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Note to the reader (see page 3 of the cover)

EN

[1] Text with EEA relevance

III

(Preparatory Acts)

COUNCIL

COMMON POSITION (EC) No 21/2008

adopted by the Council on 19 May 2008

with a view to the adoption of Directive 2008/…/EC of the European Parliament and of the Council of … establishing a framework for Community action to achieve the sustainable use of pesticides

(Text with EEA relevance)

(2008/C 254 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 ([1]),

Having regard to the opinion of the Committee of the Regions ([2]),

Acting in accordance with the procedure laid down in Article 251 of the Treaty ([3]),

Whereas:

(1) In line with 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 ([4]), this Directive establishes a common legal framework for achieving a sustainable use of pesticides.

(2) At present, this Directive should apply to pesticides which are plant protection products. However, it is anticipated that the scope of this Directive will be extended to cover biocidal products.

(3) The measures provided for in this Directive should be complementary to, and not affect, measures laid down in other related Community legislation, in particular Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds ([5]), Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ([6]), 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 ([7]), Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin ([8]) and Council Regulation (EC) No …/… of … on the placing on the market of plant protection products ([9]). These measures should also not prejudice voluntary measures in the context of Regulations for Structural Funds or according to the Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) ([10]).

(4) National Action Plans aimed at setting targets, measures and timetables to reduce risks and impacts of pesticide use on human health and the environment and at encouraging the development and introduction of Integrated Pest Management and of alternative approaches or techniques in order to reduce dependency on the use of pesticides should be used by Member States in order to facilitate the implementation of this Directive. National Action Plans may be coordinated with implementation plans under other relevant Community legislation and could be used for grouping together objectives to be achieved under other Community legislation related to pesticides.

([1]) OJ C 161, 13.7.2007, p. 48.
([2]) OJ C 146, 30.6.2007, p. 48.
([3]) Opinion of the European Parliament of 23 October 2007 (not yet published in the Official Journal), Council Common Position of 19 May 2008 and Council Decision of … (not yet published in the Official Journal).
([4]) OJ L 242, 10.9.2002, p. 1.
([5]) OJ L 103, 25.4.1979, p. 1.
([6]) OJ L 206, 22.7.1992, p. 7.
([7]) OJ L 327, 22.12.2000, p. 1.
([8]) OJ L 70, 16.3.2005, p. 1.
([9]) OJ L …
([10]) OJ L 277, 21.10.2005, p. 1.

(5) The exchange of information on the objectives and actions Member States lay down in their National Action Plans is a very important element for achieving the objectives of this Directive. Therefore, it is appropriate to request Member States to report regularly to the Commission and to the other Member States, in particular on the implementation and results of their National Action Plans and on their experiences.

(6) For the preparation and modification of National Action Plans, it is appropriate to provide for the application of Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment ([1]).

(7) It is essential that Member States set up systems of both initial and additional training for distributors, advisors and professional users of pesticides and certification systems to record this whereby those who use or will use pesticides are fully aware of the potential risks to human health and the environment and of the appropriate measures to reduce those risks as much as possible. Training activities for professional users may be coordinated with those organised in the framework of Regulation (EC) No 1698/2005.

(8) The sales of pesticides, including Internet sales, are an important element in the distribution chain, where specific advice on safety instructions for human health and the environment should be given to the end user at the time of sale, in particular to professional users. For non-professional users who in general do not have the same education and training, recommendations should be given, in particular on safe handling and storage of pesticides as well as on disposal of the packaging.

(9) Considering the possible risks from the use of pesticides, the general public should be better informed on the overall impacts of the use of pesticides through awareness-raising campaigns, information passed on through retailers and other appropriate measures.

(10) To the extent that the handling and application of pesticides require the setting of minimum health and safety requirements at the workplace, covering the risks arising from exposure of workers to such products, as well as general and specific preventive measures to reduce those risks, those measures are covered by Council Directive 98/24/EC of 7 April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work ([2]) and Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to their exposure to carcinogens or mutagens at work ([3]).

(11) Since Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery ([4]) will provide for rules on the placing on the market of pesticide application equipment ensuring that environmental requirements are met, it is appropriate, in order to minimise the adverse impacts of pesticides on human health and the environment caused by such equipment, to provide for systems for regular technical inspection of pesticide application equipment already in use. Member States should describe how they will ensure the implementation of those requirements in their National Action Plans.

(12) Aerial spraying of pesticides has the potential to cause significant adverse impacts on human health and the environment, in particular from spray drift. Therefore, aerial spraying should generally be prohibited with derogations possible where it represents clear advantages in terms of reduced impacts on human health and the environment in comparison with other spraying methods, or where there are no viable alternatives.

(13) The aquatic environment is especially sensitive to pesticides. It is therefore necessary for particular attention to be paid to avoid pollution of surface water and groundwater by taking appropriate measures such as, the establishment of buffer and safeguard zones or planting hedges along surface waters to reduce exposure of water bodies to spray drift, drain flow and run-off. The dimensions of buffer zones should depend in particular on soil characteristics, pesticide properties, as well as agricultural characteristics of the areas concerned. Use of pesticides in areas for the abstraction of drinking water, on or along transport routes, such as railway lines, or on sealed or very permeable surfaces can lead to higher risks of pollution of the aquatic environment. In such areas the pesticide use should, therefore, be reduced as far as possible, or eliminated, if appropriate.

(14) Use of pesticides can be particularly dangerous in very sensitive areas, such as Natura 2000 sites protected in accordance with Directives 79/409/EEC and 92/43/EEC. In other places such as public parks, sports grounds or children's playgrounds, the risks from exposure to pesticides of the general public are high. Use of pesticides in those areas should, therefore, be prohibited, restricted or the risks arising from such use minimised.

(15) Handling of pesticides, including storage, diluting and mixing the pesticides and cleaning of pesticide application equipment after use, and recovery and disposal of tank mixtures, empty packaging and remnants of pesticides are particularly prone to unwanted exposure of humans and the environment. Therefore, it is appropriate to provide for specific measures addressing those activities as a complement to the measures provided for under Directive 2006/12/EC of the European Parliament

([1]) OJ L 156, 25.6.2003, p. 17.
([2]) OJ L 131, 5.5.1998, p. 11.
([3]) OJ L 158, 30.4.2004, p. 50.
([4]) OJ L 157, 9.6.2006, p. 24.

and of the Council of 5 April 2006 on waste ([1]), and Council Directive 91/689/EEC of 12 December 1991 on hazardous waste ([2]). Measures should also encompass non-professional users, since inappropriate handling is very likely to occur in this group of users due to their lack of knowledge.

(16) The application of general principles and crop and sector specific guidelines of Integrated Pest Management by all farmers would result in a better targeted use of all available pest control measures, including pesticides. Therefore, it contributes to a further reduction of the risks to human health and the environment and the dependency on the use of pesticides. Member States should promote low pesticide-input pest management, in particular Integrated Pest Management, and establish the necessary conditions and measures for its implementation.

(17) Whereas, on the basis of Regulation (EC) No …/… and of this Directive, implementation of the principles of Integrated Pest Management is obligatory and whereas the subsidiarity principle applies to the way the principles for Integrated Pest Management are implemented, Member States should describe how they ensure the implementation of the principles of Integrated Pest Management into their National Action Plan.

(18) It is necessary to measure the progress achieved in the reduction of risks and adverse impacts from pesticide use for human health and the environment. Appropriate means are harmonised risk indicators that will be established at Community level. Member States should use those indicators for risk management at national level and for reporting purposes, while the Commission should calculate indicators to evaluate progress at Community level. Statistical data collected in accordance with Regulation (EC) No …/… of the European Parliament and of the Council of … concerning statistics on plant protection products ([3]) should be used. Member States should be entitled to use, in addition to harmonised common indicators, their national indicators.

(19) Member States should determine penalties applicable to infringements of national provisions adopted pursuant to this Directive and ensure that they are implemented. The penalties should be effective, proportionate and dissuasive.

(20) Since the objective of this Directive, namely to protect human health and the environment from the possible risks associated with the use of pesticides, 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 this objective.

(21) This Directive respects the fundamental rights and observes the principles recognised notably by the Charter of Fundamental Rights of the European Union. In particular, this seeks to promote the integration into Community policies of a high level of environmental protection in accordance with the principle of sustainable development as laid down in Article 37 of the Charter of Fundamental Rights of the European Union.

(22) 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 ([4]).

(23) In particular the Commission should be empowered to establish and update the Annexes to this Directive. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, *inter alia* by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(24) In accordance with point 34 of the Interinstitutional agreement on better law-making ([5]), 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,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

General Provisions

Article 1

Subject matter

This Directive establishes a framework to achieve a sustainable use of pesticides by reducing the risks and impacts of pesticide use on human health and the environment and promoting the use of Integrated Pest Management and of alternative approaches or techniques.

([1]) OJ L 114, 27.4.2006, p. 9.
([2]) OJ L 377, 31.12.1991, p. 20.
([3]) OJ L …
([4]) OJ L 184, 17.7.1999, p. 23.
([5]) OJ C 321, 31.12.2003, p. 1.

Article 2

Scope

1. This Directive shall apply to pesticides that are plant protection products as defined in point 9(a) of Article 3.

2. This Directive shall apply without prejudice to any other relevant Community legislation.

Article 3

Definitions

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

1) 'professional user' means any person who uses pesticides in the course of their professional activities, including operators, technicians, employers and self-employed people, both in the farming and other sectors;

2) 'distributor' means any natural or legal person who makes a pesticide available on the market, including wholesalers, retailers, vendors and suppliers;

3) 'advisor' means any person who advises on pest management and pesticide safe use, in the context of a professional capacity or commercial service, including private self-employed and public advisory services, commercial agents, food producers and retailers where applicable;

4) 'pesticide application equipment' means any apparatus specifically intended for the application of pesticides, including accessories that are essential for the effective operation of such equipment, such as nozzles, manometers, filters, strainers and cleaning devices for tanks;

5) 'aerial spraying' means application of pesticides from an aircraft (plane or helicopter);

6) 'integrated pest management' means careful consideration of all available plant protection methods and subsequent integration of appropriate measures that discourage the development of the populations of harmful organisms and keep the use of plant protection products and other forms of intervention to levels that are economically and ecologically justified and reduce or minimise risks to human health and the environment. Integrated Pest Management emphasises the growth of a healthy crop with the least possible disruption to agro ecosystems and encourages natural pest control mechanisms;

7) 'risk indicator' means the result of a method of calculation that is used to evaluate risks of pesticides on human health and/or the environment;

8) the terms 'surface water' and 'groundwater' have the same meaning as in Directive 2000/60/EC;

9) 'pesticide' means:

(a) a plant protection product as defined in Regulation (EC) No …/…;

(b) a biocidal product as defined in Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing on the market of biocidal products ([1]).

Article 4

National Action Plans

1. Member States shall adopt National Action Plans to set up targets, measures and timetables to reduce risks and impacts of pesticide use on human health and the environment and to encourage the development and introduction of integrated pest management and of alternative approaches or techniques in order to reduce dependency on the use of pesticides.

When drawing up and revising their National Action Plans, Member States shall take account of the social, economic, environmental and health impacts of the measures envisaged. Member States shall describe in their National Action Plans how they will implement measures pursuant to Articles 5 to 14 in order to achieve the objectives referred to in the first subparagraph of this paragraph.

2. By … (*) Member States shall communicate their National Action Plans to the Commission and to other Member States.

National Action Plans shall be reviewed at least every five years and any substantial changes to National Action Plans shall be reported to the Commission without undue delay.

3. Where relevant, the Commission shall make information communicated in accordance with paragraph 2 available on the Internet.

4. The provisions on public participation laid down in Article 2 of Directive 2003/35/EC shall apply to the preparation and the modification of the National Action Plans.

CHAPTER II

Training, Sales of pesticides, Information and Awareness-raising

Article 5

Training

1. Member States shall ensure that all professional users, distributors and advisors have access to appropriate training. This shall consist of both initial and additional training to acquire and to update knowledge as appropriate.

([1]) OJ L 123, 24.4.1998, p. 1.
(*) Three years after the date of entry into force of this Directive.

The training shall be designed to ensure that such users, distributors and advisors acquire sufficient knowledge on the subjects listed in Annex I, taking account of their different roles and responsibilities.

2. By … (*) Member States shall establish certification systems and designate the competent authorities responsible for their implementation. These certificates shall, as a minimum, provide evidence of sufficient knowledge of the subjects listed in Annex I acquired by professional users, distributors and advisors either by undergoing training or by other means.

Certification systems shall include requirements and procedures for the granting, maintenance and withdrawal of certificates.

3. Measures designed to amend non-essential elements of this Directive relating to amending Annex I in order to take account of scientific and technical progress shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 19(2).

Article 6

Requirements for sales of pesticides

1. Member States shall ensure that at least those distributors selling pesticides to professional users have sufficient staff in their employment holding a certificate referred to in Article 5(2). Such persons shall be available at the time of sale to provide adequate information to customers as regards pesticide use and human health and environmental safety instructions on the products in question.

2. Member States shall take necessary measures to restrict sales of pesticides authorised for professional use to persons holding a certificate referred to in Article 5(2).

3. Member States shall require distributors selling pesticides to non-professional users to provide general information regarding the risks of pesticide use, in particular on hazards, exposure, proper storage, handling, application and safe disposal in accordance with Community legislation on waste, as well as regarding low-risk alternatives. Member States may require pesticide producers to provide such information.

4. The measures provided for in paragraphs 1 and 2 shall be established by … (**).

Article 7

Information and awareness-raising

Member States shall take measures to inform the general public and to promote and facilitate awareness-raising and the availability of accurate and balanced information relating to pesticides for the general public, in particular regarding the risks for human health, non-target organisms and the environment and the use of non-chemical alternatives.

CHAPTER III

Pesticide application equipment

Article 8

Inspection of equipment in use

1. Member States shall ensure that pesticide application equipment in professional use shall be subject to inspections at regular intervals. The interval between inspections shall not exceed five years until 2020 and shall not exceed three years thereafter.

2. By … (***) Member States shall ensure that pesticide application equipment has been inspected at least once. After this date only pesticide application equipment having successfully passed inspection shall be in professional use.

New equipment shall be inspected at least once within a period of 5 years after purchase.

3. By way of derogation from paragraphs 1 and 2 and, following a risk assessment for human health and the environment including an assessment of the scale of the use of the equipment, Member States may:

(a) apply different timetables and inspection intervals to pesticide application equipment not used for spraying pesticides, to handheld pesticide application equipment or knapsack sprayers and to additional pesticide application equipment, which shall be listed in the national action plan foreseen in article 4, that represent a very low scale of use.

The following additional pesticide application equipment shall never be considered as constituting a very low scale of use:

(i) spraying equipment mounted on trains or aircraft;

(ii) boom sprayers larger than 3 m, including boom sprayers that are mounted on sowing equipment;

(b) exempt from inspection handheld pesticide application equipment or knapsack sprayers.

4. The inspections shall verify that pesticide application equipment satisfies the relevant requirements listed in Annex II, in order to achieve a high level of protection for human health and the environment.

Pesticide application equipment complying with harmonised standards developed according to Article 18(1) shall be presumed to comply with the essential health and safety and environmental requirements.

(*) Four years after the date of entry into force of this Directive.
(**) Six years after the date of entry into force of this Directive.
(***) Seven years after the date of entry into force of this Directive.

5. Professional users shall conduct regular calibrations and technical checks of the pesticide application equipment according to the appropriate training received as provided for in Article 5.

6. Member States shall designate bodies responsible for implementing the inspection systems and inform the Commission thereof.

Each Member State shall establish certificate systems designed to allow the verification of inspections and recognise the certificates granted in other Member States following the requirements referred to in paragraph 4 and where the time period since the last inspection carried out in another Member State is equal to or shorter than the time period of the inspection interval applicable in its own territory.

Member States shall endeavour to recognise the certificates issued in other Member States provided that the inspection intervals referred to in paragraph 1 are complied with.

7. Measures designed to amend non-essential elements of this Directive relating to amending Annex II in order to take account of scientific and technical progress shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 19(2).

CHAPTER IV

Specific Practices and Uses

Article 9

Aerial spraying

1. Member States shall ensure that aerial spraying is prohibited.

2. By way of derogation from paragraph 1 aerial spraying may only be allowed in special cases provided the following conditions are met:

(a) there must be no viable alternatives, or there must be clear advantages in terms of reduced impacts on human health and the environment as compared with land-based application of pesticides;

(b) the pesticides used must be explicitly approved for aerial spraying by the Member State following a specific assessment addressing risks from aerial spraying;

(c) the operator carrying out the aerial spraying must hold a certificate as referred to in Article 5(2). During the transitional period where certification systems are not yet in place, Member States may accept other proof of competence;

(d) the enterprise responsible for providing aerial spray applications shall be certified by a competent authority for authorising equipment and aircraft for aerial application of pesticides.

3. Member States shall designate the authorities competent for establishing the specific conditions by which aerial spraying may be carried out and make public information on crops, areas, circumstances and particular requirements for application including weather conditions where aerial spraying may be allowed.

The competent authorities shall specify the measures necessary for warning residents and bystanders and to protect the environment in the vicinity of the area sprayed.

4. A professional user wishing to apply pesticides by aerial spraying shall submit a request in due time to the competent authority to apply pesticides by aerial spraying accompanied by evidence to show that the conditions referred to in paragraphs 2 and 3 are fulfilled. Member States may provide that requests for which no answer was received on the decision taken within the time period laid down by the competent authorities shall be deemed to be approved.

5. Member States shall ensure that the conditions referred to in paragraphs 2 and 3 are met by conducting appropriate monitoring.

6. The competent authorities shall keep records of the requests submitted under paragraph 4.

Article 10

Specific measures to protect the aquatic environment and drinking water

1. Member States shall ensure that appropriate measures to protect the aquatic environment and drinking water supplies from the impact of pesticides are adopted. These measures shall support and be compatible with relevant provisions of Directive 2000/60/EC and Regulation (EC) No …/….

2. The measures provided in paragraph 1 shall include:

(a) giving preference to pesticides that are not classified as dangerous for the aquatic environment pursuant to Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations [1] nor containing priority hazardous substances as set in Article 16(3) of Directive 2000/60/EC;

(b) giving preference to the most efficient application techniques such as the use of low-drift pesticide application equipment especially in vertical crops such as hops and those found in orchards and vineyards;

[1] OJ L 200, 30.7.1999, p. 1.

(c) use of mitigation measures which minimise the risk of off-site pollution caused by spray drift, drain-flow and run-off. These shall include when necessary the establishment of appropriately-sized buffer zones for the protection of non-target aquatic organisms and safeguard zones for surface and groundwater used for the abstraction of drinking water, where pesticides must not be used or stored;

(d) reducing as far as possible or if appropriate eliminating applications on or along roads, railway lines, very permeable surfaces or other infrastructure close to surface water or groundwater or on sealed surfaces with a high risk of run-off into surface water or sewage systems.

Article 11

Reduction of pesticide use or risks in specific areas

Member States shall, having due regard to necessary hygiene and public health requirements and biodiversity, or the results of relevant risk assessments, ensure that the use of pesticides is prohibited, restricted or the risks arising from such use minimised, in:

1) areas used by the general public or by vulnerable populations, such as parks, public gardens, sports grounds, school grounds and playgrounds;

2) protected areas as defined in Directive 2000/60/EC or other areas identified for the purposes of establishing the necessary conservation measures in accordance with the provisions of Directives 79/409/EEC and 92/43/EEC;

3) recently treated areas used by or accessible to agricultural workers.

Article 12

Handling and storage of pesticides and treatment of their packaging and remnants

1. Member States shall adopt the necessary measures to ensure that the following operations by professional users and where applicable by distributors do not endanger human health or the environment:

(a) storage, handling, dilution and mixing of pesticides before application;

(b) handling of packaging and remnants of pesticides;

(c) disposal of tank mixtures remaining after application;

(d) cleaning of the equipment used after application;

(e) recovery or disposal of pesticide remnants and their packaging in accordance with Community legislation on waste.

2. Member States shall take all necessary measures regarding pesticides authorised for non-professional users to avoid dangerous handling operations. These measures may include use of pesticides of low toxicity, ready to use formulations and limits on sizes of containers or packaging.

3. Member States shall ensure that storage areas for pesticides for professional use are constructed in such a way as to prevent unwanted releases. Particular attention shall be paid to location, size and construction materials.

Article 13

Integrated Pest Management

1. Member States shall take appropriate measures to promote low pesticide-input pest management, giving priority wherever possible to non-chemical methods and otherwise to practices and products with the lowest risk to human health and the environment among those available for the same pest problem. Low pesticide-input pest management includes Integrated Pest Management as well as organic farming according to Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products ([1]).

2. Member States shall establish or support the establishment of necessary conditions for the implementation of Integrated Pest Management. In particular, they shall ensure that professional users have at their disposal information and tools for pest monitoring and decision making, as well as advisory services on integrated pest management.

3. By 30 June 2013, Member States shall report to the Commission on the implementation of paragraphs 1 and 2 and, in particular, whether the necessary conditions for implementation of integrated pest management are in place.

4. Member States shall describe in their National Action Plan referred to in Article 4 how they ensure that the general principles of Integrated Pest Management as set out in Annex III are implemented by all professional users by 1 January 2014.

Measures designed to amend non-essential elements of this Directive relating to amending Annex III in order to take account of scientific and technical progress shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 19(2).

5. Member States shall establish appropriate incentives to encourage professional users to implement crop or sector specific guidelines for integrated pest management on a voluntary basis. Public authorities and/or organisations representing particular professional users may draw up such guidelines. Member States shall refer to those guidelines that they consider pertinent and appropriate in their National Action Plans drawn up in accordance with Article 4.

([1]) OJ L 189, 20.7.2007, p. 1.

CHAPTER V

Indicators, Reporting and Information Exchange

Article 14

Indicators

1. Harmonised risk indicators as referred to in Annex IV shall be established. However, Member States may continue to use existing national indicators or adopt other appropriate indicators in addition to the harmonised ones.

Measures designed to amend non-essential elements of this Directive relating to amending Annex IV in order to take account of scientific and technical progress shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 19(2).

2. Member States shall

(a) calculate harmonised risk indicators as referred to in paragraph 1 by using statistical data collected in accordance with Regulation (EC) No …/… together with other relevant data;

(b) identify trends in the use of certain active substances;

(c) identify priority items, such as active substances, crops, regions or practices, that require particular attention or good practices that can be used as examples in order to achieve the objectives of this Directive to reduce the risks and impacts of pesticide use on human health and the environment and to encourage the development and introduction of integrated pest management and of alternative approaches or techniques in order to reduce dependency on the use of pesticides.

3. Member States shall communicate the results of the evaluations carried out pursuant to paragraph 2 to the Commission and to other Member States.

4. The Commission shall calculate risk indicators at Community level by using statistical data collected in accordance with Regulation (EC) No …/… and other relevant data, in order to estimate trends in risks from pesticide use.

The Commission shall also use these data and this information to assess progress in achieving the objectives of other Community policies aimed at reducing the impact of pesticides on human health and on the environment.

Article 15

Reporting

The Commission shall regularly submit to the European Parliament and the Council a report on the progress in the implementation of this Directive, accompanied where appropriate by proposals for amendments.

CHAPTER VI

Final provisions

Article 16

Penalties

Member States shall determine penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

Member States shall notify those provisions to the Commission by … (*) and shall notify it without delay of any subsequent amendment.

Article 17

Fees and Charges

1. Member States may recover the costs associated with any work pursuant to obligations under this Directive by means of a fee or charge.

2. Member States shall ensure that the fee or charge referred to in paragraph 1 is established in a transparent manner and corresponds to the actual cost of the work involved.

Article 18

Standardisation

1. The standards referred to in Article 8(4) of this Directive shall be established in accordance with the procedure provided for in Article 6(3) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services [1].

The request for developing these standards may be established in consultation with the Committee referred to in Article 19(1).

2. The Commission shall publish the references of the standards in the *Official Journal of the European Union*.

3. When a Member State or the Commission considers that a standard does not entirely satisfy the essential requirements which it covers, the Commission or the Member State concerned shall set out its arguments and bring the matter before the Committee set up by Directive 98/34/EC. That Committee shall deliver its opinion without delay.

In the light of that Committee's opinion, the Commission shall decide to publish the references to the harmonised standard concerned in the *Official Journal of the European Union*, not to publish them, to publish them with restrictions, to maintain the existing references, to maintain them with restriction or to withdraw them.

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

[1] OJ L 204, 21.7.1998, p. 37.

Article 19

Committee procedure

1. The Commission shall be assisted by the Standing Committee on the Food Chain and Animal Health established by Article 58 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety ([1]).

2. Where reference is made to this paragraph, Articles 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 20

Expenditure

In order to support the establishment of a harmonised policy and systems in the field of sustainable use of pesticides, the Commission may finance:

1) the development of a harmonised system including an appropriate database to gather and store all information relating to pesticide risk indicators, and to make such information available to the competent authorities, other interested parties and the general public;

2) the performance of studies necessary for the preparation and development of legislation, including the adaptation of the Annexes of this Directive to technical progress;

3) the development of guidance and best practices to facilitate the implementation of this Directive.

Article 21

Transposition

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

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

Article 22

Entry into force

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

Article 23

Addressees

This Directive is addressed to the Member States.

Done at …

For the European Parliament	*For the Council*
The President	*The President*
…	…

([1]) OJ L 31, 1.2.2002, p. 1.

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

ANNEX I

Training subjects referred to in Article 5

1. All relevant legislation regarding pesticides and their use.
2. The hazards and risks associated with pesticides, and how to identify and control them, in particular:
   (a) risks to humans (operators, residents, bystanders, people entering treated areas and those handling or eating treated items) and how factors such as smoking exacerbate these risks;
   (b) symptoms of pesticide poisoning and first aid measures;
   (c) risks to non-target plants, beneficial insects, wildlife, biodiversity and the environment in general.
3. Notions on integrated pest management strategies and techniques, integrated crop management strategies and techniques, organic farming principles, information on the general principles and crop or sector-specific guidelines for integrated pest management.
4. Initiation to comparative assessment at user level to help professional users make the most appropriate choices on pesticides with the least side effects on human health, non-target organisms and the environment among all authorised products for a given pest problem, in a given situation.
5. Measures to minimise risks to humans, non-target organisms and the environment: safe working practices for storing, handling and mixing pesticides, and disposing of empty packaging, other contaminated materials and surplus pesticides (including tank mixes), whether in concentrate or dilute form; recommended way to control operator exposure (personal protection equipment).
6. Procedures for preparing pesticide application equipment for work, including its calibration, and for its operation with minimum risks to the user, other humans, non-target animal and plant species, biodiversity and the environment.
7. Use of pesticide application equipment and its maintenance, and specific spraying techniques (e.g. low-volume spraying, low-drift nozzles), as well as the objectives of the technical check of sprayers in use and ways to improve spray quality.
8. Emergency action to protect human health and the environment in case of accidental spillage and contamination.
9. Health monitoring and access facilities to report on any incidents or suspected incidents.
10. Record keeping of any use of pesticides, in accordance with the relevant legislation.

ANNEX II

Health and safety and environmental requirements relating to the inspection of pesticide application equipment

The inspection of pesticide application equipment shall cover all aspects important to achieve a high level of safety and protection of human health and the environment. Full effectiveness of the application operation should be ensured by proper performance of devices and functions of the equipment to guarantee the following objectives are met.

The pesticide application equipment must function reliably and be used properly for its intended purpose ensuring that pesticides can be accurately dosed and distributed. The equipment must be in such a condition as to be filled and emptied safely, easily and completely and prevent leakage of pesticides. It must permit easy and thorough cleaning. It must also ensure safe operations, and be controlled and capable of being immediately stopped from the operator's seat. Where necessary, adjustments must be simple, accurate and capable of being reproduced.

Particular attention should be paid to:

1) *Power transmission parts*

The power take-off drive shaft guard and the guard of the power input connection shall be fitted and in good condition and the protective devices and any moving or rotating power transmission parts shall not be affected in their function so as to ensure protection of the operator.

2) *Pump*

The pump capacity shall be suited to the needs of the equipment and the pump must function properly in order to ensure a stable and reliable application rate. There shall be no leakages from the pump.

3) *Agitation*

Agitation devices must ensure a proper recirculation in order to achieve an even concentration of the whole volume of the liquid spray mixture in the tank.

4) *Spray liquid tank*

Spray tanks including indicator of tank content, filling devices, strainers and filters, emptying and rinsing systems, and mixing devices shall operate in such a way as to minimise accidental spillage, uneven concentration distribution, operator exposure and residual content.

5) *Measuring systems, control and regulation systems*

All devices for measuring, switching on and off and adjusting pressure and/or flow rate shall be properly calibrated and work correctly and there shall be no leakages. Control of pressure and operation of pressure adjustment devices shall be easily possible during application. Pressure adjustment devices shall maintain a constant working pressure at constant revolutions of the pump, in order to ensure that a stable volume application rate is applied.

6) *Pipes and hoses*

Hoses and pipes shall be in proper condition to avoid disturbance of liquid flow or accidental spillage in case of failure. There shall be no leakages from pipes or hoses when run with the maximum obtainable pressure for the system.

7) *Filtering*

In order to avoid turbulence and heterogeneity in spray patterns, filters shall be in good condition and the mesh size of the filters shall correspond to the size of nozzles fitted on the sprayer. Where applicable the filter blockage indication system shall operate correctly.

8) *Spray boom (for equipment spraying pesticides by means of a horizontally positioned boom, located close to the crop or the material to be treated)*

The spray boom must be in good condition and stable in all directions. The fixation and adjustment systems and the devices for damping unintended movements and slope compensation must work correctly.

9) *Nozzles*

Nozzles must work properly to control dripping when spraying stops. To ensure homogeneity of the spray pattern, the flow rate of each individual nozzle shall not deviate significantly from the data of the flow rate tables provided by the manufacturer.

10) *Distribution*

The transverse and vertical (in case of applications in vertical crops) distribution of the spray mixture in the target area must be even, where relevant.

11) *Blower (for equipment distributing pesticides by air assistance)*

The blower must be in good condition and must ensure a stable and reliable air stream.

ANNEX III

General principles of Integrated Pest Management

1. The prevention and/or suppression of harmful organisms should be achieved or supported among other options especially by:
   - crop rotation,
   - use of adequate cultivation techniques (e.g. stale seedbed technique, sowing dates and densities, under-sowing, conservation tillage, pruning and direct sowing),
   - use, where appropriate, of resistant/tolerant cultivars and standard/certified seed and planting material,
   - use of balanced fertilisation, liming and irrigation/drainage practices,
   - preventing the spreading of harmful organisms by hygiene measures (e.g. by regular cleansing of machinery and equipment),
   - protection and enhancement of important beneficial organisms, e.g. by adequate plant protection measures or the utilisation of ecological infrastructures inside and outside production sites.
2. Harmful organisms must be monitored by adequate methods and tools, where available. Such adequate tools should include observations in the field as well as scientifically sound warning, forecasting and early diagnosis systems, where feasible, as well as the use of advice from professionally qualified advisors.
3. Based on the results of the monitoring the professional user has to decide whether and when to apply plant protection measures. Robust and scientifically sound threshold values are essential components for decision making. For harmful organisms threshold levels defined for the region, specific areas, crops and particular climatic conditions must be taken into account before treatments, where feasible.
4. Sustainable biological, physical and other non-chemical methods must be preferred to chemical methods if they provide satisfactory pest control.
5. The pesticides applied shall be as specific as possible for the target and shall have the least side effects on human health, non-target organisms and the environment.
6. The professional user should keep the use of pesticides and other forms of intervention to levels that are necessary, e.g. by reduced doses, reduced application frequency or partial applications, considering that the level of risk in vegetation is acceptable and they do not increase the risk for development of resistance in populations of harmful organisms.
7. Where the risk of resistance against a plant protection measure is known and where the level of harmful organisms requires repeated application of pesticides to the crops, available anti-resistance strategies should be applied to maintain the effectiveness of the products. This may include the use of multiple pesticides with different modes of action.
8. Based on the records on the use of pesticides and on the monitoring of harmful organisms the professional user should check the success of the applied plant protection measures.

ANNEX IV

Harmonised risk indicators

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 18 July 2006, the Commission submitted to the Council a proposal for a Directive of the European Parliament and of the Council establishing a framework for Community action to achieve a sustainable use of pesticides. The proposal is based on Article 175(1) of the Treaty.

2. The European Parliament adopted its opinion at first reading on 23 October 2007 ([1]). The Economic and Social Committee and the Committee of the Regions delivered their opinions on 14 March and 1 February 2007 respectively.

3. On 19 May 2008, the Council adopted its Common Position in accordance with Article 251 of the Treaty.

II. OBJECTIVES

The proposal seeks to protect human and animal health and the environment from adverse impact of use of pesticides in farming and the ecosystem. It aims at reducing the risks of pesticide use in a way that is consistent with the necessary crop protection.

It provides, in particular, for:

— the establishment of National Action Plans (NAPs) to reduce risks and impact of pesticide use on human health and the environment;

— information, awareness-raising and training for advisers and professional users of pesticides;

— concrete requirements for the sale of pesticides;

— regular inspection of application equipment;

— prohibition of aerial spraying with possible derogations;

— specific measures for the protection of the aquatic environment from pollution with pesticides;

— restriction of pesticide use in specific areas;

— requirements for the handling and storage of pesticides and their packaging and remnants;

— establishment of compulsory standards on Integrated Pest Management; and

— development of risk indicators to measure progress on pesticide use.

III. ANALYSIS OF THE COMMON POSITION

1. *General observations*

The Council's Common Position broadly accords with the position taken by the Commission and the European Parliament, inasmuch as it:

— confirms the objectives and most of the arrangements proposed by the Commission and supported by the European Parliament;

— incorporates a large number of the amendments adopted at first reading by the European Parliament.

Amendments 6, 17, 43, 49, 52, 60, 61, 62, 63, 68, 85, 93, 95, 103, 106, 112, 122, 137 and 155 are fully incorporated.

Amendments 13, 18, 29, 35, 36, 39, 42, 48, 51, 54, 59, 64, 87, 90, 114, 146 and 164 are accepted in spirit or partially incorporated.

Amendments 1, 5, 16, 22, 23, 28, 30, 32, 37, 40, 55, 57, 58, 69, 72, 77, 84, 88, 91, 96, 98, 99, 102, 104, 120, 121, 138, 139 have not been incorporated, the Council sharing the same position as the Commission.

([1]) 14183/07.

Amendments 2-4, 7-11, 15, 19-21, 24-27, 31, 33, 44, 46, 47, 50, 53, 56, 65, 66, 70, 71, 74, 76, 78, 79, 81-83, 92, 94, 97, 100, 101, 105, 107-111, 113, 115-119, 133, 135, 141, 143, 151 and 153 which were accepted by the Commission have not been included in the Common Position, the Council deviating from the Commission's views.

The Common Position also includes other changes, not envisaged by the European Parliament, which address a number of concerns expressed by the Member States in the course of the negotiations.

A number of technical and editorial amendments were also introduced to define the scope of some provisions, to make the wording of the Directive more explicit and more consistent with the wording of the project of Regulation on placing on the market, to guarantee also legal certainty or to increase its consistency with other Community instruments.

The Commission has accepted the Common Position agreed by the Council.

2. ***Specific comments***

Legal basis

Amendment 1 was not accepted by the Council since it considered that Article 175(1) is the correct and sufficient legal basis.

Definitions

The following changes were made to the original proposal:

— the definition of 'use' was deleted because it was considered unnecessary;

— the concept of professional capacity or commercial service was incorporated in the definition of 'adviser';

— the definitions of 'pesticide application equipment' and 'pesticide application accessories' were merged;

— the definition of 'integrated pest management' was moved from the proposal for a Regulation concerning the placing of plant protection products on the market to this proposal; and

— the definitions of 'surface water' and 'groundwater' were added.

Amendment 29 to insert a definition of pesticides as plant protection products was incorporated in the Common Position although the Commission rejected it. The Council extended this definition to biocidal products.

National Action Plans

The Parliament and the Council concurred in the following elements:

— Member States should take into consideration the health impact of the measures envisaged;

— National Action Plans should describe how Member States implement the Directive (in particular measures arising from Articles 5 to 14) in order to reduce dependency on the use of pesticides;

— the information received by the Commission on these National Action Plans should be available on the Internet.

The Council did not think it was appropriate to take other amendments, in particular the establishment of quantitative use reduction targets, into account. The Council preferred to concentrate on the reduction of risks rather than defining use reduction targets.

Training

The Council has inserted provisions to ensure that both initial and further training are offered. This concern was shared by the European Parliament. The Council also took on board one of the European Parliament's suggestions for Annex I regarding initiation in comparative assessment to help professional users chose a good pesticide with the least adverse effect for humans and the environment.

The Council also considered it useful to specify that the training should take into consideration the different roles and responsibilities of the persons dealing with pesticides: users, distributors and advisors. In addition, the Council has incorporated a provision laying down that the training certification systems set up by Member States shall include requirements and procedures for the granting maintenance and withdrawal of certificates.

Requirements for the sale of pesticides

The Council has taken on board the Parliament's suggestion that the persons selling pesticides to professional users shall provide advice not only on pesticide use but also on human health and environmental safety instructions.

The Council has also added the requirement for distributors selling pesticides to non-professional users additionally to provide information on low-risk products. Moreover, it amended this Article to allow the person holding a certificate to be not physically present but still available in some other way. The Council felt that it was necessary to provide this flexibility for small retailers.

Information and awareness-raising

The European Parliament has considerably developed Article 7 and the Council has not been able to accept all its suggestions. The Council has nevertheless retained the requirement that the information provided to the public concerning pesticides should be accurate and balanced.

Inspection of equipment in use

The Council has accepted all but one of the Parliaments amendments related to the inspection of equipment for professional use. The Council, like the Parliament, felt that it was necessary to be more precise regarding the intervals between inspections but has gone a step further requiring shorter intervals between inspections from 2020.

Nevertheless, the Council believed that it would be disproportionate to require the inspection of all handheld pesticide application equipment or knapsack sprayers and has inserted an option to exempt them. It has also incorporated the possibility to, following a risk assessment, of applying different timetables and inspection intervals to certain types of equipment for small scale of use.

Moreover, the Council also considered it necessary to require that professional users conduct regular calibrations and technical checks of the application equipment.

Finally, the Council decided that Member States should establish a certification system with mutual recognition.

Aerial spraying

Although the Council agrees with the Parliament on the general approach for this issue and has accepted amendment 63 and part of amendment 64, it considered unnecessary those amendments that risked creating excessive administrative burdens for competent authorities.

The Council has changed the original proposal to specify that products used must be approved following a risk assessment and that enterprises providing aerial spraying must be certified, and to provide the option of tacit approval of requests for aerial spraying by competent authorities after a certain period has elapsed.

Specific measures to protect the aquatic environment

The Council incorporated amendment 68 to highlight the importance of protecting drinking water. Article 10 was also amended to give preference to pesticides not containing priority hazardous substances.

Concerning amendment 70 on the compulsory establishment of buffer zones, the Council considered that it was more appropriate to develop Article 10 to cover a wider range of mitigation measures which could be put in place when necessary.

Reduction of pesticide use or risks in specific areas

The text has been redrafted in order to give Member States the option to minimise the risks of pesticides when used in these particular areas. The Council could not accept the Parliament's amendments in this area.

Handling, storage and treatment of packaging and remnants

The Council rephrased the text of points 1 and 3 of Article 12 to clarify that those measures only applied to professional users and, if applicable, to advisers. It also added a provision on the recovery or disposal of pesticide remnants and packaging. The Council did not think consider the Parliament's amendments relevant.

Integrated Pest Management

The Council and the Parliament's views substantially converge on this issue. In particular the Council can support the Parliament's amendments 85 and 122 to include a new Annex in the proposal containing general principles of Integrated Pest Management. It can also agree with parts of amendments 164 and 87.

In addition, the Council replaced the term low pesticide-input farming by low pesticide-input pest management and specified that this concept includes IPM and organic farming.

Indicators

The Council agreed with the Commission taking the view that amendments to include use were not relevant. The Council accepted only part of amendment 93 and the principle included in amendment 95.

Comitology

The Council has taken on board those amendments adapting certain Articles to the new comitology Decision (17, 52, 62, 103, 137 and 155).

IV. **CONCLUSIONS**

The Council considers that its Common Position represents a balanced and realistic solution for a number of concerns expressed on the Commission's proposal and looks forward to a constructive discussion with the European Parliament with a view to a workable agreement on this Directive.

COMMON POSITION (EC) No 22/2008

adopted by the Council on 23 June 2008

with a view to the adoption of Directive 2008/…/EC of the European Parliament and of the Council of … on airport charges

(Text with EEA relevance)

(2008/C 254 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 80(2) thereof,

Having regard to the proposal from the Commission,

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

Having regard to the opinion of the Committee of the Regions ([2]),

Acting in accordance with the procedure laid down in Article 251 of the Treaty ([3]),

Whereas:

(1) The main task and commercial activity of airports is to ensure the handling of aircraft, from landing to take-off, and of passengers and cargo, so as to enable air carriers to provide air transport services. For this purpose, airports offer a number of facilities and services related to the operation of aircraft and the processing of passengers and cargo, the cost of which they generally recover through airport charges. Airport managing bodies providing facilities and services for which airport charges are levied should endeavour to operate on a cost efficient basis.

(2) It is necessary to establish a common framework regulating the essential features of airport charges and the way they are set, as in the absence of such a framework, basic requirements in the relationship between airport managing bodies and airport users may not be met. Such a framework should be without prejudice to the possibility for a Member State to determine the extent to which revenues from an airport's commercial activities may be taken into account in establishing airport charges.

(3) This Directive should apply to airports located in the Community that are above a minimum size as the management and the funding of small airports do not call for the application of a Community framework, and to the airport with the highest passenger movement in each Member State.

(4) In order to promote territorial cohesion, Member States should have the possibility to apply a common charging system to cover an airport network. Economic transfers between airports in such networks should comply with Community law.

(5) For reasons of traffic distribution Member States should be able to allow an airport managing body for airports serving the same city or conurbation to apply the same level of airport charges. Economic transfers between these airports should comply with relevant Community law.

(6) Incentives for starting up new routes, such as to promote, *inter alia*, the development of disadvantaged and outermost regions should only be granted in accordance with Community law.

(7) The collection of charges with respect to the provision of air navigation services and groundhandling services has already been addressed by Commission Regulation (EC) No 1794/2006 of 6 December 2006 laying down a common charging scheme for air navigation services ([4]) and Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports ([5]) respectively. The charges levied for the funding of assistance to disabled passengers and passengers with reduced mobility are governed by Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air ([6]).

(8) The Council of the International Civil Aviation Organization (the ICAO Council) in 2004 adopted policies on airport charges that included, *inter alia*, the principles of cost-relatedness, non-discrimination and an independent mechanism for economic regulation of airports.

(9) The ICAO Council has considered that an airport charge is a levy that is designed and applied specifically to recover the cost of providing facilities and services for civil aviation, while a tax is a levy that is designed to raise national or local government revenues which are generally not applied to civil aviation in their entirety or on a cost-specific basis.

([1]) OJ C 10, 15.1.2008, p. 35.
([2]) OJ C 305, 15.12.2007, p. 11.
([3]) Opinion of the European Parliament of 15 January 2008 (not yet published in the Official Journal), Council Common Position of 23 June 2008 and Position of the European Parliament of … (not yet published in the Official Journal).

([4]) OJ L 341, 7.12.2006, p. 3.
([5]) OJ L 272, 25.10.1996, p. 36.
([6]) OJ L 204, 26.7.2006, p. 1.

(10) Airport charges should be non-discriminatory. A compulsory procedure for regular consultation between airport managing bodies and airport users should be put in place with the possibility for either party to have recourse to an independent supervisory body whenever a decision on airport charges or the modification of the charging system is contested by airport users.

(11) In order to ensure impartial decisions and the proper and effective application of this Directive, an independent supervisory body should be established in every Member State. The body should be in possession of all the necessary resources in terms of staffing, expertise, and financial means for the performance of its tasks.

(12) It is vital for airport users to obtain from the airport managing body, on a regular basis, information on how and on what basis airport charges are calculated. Such transparency would provide air carriers with an insight into the costs incurred by the airport and the productivity of an airport's investments. To allow an airport managing body to properly assess the requirements with regard to future investments, the airport users should be required to share all their operational forecasts, development projects and specific demands and suggestions with the airport managing body on a timely basis.

(13) Airport managing bodies should inform airport users about major infrastructure projects as these have a significant impact on the system or the level of airport charges. Such information should be provided in order to make monitoring of infrastructure costs possible and with a view to providing suitable and cost-effective facilities at the airport concerned.

(14) Airport managing bodies should be enabled to apply airport charges corresponding to the infrastructure and/or the level of service provided as air carriers have a legitimate interest to require services from an airport managing body that correspond to the price/quality ratio. However, access to a differentiated level of infrastructure or services should be open to all carriers that wish to avail of them on a non-discriminatory basis. If demand exceeds supply, access should be determined on the basis of objective and non-discriminatory criteria to be developed by an airport managing body. Any differentiation in airport charges should be transparent, objective and based on clear criteria.

(15) Airport users and the airport managing body should be able to conclude a service level agreement with regard to the quality of service provided in return for airport charges. Negotiations on the quality of service provided in return for airport charges could take place as part of the regular consultation.

(16) This Directive should be without prejudice to the Treaty, in particular Articles 81 to 89 thereof.

(17) Since the objective of this Directive, namely to set common principles for the levying of airport charges at Community airports, cannot be sufficiently achieved by the Member States as systems of airport charges can not be put in place at national level in a uniform way throughout the Community and can therefore, by reason of its scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

1. This Directive sets common principles for the levying of airport charges at Community airports.

2. This Directive shall apply to any airport located in a territory subject to the Treaty and open to commercial traffic whose annual traffic is over 5 million passenger movements and to the airport with the highest passenger movement in each Member State.

3. Member States shall publish a list of the airports on their territory to which this Directive applies. This list shall be based on data from the Commission (EUROSTAT) and shall be updated annually.

4. This Directive shall not apply to the charges collected for the remuneration of en-route and terminal air navigation services in accordance with Regulation (EC) No 1794/2006, or to the charges collected for the remuneration of groundhandling services referred to in the Annex to Directive 96/67/EC, or to the charges levied for the funding of assistance to disabled passengers and passengers with reduced mobility referred to in Regulation (EC) No 1107/2006.

5. This Directive shall be without prejudice to the right of each Member State to apply additional regulatory measures that are not incompatible with this Directive or other relevant provisions of Community law with regard to any airport managing body located in its territory. This may include economic oversight measures, such as the approval of charging systems and/or the level of charges including incentive-based charging methods or price cap regulation.

Article 2

Definitions

For the purposes of this Directive:

1) 'airport' means any land area specifically adapted for the landing, taking-off and manoeuvring of aircraft, including the ancillary installations which these operations may involve for the requirements of aircraft traffic and services including the installations needed to assist commercial air services;

2) 'airport managing body' means a body which, in conjunction with other activities or not as the case may be, has as its objective under national laws, regulations or contracts the administration and management of the airport or airport network infrastructures and the coordination and control of the activities of the different operators present in the airports or airport network concerned;

3) 'airport user' means any natural or legal person responsible for the carriage of passengers, mail and/or freight by air to or from the airport concerned;

4) 'airport charge' means a levy collected for the benefit of the airport managing body and paid by the airport users for the use of facilities and services, which are exclusively provided by the airport managing body and which are related to landing, take-off, lighting and parking of aircraft, and processing of passengers and freight;

5) 'airport network' means a group of airports duly designated as such by the Member State and operated by the same airport managing body.

Article 3

Non-discrimination

Member States shall ensure that airport charges do not discriminate among airport users, in accordance with Community law. This does not prevent the modulation of airport charges for issues of public and general interest, including environmental issues. The criteria used for such a modulation shall be relevant, objective and transparent.

Article 4

Airport network

1. Member States may allow the airport managing body of an airport network to introduce a common and transparent airport charging system to cover the airport network.

2. Member States may allow an airport managing body for airports serving the same city or conurbation, to apply the same level of airport charges to all the airports concerned, provided that each airport fully complies with the requirements on transparency set out in Article 6.

Article 5

Consultation and remedy

1. Member States shall ensure that a compulsory procedure for regular consultation between the airport managing body and airport users or the representatives or associations of airport users is established with respect to the operation of the system of airport charges, the level of airport charges and, as appropriate, the quality of service provided. Such consultation shall take place at least once a year, unless agreed otherwise in the latest consultation. Where a multi-annual agreement between the airport managing body and the airport users exists, the consultations shall take place as foreseen in such agreement. Member States shall retain the right to request more frequent consultations.

2. Member States shall ensure that, wherever possible, changes to the system or the level of airport charges are made in agreement between the airport managing body and the airport users. To that end, the airport managing body shall submit any proposal to modify the system or the level of airport charges to the airport users no later than four months before they enter into force, together with the reasons for the proposed changes, unless there are exceptional circumstances which need to be justified to airport users, in which case, this period shall not be less than two months. The airport managing body shall hold consultations on the proposed changes with the airport users and take their views into account before a decision is taken. The airport managing body shall publish its decision or recommendation within reasonable time before it enters into force. The airport managing body shall justify its decision with regard to the views of the airport users in the event that no agreement on the proposed changes is reached between the airport managing body and the airport users.

3. Member States shall ensure that in the event of a disagreement over a decision on airport charges taken by the airport managing body, either party may seek the intervention of the independent supervisory body referred to in Article 10 which shall examine the justifications for the modification of the system or the level of airport charges.

4. A modification of the system or the level of airport charges decided upon by the airport managing body shall, if brought before the independent supervisory body, not take effect until that body has examined the matter. The independent supervisory body may take an interim decision on the entry into force of the modification of airport charges.

5. A Member State may decide not to apply paragraphs 3 and 4 in relation to the changes to the system or the level of airport charges at those airports for which it has established a procedure, whereby there is economic oversight. The economic oversight measures may be the same as those referred to in Article 1(5). Where these measures include approval of the system or the level of airport charges, they must be approved by the same body that has been nominated or established as an independent supervisory body for the purposes of this Directive.

Article 6

Transparency

1. Member States shall ensure that the airport managing body provides each airport user, or the representatives or associations of airport users, every time consultations referred to in Article 5(1) are to be held with information on the components serving as a basis for determining the system or the level of all charges levied at each airport by the airport managing body. The information shall include at least:

(a) a list of the various services and infrastructure provided in return for the airport charge levied;

(b) the methodology used for setting airport charges;

(c) the overall cost structure with regard to the facilities and services which airport charges relate to;

(d) the revenue of the different charges and the total cost of the services covered by them;

(e) forecasts of the situation at the airport as regards the charges, traffic growth and proposed investments;

(f) the actual use of airport infrastructure and equipment over a given period.

2. Member States shall ensure that airport users submit information to the airport managing body before every consultation, as provided for in Article 5(1), concerning in particular:

(a) forecasts as regards traffic;

(b) forecasts as to the composition and envisaged use of their fleet;

(c) their development projects at the airport concerned;

(d) their requirements at the airport concerned.

3. Subject to national legislation, the information provided on the basis of this Article shall be considered as confidential or economically sensitive and handled accordingly. In the case of airport managing bodies that are quoted on the stock exchange, stock exchange regulations in particular shall be complied with.

Article 7

New infrastructure

Member States shall ensure that the airport managing body consults with airport users before plans for new infrastructure projects are finalised.

Article 8

Quality standards

1. In order to ensure smooth and efficient operations at an airport, Member States shall take the necessary measures to allow the airport managing body and the representatives or associations of airport users at the airport to enter into negotiations with a view to concluding a service level agreement with regard to the quality of service provided at the airport. These negotiations on service quality may take place as part of the consultations referred to in Article 5(1).

2. Any such service level agreement shall determine the level of the service to be provided by the airport managing body which takes into account the actual system or the level of airport charges and the level of service to which airport users are entitled in return for airport charges.

Article 9

Tailored services

1. Member States shall take the necessary measures to allow the airport managing body to vary the quality and scope of particular airport services, terminals or parts of terminals, with the aim of providing tailored services or a dedicated terminal or part of a terminal. The system or the level of airport charges may be differentiated according to the quality and scope of such services and their costs or any other objective justification. Airport managing bodies shall remain free to set any such differentiated airport charges.

2. Member States shall take the necessary measures to allow any airport user wishing to use the tailored services or dedicated terminal or part of a terminal, to have access to these services and terminal or part of a terminal.

In the event that more airport users wish to have access to the tailored services and/or a dedicated terminal or part of a terminal than is possible due to capacity constraints, access shall be determined on the basis of relevant, objective, transparent and non-discriminatory criteria. These criteria may be set by the airport managing body and Member States may require these criteria to be endorsed by the independent supervisory body.

Article 10

Independent supervisory body

1. Member States shall nominate or establish an independent body as their national independent supervisory body in order to ensure the correct application of the measures taken to comply with this Directive and to assume, at least, the tasks assigned under Article 5. Such body may be the same as the entity entrusted by a Member State with the application of the additional regulatory measures referred to in Article 1(5), including with the approval of the charging system and/or the level of airport charges, provided that it meets the requirements of paragraph 2 of this Article.

2. Member States shall guarantee the independence of the independent supervisory body by ensuring that it is legally distinct from and functionally independent of any airport managing body and air carrier. Member States that retain ownership of airports, airport managing bodies or air carriers or control of airport managing bodies or air carriers shall ensure that the functions relating to such ownership or control are not vested in the independent supervisory body. Member States shall ensure that the independent supervisory body exercises its powers impartially and transparently.

3. Member States shall notify the Commission of the name and address of the independent supervisory body, its assigned tasks and responsibilities, and of the measures taken to ensure compliance with paragraph 2.

4. Member States may establish a funding mechanism for the independent supervisory body, which may include levying a charge on airport users and airport managing bodies.

5. Without prejudice to Article 5(5), Member States shall ensure that for the independent supervisory body in respect of disagreements referred to in Article 5(3), the necessary measures relating to the system or the level of airport charges, including relating to quality of service, shall be taken to:

(a) establish a procedure for resolving disagreements between the airport managing body and the airport users;

(b) determine the conditions under which a disagreement may be brought to the independent supervisory body. The body may, in particular, dismiss complaints that are not properly justified or adequately documented;

(c) determine the criteria against which disagreements will be assessed for resolution.

These procedures, conditions and criteria shall be non-discriminatory, transparent and objective.

6. When undertaking an investigation into the justification for the modification of the system or the level of airport charges as set out in Article 5, the independent supervisory body shall have access to necessary information from the parties concerned and shall be required to consult the parties concerned in order to reach its decision. It shall issue a decision as soon as possible, and in any case within six months from receipt of the complaint. The decisions of the independent supervisory body shall have binding effect, without prejudice to parliamentary or judicial review, as applicable in the Member States.

7. The independent supervisory body shall publish an annual report concerning its activities.

Article 11

Report and revision

1. The Commission shall submit to the European Parliament and the Council, by … (*), a report on the application of this Directive assessing progress made in attaining its objective as well as, where appropriate, any suitable proposal.

2. Member States and the Commission shall cooperate in the application of this Directive, particularly as regards the collection of information for the report referred to in paragraph 1.

Article 12

Transposition

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

When Member States adopt those 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 13

Entry into force

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

Article 14

Addresses

This Directive is addressed to the Member States.

Done at …

For the European Parliament	*For the Council*
The President	*The President*
…	…

(*) Four years from the date of entry into force of this Directive.

(**) 36 months from the date of entry into force of this Directive.

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 29 January 2007, the Commission transmitted to the Council the above mentioned proposal. The proposal is based on Article 80(2) of the EC Treaty.

2. On 29-30 November 2007, the TTE Council reached a general approach on the proposal.

3. On 15 January 2008, the European Parliament (rapporteur Mr Ulrich Stockmann (PSE-DE)) voted on the proposal at first reading. The EP opinion consists of 45 amendments.

4. On 7 April 2008, the TTE Council reached a political agreement on the proposal, accepting a number of the EP's 45 first-reading amendments (doc. 8017/08). The resultant Common Position is scheduled to be adopted by the Council on 23 June 2008.

II. OBJECTIVE

The objective of the proposed Directive is to set common principles for the levying of airport charges at Community airports. It aims to clarify the relationship between airport operators and airport users by requiring transparency, user consultation and the application of the principle of non-discrimination when calculating charges levied on users. Moreover, it aims to create strong, independent authorities in the Member States to arbitrate and settle disputes in order to achieve their speedy resolution.

III. ANALYSIS OF THE COMMON POSITION

1. *General*

At its Plenary on 15 January 2008, the European Parliament (EP) adopted 45 amendments to the Commission proposal. The Council Common Position reflects changes to the Commission proposal (see below under 2(a)) by incorporating a considerable number of amendments,

— either verbatim (EP amendments 8, 10, 11, 45), or

— in spirit, by means of similar wording (EP amendments 1, 2, 3, 15, 23, 28, 29).

However, a substantial number of amendments are not reflected in the Common Position, because the Council considered that either

1. they were redundant, as they were already covered by other instruments adopted after the EP adopted its opinion; or

2. they were taken into account elsewhere in the text because the Commission's initial proposal had been redrafted in the Common Position.

2. *Specific issues*

(a) **Main modifications to Commission proposal**

Taking as a basis the Commission's proposal, the Council introduced several modifications, which could be summarised as follows:

— *Scope of the proposed Directive,* Article 1

The Commission initially proposed to include all airports with an annual traffic of more than 1 million passengers. The Council agreed to increase this threshold to 5 million and to add the largest airport in each Member State. This scope is, moreover, in line with the EP opinion.

— *Modulation of charges for environmental and other purposes of public interest,* Article 3

The Council agreed on the inclusion of this possibility in the Article on non-discrimination. This addition reflects the wish of Member States to have the possibility to promote the use of more environmentally-friendly aircraft through modulation of airport charges, as well as for other purposes.

— *Cost-relatedness,* Recital 8

This recital reflects a balanced compromise between the wish of Member States that airport charges are strictly related to the level of the cost of providing airport services (in line with ICAO policy recommendations on airport charges) and an appropriate degree of flexibility for other Member States, including those considering that this could have implications for the functioning of airport networks as some Member States need flexibility to use the commercial revenues within the airport network.

— *Airport network and airport system,* Article 2(5) and 4

The Council agreed that it was necessary to introduce in the text of the draft Directive a definition of airport networks. Moreover, it considered appropriate to include a text ensuring that airports serving the same city or conurbation can share a common charging system.

— *Economic oversight measures,* Article 5(5)

The Council considered appropriate the addition of a provision on economic oversight measures, under which Member States, which use economic oversight systems, are not obliged to apply the Directive's prescribed dispute settlements procedure. This is on the grounds that economic oversight offers a degree of protection comparable to that set out in the Directive.

— *Deadline for transposition of the Directive,* Article 12

The Council extended the period required for the transposition of the Directive into national law to 36 months in order to allow all Members States sufficient time to take the necessary measures for its implementation.

(b) **Amendments of the European Parliament**

The Council moreover considered a number of amendments, even though it did not include them in its Common Position. These issues could be summarised as follows:

— *Security charges*

Relevant amendments 4, 13, 37-41

The Common Position did not include the amendments on security financing considering that the EP's concerns on this matter are already addressed by the entry into force of the new Regulation on civil aviation security (Regulation (EC) No 300/2008). These concerns will be also addressed in a future Commission policy initiative.

— *Pre-financing*

Relevant amendments 31, 32

The Common Position acknowledges the importance of new infrastructure projects and ensures the possibility of the financing thereof, while protecting the interests of airport users. This principle of pre-financing is already mentioned in ICAO texts, but the Council considered it more appropriate not to include this in its Common Position due to differing approaches in Member States and the need to maintain flexibility. The Commission has not accepted these amendments.

— *Single or dual till system*

Relevant amendments 6, 22

The Council considered necessary to foresee the establishment of a common framework regulating the essential features of airport charges and the way they are set, but also considered that Member States should be free to allow single or dual till or a combination of the two systems and not be obliged to adopt legislation making compulsory one of these systems or to give airports the right to choose which till they adopt. For these reasons, the Common Position did not include any express provision on this issue.

— *Coverage of all airports in a network*

Relevant amendments 9, 14

The Common Position did not accept these amendments for reasons of coherence with the whole approach on networks, namely non-discrimination of networks between Member States, elimination of unnecessary bureaucracy at small airports and lack of practical need, since the Council considers that the risk of cross-subsidisation is unfounded.

— *Other amendments*

The Common Position did not include a number of amendments for three reasons:

— The Council considered that they were not coherent with the philosophy and the approach followed by the draft Directive.

— The Council considered that their drafting was not sufficiently clear and could entail legal uncertainty, as they could be interpreted in more than one way.

— The Council considered that they would be impractical to implement by Member States, in particular concerning amendments setting deadlines, which Member States consider either too short or too long.

The amendments in question are the following:

— principles of competition and state aid (part of 7, 16, 24, 25, 26),

— non-discrimination (34, 35, 36),

— conditions for the intervention of the independent supervisory body and delegation of authority (19, 21, 42, 43),

— level of service and service quality (5, 27, 33),

— reference to factors determining level of charges (12),

— consultations (17),

— timing for presentation of changes to charging system (18),

— admissibility of complaints (20),

— transparency (30),

— deadline for decision of independent supervisory body (44).

IV. **CONCLUSION**

The Council holds that the Common Position is balanced and respects the aims and objectives behind the Commission's proposal. It also takes into account the results of the European Parliament's first reading.

The Council notes the informal negotiations that have already taken place between the Council and the European Parliament and trusts that the compromise texts identified will allow for quick adoption of the Directive in the near future.

COMMON POSITION (EC) No 23/2008

adopted by the Council of 15 September 2008

with a view to the adoption of Directive 2008/…/EC of the European Parliament and of the Council of … amending Directive 2003/88/EC concerning certain aspects of the organisation of working time

(2008/C 254 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 137(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee [1],

Having regard to the opinion of the Committee of the Regions [2],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [3],

Whereas:

(1) Article 137 of the Treaty provides that the Community is to support and complement the activities of the Member States with a view to improving the working environment to protect workers' health and safety. Directives adopted on the basis of the aforementioned Article are to avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

(2) Directive 2003/88/EC of the European Parliament and of the Council [4] establishes minimum requirements concerning the organisation of working time, *inter alia*, in respect of daily and weekly rest periods, breaks, maximum weekly working time, annual leave and certain aspects of night work, shift work and patterns of work.

(3) The third paragraph of Article 19 and the second subparagraph of Article 22(1) of Directive 2003/88/EC provide for a review before 23 November 2003.

(4) More than ten years after the adoption of Council Directive 93/104/EC [5], the initial Directive concerning the organisation of working time, it has become necessary to take into consideration new developments and demands from both employers and workers and provide the resources to meet the growth and employment objectives laid down by the European Council of 22 and 23 March 2005 in the context of the Lisbon strategy.

(5) The reconciliation of work and family life is also an essential element for achieving the objectives set by the European Union in the Lisbon strategy, particularly for increasing the rate of employment amongst women. The aim is not only to create a more satisfactory working environment, but also to respond better to workers' demands, in particular those with family responsibilities. A number of amendments contained in this Directive are intended to permit greater compatibility between work and family life.

(6) In this context, the Member States should encourage the social partners to conclude agreements at the appropriate level for improving the reconciliation of work and family life.

(7) There is a need to strengthen the protection of workers' health and safety and for greater flexibility in organising working time, particularly with regard to on-call time and, more specifically, inactive periods during on-call time, and also to strike a new balance between reconciling work and family life on the one hand and more flexible organisation of working time on the other.

(8) Workers should be afforded periods of compensatory rest in circumstances where rest periods are not granted. The determination of the length of the reasonable period within which equivalent compensatory rest is granted to workers should be left to the Member States, taking into account the need to ensure the safety and health of the workers concerned and the principle of proportionality.

(9) The provisions on the reference period for maximum weekly working time must also be re-examined, with the objective of adapting them to the needs of employers and employees, subject to safeguards for the protection of workers' health and safety.

(10) Whenever the duration of the employment contract is less than one year, the reference period should not be longer than the duration of the employment contract.

(11) The experience gained in the application of Article 22(1) of Directive 2003/88/EC shows that the purely individual decision not to be bound by Article 6 thereof can be problematic with regard to the protection of workers' health and safety and the freedom of choice of the worker.

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[1] OJ C 267, 27.10.2005, p. 16.
[2] OJ C 231, 20.9.2005, p. 69.
[3] Opinion of the European Parliament of 11 May 2005 (OJ C 92 E, 20.4.2006, p. 292), Council Common Position of 15 September 2008 and Council Decision of … (not yet published in the Official Journal).
[4] OJ L 299, 18.11.2003, p. 9.
[5] OJ L 307, 13.12.1993, p. 1. Directive repealed by Directive 2003/88/EC.

(12) The option provided for in Article 22(1) is a derogation from the principle of a 48-hour maximum working week, calculated as an average over a reference period. It is subject to the effective protection of workers' health and safety, and to the express, free and informed consent of the worker concerned. Its use must be subject to appropriate safeguards to ensure that these conditions are complied with, and to close monitoring.

(13) Before applying the option provided in Article 22(1), consideration should be given to whether the longest reference period or other flexibility provisions provided by Directive 2003/88/EC do not guarantee the flexibility needed.

(14) In order to avoid risks to the health and safety of workers, the cumulative use in a Member State of both the flexible reference period provided by point (b) of the first paragraph of Article 19 and the option under Article 22(1) is not possible.

(15) In accordance with Article 138(2) of the Treaty, the Commission consulted management and labour at Community level on the possible direction of Community action in this field.

(16) Following this consultation, the Commission considered that Community action was advisable and further consulted management and labour on the content of the envisaged proposal, in accordance with Article 138(3) of the Treaty.

(17) Following this second phase of consultation, management and labour at Community level did not inform the Commission of their wish to initiate the process which could lead to the conclusion of an agreement provided for in Article 139 of the Treaty.

(18) Since the objective of this Directive, namely modernising Community legislation concerning the organisation of working time, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(19) This Directive respects the fundamental rights and complies with the principles recognised by the Charter of Fundamental Rights of the European Union ([1]). In particular, it is designed to ensure full respect for the right to fair and just working conditions referred to in Article 31 of the Charter, and in particular paragraph 2 thereof, which provides that 'every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave'.

([1]) OJ C 303, 14.12.2007, p. 1.

(20) The implementation of this Directive should maintain the general level of protection afforded to workers as regards health and safety at work,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2003/88/EC is hereby amended as follows:

1) In Article 2 the following points shall be inserted:

'1a. "on-call time" means any period during which the worker has the obligation to be available at the workplace in order to intervene, at the employer's request, to carry out his activity or duties;

1b. "workplace" means the place or places where the worker normally carries out his activities or duties and which is determined in accordance with the terms of the employment relationship or contract applicable to the worker;

1c. "inactive part of on-call time" means any period during which the on-call worker is on call within the meaning of point 1a but is not required by his employer to actually carry out his activity or duties;'.

2) The following Articles shall be inserted:

'*Article 2a*

On-call time

The inactive part of on-call time shall not be regarded as working time unless national law or, in accordance with national law and/or practice, a collective agreement or an agreement between the social partners provides otherwise.

The inactive part of on-call time may be calculated on the basis of an average number of hours or a proportion of on-call time, taking account of experience in the sector concerned, by collective agreement or agreement between the social partners or by national legislation following consultation of the social partners.

The inactive part of on-call time shall not be taken into account in calculating the daily or weekly rest periods laid down in Articles 3 and 5 respectively, unless otherwise provided for:

(a) in a collective agreement or an agreement between the social partners;

or

(b) by means of national legislation following consultation of the social partners.

The period during which the worker actually carries out his activity or duties during on-call time shall always be regarded as working time.

Article 2b

Reconciliation of work and family life

The Member States shall encourage the social partners at the appropriate level, without prejudice to their autonomy, to conclude agreements aimed at improving the reconciliation of work and family life.

The Member States shall ensure, without prejudice to Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (*) and in consultation with the social partners, that employers inform workers in due time of any substantial changes in the pattern or organisation of their working time.

Taking into account workers' needs for flexibility in their working hours and patterns, the Member States shall, in accordance with national practices, also encourage employers to examine requests for changes to such working hours and patterns, subject to business needs, and to both employers' and workers' needs for flexibility.

(*) OJ L 80, 23.3.2002, p. 29.'.

3) Article 17 shall be amended as follows:

(a) in paragraph 1, the words 'Articles 3 to 6, 8 and 16' shall be replaced by 'Articles 3 to 6, Article 8 and Article 16(a) and (c)';

(b) in paragraph 2, the words 'provided that the workers concerned are afforded equivalent periods of compensatory rest' shall be replaced by 'provided that the workers concerned are afforded equivalent periods of compensatory rest within a reasonable period, to be determined by national legislation or a collective agreement or an agreement concluded between the social partners';

(c) in paragraph 3, in the introductory sentence, the words 'Articles 3, 4, 5, 8 and 16' shall be replaced by 'Articles 3, 4, 5, 8 and Article 16(a) and (c)';

(d) paragraph 5 shall be amended as follows:

(i) the first subparagraph shall be replaced by the following:

'5. In accordance with paragraph 2 of this Article, derogations may be made from Article 6 in the case of doctors in training, in accordance with the provisions set out in the second to the sixth subparagraphs of this paragraph.';

(ii) the last subparagraph shall be deleted.

4) In Article 18, in the third paragraph, the words 'on condition that equivalent compensating rest periods are granted to the workers concerned' shall be replaced by 'on condition that equivalent compensating rest periods are granted to the workers concerned within a reasonable period, to be determined by national legislation or a collective agreement or an agreement concluded between the social partners'.

5) Article 19 shall be replaced by the following:

'Article 19

Limitations to derogations from reference periods

Without prejudice to Article 22a(b) and by way of derogation from Article 16(b), Member States shall have the option, subject to compliance with the general principles relating to the protection of the safety and health of workers, of allowing, for objective or technical reasons, or reasons concerning the organisation of work, the reference period to be set at a period not exceeding twelve months:

(a) by collective agreement or agreement between the social partners, as laid down in Article 18;

or

(b) by legislative or regulatory provision following consultation of the social partners at the appropriate level.

In making use of the option pursuant to point (b) of the first paragraph, Member States shall ensure that employers respect their obligations as laid down in Section II of Directive 89/391/EEC.'.

6) Article 22 shall be replaced by the following:

'Article 22

Miscellaneous provisions

1. Although the general principle is that the maximum weekly working time in the European Union is 48 hours and that in practice it is an exception for workers in the Union to work longer, Member States may decide not to apply Article 6 provided that they take the necessary measures to ensure the effective protection of the safety and health of workers. Implementation of this option, however, shall be expressly laid down by a collective agreement or an agreement between the social partners at the appropriate level or by national law following consultation of the social partners at the appropriate level.

2. In any event, Member States wishing to make use of this option shall take the necessary measures to ensure that:

(a) no employer requires a worker to work more than 48 hours over a seven-day period, calculated as an average for the reference period referred to in Article 16(b), unless he has first obtained the worker's agreement to perform such work. This agreement shall be valid for a period not exceeding one year and shall be renewable;

(b) no worker shall be subjected to any detriment by his employer because he is not willing to give his agreement to perform such work or because he has withdrawn his agreement for any reason;

(c) an agreement given at:

(i) the time of the signature of the individual employment contract; or

(ii) during the first four weeks of the employment relationship

shall be null and void;

(d) no worker who has given an agreement under this Article shall, over a period of seven days, work more than:

(i) 60 hours, calculated as an average over a period of three months, unless otherwise provided for in a collective agreement or an agreement between the social partners; or

(ii) 65 hours, calculated as an average over a period of three months, in the absence of a collective agreement and when the inactive part of on-call time is regarded as working time in accordance with Article 2a;

(e) every worker shall be entitled to withdraw, with immediate effect, his agreement to perform such work during the first six months after signature of a valid agreement or during and up to three months after the probation period specified in his contract is completed, whichever is longer, by informing his employer in due time in writing that he is doing so. Thereafter, the employer may require the worker to give, in writing, advance notice thereof, which shall not exceed two months in duration;

(f) the employer keeps up-to-date records of all workers who carry out such work and adequate records for establishing that the provisions of this Directive are complied with;

(g) the records are placed at the disposal of the competent authorities, which may, for reasons connected with the safety and/or health of workers, prohibit or restrict the possibility of exceeding the maximum weekly working time;

(h) the employer provides the competent authorities at their request with information on cases in which agreement has been given by workers to work for more than 48 hours over a period of seven days, calculated as an average for the reference period referred to in Article 16(b), and adequate records for establishing that the provisions of this Directive are complied with.

3. Subject to compliance with the general principles relating to the protection of the safety and health of workers, where a worker is employed by the same employer for a period or periods that do not exceed ten weeks in total over a period of twelve months, the provisions of paragraph 2(c)(ii) and (d) shall not apply.'.

7) The following Article shall be inserted:

'*Article 22a*

Special provisions

When a Member State makes use of the option provided for by Article 22:

(a) the option set out under point (b) of the first paragraph of Article 19 shall not apply;

(b) that Member State may, by way of derogation from Article 16(b) and for objective or technical reasons or reasons concerning the organisation of work, allow, by means of laws, regulations or administrative provisions, the reference period to be set at a period not exceeding six months.

Such a reference period shall be subject to compliance with the general principles relating to the protection of the health and safety of workers, and shall not affect the three-month reference period applicable under Article 22(2)(d) to workers who have entered into a valid subsisting agreement under Article 22(2)(a).'.

8) Article 24 shall be replaced by the following:

'*Article 24*

Reports

1. Member States shall communicate to the Commission the texts of the provisions of national law already adopted or being adopted in the field governed by this Directive.

2. Member States shall report to the Commission every five years on the practical implementation of this Directive, indicating the viewpoints of the two sides of industry.

The Commission shall inform the European Parliament, the Council, the European Economic and Social Committee and the Advisory Committee on Safety and Health at Work thereof.

3. Every five years from 23 November 1996 the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Directive taking into account paragraphs 1 and 2.'.

9) The following Article shall be inserted:

'*Article 24a*

Evaluation report

1. By … (*):

(a) Member States which make use of the option under Article 22(1) shall inform the Commission of the reasons, the sector(s), activities and numbers of workers concerned, after consulting the social partners at national level. The report by each Member State shall give information on its effects on workers' health and safety as well as indicating the viewpoints of the social partners at appropriate level, and shall also be submitted to the social partners at national level;

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

(b) Member States which make use of the option under point (b) of the first paragraph of Article 19 shall inform the Commission of the manner in which they have implemented this provision, and of its effects on workers' health and safety.

2. By … (*), the Commission shall, after consulting the social partners at Community level, submit to the European Parliament, the Council and the European Economic and Social Committee a report on:

(a) the use of the option under Article 22(1) and the reasons for that use, and

(b) other factors which may contribute to long working hours, such as the use of point (b) of the first paragraph of Article 19.

The report may be accompanied by appropriate proposals to reduce excessive working hours, including the use of the option under Article 22(1), taking into account its impact on the health and safety of the workers covered by this option.

3. The Council shall, on the basis of the report referred to in paragraph 2, evaluate the use of the options provided by this Directive and namely those laid down in point (b) of the first paragraph of Article 19 and Article 22(1).

Taking into account this evaluation, the Commission may, by … (**), if appropriate, submit a proposal to the European Parliament and the Council to amend this Directive, including the option laid down in Article 22(1).'.

Article 2

Member States shall lay down rules on penalties applicable in the event of infringements of national provisions implementing this Directive and shall take all necessary measures to ensure that they are applied. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify these provisions to the Commission by … (***). Member States shall notify to the Commission any subsequent amendments to those provisions in good time. They shall, in particular, ensure that workers and/or their representatives have adequate means of enforcing the obligations under this Directive.

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by … (***), or shall ensure that the social partners introduce the necessary provisions by way of an agreement, whereby the Member States must make all the necessary arrangements to enable them to guarantee at any time that the objectives of this Directive are being attained. 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.

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

Article 4

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

Article 5

This Directive is addressed to the Member States.

Done at …

For the European Parliament	*For the Council*
The President	*The President*
…	…

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

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

On 24 September 2004, the Commission submitted a proposal for a Directive of the European Parliament and of the Council amending Directive 2003/88/EC concerning certain aspects of the organisation of working time ([1]). The proposal is based on Article 137(2) of the Treaty.

Acting in accordance with Article 251 of the Treaty, the European Parliament delivered its Opinion on first reading on 11 May 2005 ([2]).

The Economic and Social Committee delivered its Opinion on 11 May 2005 ([3]) and the Committee of the Regions on 14 April 2005 ([4]).

The Commission presented its amended proposal ([5]) on 2 June 2005, in which it accepted 13 of the 25 amendments adopted by the European Parliament.

On 9 June 2008, the Council reached a political agreement by qualified majority on a Common Position, in parallel to a political agreement by qualified majority on a Common Position regarding the Directive on working conditions for temporary workers. Five of the delegations which could not accept the text of the political agreement on the Working Time Directive entered a joint declaration in the Council Minutes ([6]).

In accordance with Article 251(2) of the EC Treaty, the Council adopted its Common Position by qualified majority on 15 September 2008.

II. OBJECTIVES

The objectives of the proposal are two-fold:

— First, to review some of the provisions of Directive 2003/88/EC (which last amended Directive 93/104/EC) in accordance with Articles 19 and 22 of that Directive. These provisions concern the derogations to the reference period for the application of Article 6 (maximum weekly working time) and the possibility not to apply Article 6 if the worker gives his agreement to carry out such work (the 'opt-out provision').

— Second, to take into account the European Court of Justice's case law, in particular the rulings in the SIMAP ([7]) and Jaeger ([8]) cases which held that on-call duty performed by a doctor when he is required to be physically present in the hospital must be regarded as working time. This interpretation of certain provisions of the Directive by the European Court of Justice, following several requests for preliminary rulings under Article 234 of the Treaty, had a profound impact on the concept of 'working time' and, consequently, on essential provisions of the Directive.

In particular:

— With the aim of ensuring an appropriate balance between the protection of workers' health and safety, on the one hand, and the need for flexibility for employers, on the other hand, the proposal establishes general principles of protection for on call workers both during active and inactive periods of on call time. Within this framework, the proposal provides that the inactive part of on-call time is not working time within the meaning of the Directive, unless national legislation, collective agreements or agreements between the social partners decide otherwise.

— The proposal aims to give employers and Member States greater flexibility in the organisation of working time, under certain conditions, by making the extension of the reference period for the calculation of the maximum weekly working time possible up to one year, thus allowing companies to deal with more or less regular fluctuations in demand.

([1]) OJ C 322, 29.12.2004, p. 9.
([2]) OJ C 92, 20.4.2006, p. 292.
([3]) OJ C 267, 27.10.2005, p. 16.
([4]) OJ C 231, 20.9.2005, p. 69.
([5]) OJ C 146, 16.6.2005, p. 13.
([6]) Doc. 10583/08 ADD 1.
([7]) Judgement of the Court of 3 October 2000 in case C-303/98, Sindicato de Médicos de Asistencia Publica (SIMAP) v. Conselleria de Sanidad y Consumo de la Generalidad Valenciana, ECR 2000, p. I-07963.
([8]) Judgement of the Court of 9 October 2003 in case C-151/02, Reference for a preliminary ruling: Landesarbeitsgericht Schleswig-Holstein (Germany) in the proceedings pending before that court between Landeshauptstadt Kiel and Norbert Jaeger, not yet published.

— The proposal allows for better compatibility between work and family life, in particular by the changes proposed with regard to Article 22.

— As regards the individual opt-out from the 48-hour average weekly limit, the proposal strengthens social dialogue, by involving social partners in any decision by a Member State to allow use of the opt-out by individual workers. Under this new system, a decision by a Member State to allow use of the opt-out must be implemented either through a prior collective agreement or agreement between social partners at the appropriate level, or by national law following consultation of the social partners at the appropriate level. It remains the case that no employer can oblige a worker to work more than the 48-hour average weekly limit, so the individual worker must also agree to use the opt-out. Reinforced conditions will also apply at Community level, to prevent abuses and to ensure that a worker who is considering using the opt-out, can make an entirely free choice. Furthermore, the proposal introduces a general principle according to which the maximum duration of weekly working time should be limited.

III. ANALYSIS OF THE COMMON POSITION

1. *General observations*

a) Commission's amended proposal

The European Parliament adopted 25 amendments to the Commission proposal. 13 of these amendments were incorporated into the amended Commission proposal in whole, in part of after being reworded (amendments 1, 2, 3, 4, 8, 11, 12, 13, 16, 17, 18, 19 and 24). 12 other amendments were, however, not acceptable to the Commission (amendments 5, 6, 7, 9, 10, 14, 15, 20, 21, 22, 23 and 25).

b) Council's Common Position

The Council could accept 8 of the 13 amendments, as wholly or partially incorporated into the Commission's amended proposal, namely amendments Nos 1 and 2 (recital No 4 citing the conclusions of the Lisbon European Council), 3 (recital No 5 making reference to increasing the rate of employment amongst women), 4 (recital No 7: addition of a reference to compatibility between work and family life), 8 (recital No 14 citing Article 31(2) of the Charter of Fundamental Rights), 16 (Article 17(2) concerning compensatory rest time), 17 (Article 17(5) first indent, correction of an error) and 18 (Article 18(3) concerning compensatory rest time).

The Council also accepted, subject to redrafting, the principles underlying amendments:

— No 12 (Article 2b: addition of a provision concerning compatibility between work and family life).

— No 13 (deletion of Article 16b(2) concerning the 12-months reference period).

— No 19 (Article 19: reference period).

However, the Council did not deem it advisable to take up amendments:

— No 11 (aggregation of hours in cases involving several employment contracts), as taken into account in recital No 2 in the amended proposal, as recital No 3 of the current Directive provides that '*the provisions of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work remain fully applicable to the areas covered by this Directive without prejudice to more stringent and/or specific provisions contained therein*' and that its Article 1(4) also provides that the provisions of Directive 89/391/EEC are fully applicable to minimum periods of daily rest, weekly rest and annual leave, to breaks and maximum weekly working time as well as to certain aspects of night work, shift work and patterns of work.

— No 24 (provision concerning the validity of opt-out agreements signed prior to the entry into force of the Directive, Article 22 (1c)): the Council did not consider it necessary to incorporate this provision which has been taken on board in the Commission's amended proposal.

— No 25 (which provides that a copy of the Directive shall be sent to the governments and parliaments of the candidate countries).

The Council was also not in a position to accept amendments 5, 6, 7, 9, 10, 14, 15, 20, 21, 22 and 23 for the reasons mentioned by the Commission in its amended proposal.

The Commission has accepted the Common Position agreed by the Council.

2. ***Specific comments***

Provisions regarding on-call time

The Council agreed with the definitions of 'on-call time' and 'inactive part of on-call time' as suggested by the Commission in its original proposal and confirmed in its amended proposal.

The Council also agreed with the Commission on the need to add a definition of the term 'workplace' in Article 1(1)(1b) of the Common Position, in order to make the definition of 'on-call time' clearer.

With regard to the new Article 2a on on-call time, the Council concurred with the Commission on the principle that the inactive part of on-call time should not be regarded as working time unless national law or, in accordance with national law and/or practice, a collective agreement or an agreement between the social partners decides otherwise. The Council shares the Commission's view that the introduction of this new category should be of help in clarifying the relationship between working time and rest periods.

The Council also followed the Commission's approach with regard to the method of calculation of the inactive part of on-call time while providing that it may not only be established by collective agreement or agreement between the social partners but also by national legislation following consultation of the social partners.

The Council acknowledged as a general principle that the inactive part of on call time should not be taken into account in calculating the daily and weekly rest periods. However, the Council also considered appropriate to provide for the possibility of introducing some flexibility in the application of this provision through collective agreements, agreements between the social partners or by means of national legislation following consultation of the social partners.

Compensatory rest time

In relation to Articles 17(2) and 18(3) of the Directive, the Council can agree with amendments Nos 16 and 18 as reworded in the Commission's amended proposal.

The general principle is that workers should be afforded periods of compensatory rest in circumstances where normal rest periods cannot be taken. The determination of the length of the reasonable period within which equivalent compensatory rest is granted to workers should be left to the Member States, taking into account the need to ensure the safety and health of the workers concerned and the principle of proportionality.

Reconciliation of work and family life

The Council concurs with Parliament on the need to improve the reconciliation between work and family life. This concern appears quite clearly in recitals Nos 5, 6 and 7 as well as in Article 1(2), incorporating a new Article 2b, of the Common Position.

The Council agrees with amendments Nos 2 and 3 (concerning recitals Nos 4 and 5), as reworded in the Commission amended proposal.

With regard to the new Article 2b, the Council took on board the text of the first paragraph in the Commission's amended proposal which states that '*The Member States shall encourage the social partners at the appropriate level, without prejudice to their autonomy, to conclude agreements aimed at improving reconciliation of work and family life*'.

The two other paragraphs draw inspiration from amendment 12 and are based on the Commission's amended proposal. The second paragraph further introduces references to Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community, and to the consultation of the social partners. The third paragraph provides that Member States should encourage employers to examine workers' requests for changes to their working hours and patterns, subject to business needs and to both employers' and workers' needs for flexibility.

Reference period (Article 19)

The Council shares the European Parliament's views that the extension of the reference period should go hand in hand with an increased involvement of workers and their representatives and with any necessary preventive measures with regard to risks to workers' health and safety. It, however, considered that a reference to Section II of Directive 89/391/EEC ([1]), which lays down a number of provisions in this respect, would provide for appropriate guarantees in this regard.

Framework for the opt-out (Article 22)

The Council was unable to accept either amendment No 20, according to which Article 22 concerning the opt-out should be repealed 36 months after the entry into force of the Directive, or the Commission's amended proposal which provided for the possibility of extending this option after three years. While some delegations were in favour of the principle of putting an end to the use of the opt-out after a certain period, a majority of them were opposed to any such solution, without necessarily implying, however, that they would all make use of the opt-out at this stage.

In this context, after having examined different possible solutions, the Council eventually came to the conclusion that the only solution acceptable to a qualified majority of delegations would be to provide for the continuation of the opt-out, while introducing safeguards against abuse to the detriment of the worker.

In particular, Article 1(7) of the Common Position regarding Article 22a(a) of the Directive provides that the use of the opt-out cannot be combined with the option provided in Article 19(b). Furthermore, recital 13 states that, before implementing the opt-out, consideration should be given to whether the longest reference period or other flexibility provisions provided by the Directive do not guarantee the flexibility needed.

With regard to the conditions applicable to the opt-out, the Common Position provides that:

— the working week in the EU should remain at a maximum 48 h, in accordance with Article 6 of the current Directive, unless a Member State provides for an opt-out either through collective agreements, or agreements between the social partners at the appropriate level, or through national law following consultation of the social partners at the appropriate level, and the individual worker decides to use the opt-out. The decision therefore remains with the individual worker and he cannot be forced to work beyond the 48-hour limit;

— the use of this option is, moreover, subject to strict conditions which aim at protecting the worker's free consent, at introducing a legal limit to the number of hours worked per week in the context of the opt-out and at providing for specific obligations on employers to inform the competent authorities at their request.

With regard to the protection of the worker's free consent, the Common Position stipulates that the opt-out is only valid if the worker has given his agreement prior to performing such work and for a period not exceeding one year, renewable. The employer cannot, in any case, victimise a worker because he is not willing to give his agreement to perform such work or because he withdraws his agreement for any reason. Moreover, except in the case of short term contracts (see below), an opt-out can only be signed after the first four weeks of work and a worker cannot be asked to sign an opt-out upon signature of his contract. Finally, the worker is entitled within specific deadlines to withdraw his agreement to work under the opt-out.

The Common Position introduces legal limits to the number of hours allowed to be worked per week in the framework of the opt-out, which are not provided for under the current Directive. 60 hours per week, calculated as an average over a period of 3 months, would normally be the limit, unless otherwise provided for in a collective agreement or an agreement between the social partners. This limit could be increased to 65 hours, calculated as an average over a period of 3 months, in the absence of a collective agreement and when the inactive part of on-call time is regarded as working time.

([1]) OJ L 183, 29.6.1989, p. 1.

Finally, the Common Provision stipulates that employers must keep a record of the working hours of employees working in the framework of the opt-out. The records are placed at the disposal of the competent authorities which may, for reasons connected with the safety and/or health of workers, prohibit or restrict the possibility of exceeding the maximum weekly working hours. Moreover, the employer may be requested by the competent authorities to provide information on cases in which agreement has been given by workers to perform work exceeding 48 hours over a period of seven days, calculated as an average for the reference period referred to in Article 16(b).

The Common Position provides for specific conditions in the case of short-term contracts (where a worker is employed by the same employer for a period, or periods, that do not exceed 10 weeks in total over a period of 12 months): the agreement to use the opt-out can then be given during the first four weeks of an employment relationship and the legal limits to the number of hours allowed to be worked per week in the framework of the opt-out would not apply. However, a worker may not be asked to give his agreement to work in the framework of the opt-out at the time of signature of his employment contract.

The Common Position further provides that, when making use of the opt-out, a Member State may allow by means of laws, regulations or administrative provisions, for objective or technical reasons, or reasons concerning the organisation of work, the reference period to be set at a period not exceeding six months. This reference period should not, however, affect the three-month reference period applicable for the calculation of the 60 or 65 hours maximum weekly limit.

Monitoring, evaluation and review provisions

Article 1(9) of the Common Position regarding a new Article 24a of the Directive provides for detailed reporting requirements regarding the use of the opt-out and other factors which may contribute to long working hours, such as the use of Article 19(b) (12-months reference period). These requirements are intended to allow for close monitoring by the Commission.

More specifically, the Common Position provides that the Commission:

— will, no later than four years after the entry into force of the Directive, submit a report accompanied, if necessary, by appropriate proposals to reduce excessive working hours, including the use of the opt-out, taking into account its impact on the health and safety of the workers covered by this option. This report will be evaluated by the Council;

— may, taking this evaluation into account, and no later than five years after the entry into force of the Directive, submit a proposal to the Council and the European Parliament to revise the Directive, including the opt-out option.

IV. **CONCLUSION**

Bearing in mind the very tangible progress achieved in parallel with respect to the temporary agency workers Directive, the Council considers that its Common Position on the Working Time Directive represents a balanced and realistic solution to the issues covered by the Commission's proposal, given the wide differences in the Member States' labour market situations and in their views on the necessary conditions for accommodating such situations. It looks forward to a constructive discussion with the European Parliament with a view to reaching final agreement on this important Directive.

COMMON POSITION (EC) No 24/2008

adopted by the Council on 15 September 2008

with a view to the adoption of Directive 2008/…/EC of the European Parliament and of the Council of … on temporary agency work

(2008/C 254 E/04)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 137(2) thereof,

Having regard to the proposal from the Commission,

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

After consulting the Committee of the Regions,

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

Whereas:

(1) This Directive respects the fundamental rights and complies with the principles recognised by the Charter of Fundamental Rights of the European Union ([3]). In particular, it is designed to ensure full compliance with Article 31 of the Charter, which provides that every worker has the right to working conditions which respect his or her health, safety and dignity, and to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

(2) The Community Charter of the Fundamental Social Rights of Workers provides in point 7 thereof, inter alia, that the completion of the internal market must lead to an improvement in the living and working conditions of workers in the European Community; this process will be achieved by harmonising progress on these conditions, mainly in respect of forms of work such as fixed-term contract work, part-time work, temporary agency work and seasonal work.

(3) On 27 September 1995 the Commission consulted management and labour at Community level in accordance with Article 138(2) of the Treaty on the course of action to be adopted at Community level with regard to flexibility of working hours and job security of workers.

(4) After that consultation, the Commission considered that Community action was advisable and on 9 April 1996 further consulted management and labour in accordance with Article 138(3) of the Treaty on the content of the envisaged proposal.

(5) In the introduction to the framework agreement on fixed-term work concluded on 18 March 1999, the signatories indicated their intention to consider the need for a similar agreement on temporary agency work and decided not to include temporary agency workers in the Directive on fixed-term work.

(6) The general cross-sector organisations, namely the Union of Industrial and Employers' Confederations of Europe (UNICE) ([4]), the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP) and the European Trade Union Confederation (ETUC), informed the Commission in a joint letter of 29 May 2000 of their wish to initiate the process provided for in Article 139 of the Treaty. By a further joint letter of 28 February 2001 they asked the Commission to extend the deadline referred to in Article 138(4) by one month. The Commission granted this request and extended the negotiation deadline until 15 March 2001.

(7) On 21 May 2001, the social partners acknowledged that their negotiations on temporary agency work had not produced any agreement.

(8) In March 2005, the European Council considered it vital to relaunch the Lisbon Strategy and to refocus its priorities on growth and employment. The Council approved the Integrated Guidelines for Growth and Jobs 2005-2008, which seek, inter alia, to promote flexibility combined with employment security and to reduce labour market segmentation, having due regard to the role of the social partners.

(9) In accordance with the Communication from the Commission on the Social Agenda covering the period up to 2010, which was welcomed by the March 2005 European Council as a contribution towards achieving the Lisbon Strategy objectives by reinforcing the European social model, the European Council considered that new forms of work organisation and a greater diversity of contractual arrangements for workers and businesses, better combining flexibility with security, would contribute to adaptability. Furthermore, the December 2007 European Council endorsed the agreed common principles of flexicurity which strike a balance between flexibility and security in the labour market and help both workers and employers to seize the opportunities offered by globalisation.

([1]) OJ C 61, 14.3.2003, p. 124.
([2]) Opinion of the European Parliament of 21 November 2002 (OJ C 25 E, 29.1.2004, p. 368), Council Common Position of 15 September 2008 and Council Decision of … (not yet published in the Official Journal).
([3]) OJ C 303, 14.12.2007, p. 1.
([4]) UNICE changed its name to BUSINESSEUROPE in January 2007.

(10) There are considerable differences in the use of temporary agency work and in the legal situation, status and working conditions of temporary agency workers within the European Union.

(11) Temporary agency work meets not only undertakings' needs for flexibility but also the need of employees to reconcile their working and private lives. It thus contributes to job creation and to participation and integration in the labour market.

(12) This Directive establishes a protective framework for temporary agency workers which is non-discriminatory, transparent and proportionate, while respecting the diversity of labour markets and industrial relations.

(13) Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship [1] establishes the safety and health provisions applicable to temporary agency workers.

(14) The basic working and employment conditions applicable to temporary agency workers should be at least those which would apply to such workers if they were recruited by the user undertaking to occupy the same job.

(15) Employment contracts of an indefinite duration are the general form of employment relationship. In the case of workers who have a permanent contract with their temporary-work agency, and in view of the special protection such a contract offers, provision should be made to permit exemptions from the rules applicable in the user undertaking.

(16) In order to cope in a flexible way with the diversity of labour markets and industrial relations, Member States may allow the social partners to define working and employment conditions, provided that the overall level of protection for temporary agency workers is respected.

(17) Furthermore, in certain limited circumstances, Member States should, on the basis of an agreement concluded by the social partners at national level, be able to derogate within limits from the principle of equal treatment, so long as an adequate level of protection is provided.

(18) The improvement in the minimum protection for temporary agency workers should be accompanied by a review of any restrictions or prohibitions which may have been imposed on temporary agency work. These may be justified only on grounds of the general interest regarding, in particular the protection of workers, the requirements of safety and health at work and the need to ensure that the labour market functions properly and that abuses are prevented.

(19) This Directive does not affect the autonomy of the social partners nor should it affect relations between the social partners, including the right to negotiate and conclude collective agreements in accordance with national law and practices while respecting prevailing Community law.

(20) The provisions of this Directive on restrictions or prohibitions on temporary agency work are without prejudice to national legislation or practices that prohibit workers on strike being replaced by temporary agency workers.

(21) Member States should provide for administrative or judicial procedures to safeguard temporary agency workers' rights and should provide for effective, dissuasive and proportionate penalties for breaches of the obligations laid down in this Directive.

(22) This Directive should be implemented in compliance with the provisions of the Treaty regarding the freedom to provide services and the freedom of establishment and without prejudice to Directive 96/71/EC of the European Parliament and the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services [2].

(23) Since the objective of this Directive, namely to establish a harmonised Community-level framework for protection for temporary agency workers, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level by introducing minimum requirements applicable throughout the Community, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

General provisions

Article 1

Scope

1. This Directive applies to workers with a contract of employment or employment relationship with a temporary-work agency who are assigned to user undertakings to work temporarily under their supervision and direction.

2. This Directive applies to public and private undertakings which are temporary-work agencies or user undertakings engaged in economic activities whether or not they are operating for gain.

[1] OJ L 206, 29.7.1991, p. 19.

[2] OJ L 18, 21.1.1997, p. 1.

3. Member States may, after consulting the social partners, provide that this Directive does not apply to employment contracts or relationships concluded under a specific public or publicly supported vocational training, integration or retraining programme.

Article 2

Aim

The purpose of this Directive is to ensure the protection of temporary agency workers and to improve the quality of temporary agency work by ensuring that the principle of equal treatment, as set out in Article 5, is applied to temporary agency workers, and by recognising temporary-work agencies as employers, while taking into account the need to establish a suitable framework for the use of temporary agency work with a view to contributing effectively to the creation of jobs and to the development of flexible forms of working.

Article 3

Definitions

1. For the purposes of this Directive:

(a) 'worker' means any person who, in the Member State concerned, is protected as a worker under national employment law;

(b) 'temporary-work agency' means any natural or legal person who, in compliance with national law, concludes contracts of employment or employment relationships with temporary agency workers in order to assign them to user undertakings to work there temporarily under their supervision and direction;

(c) 'temporary agency worker' means a worker with a contract of employment or an employment relationship with a temporary-work agency with a view to being assigned to a user undertaking to work temporarily under its supervision and direction;

(d) 'user undertaking' means any natural or legal person for whom and under the supervision and direction of whom a temporary agency worker works temporarily;

(e) 'assignment' means the period during which the temporary agency worker is placed at the user undertaking to work temporarily under its supervision and direction;

(f) 'basic working and employment conditions' means working and employment conditions laid down by legislation, regulations, administrative provisions, collective agreements and/or other binding general provisions in force in the user undertaking relating to:

(i) the duration of working time, overtime, breaks, rest periods, night work, holidays and public holidays;

(ii) pay.

2. This Directive shall be without prejudice to national law as regards the definition of pay, contract of employment or employment relationship, or worker.

Member States shall not exclude from the scope of this Directive workers, contracts of employment or employment relationships solely because they relate to part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary-work agency.

Article 4

Review of restrictions or prohibitions

1. Prohibitions or restrictions on the use of temporary agency work shall be justified only on grounds of general interest relating in particular to the protection of temporary agency workers, the requirements of health and safety at work or the need to ensure that the labour market functions properly and abuses are prevented.

2. By … (*), Member States shall, after consulting the social partners in accordance with national legislation, collective agreements and practices, review any restrictions or prohibitions on the use of temporary agency work in order to verify whether they are justified on the grounds mentioned in paragraph 1.

3. If such restrictions or prohibitions are laid down by collective agreements, the review referred to in paragraph 2 may be carried out by the social partners who have negotiated the relevant agreement.

4. Paragraphs 1, 2 and 3 shall be without prejudice to national requirements with regard to registration, licensing, certification, financial guarantees or monitoring of temporary-work agencies.

5. The Member States shall inform the Commission of the results of the review referred to in paragraphs 2 and 3 by … (*).

CHAPTER II

Employment and working conditions

Article 5

The principle of equal treatment

1. The basic working and employment conditions of temporary agency workers shall be, for the duration of their assignment at a user undertaking, at least those that would apply if they had been recruited directly by that undertaking to occupy the same job.

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

For the purposes of the application of the first subparagraph, the rules in force in the user undertaking on:

(a) protection of pregnant women and nursing mothers and protection of children and young people; and

(b) equal treatment for men and women and any action to combat any discrimination based on sex, race or ethnic origin, religion, beliefs, disabilities, age or sexual orientation;

must be complied with as established by legislation, regulations, administrative provisions, collective agreements and/or any other general provisions.

2. As regards pay, Member States may, after consulting the social partners, provide that an exemption be made to the principle established in paragraph 1 where temporary agency workers who have a permanent contract of employment with a temporary-work agency continue to be paid in the time between assignments.

3. Member States may, after consulting the social partners, give them, at the appropriate level and subject to the conditions laid down by the Member States, the option of upholding or concluding collective agreements which, while respecting the overall protection of temporary agency workers, may establish arrangements concerning the working and employment conditions of temporary agency workers which may differ from those referred to in paragraph 1.

4. Provided that an adequate level of protection is provided for temporary agency workers, Member States in which there is either no system in law for declaring collective agreements universally applicable or no such system in law or practice for extending their provisions to all similar undertakings in a certain sector or geographical area, may, after consulting the social partners at national level and on the basis of an agreement concluded by them, establish arrangements concerning the basic working and employment conditions which derogate from the principle established in paragraph 1. Such arrangements may include a qualifying period for equal treatment.

The arrangements referred to in this paragraph shall be in conformity with Community legislation and shall be sufficiently precise and accessible to allow the sectors and firms concerned to identify and comply with their obligations. In particular, Member States shall specify in application of Article 3(2) whether occupational social security schemes, including pension, sick pay or financial participation schemes are included in the basic working and employment conditions referred to in paragraph 1. Such arrangements shall also be without prejudice to agreements at national, regional, local or sectoral level that are no less favourable to workers.

5. Member States shall take appropriate measures, in accordance with national law and/or practice, with a view to preventing misuse in the application of this Article and, in particular, to preventing successive assignments designed to circumvent the provisions of this Directive. They shall inform the Commission about such measures.

Article 6

Access to employment, collective facilities and vocational training

1. Temporary agency workers shall be informed of any vacant posts in the user undertaking to give them the same opportunity as other workers in that undertaking to find permanent employment. Such information may be provided by a general announcement in a suitable place in the undertaking for which and under whose supervision temporary agency workers are engaged.

2. Member States shall take any action required to ensure that any clauses prohibiting or having the effect of preventing the conclusion of a contract of employment or an employment relationship between the user undertaking and the temporary agency worker after his assignment are null and void or may be declared null and void.

This paragraph is without prejudice to provisions under which temporary agencies receive a reasonable level of recompense for services rendered to user undertakings for the assignment, recruitment and training of temporary agency workers.

3. Temporary-work agencies shall not charge workers any fees, in exchange for arranging for them to be recruited by a user undertaking, or for concluding a contract of employment or an employment relationship with a user undertaking after carrying out an assignment in that undertaking.

4. Without prejudice to Article 5(1), temporary agency workers shall be given access to the amenities or collective facilities in the user undertaking, in particular any canteen, child-care facilities and transport services, under the same conditions as workers employed directly by the undertaking, unless the difference in treatment is justified by objective reasons.

5. Member States shall take suitable measures or shall promote dialogue between the social partners, in accordance with their national traditions and practices, in order to:

(a) improve temporary agency workers' access to training and to child-care facilities in the temporary-work agencies, even in the periods between their assignments, in order to enhance their career development and employability;

(b) improve temporary agency workers' access to training for user undertakings' workers.

Article 7

Representation of temporary agency workers

1. Temporary agency workers shall count, under conditions established by the Member States, for the purposes of calculating the threshold above which bodies representing workers provided for under Community and national law and collective agreements are to be formed at the temporary-work agency.

2. Member States may provide that, under conditions that they define, temporary agency workers count for the purposes of calculating the threshold above which bodies representing workers provided for by Community and national law and collective agreements are to be formed in the user undertaking, in the same way as if they were workers employed directly for the same period of time by the user undertaking.

3. Those Member States which avail themselves of the option provided for in paragraph 2 shall not be obliged to implement the provisions of paragraph 1.

Article 8

Information of workers' representatives

Without prejudice to national and Community provisions on information and consultation which are more stringent and/or more specific and in particular Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community ([1]), the user undertaking must provide suitable information on the use of temporary agency workers when providing information on the employment situation in that undertaking to bodies representing the workers set up in accordance with national and Community legislation.

CHAPTER III

Final provisions

Article 9

Minimum requirements

1. This Directive is without prejudice to the Member States' right to apply or introduce legislative, regulatory or administrative provisions which are more favourable to workers or to promote or permit collective agreements concluded between the social partners which are more favourable to workers.

2. The implementation of this Directive shall under no circumstances constitute sufficient grounds for justifying a reduction in the general level of protection of workers in the fields covered by this Directive. This is without prejudice to the rights of Member States and/or management and labour to lay down, in the light of changing circumstances, different legislative, regulatory or contractual arrangements to those prevailing at the time of the adoption of this Directive, provided always that the minimum requirements laid down in this Directive are respected.

Article 10

Penalties

1. Member States shall provide for appropriate measures in the event of non-compliance with this Directive by the temporary-work agency or the user undertaking. In particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from this Directive to be enforced.

2. Member States shall lay down rules on penalties applicable in the event of infringements of national provisions implementing this Directive and shall take all necessary measures to ensure that they are applied. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify these provisions to the Commission by … (*). Member States shall notify to the Commission any subsequent amendments to those provisions in good time. They shall, in particular, ensure that workers and/or their representatives have adequate means of enforcing the obligations under this Directive.

Article 11

Implementation

1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by … (*), or shall ensure that the social partners introduce the necessary provisions by way of an agreement, whereby the Member States must make all the necessary arrangements to enable them to guarantee at any time that the objectives of this Directive are being attained. They shall forthwith inform the Commission thereof.

2. 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.

Article 12

Review by the Commission

By … (**), the Commission shall, in consultation with the Member States and social partners at Community level, review the application of this Directive with a view to proposing, where appropriate, the necessary amendments.

Article 13

Entry into force

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

Article 14

Addressees

This Directive is addressed to the Member States.

Done at …

For the European Parliament	*For the Council*
The President	*The President*
…	…

([1]) OJ L 80, 23.3.2002, p. 29.

(*) Three years after the entry into force of this Directive.
(**) Five years after the adoption of this Directive.

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

On 20 March 2002, the Commission adopted in the context of the Lisbon strategy a proposal for a Directive concerning 'working conditions for temporary workers' to better reconcile flexibility in labour markets and job security, and create more and better jobs.

Acting in accordance with Article 251 of the Treaty, the European Parliament delivered its opinion on first reading on 21 November 2002.

The Economic and Social Committee gave its opinion on the Commission's proposal on 19 September 2002.

The Committee of the Regions stated in a letter dated 23 May 2002 that it would not be submitting an opinion on the proposal for a Directive.

On 28 November 2002, the Commission adopted an amended proposal, taking into account the opinion of the European Parliament.

The Council reached political agreement on a Common Position by qualified majority during its session of 9 and 10 June 2008, in parallel with a political agreement, also by qualified majority, on the Working Time Directive.

In accordance with Article 251(2) of the EC Treaty, the Council formally adopted its Common Position by qualified majority on 15 September 2008.

II. OBJECTIVE

The objective of the draft Directive is to ensure the protection of temporary agency workers and to improve the quality of temporary agency work by ensuring that the principle of equal treatment is applied to temporary agency workers and by recognising temporary work agencies as employers. The draft Directive also aims at establishing a suitable framework for the use of temporary agency work with a view to contributing effectively to the creation of jobs and to the development of flexible forms of working.

III. ANALYSIS OF THE COMMON POSITION

1. GENERAL OBSERVATIONS

According to Article 137(1) of the Treaty '*the Community shall support and complement the activities of the Member States in*' a number of fields, including '*working conditions*'.

Article 137(2) of the Treaty states that the Council '*may adopt, by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States*'.

The Council's Common Position is in accordance with the objectives of Article 137(2) of the Treaty in the area covered, since it is designed to ensure the protection of temporary agency workers and to improve the quality of temporary agency work. In addition, the Common Position also takes into account the need to establish a suitable framework for the use of temporary agency work with a view to contributing to the creation of jobs and to the development of flexible forms of working.

The Common Position respects the objectives put forward by the Commission and supported by Parliament, in particular that the principle of equal treatment from day one should be the general rule. In general, it includes a majority of the amendments resulting from Parliament's first reading of the Commission's proposal.

2. STRUCTURE AND KEY ELEMENTS

2.1. General structure and the title of the Directive

The general structure of the Common Position is in line with the general structure of the Commission's amended proposal. Concerning the title of the Directive, the Council has followed the Commission's amended proposal and opted for a more general title: the Directive on temporary agency work. It is to be noted that, in a number of instances, the Council's Common Position clarifies the key terms and expressions, in particular by using consistently the English terms 'temporary agency worker' and 'temporary work agency'.

2.2. **Main differences from the Commission's amended proposal**

In Article 4 on the review of restrictions and prohibitions on the use of temporary agency work, while essentially following the spirit of the Parliament's Amendment 34, the Council added a new paragraph 3 concerning the review of agreements negotiated by the social partners. The Council considered that, in order to respect their autonomy, the social partners should themselves review whether the restrictions and prohibitions negotiated by them were justifiable on the grounds set out in the first paragraph of Article 4. The Council did not consider it necessary to retain an explicit reference to the discontinuation of unjustified restrictions and prohibitions.

While generally following the Commission's amended proposal, the Council modified Article 5(3) and substantially reformulated Article 5(4) and (5). The Council also considered that the principle of equal treatment from day one should be the general rule. Any treatment of temporary agency workers differing from that principle should be agreed by the social partners, either through collective bargaining or through social partner agreements concluded at national level. In the light of the modifications made to Article 5(3) to (5), a specific exemption for short-term contracts (six weeks or shorter), as envisaged in the Commission's amended proposal, was therefore no longer considered necessary or appropriate.

In Article 5(3) and (4), as in a number of other instances, the Common Position reflects those of the Parliament's amendments which stress the importance of the role of social partners in negotiating arrangements on working and employment conditions. In Article 5(5), the Common Position echoes the Parliament's concerns in relation to the prevention of misuse.

In Article 10, the Council's Common Position includes a new paragraph 1 concerning measures the Member States are expected to take in order to ensure compliance with the Directive by temporary work agencies and user undertakings.

The Council considered that the Member States would need three years to implement the Directive, while the Commission had proposed a two-year implementation period (Article 11).

In addition, a number of recitals have been updated and modified, in order both to explain the modifications introduced by the Council to the Commission's amended proposal and to describe developments since the amended proposal was published in 2002. For example, references to the relaunch of the Lisbon Strategy, in 2005, and to the agreed common principles of flexicurity, endorsed by the European Council in December 2007, were included in recitals 8 and 9.

3. THE EUROPEAN PARLIAMENT'S AMENDMENTS IN FIRST READING

3.1. **European Parliament amendments adopted by the Council**

Altogether 26 amendments (numbers 1, 15, 19, 20, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 40, 42, 43, 46, 47, 48, 49, 51, 85 and 86) are taken up in their entirety, if not word-for-word then at least in spirit, in the Common Position.

Specifically, the Council accepted Amendment 1 to the title, three amendments to the recitals (Amendments 15, 19 and 20) as well as a number of amendments to the following Articles: Article 1 on the scope (Amendment 23), Article 2 on the aim of the Directive (26), Article 3 on definitions (27-33 and 85), Article 4 on the review of restrictions and prohibitions (34-36), Article 5 on the principle of equal treatment (40, 42, 43 and 86), Article 6 on access to employment, collective facilities and vocational training (46-49), and Article 7 on the representation of temporary agency workers (51).

It is to be noted that some amendments have been included in another part of the text of the Common Position than originally suggested by the Parliament. For example, a part of Amendment 32 is reflected in Article 5(1) and not in Article 3(1)(d). Another example is Amendment 36 that, rather than in Article 4, is reflected in a more general form in recital 20.

3.2. **European Parliament amendments adopted partially by the Council**

Amendment 4 on *'new forms of regulated flexibility'* is reflected in spirit in the text of recital 9; however, the Council considered it appropriate to update the text of the recital and to refer to the common principles of flexicurity agreed in 2007, rather than use the formulation suggested by the Parliament in its first reading opinion.

Amendment 6 is accepted in spirit, as recital 5 specifies the links between this Directive and Directive 1999/70/EC of 28 June 1999 on fixed-term work. Concerning this amendment, the Common Position follows the amended proposal of the Commission.

The thrust of Amendment 12, on employment contracts of an indefinite duration being the general form of employment relationship, is included in recital 15.

The underlying objectives of Amendment 18, on allowing the social partners to negotiate and define the basic working and employment conditions of temporary agency workers when these differ from the principle of equal treatment, are included in the Common Position (see recitals 16 and 17 and Article 5(3) and (4)).

Amendment 24 is accepted partly as it is useful to clarify, in line with the amended proposal, that both user undertakings and temporary work agencies are covered by the Directive. However, it would not be appropriate to allow Member States to exclude certain undertakings from the principle of equal treatment (the last part of the amendment).

Amendment 54 (on job creation, on making temporary agency work more attractive and on recognising different national circumstances) is accepted in spirit in Article 2 (the aim of the Directive), which now includes the wording *'while taking into account the need for establishing a suitable framework for the use of temporary agency work with a view to contributing effectively to the creation of jobs and to the development of flexible forms of working*'. The need for taking into account different national circumstances is explicitly referred to in recitals 12, 16, 17 and 19.

Amendment 87 is partly taken up in Article 5(1); while the first part of the amendment (on the principle of equal treatment) was included in the Commission's amended proposal and is taken over by the Council in its Common Position, the second part had become redundant as the concept of 'comparable worker' had been removed from the text (cf. Amendment 28 accepted by the Commission and the Council).

In line with the Commission's amended proposal, Amendment 92 is partly accepted in Article 5(3). It was, however, considered appropriate to state specifically that the social partner agreements should respect *'the overall protection of temporary agency workers*' when establishing arrangements concerning working and employment conditions differing from the principle of equal treatment.

3.3. **European Parliament's amendments not adopted by the Council**

The Council did not consider it advisable to include amendments 3, 5, 7, 8, 9, 10, 11, 12 (first part), 13, 16, 21, 22, 25, 44, 45, 52, 53, 71, 84, 88, 91, 93, 94 and 95 in its Common Position, for the following reasons:

(i) *Recitals*

There was no specific need for the text to explain in the recitals certain historical developments concerning temporary agency work or the draft Directive; therefore the Council followed the Commission's amended proposal in rejecting Amendments 3, 5, 7 and 11 as well as the first part of Amendment 12.

In line with the Commission's amended proposal, Amendments 8, 9, 10, 13 and 84 were not adopted by the Council. The amendments contained specific examples of how temporary agency work could either help or harm temporary agency workers themselves (women, workers with interrupted work histories, etc.) or user undertakings (especially small and medium-sized undertakings), or affect systems or traditions of industrial relations.

Amendments 16 and 94 had become redundant as the Commission's amended proposal no longer contained the former recital 16 on when differences in treatment would be considered acceptable.

The reasons explained in connection with Article 7 (see point (v) below) apply also to the rejection of Amendment 21 on information, consultation and participation of employees.

Amendment 22 concerning cross-border labour mobility (accepted by the Commission), which could be considered as an example, is not included in the Common Position as the text is not limited in any specific way to cross-border mobility.

The Council reworded recital 12 making it substantially shorter. Some aspects of Amendment 93 (e.g. the call for clarity concerning the rights of temporary agency workers and concerning the status of temporary work agencies as employers) have, however, been included in the redrafted text of the recital.

While recital 15 on temporary agency workers with a permanent contract with their agency has been strengthened by the Council by adding a sentence on employment contracts of an indefinite duration being the general form of employment relationship, the Common Position does not include the more detailed wording of Amendment 88 on what such permanent contracts should offer to a temporary agency worker.

(ii) *Article 1 — Scope*

Following the Commission's amended proposal, the Council did not accept Amendment 25 which would have extended the possibility of not applying the Directive to employment contracts or relationships concluded under specific training programmes without any public support.

(iii) *Article 4 — Review of restrictions and prohibitions*

In its Amendment 91, the Parliament called for a comprehensive review of national legislations concerning temporary agency workers. The Council, like the Commission in its amended proposal, considered that this would be outside the scope of the Directive.

(iv) *Article 5 — The principle of equal treatment*

Following the amended proposal, Amendment 39 (on non-discrimination) was considered redundant in view of the incorporation in the text of Article 5(1) of relevant elements of Amendment 32.

While Amendment 44 has became redundant, as Article 5(5) of the amended proposal was not included in the Common Position, it should be noted that the spirit of the amendment was followed in the general thrust of the text calling for the respect of different national practices.

Amendment 45 on safety and health at work and on safety training was considered superfluous as the relevant Community legislation on safety and health at work, and especially Directive 91/383/EEC supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship, would in any event have to be applied. Therefore, the Council followed the Commission's amended proposal in rejecting this amendment.

(v) *Article 7 — Representation of temporary agency workers*

Amendment 95, with its accompanying Amendment 21 to recital 21, was not adopted as it went beyond the scope of the article on the representation of temporary agency workers.

In this context it should be noted that Article 8 of the Common Position includes a reference to Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community.

(vi) *Article 10 — Penalties*

The Council considers that the wording '*workers and/or their representatives*' in Article 10(2) correctly takes into account the variety of different situations in the labour markets of the Member States. The Common Position therefore maintains that expression, rejecting Amendment 52.

(vii) *Article 11 — Implementation*

The text of Article 11 on implementation was considered sufficiently clear without the suggested amendment 53 reading '*where applicable in accordance with their national legislation and practices*'.

Amendment 71 (on a five-year period for not applying the Directive in certain situations) has become redundant as the Common Position in its Article 5 now makes the principle of equal treatment a general rule from day one and does not include the possibility of excluding assignments with a duration shorter than six weeks from the application of that principle. However, it should be noted that the essence of the last part of the amendment, dealing with the prevention of misuse, has been included in Article 5(5) of the Common Position.

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 it has taken account of the principal objectives pursued by the European Parliament in its amendments to the Commission's original proposal.

NOTE TO THE READER

The institutions have decided no longer to quote in their texts the last amendment to cited acts.

Unless otherwise indicated, references to acts in the texts published here are to the version of those acts currently in force.