs of pollutants into groundwater

1. In order to achieve the objective of preventing or limiting inputs of pollutants into groundwater, established in accordance with Article 4(1)(b)(i) of Directive 2000/60/EC, Member States shall ensure that the programme of measures established in accordance with Article 11 of that Directive includes:
  - (a) all measures necessary to aim to prevent inputs into groundwater of any hazardous substances. In identifying such substances, Member States shall in particular take account of hazardous substances belonging to the families or groups of pollutants referred to in points 1 to 6 of Annex VIII to Directive 2000/60/EC, as well as of substances belonging to the families or groups of pollutants referred to in points 7 to 9 of that Annex, where these are considered to be hazardous;

(b) for pollutants listed in Annex VIII to Directive 2000/60/EC which are not considered hazardous, and any other non-hazardous pollutants not listed in that Annex considered by Member States to present an existing or potential risk of pollution, all measures necessary to limit inputs into groundwater so as to ensure that such inputs do not cause deterioration of good groundwater chemical status, do not cause any significant and sustained upward trends in the concentrations of pollutants in groundwater, and do not otherwise cause pollution of groundwater. Such measures shall take account of established best practice, including the Best Environmental Practice and Best Available Techniques specified in the relevant Community legislation.

For the purpose of establishing measures referred to in points (a) or (b), Member States may, as a first step, identify the circumstances under which the pollutants listed in Annex VIII to Directive 2000/60/EC, in particular essential metals and their compounds referred to in point 7 of that Annex, are to be considered hazardous or non-hazardous.

2. Inputs of pollutants from diffuse sources of pollution having an impact on the groundwater chemical status shall be taken into account whenever technically possible.

3. Without prejudice to any more stringent requirements in other Community legislation, Member States may exempt from the measures required by paragraph 1 inputs of pollutants that are:

- (a) the result of direct discharges authorised in accordance with Article 11(3)(j) of Directive 2000/60/EC;
- (b) considered by the competent authorities to be of a quantity and concentration so small as to obviate any present or future danger of deterioration in the quality of the receiving groundwater;
- (c) the consequences of accidents or exceptional circumstances of natural cause that could not reasonably have been foreseen, avoided or mitigated;
- (d) the result of artificial recharge or augmentation of bodies of groundwater authorised in accordance with Article 11(3)(f) of Directive 2000/60/EC;
- (e) considered by the competent authorities to be not technically feasible to prevent or limit without using:
  - (i) measures that would increase risks to human health or to the quality of the environment as a whole; or
  - (ii) disproportionately costly measures to remove quantities of pollutants from, or otherwise control their percolation in, contaminated ground or subsoil; or

(f) the result of interventions in surface waters for the purposes, amongst others, of mitigating the effects of floods and droughts, and for the management of waters and waterways, including at international level. Such activities, including cutting, dredging, relocation and deposition of sediments in surface water, shall be conducted in accordance with general binding rules, and, where applicable, with permits and authorisations issued on the basis of such rules, developed by the Member States for that purpose, provided that such inputs do not compromise the achievement of the environmental objectives established for the water bodies concerned in accordance with Article 4(1)(b)(ii) of Directive 2000/60/EC.

4. The competent authorities of the Member States shall keep an inventory of the exemptions referred to in paragraph 3 for the purpose of notification, upon request, to the Commission.

#### Article 7

#### Transitional arrangements

In the period between ... (\*) and 22 December 2013, any new authorisation procedure pursuant to Articles 4 and 5 of Directive 80/68/EEC shall take into account the requirements set out in Articles 3, 4 and 5 of this Directive.

#### Article 8

#### Technical adaptations

Annexes II, III and IV may be adapted to scientific and technical progress in accordance with the procedure referred to in Article 21(2) of Directive 2000/60/EC, taking into consideration the period for reviewing and updating river basin management plans, as referred to in Article 13(7) of that Directive.

#### Article 9

#### Implementation

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before ... (\*). They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

(\*) Two years after the entry into force of this Directive.

*Article 10***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 11***Addressees**

This Directive is addressed to the Member States.

Done at ...,

*For the European Parliament*  
*The President*

...

*For the Council*  
*The President*

...

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## ANNEX I

## GROUNDWATER QUALITY STANDARDS

1. For the purposes of assessing groundwater chemical status in accordance with Article 4, the following groundwater quality standards will be the quality standards referred to in Table 2.3.2 in Annex V to Directive 2000/60/EC and established in accordance with Article 17 of that Directive.

Pollutant	Quality standards	Comment
Nitrates	50 mg/l	For activities falling within the scope of Directive 91/676/EEC, programmes and measures required in relation to this value (i.e. 50 mg/l) will be in accordance with that Directive <sup>(1)</sup> .
Active substances in pesticides, including their relevant metabolites, degradation and reaction products <sup>(2)</sup>	0,1 µg/l 0,5 µg/l (total) <sup>(3)</sup>	

<sup>(1)</sup> Activities outside the scope of Directive 91/676/EEC are not covered by this provision.

<sup>(2)</sup> 'Pesticides' means plant protection products and biocidal products as defined in Article 2 of Directive 91/414/EEC and in Article 2 of Directive 98/8/EC, respectively.

<sup>(3)</sup> 'Total' means the sum of all individual pesticides detected and quantified in the monitoring procedure.

2. The results of the application of the quality standards for pesticides in the manner specified for the purposes of this Directive will be without prejudice to the results of the risk assessment procedures required by Directive 91/414/EEC or Directive 98/8/EC.
3. Where, for a given body of groundwater, it is considered that the groundwater quality standards could result in failure to achieve the environmental objectives specified in Article 4 of Directive 2000/60/EC for associated bodies of surface water, or in any significant diminution of the ecological or chemical quality of such bodies, or in any significant damage to terrestrial ecosystems which depend directly on the body of groundwater, more stringent threshold values will be established in accordance with Article 3 and Annex II to this Directive. Programmes and measures required in relation to such a threshold value will also apply to activities falling within the scope of Directive 91/676/EEC.



## ANNEX II

**THRESHOLD VALUES FOR GROUNDWATER POLLUTANTS AND INDICATORS OF POLLUTION****PART A: GUIDELINES FOR THE ESTABLISHMENT OF THRESHOLD VALUES BY MEMBER STATES IN ACCORDANCE WITH ARTICLE 3**

Member States will establish threshold values for all pollutants and indicators of pollution which, pursuant to the characterisation performed in accordance with Article 5 of Directive 2000/60/EC, characterise bodies or groups of bodies of groundwater as being at risk of failing to achieve good groundwater chemical status.

Threshold values will be established in such a way that, should the monitoring results at a representative monitoring point exceed the thresholds, this will indicate a risk that one or more of the conditions for good groundwater chemical status referred to in Article 4(2)(b)(ii), (iii) and (iv) are not being met.

When establishing threshold values, Member States will consider the following guidelines:

1. The determination of threshold values should be based on:
  - (a) the extent of interactions between groundwater and associated aquatic and dependent terrestrial ecosystems;
  - (b) the interference with actual or potential legitimate uses or functions of groundwater;
  - (c) all pollutants which characterise bodies of groundwater as being at risk, taking into account the minimum list set up in part B;
  - (d) hydro-geological characteristics including information on background values and water balance.
2. The determination of threshold values should also take account of the origins of the pollutants, their possible natural occurrence, their toxicology and dispersion tendency, their persistence and their bioaccumulation potential.
3. The determination of threshold values should be supported by a control mechanism for the data collected, based on an evaluation of data quality, analytical considerations, and background levels for substances which may occur both naturally and as a result of human activities.

**PART B: MINIMUM LIST OF POLLUTANTS AND THEIR INDICATORS FOR WHICH MEMBER STATES HAVE TO CONSIDER ESTABLISHING THRESHOLD VALUES IN ACCORDANCE WITH ARTICLE 3****1. Substances or ions which may occur both naturally and as a result of human activities**

Arsenic

Cadmium

Lead

Mercury

Ammonium

Chloride

Sulphate

**2. Man-made synthetic substances**

Trichloroethylene

Tetrachloroethylene

**3. Parameters indicative of saline or other intrusions <sup>(1)</sup>**

Conductivity

<sup>(1)</sup> With regard to saline concentrations resulting from human activities, Member States may decide to establish threshold values either for sulphate and chloride or for conductivity.

PART C: INFORMATION TO BE PROVIDED BY MEMBER STATES WITH REGARD TO THE POLLUTANTS AND THEIR INDICATORS FOR WHICH THRESHOLD VALUES HAVE BEEN ESTABLISHED

Member States will summarise, in the river basin management plans to be submitted in accordance with Article 13 of Directive 2000/60/EC, the way the procedure set out in Part A of this Annex has been followed.

In particular, Member States will provide, where feasible:

- (a) information on the number of bodies or groups of bodies of groundwater characterised as being at risk and on the pollutants and indicators of pollution which contribute to this classification, including the observed concentrations/values;
  - (b) information on each of the bodies of groundwater characterised as being at risk, in particular the size of the bodies, the relationship between the bodies of groundwater and the associated surface waters and directly dependent terrestrial ecosystems, and, in the case of naturally-occurring substances, the natural background levels in the bodies of groundwater;
  - (c) the threshold values, whether they apply at the national level, at the level of the river basin district or the part of the international river basin district falling within the territory of the Member State, or at the level of a body or a group of bodies of groundwater;
  - (d) the relationship between the threshold values and:
    - (i) in the case of naturally-occurring substances, the observed background levels,
    - (ii) the environmental quality objectives and other standards for water protection that exist at national, Community or international level, and
    - (iii) any relevant information concerning the toxicology, eco-toxicology, persistence, bioaccumulation potential, and dispersion tendency of the pollutants.
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## ANNEX III

**ASSESSMENT OF GROUNDWATER CHEMICAL STATUS**

1. The assessment procedure for determining the chemical status of a body or a group of bodies of groundwater will be carried out in relation to all bodies or groups of bodies of groundwater characterised as being at risk and in relation to each of the pollutants which contribute to the body or group of bodies of groundwater being so characterised.
  2. In undertaking any investigations referred to in Article 4(2)(b), Member States will take into account:
    - (a) the information collected as part of the characterisation to be carried out in accordance with Article 5 of Directive 2000/60/EC and with Sections 2.1, 2.2 and 2.3 of Annex II thereto;
    - (b) the results of the groundwater monitoring network obtained in accordance with Section 2.4 of Annex V to Directive 2000/60/EC; and
    - (c) any other relevant information including a comparison of the annual arithmetic mean concentration of the relevant pollutants at a monitoring point with the groundwater quality standards set out in Annex I and the threshold values set by Member States in accordance with Article 3 and Annex II.
  3. For the purposes of investigating whether the conditions for good groundwater chemical status referred to in Article 4(2)(b)(i) and (iv) are met, Member States will, where relevant and necessary, and on the basis of appropriate aggregations of the monitoring results, supported where necessary by concentration estimations based on a conceptual model of the body or group of bodies of groundwater, estimate the extent of the body of groundwater having an annual arithmetic mean concentration of a pollutant higher than a groundwater quality standard or a threshold value.
  4. For the purposes of investigating whether the conditions for good groundwater chemical status referred to in Article 4(2)(b)(ii) and (iii) are met, Member States will, where relevant and necessary, and on the basis of relevant monitoring results and of a suitable conceptual model of the body of groundwater, assess:
    - (a) the amounts and the concentrations of the pollutants being, or likely to be, transferred from the body of groundwater to the associated surface waters or directly dependent terrestrial ecosystems;
    - (b) the likely impact of the amounts and concentrations of the pollutants transferred to the associated surface waters and directly dependent terrestrial ecosystems;
    - (c) the extent of any saline or other intrusions into the body of groundwater; and
    - (d) the risk from pollutants in the body of groundwater to the quality of water abstracted, or intended to be abstracted, from the body of groundwater for human consumption.
  5. Member States will present the groundwater chemical status of a body or a group of bodies of groundwater on maps in accordance with Sections 2.4.5 and 2.5 of Annex V to Directive 2000/60/EC. In addition, Member States will indicate on these maps all monitoring points where groundwater quality standards and/or threshold values are exceeded, where relevant and feasible.
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## ANNEX IV

**IDENTIFICATION AND REVERSAL OF SIGNIFICANT AND SUSTAINED UPWARD TRENDS**

## PART A: IDENTIFICATION OF SIGNIFICANT AND SUSTAINED UPWARD TRENDS

Member States will identify significant and sustained upward trends in all bodies or groups of bodies of groundwater that are characterised as being at risk in accordance with Annex II to Directive 2000/60/EC, taking into account the following requirements:

1. in accordance with Section 2.4 of Annex V to Directive 2000/60/EC, the monitoring programme will be so designed as to detect significant and sustained upward trends in concentrations of the pollutants identified pursuant to Article 3 of this Directive;
2. the procedure for the identification of significant and sustained upward trends will be based on the following elements:
  - (a) monitoring frequencies and monitoring locations will be selected such as are sufficient to:
    - (i) provide the information necessary to ensure that such upward trends can be distinguished from natural variation with an adequate level of confidence and precision;
    - (ii) enable such upward trends to be identified in sufficient time to allow measures to be implemented in order to prevent, or at least mitigate as far as practicable, environmentally significant detrimental changes in groundwater quality. This identification will be carried out for the first time by 2009, if possible, and will take into account existing data, in the context of the report on trend identification within the first river basin management plan referred to in Article 13 of Directive 2000/60/EC, and at least every six years thereafter;
    - (iii) take into account the physical and chemical temporal characteristics of the body of groundwater, including groundwater flow conditions and recharge rates and percolation time through soil or subsoil.
  - (b) the methods of monitoring and analysis used will conform to international quality control principles, including, if relevant, CEN or national standardised methods, to ensure equivalent scientific quality and comparability of the data provided;
  - (c) the assessment will be based on a statistical method, such as regression analysis, for trend analysis in time series of individual monitoring points;
  - (d) in order to avoid bias in trend identification, all measurements below the quantification limit will be set to half of the value of the highest quantification limit occurring in time series, except for total pesticides;
3. the identification of significant and sustained upward trends in the concentrations of substances which occur both naturally and as a result of human activities will consider the data collected before the start of the monitoring programme in order to report on trend identification within the first river basin management plan referred to in Article 13 of Directive 2000/60/EC, where such data is available.

## PART B: STARTING POINTS FOR TREND REVERSALS

According to Article 5, Member States will reverse identified significant and sustained upward trends where these trends present a risk of harm to associated aquatic ecosystems, to directly dependent terrestrial ecosystems, to human health or to actual or potential legitimate uses of the water environment, taking into account the following requirements:

1. the starting point for implementing measures to reverse significant and sustained upward trends will be when the concentration of the pollutant reaches 75 % of the parametric values of the groundwater quality standards set out in Annex I and of the threshold values established pursuant to Article 3, unless:
  - (a) an earlier starting point is required to enable trend reversal measures to prevent most cost-effectively, or at least mitigate as far as possible, any environmentally significant detrimental changes in groundwater quality;
  - (b) a different starting point is justified where the detection limit does not allow for establishing the presence of a trend at 75 % of the parametric values; or
  - (c) the rate of increase and the reversibility of the trend are such that a later starting point for trend reversal measures would still enable such measures to prevent most cost-effectively, or at least mitigate as far as possible, any environmentally significant detrimental changes in groundwater quality.

For activities falling within the scope of Directive 91/676/EEC, the starting point for implementing measures to reverse significant and sustained upward trends will be established in accordance with that Directive and with Directive 2000/60/EC;

2. once a starting point has been established for a body of groundwater characterised as being at risk in accordance with Section 2.4.4 of Annex V to Directive 2000/60/EC and pursuant to Part B, paragraph 1 of this Annex, it will not be changed during the six-year cycle of the river basin management plan required in accordance with Article 13 of Directive 2000/60/EC;
  3. trend reversals will be demonstrated, taking into account relevant monitoring provisions contained in Part A, paragraph 2.
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## STATEMENT OF THE COUNCIL'S REASONS

### I. INTRODUCTION

The Commission adopted its proposal for a Directive of the European Parliament and of the Council on the protection of groundwater against pollution on 28 October 2003.

The European Parliament adopted its first-reading opinion on 28 April 2005 <sup>(1)</sup>.

The Committee of the Regions adopted its opinion on 12 February 2004 <sup>(2)</sup>.

The European Economic and Social Committee adopted its opinion on 31 March 2004 <sup>(3)</sup>.

The Council adopted its common position on 23 January 2006.

### II. OBJECTIVE

Groundwater is an important natural resource which provides water for human consumption as well for agriculture and industry. It also plays a key role, especially in periods of drought, in preserving aquatic and terrestrial ecosystems. Protecting groundwater against pollution is therefore essential, with particular emphasis on prevention as groundwater quality is generally long and difficult to restore, even once the source of pollution has been removed.

The protection of groundwater against pollution is currently regulated under Directive 80/68/EEC, <sup>(4)</sup> to be repealed in 2013, and Directive 2000/60/EC: the Water Framework Directive (WFD). <sup>(5)</sup>

This proposal seeks to meet the general requirement contained in Article 17 of the WFD that, on the basis of a proposal from the Commission, the European Parliament and the Council shall adopt specific measures to prevent and control groundwater pollution, so as to ensure achievement of the groundwater related environmental objectives of the framework Directive.

### III. ANALYSIS OF THE COMMON POSITION

#### General

The common position incorporates a number of the European Parliament's first-reading amendments, either verbatim, in part or in spirit. These improve or clarify the text of the proposed Directive.

However, other amendments are not reflected in the common position because the Council agreed that they were unnecessary or unacceptable or, in several cases, because provisions from the original Commission proposal were deleted or thoroughly redrafted. This applies in particular to the annexes, which the Council aimed to simplify and clarify as much as possible so as to ensure effective implementation.

Several amendments were not included in the common position because the Council considered they were not in line with the guide for the drafting of Community legislation, because they repeated, interpreted or contradicted provisions contained in Directive 2000/60/EC, the Water Framework Directive.

Several amendments were rejected because it was considered that they sought to introduce provisions lying outside the scope of the proposal as determined by the framework Directive or covered by other legislation in place.

The common position also includes changes other than those envisaged in the European Parliament's first-reading opinion. In particular, the Council sought to organise the structure of the proposed act as rationally as possible in order to aid understanding, by competent authorities and citizens, of the requirements imposed on Member States. In addition, a number of drafting changes were introduced either to clarify the text or ensure the overall coherence of the Directive.

<sup>(1)</sup> OJ C 45 E, 23.2.2006, p. 75

<sup>(2)</sup> OJ C 109, 30.4.2004, p. 29.

<sup>(3)</sup> OJ C 112, 30.4.2004, p. 40.

<sup>(4)</sup> OJ L 20, 26.1.1980, p. 43.

<sup>(5)</sup> OJ L 327, 22.12.2000, p. 1.

## Specific

In particular, the Council agreed that:

- Amendment 1 and the first part of amendment 2 were unclear in terms of the difference between 'pollution' and 'deterioration'. A reference to the need to prevent deterioration of the status of groundwater bodies, consistent with WFD, was added to Article 1.
- Amendment 3 would have imposed on all groundwater bodies the standards applied to bodies used for the extraction of drinking water, which would not be realistically feasible. The same applies to the first part of amendment 62 (of which the second part was accepted by the Council), to point 2(b) of amendment 65 and to amendment 68.
- The aims set out in amendments 95 and 100 were best pursued through the Community Framework Programmes for Research.
- Amendment 4 was not in line with the WFD, which clearly distinguishes between protection levels for groundwater and surface waters.
- Amendments 7, 10 and 80, as well as item (aa) of amendment 15, addressed the quantitative status of groundwater. This was outside the scope of this daughter Directive, which is exclusively about qualitative status, as defined in Article 17 of the WFD.
- Amendments 8 and 9, referring to other policy areas, were not in line with the guide for the drafting of Community legislation, like amendment 13, which was considered to interpret the WFD rather than justify the Groundwater Directive.
- Amendment 11 was not needed because the text of the common position established, under Article 6, a regime equivalent to that contained in Directive 80/68/EEC.
- Amendment 16 duplicated provisions from Article 5 of the WFD which clearly establish responsibilities with regard to characterisation.
- Amendment 17 was not acceptable because the Council considered that a clear distinction, both conceptual and terminological, between quality standards set at Community level and threshold values to be determined by the Member States according to national hydro-geological specificities was an essential element of the proposed Directive. Weakening or refusing this approach would make implementation more complicated and less effective in terms of results. The same applies throughout the text, to all or parts of amendments 30, 31, 34, 36, 65, 66, 67, 69, 70, 71, 89, and 90.
- Amendment 18 was acceptable in principle, but the wording was clarified to better address the notion of trends potentially leading to environmental risk.
- Amendments 19 and 20 were acceptable in part but were inconsistent with the WFD as drafted. Elements taken from both were combined in Article 2(4).
- Amendment 21 redefined an existing term in the WFD and could have led to confusion. The WFD requires 'no deterioration of the status of bodies of groundwater', not of quality.
- Amendments 22 and 24, as well as the first part of amendment 38, referred to concepts that are not used as such in the common position, and presented serious practical difficulties. However, the issue of naturally occurring concentrations (also hinted at in amendment 91) is addressed in recital 7.
- Amendments 23, 49 and 93 introduced a new, complex and unnecessary term that could have led to widespread misinterpretation. Historical contamination is adequately covered by more general provisions in the common position and in the WFD.
- Amendment 56 was not relevant given the scope of the proposed directive.
- Amendment 27 was incompatible with the Council's view that quality standards and threshold values should be set at levels relevant to the risk to groundwater bodies.

- Amendments 57 and 59 were unnecessary since the common position addresses the meaning of good and poor chemical status.
- Amendment 37 was unnecessary with regard to the WFD definitions of pollutant and pollution.
- Amendment 40 was unacceptable because Member States are responsible for implementing the programme of measures.
- The issues addressed in amendments 41 and 58 were covered respectively in Annex IV and Annex III of the common position.
- Amendment 46 was not acceptable because it used a provision derived from Directive 80/68/EEC in a very different context, which would make it unworkable.
- Amendments 51, 52 and 54 duplicated provisions of the WFD. As far as amendment 50 is concerned, the Council introduced language inspired from Directive 80/68/EEC (Article 15) in Article 6(4), bearing in mind the need to minimise the bureaucratic burden.
- Amendment 55 unduly excluded Annex III from possible technical adaptation.
- The deletion proposed in amendment 60 would have led to incompatibility between this Groundwater Directive and Directive 91/676/EEC. The common position clarifies the relationship between these two directives.
- Amendment 64 was no longer relevant as such, because the common position addresses the issue of compliance in a different manner, the aim being to avoid a situation where non-compliance at one single monitoring point would mean non-compliance for the whole groundwater body or group of bodies (see Article 4 and Annex III).
- Amendments 73, 76, 77, 78, 79 (first part), 83, 84 and 85 were no longer relevant. In particular, the Council felt that the fixed time series approach in the original proposal was inapplicable given the variety of hydro-geological conditions across the EU and that common criteria should be defined only for trend identification and for the starting point for trend reversal (Annex IV). The second part of amendment 79 (similar to amendment 89) was incorporated in spirit in Annex IV, point 1.3.
- Amendment 81 was confusing and inconsistent with the WFD. However, Article 5(2) of the common position clarifies what is to be protected.

#### IV. CONCLUSION

The Council believes that the common position represents a balanced package of measures that would contribute to the pursuit of the objectives of Community environmental policy outlined in Article 174(1) EC Treaty and would advance the protection of groundwater against pollution, while ensuring compliance with the groundwater-related requirements contained in Directive 2000/60/EC and allowing for effective implementation by the Member States, taking due account of specific hydro-geological circumstances at national level.

It looks forward to constructive discussions with the European Parliament with a view to the early adoption of the Directive.

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**COMMON POSITION (EC) No 5/2006****adopted by the Council on 23 January 2006****with a view to adopting Directive 2006/.../EC of the European Parliament and of the Council of ...  
establishing an Infrastructure for Spatial Information in the European Community (INSPIRE)**

(2006/C 126 E/02)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

After consulting the Committee of the Regions,

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

Whereas:

- (1) Community policy on the environment must aim at a high level of protection taking into account the diversity of situations in the various regions of the Community. Moreover, information, including spatial information, is needed for the formulation and implementation of this policy and other Community policies, which must integrate environmental protection requirements in accordance with Article 6 of the Treaty. In order to bring about such integration, it is necessary to establish a measure of coordination between the users and providers of the information so that information and knowledge from different sectors can be combined.
- (2) The Sixth Environment Action Programme adopted by Decision No 1600/2002/EC of the European Parliament and of the Council <sup>(3)</sup> requires full consideration to be given to ensuring that the Community's environmental policy-making is undertaken in an integrated way, taking into account regional and local differences. A number of problems exist regarding the availability, quality, organisation, accessibility and sharing of spatial information needed in order to achieve the objectives set out in that programme.
- (3) The problems regarding the availability, quality, organisation, accessibility and sharing of spatial information are common to a large number of policy and information themes and are experienced across the various levels of public authority. Solving these problems

requires measures that address exchange, sharing, access and use of interoperable spatial data and spatial data services across the various levels of public authority and across different sectors. An infrastructure for spatial information in the Community should therefore be established.

- (4) The Infrastructure for Spatial Information in the European Community (INSPIRE) should assist policy-making in relation to policies and activities that may have a direct or indirect impact on the environment.
- (5) INSPIRE should be based on the infrastructures for spatial information that are created by the Member States and that are made compatible with common implementing rules and are supplemented with measures at Community level. These measures should ensure that the infrastructures for spatial information created by the Member States are compatible and usable in a Community and transboundary context.
- (6) The infrastructures for spatial information in the Member States should be designed to ensure that spatial data are stored, made available and maintained at the most appropriate level; that it is possible to combine spatial data from different sources across the Community in a consistent way and share them between several users and applications; that it is possible for spatial data collected at one level of public authority to be shared between other public authorities to the extent that this Directive imposes on such public authorities a duty to share spatial data; that spatial data are made available under conditions which do not unduly restrict their extensive use; that it is easy to discover available spatial data, to evaluate their suitability for the purpose and to know the conditions applicable to their use.
- (7) There is a degree of overlap between the spatial information covered by this Directive and the information covered by Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information <sup>(4)</sup>. This Directive should be without prejudice to Directive 2003/4/EC.

<sup>(1)</sup> OJ C 221, 8.9.2005, p. 33.

<sup>(2)</sup> Opinion of the European Parliament of 7 June 2005 (not yet published in the Official Journal), Council Common Position of 23 January 2006 and Position of the European Parliament of ... (not yet published in the Official Journal).

<sup>(3)</sup> OJ L 242, 10.9.2002, p. 1.

<sup>(4)</sup> OJ L 41, 14.2.2003, p. 26.

- (8) This Directive should be without prejudice to Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information<sup>(1)</sup>, the objectives of which are complementary to those of this Directive.
- (9) The establishment of INSPIRE will represent significant added value for — and will also benefit from — other Community initiatives such as Council Regulation (EC) No 876/2002 of 21 May 2002 setting up the Galileo Joint Undertaking<sup>(2)</sup> and the Communication from the Commission to the European Parliament and the Council ‘Global Monitoring for Environment and Security (GMES): Establishing a GMES capacity by 2008 — (Action Plan (2004 to 2008))’. Member States should consider using the data and services resulting from Galileo and GMES as they become available, in particular those related to the time and space references from Galileo.
- (10) Many initiatives are taken at national and Community level to collect, harmonise or organise the dissemination or use of spatial information. Such initiatives may be established by Community legislation, such as Commission Decision 2000/479/EC of 17 July 2000 on the implementation of a European pollutant emission register (EPER) according to Article 15 of Council Directive 96/61/EC concerning integrated pollution prevention and control (IPPC)<sup>(3)</sup> and Regulation (EC) No 2152/2003 of the European Parliament and of the Council of 17 November 2003 concerning monitoring of forests and environmental interactions in the Community (Forest Focus)<sup>(4)</sup>, in the framework of Community funded programmes (for example CORINE land cover, European Transport Policy Information System) or may emanate from initiatives taken at national or regional level. This Directive will not only complement such initiatives by providing a framework that will enable them to become interoperable, but it will also build upon existing experience and initiatives rather than duplicate the work that has already been done.
- (11) This Directive should apply to spatial data held by or on behalf of public authorities and to the use of spatial data by public authorities in the performance of their public tasks. Subject to certain conditions, however, it should also apply to spatial data held by natural or legal persons other than public authorities, provided that those natural or legal persons request this.
- (12) This Directive should not set requirements for the collection of new data, or for reporting such information to the Commission, since those matters are regulated by other legislation related to the environment.
- (13) The implementation of the national infrastructures should be progressive and, accordingly, the spatial data themes covered by this Directive should be accorded different levels of priority. The implementation should take account of the extent to which spatial data are needed for a wide range of applications in various policy areas, of the priority of actions provided for under Community policies that need harmonised spatial data and of the progress already made by the harmonisation efforts undertaken in the Member States.
- (14) The loss of time and resources in searching for existing spatial data or establishing whether they may be used for a particular purpose is a key obstacle to the full exploitation of the data available. Member States should therefore provide descriptions of available spatial data sets and services in the form of metadata.
- (15) Since the wide diversity of formats and structures in which spatial data are organised and accessed in the Community hampers the efficient formulation, implementation, monitoring and evaluation of Community legislation that directly or indirectly affect the environment, implementing measures should be provided for in order to facilitate the use of spatial data from different sources across the Member States. Those measures should be designed to make the spatial data sets interoperable, and Member States should ensure that any data or information needed for the purposes of achieving interoperability are available on conditions that do not restrict their use for that purpose.
- (16) Network services are necessary for sharing spatial data between the various levels of public authority in the Community. Those network services should make it possible to discover, transform, view and download spatial data and to invoke spatial data and e-commerce services. The services of the network should work in accordance with commonly agreed specifications and minimum performance criteria in order to ensure the interoperability of the infrastructures established by the Member States. The network of services should also include the technical possibility to enable public authorities to make their spatial data sets and services available.

<sup>(1)</sup> OJ L 345, 31.12.2003, p. 90.

<sup>(2)</sup> OJ L 138, 28.5.2002, p. 1.

<sup>(3)</sup> OJ L 192, 28.7.2000, p. 36.

<sup>(4)</sup> OJ L 324, 11.12.2003, p. 1. Regulation as amended by Regulation (EC) No 788/2004 (OJ L 138, 30.4.2004, p. 17).

- (17) Certain spatial data sets and services relevant to Community policies that directly or indirectly affect the environment are held and operated by third parties. Member States should therefore offer third parties the possibility of contributing to the national infrastructures, provided that the cohesion and ease of use of the spatial data and spatial data services covered by those infrastructures is thereby not impaired.
- (18) Experience in the Member States has shown that it is important, for the successful implementation of an infrastructure for spatial information, that a minimum number of services be made available to the public free of charge. Member States should therefore make available, as a minimum and free of charge, the services for discovering spatial data sets.
- (19) In order to assist the integration of the national infrastructures into INSPIRE, Member States should provide access to their infrastructures through a Community geo-portal operated by the Commission, as well as through any access points they themselves decide to operate.
- (20) In order to make information from various levels of public authority available, Member States should remove the practical obstacles faced in that regard by public authorities at national, regional and local level when performing their public tasks that may have a direct or indirect impact on the environment. These practical obstacles should be removed at the point where the information is to be used for the public task.
- (21) Public authorities need to have smooth access to relevant spatial data sets and services during the execution of their public tasks. Such access can be hindered if it depends on individual ad hoc negotiations between public authorities every time access is required. Member States should take the necessary measures to prevent such practical obstacles to the sharing of data, using for example prior agreements between public authorities.
- (22) The mechanisms for sharing spatial data sets and services between government and other public administrations and natural or legal persons performing public administrative functions under national law may involve laws, regulations, licensing or financial arrangements or administrative procedures, for instance to protect the financial viability of those public authorities that have a duty placed on them to raise revenue, or for instance whose data are only partially subsidised by the Member State so that they have to recover the unsubsidised costs by charging the users, or for instance to guarantee the maintenance and update of those data.
- (23) The possibility for public authorities who supply spatial data sets and services to license these sets and services to, and require payment from, other public authorities who use these spatial data sets and services could be provided for in the measures adopted by Member States in their transposition legislation.
- (24) The provisions of point (f) of Article 13(1) and of Article 17(1) should be implemented and applied in full compliance with the principles relating to the protection of personal data in accordance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data <sup>(1)</sup>.
- (25) Frameworks for the sharing of spatial data between public authorities upon whom the Directive imposes a duty to share should be neutral in respect of such public authorities within a Member State, but also in respect of such public authorities in other Member States and of the Community institutions. Since the Community institutions and bodies frequently need to integrate and assess spatial information from all the Member States, they should be able to gain access to and use spatial data and spatial data services in accordance with harmonised conditions.
- (26) With a view to stimulating the development of added-value services by third parties, for the benefit of both public authorities and the public, it is necessary to facilitate access to spatial data that extend over administrative or national borders.
- (27) The effective implementation of infrastructures for spatial information requires coordination by all those with an interest in the establishment of such infrastructures, whether as contributors or users. Appropriate coordination structures should therefore be established both in the Member States and at Community level.

<sup>(1)</sup> OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

(28) In order to benefit from the state of the art and actual experience of information infrastructures, it is appropriate that the measures necessary for the implementation of this Directive should be supported by international standards and standards adopted by European standardisation bodies in accordance with the procedure laid down in 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<sup>(1)</sup> and of rules on Information Society services.

(29) Since the European Environment Agency set up by Council Regulation (EEC) No 1210/90 of 7 May 1990 on the establishment of the European Environment Agency and the European Environment Information and Observation Network<sup>(2)</sup> has the task of providing the Community with objective, reliable and comparable environmental information at Community level, and aims *inter alia* to improve the flow of policy-relevant environmental information between Member States and the Community institutions, it should contribute actively to the implementation of this Directive.

(30) In accordance with point 34 of the Interinstitutional Agreement on better law-making<sup>(3)</sup>, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

(31) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>(4)</sup>.

(32) Preparatory work for decisions concerning the implementation of this Directive and for the future evolution of INSPIRE requires continuous monitoring of the implementation of the Directive and regular reporting.

(33) Since the objective of this Directive, namely the establishment of INSPIRE, cannot be sufficiently achieved by the Member States because of the transnational aspects and the general need within the Community to coordinate the conditions of access to, exchange and sharing of spatial information, 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 this objective,

HAVE ADOPTED THIS DIRECTIVE:

## CHAPTER I

### GENERAL PROVISIONS

#### Article 1

1. The purpose of this Directive is to lay down general rules aimed at the establishment of the Infrastructure for Spatial Information in the European Community (hereinafter referred to as 'INSPIRE'), for the purposes of Community environmental policies and policies or activities which may have an impact on the environment.

2. INSPIRE shall build upon infrastructures for spatial information established and operated by the Member States.

#### Article 2

This Directive is without prejudice to Directives 2003/4/EC and 2003/98/EC.

#### Article 3

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

- (1) 'infrastructure for spatial information' means metadata, spatial data sets and spatial data services; network services and technologies; agreements on sharing, access and use; and coordination and monitoring mechanisms, processes and procedures, established, operated or made available in accordance with this Directive;
- (2) 'spatial data' means any data with a direct or indirect reference to a specific location or geographical area;
- (3) 'spatial data set' means an identifiable collection of spatial data;
- (4) 'spatial data services' means the operations which may be performed, by invoking a computer application, on the spatial data contained in spatial data sets or on the related metadata;
- (5) 'spatial object' means an abstract representation of a real-world phenomenon related to a specific location or geographical area;

<sup>(1)</sup> OJ L 204, 21.7.1998, p. 37. Directive as last amended by the 2003 Act of Accession.

<sup>(2)</sup> OJ L 120, 11.5.1990, p. 1. Regulation as last amended by Regulation (EC) No 1641/2003 of the European Parliament and of the Council (OJ L 245, 29.9.2003, p. 1).

<sup>(3)</sup> OJ C 321, 31.12.2003, p. 1.

<sup>(4)</sup> OJ L 184, 17.7.1999, p. 23.

- (6) 'metadata' means information describing spatial data sets and spatial data services and making it possible to discover, inventory and use them;
- (7) 'interoperability' means the possibility for spatial data sets to be combined, and for services to interact, without repetitive manual intervention, in such a way that the result is coherent and the added value of the data sets and services is enhanced;
- (8) 'INSPIRE geo-portal' means an Internet site, or equivalent, providing access to the services referred to in Article 11(1);
- (9) 'public authority' means:
- any government or other public administration, including public advisory bodies, at national, regional or local level;
  - any natural or legal person performing public administrative functions under national law, including specific duties, activities or services in relation to the environment; and
  - any natural or legal person having public responsibilities or functions, or providing public services relating to the environment under the control of a body or person falling within (a) or (b);
- Member States may provide that when bodies or institutions are acting in a judicial or legislative capacity, they are not to be regarded as a public authority for the purposes of this Directive;
- 10) 'third party' means any natural or legal person other than a public authority.
- (d) they relate to one or more of the themes listed in Annex I, II or III.
2. In cases where multiple identical copies of the same spatial data set are held by or on behalf of various public authorities, this Directive shall apply only to the reference version from which the various copies are derived.
3. This Directive shall also cover the spatial data services relating to the data contained in the spatial data sets referred to in paragraph 1.
4. This Directive does not require collection of new spatial data.
5. In the case of spatial data sets which comply with the condition set out in paragraph 1(c), but in respect of which a third party holds intellectual property rights, the public authority may take action under this Directive only with the consent of that third party.
6. By way of derogation from paragraph 1, this Directive shall cover spatial data sets held by or on behalf of a public authority operating at the lowest level of government within a Member State only if the Member State has laws or regulations requiring their collection or dissemination.
7. The technical description of the data themes referred to in Annexes I, II and III may be adapted in accordance with the procedure referred to in Article 22(2), in order to take into account the evolving needs for spatial data in support of Community policies that affect the environment.

#### Article 4

1. This Directive shall cover spatial data sets which fulfil the following conditions:

- they relate to an area where a Member State has and/or exercises jurisdictional rights;
- they are in electronic format;
- they are held by or on behalf of any of the following:
  - a public authority, having been produced or received by a public authority, or being managed or updated by that authority and falling within the scope of its public tasks;
  - a third party to whom the network has been made available in accordance with Article 12;

#### CHAPTER II

#### METADATA

#### Article 5

- Member States shall ensure that metadata are created for the spatial data sets and services corresponding to the themes listed in Annexes I, II and III, and that those metadata are kept up to date.
- Metadata shall include information on the following:
  - the conformity of spatial data sets with the implementing rules provided for in Article 7(1);
  - conditions applying to access to, and use of, spatial data sets and services and, where applicable, corresponding fees;

- (c) the quality of spatial data, including whether they are validated;
- (d) the public authorities responsible for the establishment, management, maintenance and distribution of spatial data sets and services;
- (e) limitations on public access and the reasons for such limitations, in accordance with Article 13.

3. Member States shall take the necessary measures to ensure that metadata are complete and of a quality sufficient to fulfil the purpose set out in point (6) of Article 3.

4. Rules for the implementation of this Article shall be adopted by ... (\*) in accordance with the procedure referred to in Article 22(2). These rules shall take account of relevant, existing international standards and user requirements.

#### Article 6

Member States shall create the metadata referred to in Article 5 in accordance with the following timetable:

- (a) not later than two years after the date of adoption of implementing rules in accordance with Article 5(4) in the case of the spatial data sets corresponding to the themes listed in Annexes I and II;
- (b) not later than five years after the date of adoption of implementing rules in accordance with Article 5(4) in the case of the spatial data sets corresponding to the themes listed in Annex III.

### CHAPTER III

#### INTEROPERABILITY OF SPATIAL DATA SETS AND SERVICES

#### Article 7

1. Implementing rules laying down technical arrangements for the interoperability and, where practicable, harmonisation of spatial data sets and services shall be adopted in accordance with the procedure referred to in Article 22(2). Relevant user requirements, existing initiatives and international standards for the harmonisation of spatial data sets, as well as feasibility and cost-benefit considerations shall be taken into account in the development of the implementing rules. Where organisations established under international law have adopted relevant standards to ensure interoperability or harmonisation of spatial data sets and services, these standards shall be integrated, and the existing technical means shall be referred to, if appropriate, in the implementing rules mentioned in this paragraph.

(\*) One year following the date of entry into force of this Directive.

2. As a basis for developing the proposals for such implementing rules, the Commission shall undertake an analysis of the feasibility and expected costs and benefits. Member States shall, on request, provide the Commission with the information necessary to enable it to prepare this analysis. When proposing such rules, the Commission shall consult Member States within the Committee referred to in Article 22(1) on the results of its analysis. The adoption of such rules shall not result in excessive costs to a Member State.

3. To the extent feasible, Member States shall ensure that all newly collected or updated spatial data sets and the corresponding spatial data services are brought into conformity with the implementing rules referred to in paragraph 1 within two years of their adoption, and that other spatial data sets and services are brought into conformity with the implementing rules within seven years of their adoption.

4. Implementing rules referred to in paragraph 1 shall cover the definition and classification of spatial objects relevant to spatial data sets related to the themes listed in Annex I, II or III and the way in which those spatial data are geo-referenced.

5. Representatives of Member States at national, regional and local level as well as other natural or legal persons with an interest in the spatial data concerned by virtue of their role in the infrastructure for spatial information, including users, producers, added value service providers or any coordinating body shall be given the opportunity, in accordance with applicable procedures, to participate in preparatory discussions on the content of the implementing rules referred to in paragraph 1, prior to consideration by the Committee referred to in Article 22(1).

#### Article 8

1. In the case of spatial data sets corresponding to one or more of the themes listed in Annex I or II, the implementing rules provided for in Article 7(1) shall meet the conditions laid down in paragraphs 2, 3 and 4 of this Article.

2. The implementing rules shall address the following aspects of spatial data:

- (a) solutions to ensure unambiguous identification of spatial objects, to which identifiers under existing national systems can be mapped in order to ensure interoperability between them;
- (b) the relationship between spatial objects;

- (c) the key attributes and the corresponding multilingual thesauri commonly required for policies which may have an impact on the environment;
- (d) information on the temporal dimension of the data;
- (e) updates of the data.

3. The implementing rules shall be designed to ensure consistency between items of information which refer to the same location or between items of information which refer to the same object represented at different scales.

4. The implementing rules shall be designed to ensure that information derived from different spatial data sets is comparable as regards the aspects referred to in Article 7(4) and in paragraph 2 of this Article.

#### Article 9

The implementing rules provided for in Article 7(1) shall be adopted in accordance with the following timetable:

- (a) no later than ... (\*) in the case of the spatial data sets corresponding to the themes listed in Annex I;
- (b) no later than ... (\*\*) in the case of the spatial data sets corresponding to the themes listed in Annex II or III.

#### Article 10

1. Member States shall ensure that any information, including data, codes and technical classifications, needed for compliance with the implementing rules provided for in Article 7(1) is made available to public authorities or third parties in accordance with conditions that do not restrict its use for that purpose.

2. In order to ensure that spatial data relating to a geographical feature, the location of which spans the frontier between two or more Member States, are coherent, Member States shall, where appropriate, decide by mutual consent on the depiction and position of such common features.

### CHAPTER IV

#### NETWORK SERVICES

#### Article 11

1. Member States shall establish and operate a network of the following services for the spatial data sets and services for

(\*) Two years following the date of entry into force of this Directive.  
 (\*\*) Five years following the date of entry into force of this Directive.

which metadata have been created in accordance with this Directive:

- (a) discovery services making it possible to search for spatial data sets and services on the basis of the content of the corresponding metadata and to display the content of the metadata;
- (b) view services making it possible, as a minimum, to display, navigate, zoom in/out, pan, or overlay viewable spatial data sets and to display legend information and any relevant content of metadata;
- (c) download services, enabling copies of spatial data sets, or parts of such sets, to be downloaded and, where practicable, accessed directly;
- (d) transformation services, enabling spatial data sets to be transformed with a view to achieving interoperability;
- (e) services allowing spatial data services to be invoked.

Those services shall take into account relevant user requirements and shall be easy to use, available to the public and accessible via the Internet or any other appropriate means of telecommunication.

2. For the purposes of the services referred to in paragraph 1(a), as a minimum the following combination of search criteria shall be implemented:

- (a) keywords;
- (b) classification of spatial data and services;
- (c) the quality of spatial data, including whether they are validated;
- (d) degree of conformity with the implementing rules provided for in Article 7(1);
- (e) geographical location;
- (f) conditions applying to the access to and use of spatial data sets and services;
- (g) the public authorities responsible for the establishment, management, maintenance and distribution of spatial data sets and services.

3. The transformation services referred to in paragraph 1(d) shall be combined with the other services referred to in that paragraph in such a way as to enable all those services to be operated in conformity with the implementing rules provided for in Article 7(1).

*Article 12*

Member States shall ensure that public authorities are given the technical possibility to link their spatial data sets and services to the network referred to in Article 11(1). This service shall also be made available upon request to third parties whose spatial data sets and services comply with implementing rules laying down obligations with regard, in particular, to metadata, network services and interoperability.

*Article 13*

1. By way of derogation from Article 11(1), Member States may limit public access to spatial data sets and services through the services referred to in points (a) to (e) of Article 11(1), or to the e-commerce services referred to in Article 14(3), where such access would adversely affect any of the following:

- (a) the confidentiality of the proceedings of public authorities, where such confidentiality is provided for by law;
- (b) international relations, public security or national defence;
- (c) the course of justice, the ability of any person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;
- (d) the confidentiality of commercial or industrial information, where such confidentiality is provided for by national or Community law to protect a legitimate economic interest, including the public interest in maintaining statistical confidentiality and tax secrecy;
- (e) intellectual property rights;
- (f) the confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for by national or Community law;
- (g) the interests or protection of any person who supplied the information requested on a voluntary basis without being under, or capable of being put under, a legal obligation to do so, unless that person has consented to the release of the information concerned;
- (h) the protection of the environment to which such information relates, such as the location of rare species.

2. The grounds for limiting access, as provided for in paragraph 1, shall be interpreted in a restrictive way, taking into account for the particular case the public interest served by providing this access. In every particular case, the public interest served by disclosure shall be weighed against the

interest served by limiting or conditioning the access. Member States may not, by virtue of paragraph 1(a), (d), (f), (g) and (h), limit access to information on emissions into the environment.

However, in cases where paragraph 1(d) or (f) is the ground for limiting access, the first subparagraph of this paragraph shall apply only when the access referred to in paragraph 1 concerns environmental information as defined in Article 2(1) of Directive 2003/4/EC.

3. Within this framework, and for the purposes of the application of paragraph 1(f), Member States shall ensure that the requirements of Directive 95/46/EC are complied with.

*Article 14*

1. Member States shall ensure that:

- (a) the services referred to in point (a) of Article 11(1) are available to the public free of charge;
- (b) the services referred to in point (b) of Article 11(1) are, as a rule, available to the public free of charge. However, in cases where charges and/or licences are an essential precondition for maintaining the spatial data sets and services or for fulfilling the requirements of already existing international spatial data infrastructure in a sustainable way, Member States may apply charges and/or licences either to the person providing the service to the public, or, where the service provider chooses, to the public itself.

2. Data made available through the view services referred to in point (b) of Article 11(1) may be in a form preventing their re-use for commercial purposes.

3. Where public authorities levy charges for the services referred to in points (b), (c) or (e) of Article 11(1), Member States shall ensure that e-commerce services are available. Such services may be covered by disclaimers, click-licences or licences.

*Article 15*

1. The Commission shall establish and operate an INSPIRE geo-portal at Community level.

2. Member States shall provide access to the services referred to in Article 11(1) through the INSPIRE geo-portal referred to in paragraph 1. Member States may also provide access to those services through their own access points.



*Article 16*

Rules for the implementation of this Chapter shall be adopted in accordance with the procedure referred to in Article 22(2), and shall in particular lay down the following:

- (a) technical specifications for the services referred to in Articles 11 and 12 and minimum performance criteria for those services, taking account of existing reporting requirements and recommendations adopted within the framework of Community environmental legislation, existing e-commerce services and technological progress;
- (b) the obligations referred to in Article 12.

## CHAPTER V

## DATA-SHARING

*Article 17*

1. Each Member State shall adopt measures for the sharing of spatial data sets and services between its public authorities referred to in point (9)(a) and (b) of Article 3. Those measures shall enable those public authorities to gain access to spatial data sets and services, and to exchange and use those sets and services, for the purposes of public tasks that may have an impact on the environment.

2. The measures provided for in paragraph 1 shall preclude any restrictions likely to create, at the point of use, practical obstacles to the sharing of spatial data sets and services.

3. The provisions of paragraph 2 shall not prevent public authorities that supply spatial data sets and services from licensing them to, and requiring payment from, the public authorities or institutions and bodies of the Community that use these spatial data sets and services.

4. The arrangements for the sharing of spatial data sets and services provided for in paragraphs 1, 2 and 3 shall be open to public authorities referred to in point (9)(a) and (b) of Article 3 of other Member States and to the institutions and bodies of the Community, for the purposes of public tasks that may have an impact on the environment.

5. The arrangements for the sharing of spatial data sets and services provided for in paragraphs 1, 2 and 3 shall be open, on a reciprocal and equivalent basis, to bodies established by international agreements to which the Community and Member States are parties, for the purposes of tasks that may have an impact on the environment.

6. Where the arrangements for the sharing of spatial data sets and services provided for in paragraphs 1, 2 and 3 are made available in accordance with paragraphs 4 and 5, these arrangements may be accompanied by national requirements conditioning their use.

7. By way of derogation from this Article, Member States may limit sharing when this would compromise the course of justice, public security, national defence or international relations.

8. Without prejudice to paragraph 3, Member States shall provide the institutions and bodies of the Community with access to spatial data sets and services in accordance with harmonised conditions. Implementing rules governing those conditions shall be adopted in accordance with the procedure referred to in Article 22(2).

9. This Article does not affect the existence or ownership of public sector authorities' intellectual property rights.

## CHAPTER VI

## COORDINATION AND COMPLEMENTARY MEASURES

*Article 18*

Member States shall ensure that appropriate structures and mechanisms for coordinating the contributions of all those with an interest in their infrastructures for spatial information are designated.

These structures shall coordinate the contributions of, *inter alia*, users, producers, added-value service providers and coordinating bodies, concerning the identification of relevant data sets, user needs, the provision of information on existing practices and the provision of feedback on the implementation of this Directive.

*Article 19*

1. The Commission shall be responsible for coordinating INSPIRE at Community level and shall be assisted for that purpose by relevant organisations and, in particular, by the European Environment Agency.

2. Each Member State shall designate a contact point, usually a public authority, to be responsible for contacts with the Commission in relation to this Directive.

*Article 20*

The implementing rules referred to in this Directive shall take due account of standards adopted by European standardisation bodies in accordance with the procedure laid down in Directive 98/34/EC, as well as international standards.

## CHAPTER VII

## FINAL PROVISIONS

*Article 21*

1. Member States shall monitor the implementation and use of their infrastructures for spatial information. They shall make the results of this monitoring accessible to the Commission and to the public on a permanent basis.

2. No later than ... (\*) Member States shall send to the Commission a report including summary descriptions of:

- (a) how public sector providers and users of spatial data sets and services and intermediary bodies are coordinated, and of the relationship with the third parties and of the organisation of quality assurance, as far as practicable;
- (b) the contribution made by public authorities or third parties to the functioning and coordination of the infrastructure for spatial information;
- (c) information on the use of the infrastructure for spatial information;
- (d) data-sharing agreements between public authorities;
- (e) the costs and benefits of implementing this Directive.

3. Every three years, and starting no later than ... (\*\*), Member States shall send to the Commission a report providing updated information in relation to the items referred to in paragraph 2.

4. Detailed rules for the implementation of this Article shall be adopted in accordance with the procedure referred to in Article 22(2).

*Article 22*

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

*Article 23*

By ... (\*\*\*) and every six years thereafter the Commission shall present to the European Parliament and to the Council a report on the implementation of this Directive based, *inter alia*, on reports from Member States in accordance with Article 21(2) and (3).

Where necessary, the report shall be accompanied by proposals for Community action.

*Article 24*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... (\*).

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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 25*

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

*Article 26*

This Directive is addressed to the Member States.

Done at Brussels, ...

For the European Parliament  
The President

For the Council  
The President

...

...

(\*) Three years following the date of entry into force of this Directive.

(\*\*) Six years following the date of entry into force of this Directive.

(\*\*\*) Seven years following the date of entry into force of this Directive.

## ANNEX I

## SPATIAL DATA THEMES REFERRED TO IN ARTICLES 6(A), 8(1) AND 9(A)

1. Coordinate reference systems  
Systems for uniquely referencing spatial information in space as a set of coordinates (x,y,z) and/or latitude and longitude and height, based on a geodetic horizontal and vertical datum.
2. Geographical grid systems  
Harmonised multi-resolution grid with a common point of origin and standardised location and size of grid cells.
3. Geographical names  
Names of areas, regions, localities, cities, suburbs, towns or settlements, or any geographical or topographical feature of public or historical interest.
4. Administrative units  
Units of administration, dividing areas where Member States have and/or exercise jurisdictional rights, for local, regional and national governance, separated by administrative boundaries.
5. Transport networks  
Road, rail, air and water transport networks and related infrastructure. Includes links between different networks. Also includes the trans-European transport network as defined in Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network <sup>(1)</sup> and future revisions of that Decision.
6. Hydrography  
Hydrographic elements, including marine areas and all other water bodies and items related to them, including river basins and sub-basins. Where appropriate, according to the definitions set out in Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy <sup>(2)</sup> and in the form of networks.
7. Protected sites  
Area designated or managed within a framework of international, Community and Member States' legislation to achieve specific conservation objectives.

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<sup>(1)</sup> OJ L 228, 9.9.1996, p. 1, corrected by OJ L 201, 7.6.2004, p. 1).

<sup>(2)</sup> OJ L 327, 22.12.2000, p. 1. Directive as amended by Decision No 2455/2001/EC (OJ L 331, 15.12.2001, p. 1).

## ANNEX II

**SPATIAL DATA THEMES REFERRED TO IN ARTICLES 6(A), 8(1) AND 9(B)**

1. Elevation  
Digital elevation models for land, ice and ocean surface. Includes terrestrial elevation, bathymetry and shoreline.
  2. Addresses  
Location of properties based on address identifiers, usually by road name, house number, postal code.
  3. Cadastral parcels  
Areas defined by cadastral registers or equivalent.
  4. Land cover  
Physical and biological cover of the earth's surface including artificial surfaces, agricultural areas, forests, (semi-)natural areas, wetlands, water bodies.
  5. Orthoimagery  
Geo-referenced image data of the Earth's surface, from either satellite or airborne sensors.
  6. Geology  
Geology characterised according to composition and structure. Includes bedrock, aquifers and geomorphology.
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## ANNEX III

## SPATIAL DATA THEMES REFERRED TO IN ARTICLES 6(B) AND 9(B)

1. Statistical units  
Units for dissemination or use of statistical information.
2. Buildings  
Geographical location of buildings.
3. Soil  
Soils and subsoil characterised according to depth, texture, structure and content of particles and organic material, stoniness, erosion, where appropriate mean slope and anticipated water storage capacity.
4. Land use  
Territory characterised according to its current and future planned functional dimension or socio-economic purpose (e.g. residential, industrial, commercial, agricultural, forestry, recreational).
5. Human health and safety  
Geographical distribution of dominance of pathologies (allergies, cancers, respiratory diseases, etc.), information indicating the effect on health (biomarkers, decline of fertility, epidemics) or well-being of humans (fatigue, stress, etc.) linked directly (air pollution, chemicals, depletion of the ozone layer, noise, etc.) or indirectly (food, genetically modified organisms, etc.) to the quality of the environment.
6. Utility and governmental services  
Includes utility facilities such as sewage, waste management, energy supply and water supply, administrative and social governmental services such as public administrations, civil protection sites, schools and hospitals.
7. Environmental monitoring facilities  
Location and operation of environmental monitoring facilities includes observation and measurement of emissions, of the state of environmental media and of other ecosystem parameters (biodiversity, ecological conditions of vegetation, etc.) by or on behalf of public authorities.
8. Production and industrial facilities  
Industrial production sites, including installations covered by Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control <sup>(1)</sup> and water abstraction facilities, mining, storage sites.
9. Agricultural and aquaculture facilities  
Farming equipment and production facilities (including irrigation systems, greenhouses and stables).
10. Population distribution — demography  
Geographical distribution of people, including population characteristics and activity levels, aggregated by grid, region, administrative unit or other analytical unit.
11. Area management/restriction/regulation zones and reporting units  
Areas managed, regulated or used for reporting at international, European, national, regional and local levels. Includes dumping sites, restricted areas around drinking water sources, nitrate-vulnerable zones, regulated fairways at sea or large inland waters, areas for the dumping of waste, noise restriction zones, prospecting and mining permit areas, river basin districts, relevant reporting units and coastal zone management areas.
12. Natural risk zones  
Vulnerable areas characterised according to natural hazards (all atmospheric, hydrologic, seismic, volcanic and wild-fire phenomena that, because of their location, severity, and frequency, have the potential to seriously affect society), e.g. floods, landslides and subsidence, avalanches, forest fires, earthquakes, volcanic eruptions.
13. Atmospheric conditions  
Physical conditions in the atmosphere. Includes spatial data based on measurements, on models or on a combination thereof and includes measurement locations.

<sup>(1)</sup> OJ L 257, 10.10.1996, p. 26. Directive as last amended by Regulation (EC) No 166/2006 of the European Parliament and of the Council (OJ L 33, 4.2.2006, p. 1).

14. Meteorological geographical features  
Weather conditions and their measurements; precipitation, temperature, evapotranspiration, wind speed and direction.
  15. Oceanographic geographical features  
Physical conditions of oceans (currents, salinity, wave heights, etc.).
  16. Sea regions  
Physical conditions of seas and saline water bodies divided into regions and sub-regions with common characteristics.
  17. Bio-geographical regions  
Areas of relatively homogeneous ecological conditions with common characteristics.
  18. Habitats and biotopes  
Geographical areas characterised by specific ecological conditions, processes, structure, and (life support) functions that physically support the organisms that live there. Includes terrestrial and aquatic areas distinguished by geographical, abiotic and biotic features, whether entirely natural or semi-natural.
  19. Species distribution  
Geographical distribution of occurrence of animal and plant species aggregated by grid, region, administrative unit or other analytical unit.
  20. Energy resources  
Energy resources including hydrocarbons, hydropower, bio-energy, solar, wind, etc., where relevant including depth/height information on the extent of the resource.
  21. Mineral resources  
Mineral resources including metal ores, industrial minerals, etc., where relevant including depth/height information on the extent of the resource.
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## STATEMENT OF THE COUNCIL'S REASONS

### I. INTRODUCTION

On 26 July 2004, the Commission submitted to the Council its proposal for a Directive of the European Parliament and of the Council establishing an infrastructure for spatial information in the Community (INSPIRE). The proposal is based on Article 175(1) of the Treaty.

On 7 June 2005, the European Parliament adopted its opinion at first reading.

On 20 September 2004, the Committee of the Regions decided not to deliver an opinion.

On 9 February 2005, the Economic and Social Committee adopted its opinion.

On 23 January 2006, the Council adopted its common position in accordance with Article 251(2) of the Treaty.

### II. OBJECTIVE

The proposed Directive creates a legal framework for the establishment and operation of an infrastructure for spatial information in Europe for the purpose of formulating, implementing, monitoring and evaluating Community policies at all levels and providing public information.

A key objective of INSPIRE is to reduce obstacles between public authorities in sharing data, especially in the field of the environment and to make more and better spatial data available for Community policy-making and implementation of Community policies in Member States at all levels. INSPIRE focuses on environmental policy, but is open for use by and future extension to other sectors.

### III. ANALYSIS OF THE COMMON POSITION

#### General

The common position incorporates the majority of the European Parliament's first-reading amendments, either verbatim, in part or in spirit. In particular, it includes modifications to the Commission's initial proposal regrouping Articles of the text, streamlining the definitions and clarifying the scope. However, the common position includes a number of changes other than those envisaged in the European Parliament's Opinion at first reading and in the Commission's initial proposal. The common position:

- sets out the conditions for public access to spatial data sets and services and sharing of data between public authorities in the framework of existing Community legislation;
- clarifies the possibility of licensing to and requiring payment from other public authorities for spatial data sets and services; and
- introduces measures to reach the objectives of the Directive in a balanced and more effective way (rationalisation of the provisions for monitoring and reporting, cost-benefit analysis).

The following sections describe the changes of substance.

#### General provisions, definitions, scope (Articles 1 to 4)

The common position does not follow EP amendment 6. The aim and scope of the Directive in Article 1 correspond with the Commission's initial proposal and its legal basis. The text of the common position does not refer to 'direct or indirect' impact on the environment, however, additional recital 4 addresses this issue.

The Council agrees with the substance of EP amendment 7 and related amendment 2. However, it accepted the Commission's view that it would not be legally sound to include obligations for Community institutions and bodies in a directive.

Article 2 states that the Directive would apply without prejudice to Directive 2003/4/EC on public access to environmental information and 2003/98/EC on the re-use of public sector information.

Article 3 introduces additional definitions of the terms 'interoperability', 'INSPIRE geo portal' and limits the scope of the definition of 'public authority'.

Paragraphs (2), (4), (5) and (6) of Article 4 clarify the scope of spatial data sets covered by the Directive. Article 4(7) limits the extent of the competence of the committee to adapt the data themes in the Annexes.

Amendments 9 and 10 were not accepted because the Council does not believe that they clarify the text.

### **Metadata, interoperability of spatial data sets and services (Articles 5 to 10)**

The components of the metadata are clarified in Article 5 of the common position as well as the implementation rules. The time schedule for creation of the metadata in Article 6 is consistent with the timetable in EP amendment 15, taking into account the new wording of Article 5(4) of the common position.

Article 7 introduces additional conditions for the drafting of the implementing rules laying down technical arrangements for interoperability, particularly the cost-benefit consideration, integration of standards and activities at international level and reference to existing technical means. Cost-benefit and feasibility considerations are backed up by Article 7(2), which requires the Commission to undertake a cost-benefit analysis prior to developing the proposals for the implementing rules. The adoption of these rules shall not result in excessive costs to a Member State. Article 7(3) clarifies the adaptation of newly collected and other spatial data sets and services.

Article 8(2)(a) replaces 'a common system of unique identifiers' by 'solutions to ensure unambiguous identification of spatial objects, to which identifiers under existing national systems can be mapped in order to ensure interoperability between them' in order to avoid the imposition of a particular technical solution.

Amendments 13, 14, 16, 17, 18, 19, 21, 22 and 23 were taken on board either fully or in part within reworded text.

Amendment 20 was not accepted since the reference to 'indirect impact on the environment' was considered too vague (see Article 1).

### **Network services (Articles 11 to 16)**

The extended list of grounds for limiting access set out in Article 13 is identical to that in Article 4(2) of Directive 2003/4/EC on public access to environmental information to ensure consistence in the implementation. Additional Article 13(3) provides that public access to spatial data complies with Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

In Article 14, the common position allows Member States to apply charges and/or licences for view services, where this is necessary to maintain the spatial data sets and services or to fulfil requirements of existing international spatial data infrastructures.

Amendments 24, 25, 26 and 27 were accepted within reworded text.



**Data-sharing (Article 17)**

Article 17 of the common position clarifies the scope of data-sharing obligations between the public authorities of one Member State, the public authorities of different Member States, the institutions and bodies of the Community and the bodies established by international agreements. Article 17(2) seeks to prevent practical obstacles at the point of use (for example, a public authority employee using the data on their computer) while Article 17(3) allows data providers to recover their costs from the public authorities of Member States and Community bodies, thus ensuring that the quality and currency of the data are maintained. Where charging occurs, it is at the public authority level, not at the point of use. Protection of intellectual property rights is ensured by Article 17(9). New recitals 22, 23 and 24 also address these issues. Amendment 28 is addressed in recital 21.

Amendment 29 was not accepted as redundantly extending the data-sharing requirements.

Amendment 30 is superseded by the new wording of Article 17.

The whole concept of the original Article 24 — common implementing rules for data-sharing — (amendment 32) is not acceptable to the Council.

**Coordination and complementary measures, final provisions (Articles 18 to 26)**

There is no explicit stress on the distribution of powers and responsibilities within the Member States in relation to their structures involved (amendments 33, 34 and 4) in Article 18 and 19(2) of the common position, however, the Council understands the Articles in this sense.

The new wording of Article 21 and additional recital 31 of the common position rationalise the monitoring and reporting requirements of the Directive compared to amendment 37. Article 24 slightly defers the transposition date.

Amendments 35, 36 and 38 have been accepted.

**Annexes**

Spatial data themes 'distribution of road accidents' (amendment 43, paragraph 6) and 'telecommunications' (amendment 44, paragraph 7) are not included in the common position as they are not related to the purpose of INSPIRE.

Amendment 47 was partly accepted in Annex III, paragraph 11.

Amendments 39, 40, 41, 42, 45, 46, 48 and 49 have been accepted.

**IV. CONCLUSION**

The changes made by the Council to the Commission's proposal aim to ensure compatibility with existing Community legislation and sustainable collection of data. Despite these changes, the Council's common position is in line with the majority of the European Parliament's amendments and establishes a good basis for further negotiations.

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**COMMON POSITION (EC) No 6/2006****adopted by the Council on 10 March 2006****with a view to adopting Directive 2006/.../EC of the European Parliament and of the Council of ...  
on the implementation of the principle of equal opportunities and equal treatment of men and  
women in matters of employment and occupation (recast)**

(2006/C 126 E/03)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 141(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

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

Whereas:

(1) Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions <sup>(3)</sup> and Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes <sup>(4)</sup> have been significantly amended <sup>(5)</sup>. Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women <sup>(6)</sup> and Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex <sup>(7)</sup> also contain provisions which have as their purpose the implementation of the principle of equal treatment between men and women. Now that new amendments are being made to the said Directives, it is desirable, for reasons of clarity that the provisions in question should be recast by bringing together in a single text the main provisions existing in this field as well as certain developments arising out of the case-law of the Court of Justice of the European Communities (hereinafter referred to as the Court of Justice).

<sup>(1)</sup> OJ C 157, 28.6.2005, p. 83.

<sup>(2)</sup> Opinion of the European Parliament of 6 July 2005 (not yet published in the Official Journal), Council Common Position of 10 March 2006 and Position of the European Parliament of ... (not yet published in the Official Journal).

<sup>(3)</sup> OJ L 39, 14.2.1976, p. 40. Directive as amended by Directive 2002/73/EC of the European Parliament and of the Council (OJ L 269, 5.10.2002, p. 15).

<sup>(4)</sup> OJ L 225, 12.8.1986, p. 40. Directive as amended by Directive 96/97/EC (OJ L 46, 17.2.1997, p. 20).

<sup>(5)</sup> See Annex I Part A.

<sup>(6)</sup> OJ L 45, 19.2.1975, p. 19.

<sup>(7)</sup> OJ L 14, 20.1.1998, p. 6. Directive as amended by Directive 98/52/EC (OJ L 205, 22.7.1998, p. 66).

(2) Equality between men and women is a fundamental principle of Community law under Article 2 and Article 3(2) of the Treaty and the case-law of the Court of Justice. Those Treaty provisions proclaim equality between men and women as a 'task' and an 'aim' of the Community and impose a positive obligation to promote it in all its activities.

(3) The Court of Justice has held that the scope of the principle of equal treatment for men and women cannot be confined to the prohibition of discrimination based on the fact that a person is of one or other sex. In view of its purpose and the nature of the rights which it seeks to safeguard it also applies to discrimination arising from the gender reassignment of a person.

(4) Article 141(3) of the Treaty now provides a specific legal basis for the adoption of Community measures to ensure the application of the principle of equal opportunities and equal treatment in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value.

(5) Articles 21 and 23 of the Charter of Fundamental Rights of the European Union also prohibit any discrimination on grounds of sex and enshrine the right to equal treatment between men and women in all areas, including employment, work and pay.

(6) Harassment and sexual harassment are contrary to the principle of equal treatment between men and women and constitute discrimination on grounds of sex for the purposes of this Directive. These forms of discrimination occur not only in the workplace, but also in the context of access to employment, vocational training and promotion. They should therefore be prohibited and should be subject to effective, proportionate and dissuasive penalties.

(7) In this context, employers and those responsible for vocational training should be encouraged to take measures to combat all forms of discrimination on grounds of sex and, in particular, to take preventive measures against harassment and sexual harassment in the workplace and in access to employment, vocational training and promotion, in accordance with national law and practice.

- (8) The principle of equal pay for equal work or work of equal value as laid down by Article 141 of the Treaty and consistently upheld in the case-law of the Court of Justice constitutes an important aspect of the principle of equal treatment between men and women and an essential and indispensable part of the *acquis communautaire*, including the case-law of the Court concerning sex discrimination. It is therefore appropriate to make further provision for its implementation.
- (9) In accordance with settled case-law of the Court of Justice, in order to assess whether workers are performing the same work or work of equal value, it should be determined whether, having regard to a range of factors including the nature of the work and training and working conditions, those workers may be considered to be in a comparable situation.
- (10) The Court of Justice has established that, in certain circumstances, the principle of equal pay is not limited to situations in which men and women work for the same employer.
- (11) The Member States, in collaboration with the social partners, should continue to address the problem of the continuing gender-based wage differentials and marked gender segregation on the labour market by means such as flexible working time arrangements which enable both men and women to combine family and work commitments more successfully. This could also include appropriate parental leave arrangements which could be taken up by either parent as well as the provision of accessible and affordable child-care facilities and care for dependent persons.
- (12) Specific measures should be adopted to ensure the implementation of the principle of equal treatment in occupational social security schemes and to define its scope more clearly.
- (13) In its judgment of 17 May 1990 in Case 262/88<sup>(1)</sup>, the Court of Justice determined that all forms of occupational pension constitute an element of pay within the meaning of Article 141 of the Treaty.
- (14) Although the concept of pay within the meaning of Article 141 of the Treaty does not encompass social security benefits, it is now clearly established that a pension scheme for public servants falls within the scope of the principle of equal pay if the benefits payable under the scheme are paid to the worker by reason of his/her employment relationship with the public employer, notwithstanding the fact that such scheme forms part of a general statutory scheme. According to the judgments of the Court of Justice in Cases C-7/93<sup>(2)</sup> and C-351/00<sup>(3)</sup>, that condition will be satisfied if the pension scheme concerns a particular category of workers and its benefits are directly related to the period of service and calculated by reference to the public servant's final salary. For reasons of clarity, it is therefore appropriate to make specific provision to that effect.
- (15) The Court of Justice has confirmed that whilst the contributions of male and female workers to a defined-benefit pension scheme are covered by Article 141 of the Treaty, any inequality in employers' contributions paid under funded defined-benefit schemes which is due to the use of actuarial factors differing according to sex is not to be assessed in the light of that same provision.
- (16) By way of example, in the case of funded defined-benefit schemes, certain elements, such as conversion into a capital sum of part of a periodic pension, transfer of pension rights, a reversionary pension payable to a dependant in return for the surrender of part of a pension or a reduced pension where the worker opts to take earlier retirement, may be unequal where the inequality of the amounts results from the effects of the use of actuarial factors differing according to sex at the time when the scheme's funding is implemented.
- (17) It is well established that benefits payable under occupational social security schemes are not to be considered as remuneration insofar as they are attributable to periods of employment prior to 17 May 1990, except in the case of workers or those claiming under them who initiated legal proceedings or brought an equivalent claim under the applicable national law before that date. It is therefore necessary to limit the implementation of the principle of equal treatment accordingly.
- (18) The Court of Justice has consistently held that the Barber Protocol<sup>(4)</sup> does not affect the right to join an occupational pension scheme and that the limitation of the effects in time of the judgment in Case 262/88 does not apply to the right to join an occupational pension scheme. The Court of Justice also ruled that the national rules relating to time limits for bringing actions under national law may be relied on against workers who assert their right to join an occupational pension scheme, provided that they are not less favourable for that type of action than for similar actions of a domestic nature and that they do not render the exercise of rights conferred by Community law impossible in practice. The

<sup>(1)</sup> 262/88: *Barber v. Guardian Royal Exchange Assurance Group* (1990 ECR I-1889).

<sup>(2)</sup> C-7/93: *Bestuur van het Algemeen Burgerlijk Pensioenfonds v. G. A. Beune* (1994 ECR I-4471).

<sup>(3)</sup> C-351/00: *Pirkko Niemi* (2002 ECR I-7007).

<sup>(4)</sup> Protocol (17) concerning Article 141 of the Treaty establishing the European Community (1992).

Court of Justice has also pointed out that the fact that a worker can claim retroactively to join an occupational pension scheme does not allow the worker to avoid paying the contributions relating to the period of membership concerned.

- (19) Ensuring equal access to employment and the vocational training leading thereto is fundamental to the application of the principle of equal treatment of men and women in matters of employment and occupation. Any exception to this principle should therefore be limited to those occupational activities which necessitate the employment of a person of a particular sex by reason of their nature or the context in which they are carried out, provided that the objective sought is legitimate and complies with the principle of proportionality.
- (20) This Directive does not prejudice freedom of association, including the right to establish unions with others and to join unions to defend one's interests. Measures within the meaning of Article 141(4) of the Treaty may include membership or the continuation of the activity of organisations or unions whose main objective is the promotion, in practice, of the principle of equal treatment between men and women.
- (21) The prohibition of discrimination should be without prejudice to the maintenance or adoption of measures intended to prevent or compensate for disadvantages suffered by a group of persons of one sex. Such measures permit organisations of persons of one sex where their main object is the promotion of the special needs of those persons and the promotion of equality between men and women.
- (22) In accordance with Article 141(4) of the Treaty, with a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment does not prevent Member States from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers. Given the current situation and bearing in mind Declaration No 28 to the Amsterdam Treaty, Member States should, in the first instance, aim at improving the situation of women in working life.
- (23) It is clear from the case-law of the Court of Justice that unfavourable treatment of a woman related to pregnancy or maternity constitutes direct discrimination on grounds of sex. Such treatment should therefore be expressly covered by this Directive.
- (24) The Court of Justice has consistently recognised the legitimacy, as regards the principle of equal treatment, of protecting a woman's biological condition during pregnancy and maternity and of introducing maternity protection measures as a means to achieve substantive equality. This Directive should therefore be without

prejudice to Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding<sup>(1)</sup>. This Directive should further be without prejudice to Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC<sup>(2)</sup>.

- (25) For reasons of clarity, it is also appropriate to make express provision for the protection of the employment rights of women on maternity leave and in particular their right to return to the same or an equivalent post, to suffer no detriment in their terms and conditions as a result of taking such leave and to benefit from any improvement in working conditions to which they would have been entitled during their absence.
- (26) In the Resolution of the Council and of the Ministers for Employment and Social Policy, meeting within the Council, of 29 June 2000 on the balanced participation of women and men in family and working life<sup>(3)</sup>, Member States were encouraged to consider examining the scope for their respective legal systems to grant working men an individual and non-transferable right to paternity leave, while maintaining their rights relating to employment.
- (27) Similar considerations apply to the granting by Member States to men and women of an individual and non-transferable right to leave subsequent to the adoption of a child. It is for the Member States to determine whether or not to grant such a right to paternity and/or adoption leave and also to determine any conditions, other than dismissal and return to work, which are outside the scope of this Directive.
- (28) The effective implementation of the principle of equal treatment requires appropriate procedures to be put in place by the Member States.
- (29) The provision of adequate judicial or administrative procedures for the enforcement of the obligations imposed by this Directive is essential to the effective implementation of the principle of equal treatment.
- (30) The adoption of rules on the burden of proof plays a significant role in ensuring that the principle of equal treatment can be effectively enforced. As the Court of Justice has held, provision should therefore be made to ensure that the burden of proof shifts to the respondent when there is a prima facie case of discrimination, except in relation to proceedings in which it is for the court or other competent national body to investigate

<sup>(1)</sup> OJ L 348, 28.11.1992, p. 1.

<sup>(2)</sup> OJ L 145, 19.6.1996, p. 4. Directive as amended by Directive 97/75/EC (OJ L 10, 16.1.1998, p. 24).

<sup>(3)</sup> OJ C 218, 31.7.2000, p. 5.

the facts. It is however necessary to clarify that the appreciation of the facts from which it may be presumed that there has been direct or indirect discrimination remains a matter for the relevant national body in accordance with national law or practice. Further, it is for the Member States to introduce, at any appropriate stage of the proceedings, rules of evidence which are more favourable to plaintiffs.

- (31) With a view to further improving the level of protection offered by this Directive, associations, organisations and other legal entities should also be empowered to engage in proceedings, as the Member States so determine, either on behalf or in support of a complainant, without prejudice to national rules of procedure concerning representation and defence.
- (32) Having regard to the fundamental nature of the right to effective legal protection, it is appropriate to ensure that workers continue to enjoy such protection even after the relationship giving rise to an alleged breach of the principle of equal treatment has ended. An employee defending or giving evidence on behalf of a person protected under this Directive should be entitled to the same protection.
- (33) It has been clearly established by the Court of Justice that in order to be effective, the principle of equal treatment implies that the compensation awarded for any breach must be adequate in relation to the damage sustained. It is therefore appropriate to exclude the fixing of any prior upper limit for such compensation, except where the employer can prove that the only damage suffered by an applicant as a result of discrimination within the meaning of this Directive was the refusal to take his/her job application into consideration.
- (34) In order to enhance the effective implementation of the principle of equal treatment, Member States should promote dialogue between the social partners and, within the framework of national practice, with non-governmental organisations.
- (35) Member States should provide for effective, proportionate and dissuasive penalties in case of breaches of the obligations under this Directive.
- (36) Since the objectives of this Directive 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 those objectives.
- (37) For the sake of a better understanding of the different treatment of men and women in matters of employment and occupation, comparable statistics disaggregated by sex should continue to be developed, analysed and made available at the appropriate levels.

- (38) Equal treatment of men and women in matters of employment and occupation cannot be restricted to legislative measures. Instead, the European Union and the Member States should continue to promote the raising of public awareness of wage discrimination and the changing of public attitudes, involving all parties concerned at public and private level to the greatest possible extent. The dialogue between the social partners could play an important role in this process.
- (39) 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 substantially unchanged arises under the earlier Directives.
- (40) 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 I, Part B.
- (41) In accordance with paragraph 34 of the Interinstitutional agreement on better law-making<sup>(1)</sup>, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables, which will, as far as possible, illustrate the correlation between this Directive and the transposition measures and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

#### TITLE I

### GENERAL PROVISIONS

#### Article 1

#### Purpose

The purpose of this Directive is to ensure the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

To that end, it contains provisions to implement the principle of equal treatment in relation to:

- (a) access to employment, including promotion, and to vocational training;
- (b) working conditions, including pay;
- (c) occupational social security schemes.

It also contains provisions to ensure that such implementation is made more effective by the establishment of appropriate procedures.

<sup>(1)</sup> OJ C 321, 31.12.2003, p. 1.

## Article 2

**Definitions**

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

- (a) 'direct discrimination': where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation;
- (b) 'indirect discrimination': where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary;
- (c) 'harassment': where unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment;
- (d) 'sexual harassment': where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment;
- (e) 'pay': the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his/her employment from his/her employer;
- (f) 'occupational social security schemes': schemes not governed by Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security<sup>(1)</sup> whose purpose is to provide workers, whether employees or self-employed, in an undertaking or group of undertakings, area of economic activity, occupational sector or group of sectors with benefits intended to supplement the benefits provided by statutory social security schemes or to replace them, whether membership of such schemes is compulsory or optional.

2. For the purposes of this Directive, discrimination includes:

- (a) harassment and sexual harassment, as well as any less favourable treatment based on a person's rejection of or submission to such conduct;
- (b) instruction to discriminate against persons on grounds of sex;
- (c) any less favourable treatment of a woman related to pregnancy or maternity leave within the meaning of Directive 92/85/EEC.

<sup>(1)</sup> OJ L 6, 10.1.1979, p. 24.

## Article 3

**Positive action**

Member States may maintain or adopt measures within the meaning of Article 141(4) of the Treaty with a view to ensuring full equality in practice between men and women in working life.

## TITLE II

**SPECIFIC PROVISIONS****Chapter 1***Equal pay*

## Article 4

**Prohibition of discrimination**

For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated.

In particular, where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.

**Chapter 2***Equal treatment in occupational social security schemes*

## Article 5

**Prohibition of discrimination**

Without prejudice to Article 4, there shall be no direct or indirect discrimination on grounds of sex in occupational social security schemes, in particular as regards:

- (a) the scope of such schemes and the conditions of access to them;
- (b) the obligation to contribute and the calculation of contributions;
- (c) the calculation of benefits, including supplementary benefits due in respect of a spouse or dependants, and the conditions governing the duration and retention of entitlement to benefits.

## Article 6

**Personal scope**

This Chapter shall apply to members of the working population, including self-employed persons, persons whose activity is interrupted by illness, maternity, accident or involuntary unemployment and persons seeking employment and to retired and disabled workers, and to those claiming under them, in accordance with national law and/or practice.

*Article 7***Material scope**

1. This Chapter applies to:
  - (a) occupational social security schemes which provide protection against the following risks:
    - (i) sickness,
    - (ii) invalidity,
    - (iii) old age, including early retirement,
    - (iv) industrial accidents and occupational diseases,
    - (v) unemployment;
  - (b) occupational social security schemes which provide for other social benefits, in cash or in kind, and in particular survivors' benefits and family allowances, if such benefits constitute a consideration paid by the employer to the worker by reason of the latter's employment.
2. This Chapter also applies to pension schemes for a particular category of worker such as that of public servants if the benefits payable under the scheme are paid by reason of the employment relationship with the public employer. The fact that such a scheme forms part of a general statutory scheme shall be without prejudice in that respect.

*Article 8***Exclusions from material scope**

1. This Chapter does not apply to:
  - (a) individual contracts for self-employed persons;
  - (b) single-member schemes for self-employed persons;
  - (c) insurance contracts to which the employer is not a party, in the case of workers;
  - (d) optional provisions of occupational social security schemes offered to participants individually to guarantee them:
    - (i) either additional benefits,
    - (ii) or a choice of date on which the normal benefits for self-employed persons will start, or a choice between several benefits;
  - (e) occupational social security schemes in so far as benefits are financed by contributions paid by workers on a voluntary basis.
2. This Chapter does not preclude an employer granting to persons who have already reached the retirement age for the purposes of granting a pension by virtue of an occupational social security scheme, but who have not yet reached the retirement age for the purposes of granting a statutory retirement

pension, a pension supplement, the aim of which is to make equal or more nearly equal the overall amount of benefit paid to these persons in relation to the amount paid to persons of the other sex in the same situation who have already reached the statutory retirement age, until the persons benefiting from the supplement reach the statutory retirement age.

*Article 9***Examples of discrimination**

1. Provisions contrary to the principle of equal treatment shall include those based on sex, either directly or indirectly, for:
  - (a) determining the persons who may participate in an occupational social security scheme;
  - (b) fixing the compulsory or optional nature of participation in an occupational social security scheme;
  - (c) laying down different rules as regards the age of entry into the scheme or the minimum period of employment or membership of the scheme required to obtain the benefits thereof;
  - (d) laying down different rules, except as provided for in points (h) and (j), for the reimbursement of contributions when a worker leaves a scheme without having fulfilled the conditions guaranteeing a deferred right to long-term benefits;
  - (e) setting different conditions for the granting of benefits or restricting such benefits to workers of one or other of the sexes;
  - (f) fixing different retirement ages;
  - (g) suspending the retention or acquisition of rights during periods of maternity leave or leave for family reasons which are granted by law or agreement and are paid by the employer;
  - (h) setting different levels of benefit, except in so far as may be necessary to take account of actuarial calculation factors which differ according to sex in the case of defined-contribution schemes; in the case of funded defined-benefit schemes, certain elements may be unequal where the inequality of the amounts results from the effects of the use of actuarial factors differing according to sex at the time when the scheme's funding is implemented;
  - (i) setting different levels for workers' contributions;
  - (j) setting different levels for employers' contributions, except:
    - (i) in the case of defined-contribution schemes if the aim is to equalise the amount of the final benefits or to make them more nearly equal for both sexes,

- (ii) in the case of funded defined-benefit schemes where the employer's contributions are intended to ensure the adequacy of the funds necessary to cover the cost of the benefits defined;
- (k) laying down different standards or standards applicable only to workers of a specified sex, except as provided for in points (h) and (j), as regards the guarantee or retention of entitlement to deferred benefits when a worker leaves a scheme.

2. Where the granting of benefits within the scope of this Chapter is left to the discretion of the scheme's management bodies, the latter shall comply with the principle of equal treatment.

#### Article 10

##### Implementation as regards self-employed persons

1. Member States shall take the necessary steps to ensure that the provisions of occupational social security schemes for self-employed persons contrary to the principle of equal treatment are revised with effect from 1 January 1993 at the latest or for Member States whose accession took place after that date, at the date that Directive 86/378/EEC became applicable in their territory.
2. This Chapter shall not preclude rights and obligations relating to a period of membership of an occupational social security scheme for self-employed persons prior to revision of that scheme from remaining subject to the provisions of the scheme in force during that period.

#### Article 11

##### Possibility of deferral as regards self-employed persons

As regards occupational social security schemes for self-employed persons, Member States may defer compulsory application of the principle of equal treatment with regard to:

- (a) determination of pensionable age for the granting of old-age or retirement pensions, and the possible implications for other benefits:
- (i) either until the date on which such equality is achieved in statutory schemes,
- (ii) or, at the latest, until such equality is prescribed by a directive;
- (b) survivors' pensions until Community law establishes the principle of equal treatment in statutory social security schemes in that regard;

- (c) the application of Article 9(1)(i) in relation to the use of actuarial calculation factors, until 1 January 1999 or for Member States whose accession took place after that date until the date that Directive 86/378/EEC became applicable in their territory.

#### Article 12

##### Retroactive effect

1. Any measure implementing this Chapter, as regards workers, shall cover all benefits under occupational social security schemes derived from periods of employment subsequent to 17 May 1990 and shall apply retroactively to that date, without prejudice to workers or those claiming under them who have, before that date, initiated legal proceedings or raised an equivalent claim under national law. In that event, the implementation measures shall apply retroactively to 8 April 1976 and shall cover all the benefits derived from periods of employment after that date. For Member States which acceded to the Community after 8 April 1976, and before 17 May 1990, that date shall be replaced by the date on which Article 141 of the Treaty became applicable in their territory.

2. The second sentence of paragraph 1 shall not prevent national rules relating to time limits for bringing actions under national law from being relied on against workers or those claiming under them who initiated legal proceedings or raised an equivalent claim under national law before 17 May 1990, provided that they are not less favourable for that type of action than for similar actions of a domestic nature and that they do not render the exercise of rights conferred by Community law impossible in practice.

3. For Member States whose accession took place after 17 May 1990 and who were on 1 January 1994 Contracting Parties to the Agreement on the European Economic Area, the date of 17 May 1990 in the first sentence of paragraph 1 shall be replaced by 1 January 1994.

4. For other Member States whose accession took place after 17 May 1990, the date of 17 May 1990 in paragraphs 1 and 2 shall be replaced by the date on which Article 141 of the Treaty became applicable in their territory.

#### Article 13

##### Flexible pensionable age

Where men and women may claim a flexible pensionable age under the same conditions, this shall not be deemed to be incompatible with this Chapter.



**Chapter 3**

*Equal treatment as regards access to employment, vocational training and promotion and working conditions*

*Article 14***Prohibition of discrimination**

1. There shall be no direct or indirect discrimination on grounds of sex in the public or private sectors, including public bodies, in relation to:

- (a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
- (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
- (c) employment and working conditions, including dismissals, as well as pay as provided for in Article 141 of the Treaty;
- (d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

2. Member States may provide, as regards access to employment including the training leading thereto, that a difference of treatment which is based on a characteristic related to sex shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that its objective is legitimate and the requirement is proportionate.

*Article 15***Return from maternity leave**

A woman on maternity leave shall be entitled, after the end of her period of maternity leave, to return to her job or to an equivalent post on terms and conditions which are no less favourable to her and to benefit from any improvement in working conditions to which she would have been entitled during her absence.

*Article 16***Paternity and adoption leave**

This Directive is without prejudice to the right of Member States to recognise distinct rights to paternity and/or adoption leave. Those Member States which recognise such rights shall take the necessary measures to protect working men and women against dismissal due to exercising those rights and ensure that, at the end of such leave, they shall be entitled to

return to their jobs or to equivalent posts on terms and conditions which are no less favourable to them, and to benefit from any improvement in working conditions to which they would have been entitled during their absence.

## TITLE III

**HORIZONTAL PROVISIONS****Chapter 1**

*Remedies and enforcement*

## SECTION 1

## REMEDIES

*Article 17***Defence of rights**

1. Member States shall ensure that, after possible recourse to other competent authorities including where they deem it appropriate conciliation procedures, judicial procedures for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.

2. Member States shall ensure that associations, organisations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his/her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.

3. Paragraphs 1 and 2 are without prejudice to national rules relating to time limits for bringing actions as regards the principle of equal treatment.

*Article 18***Compensation or reparation**

Member States shall introduce into their national legal systems such measures as are necessary to ensure real and effective compensation or reparation as the Member States so determine for the loss and damage sustained by a person injured as a result of discrimination on grounds of sex, in a way which is dissuasive and proportionate to the damage suffered. Such compensation or reparation may not be restricted by the fixing of a prior upper limit, except in cases where the employer can prove that the only damage suffered by an applicant as a result of discrimination within the meaning of this Directive is the refusal to take his/her job application into consideration.

## SECTION 2

## BURDEN OF PROOF

*Article 19***Burden of proof**

1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

2. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.

3. Member States need not apply paragraph 1 to proceedings in which it is for the court or competent body to investigate the facts of the case.

4. Paragraphs 1, 2 and 3 shall also apply to:

- (a) the situations covered by Article 141 of the Treaty and, insofar as discrimination based on sex is concerned, by Directives 92/85/EEC and 96/34/EC;
- (b) any civil or administrative procedure concerning the public or private sector which provides for means of redress under national law pursuant to the measures referred to in (a) with the exception of out-of-court procedures of a voluntary nature or provided for in national law.

5. This Article shall not apply to criminal procedures, unless otherwise provided by the Member States.

**Chapter 2***Promotion of equal treatment — Dialogue**Article 20***Equality bodies**

1. Member States shall designate and make the necessary arrangements for a body or bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex. These bodies may form part of agencies with responsibility at national level for the defence of human rights or the safeguard of individuals' rights.

2. Member States shall ensure that the competences of these bodies include:

- (a) without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 17(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination;
- (b) conducting independent surveys concerning discrimination;
- (c) publishing independent reports and making recommendations on any issue relating to such discrimination;
- (d) at the appropriate level exchanging available information with corresponding European bodies such as any future European Institute for Gender Equality.

*Article 21***Social dialogue**

1. Member States shall, in accordance with national traditions and practice, take adequate measures to promote social dialogue between the social partners with a view to fostering equal treatment, including, for example, through the monitoring of practices in the workplace, in access to employment, vocational training and promotion, as well as through the monitoring of collective agreements, codes of conduct, research or exchange of experience and good practice.

2. Where consistent with national traditions and practice, Member States shall encourage the social partners, without prejudice to their autonomy, to promote equality between men and women, and flexible working arrangements, with the aim of facilitating the reconciliation of work and private life, and to conclude, at the appropriate level, agreements laying down anti-discrimination rules in the fields referred to in Article 1 which fall within the scope of collective bargaining. These agreements shall respect the provisions of this Directive and the relevant national implementing measures.

3. Member States shall, in accordance with national law, collective agreements or practice, encourage employers to promote equal treatment for men and women in a planned and systematic way in the workplace, in access to employment, vocational training and promotion.

4. To this end, employers shall be encouraged to provide at appropriate regular intervals employees and/or their representatives with appropriate information on equal treatment for men and women in the undertaking.

Such information may include an overview of the proportions of men and women at different levels of the organisation; their pay and pay differentials; and possible measures to improve the situation in cooperation with employees' representatives.

*Article 22***Dialogue with non-governmental organisations**

Member States shall encourage dialogue with appropriate non-governmental organisations which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on grounds of sex with a view to promoting the principle of equal treatment.

**Chapter 3***General horizontal provisions**Article 23***Compliance**

Member States shall take all necessary measures to ensure that:

- (a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished;
- (b) provisions contrary to the principle of equal treatment in individual or collective contracts or agreements, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations or any other arrangements shall be, or may be, declared null and void or are amended;
- (c) occupational social security schemes containing such provisions may not be approved or extended by administrative measures.

*Article 24***Victimisation**

Member States shall introduce into their national legal systems such measures as are necessary to protect employees, including those who are employees' representatives provided for by national laws and/or practices, against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment.

*Article 25***Penalties**

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are applied. The penalties, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by 5 October 2005 at the latest and shall notify it without delay of any subsequent amendment affecting them.

*Article 26***Prevention of discrimination**

Member States shall encourage, in accordance with national law, collective agreements or practice, employers and those responsible for access to vocational training to take effective measures to prevent all forms of discrimination on grounds of sex, in particular harassment and sexual harassment in the workplace, in access to employment, vocational training and promotion.

*Article 27***Minimum requirements**

1. Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.
2. Implementation of this Directive shall under no circumstances be sufficient grounds for a reduction in the level of protection of workers in the areas to which it applies, without prejudice to the Member States' right to respond to changes in the situation by introducing laws, regulations and administrative provisions which differ from those in force on the notification of this Directive, provided that the provisions of this Directive are complied with.

*Article 28***Relationship to Community and national provisions**

1. This Directive shall be without prejudice to provisions concerning the protection of women, particularly as regards pregnancy and maternity.
2. This Directive shall be without prejudice to the provisions of Directive 96/34/EC and Directive 92/85/EEC.

*Article 29***Gender mainstreaming**

Member States shall actively take into account the objective of equality between men and women when formulating and implementing laws, regulations, administrative provisions, policies and activities in the areas referred to in this Directive.

*Article 30***Dissemination of information**

Member States shall ensure that measures taken pursuant to this Directive, together with the provisions already in force, are brought to the attention of all the persons concerned by all suitable means and, where appropriate, at the workplace.

## TITLE IV

## FINAL PROVISIONS

## Article 31

**Reports**

1. By ... (\*), the Member States shall communicate to the Commission all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.

2. Without prejudice to paragraph 1, Member States shall communicate to the Commission, every four years, the texts of any measures adopted pursuant to Article 141(4) of the Treaty, as well as reports on these measures and their implementation. On the basis of that information, the Commission will adopt and publish every four years a report establishing a comparative assessment of any measures in the light of Declaration No 28 annexed to the Final Act of the Treaty of Amsterdam.

3. Member States shall assess the occupational activities referred to in Article 14(2), in order to decide, in the light of social developments, whether there is justification for maintaining the exclusions concerned. They shall notify the Commission of the results of this assessment periodically, but at least every 8 years.

## Article 32

**Review**

By ... (\*\*) at the latest, the Commission shall review the operation of this Directive and if appropriate, propose any amendments it deems necessary.

## Article 33

**Implementation**

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... (\*\*\*) at the latest or shall ensure, by that date, that management and labour introduce the requisite provisions by way of agreement. Member States may, if necessary to take account of particular difficulties, have up to one additional year to comply with this Directive. Member States shall take all necessary steps to be able to guarantee the results imposed by this Directive. They shall forthwith communicate to the Commission the texts of those measures.

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

The obligation to transpose this Directive into national law shall be confined to those provisions which represent a substantive change as compared with the earlier Directives. The obligation to transpose the provisions which are substantially unchanged arises under the earlier Directives.

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 34

**Repeal**

1. With effect from ... (\*\*\*\*) Directives 75/117/EEC, 76/207/EEC, 86/378/EEC and 97/80/EC shall be 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 I, Part B.

2. References made to the repealed Directives shall be construed as being made to this Directive and should be read in accordance with the correlation table in Annex II.

## Article 35

**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 36

**Addressees**

This Directive is addressed to the Member States.

Done at Brussels, ...

For the European Parliament  
The President

For the Council  
The President

...

...

(\*) Four and a half years after the date of entry into force of this Directive.

(\*\*) Six and a half years after the date of entry into force of this Directive.

(\*\*\*) Two years after the date of entry into force of this Directive.

(\*\*\*\*) Three years after the date of entry into force of this Directive.

## ANNEX I

## PART A

## Repealed Directives with their successive amendments

Council Directive 75/117/EEC	OJ L 45, 19.2.1975, p. 19
Council Directive 76/207/EEC	OJ L 39, 14.2.1976, p. 40
Directive 2002/73/EC of the European Parliament and of the Council	OJ L 269, 5.10.2002, p. 15
Council Directive 86/378/EEC	OJ L 225, 12.8.1986, p. 40
Directive 96/97/EC	OJ L 46, 17.2.1997, p. 20
Council Directive 97/80/EC	OJ L 14, 20.1.1998, p. 6
Directive 98/52/EC	OJ L 205, 22.7.1998, p. 66

## PART B

## List of time limits for transposition into national law and application dates

(referred to in Article 34(1))

Directive	Time-limit for transposition	Date of application
Directive 75/117/EEC	19.2.1976	
Directive 76/207/EEC	14.8.1978	
Directive 86/378/EEC	1.1.1993	
Directive 96/97/EC	1.7.1997	17.5.1990 in relation to workers, except for those workers or those claiming under them who had before that date initiated legal proceedings or raised an equivalent claim under national law. Article 8 of Directive 86/378/EEC — 1.1.1993 at the latest. Article 6(1)(i), first indent of Directive 86/378/EEC — 1.1.1999 at the latest.
Directive 97/80/EC	1.1.2001	As regards the United Kingdom of Great Britain and Northern Ireland 22.7.2001
Directive 98/52/EC	22.7.2001	
Directive 2002/73/EC	5.10.2005	

## ANNEX II

## CORRELATION TABLE

Directive 75/117	Directive 76/207	Directive 86/378	Directive 97/80	This Directive
–	Article 1(1)	Article 1	Article 1	Article 1
–	Article 1(2)	–	–	–
–	Article 2(2), first indent	–	–	Article 2(1), (a)
–	Article 2(2), second indent	–	Article 2(2)	Article 2(1), (b)
–	Article 2(2), third and fourth indents	–	–	Article 2(1), (c) and (d)
–	–	–	–	Article 2(1), (e)
–	–	Article 2(1)	–	Article 2(1), (f)
–	Article 2(3) and (4) and Article 2(7) third subparagraph	–	–	Article 2(2)
–	Article 2(8)	–	–	Article 3
Article 1	–	–	–	Article 4
–	–	Article 5(1)	–	Article 5
–	–	Article 3	–	Article 6
–	–	Article 4	–	Article 7(1)
–	–	–	–	Article 7(2)
–	–	Article 2(2)	–	Article 8(1)
–	–	Article 2(3)	–	Article 8(2)
–	–	Article 6	–	Article 9
–	–	Article 8	–	Article 10
–	–	Article 9	–	Article 11
–	–	(Article 2 of Directive 96/97/EC)	–	Article 12
–	–	Article 9a	–	Article 13
–	Articles 2(1) and 3(1)	–	Article 2(1)	Article 14(1)

Directive 75/117	Directive 76/207	Directive 86/378	Directive 97/80	This Directive
–	Article 2(6)	–	–	Article 14(2)
–	Article 2(7), second subparagraph	–	–	Article 15
–	Article 2(7), fourth subparagraph, second and third sentence	–	–	Article 16
Article 2	Article 6(1)	Article 10	–	Article 17(1)
–	Article 6(3)	–	–	Article 17(2)
–	Article 6(4)	–	–	Article 17(3)
–	Article 6(2)	–	–	Article 18
–	–	–	Articles 3 and 4	Article 19
–	Article 8a	–	–	Article 20
–	Article 8b	–	–	Article 21
–	Article 8c	–	–	Article 22
Articles 3 and 6	Article 3 (2)(a)	–	–	Article 23(a)
Article 4	Article 3(2)(b)	Article 7(a)	–	Article 23(b)
–	–	Article 7(b)	–	Article 23(c)
Article 5	Article 7	Article 11	–	Article 24
Article 6	–	–	–	–
–	Article 8d	–	–	Article 25
–	Article 2(5)	–	–	Article 26
–	Article 8e(1)	–	Article 4 (2)	Article 27 (1)
–	Article 8e(2)	–	Article 6	Article 27 (2)
–	Article 2(7) first subparagraph	Article 5(2)	–	Article 28 (1)
–	Article 2(7) fourth subparagraph first sentence	–	–	Article 28 (2)

Directive 75/117	Directive 76/207	Directive 86/378	Directive 97/80	This Directive
–	Article 1(1a)	–	–	Article 29
Article 7	Article 8	–	Article 5	Article 30
Article 9	Article 10	Article 12(2)	Article 7, fourth subparagraph	Article 31 (1) and (2)
–	Article 9 (2)	–	–	Article 31 (3)
–	–	–	–	Article 32
Article 8	Article 9(1), first subparagraph and 9(2) and (3)	Article 12(1)	Article 7, first, second and third subparagraphs	Article 33
–	Article 9(1), second subparagraph	–	–	–
–	–	–	–	Article 34
–	–	–	–	Article 35
–	–	–	–	Article 36
–	–	Annex	–	–



## STATEMENT OF THE COUNCIL'S REASONS

### I. INTRODUCTION

On 21 April 2004, the Commission submitted to the Council, on the basis of Article 141(3) of the Treaty, a proposal for a Council Directive on the equal treatment of men and women in matters of employment and occupation.

The European Parliament gave its Opinion on 6 July 2005 (first reading).

The Economic and Social Committee delivered its opinion 15 December 2004.

The Commission submitted an amended proposal on 26 August 2005.

The Council adopted a Common Position on 10 March 2006 in accordance with the procedure laid down in Article 251 of the Treaty.

### II. OBJECTIVE

The main objectives of this Directive, which incorporates seven existing Directives <sup>(1)</sup> relating to equal opportunities and equal treatment into a single instrument, are to create more readable and accessible Community legislation, to reduce legal uncertainty by incorporating relevant European Court of Justice case law, and to increase clarity as regards the application of horizontal provisions in Directive 2002/73/EC.

### III. ANALYSIS OF THE COMMON POSITION

#### 1. General Observations

The Council Common Position has been established in accordance with the recast procedure, with any textual modifications proposed by the Commission or inserted by the Council or Parliament being clearly marked.

It should be noted that the Common Position was agreed on the basis of informal tripartite negotiations, following a series of meetings between the Presidency in office (Luxembourg and the UK), the rapporteur and shadow rapporteurs and the relevant representatives of the Commission. On 8 December 2005, the EPSCO Council reached political agreement on this text and, as part of the compromise agreement with the Parliament, both the Council and the Commission presented statements for the Council minutes relating to parental leave <sup>(2)</sup>.

#### 2. The European Parliament's amendments

In its first reading on 6 July 2005, the European Parliament adopted 93 amendments.

##### 2.1 *European Parliament amendments accepted by the Council*

In its common position, the Council took into account 74 amendments. Out of these, the Council:

- accepted 37 amendments in full, as did the Commission in its amended proposal. These were amendments 8, 9, 14, 15, 19, 22, 23, 27, 28, 34, 37-42, 45, 47, 50, 51, 52, 58, 59, 60, 62, 64, 66, 68, 74, 75, 78, 82, 85, 87, 91, 92 and 93.

<sup>(1)</sup> The Directives concerned are : 75/117/EEC (equal pay); 86/378/EEC, as amended by 96/97/EC (equal treatment in occupational social security schemes); 76/207/EEC as amended by 2002/73/EC (equal treatment of men and women); 97/80/EC as amended by 98/52/EC (burden of proof).

<sup>(2)</sup> Document 14878/05

- accepted 24 amendments in principle or in part, following the approach taken by the Commission (Nos 2, 5, 6, 11, 17, 18, 20, 21, 24, 107, 31, 32, 35, 36, 108, 43, 48, 49, 56, 71, 72, 76, 80/81/102 and 83).
- reached a compromise with the Parliament on 13 other amendments (Nos 4, 101, 25, 26, 55, 88, 61, 67, 69/70, 73, 103, 89/104 and 105).

## 2.2 *European Parliament's amendments not acceptable to the Council*

The Council did not accept 14 amendments for the reasons explained by the Commission in its amended proposal (Nos 1, 100, 3, 12, 13, 29, 30, 53, 54, 57, 36, 77, 84 and 86). The Council also could not accept a further five amendments for technical or drafting reasons, as follows:

- in relation to amendment 107, the Council preferred to retain the standard recital used for referring to correlation tables,
- the title for Article 3 in the Commission's original proposal (amendment 33) was redundant as the Council had moved this text to Articles 6 and 28,
- the title for Article 20 in the Commission's original proposal (amendment 65) was redundant as the Council had moved this text to Article 19(4) (burden of proof) for reasons of coherence,
- in Article 25, the term 'penalties', rather than 'sanctions', has been used as this is the correct legal term in English (amendment 79);
- although there was no difference in substance on amendment 106, the drafting of the Council's text for Article 33(2a) (new) was considered to be clearer.

## 3. **Other changes made by the Council**

A number of other, mainly technical, changes were made by the Council in adopting its Common Position. In brief, these relate to:

*Title II, Chapter 1:* the title was shortened to 'Equal pay' from 'Principle of Equal Pay'.

*Title II, Chapter 2:* the title was similarly shortened to 'Equal treatment in occupation social security schemes'.

*Article 6:* the title of 'Personal scope' was inserted for this new article (which was omitted by the Parliament in amendment 40).

*Title II, Chapter 3:* the title was similarly shortened to 'Equal treatment as regards access to employment, vocational training and promotion and working conditions'.

*Article 15(1) in the Commission's original proposal:* the text was moved to Article 2(2)(c) (see Amendment 31) but Parliament did not propose a corresponding amendment deleting the text from Article 15(1).

*Title III, Chapter 2:* the title was shortened to 'Promotion of equal treatment — dialogue'.

*Title III, Chapter 3:* Title IV (Implementation) was replaced by a Chapter 3 on 'General horizontal provisions'.

*Recital 5 in the Commission's original proposal:* was deleted as it was not considered to be strictly necessary. ('For reasons of coherence, it is necessary to provide a single definition of direct and indirect discrimination').

*Recital 41:* a standard recital relating to the correlation tables mentioned in Article 33 on Implementation was inserted. ('In accordance with paragraph 34 of the Interinstitutional agreement on better law-making<sup>(1)</sup>, Member States are encouraged to draw up, for themselves and in the interest of the community, their own tables, which will, as far as possible, illustrate the correlation between the Directive and the transposition measures and to make them public.').

(<sup>1</sup>) OJ C 321, 31.12.2003, p.1.

It should also be noted that a number of other technical corrections were made to the final text in the course of the normal legal/linguistic procedure between the two institutions. The main ones relate to moving Article 3 to the horizontal provisions in Title 1, which was the intention of both the Parliament and the Council; aligning the date in Article 25 with the original transposition or notification deadlines as in Articles 11 and 12; and aligning the deadline in Article 34 (Repeal) with the transposition dates in Article 33.

#### IV. CONCLUSION

The Council considers that, as a whole, the Common Position is in line with the fundamental objectives of the Commission's amended proposal. The Council also considers that, wherever possible within the confines of the recast procedure, it has taken account of the principal objectives pursued by the European Parliament in its amendments to the original Commission proposal.

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