ISSN 1725-2555

Official Journal of the European Union

L 310

English edition

Legislation

Volume 48

25 November 2005

Contents

I *Acts whose publication is obligatory*

★ **Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies** [1] 1

★ **Directive 2005/64/EC of the European Parliament and of the Council of 26 October 2005 on the type-approval of motor vehicles with regard to their reusability, recyclability and recoverability and amending Council Directive 70/156/EEC** 10

★ **Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security** [1] 28

[1] Text with EEA relevance.

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

I

(Acts whose publication is obligatory)

DIRECTIVE 2005/56/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 26 October 2005

on cross-border mergers of limited liability companies

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 44 thereof,

Having regard to the proposal from the Commission,

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

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

Whereas:

(1) There is a need for cooperation and consolidation between limited liability companies from different Member States. However, as regards cross-border mergers of limited liability companies, they encounter many legislative and administrative difficulties in the Community. It is therefore necessary, with a view to the completion and functioning of the single market, to lay down Community provisions to facilitate the carrying-out of cross-border mergers between various types of limited liability company governed by the laws of different Member States.

(2) This Directive facilitates the cross-border merger of limited liability companies as defined herein. The laws of the Member States are to allow the cross-border merger of a national limited liability company with a limited liability company from another Member State if the national law of the relevant Member States permits mergers between such types of company.

(3) In order to facilitate cross-border merger operations, it should be laid down that, unless this Directive provides otherwise, each company taking part in a cross-border merger, and each third party concerned, remains subject to the provisions and formalities of the national law which would be applicable in the case of a national merger. None of the provisions and formalities of national law, to which reference is made in this Directive, should introduce restrictions on freedom of establishment or on the free movement of capital save where these can be justified in accordance with the case-law of the Court of Justice and in particular by requirements of the general interest and are both necessary for, and proportionate to, the attainment of such overriding requirements.

(4) The common draft terms of the cross-border merger are to be drawn up in the same terms for each of the companies concerned in the various Member States. The minimum content of such common draft terms should therefore be specified, while leaving the companies free to agree on other items.

(5) In order to protect the interests of members and others, both the common draft terms of cross-border mergers and the completion of the cross-border merger are to be publicised for each merging company via an entry in the appropriate public register.

(6) The laws of all the Member States should provide for the drawing-up at national level of a report on the common draft terms of the cross-border merger by one or more experts on behalf of each of the companies that are merging. In order to limit experts' costs connected with cross-border mergers, provision should be made for the possibility of drawing up a single report intended for all members of companies taking part in a cross-border merger operation. The common draft terms of the cross-border merger are to be approved by the general meeting of each of those companies.

([1]) OJ C 117, 30.4.2004, p. 43.

([2]) Opinion of the European Parliament of 10 May 2005 (not yet published in the Official Journal) and Council Decision of 19 September 2005.

(7) In order to facilitate cross-border merger operations, it should be provided that monitoring of the completion and legality of the decision-making process in each merging company should be carried out by the national authority having jurisdiction over each of those companies, whereas monitoring of the completion and legality of the cross-border merger should be carried out by the national authority having jurisdiction over the company resulting from the cross-border merger. The national authority in question may be a court, a notary or any other competent authority appointed by the Member State concerned. The national law determining the date on which the cross-border merger takes effect, this being the law to which the company resulting from the cross-border merger is subject, should also be specified.

(8) In order to protect the interests of members and others, the legal effects of the cross-border merger, distinguishing as to whether the company resulting from the cross-border merger is an acquiring company or a new company, should be specified. In the interests of legal certainty, it should no longer be possible, after the date on which a cross-border merger takes effect, to declare the merger null and void.

(9) This Directive is without prejudice to the application of the legislation on the control of concentrations between undertakings, both at Community level, by Regulation (EC) No 139/2004 ([1]), and at the level of Member States.

(10) This Directive does not affect Community legislation regulating credit intermediaries and other financial undertakings and national rules made or introduced pursuant to such Community legislation.

(11) This Directive is without prejudice to a Member State's legislation demanding information on the place of central administration or the principal place of business proposed for the company resulting from the cross-border merger.

(12) Employees' rights other than rights of participation should remain subject to the national provisions referred to in Council Directive 98/59/EC of 20 July 1998 on collective redundancies ([2]), Council Directive 2001/23/EC of 12 March 2001 on the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses ([3]), 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 ([4]) and Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees ([5]).

(13) If employees have participation rights in one of the merging companies under the circumstances set out in this Directive and, if the national law of the Member State in which the company resulting from the cross-border merger has its registered office does not provide for the same level of participation as operated in the relevant merging companies, including in committees of the supervisory board that have decision-making powers, or does not provide for the same entitlement to exercise rights for employees of establishments resulting from the cross-border merger, the participation of employees in the company resulting from the cross-border merger and their involvement in the definition of such rights are to be regulated. To that end, the principles and procedures provided for in Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) ([6]) and in Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees ([7]), are to be taken as a basis, subject, however, to modifications that are deemed necessary because the resulting company will be subject to the national laws of the Member State where it has its registered office. A prompt start to negotiations under Article 16 of this Directive, with a view to not unnecessarily delaying mergers, may be ensured by Member States in accordance with Article 3(2)(b) of Directive 2001/86/EC.

(14) For the purpose of determining the level of employee participation operated in the relevant merging companies, account should also be taken of the proportion of

([1]) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).

([2]) OJ L 225, 12.8.1998, p. 16.

([3]) OJ L 82, 22.3.2001, p. 16.

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

([5]) OJ L 254, 30.9.1994, p. 64. Directive as amended by Directive 97/74/EC (OJ L 10, 16.1.1998, p. 22).

([6]) OJ L 294, 10.11.2001, p. 1. Regulation as amended by Regulation (EC) No 885/2004 (OJ L 168, 1.5.2004, p. 1).

([7]) OJ L 294, 10.11.2001, p. 22.

employee representatives amongst the members of the management group, which covers the profit units of the companies, subject to employee participation.

(15) Since the objective of the proposed action, namely laying down rules with common features applicable at transnational level, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the proposed action, 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 to achieve that objective.

(16) In accordance with paragraph 34 of the Interinstitutional Agreement on better law-making [1], Member States should be encouraged to draw up, for themselves and in the interest of the Community, their own tables which will, as far as possible, illustrate the correlation between this Directive and the transposition measures and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Scope

This Directive shall apply to mergers of limited liability companies formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community, provided at least two of them are governed by the laws of different Member States (hereinafter referred to as cross-border mergers).

[1] OJ C 321, 31.12.2003, p. 1.

Article 2

Definitions

For the purposes of this Directive:

1) 'limited liability company', hereinafter referred to as 'company', means:

   (a) a company as referred to in Article 1 of Directive 68/151/EEC [2], or

   (b) a company with share capital and having legal personality, possessing separate assets which alone serve to cover its debts and subject under the national law governing it to conditions concerning guarantees such as are provided for by Directive 68/151/EEC for the protection of the interests of members and others;

2. 'merger' means an operation whereby:

   (a) one or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to another existing company, the acquiring company, in exchange for the issue to their members of securities or shares representing the capital of that other company and, if applicable, a cash payment not exceeding 10 % of the nominal value, or, in the absence of a nominal value, of the accounting par value of those securities or shares; or

   (b) two or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to a company that they form, the new company, in exchange for the issue to their members of securities or shares representing the capital of that new company and, if applicable, a cash payment not exceeding 10 % of the nominal value, or in the absence of a nominal value, of the accounting par value of those securities or shares; or

   (c) a company, on being dissolved without going into liquidation, transfers all its assets and liabilities to the company holding all the securities or shares representing its capital.

[2] First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (OJ L 65, 14.3.1968, p. 8). Directive as last amended by the 2003 Act of Accession.

Article 3

Further provisions concerning the scope

1. Notwithstanding Article 2(2), this Directive shall also apply to cross-border mergers where the law of at least one of the Member States concerned allows the cash payment referred to in points (a) and (b) of Article 2(2) to exceed 10 % of the nominal value, or, in the absence of a nominal value, of the accounting par value of the securities or shares representing the capital of the company resulting from the cross-border merger.

2. Member States may decide not to apply this Directive to cross-border mergers involving a cooperative society even in the cases where the latter would fall within the definition of 'limited liability company' as laid down in Article 2(1).

3. This Directive shall not apply to cross-border mergers involving a company the object of which is the collective investment of capital provided by the public, which operates on the principle of risk-spreading and the units of which are, at the holders' request, repurchased or redeemed, directly or indirectly, out of the assets of that company. Action taken by such a company to ensure that the stock exchange value of its units does not vary significantly from its net asset value shall be regarded as equivalent to such repurchase or redemption.

Article 4

Conditions relating to cross-border mergers

1. Save as otherwise provided in this Directive,

(a) cross-border mergers shall only be possible between types of companies which may merge under the national law of the relevant Member States, and

(b) a company taking part in a cross-border merger shall comply with the provisions and formalities of the national law to which it is subject. The laws of a Member State enabling its national authorities to oppose a given internal merger on grounds of public interest shall also be applicable to a cross-border merger where at least one of the merging companies is subject to the law of that Member State. This provision shall not apply to the extent that Article 21 of Regulation (EC) No 139/2004 is applicable.

2. The provisions and formalities referred to in paragraph 1 (b) shall, in particular, include those concerning the decision-making process relating to the merger and, taking into account the cross-border nature of the merger, the protection of creditors of the merging companies, debenture holders and the holders of securities or shares, as well as of employees as regards rights other than those governed by Article 16. A Member State may, in the case of companies participating in a cross-border merger and governed by its law, adopt provisions designed to ensure appropriate protection for minority members who have opposed the cross-border merger.

Article 5

Common draft terms of cross-border mergers

The management or administrative organ of each of the merging companies shall draw up the common draft terms of cross-border merger. The common draft terms of cross-border merger shall include at least the following particulars:

(a) the form, name and registered office of the merging companies and those proposed for the company resulting from the cross-border merger;

(b) the ratio applicable to the exchange of securities or shares representing the company capital and the amount of any cash payment;

(c) the terms for the allotment of securities or shares representing the capital of the company resulting from the cross-border merger;

(d) the likely repercussions of the cross-border merger on employment;

(e) the date from which the holding of such securities or shares representing the company capital will entitle the holders to share in profits and any special conditions affecting that entitlement;

(f) the date from which the transactions of the merging companies will be treated for accounting purposes as being those of the company resulting from the cross-border merger;

(g) the rights conferred by the company resulting from the cross-border merger on members enjoying special rights or on holders of securities other than shares representing the company capital, or the measures proposed concerning them;

(h) any special advantages granted to the experts who examine the draft terms of the cross-border merger or to members of the administrative, management, supervisory or controlling organs of the merging companies;

(i) the statutes of the company resulting from the cross-border merger;

(j) where appropriate, information on the procedures by which arrangements for the involvement of employees in the definition of their rights to participation in the company resulting from the cross-border merger are determined pursuant to Article 16;

(k) information on the evaluation of the assets and liabilities which are transferred to the company resulting from the cross-border merger;

(l) dates of the merging companies' accounts used to establish the conditions of the cross-border merger.

Article 6

Publication

1. The common draft terms of the cross-border merger shall be published in the manner prescribed by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC for each of the merging companies at least one month before the date of the general meeting which is to decide thereon.

2. For each of the merging companies and subject to the additional requirements imposed by the Member State to which the company concerned is subject, the following particulars shall be published in the national gazette of that Member State:

(a) the type, name and registered office of every merging company;

(b) the register in which the documents referred to in Article 3(2) of Directive 68/151/EEC are filed in respect of each merging company, and the number of the entry in that register;

(c) an indication, for each of the merging companies, of the arrangements made for the exercise of the rights of creditors and of any minority members of the merging companies and the address at which complete information on those arrangements may be obtained free of charge.

Article 7

Report of the management or administrative organ

The management or administrative organ of each of the merging companies shall draw up a report intended for the members explaining and justifying the legal and economic aspects of the cross-border merger and explaining the implications of the cross-border merger for members, creditors and employees.

The report shall be made available to the members and to the representatives of the employees or, where there are no such representatives, to the employees themselves, not less than one month before the date of the general meeting referred to in Article 9.

Where the management or administrative organ of any of the merging companies receives, in good time, an opinion from the representatives of their employees, as provided for under national law, that opinion shall be appended to the report.

Article 8

Independent expert report

1. An independent expert report intended for members and made available not less than one month before the date of the general meeting referred to in Article 9 shall be drawn up for each merging company. Depending on the law of each Member State, such experts may be natural persons or legal persons.

2. As an alternative to experts operating on behalf of each of the merging companies, one or more independent experts, appointed for that purpose at the joint request of the companies by a judicial or administrative authority in the Member State of one of the merging companies or of the company resulting from the cross-border merger or approved by such an authority, may examine the common draft terms of cross-border merger and draw up a single written report to all the members.

3. The expert report shall include at least the particulars provided for by Article 10(2) of Council Directive 78/855/EEC of 9 October 1978 concerning mergers of public limited liability companies [1]. The experts shall be entitled to secure from each of the merging companies all information they consider necessary for the discharge of their duties.

4. Neither an examination of the common draft terms of cross-border merger by independent experts nor an expert report shall be required if all the members of each of the companies involved in the cross-border merger have so agreed.

Article 9

Approval by the general meeting

1. After taking note of the reports referred to in Articles 7 and 8, the general meeting of each of the merging companies shall decide on the approval of the common draft terms of cross-border merger.

[1] OJ L 295, 20.10.1978, p. 36. Directive as last amended by the 2003 Act of Accession.

2. The general meeting of each of the merging companies may reserve the right to make implementation of the cross-border merger conditional on express ratification by it of the arrangements decided on with respect to the participation of employees in the company resulting from the cross-border merger.

3. The laws of a Member State need not require approval of the merger by the general meeting of the acquiring company if the conditions laid down in Article 8 of Directive 78/855/EEC are fulfilled.

Article 10

Pre-merger certificate

1. Each Member State shall designate the court, notary or other authority competent to scrutinise the legality of the cross-border merger as regards that part of the procedure which concerns each merging company subject to its national law.

2. In each Member State concerned the authority referred to in paragraph 1 shall issue, without delay to each merging company subject to that State's national law, a certificate conclusively attesting to the proper completion of the pre-merger acts and formalities.

3. If the law of a Member State to which a merging company is subject provides for a procedure to scrutinise and amend the ratio applicable to the exchange of securities or shares, or a procedure to compensate minority members, without preventing the registration of the cross-border merger, such procedure shall only apply if the other merging companies situated in Member States which do not provide for such procedure explicitly accept, when approving the draft terms of the cross-border merger in accordance with Article 9(1), the possibility for the members of that merging company to have recourse to such procedure, to be initiated before the court having jurisdiction over that merging company. In such cases, the authority referred to in paragraph 1 may issue the certificate referred to in paragraph 2 even if such procedure has commenced. The certificate must, however, indicate that the procedure is pending. The decision in the procedure shall be binding on the company resulting from the cross-border merger and all its members.

Article 11

Scrutiny of the legality of the cross-border merger

1. Each Member State shall designate the court, notary or other authority competent to scrutinise the legality of the cross-border merger as regards that part of the procedure which concerns the completion of the cross-border merger and, where appropriate, the formation of a new company resulting from the cross-border merger where the company created by the cross-border merger is subject to its national law. The said authority shall in particular ensure that the merging companies have approved the common draft terms of cross-border merger in the same terms and, where appropriate, that arrangements for employee participation have been determined in accordance with Article 16.

2. To that end each merging company shall submit to the authority referred to in paragraph 1 the certificate referred to in Article 10(2) within six months of its issue together with the common draft terms of cross-border merger approved by the general meeting referred to in Article 9.

Article 12

Entry into effect of the cross-border merger

The law of the Member State to whose jurisdiction the company resulting from the cross-border merger is subject shall determine the date on which the cross-border merger takes effect. That date must be after the scrutiny referred to in Article 11 has been carried out.

Article 13

Registration

The law of each of the Member States to whose jurisdiction the merging companies were subject shall determine, with respect to the territory of that State, the arrangements, in accordance with Article 3 of Directive 68/151/EEC, for publicising completion of the cross-border merger in the public register in which each of the companies is required to file documents.

The registry for the registration of the company resulting from the cross-border merger shall notify, without delay, the registry in which each of the companies was required to file documents that the cross-border merger has taken effect. Deletion of the old registration, if applicable, shall be effected on receipt of that notification, but not before.

Article 14

Consequences of the cross-border merger

1. A cross-border merger carried out as laid down in points (a) and (c) of Article 2(2) shall, from the date referred to in Article 12, have the following consequences:

(a) all the assets and liabilities of the company being acquired shall be transferred to the acquiring company;

(b) the members of the company being acquired shall become members of the acquiring company;

(c) the company being acquired shall cease to exist.

2. A cross-border merger carried out as laid down in point (b) of Article 2(2) shall, from the date referred to in Article 12, have the following consequences:

(a) all the assets and liabilities of the merging companies shall be transferred to the new company;

(b) the members of the merging companies shall become members of the new company;

(c) the merging companies shall cease to exist.

3. Where, in the case of a cross-border merger of companies covered by this Directive, the laws of the Member States require the completion of special formalities before the transfer of certain assets, rights and obligations by the merging companies becomes effective against third parties, those formalities shall be carried out by the company resulting from the cross-border merger.

4. The rights and obligations of the merging companies arising from contracts of employment or from employment relationships and existing at the date on which the cross-border merger takes effect shall, by reason of that cross-border merger taking effect, be transferred to the company resulting from the cross-border merger on the date on which the cross-border merger takes effect.

5. No shares in the acquiring company shall be exchanged for shares in the company being acquired held either:

(a) by the acquiring company itself or through a person acting in his or her own name but on its behalf;

(b) by the company being acquired itself or through a person acting in his or her own name but on its behalf.

Article 15

Simplified formalities

1. Where a cross-border merger by acquisition is carried out by a company which holds all the shares and other securities conferring the right to vote at general meetings of the company or companies being acquired:

— Articles 5, points (b), (c) and (e), 8 and 14(1), point (b) shall not apply,

— Article 9(1) shall not apply to the company or companies being acquired.

2. Where a cross-border merger by acquisition is carried out by a company which holds 90 % or more but not all of the shares and other securities conferring the right to vote at general meetings of the company or companies being acquired, reports by an independent expert or experts and the documents necessary for scrutiny shall be required only to the extent that the national law governing either the acquiring company or the company being acquired so requires.

Article 16

Employee participation

1. Without prejudice to paragraph 2, the company resulting from the cross-border merger shall be subject to the rules in force concerning employee participation, if any, in the Member State where it has its registered office.

2. However, the rules in force concerning employee participation, if any, in the Member State where the company resulting from the cross-border merger has its registered office shall not apply, where at least one of the merging companies has, in the six months before the publication of the draft terms of the cross-border merger as referred to in Article 6, an average number of employees that exceeds 500 and is operating under an employee participation system within the meaning of Article 2(k) of Directive 2001/86/EC, or where the national law applicable to the company resulting from the cross-border merger does not

(a) provide for at least the same level of employee participation as operated in the relevant merging companies, measured by reference to the proportion of employee representatives amongst the members of the administrative or supervisory organ or their committees or of the management group which covers the profit units of the company, subject to employee representation, or

(b) provide for employees of establishments of the company resulting from the cross-border merger that are situated in other Member States the same entitlement to exercise participation rights as is enjoyed by those employees employed in the Member State where the company resulting from the cross-border merger has its registered office.

3. In the cases referred to in paragraph 2, the participation of employees in the company resulting from the cross-border merger and their involvement in the definition of such rights shall be regulated by the Member States, *mutatis mutandis* and subject to paragraphs 4 to 7 below, in accordance with the principles and procedures laid down in Article 12(2), (3) and (4) of Regulation (EC) No 2157/2001 and the following provisions of Directive 2001/86/EC:

(a) Article 3(1), (2) and (3), (4) first subparagraph, first indent, and second subparagraph, (5) and (7);

(b) Article 4(1), (2), points (a), (g) and (h), and (3);

(c) Article 5;

(d) Article 6;

(e) Article 7(1), (2) first subparagraph, point (b), and second subparagraph, and (3). However, for the purposes of this Directive, the percentages required by Article 7(2), first subparagraph, point (b) of Directive 2001/86/EC for the application of the standard rules contained in part 3 of the Annex to that Directive shall be raised from 25 to 33 1/3 %;

(f) Articles 8, 10 and 12;

(g) Article 13(4);

(h) part 3 of the Annex, point (b).

4. When regulating the principles and procedures referred to in paragraph 3, Member States:

(a) shall confer on the relevant organs of the merging companies the right to choose without any prior negotiation to be directly subject to the standard rules for participation referred to in paragraph 3(h), as laid down by the legislation of the Member State in which the company resulting from the cross-border merger is to have its registered office, and to abide by those rules from the date of registration;

(b) shall confer on the special negotiating body the right to decide, by a majority of two thirds of its members representing at least two thirds of the employees, including the votes of members representing employees in at least two different Member States, not to open negotiations or to terminate negotiations already opened and to rely on the rules on participation in force in the Member State where the registered office of the company resulting from the cross-border merger will be situated;

(c) may, in the case where, following prior negotiations, standard rules for participation apply and notwithstanding these rules, determine to limit the proportion of employee representatives in the administrative organ of the company resulting from the cross-border merger. However, if in one of the merging companies employee representatives constituted at least one third of the administrative or supervisory board, the limitation may never result in a lower proportion of employee representatives in the administrative organ than one third.

5. The extension of participation rights to employees of the company resulting from the cross-border merger employed in other Member States, referred to in paragraph 2(b), shall not entail any obligation for Member States which choose to do so to take those employees into account when calculating the size of workforce thresholds giving rise to participation rights under national law.

6. When at least one of the merging companies is operating under an employee participation system and the company resulting from the cross-border merger is to be governed by such a system in accordance with the rules referred to in paragraph 2, that company shall be obliged to take a legal form allowing for the exercise of participation rights.

7. When the company resulting from the cross-border merger is operating under an employee participation system, that company shall be obliged to take measures to ensure that employees' participation rights are protected in the event of subsequent domestic mergers for a period of three years after the cross-border merger has taken effect, by applying mutatis mutandis the rules laid down in this Article.

Article 17

Validity

A cross-border merger which has taken effect as provided for in Article 12 may not be declared null and void.

Article 18

Review

Five years after the date laid down in the first paragraph of Article 19, the Commission shall review this Directive in the light of the experience acquired in applying it and, if necessary, propose its amendment.

Article 19

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 15 December 2007.

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 20

Entry into force

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

Article 21

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 26 October 2005.

For the European Parliament	*For the Council*
The President	*The President*
J. BORRELL FONTELLES	D. ALEXANDER

DIRECTIVE 2005/64/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 26 October 2005

on the type-approval of motor vehicles with regard to their reusability, recyclability and recoverability and amending Council Directive 70/156/EEC

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

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

Whereas:

(1) In accordance with Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of-life vehicles ([3]), appropriate provisions should be laid down to ensure that type-approved vehicles belonging to category M_1 and those belonging to category N_1 may be put on the market only if they are reusable and/or recyclable to a minimum of 85 % by mass and are reusable and/or recoverable to a minimum of 95 % by mass.

(2) Reusability of component parts, recyclability and recoverability of materials constitute a substantial part of the Community strategy for waste management. Therefore vehicle manufacturers and their suppliers should be requested to include those aspects at the earliest stages of the development of new vehicles, in order to facilitate the treatment of vehicles at the time when they reach the end of their life.

(3) This Directive constitutes one of the separate directives within the framework of the Community whole vehicle type-approval system established by Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers ([4]).

(4) That whole vehicle type-approval system is currently compulsory for vehicles belonging to category M_1 and will be extended, in the near future, to all categories of vehicle. It is therefore necessary to include in the whole vehicle type-approval system those measures concerning the re-usability, recyclability and recoverability of vehicles.

(5) Accordingly, it is necessary to lay down provisions to take into account the fact that N_1 vehicles are not yet covered by the whole vehicle type-approval system.

(6) The manufacturer should make available to the approval authority all relevant technical information as regards constituent materials and their respective masses in order to permit verification of the manufacturer's calculations in accordance with the standard ISO 22628: 2002.

(7) The manufacturer's calculations can be properly validated at the time of the vehicle type-approval only if the manufacturer has put in place satisfactory arrangements and procedures to manage all information he receives from his suppliers. Before any type-approval can be granted, the competent body should carry out a preliminary assessment of those arrangements and procedures and should issue a certificate indicating that they are satisfactory.

([1]) OJ C 74, 23.3.2005, p. 15.

([2]) Opinion of the European Parliament of 14 April 2005 (not yet published in the Official Journal) and Council Decision of 6 October 2005.

([3]) OJ L 269, 21.10.2000, p. 34. Directive as last amended by Council Decision 2005/673/EC (OJ L 254, 30.9.2005, p. 69).

([4]) OJ L 42, 23.2.1970, p. 1. Directive as last amended by Commission Directive 2005/49/EC (OJ L 194, 26.7.2005, p. 12).

(8) The relevance of the different inputs in the calculations of the recyclability and recoverability rates has to be assessed in accordance with the processes for treatment of end-of-life vehicles. The manufacturer should therefore recommend a strategy for the treatment of end-of-life vehicles and should provide details thereof to the competent body. This strategy should be based on proven technologies, which are available or in development at the time of applying for the vehicle approval.

(9) Special-purpose vehicles are designed to perform a specific function and require special bodywork arrangements which are not entirely under the control of the manufacturer. Consequently, the recyclability and recoverability rates cannot be calculated properly. Those vehicles should therefore be excluded from the requirements concerning calculation.

(10) Incomplete vehicles constitute a significant proportion of N_1 vehicles. The manufacturer of the base vehicle is not in a position to calculate the recyclability and recoverability rates for completed vehicles because the data concerning the later stages of construction are not available at the design stage of the base vehicles. It is therefore appropriate to require only the base vehicle to comply with this Directive.

(11) The market shares of vehicles produced in small series are very limited, so that there will be little benefit to the environment if they have to comply with this Directive. It is therefore appropriate to exclude them from certain provisions of this Directive.

(12) In accordance with Directive 2000/53/EC, appropriate measures should be taken, in the interests of road safety and protection of the environment, to prevent the reuse of certain component parts which have been removed from end-of-life vehicles. Such measures should be restricted to the reuse of parts in the construction of new vehicles.

(13) The provisions set out in this Directive will impose on manufacturers the supply of new data relating to type-approval and therefore these particulars should be reflected in Directive 70/156/EEC, which establishes the exhaustive list of data to be submitted for type-approval. It is therefore necessary to amend that Directive accordingly.

(14) The measures necessary for the adaptation to scientific and technical progress of this Directive should be adopted in accordance with the regulatory procedure provided for in Article 13(3) of Directive 70/156/EEC.

(15) Since the objective of this Directive, namely to minimise the impact of end-of-life vehicles on the environment by requiring that vehicles be designed from the conception phase with a view to facilitating reuse, recycling and recovery, cannot be sufficiently achieved by the Member States acting alone and can, therefore, by reason of the scale of the action, 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.

(16) In accordance with paragraph 34 of the Interinstitutional Agreement on better law-making [1], Member States will be encouraged to draw up, for themselves and in the interest of the Community, their own tables which will, as far as possible, illustrate the correlation between this Directive and the transposition measures and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive lays down the administrative and technical provisions for the type-approval of vehicles covered by Article 2, with a view to ensuring that their component parts and materials can be reused, recycled and recovered in the minimum percentages set out in Annex I.

It lays down specific provisions to ensure that the re-use of component parts does not give rise to safety or environmental hazards.

Article 2

Scope

This Directive shall apply to vehicles belonging to categories M_1 and N_1, as defined in Part A of Annex II to Directive 70/156/EEC, and to new or reused component parts of such vehicles.

[1] OJ C 321, 31.12.2003, p. 1.

Article 3

Exemptions

Without prejudice to the application of the provisions of Article 7, this Directive shall not apply to:

(a) special purpose vehicles as defined in part A, point 5, of Annex II to Directive 70/156/EEC;

(b) multi-stage built vehicles belonging to category N_1, provided that the base vehicle complies with this Directive;

(c) vehicles produced in small series, referred to in Article 8 (2)(a) of Directive 70/156/EEC.

Article 4

Definitions

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

1. 'vehicle' means a motor vehicle;

2. 'component part' means any part or any assembly of parts which is included in a vehicle at the time of its production. It also covers components and separate technical units as defined in Article 2 of Directive 70/156/EEC;

3. 'vehicle type' means the type of a vehicle as defined in part B, points 1 and 3, of Annex II to Directive 70/156/EEC;

4. 'end-of-life vehicle' means a vehicle as defined in point 2 of Article 2 of Directive 2000/53/EC;

5. 'reference vehicle' means the version within a type of vehicle, which is identified by the approval authority, in consultation with the manufacturer and in accordance with the criteria laid down in Annex I, as being the most problematic in terms of reusability, recyclability and recoverability;

6. 'multi-stage built vehicle' means a vehicle resulting from a multi-stage construction process;

7. 'base vehicle' means a vehicle as defined in Article 2, fourth indent of Directive 70/156/CEE, which is used at the starting stage of a multi-stage construction;

8. 'multi-stage construction' means the process by which a vehicle is produced in several stages by adding component parts to a base vehicle or by modifying those component parts;

9. 'reuse' means reuse as defined in point 6 of Article 2 of Directive 2000/53/EC;

10. 'recycling' means recycling as defined in the first sentence of point 7 of Article 2 of Directive 2000/53/EC;

11. 'energy recovery' means energy recovery as defined in the second sentence of point 7 of Article 2 of Directive 2000/53/EC;

12. 'recovery' means recovery as defined in point 8 of Article 2 of Directive 2000/53/EC;

13. 'reusability' means the potential for reuse of component parts diverted from an end-of-life vehicle;

14. 'recyclability' means the potential for recycling of component parts or materials diverted from an end-of-life vehicle;

15. 'recoverability' means the potential for recovery of component parts or materials diverted from an end-of-life vehicle;

16. 'recyclability rate of a vehicle (R_{cyc})' means the percentage by mass of a new vehicle, potentially able to be reused and recycled;

17. 'recoverability rate of a vehicle (R_{cov})' means the percentage by mass of a new vehicle, potentially able to be reused and recovered;

18. 'strategy' means a large-scale plan consisting of coordinated actions and technical measures to be taken as regards dismantling, shredding or similar processes, recycling and recovery of materials to ensure that the targeted recyclability and recoverability rates are attainable at the time a vehicle is in its development phase;

19. 'mass' means the mass of the vehicle in running order as defined in point 2.6 of Annex I to Directive 70/156/EEC, but excluding the driver, whose mass is assessed at 75 kg;

20. 'competent body' means an entity, e.g. a technical service or another existing body, notified by a Member State to carry out preliminary assessment of the manufacturer and to issue a certificate of compliance, in accordance with the prescriptions of this Directive. The competent body may be the type-approval authority, provided its competence in this field is properly documented.

Article 5

Type-approval provisions

1. Member States shall grant, as appropriate, EC type-approval or national type-approval, with regard to reusability, recyclability and recoverability, only to such vehicle types that satisfy the requirements of this Directive.

2. For the application of paragraph 1, the manufacturer shall make available to the approval authority the detailed technical information necessary for the purposes of the calculations and checks referred to in Annex I, relating to the nature of the materials used in the construction of the vehicle and its component parts. In cases where such information is shown to be covered by intellectual property rights or to constitute specific know-how of the manufacturer or of his suppliers, the manufacturer or his suppliers shall supply sufficient information to enable those calculations to be made properly.

3. With regard to reusability, recyclability and recoverability, the Member States shall ensure that the manufacturer uses the model of the information document set out in Annex II to this Directive, when submitting an application for EC vehicle type-approval, pursuant to Article 3(1) of Directive 70/156/EEC.

4. When granting an EC type-approval pursuant to Article 4(3) of Directive 70/156/EEC, the type-approval authority shall use the model of the EC type-approval certificate set out in Annex III to this Directive.

Article 6

Preliminary assessment of the manufacturer

1. Member States shall not grant any type approval without first ensuring that the manufacturer has put in place satisfactory arrangements and procedures, in accordance with point 3 of Annex IV, to manage properly the reusability, recyclability and recoverability aspects covered by this Directive. When this preliminary assessment has been carried out, a certificate named 'Certificate of Compliance with Annex IV' (hereinafter the certificate of compliance) shall be granted to the manufacturer.

2. In the framework of the preliminary assessment of the manufacturer, Member States shall ensure that the materials used for the construction of a vehicle type comply with the provisions of Article 4(2)(a) of Directive 2000/53/EC.

The Commission shall, in accordance with the procedure referred to in Article 9, establish the detailed rules necessary to verify compliance with this provision.

3. For the purpose of paragraph 1, the manufacturer shall recommend a strategy to ensure dismantling, reuse of component parts, recycling and recovery of materials. The strategy shall take into account the proven technologies available or in development at the time of the application for a vehicle type-approval.

4. Member States shall appoint a competent body, in accordance with point 2 of Annex IV, to carry out the preliminary assessment of the manufacturer and to issue the certificate of compliance.

5. The certificate of compliance shall include the appropriate documentation and describe the strategy recommended by the manufacturer. The competent body shall use the model set out in the Appendix to Annex IV.

6. The certificate of compliance shall remain valid for no less than two years from the date of deliverance of the certificate before new checks shall be conducted.

7. The manufacturer shall inform the competent body of any significant change that could affect the relevance of the certificate of compliance. After consultation with the manufacturer, the competent body shall decide whether new checks are necessary.

8. At the end of the period of validity of the certificate of compliance, the competent body shall, as appropriate, issue a new certificate of compliance or extend its validity for a further period of two years. The competent body shall issue a new certificate in cases where significant changes have been brought to the attention of the competent body.

Article 7

Reuse of component parts

The component parts listed in Annex V shall:

(a) be deemed to be non-reusable for the purposes of calculating the recyclability and recoverability rates;

(b) not be reused in the construction of vehicles covered by Directive 70/156/EEC.

Article 8

Amendments to Directive 70/156/EEC

Directive 70/156/EEC shall be amended in accordance with Annex VI to this Directive.

Article 9

Amendments

Amendments to this Directive which are necessary to adapt it to scientific and technical progress shall be adopted by the Commission in accordance with the regulatory procedure referred to in Article 13(3) of Directive 70/156/EEC.

Article 10

Implementation dates for type-approval

1. With effect from 15 December 2006, Member States shall not, in respect of a type of vehicle which complies with the requirements of this Directive:

(a) refuse to grant EC or national type-approval,

(b) prohibit the registration, sale or entry into service of new vehicles.

2. With effect from 15 December 2008, Member States shall, in respect of a type of vehicle which does not comply with the requirements of this Directive:

(a) refuse to grant EC type-approval;

(b) refuse to grant national type-approval.

3. With effect from 15 July 2010, Member States shall, if the requirements of this Directive are not met:

(a) consider certificates of conformity which accompany new vehicles as no longer valid for the purposes of Article 7(1) of Directive 70/156/EEC;

(b) refuse the registration, sale or entry into service of new vehicles, save where Article 8(2)(b) of Directive 70/156/EEC applies.

4. Article 7 shall apply with effect from 15 December 2006.

Article 11

Transposition

1. Member States shall adopt and publish, not later than 15 December 2006, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those measures.

They shall apply those measures from 15 December 2006.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a 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 12

Entry into force

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

Article 13

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 26 October 2005.

For the European Parliament	*For the Council*
The President	*The President*
J. BORRELL FONTELLES	D. ALEXANDER

ANNEX

LIST OF ANNEXES

Annex I:	Requirements
Annex II:	Information document for EC vehicle type-approval
Annex III:	Model of the EC type-approval certificate
Annex IV:	Preliminary assessment of the manufacturer
Appendix:	model of the certificate of compliance
Annex V:	Component parts deemed to be non reusable
Annex VI:	Amendments to Directive 70/156/EEC

ANNEX I

REQUIREMENTS

1. Vehicles belonging to category M_1 and those belonging to category N_1 shall be so constructed as to be:

   — reusable and/or recyclable to a minimum of 85 % by mass, and

   — reusable and/or recoverable to a minimum of 95 % by mass,

   as determined by the procedures laid down in this Annex.

2. For the purposes of type-approval, the manufacturer shall submit a data presentation form duly completed, established in accordance with Annex A to the standard ISO 22628: 2002. It shall include the materials breakdown.

   It shall be accompanied by a listing of the dismantled component parts, declared by the manufacturer with respect to the dismantling stage, and the process he recommends for their treatment.

3. For the application of points 1 and 2, the manufacturer shall demonstrate to the satisfaction of the approval authority that the reference vehicles meet the requirements. The calculation method prescribed in Annex B to the standard ISO 22628: 2002 shall apply.

   However, the manufacturer must be in a position to demonstrate that any version within the vehicle type complies with the requirements of this Directive.

4. For the purposes of the selection of the reference vehicles, account shall be taken of the following criteria:

   — the type of bodywork,

   — the available trim levels ([1]),

   — the available optional equipment ([1]) which can be fitted under the manufacturer's responsibility.

5. Should the type-approval authority and the manufacturer fail jointly to identify the most problematic version within a type of vehicle, in terms of reusability, recyclability and recoverability, one reference vehicle shall be selected, within:

   (a) each 'type of bodywork', as defined in point 1 of part C of Annex II to Directive 70/156/EEC in the case of M_1 vehicles;

   (b) each 'type of bodywork', i.e. van, chassis-cab, pick-up, etc., in the case of N_1 vehicles.

([1]) i.e. leather upholstery, in-car radio equipment, air-conditioning, alloy wheels, etc.

6. For the purposes of calculations, tyres shall be considered as recyclable.

7. Masses shall be expressed in kg with one decimal place. The rates shall be calculated in percent with one decimal place, then rounded as follows:

   (a) if the figure following the decimal point is between 0 and 4, the total is rounded down;

   (b) if the figure following the decimal point is between 5 and 9, the total is rounded up.

8. For the purposes of checking the calculations referred to in this Annex, the approval authority shall ensure that the data presentation form referred to in point 2 is coherent with the recommended strategy annexed to the certificate of compliance referred to in Article 6(1) of this Directive.

9. For the purposes of checks of the materials and masses of component parts, the manufacturer shall make available vehicles and component parts as deemed necessary by the type-approval authority.

ANNEX II

INFORMATION DOCUMENT FOR EC VEHICLE TYPE-APPROVAL

in accordance with Annex I to Council Directive 70/156/EEC [1] relating to EC type-approval of a vehicle with regard to its reusability, recyclability and recoverability

The following information, if applicable, must be supplied in triplicate and include a list of contents. Any drawings must be supplied in appropriate scale and in sufficient detail on size A4 or on a folder of A4 format. Photographs, if any, must show sufficient detail.

0. GENERAL

0.1. Make (trade name of manufacturer): .....

0.2. Type:.....

0.2.0.1. Chassis:.....

0.2.1. Commercial name(s) (if available):.....

0.3. Means of identification of type, if marked on the vehicle ([b]):.....

0.3.1. Location of that marking:.....

0.4. Category of vehicle ([c]): .....

0.5. Name and address of manufacturer:.....

0.8. Address(es) of assembly plant(s): .....

1. GENERAL CONSTRUCTION CHARACTERISTICS OF THE VEHICLE

1.1. Photographs and/or drawings of a representative vehicle:.....

1.2. Dimensional drawing of the whole vehicle:.....

1.3. Number of axles and wheels:.....

1.3.1. Number and position of axles with double wheels:.....

[1] The item numbers and footnotes used in this information document correspond to those set out in Annex I to Directive 70/156/EEC. Items not relevant for the purpose of this Directive are omitted.

1.3.3. Powered axles (number, position, interconnection): .....

1.7. Driving cab (forward control or bonneted)([z]):.....

3. POWER PLANT ([q]) (In the case of a vehicle that can run either on petrol, diesel, etc., or also in combination with another fuel, items shall be repeated ([+]))

3.1. Manufacturer:.....

3.2. Internal combustion engine

3.2.1. Specific engine information

3.2.1.1. Working principle: positive ignition/compression ignition, four-stroke/two stroke ([1])

3.2.1.2. Number and arrangement of cylinders: .....

3.2.1.3. Engine capacity ([s]):...cm^3

3.2.2. Fuel: diesel oil/petrol/LPG/NG/ethanol: ([1])

4. TRANSMISSION ([v])

4.2. Type (mechanical, hydraulic, electric, etc.): .....

4.5. Gearbox

4.5.1. Type (manual/automatic/CVT (continuously variable transmission)) ([1])

4.9. Differential lock: yes/no/optional ([1])

9. BODYWORK

9.1. Type of bodywork: .....

9.3.1. Door configuration and number of doors:.....

9.10.3. Seats

9.10.3.1. Number:.....

([1]) The item numbers and footnotes used in this information document correspond to those set out in Annex I to Directive 70/156/EEC. Items not relevant for the purpose of this Directive are omitted.

15. REUSABILITY, RECYCLABILITY and RECOVERABILITY

15.1. Version to which the reference vehicle belongs:.....

15.2. Mass of the reference vehicle with bodywork or mass of the chassis with cab, without bodywork and/or coupling device if the manufacturer does not fit the bodywork and/or coupling device (including liquids, tools, spare wheel, if fitted) without driver: .....

15.3. Masses of materials of the reference vehicle

15.3.1. Mass of material taken into account at the pre-treatment step (##):.....

15.3.2. Mass of material taken into account at the dismantling step (##):.....

15.3.3. Mass of material taken into account at the non-metallic residue treatment step, considered as recyclable (##):

15.3.4. Mass of material taken into account at the non-metallic residue treatment step, considered as energy recoverable (##): .....

15.3.5. Materials breakdown (##): .....

15.3.6. Total mass of materials, which are reusable and/or recyclable:.....

15.3.7. Total mass of materials, which are reusable and/or recoverable: .....

15.4. Rates

15.4.1. Recyclability rate 'R_{cyc} (%)':.....

15.4.2. Recoverability rate 'R_{cov} (%)':.....

ANNEX III

MODEL OF EC TYPE-APPROVAL CERTIFICATE

Maximum format: A4 (210 x 297 mm)

EC TYPE-APPROVAL CERTIFICATE

Stamp
of EC type-approval authority

Communication concerning:

— EC type-approval ([1]) of a type of vehicle

— extension of EC type-approval ([1])

— refusal of EC type-approval ([1])

with regard to Directive 2005/64/EC

EC type-approval number:

Reason for extension:

SECTION I

0.1. Make (trade name of manufacturer):.....

0.2. Type:.....

0.2.1. Commercial name(s) ([2]):

0.3. Means of identification of type, if marked on the vehicle:.....

0.3.1. Location of that marking:.....

([1]) Delete where not applicable.

([2]) If not available at the time of granting the EC type-approval, this item shall be completed at the latest when the vehicle is introduced on the market.

0.4. Category of vehicle [1]:.....

0.5. Name and address of manufacturer: .....

0.8. Name(s) and address(es) of assembly plant(s):.....

[…]

SECTION II

1. Additional information:.....

Recyclability rate(s) of the reference vehicle(s):.....

Recoverability rate(s) of the reference vehicle(s): .....

2. Technical service responsible for carrying out the tests: .....

3. Date of test report: .....

4. Reference of test report: .....

5. Remarks (if any):.....

6. Attachments: the index and information package

7. The vehicle meets/does not meet [2] the technical requirements of this Directive:.....

.....

(Place) (Signature) (Date)

Attachments: Information package.

---

[1] As defined in part A of Annex II to Directive 70/156/EEC.

[2] Delete where not applicable.

ANNEX IV

PRELIMINARY ASSESSMENT OF THE MANUFACTURER

1. Purpose of this Annex

This Annex describes the preliminary assessment that must be carried out by the competent body to ensure that the manufacturer has put in place the necessary arrangements and procedures.

2. Competent body

The competent body shall comply with standard EN 45012: 1989 or ISO/IEC Guide 62: 1996 on the general criteria for certification bodies operating quality system certification as regards the management systems implemented by the manufacturer.

3. Checks to be performed by the competent body

3.1. The competent body shall ensure that the manufacturer has taken the necessary measures to:

(a) collect appropriate data through the full chain of supply, in particular the nature and the mass of all materials used in the construction of the vehicles, in order to perform the calculations required under this Directive;

(b) keep at his disposal all the other appropriate vehicle data required by the calculation process such as the volume of the fluids, etc.;

(c) check adequately the information received from suppliers;

(d) manage the breakdown of the materials;

(e) be able to perform the calculation of the recyclability and recoverability rates in accordance with the standard ISO 22628: 2002;

(f) mark the component parts made of polymers and elastomers in accordance with Commission Decision 2003/138/EC of 27 February 2003 establishing component and material coding standards for vehicles pursuant to Directive 2000/53/EC of the European Parliament and of the Council on end-of-life vehicles ([1]);

(g) verify that no component part listed in Annex V is reused in the construction of new vehicles.

3.2. The manufacturer shall provide the competent body with all relevant information, in documentary form. In particular, recycling and recovery of materials shall be properly documented.

([1]) OJ L 53, 28.2.2003, p. 58.

Appendix to Annex IV

MODEL OF CERTIFICATE OF COMPLIANCE

CERTIFICATE OF COMPLIANCE

WITH ANNEX IV TO DIRECTIVE 2005/64/EC

No [……. Reference number]

[……. the competent body]

Certifies that

(Manufacturer): .....

(Address of the manufacturer): .....

complies with the provisions of Annex IV to Directive 2005/64/EC.

Checks have been performed on:

by (name and address of the competent body):

Number of report:

The certificate is valid until […..date]

Done at [……Place]

On […….Date]

[…….Signature]

Attachments: Description of the strategy recommended by the manufacturer in the area of reuse, recycling and recovery.

ANNEX V

COMPONENT PARTS DEEMED TO BE NON-REUSABLE

1. **Introduction**

This Annex addresses the component parts of vehicles belonging to category M_1 and those belonging to category N_1 which must not be reused in the construction of new vehicles.

2. **List of component parts**

— All airbags ([1]), including cushions, pyrotechnic actuators, electronic control units and sensors

— Automatic or non-automatic seat belt assemblies, including webbing, buckles, retractors, pyrotechnic actuators

— Seats (only in cases where safety belt anchorages and/or airbags are incorporated in the seat)

— Steering lock assemblies acting on the steering column

— Immobilisers, including transponders and electronic control units

— Emission after-treatment systems (e.g. catalytic converters, particulate filters)

— Exhaust silencers.

([1]) When the airbag is inserted inside the steering wheel, the steering wheel itself.

ANNEX VI

AMENDMENTS TO DIRECTIVE 70/156/EEC

Directive 70/156/EEC is amended as follows:

1. the following points shall be added in Annex I:

'15. REUSABILITY, RECYCLABILITY and RECOVERABILITY

15.1. Version to which the reference vehicle belongs:

15.2. Mass of the reference vehicle with bodywork or mass of the chassis with cab, without bodywork and/or coupling device if the manufacturer does not fit the bodywork and/or coupling device (including liquids, tools, spare wheel, if fitted) without driver:

15.3. Mass of materials of the reference vehicle

15.3.1. Mass of material taken into account at the pre-treatment step (##):

15.3.2. Mass of material taken into account at the dismantling step (##):

15.3.3. Mass of material taken into account at the non-metallic residue treatment step, considered as recyclable (##):

15.3.4. Mass of material taken into account at the non-metallic residue treatment step, considered as energy recoverable (##):

15.3.5. Materials breakdown (##):

15.3.6. Total mass of materials, which are reusable and/or recyclable:

15.3.7. Total mass of materials, which are reusable and/or recoverable:

15.4. Rates

15.4.1. Recyclability rate "R_{cyc} (%)":

15.4.2. Recoverability rate "R_{cov} (%)":

(##) These terms are defined in the standard ISO 22628: 2002.';

2. the following item shall be added in Part I of Annex IV:

Subject	Directive No	Official Journal reference	Applicability									
			M_1	M_2	M_3	N_1	N_2	N_3	O_1	O_2	O_3	O_4
'59. Recyclability	2005/64/EC	L 310, 25 November 2005, p. 10	X	—	—	X	—	—				'

3. Annex XI is amended as follows:

(a) the following item shall be added in Appendix 1:

Item	Subject	Directive No	$M_1 \leq 2\,500$ (1) kg	$M_1 > 2\,500$ (1) kg	M_2	M_3
'59	Recyclability	2005/64/EC	N/A	N/A	—	—'

(b) the following item shall be added in Appendix 2:

Item	Subject	Directive number	M_1	M_2	M_3	N_1	N_2	N_3	O_1	O_2	O_3	O_4
'59	Recyclability	2005/64/EC	N/A	—	—	N/A	—	—	—	—	—	—'

(c) the following item shall be added in Appendix 3:

Item	Subject	Directive number	M_2	M_3	N_1	N_2	N_3	O_1	O_2	O_3	O_4
'59	Recyclability	2005/64/EC	—	—	N/A	—	—	—	—	—	—'

DIRECTIVE 2005/65/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 26 October 2005

on enhancing port security

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 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) Security incidents resulting from terrorism are among the greatest threats to the ideals of democracy, freedom and peace, which are the very essence of the European Union.

(2) People, infrastructure and equipment in ports should be protected against security incidents and their devastating effects. Such protection would benefit transport users, the economy and society as a whole.

(3) On 31 March 2004 the European Parliament and the Council of the European Union adopted Regulation (EC) No 725/2004 ([4]) on enhancing ship and port facility security. The maritime security measures imposed by that Regulation constitute only part of the measures necessary to achieve an adequate level of security throughout maritime-linked transport chains. That Regulation is limited in scope to security measures on board vessels and the immediate ship/port interface.

(4) In order to achieve the fullest protection possible for maritime and port industries, port security measures should be introduced, covering each port within the boundaries defined by the Member State concerned, and thereby ensuring that security measures taken pursuant to Regulation (EC) No 725/2004 benefit from enhanced security in the areas of port activity. These measures should apply to all those ports in which one or more port facilities covered by Regulation (EC) No 725/2004 are situated.

(5) The security objective of this Directive should be achieved by adopting appropriate measures without prejudice to the rules of the Member States in the field of national security and measures which might be taken on the basis of Title VI of the Treaty on European Union.

(6) Member States should rely upon detailed security assessments to identify the exact boundaries of the security-relevant port area, as well as the different measures required to ensure appropriate port security. Such measures should differ according to the security level in place and reflect differences in the risk profile of different sub-areas in the port.

(7) Member States should approve port security plans which incorporate the findings of the port security assessment. The effectiveness of security measures also requires the clear division of tasks between all parties involved as well as regular exercises. This clear division of tasks and the recording of exercise procedures in the format of the port security plan is considered to contribute strongly to the effectiveness of both preventive and remedial port security measures.

(8) Roll-on roll-off vessels are particularly vulnerable to security incidents, in particular if they carry passengers as well as cargo. Adequate measures should be taken on the basis of risk assessments which ensure that cars and goods vehicles destined for transport on roll-on roll-off vessels on domestic and international routes do not cause a risk to the vessel, its passengers and crew or to the cargo. The measures should be taken in a way which impedes as little as possible the fluidity of the operations.

([1]) OJ C 120, 20.5.2005, p. 28.

([2]) OJ C 43, 18.2.2005, p. 26.

([3]) Opinion of the European Parliament of 10 May 2005 (not yet published in the Official Journal) and Council Decision of 6 October 2005.

([4]) OJ L 129, 29.4.2004, p. 6.

(9) Member States should be able to establish port security committees entrusted with providing practical advice in the ports covered by this Directive.

(10) Member States should ensure that responsibilities in port security are clearly recognised by all parties involved. Member States should monitor compliance with security rules and clearly establish a responsible authority for all their ports, approve all security assessments and plans for their ports, set and communicate as appropriate security levels and ensure that measures are well communicated, implemented and coordinated.

(11) Member States should approve assessments and plans and monitor their implementation in their ports. In order to keep disruption to ports and the administrative burden on inspection bodies to a minimum, the Commission's monitoring of the implementation of this Directive should be conducted jointly with the inspections provided for in Article 9(4) of Regulation (EC) No 725/2004.

(12) Member States should ensure that a focal point for port security takes up the role of contact point between the Commission and Member States. They should inform the Commission which ports are covered by this Directive on the basis of the security assessments carried out.

(13) The effective and standard implementation of measures under this security policy raises important questions in relation to its funding. The funding of extra security measures should not generate distortions of competition. By 30 June 2006, the Commission should submit to the European Parliament and the Council the findings of a study on the costs involved in measures taken under this Directive, addressing in particular the way financing is shared between the public authorities, port authorities and operators.

(14) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

(15) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ([1]).

([1]) OJ L 184, 17.7.1999, p. 23.

(16) A procedure should be defined for the adaptation of this Directive to take account of developments in international instruments and, in the light of experience, to adapt or complement the detailed provisions of the Annexes to this Directive, without broadening the scope of this Directive.

(17) Since the objectives of this Directive, namely the balanced introduction of appropriate measures in the field of maritime transport and port policy, cannot be sufficiently achieved by the Member States and can therefore, by reason of the European scale of this Directive, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(18) Since this Directive concerns seaports, the obligations herein contained should not be applicable to Austria, the Czech Republic, Hungary, Luxembourg or Slovakia,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

1. The main objective of this Directive is to introduce Community measures to enhance port security in the face of threats of security incidents. This Directive shall also ensure that security measures taken pursuant to Regulation (EC) No 725/2004 benefit from enhanced port security.

2. The measures referred to in paragraph 1 shall consist of:

(a) common basic rules on port security measures;

(b) an implementation mechanism for these rules;

(c) appropriate compliance monitoring mechanisms.

Article 2

Scope

1. This Directive lays down security measures which shall be observed in ports. Member States may apply the provisions of this Directive to port-related areas.

2. The measures laid down in this Directive shall apply to every port located in the territory of a Member State in which one or more port facilities covered by an approved port facility security plan pursuant to Regulation (EC) No 725/2004 is or are situated. This Directive shall not apply to military installations in ports.

3. Member States shall define for each port the boundaries of the port for the purposes of this Directive, appropriately taking into account information resulting from the port security assessment.

4. Where the boundaries of a port facility within the meaning of Regulation (EC) No 725/2004 have been defined by a Member State as effectively covering the port, the relevant provisions of Regulation (EC) No 725/2004 shall take precedence over those of this Directive.

Article 3

Definitions

For the purpose of this Directive:

1. 'port' means any specified area of land and water, with boundaries defined by the Member State in which the port is situated, containing works and equipment designed to facilitate commercial maritime transport operations;

2. 'ship/port interface' means the interactions that occur when a ship is directly and immediately affected by actions involving the movement of persons or goods or the provision of port services to or from the ship;

3. 'port facility' means a location where the ship/port interface takes place; this includes areas such as anchorages, waiting berths and approaches from seaward, as appropriate;

4. 'focal point for port security' means the body designated by each Member State to serve as contact point for the Commission and other Member States and to facilitate, follow up and provide information on the application of the port security measures laid down in this Directive;

5. 'port security authority' means the authority responsible for security matters in a given port.

Article 4

Coordination with measures taken in application of Regulation (EC) No 725/2004

Member States shall ensure that port security measures introduced by this Directive are closely coordinated with measures taken pursuant to Regulation (EC) No 725/2004.

Article 5

Port security authority

1. Member States shall designate a port security authority for each port covered by this Directive. A port security authority may be designated for more than one port.

2. The port security authority shall be responsible for the preparation and implementation of port security plans based on the findings of port security assessments.

3. Member States may designate a 'competent authority for maritime security' provided for under Regulation (EC) No 725/2004 as port security authority.

Article 6

Port security assessment

1. Member States shall ensure that port security assessments are carried out for the ports covered by this Directive. These assessments shall take due account of the specificities of different sections of a port and, where deemed applicable by the relevant authority of the Member State, of its adjacent areas if these have an impact on security in the port and shall take into account the assessments for port facilities within their boundaries as carried out pursuant to Regulation (EC) No 725/2004.

2. Each port security assessment shall be carried out taking into account as a minimum the detailed requirements laid down in Annex I.

3. Port security assessments may be carried out by a recognised security organisation as referred to in Article 11.

4. Port security assessments shall be approved by the Member State concerned.

Article 7

Port security plan

1. Subject to the findings of port security assessments, Member States shall ensure that port security plans are developed, maintained and updated. Port security plans shall adequately address the specificities of different sections of a port and shall integrate the security plans for port facilities within their boundaries established pursuant to Regulation (EC) No 725/2004.

2. Port security plans shall identify, for each of the different security levels referred to in Article 8:

(a) the procedures to be followed;

(b) the measures to be put in place;

(c) the actions to be undertaken.

3. Each port security plan shall take into account as a minimum the detailed requirements specified in Annex II. Where, and to the extent appropriate, the port security plan shall in particular include security measures to be applied to passengers and vehicles set for embarkation on seagoing vessels which carry passengers and vehicles. In the case of international maritime transport services, the Member States concerned shall cooperate in the security assessment.

4. Port security plans may be developed by a recognised security organisation as referred to in Article 11.

5. Port security plans shall be approved by the Member State concerned before implementation.

6. Member States shall ensure that the implementation of port security plans is monitored. The monitoring shall be coordinated with other control activities carried out in the port.

7. Member States shall ensure that adequate exercises are performed, taking into account the basic security training exercise requirements listed in Annex III.

Article 8

Security levels

1. Member States shall introduce a system of security levels for ports or parts of ports.

2. There shall be three security levels, as defined in Regulation (EC) No 725/2004:

— 'Security level 1' means the level for which minimum appropriate protective security measures shall be maintained at all times;

— 'Security level 2' means the level for which appropriate additional protective security measures shall be maintained for a period of time as a result of a heightened risk of a security incident;

— 'Security level 3' means the level for which further specific protective security measures shall be maintained for a limited period of time when a security incident is probable or imminent, although it may not be possible to identify the specific target.

3. Member States shall determine the security levels in use for each port or part of a port. At each security level, a Member State may determine that different security measures are to be implemented in different parts of the port depending on the findings of the port security assessment.

4. Member States shall communicate to the appropriate person or persons the security level in force for each port or part of a port as well as any changes thereto.

Article 9

Port security officer

1. A port security officer shall be approved by the Member State concerned for each port. Each port shall, where practicable, have a different port security officer, but may, if appropriate, share a security officer.

2. Port security officers shall fulfil the role of point of contact for port security related issues.

3. Where the port security officer is not the same as the port facility(ies) security officer(s) under Regulation (EC) No 725/2004, close cooperation between them shall be ensured.

Article 10

Reviews

1. Member States shall ensure that port security assessments and port security plans are reviewed as appropriate. They shall be reviewed at least once every five years.

2. The scope of the review shall be that of Articles 6 or 7, as appropriate.

Article 11

Recognised security organisation

Member States may appoint recognised security organisations for the purposes specified in this Directive. Recognised security organisations shall fulfil the conditions set out in Annex IV.

Article 12

Focal point for port security

Member States shall appoint for port security aspects a focal point. Member States may designate for port security aspects the focal point appointed under Regulation (EC) No 725/2004. The focal point for port security shall communicate to the Commission the list of ports concerned by this Directive and shall inform it of any changes to that list.

Article 13

Implementation and conformity checking

1. Member States shall set up a system ensuring adequate and regular supervision of the port security plans and their implementation.

2. The Commission shall, in cooperation with the focal points referred to in Article 12, monitor the implementation of this Directive by Member States.

3. This monitoring shall be conducted jointly with the inspections provided for in Article 9(4) of Regulation (EC) No 725/2004.

Article 14

Adaptations

Annexes I to IV may be amended in accordance with the procedure referred to in Article 15(2), without broadening the scope of this Directive.

Article 15

Committee procedure

1. The Commission shall be assisted by the committee set up by Regulation (EC) No 725/2004.

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

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

3. The Committee shall adopt its Rules of Procedure.

Article 16

Confidentiality and dissemination of information

1. In applying this Directive, the Commission shall take, in accordance with Decision 2001/844/EC, ECSC, Euratom [1], appropriate measures to protect information subject to the requirement of confidentiality to which it has access or which is communicated to it by Member States.

Member States shall take equivalent measures in accordance with relevant national legislation.

2. Any personnel carrying out security inspections, or handling confidential information related to this Directive, shall have an appropriate level of security vetting by the Member State of which the person concerned is a national.

Article 17

Penalties

Member States shall ensure that effective, proportionate and dissuasive penalties are introduced for infringements of the national provisions adopted pursuant to this Directive.

[1] OJ L 317, 3.12.2001, p. 1. Decision as last amended by Decision 2005/94/EC, Euratom (OJ L 31, 4.2.2005, p. 66).

Article 18

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 15 June 2007. 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 main provisions of national law which they adopt in the field covered by this Directive.

Article 19

Evaluation report

By 15 December 2008 and every five years thereafter, the Commission shall submit an evaluation report to the European Parliament and the Council based, among other things, on the information obtained pursuant to Article 13. In the report, the Commission shall analyse compliance with this Directive by Member States and the effectiveness of the measures taken. If necessary, it shall present proposals for additional measures.

Article 20

Entry into force

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

Article 21

Addressees

This Directive is addressed to the Member States which have ports as referred to in Article 2(2).

Done at Strasbourg, 26 October 2005.

For the European Parliament	*For the Council*
The President	*The President*
J. BORRELL FONTELLES	D. ALEXANDER

ANNEX I

PORT SECURITY ASSESSMENT

The port security assessment is the basis for the port security plan and its implementation. The port security assessment will cover at least:

— identification and evaluation of important assets and infrastructure which it is important to protect;

— identification of possible threats to the assets and infrastructure and the likelihood of their occurrence, in order to establish and prioritise security measures;

— identification, selection and prioritisation of counter-measures and procedural changes and their level of effectiveness in reducing vulnerability; and

— identification of weaknesses, including human factors in the infrastructure, policies and procedures.

For this purpose the assessment will at least:

— identify all areas which are relevant to port security, thus also defining the port boundaries. This includes port facilities which are already covered by Regulation (EC) No 725/2004 and whose risk assessment will serve as a basis;

— identify security issues deriving from the interface between port facility and other port security measures;

— identify which port personnel will be subject to background checks and/or security vetting because of their involvement in high-risk areas;

— subdivide, if useful, the port according to the likelihood of security incidents. Areas will be judged not only upon their direct profile as a potential target, but also upon their potential role of passage when neighbouring areas are targeted;

— identify risk variations, e.g. those based on seasonality;

— identify the specific characteristics of each sub-area, such as location, accesses, power supply, communication system, ownership and users and other elements considered security-relevant;

— identify potential threat scenarios for the port. The entire port or specific parts of its infrastructure, cargo, baggage, people or transport equipment within the port can be a direct target of an identified threat;

— identify the specific consequences of a threat scenario. Consequences can impact on one or more sub-areas. Both direct and indirect consequences will be identified. Special attention will be given to the risk of human casualties;

— identify the possibility of cluster effects of security incidents;

— identify the vulnerabilities of each sub-area;

— identify all organisational aspects relevant to overall port security, including the division of all security-related authorities, existing rules and procedures;

— identify vulnerabilities of the overarching port security related to organisational, legislative and procedural aspects;

— identify measures, procedures and actions aimed at reducing critical vulnerabilities. Specific attention will be paid to the need for, and the means of, access control or restrictions to the entire port or to specific parts of a port, including identification of passengers, port employees or other workers, visitors and ship crews, area or activity monitoring requirements, cargo and luggage control. Measures, procedures and actions will be consistent with the perceived risk, which may vary between port areas;

— identify how measures, procedures and actions will be reinforced in the event of an increase of security level;

— identify specific requirements for dealing with established security concerns, such as 'suspect' cargo, luggage, bunker, provisions or persons, unknown parcels, known dangers (e.g. bomb). These requirements will analyse desirability conditions for either clearing the risk where it is encountered or after moving it to a secure area;

— identify measures, procedures and actions aimed at limiting and mitigating consequences;

— identify task divisions allowing for the appropriate and correct implementation of the measures, procedures and actions identified;

— pay specific attention, where appropriate, to the relationship with other security plans (e.g. port facility security plans) and other existing security measures. Attention will also be paid to the relationship with other response plans (e.g. oil spill response plan, port contingency plan, medical intervention plan, nuclear disaster plan, etc.);

— identify communication requirements for implementation of the measures and procedures;

— pay specific attention to measures to protect security-sensitive information from disclosure;

— identify the need-to-know requirements of all those directly involved as well as, where appropriate, the general public.

ANNEX II

PORT SECURITY PLAN

The port security plan sets out the port's security arrangements. It will be based on the findings of the port security assessment. It will clearly set out detailed measures. It will contain a control mechanism allowing, where necessary, for appropriate corrective measures to be taken.

The port security plan will be based on the following general aspects:

— defining all areas relevant to port security. Depending on the port security assessment, measures, procedures and actions may vary from sub-area to sub-area. Indeed, some sub-areas may require stronger preventive measures than others. Special attention will be paid to the interfaces between sub-areas, as identified in the port security assessment;

— ensuring coordination between security measures for areas with different security characteristics;

— providing, where necessary, for varying measures both with regard to different parts of the port, changing security levels, and specific intelligence;

— identifying an organisational structure supporting the enhancement of port security.

Based on those general aspects, the port security plan will attribute tasks and specify work plans in the following fields:

— access requirements. For some areas, requirements will only enter into force when security levels exceed minimal thresholds. All requirements and thresholds will be comprehensively included in the port security plan;

— ID, luggage and cargo control requirements. Requirements may or may not apply to sub-areas; requirements may or may not apply in full to different sub-areas. Persons entering or within a sub-area may be liable to control. The port security plan will appropriately respond to the findings of the port security assessment, which is the tool by which the security requirements of each sub-area and at each security level will be identified. When dedicated identification cards are developed for port security purposes, clear procedures will be established for the issue, the use-control and the return of such documents. Such procedures will take into account the specificities of certain groups of port users allowing for dedicated measures in order to limit the negative impact of access control requirements. Categories will at least include seafarers, authority officials, people regularly working in or visiting the port, residents living in the port and people occasionally working in or visiting the port;

— liaison with cargo control, baggage and passenger control authorities. Where necessary, the plan is to provide for the linking up of the information and clearance systems of these authorities, including possible pre-arrival clearance systems;

— procedures and measures for dealing with suspect cargo, luggage, bunker, provisions or persons, including identification of a secure area; as well as for other security concerns and breaches of port security;

— monitoring requirements for sub-areas or activities within sub-areas. Both the need for technical solutions and the solutions themselves will be derived from the port security assessment;

— signposting. Areas with access and/or control requirements will be properly signposted. Control and access requirements will appropriately take into account all relevant existing law and practices. Monitoring of activities will be appropriately indicated if national legislation so requires;

— communication and security clearance. All relevant security information will be properly communicated according to security clearance standards included in the plan. In view of the sensitivity of some information, communication will be based on a need-to-know basis, but it will include where necessary procedures for communications addressed to the general public. Security clearance standards will form part of the plan and are aimed at protecting security sensitive information against unauthorised disclosure;

— reporting of security incidents. With a view to ensuring a rapid response, the port security plan will set out clear reporting requirements to the port security officer of all security incidents and/or to the port security authority;

— integration with other preventive plans or activities. The plan will specifically deal with integration with other preventive and control activities in force in the port;

— integration with other response plans and/or inclusion of specific response measures, procedures and actions. The plan will detail interaction and coordination with other response and emergency plans. Where necessary conflicts and shortcomings will be resolved;

— training and exercise requirements;

— operational port security organisation and working procedures. The port security plan will detail the port security organisation, its task division and working procedures. It will also detail the coordination with port facility and ship security officers, where appropriate. It will delineate the tasks of the port security committee, if this exists;

— procedures for adapting and updating the port security plan.

ANNEX III

BASIC SECURITY TRAINING EXERCISE REQUIREMENTS

Various types of training exercises which may involve participation of port facility security officers, in conjunction with the relevant authorities of Member States, company security officers, or ship security officers, if available, will be carried out at least once each calendar year with no more than 18 months elapsing between the training exercises. Requests for the participation of company security officers or ships security officers in joint training exercises will be made bearing in mind the security and work implications for the ship. These training exercises will test communication, coordination, resource availability and response. These training exercises may be:

(1) full scale or live;

(2) tabletop simulation or seminar; or

(3) combined with other exercises held such as emergency response or other port State authority exercises.

ANNEX IV

CONDITIONS TO BE FULFILLED BY A RECOGNISED SECURITY ORGANISATION

A recognised security organisation will be able to demonstrate:

(1) expertise in relevant aspects of port security;

(2) an appropriate knowledge of port operations, including knowledge of port design and construction;

(3) an appropriate knowledge of other security relevant operations potentially affecting port security;

(4) the capability to assess the likely port security risks;

(5) the ability to maintain and improve the port security expertise of its personnel;

(6) the ability to monitor the continuing trustworthiness of its personnel;

(7) the ability to maintain appropriate measures to avoid unauthorised disclosure of, or access to, security-sensitive material;

(8) knowledge of relevant national and international legislation and security requirements;

(9) knowledge of current security threats and patterns;

(10) the ability to recognise and detect weapons, dangerous substances and devices;

(11) the ability to recognise, on a non-discriminatory basis, characteristics and behavioural patterns of persons who are likely to threaten port security;

(12) knowledge of techniques used to circumvent security measures;

(13) knowledge of security and surveillance equipment and systems and their operational limitations.

A recognised security organisation which has made a port security assessment or review of such an assessment for a port is not allowed to establish or review the port security plan for the same port.