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I

(Acts whose publication is obligatory)

REGULATION (EC) No 336/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 15 February 2006
on the implementation of the International Safety Management Code within the Community and
repealing Council Regulation (EC) No 3051/95
(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⁾,

After consulting the Committee of the Regions,

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

Whereas:

(1) The International Management Code for the Safe Operation of Ships and for Pollution Prevention, hereinafter referred to as 'the ISM Code', was adopted by the International Maritime Organisation (IMO) in 1993. This Code gradually became mandatory for most ships sailing on international voyages with the adoption in May 1994 of Chapter IX 'Management for the Safe Operation of Ships' of the International Convention for the Safety of Life at Sea (SOLAS), 1974.

(2) The ISM Code was amended by the IMO by Resolution MSC.104(73), adopted on 5 December 2000.

(3) Guidelines on Implementation of the ISM Code by Administrations were adopted by IMO Resolution A.788(19) on 23 November 1995. These Guidelines were amended by Resolution A.913(22), adopted on 29 November 2001.

(4) Council Regulation (EC) No 3051/95 of 8 December 1995 on the safety management of roll-on/roll-off passenger ferries (ro-ro ferries) ⁽³⁾ made the ISM Code mandatory at Community level with effect from 1 July 1996 for all ro-ro passenger ferries operating on a regular service to and from ports of the Member States, on both domestic and international voyages and regardless of their flag. This was a first step towards ensuring uniform and coherent implementation of the ISM Code in all Member States.

(5) On 1 July 1998 the ISM Code became mandatory under the provisions of Chapter IX of SOLAS for companies operating passenger ships, including high-speed passenger craft, oil tankers, chemical tankers, gas carriers, bulk carriers and cargo high-speed craft of 500 gross tonnage and upwards, on international voyages.

(6) On 1 July 2002 the ISM Code became mandatory for companies operating other cargo ships and mobile offshore drilling units of 500 gross tonnage and upwards, on international voyages.

(7) The safety of human life at sea and the protection of the environment may be effectively enhanced by applying the ISM Code strictly and on a mandatory basis.

(8) It is desirable to apply directly the ISM Code to ships flying the flag of a Member State as well as to ships, regardless of their flag, engaged exclusively on domestic voyages or on a regular shipping service operating to or from ports of the Member States.

⁽¹⁾ OJ C 302, 7.12.2004, p. 20.

⁽²⁾ Opinion of the European Parliament of 10 March 2004 (OJ C 102 E, 28.4.2004, p. 565), Council Common Position of 18 July 2005 (OJ C 264 E, 25.10.2005, p. 28) and Position of the European Parliament of 13 December 2005 (not yet published in the Official Journal).

⁽³⁾ OJ L 320, 30.12.1995, p. 14. Regulation as last amended by Regulation (EC) No 2099/2002 of the European Parliament and of the Council (OJ L 324, 29.11.2002, p. 1).

- (9) The adoption of a new Regulation with direct applicability should ensure the enforcement of the ISM Code on the understanding that it is left to the Member States to decide whether to implement the Code for ships, regardless of their flag, operating exclusively in port areas.
- (10) Consequently, Regulation (EC) No 3051/95 should be repealed.
- (11) If a Member State considers it difficult in practice for companies to comply with specific provisions of Part A of the ISM Code for certain ships or categories of ships exclusively engaged on domestic voyages in that Member State, it may derogate wholly or partly from those provisions by imposing measures ensuring equivalent achievement of the objectives of the Code. It may, for such ships and companies, establish alternative certification and verification procedures.
- (12) It is necessary to take into account Council Directive 95/21/EC of 19 June 1995 on port State control of shipping ⁽¹⁾.
- (13) It is also necessary to take into account Council Directive 94/57/EC of 22 November 1994 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations ⁽²⁾, in order to define the recognised organisations for the purpose of this Regulation, and Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships ⁽³⁾, for the purpose of establishing the scope of application of this Regulation as regards passenger ships engaged on domestic voyages.
- (14) The measures necessary for amending Annex II should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽⁴⁾.
- (15) Since the objectives of this Regulation, namely to enhance the safety management and safe operation of ships as well as the prevention of pollution from ships, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the

principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS REGULATION:

Article 1

Objective

The objective of this Regulation is to enhance the safety management and safe operation of ships as well as the prevention of pollution from ships, referred to in Article 3(1), by ensuring that companies operating those ships comply with the ISM Code by means of:

- (a) the establishment, implementation and proper maintenance by companies of the shipboard and shore-based safety management systems; and
- (b) the control thereof by flag and port State administrations.

Article 2

Definitions

For the purpose of this Regulation the following definitions shall apply:

- (1) 'the ISM Code' means the International Management Code for the Safe Operation of Ships and for Pollution Prevention adopted by the International Maritime Organisation by Assembly Resolution A.741(18) of 4 November 1993, as amended by Maritime Safety Committee Resolution MSC.104(73) of 5 December 2000 and set out in Annex I to this Regulation, in its up-to-date version;
- (2) 'recognised organisation' means a body recognised in accordance with Directive 94/57/EC;
- (3) 'company' means the owner of the ship or any other organisation or person, such as the manager or the bareboat charterer, who has assumed responsibility for the operation of the ship from the shipowner and who, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed by the ISM Code;
- (4) 'passenger ship' means a ship, including a high-speed craft, carrying more than 12 passengers, or a passenger submersible craft;

⁽¹⁾ OJ L 157, 7.7.1995, p. 1. Directive as last amended by Directive 2002/84/EC of the European Parliament and of the Council (OJ L 324, 29.11.2002, p. 53).

⁽²⁾ OJ L 319, 12.12.1994, p. 20. Directive as last amended by Directive 2002/84/EC.

⁽³⁾ OJ L 144, 15.5.1998, p. 1. Directive as last amended by Commission Directive 2003/75/EC (OJ L 190, 30.7.2003, p. 6).

⁽⁴⁾ OJ L 184, 17.7.1999, p. 23.

- (5) 'passenger' means every person other than:
- (a) the master and the members of the crew or other persons employed or engaged in any capacity on board a ship on the business of that ship; and
 - (b) a child under one year of age;
- (6) 'high-speed craft' means a high-speed craft as defined in Regulation X-1/2 of SOLAS, in its up-to-date version. For high-speed passenger craft, the limitations indicated in Article 2(f) of Directive 98/18/EC shall apply;
- (7) 'cargo ship' means a ship, including a high-speed craft, which is not a passenger ship;
- (8) 'international voyage' means a voyage by sea from a port of a Member State or any other State to a port outside that State, or vice versa;
- (9) 'domestic voyage' means a voyage in sea areas from a port of a Member State to the same or another port within that Member State;
- (10) 'regular shipping service' means a series of ship crossings operated so as to serve traffic between the same two or more points, either:
- (a) according to a published timetable; or
 - (b) with crossings so regular or frequent that they constitute a recognisable systematic series;
- (11) 'ro-ro passenger ferry' means a seagoing passenger vessel as defined in Chapter II-1 of SOLAS, in its up-to-date version;
- (12) 'passenger submersible craft' means a passenger-carrying mobile vessel which primarily operates under water and relies on surface support, such as a surface ship or shore-based facilities, for monitoring and for one or more of the following:
- (a) recharging of power supply;
 - (b) recharging high pressure air;
 - (c) recharging life-support;
- (13) 'mobile offshore drilling unit' means a vessel capable of engaging in drilling operations for the exploration for or exploitation of resources beneath the seabed such as liquid or gaseous hydrocarbons, sulphur or salt;
- (14) 'gross tonnage' means the gross tonnage of a ship determined in accordance with the International Convention on Tonnage Measurement of Ships, 1969 or, in the case of ships engaged exclusively on domestic voyages and not measured in accordance with the said Convention, the gross tonnage of the ship determined in accordance with national tonnage measurement regulations.

Article 3

Scope

1. This Regulation shall apply to the following types of ships and to companies operating them:

- (a) cargo ships and passenger ships, flying the flag of a Member State, engaged on international voyages;
- (b) cargo ships and passenger ships engaged exclusively on domestic voyages, regardless of their flag;
- (c) cargo ships and passenger ships operating to or from ports of the Member States, on a regular shipping service, regardless of their flag;
- (d) mobile offshore drilling units operating under the authority of a Member State.

2. This Regulation shall not apply to the following types of ships or to the companies operating them:

- (a) ships of war and troopships and other ships owned or operated by a Member State and used only on government non-commercial service;
- (b) ships not propelled by mechanical means, wooden ships of primitive build, pleasure yachts and pleasure craft, unless they are or will be crewed and carrying more than 12 passengers for commercial purposes;
- (c) fishing vessels;
- (d) cargo ships and mobile offshore drilling units of less than 500 gross tonnage;
- (e) passenger ships, other than ro-ro passenger ferries, in sea areas of Class C and D as defined in Article 4 of Directive 98/18/EC.

*Article 4***Compliance**

Member States shall ensure that all companies operating ships falling within the scope of this Regulation comply with the provisions of this Regulation.

*Article 5***Safety management requirements**

The ships referred to in Article 3(1) and the companies operating them shall comply with the requirements of Part A of the ISM Code.

*Article 6***Certification and verification**

For the purposes of certification and verification, Member States shall comply with the provisions of Part B of the ISM Code.

*Article 7***Derogation**

1. A Member State may, if it considers it difficult in practice for companies to comply with paragraphs 6, 7, 9, 11 and 12 of Part A of the ISM Code for certain ships or categories of ships exclusively engaged on domestic voyages in that Member State, derogate wholly or partly from those provisions by imposing measures ensuring equivalent achievement of the objectives of the Code.

2. A Member State may, for ships and companies for which a derogation has been adopted by virtue of paragraph 1, if it considers it difficult in practice to apply the requirements laid down in Article 6, establish alternative certification and verification procedures.

3. In the circumstances set out in paragraph 1 and, if applicable, paragraph 2, the following procedure shall apply:

- (a) the Member State concerned shall notify the Commission of the derogation and of the measures which it intends to adopt;
- (b) if, within six months of the notification, it is decided, in accordance with the procedure referred to in Article 12(2), that the proposed derogation is not justified or that the proposed measures are not sufficient, the Member State shall be required to amend or refrain from adopting the proposed provisions;

- (c) the Member State shall make any adopted measures public with a direct reference to paragraph 1 and, if applicable, paragraph 2.

4. Following a derogation under paragraph 1 and, if applicable, paragraph 2, the Member State concerned shall issue a certificate in accordance with the second subparagraph of Annex II, Part B, Section 5, indicating the applicable operational limitations.

*Article 8***Validity, acceptance and recognition of certificates**

1. The Document of Compliance shall remain valid for up to five years from the date of its issue. The Safety Management Certificate shall remain valid for up to five years from the date of its issue.

2. In cases of renewal of the Document of Compliance and the Safety Management Certificate, the relevant provisions of Part B of the ISM Code shall apply.

3. Member States shall accept Documents of Compliance, Interim Documents of Compliance, Safety Management Certificates and Interim Safety Management Certificates issued by the administration of any other Member State or on behalf of this administration by a recognised organisation.

4. Member States shall accept Documents of Compliance, Interim Documents of Compliance, Safety Management Certificates and Interim Safety Management Certificates issued by, or on behalf of, the administrations of third countries.

However, for ships engaged on a regular shipping service, compliance with the ISM Code by the Documents of Compliance, Interim Documents of Compliance, Safety Management Certificates and Interim Safety Management Certificates issued on behalf of administrations of third countries shall be verified, by any appropriate means, by or on behalf of the Member State(s) concerned, unless they were issued by the administration of a Member State or by a recognised organisation.

*Article 9***Penalties**

Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all the measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

*Article 10***Reporting**

1. Member States shall report to the Commission every two years on the implementation of this Regulation.
2. The Commission shall, in accordance with the procedure referred to in Article 12(2), establish a harmonised specimen form for such reports.
3. The Commission shall, with the assistance of the European Maritime Safety Agency and within six months of receiving the reports from Member States, prepare a consolidated report concerning the implementation of this Regulation, with any proposed measures, if appropriate. This report shall be addressed to the European Parliament and the Council.

*Article 11***Amendments**

1. Amendments to the ISM Code may be excluded from the scope of this Regulation pursuant to Article 5 of Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) ⁽¹⁾.
2. Any amendment to Annex II shall be made in accordance with the procedure referred to in Article 12(2).

*Article 12***Committee**

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) set up under Article 3 of Regulation (EC) No 2099/2002.

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 two months.

3. The Committee shall adopt its Rules of Procedure.

*Article 13***Repeal**

1. Regulation (EC) No 3051/95 shall be repealed with effect from 24 March 2006.
2. Interim Documents of Compliance, Interim Safety Management Certificates, Documents of Compliance and Safety Management Certificates issued before 24 March 2006 shall remain valid until their expiry or until their next endorsement.

*Article 14***Entry into force**

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

As concerns cargo and passenger ships, which are not already required to comply with the ISM Code, this Regulation shall apply as from 24 March 2008.

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

Done at Strasbourg, 15 February 2006.

For the European Parliament

The President

J. BORRELL FONTELLES

For the Council

The President

H. WINKLER

⁽¹⁾ OJ L 324, 29.11.2002, p. 1. Regulation as amended by Commission Regulation (EC) No 415/2004 (OJ L 68, 6.3.2004, p. 10).

ANNEX I

International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code)

Part A — Implementation

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 - 1.2. Objectives
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5. Master's responsibility and authority
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Part B — Certification and verification

13. Certification and periodical verification
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INTERNATIONAL MANAGEMENT CODE FOR THE SAFE OPERATION OF SHIPS AND FOR POLLUTION PREVENTION

(INTERNATIONAL SAFETY MANAGEMENT (ISM) CODE)

PART A — IMPLEMENTATION

1. **General**

1.1. *Definitions*

The following definitions apply to Parts A and B of this Code.

- 1.1.1. 'International Safety Management (ISM) Code' means the International Management Code for the Safe Operation of Ships and for Pollution Prevention as adopted by the Assembly, as may be amended by the organisation.
- 1.1.2. 'Company' means the owner of the ship or any other organisation or person such as the manager or the bareboat charterer, who has assumed the responsibility for the operation of the ship from the shipowner and who on assuming such responsibility has agreed to take over all the duties and responsibility imposed by the Code.
- 1.1.3. 'Administration' means the government of the State whose flag the ship is entitled to fly.
- 1.1.4. 'Safety management system' means a structured and documented system enabling company personnel to implement effectively the company safety and environmental protection policy.
- 1.1.5. 'Document of Compliance' means a document issued to a company which complies with the requirements of this Code.
- 1.1.6. 'Safety Management Certificate' means a document issued to a ship which signifies that the company and its shipboard management operate in accordance with the approved safety management system.
- 1.1.7. 'Objective evidence' means quantitative or qualitative information, records or statements of fact pertaining to safety or to the existence and implementation of a safety management system element, which is based on observation, measurement or test and which can be verified.
- 1.1.8. 'Observation' means a statement of fact made during a safety management audit and substantiated by objective evidence.
- 1.1.9. 'Non-conformity' means an observed situation where objective evidence indicates the non-fulfilment of a specified requirement.
- 1.1.10. 'Major non-conformity' means an identifiable deviation that poses a serious threat to the safety of personnel or the ship or a serious risk to the environment that requires immediate corrective action and includes the lack of effective and systematic implementation of a requirement of this Code.
- 1.1.11. 'Anniversary date' means the day and month of each year that corresponds to the date of expiry of the relevant document or certificate.
- 1.1.12. 'Convention' means the International Convention for the Safety of Life at Sea, 1974 as amended.

1.2. Objectives

1.2.1. The objectives of the Code are to ensure safety at sea, prevention of human injury or loss of life, and avoidance of damage to the environment, in particular, to the marine environment, and to property.

1.2.2. Safety management objectives of the company should, *inter alia*:

1.2.2.1. provide for safe practices in ship operation and a safe working environment;

1.2.2.2. establish safeguards against all identified risks; and

1.2.2.3. continuously improve safety management skills of personnel ashore and aboard ships, including preparing for emergencies related both to safety and environmental protection.

1.2.3. The safety management system should ensure:

1.2.3.1. compliance with mandatory rules and regulations; and

1.2.3.2. that applicable codes, guidelines and standards recommended by the organisation, administrations, classification societies and maritime industry organisations are taken into account.

1.3. Application

The requirements of this Code may be applied to all ships.

1.4. Functional requirements for a safety management system (SMS)

Every company should develop, implement and maintain a safety management system (SMS) which includes the following functional requirements:

1.4.1. a safety and environmental protection policy;

1.4.2. instructions and procedures to ensure safe operation of ships and protection of the environment in compliance with relevant international and flag State legislation;

1.4.3. defined levels of authority and lines of communication between, and amongst, shore and shipboard personnel;

1.4.4. procedures for reporting accidents and non-conformities with the provisions of this Code;

1.4.5. procedures to prepare for and respond to emergency situations; and

1.4.6. procedures for internal audits and management reviews.

2. Safety and environmental protection policy

2.1. The company should establish a safety and environmental protection policy which describes how the objectives, given in paragraph 1.2, will be achieved.

2.2. The company should ensure that the policy is implemented and maintained at all levels of the organisation both ship-based as well as shore-based.

3. **Company responsibilities and authority**

- 3.1. If the entity who is responsible for the operation of the ship is other than the owner, the owner must report the full name and details of such entity to the administration.
- 3.2. The company should define and document the responsibility, authority and interrelation of all personnel who manage, perform and verify work relating to and affecting safety and pollution prevention.
- 3.3. The company is responsible for ensuring that adequate resources and shore-based support are provided to enable the designated person or persons to carry out their functions.

4. **Designated person(s)**

To ensure the safe operation of each ship and to provide a link between the company and those on board, every company, as appropriate, should designate a person or persons ashore having direct access to the highest level of management. The responsibility and authority of the designated person or persons should include monitoring the safety and pollution prevention aspects of the operation of each ship and to ensure that adequate resources and shore-based support are applied, as required.

5. **Master's responsibility and authority**

- 5.1. The company should clearly define and document the master's responsibility with regard to:
 - 5.1.1. implementing the safety and environmental protection policy of the company;
 - 5.1.2. motivating the crew in the observance of that policy;
 - 5.1.3. issuing appropriate orders and instructions in a clear and simple manner;
 - 5.1.4. verifying that specified requirements are observed; and
 - 5.1.5. reviewing the SMS and reporting its deficiencies to the shore-based management.
- 5.2. The company should ensure that the SMS operating on board the ship contains a clear statement emphasising the master's authority. The company should establish in the SMS that the master has the overriding authority and the responsibility to make decisions with respect to safety and pollution prevention and to request the company's assistance as may be necessary.

6. **Resources and personnel**

- 6.1. The company should ensure that the master is:
 - 6.1.1. properly qualified for command;
 - 6.1.2. fully conversant with the company's SMS; and
 - 6.1.3. given the necessary support so that the master's duties can be safely performed.
- 6.2. The company should ensure that each ship is manned with qualified, certificated and medically fit seafarers in accordance with national and international requirements.

- 6.3. The company should establish procedures to ensure that new personnel and personnel transferred to new assignments related to safety and protection of the environment are given proper familiarisation with their duties.

Instructions which must be provided prior to sailing should be identified, documented and given.

- 6.4. The company should ensure that all personnel involved in the company's SMS have an adequate understanding of relevant rules, regulations, codes and guidelines.
- 6.5. The company should establish and maintain procedures for identifying any training which may be required in support of the SMS and ensure that such training is provided for all personnel concerned.
- 6.6. The company should establish procedures by which the ship's personnel receive relevant information on the SMS in a working language or languages understood by them.
- 6.7. The company should ensure that the ship's personnel are able to communicate effectively in the execution of their duties related to the SMS.

7. **Development of plans for shipboard operations**

The company should establish procedures for the preparation of plans and instructions, including checklists as appropriate, for key shipboard operations concerning the safety of the ship and the prevention of pollution. The various tasks involved should be defined and assigned to qualified personnel.

8. **Emergency preparedness**

- 8.1. The company should establish procedures to identify, describe and respond to potential emergency shipboard situations.
- 8.2. The company should establish programmes for drills and exercises to prepare for emergency actions.
- 8.3. The SMS should provide for measures ensuring that the company's organisation can respond at any time to hazards, accidents and emergency situations involving its ships.

9. **Reports and analysis of non-conformities, accidents and hazardous occurrences**

- 9.1. The SMS should include procedures ensuring that non-conformities, accidents and hazardous situations are reported to the company, investigated and analysed with the objective of improving safety and pollution prevention.
- 9.2. The company should establish procedures for the implementation of corrective action.

10. **Maintenance of the ship and equipment**

- 10.1. The company should establish procedures to ensure that the ship is maintained in conformity with the provisions of the relevant rules and regulations and with any additional requirements which may be established by the company.
- 10.2. In meeting these requirements the company should ensure that:
- 10.2.1. inspections are held at appropriate intervals;
- 10.2.2. any non-conformity is reported with its possible cause, if known;

10.2.3. appropriate corrective action is taken; and

10.2.4. records of these activities are maintained.

10.3. The company should establish procedures in the SMS to identify equipment and technical systems the sudden operational failure of which may result in hazardous situations. The SMS should provide for specific measures aimed at promoting the reliability of such equipment or systems. These measures should include the regular testing of stand-by arrangements and equipment or technical systems that are not in continuous use.

10.4. The inspections mentioned in 10.2 as well as the measures referred to in 10.3 should be integrated in the ship's operational maintenance/routine.

11. **Documentation**

11.1. The company should establish and maintain procedures to control all documents and data, which are relevant to the SMS.

11.2. The company should ensure that:

11.2.1. valid documents are available at all relevant locations;

11.2.2. changes to documents are reviewed and approved by authorised personnel; and

11.2.3. obsolete documents are promptly removed.

11.3. The documents used to describe and implement the SMS may be referred to as the 'safety management manual'. Documentation should be kept in a form that the company considers most effective. Each ship should carry on board all documentation relevant to that ship.

12. **Company verification, review and evaluation**

12.1. The company should carry out internal safety audits to verify whether safety and pollution prevention activities comply with the SMS.

12.2. The company should periodically evaluate the efficiency and when needed review the SMS in accordance with procedures established by the company.

12.3. The audits and possible corrective actions should be carried out in accordance with documented procedures.

12.4. Personnel carrying out audits should be independent of the areas being audited unless this is impracticable due to the size and the nature of the company.

12.5. The results of the audits and reviews should be brought to the attention of all personnel having responsibility in the area involved.

12.6. The management personnel responsible for the area involved should take timely corrective action on deficiencies found.

PART B — CERTIFICATION AND VERIFICATION

13. Certification and periodical verification

- 13.1. The ship should be operated by a company which has been issued with a Document of Compliance or with an Interim Document of Compliance in accordance with paragraph 14.1, relevant to that ship.
- 13.2. The Document of Compliance should be issued by the administration, by an organisation recognised by the administration or, at the request of the administration, by another contracting government to the Convention to any company complying with the requirements of this Code for a period specified by the administration which should not exceed five years. Such a document should be accepted as evidence that the company is capable of complying with the requirements of this Code.
- 13.3. The Document of Compliance is only valid for the ship types explicitly indicated in the document. Such indication should be based on the types of ships on which the initial verification was based. Other ship types should only be added after verification of the company's capability to comply with the requirements of this Code applicable to such ship types. In this context, ship types are those referred to in Regulation IX/1 of the Convention.
- 13.4. The validity of a Document of Compliance should be subject to annual verification by the administration or by an organisation recognised by the administration or, at the request of the administration by another contracting government within three months before or after the anniversary date.
- 13.5. The Document of Compliance should be withdrawn by the administration or, at its request, by the contracting government which issued the document, when the annual verification required in paragraph 13.4 is not requested or if there is evidence of major non-conformities with this Code.
 - 13.5.1. All associated Safety Management Certificates and/or Interim Safety Management Certificates should also be withdrawn if the Document of Compliance is withdrawn.
- 13.6. A copy of the Document of Compliance should be placed on board in order that the master of the ship, if so requested, may produce it for verification by the administration or by an organisation recognised by the administration or for the purposes of the control referred to in Regulation IX/6.2 of the Convention. The copy of the document is not required to be authenticated or certified.
- 13.7. The Safety Management Certificate should be issued to a ship for a period which should not exceed five years by the administration or an organisation recognised by the administration or, at the request of the administration, by another contracting government. The Safety Management Certificate should be issued after verifying that the company and its shipboard management operate in accordance with the approved safety management system. Such a certificate should be accepted as evidence that the ship is complying with the requirements of this Code.
- 13.8. The validity of the Safety Management Certificate should be subject to at least one intermediate verification by the administration or an organisation recognised by the administration or, at the request of the administration, by another contracting government. If only one intermediate verification is to be carried out and the period of validity of the Safety Management Certificate is five years, it should take place between the second and third anniversary date of the Safety Management Certificate.
- 13.9. In addition to the requirements of paragraph 13.5.1, the Safety Management Certificate should be withdrawn by the administration or, at the request of the administration, by the contracting government which has issued it when the intermediate verification required in paragraph 13.8 is not requested or if there is evidence of major non-conformity with this Code.
- 13.10. Notwithstanding the requirements of paragraphs 13.2 and 13.7, when the renewal verification is completed within three months before the expiry date of the existing Document of Compliance or Safety Management Certificate, the new Document of Compliance or the new Safety Management Certificate should be valid from the date of completion of the renewal verification for a period not exceeding five years from the date of expiry of the existing Document of Compliance or Safety Management Certificate.

13.11. When the renewal verification is completed more than three months before the expiry date of the existing Document of Compliance or Safety Management Certificate, the new Document of Compliance or the new Safety Management Certificate should be valid from the date of completion of the renewal verification for a period not exceeding five years from the date of completion of the renewal verification.

14. **Interim certification**

14.1. An Interim Document of Compliance may be issued to facilitate initial implementation of this Code when:

1. a company is newly established; or
2. new ship types are to be added to an existing Document of Compliance, following verification that the company has a safety management system that meets the objectives of paragraph 1.2.3 of this Code, provided the company demonstrates plans to implement a safety management system meeting the full requirements of this Code within the period of validity of the Interim Document of Compliance. Such an Interim Document of Compliance should be issued for a period not exceeding 12 months by the administration or by an organisation recognised by the administration or, at the request of the administration, by another contracting government. A copy of the Interim Document of Compliance should be placed on board in order that the master of the ship, if so requested, may produce it for verification by the administration or by an organisation recognised by the administration or for the purposes of the control referred to in Regulation IX/6.2 of the Convention. The copy of the document is not required to be authenticated or certified.

14.2. An Interim Safety Management Certificate may be issued:

1. to new ships on delivery;
2. when a company takes on responsibility for the operation of a ship which is new to the company; or
3. when a ship changes flag.

Such an Interim Safety Management Certificate should be issued for a period not exceeding six months by the administration or an organisation recognised by the administration or, at the request of the administration, by another contracting government.

14.3. An administration or, at the request of the administration, another contracting government may, in special cases, extend the validity of an Interim Safety Management Certificate for a further period which should not exceed six months from the date of expiry.

14.4. An Interim Safety Management Certificate may be issued following verification that:

1. the Document of Compliance, or the Interim Document of Compliance, is relevant to the ship concerned;
2. the Safety management system provided by the company for the ship concerned includes key elements of this Code and has been assessed during the audit for issuance of the Document of Compliance or demonstrated for issuance of the Interim Document of Compliance;
3. the company has planned the audit of the ship within three months;
4. the master and officers are familiar with the safety management system and the planned arrangements for its implementation;
5. instructions, which have been identified as being essential, are provided prior to sailing; and
6. relevant information on the safety management system has been given in a working language or languages understood by the ship's personnel.

15. Verification

- 15.1. All verifications required by the provisions of this Code should be carried out in accordance with procedures acceptable to the administration, taking into account the guidelines developed by the organisation ⁽¹⁾.

16. Forms of certificates

- 16.1. The Document of Compliance, the Safety Management Certificate, the Interim Document of Compliance and the Interim Safety Management Certificate should be drawn up in a form corresponding to the models given in the appendix to this Code. If the language used is neither English nor French, the text should include a translation into one of these languages.
- 16.2. In addition to the requirements of paragraph 13.3 the ship types indicated on the Document of Compliance and the Interim Document of Compliance may be endorsed to reflect any limitations in the operations of the ships described in the safety management system.
-

⁽¹⁾ Refer to the Revised Guidelines on Implementation of the International Safety Management (ISM) Code by Administrations adopted by the organisation by Resolution A.913(22).

Appendix

Forms of the Document of Compliance, the Safety Management Certificate, the Interim Document of Compliance and the Interim Safety Management Certificate

DOCUMENT OF COMPLIANCE

(Official seal)/(State)

Certificate No

Issued under the provisions of the

INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974, as amended

Under the authority of the Government of

(name of the State)

by

(person or organisation authorised)

Name and address of the company:

.....
.....

(see paragraph 1.1.2 of the ISM Code)

THIS IS TO CERTIFY THAT the safety management system of the company has been audited and that it complies with the requirements of the International Management Code for the Safe Operation of Ships and for Pollution Prevention (ISM Code) for the types of ships listed below (delete as appropriate):

Passenger ship

Passenger high-speed craft

Cargo high-speed craft

Bulk carrier

Oil tanker

Chemical tanker

Gas carrier

Mobile offshore drilling unit

Other cargo ship

This Document of Compliance is valid until, subject to periodical verification.

Issued at

(place of issue of the document)

Date of issue

.....

(Signature of the duly authorised official issuing the document)

(Seal or stamp of issuing authority, as appropriate)

Certificate No

ENDORSEMENT FOR ANNUAL VERIFICATION

THIS IS TO CERTIFY THAT, at the periodical verification in accordance with Regulation IX/6.1 of the Convention and paragraph 13.4 of the ISM Code, the safety management system was found to comply with the requirements of the ISM Code.

1st ANNUAL VERIFICATION

Signed:

(Signature of authorised official)

Place:

Date:

2nd ANNUAL VERIFICATION

Signed:

(Signature of authorised official)

Place:

Date:

3rd ANNUAL VERIFICATION

Signed:

(Signature of authorised official)

Place:

Date:

4th ANNUAL VERIFICATION

Signed:

(Signature of authorised official)

Place:

Date:

SAFETY MANAGEMENT CERTIFICATE

(Official seal)/(State)

Certificate No

Issued under the provisions of the

INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974, as amended

Under the authority of the Government of

(name of the State)

by

(person or organisation authorised)

Name of ship:

Distinctive number or letters:

Port of registry:

Type of ship (*):

Gross tonnage:

IMO number:

Name and address of company:

(see paragraph 1.1.2 of the ISM Code)

THIS IS TO CERTIFY THAT the safety management system of the ship has been audited and that it complies with the requirements of the International Management Code for the Safe Operation of Ships and for Pollution Prevention (ISM Code), following verification that the Document of Compliance for the company is applicable to this type of ship.

(*) Insert the type of ship from among the following: passenger ship; passenger high-speed craft; cargo high-speed craft; bulk carrier; oil tanker; chemical tanker; gas carrier; mobile offshore drilling unit; other cargo ship.

This Safety Management Certificate is valid until, subject to periodical verification and the Document of Compliance remaining valid.

Issued at

(place of issue of the document)

Date of issue

(Signature of the duly authorised official issuing the certificate)

(Seal or stamp of issuing authority, as appropriate)

Certificate No

ENDORSEMENT FOR INTERMEDIATE VERIFICATION AND ADDITIONAL VERIFICATION (IF REQUIRED)

THIS IS TO CERTIFY THAT, at the periodical verification in accordance with Regulation IX/6.1 of the Convention and paragraph 13.8 of the ISM Code, the safety management system was found to comply with the requirements of the ISM Code.

INTERMEDIATE VERIFICATION (to be completed between the second and third anniversary date)

Signed:

(Signature of authorised official)

Place:

Date:

ADDITIONAL VERIFICATION (*)

Signed:

(Signature of authorised official)

Place:

Date:

ADDITIONAL VERIFICATION (*)

Signed:

(Signature of authorised official)

Place:

Date:

ADDITIONAL VERIFICATION (*)

Signed:

(Signature of authorised official)

Place:

Date:

(*) If applicable. Reference is made to paragraph 3.4.1 of the Guidelines on Implementation of the International Safety Management (ISM) Code by Administrations (Resolution A.913(22)).

INTERIM DOCUMENT OF COMPLIANCE

(Official seal)/(State)

Certificate No

Issued under the provisions of the

INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974, as amended

Under the authority of the Government of

(name of the State)

by

(person or organisation authorised)

Name and address of the company:

(see paragraph 1.1.2 of the ISM Code)

THIS IS TO CERTIFY THAT the safety management system of the company has been recognised as meeting the objectives of paragraph 1.2.3 of the International Management Code for the Safe Operation of Ships and for Pollution Prevention (ISM Code), for the type(s) of ships listed below (delete as appropriate):

Passenger ship

Passenger high-speed craft

Cargo high-speed craft

Bulk carrier

Oil tanker

Chemical tanker

Gas carrier

Mobile offshore drilling unit

Other cargo ship

This Interim Document of Compliance is valid until:

Issued at:

(Place of issue of the document)

Date of issue:

(Signature of the duly authorised official issuing the document)

(Seal or stamp of issuing authority, as appropriate)

INTERIM SAFETY MANAGEMENT CERTIFICATE

(Official seal)/(State)

Certificate No

Issued under the provisions of the

INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974,

as amended

Under the authority of the Government of
(name of the State)

by
(person or organisation authorised)

Name of ship:

Distinctive number or letters:

Port of registry:

Type of ship (*):

Gross tonnage:

IMO number:

Name and address of company:
.....

(see paragraph 1.1.2 of the ISM Code)

THIS IS TO CERTIFY THAT the requirements of paragraph 14.4 of the ISM Code have been met and that the Document of Compliance/Interim Document of Compliance (**) of the company is relevant to this ship.

This Interim Safety Management Certificate is valid until

subject to the Document of Compliance/Interim Document of Compliance (**) remaining valid.

(*) Insert the type of ship from among the following: passenger ship; passenger high-speed craft; cargo high-speed craft; bulk carrier; oil tanker; chemical tanker; gas carrier; mobile offshore drilling unit; other cargo ship.

(**) Delete as appropriate.

Issued at
(place of issue of the document)

Date of issue:
(Signature of the duly authorised official issuing the certificate)
(Seal or stamp of issuing authority, as appropriate)

Certificate No

The validity of this Interim Safety Management Certificate is extended to:

Date of extension:
(Signature of the duly authorised official extending the validity)
(Seal or stamp of issuing authority, as appropriate)

ANNEX II

PROVISIONS FOR THE ADMINISTRATION CONCERNING THE IMPLEMENTATION OF THE INTERNATIONAL SAFETY MANAGEMENT (ISM) CODE

Part A General provisions

Part B Certification and standards

2. Certification process
3. Standard of management
4. Standards of competence
5. Form of Document of Compliance and Safety Management Certificate

PART A — GENERAL PROVISIONS

- 1.1. When carrying out verifications and certification tasks required by the provisions of the ISM Code for ships falling within the scope of this Regulation, Member States shall comply with the requirements and standards laid down in Part B of this Title.
- 1.2. In addition Member States shall take due account of the provisions of the Revised Guidelines on the Implementation of the International Safety Management (ISM) Code by Administrations, adopted by the IMO through Resolution A.913(22) of 29 November 2001, as far as they are not covered under Part B of this Title.

PART B — CERTIFICATION AND STANDARDS

2. Certification process

- 2.1. The certification process relevant for the issuance of a document of compliance for a company and a safety management certificate to each ship shall be performed taking account of the provisions set out below.
- 2.2. The certification process shall normally involve the following steps:
 1. initial verification;
 2. annual or intermediate verification;
 3. renewal verification; and
 4. additional verification.

These verifications are carried out at the request of the company to the administration or to the recognised organisation when acting on behalf of the administration.

- 2.3. The verifications shall include a safety management audit.
- 2.4. A lead auditor and, if relevant, an audit team, shall be nominated to perform the audit.
- 2.5. The nominated lead auditor shall liaise with the company and produce an audit plan.
- 2.6. An audit report shall be prepared under the direction of the lead auditor, who is responsible for its accuracy and completeness.
- 2.7. The audit report shall include the audit plan, identification of audit team members, dates and identification of the company, records of any observations and non-conformities and observations on the effectiveness of the safety management system in meeting the specified objectives.

3. **Standard of management**

- 3.1. Auditors or the audit team managing verification of compliance with the ISM Code shall have competence in relation to:
 1. ensuring compliance with the rules and regulations including certification of seafarers, for each type of ship operated by the company;
 2. approval, survey and certification activities relevant for the maritime certificates;
 3. the terms of reference that must be taken into account under the safety management system as required by the ISM Code; and
 4. practical experience of ship operation.
- 3.2. In performing verification of compliance with the provisions of the ISM Code it shall be ensured that independence exists between the personnel providing consultancy services and those involved in the certification procedure.

4. **Standards of competence**

- 4.1. Basic competence for performing verification
 - 4.1.1. Personnel who are to participate in the verification of compliance with the requirements of the ISM Code shall fulfil the minimum criteria for inspectors as laid down in Section 2 of Annex VII to Directive 95/21/EC.
 - 4.1.2. They shall have undergone training to ensure adequate competence and skills for performing verification of compliance with the requirements of the ISM Code, particularly with regard to:
 - (a) knowledge and understanding of the ISM Code;
 - (b) mandatory rules and regulations;
 - (c) the terms of reference which the ISM Code requires that companies should take into account;
 - (d) assessment techniques of examining, questioning, evaluating and reporting;
 - (e) technical or operational aspects of safety management;
 - (f) basic knowledge of shipping and shipboard operations; and

- (g) participation in at least one marine related management system audit.

4.2. Competence for initial verification and renewal verification

4.2.1. In order to assess fully whether the company or each type of ship complies with the requirements of the ISM Code, in addition to the basic competence stated above, personnel who are to perform initial verifications or renewal verifications for a document of compliance and a safety management certificate, must possess the competence to:

- (a) determine whether or not the elements of the safety management system (SMS) conform with the ISM Code;
- (b) determine the effectiveness of the company's SMS, or that of each type of ship, to ensure compliance with rules and regulations as evidenced by the statutory and classification survey records;
- (c) assess the effectiveness of the SMS in ensuring compliance with other rules and regulations which are not covered by statutory and classification surveys and enabling verification of compliance with these rules and regulations; and
- (d) assess whether the safe practices recommended by the IMO, administrations, classification societies and maritime industry organisations have been taken into account.

4.2.2. This competence can be accomplished by teams, which together possess the total competence required.

5. **Form of documents of compliance and safety management certificates**

When ships operate only in a Member State, Member States shall either use the forms attached to the ISM Code or the Document of Compliance, the Safety Management Certificate, the Interim Document of Compliance and the Interim Safety Management Certificate drawn up in the form set out below.

In the event of a derogation under Article 7(1) and, if applicable, Article 7(2), the certificate issued shall be different from the one referred to above and clearly indicate that a derogation in accordance with Article 7(1) and, if applicable, Article 7(2) of this Regulation, has been granted and shall include the applicable operational limitations.

DOCUMENT OF COMPLIANCE

(Official seal)/(State)

Certificate No

Issued under the provisions [of the INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974, as amended and] (*) of Regulation (EC) No 336/2006 on the implementation of the ISM Code within the Community

Under the authority of the Government of

(Name of the State)

by

(person or organisation authorised)

Name and address of the company

(see paragraph 1.1.2 of Part A of Annex I to Regulation (EC) No 336/2006)

THIS IS TO CERTIFY THAT the safety management system of the company has been audited and that it complies with the requirements of the International Management Code for the Safe Operation of Ships and for Pollution Prevention (ISM Code) for the types of ships listed below (delete as appropriate):

Passenger ship

Passenger high-speed craft

Cargo high-speed craft

Bulk carrier

Oil tanker

Chemical tanker

Gas carrier

Mobile offshore drilling unit

Other cargo ship

Ro-ro passenger ferry

(*) May be deleted for ships engaged only on voyages within one Member State.

This Document of Compliance is valid until, subject to periodical verification.

Issued at

(place of issue of the document)

Date of issue

(Signature of the duly authorised official issuing the document)

(Seal or stamp of issuing authority, as appropriate)

Certificate No

ENDORSEMENT FOR ANNUAL VERIFICATION

THIS IS TO CERTIFY THAT, at the periodical verification in accordance with [Regulation IX/6.1 of the Convention and paragraph 13.4 of the ISM Code and] (*) Article 6 of Regulation (EC) No 336/2006 on the implementation of the ISM Code within the Community, the safety management system was found to comply with the requirements of the ISM Code.

1st ANNUAL VERIFICATION

Signed:

(Signature of authorised official)

Place:

Date:

2nd ANNUAL VERIFICATION

Signed:

(Signature of authorised official)

Place:

Date:

3rd ANNUAL VERIFICATION

Signed:

(Signature of authorised official)

Place:

Date:

4th ANNUAL VERIFICATION

Signed:

(Signature of authorised official)

Place:

Date:

(*) May be deleted for ships engaged only on voyages within one Member State.

SAFETY MANAGEMENT CERTIFICATE*(Official seal)/(State)*

Certificate No

Issued under the provisions [of the INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974, as amended and] (*) of Regulation (EC) No 336/2006 on the implementation of the ISM Code within the Community

Under the authority of the Government of

(name of the State)

by

(person or organisation authorised)

Name of ship:

Distinctive number or letters:

Port of registry:

Type of ship (**):

Gross tonnage:

IMO number:

Name and address of company:

(see paragraph 1.1.2 of Part A of Annex I to Regulation (EC) No 336/2006)

THIS IS TO CERTIFY THAT the safety management system of the ship has been audited and that it complies with the requirements of the International Management Code for the Safe Operation of Ships and for Pollution Prevention (ISM Code), following verification that the Document of Compliance for the Company is applicable to this type of ship.

This Safety Management Certificate is valid until, subject to periodical verification and the Document of Compliance remaining valid.

Issued at

(place of issue of the document)

Date of issue

(Signature of the duly authorised official issuing the certificate)

(Seal or stamp of issuing authority, as appropriate)

(*) May be deleted for ships engaged only on voyages within one Member State.

(**) Insert the type of ship from among the following: passenger ship, passenger high- speed craft, cargo high- speed craft, bulk carrier, oil tanker, chemical tanker, gas carrier, mobile offshore drilling unit, other cargo ship, ro-ro passenger ferry.

Certificate No

ENDORSEMENT FOR INTERMEDIATE VERIFICATION AND ADDITIONAL VERIFICATION (IF REQUIRED)

THIS IS TO CERTIFY THAT, at the periodical verification in accordance with [Regulation IX/6.1 of the Convention and paragraph 13.8 of the ISM Code and] (*) Article 6 of Regulation (EC) No 336/2006 on the implementation of the ISM Code within the Community, the safety management system was found to comply with the requirements of the ISM Code.

INTERMEDIATE VERIFICATION (to be completed between the second and third anniversary date)

Signed:

(Signature of authorised official)

Place:

Date:

ADDITIONAL VERIFICATION (**)

Signed:

(Signature of authorised official)

Place:

Date:

ADDITIONAL VERIFICATION (**)

Signed:

(Signature of authorised official)

Place:

Date:

ADDITIONAL VERIFICATION (**)

Signed:

(Signature of authorised official)

Place:

Date:

(*) May be deleted for ships engaged only on voyages within one Member State.

(**) If applicable. Reference is made to paragraph 13.8 of the ISM Code and paragraph 3.4.1 of the Guidelines on Implementation of the International Safety Management (ISM) Code by Administrations (Resolution A.913(22)).

INTERIM DOCUMENT OF COMPLIANCE

(Official seal)/(State)

Certificate No

Issued under the provisions of [of the INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974, as amended and] (*) of Regulation (EC) No 336/2006 on the implementation of the ISM Code within the Community

Under the authority of the Government of
(name of the State)

by
(person or organisation authorised)

Name and address of the company
(see paragraph 1.1.2 of Part A of Annex I to Regulation (EC) No 336/2006)

THIS IS TO CERTIFY THAT the safety management system of the company has been recognised as meeting the objectives of paragraph 1.2.3 of Part A of Annex I to Regulation (EC) No 336/2006 for the type(s) of ships listed below (delete as appropriate):

Passenger ship

Passenger high-speed craft

Cargo high-speed craft

Bulk carrier

Oil tanker

Chemical tanker

Gas carrier

Mobile offshore drilling unit

Other cargo ship

Ro-ro passenger ferry

(*) May be deleted for ships engaged only on voyages within one Member State.

This Interim Document of Compliance is valid until

Issued at:

(place of issue of the document)

Date of issue:

(Signature of the duly authorised official issuing the document)

(Seal or stamp of issuing authority, as appropriate)

INTERIM SAFETY MANAGEMENT CERTIFICATE

(Official seal)/(State)

Certificate No

Issued under the provisions of [of the INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974, as amended and] (*) of Regulation (EC) No 336/2006 on the implementation of the ISM Code within the Community

Under the authority of the Government of

(name of the State)

by

(person or organisation authorised)

Name of ship:

Distinctive number or letters:

Port of registry:

Type of ship (**):

Gross tonnage:

IMO number:

Name and address of company:

(see paragraph 1.1.2 of Part A of Annex I to Regulation (EC) No 336/2006)

THIS IS TO CERTIFY THAT the requirements of paragraph 14.4 of Part A of Annex I to Regulation (EC) No 336/2006 have been met and that the Document of Compliance/Interim Document of Compliance (***) of the company is relevant to this ship.

This Interim Safety Management Certificate is valid until, subject to the Document of Compliance/Interim Document of Compliance (***) remaining valid.

Issued at: ...

(place of issue of the document)

Date of issue:

(Signature of the duly authorised official issuing the certificate)

(Seal or stamp of issuing authority, as appropriate)

(*) May be deleted for ships engaged only on voyages within one Member State.

(**) Insert the type of ship from among the following: passenger ship, passenger high-speed craft, cargo high-speed craft, bulk carrier, oil tanker, chemical tanker, gas carrier, mobile offshore drilling unit, other cargo ship, ro-ro passenger ferry.

(***) Delete as appropriate.

Certificate No

The validity of this Interim Safety Management Certificate is extended to:

Date of extension:

(Signature of the duly authorised official extending the validity)

(Seal or stamp of issuing authority, as appropriate)

DIRECTIVE 2006/7/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 15 February 2006****concerning the management of bathing water quality and repealing Directive 76/160/EEC**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the Committee of the Regions ⁽³⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽⁴⁾, in the light of the joint text approved by the Conciliation Committee on 8 December 2005,

Whereas:

- (1) Building on the Commission's Communication on sustainable development, the European Council has singled out objectives as general guidance for future development in priority areas such as natural resources and public health.
- (2) Water is a scarce natural resource, the quality of which should be protected, defended, managed and treated as such. Surface waters in particular are renewable resources with a limited capacity to recover from adverse impacts from human activities.
- (3) Community policy on the environment should aim at a high level of protection, and contribute to pursuing the objectives of preserving, protecting and improving the quality of the environment and of protecting human health.

(4) In December 2000, the Commission adopted a Communication to the European Parliament and the Council on the development of a new bathing water policy and initiated a large-scale consultation of all interested and involved parties. The main outcome of this consultation was general support for the development of a new Directive based on the latest scientific evidence and paying particular attention to wider public participation.

(5) Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme ⁽⁵⁾ contains a commitment to ensuring a high level of protection of bathing water, including by revising Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water ⁽⁶⁾.

(6) Pursuant to the Treaty, in preparing policy on the environment the Community is, *inter alia*, to take account of available scientific and technical data. This Directive should use scientific evidence in implementing the most reliable indicator parameters for predicting microbiological health risk and to achieve a high level of protection. Further epidemiological studies should be undertaken urgently concerning the health risks associated with bathing, particularly in fresh water.

(7) In order to increase efficiency and wise use of resources, this Directive needs to be closely coordinated with other Community legislation on water, such as Council Directives 91/271/EEC of 21 May 1991 concerning urban waste-water treatment ⁽⁷⁾, 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources ⁽⁸⁾ and Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy ⁽⁹⁾.

⁽¹⁾ OJ C 45 E, 25.2.2003, p. 127.

⁽²⁾ OJ C 220, 16.9.2003, p. 39.

⁽³⁾ OJ C 244, 10.10.2003, p. 31.

⁽⁴⁾ Opinion of the European Parliament of 21 October 2003 (OJ C 82 E, 1.4.2004, p. 115). Council Common Position of 20 December 2004 (OJ C 111 E, 11.5.2005, p. 1) and Position of the European Parliament of 10 May 2005 (not yet published in the Official Journal). European Parliament Legislative Resolution of 18 January 2006 (not yet published in the Official Journal) and Council Decision of 20 December 2005.

⁽⁵⁾ OJ L 242, 10.9.2002, p. 1.

⁽⁶⁾ OJ L 31, 5.2.1976, p. 1. Directive as last amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

⁽⁷⁾ OJ L 135, 30.5.1991, p. 40. Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

⁽⁸⁾ OJ L 375, 31.12.1991, p. 1. Directive as amended by Regulation (EC) No 1882/2003.

⁽⁹⁾ OJ L 327, 22.12.2000, p. 1. Directive as amended by Decision No 2455/2001/EC (OJ L 331, 15.12.2001, p. 1).

- (8) Appropriate information on planned measures and progress on implementation should be disseminated to stakeholders. The public should receive appropriate and timely information on the results of the monitoring of bathing water quality and risk management measures in order to prevent health hazards, especially in the context of predictable short-term pollution or abnormal situations. New technology that allows the public to be informed in an efficient and comparable way on bathing waters across the Community should be applied.
- (9) For the purpose of monitoring, harmonised methods and practices of analysis need to be applied. Observation and quality assessment over an extended period are necessary in order to achieve a realistic bathing water classification.
- (10) Compliance should be a matter of appropriate management measures and quality assurance, not merely of measuring and calculation. A system of bathing water profiles is therefore appropriate to provide a better understanding of risks as a basis for management measures. In parallel, particular attention should be attached to adherence to quality standards and coherent transition from Directive 76/160/EEC.
- (11) On 17 February 2005 the Community ratified the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention). It is therefore appropriate for this Directive to include provisions on public access to information and to provide for public participation in its implementation to supplement Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information⁽¹⁾ and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment⁽²⁾.
- (12) Since the objectives of this Directive, namely the attainment by the Member States, on the basis of common standards, of a good bathing water quality and a high level of protection throughout the Community, cannot be sufficiently achieved by the Member States and can 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.
- (13) 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⁽³⁾.
- (14) The continued importance of a Community bathing water policy is evident each bathing season as it protects the public from accidental and chronic pollution discharged in or near Community bathing areas. The overall quality of bathing waters has improved considerably since Directive 76/160/EEC came into force. However, that Directive reflects the state of knowledge and experience of the early 1970. Patterns of bathing water use have since changed, as has the state of scientific and technical knowledge. Therefore, that Directive should be repealed,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose and scope

1. This Directive lays down provisions for:
 - (a) the monitoring and classification of bathing water quality;
 - (b) the management of bathing water quality; and
 - (c) the provision of information to the public on bathing water quality.
2. The purpose of this Directive is to preserve, protect and improve the quality of the environment and to protect human health by complementing Directive 2000/60/EC.
3. This Directive shall apply to any element of surface water where the competent authority expects a large number of people to bathe and has not imposed a permanent bathing prohibition, or issued permanent advice against bathing (hereinafter bathing water). It shall not apply to:
 - (a) swimming pools and spa pools;
 - (b) confined waters subject to treatment or used for therapeutic purposes;

⁽¹⁾ OJ L 41, 14.2.2003, p. 26.

⁽²⁾ OJ L 156, 25.6.2003, p. 17.

⁽³⁾ OJ L 184, 17.7.1999, p. 23.

(c) artificially created confined waters separated from surface water and groundwater.

Article 2

Definitions

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

1. the terms 'surface water', 'groundwater', 'inland water', 'transitional waters', 'coastal water' and 'river basin' have the same meaning as in Directive 2000/60/EC;
2. 'competent authority' means the authority or authorities that a Member State has designated to ensure compliance with the requirements of this Directive or any other authority or body to which that role has been delegated;
3. 'permanent' means, in relation to a bathing prohibition or advice against bathing, lasting for at least one whole bathing season;
4. 'large number' means, in relation to bathers, a number that the competent authority considers to be large having regard, in particular, to past trends or to any infrastructure or facilities provided, or other measures taken, to promote bathing;
5. 'pollution' means the presence of microbiological contamination or other organisms or waste affecting bathing water quality and presenting a risk to bathers' health as referred to in Articles 8 and 9 and Annex I, column A;
6. 'bathing season' means the period during which large numbers of bathers can be expected.
7. 'management measures' means the following measures undertaken with respect to bathing water:
 - (a) establishing and maintaining a bathing water profile;
 - (b) establishing a monitoring calendar;
 - (c) monitoring bathing water;
 - (d) assessing bathing water quality;
 - (e) classifying bathing water;
 - (f) identifying and assessing causes of pollution that might affect bathing waters and impair bathers' health;
 - (g) giving information to the public;

(h) taking action to prevent bathers' exposure to pollution;

(i) taking action to reduce the risk of pollution;

8. 'short-term pollution' means microbiological contamination as referred to in Annex I, column A, that has clearly identifiable causes, is not normally expected to affect bathing water quality for more than approximately 72 hours after the bathing water quality is first affected and for which the competent authority has established procedures to predict and deal with as set out in Annex II;
9. 'abnormal situation' means an event or combination of events impacting on bathing water quality at the location concerned and not expected to occur on average more than once every four years;
10. 'set of bathing water quality data' means data obtained in accordance with Article 3;
11. 'bathing water quality assessment' means the process of evaluating bathing water quality, using the assessment method defined in Annex II;
12. 'cyanobacterial proliferation' means an accumulation of cyanobacteria in the form of a bloom, mat or scum;
13. the term 'public concerned' has the same meaning as in Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment ⁽¹⁾.

CHAPTER II

QUALITY AND MANAGEMENT OF BATHING WATER

Article 3

Monitoring

1. Member States shall annually identify all bathing waters and define the length of the bathing season. They shall do so for the first time before the start of the first bathing season after 24 March 2008.
2. Member States shall ensure that monitoring of the parameters set out in Annex I, column A, takes place in accordance with Annex IV.

⁽¹⁾ OJ L 175, 5.7.1985, p. 40. Directive as last amended by Directive 2003/35/EC of the European Parliament and of the Council (OJ L 156, 25.6.2003, p. 17).

3. The monitoring point shall be the location within the bathing water where:

- (a) most bathers are expected; or
- (b) the greatest risk of pollution is expected, according to the bathing water profile.

4. A monitoring calendar for each bathing water shall be established before the start of each bathing season and for the first time before the start of the third full bathing season after the entry into force of this Directive. Monitoring shall take place no later than four days after the date specified in the monitoring calendar.

5. Member States may introduce monitoring of the parameters set out in Annex I, column A, during the first full bathing season following the entry into force of this Directive. In that case, monitoring shall take place with the frequency specified in Annex IV. The results of such monitoring may be used to build up the sets of bathing water quality data referred to in Article 4. As soon as Member States introduce monitoring under this Directive, monitoring of the parameters set out in the Annex to Directive 76/160/EEC may cease.

6. Samples taken during short-term pollution may be disregarded. They shall be replaced by samples taken in accordance with Annex IV.

7. During abnormal situations, the monitoring calendar referred to in paragraph 4 may be suspended. It shall be resumed as soon as possible after the end of the abnormal situation. New samples shall be taken as soon as possible after the end of the abnormal situation to replace samples that are missing due to the abnormal situation.

8. Member States shall report any suspension of the monitoring calendar to the Commission, giving the reasons for the suspension. They shall provide such reports on the occasion of the next annual report provided for in Article 13 at the latest.

9. Member States shall ensure that the analysis of bathing water quality takes place in accordance with the reference methods specified in Annex I and the rules set out in Annex V. However, Member States may permit the use of other methods or rules if they can demonstrate that the results obtained are equivalent to those obtained using the methods specified in Annex I and the rules set out in Annex V. Member States that permit the use of such equivalent methods or rules shall provide the Commission with all relevant information about the methods or rules used and their equivalence.

Article 4

Bathing water quality assessment

1. Member States shall ensure that sets of bathing water quality data are compiled through the monitoring of the parameters set out in Annex I, column A.

2. Bathing water quality assessments shall be carried out:

- (a) in relation to each bathing water;
- (b) after the end of each bathing season;
- (c) on the basis of the set of bathing water quality data compiled in relation to that bathing season and the three preceding bathing seasons; and
- (d) in accordance with the procedure set out in Annex II.

However, a Member State may decide to carry out bathing water quality assessments on the basis of the set of bathing water quality data compiled in relation to the preceding three bathing seasons only. If it so decides, it shall notify the Commission beforehand. It shall also notify the Commission if it subsequently decides to revert to carrying out assessments on the basis of four bathing seasons. Member States may not change the applicable assessment period more than once every five years.

3. Sets of bathing water data used to carry out bathing water quality assessments shall always comprise at least 16 samples or, in the special circumstances referred to in Annex IV, paragraph 2, 12 samples.

4. However, provided that either:

- the requirement of paragraph 3 is satisfied, or
- the set of bathing water data used to carry out the assessment comprises at least eight samples, in the case of bathing waters with a bathing season not exceeding eight weeks,

a bathing water quality assessment may be carried out on the basis of a set of bathing water quality data relating to fewer than four bathing seasons if:

- (a) the bathing water is newly identified;
- (b) any changes have occurred that are likely to affect the classification of the bathing water in accordance with Article 5, in which case the assessment shall be carried out on the basis of a set of bathing water quality data consisting solely of the results for samples collected since the changes occurred; or
- (c) the bathing water had already been assessed in accordance with Directive 76/160/EEC, in which case equivalent data gathered under that Directive shall be used and, for this purpose, parameters 2 and 3 of the Annex to Directive 76/160/EEC shall be deemed to be equivalent to parameters 2 and 1 of column A of Annex I to this Directive.

5. Member States may subdivide or group together existing bathing waters in the light of bathing water quality assessments. They may group existing bathing waters together only if these waters:

- (a) are contiguous;
- (b) received similar assessments for the preceding four years in accordance with paragraphs 2, 3 and 4(c); and
- (c) have bathing water profiles all of which identify common risk factors or the absence thereof.

Article 5

Classification and quality status of bathing waters

1. As a result of the bathing water quality assessment carried out in accordance with Article 4, Member States shall, in accordance with the criteria set out in Annex II, classify bathing water as:

- (a) 'poor';
- (b) 'sufficient';
- (c) 'good'; or
- (d) 'excellent'.

2. The first classification according to the requirements of this Directive shall be completed by the end of the 2015 bathing season.

3. Member States shall ensure that, by the end of the 2015 bathing season, all bathing waters are at least 'sufficient'. They shall take such realistic and proportionate measures as they consider appropriate with a view to increasing the number of bathing waters classified as 'excellent' or 'good'.

4. However, notwithstanding the general requirement of paragraph 3, bathing waters may temporarily be classified as 'poor' and still remain in compliance with this Directive. In such cases, Member States shall ensure that the following conditions are satisfied:

- (a) in respect of each bathing water classified as 'poor', the following measures shall be taken with effect from the bathing season that follows its classification:
 - (i) adequate management measures, including a bathing prohibition or advice against bathing, with a view to preventing bathers' exposure to pollution;
 - (ii) identification of the causes and reasons for the failure to achieve 'sufficient' quality status;

(iii) adequate measures to prevent, reduce or eliminate the causes of pollution; and

(iv) in accordance with Article 12, alerting the public by a clear and simple warning sign and informing them of the causes of the pollution and measures taken, on the basis of the bathing water profile.

- (b) If a bathing water is classified as 'poor' for five consecutive years, a permanent bathing prohibition or permanent advice against bathing shall be introduced. However, a Member State may introduce a permanent bathing prohibition or permanent advice against bathing before the end of the five-year period if it considers that the achievement of 'sufficient' quality would be infeasible or disproportionately expensive.

Article 6

Bathing water profiles

1. Member States shall ensure that bathing water profiles are established in accordance with Annex III. Each bathing water profile may cover a single bathing water or more than one contiguous bathing waters. Bathing water profiles shall be established for the first time by 24 March 2011.

2. Bathing water profiles shall be reviewed and updated as provided for in Annex III.

3. When establishing, reviewing and updating bathing water profiles, adequate use shall be made of data obtained from monitoring and assessments carried out pursuant to Directive 2000/60/EC that are relevant for this Directive.

Article 7

Management measures in exceptional circumstances

Member States shall ensure that timely and adequate management measures are taken when they are aware of unexpected situations that have, or could reasonably be expected to have, an adverse impact on bathing water quality and on bathers' health. Such measures shall include information to the public and, if necessary, a temporary bathing prohibition.

Article 8

Cyanobacterial risks

1. When the bathing water profile indicates a potential for cyanobacterial proliferation, appropriate monitoring shall be carried out to enable timely identification of health risks.

2. When cyanobacterial proliferation occurs and a health risk has been identified or presumed, adequate management measures shall be taken immediately to prevent exposure, including information to the public.

*Article 9***Other parameters**

1. When the bathing water profile indicates a tendency for proliferation of macro-algae and/or marine phytoplankton, investigations shall be undertaken to determine their acceptability and health risks and adequate management measures shall be taken, including information to the public.

2. Bathing waters shall be inspected visually for pollution such as tarry residues, glass, plastic, rubber or any other waste. When such pollution is found, adequate management measures shall be taken, including, if necessary, information to the public.

*Article 10***Cooperation on transboundary waters**

Wherever a river basin gives rise to transboundary impacts on bathing water quality, the Member States involved shall cooperate as appropriate in implementing this Directive, including through the appropriate exchange of information and joint action to control those impacts.

CHAPTER III

EXCHANGE OF INFORMATION*Article 11***Public participation**

Member States shall encourage public participation in the implementation of this Directive and shall ensure the provision of opportunities for the public concerned:

- to find out how to participate, and
- to formulate suggestions, remarks or complaints.

This shall relate, in particular, to the establishment, review and updating of lists of bathing waters in accordance with Article 3(1). Competent authorities shall take due account of any information obtained.

*Article 12***Information to the public**

1. Member States shall ensure that the following information is actively disseminated and promptly made available during the bathing season in an easily accessible place in the near vicinity of each bathing water:

- (a) the current bathing water classification and any bathing prohibition or advice against bathing referred to in this Article by means of a clear and simple sign or symbol;
- (b) a general description of the bathing water, in non-technical language, based on the bathing water profile established in accordance with Annex III;
- (c) in the case of bathing waters subject to short-term pollution:
 - notification that the bathing water is subject to short-term pollution,
 - an indication of the number of days on which bathing was prohibited or advised against during the preceding bathing season because of such pollution, and
 - a warning whenever such pollution is predicted or present,
- (d) information on the nature and expected duration of abnormal situations during such events;
- (e) whenever bathing is prohibited or advised against, a notice advising the public and giving reasons;
- (f) whenever a permanent bathing prohibition or permanent advice against bathing is introduced, the fact that the area concerned is no longer a bathing water and the reasons for its declassification; and
- (g) an indication of sources of more complete information in accordance with paragraph 2.

2. Member States shall use appropriate media and technologies, including the Internet, to disseminate actively and promptly the information concerning bathing waters referred to in paragraph 1 and also the following information in several languages, when appropriate:

- (a) a list of bathing waters;

- (b) the classification of each bathing water over the last three years and its bathing water profile, including the results of monitoring carried out in accordance with this Directive since the last classification;
- (c) in the case of bathing waters classified as being 'poor', information on the causes of pollution and measures taken with a view to preventing bathers' exposure to pollution and to tackle its causes as referred to in Article 5(4); and
- (d) in the case of bathing waters subject to short-term pollution, general information on:
- conditions likely to lead to short-term pollution,
 - the likelihood of such pollution and its likely duration,
 - the causes of the pollution and measures taken with a view to preventing bathers' exposure to pollution and to tackle its causes.

The list referred to in point (a) shall be available each year before the start of the bathing season. The results of the monitoring referred to in point (b) shall be made available on the Internet upon completion of the analysis.

3. The information referred to in paragraphs 1 and 2 shall be disseminated as soon as it is available and with effect from the start of the fifth bathing season after 24 March 2008.

4. Member States and the Commission shall, wherever possible, provide information to the public using geo-referenced technology and present it in a clear and coherent manner, in particular through the use of signs and symbols.

Article 13

Reports

1. Member States shall provide the Commission with the results of the monitoring and with the bathing water quality assessment for each bathing water, as well as with a description of significant management measures taken. Member States shall provide this information annually by 31 December in relation to the preceding bathing season. They shall begin providing it once the first bathing water quality assessment has been carried out in accordance with Article 4.

2. Member States shall notify the Commission annually before the start of the bathing season of all waters identified as bathing waters, including the reason for any change compared to the preceding year. They shall do so for the first time before the start of the first bathing season after 24 March 2008.

3. When monitoring of bathing water has started under this Directive, annual reporting to the Commission in accordance with paragraph 1 shall continue to take place pursuant to Directive 76/160/EEC until a first assessment can be made under this Directive. During that period, parameter 1 of the Annex to Directive 76/160/EEC shall not be taken into account in the annual report, and parameters 2 and 3 of the Annex to Directive 76/160/EEC shall be assumed to be equivalent to parameters 2 and 1 of column A of Annex I to this Directive.

4. The Commission shall publish an annual summary report on bathing water quality in the Community, including bathing water classifications, conformity with this Directive and significant management measures undertaken. The Commission shall publish this report by 30 April every year, including via the Internet. When establishing the report the Commission shall, wherever possible, make best use of data collection, assessment and presentation systems under related Community legislation, in particular Directive 2000/60/EC.

CHAPTER IV

FINAL PROVISIONS

Article 14

Report and review

1. The Commission shall, by 2008, submit a report to the European Parliament and to the Council. The report shall have particular regard to:

- (a) the results of an appropriate European epidemiological study conducted by the Commission in collaboration with Member States;
- (b) other scientific, analytical and epidemiological developments relevant to the parameters for bathing water quality, including in relation to viruses; and

(c) World Health Organisation recommendations.

2. Member States shall, by the end of 2014, submit written observations to the Commission on that report including on the need for any further research or assessments which may be required to assist the Commission in its review of this Directive under paragraph 3.

3. In the light of the report, the Member States' written observations and an extended impact assessment and bearing in mind experience gained from implementing this Directive, the Commission shall, no later than 2020, review this Directive with particular regard to the parameters for bathing water quality, including whether it would be appropriate to phase out the 'sufficient' classification or modify the applicable standards, and shall present if necessary appropriate legislative proposals in accordance with Article 251 of the Treaty.

Article 15

Technical adaptations and implementing measures

1. It shall be decided in accordance with the procedure referred to in Article 16(2):
 - (a) to specify the EN/ISO standard on the equivalence of microbiological methods for the purposes of Article 3(9);
 - (b) to lay down detailed rules for the implementation of Articles 8(1), 12(1)(a) and 12(4);
 - (c) to adapt the methods of analysis for the parameters set out in Annex I in the light of scientific and technical progress;
 - (d) to adapt Annex V in the light of scientific and technical progress;
 - (e) to lay down guidelines for a common method for the assessment of single samples.

2. The Commission shall present a draft of the measures to be taken in accordance with paragraph 1(b) with respect to Article 12(1)(a) by 24 March 2010. Before doing so, it shall consult representatives of Member States, regional and local authorities, relevant tourist and consumer organisations and other interested parties. After the adoption of relevant rules, it shall publicise them via the Internet.

Article 16

Committee procedure

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

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

3. The Committee shall adopt its rules of procedure.

Article 17

Repeal

1. Directive 76/160/EEC is hereby repealed with effect from 31 December 2014. Subject to paragraph 2, this repeal shall be without prejudice to Member States' obligations concerning the time limits for transposition and application set out in the repealed Directive.
2. As soon as a Member State has taken all necessary legal, administrative and practical measures to comply with this Directive, this Directive will be applicable, replacing Directive 76/160/EEC.
3. References to the repealed Directive 76/160/EEC shall be construed as being made to this Directive.

Article 18

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 24 March 2008. 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 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 texts of the main provisions of national law that they adopt in the field covered by this Directive.

Article 19

Article 20

Addressees

Entry into force

This Directive is addressed to Member States.

Done at Strasbourg, 15 February 2006.

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

For the European Parliament

For the Council

The President

The President

J. BORRELL FONTELLES

H. WINKLER

ANNEX I

For inland waters

	A	B	C	D	E
	Parameter	Excellent quality	Good quality	Sufficient	Reference methods of analysis
1	Intestinal enterococci (cfu/100 ml)	200 (*)	400 (*)	330 (**)	ISO 7899-1 or ISO 7899-2
2	Escherichia coli (cfu/100 ml)	500 (*)	1 000 (*)	900 (**)	ISO 9308-3 or ISO 9308-1

(*) Based upon a 95-percentile evaluation. See Annex II.

(**) Based upon a 90-percentile evaluation. See Annex II.

For coastal waters and transitional waters

	A	B	C	D	E
	Parameter	Excellent quality	Good quality	Sufficient	Reference methods of analysis
1	Intestinal enterococci (cfu/100 ml)	100 (*)	200 (*)	185 (**)	ISO 7899-1 or ISO 7899-2
2	Escherichia coli (cfu/100 ml)	250 (*)	500 (*)	500 (**)	ISO 9308-3 or ISO 9308-1

(*) Based upon a 95-percentile evaluation. See Annex II.

(**) Based upon a 90-percentile evaluation. See Annex II.

ANNEX II

Bathing water assessment and classification**1. Poor quality**

Bathing waters are to be classified as 'poor' if, in the set of bathing water quality data for the last assessment period ^(a), the percentile values ^(b) for microbiological enumerations are worse ^(c) than the 'sufficient' values set out in Annex I, column D.

2. Sufficient quality

Bathing waters are to be classified as 'sufficient':

1. if, in the set of bathing water quality data for the last assessment period, the percentile values for microbiological enumerations are equal to or better ^(d) than the 'sufficient' values set out in Annex I, column D; and
2. if the bathing water is subject to short-term pollution, on condition that:
 - (i) adequate management measures are being taken, including surveillance, early warning systems and monitoring, with a view to preventing bathers' exposure by means of a warning or, where necessary, a bathing prohibition;
 - (ii) adequate management measures are being taken to prevent, reduce or eliminate the causes of pollution; and
 - (iii) the number of samples disregarded in accordance with Article 3(6) because of short-term pollution during the last assessment period represented no more than 15 % of the total number of samples provided for in the monitoring calendars established for that period, or no more than one sample per bathing season, whichever is the greater.

3. Good quality

Bathing waters are to be classified as 'good':

1. if, in the set of bathing water quality data for the last assessment period, the percentile values for microbiological enumerations are equal to or better ^(d) than the 'good quality' values set out in Annex I, column C; and
2. if the bathing water is subject to short-term pollution, on condition that:
 - (i) adequate management measures are being taken, including surveillance, early warning systems and monitoring, with a view to preventing bathers' exposure, by means of a warning or, where necessary, a bathing prohibition;
 - (ii) adequate management measures are being taken to prevent, reduce or eliminate the causes of pollution; and
 - (iii) the number of samples disregarded in accordance with Article 3(6) because of short-term pollution during the last assessment period represented no more than 15 % of the total number of samples provided for in the monitoring calendars established for that period, or no more than one sample per bathing season, whichever is the greater.

4. Excellent quality

Bathing waters are to be classified as 'excellent':

1. if, in the set of bathing water quality data for the last assessment period, the percentile values for microbiological enumerations are equal to or better than the 'excellent quality' values set out in Annex I, column B; and
2. if the bathing water is subject to short-term pollution, on condition that:
 - (i) adequate management measures are being taken, including surveillance, early warning systems and monitoring, with a view to preventing bathers' exposure, by means of a warning or, where necessary, a bathing prohibition;
 - (ii) adequate management measures are being taken to prevent, reduce or eliminate the causes of pollution; and
 - (iii) the number of samples disregarded in accordance with Article 3(6) because of short-term pollution during the last assessment period represented no more than 15 % of the total number of samples provided for in the monitoring calendars established for that period, or no more than one sample per bathing season, whichever is the greater.

NOTES

- (^a) 'Last assessment period' means the last four bathing seasons or, when applicable, the period specified in Article 4(2) or (4).
- (^b) Based upon percentile evaluation of the \log_{10} normal probability density function of microbiological data acquired from the particular bathing water, the percentile value is derived as follows:
- (i) Take the \log_{10} value of all bacterial enumerations in the data sequence to be evaluated. (If a zero value is obtained, take the \log_{10} value of the minimum detection limit of the analytical method used instead.)
 - (ii) Calculate the arithmetic mean of the \log_{10} values (μ).
 - (iii) Calculate the standard deviation of the \log_{10} values (σ).
- The upper 90-percentile point of the data probability density function is derived from the following equation:
upper 90-percentile = $\text{antilog}(\mu + 1,282 \sigma)$.
- The upper 95-percentile point of the data probability density function is derived from the following equation:
upper 95-percentile = $\text{antilog}(\mu + 1,65 \sigma)$.
- (^c) 'Worse' means with higher concentration values expressed in cfu/100 ml.
- (^d) 'Better' means with lower concentration values expressed in cfu/100 ml.
-

ANNEX III

The bathing water profile

1. The bathing water profile referred to in Article 6 is to consist of:
 - (a) a description of the physical, geographical and hydrological characteristics of the bathing water, and of other surface waters in the catchment area of the bathing water concerned, that could be a source of pollution, which are relevant to the purpose of this Directive and as provided for in Directive 2000/60/EC;
 - (b) an identification and assessment of causes of pollution that might affect bathing waters and impair bathers' health;
 - (c) an assessment of the potential for proliferation of cyanobacteria;
 - (d) an assessment of the potential for proliferation of macro-algae and/or phytoplankton;
 - (e) if the assessment under point (b) shows that there is a risk of short-term pollution, the following information:
 - the anticipated nature, frequency and duration of expected short-term pollution,
 - details of any remaining causes of pollution, including management measures taken and the time schedule for their elimination,
 - management measures taken during short-term pollution and the identity and contact details of bodies responsible for taking such action,
 - (f) the location of the monitoring point.
2. In the case of bathing waters classified as 'good', 'sufficient' or 'poor', the bathing water profile is to be reviewed regularly to assess whether any of the aspects listed in paragraph 1 have changed. If necessary, it is to be updated. The frequency and scope of reviews is to be determined on the basis of the nature and severity of the pollution. However, they are to comply with at least the provisions and to take place with at least the frequency specified in the following table.

Bathing water classification	'Good'	'Sufficient'	'Poor'
Reviews are to take place at least every	four years	three years	two years
Aspects to be reviewed (points of paragraph 1)	(a) to (f)	(a) to (f)	(a) to (f)

In the case of bathing waters previously classified as 'excellent', the bathing water profiles need be reviewed and, if necessary, updated only if the classification changes to 'good', 'sufficient' or 'poor'. The review is to cover all aspects mentioned in paragraph 1.

3. In the event of significant construction works or significant changes in the infrastructure in or in the vicinity of the bathing water, the bathing water profile is to be updated before the start of the next bathing season.
4. The information referred to in paragraph 1(a) and (b) is to be provided on a detailed map whenever practicable.
5. Other relevant information may be attached or included if the competent authority considers it appropriate.

ANNEX IV

Bathing water monitoring

1. One sample is to be taken shortly before the start of each bathing season. Taking account of this extra sample and subject to paragraph 2, no fewer than four samples are to be taken and analysed per bathing season.
 2. However, only three samples need be taken and analysed per bathing season in the case of a bathing water that either:
 - (a) has a bathing season not exceeding eight weeks; or
 - (b) is situated in a region subject to special geographical constraints.
 3. Sampling dates are to be distributed throughout the bathing season, with the interval between sampling dates never exceeding one month.
 4. In the event of short-term pollution, one additional sample is to be taken to confirm that the incident has ended. This sample is not to be part of the set of bathing water quality data. If necessary to replace a disregarded sample, an additional sample is to be taken seven days after the end of the short-term pollution.
-

ANNEX V

Rules on the handling of samples for microbiological analyses**1. Sampling point**

Where possible, samples are to be taken 30 centimetres below the water's surface and in water that is at least one metre deep.

2. Sterilisation of sample bottles

Sample bottles are:

- to undergo sterilisation in an autoclave for at least 15 minutes at 121 °C, or
- to undergo dry sterilisation at between 160 °C and 170 °C for at least one hour, or
- to be irradiated sample containers obtained directly from manufacturer.

3. Sampling

The volume of the sampling bottle/container is to depend on the quantity of water needed for each parameter to be tested. The minimum content is generally 250 ml.

Sample containers are to be of transparent and non-coloured material (glass, polyethene or polypropylene).

In order to prevent accidental contamination of the sample, the sampler is to employ an aseptic technique to maintain the sterility of the sample bottles. There is no further need for sterile equipment (such as sterile surgical gloves or tongs or sample pole) if this is done properly.

The sample is to be clearly identified in indelible ink on the sample and on the sampling form.

4. Storage and transport of samples before analysis

Water samples are to be protected at all stages of transport from exposure to light, in particular direct sunlight.

The sample is to be conserved at a temperature of around 4 °C, in a cool box or refrigerator (depending on climate) until arrival at the laboratory. If the transport to the laboratory is likely to take more than four hours, then transport in a refrigerator is required.

The time between sampling and analysis is to be kept as short as possible. It is recommended that samples be analysed on the same working day. If this is not possible for practical reasons, then the samples shall be processed within no more than 24 hours. In the meantime, they shall be stored in the dark and at a temperature of 4 °C ± 3 °C.

DIRECTIVE 2006/11/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 February 2006

on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community

(Codified version)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

After consulting the Committee of the Regions,

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

Whereas:

(1) Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community ⁽³⁾ has been significantly amended on several occasions ⁽⁴⁾. In order to clarify matters, a codification of the provisions in question should be drawn up.

(2) There is a need for general and simultaneous action by the Member States to protect the aquatic environment of the Community from pollution, particularly that caused by certain persistent, toxic and bioaccumulable substances.

(3) Several conventions are designed to protect international watercourses and the marine environment from pollution. It is important to ensure the coordinated implementation of these conventions.

(4) Discrepancies between the provisions applicable in the various Member States with regard to the discharge of certain dangerous substances into the aquatic environment may give rise to unequal conditions of competition and thus have a direct influence on the functioning of the internal market.

(5) Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme ⁽⁵⁾, provides for a number of measures to protect fresh water and sea water from certain pollutants.

(6) In order to ensure effective protection of the aquatic environment of the Community, it is necessary to establish a first list, called List I, of certain individual substances selected mainly on the basis of their toxicity, persistence and bioaccumulation, with the exception of those which are biologically harmless or which are rapidly converted into substances which are biologically harmless, and a second list, called List II, containing substances which have a deleterious effect on the aquatic environment, which can, however, be confined to a given area and which depends on the characteristics and location of the water into which such substances are discharged. Any discharge of these substances should be subject to prior authorisation which specifies emission standards.

(7) Pollution through the discharge of the various dangerous substances within List I must be eliminated. Limit values were fixed by the Directives referred to in Annex IX to Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy ⁽⁶⁾. Article 16 of Directive 2000/60/EC provides for the procedures for developing the control measures and environmental quality standards applicable to priority substances.

⁽¹⁾ OJ C 117, 30.4.2004, p. 10.

⁽²⁾ Opinion of the European Parliament of 26 October 2004 (OJ C 174 E, 14.7.2005, p. 39) and Council Decision of 30 January 2006.

⁽³⁾ OJ L 129, 18.5.1976, p. 23. Directive as last amended by Directive 2000/60/EC of the European Parliament and of the Council (OJ L 327, 22.12.2000, p. 1).

⁽⁴⁾ See Part A of Annex II.

⁽⁵⁾ OJ L 242, 10.9.2002, p. 1.

⁽⁶⁾ OJ L 327, 22.12.2000, p. 1. Directive as amended by Decision No 2455/2001/EC (OJ L 331, 15.12.2001, p. 1).

- (8) It is necessary to reduce water pollution caused by the substances within List II. To this end Member States should establish programmes which incorporate environmental quality standards for water, drawn up in compliance with Council Directives, where they exist. The emission standards applicable to such substances should be calculated in terms of these environmental quality standards.
- (9) It is appropriate for one or more Member States to be able, individually or jointly, to take measures more stringent than those provided for under this Directive.
- (10) An inventory of discharges of certain particularly dangerous substances into the aquatic environment of the Community should be drawn up in order to know where they originated.
- (11) It may be necessary to revise and, where required, supplement Lists I and II of Annex I on the basis of experience, if appropriate by transferring certain substances from List II to List I.
- (12) This Directive should be without prejudice to the obligations of the Member States relating to the time limits for transposition into national law of the Directives set out in Part B of Annex II,
- (c) 'fresh water limit' means the place in the watercourse where, at low tide and in a period of low fresh water flow, there is an appreciable increase in salinity due to the presence of sea water;
- (d) 'discharge' means the introduction into the waters referred to in Article 1 of any substances in List I or List II of Annex I, with the exception of:
- (i) discharges of dredgings;
- (ii) operational discharges from ships in territorial waters;
- (iii) dumping from ships in territorial waters;
- (e) 'pollution' means the discharge by man, directly or indirectly, of substances or energy into the aquatic environment, the results of which are such as to cause hazards to human health, harm to living resources and to aquatic ecosystems, damage to amenities or interference with other legitimate uses of water.

Article 3

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject to Article 7, this Directive shall apply to:

- (a) inland surface water;
- (b) territorial waters;
- (c) internal coastal waters.

Article 2

For the purposes of this Directive:

- (a) 'inland surface water' means all static or flowing fresh surface water situated in the territory of one or more Member States;
- (b) 'internal coastal waters' means waters on the landward side of the base line from which the breadth of territorial waters is measured, extending, in the case of water-courses, up to the fresh water limit;

Member States shall take the appropriate steps to eliminate pollution of the waters referred to in Article 1 by the dangerous substances in the families and groups of substances in List I of Annex I, hereinafter referred to as 'List I substances', and to reduce pollution of the said waters by the dangerous substances in the families and groups of substances in List II of Annex I, hereinafter referred to as 'List II substances', in accordance with this Directive.

Article 4

With regard to List I substances:

- (a) all discharges into the waters referred to in Article 1 which are liable to contain any such substance, shall require prior authorisation by the competent authority of the Member State concerned;
- (b) the authorisation shall lay down emission standards with regard to discharges of any such substance into the waters referred to in Article 1 and, where this is necessary for the implementation of this Directive, to discharges of any such substance into sewers;
- (c) authorisations may be granted for a limited period only. They may be renewed, taking into account any changes in the emission limit values laid down by the Directives referred to in Annex IX to Directive 2000/60/EC.

Article 5

1. The emission standards laid down in the authorisations granted pursuant to Article 4 shall determine:

- (a) the maximum concentration of a substance permissible in a discharge. In the case of dilution, the emission limit value laid down by the Directives referred to in Annex IX to Directive 2000/60/EC shall be divided by the dilution factor;
- (b) the maximum quantity of a substance permissible in a discharge during one or more specified periods of time, expressed, if necessary, as a unit of weight of the pollutant per unit of the characteristic element of the polluting activity (e.g. unit of weight per unit of raw material or per product unit).

2. For each authorisation, the competent authority of the Member State concerned may, if necessary, impose more stringent emission standards than those resulting from the application of the emission limit values laid down by the Directives referred to in Annex IX to Directive 2000/60/EC, taking into account in particular the toxicity, persistence and bioaccumulation of the substance concerned in the environment into which it is discharged.

3. If the discharger states that he is unable to comply with the required emission standards, or if this situation is evident to the competent authority in the Member State concerned, authorisation shall be refused.

4. Should the emission standards not be complied with, the competent authority in the Member State concerned shall take all appropriate steps to ensure that the conditions of authorisation are fulfilled and, if necessary, that the discharge is prohibited.

Article 6

1. In order to reduce pollution of the waters referred to in Article 1 by List II substances, Member States shall establish programmes in the implementation of which they shall apply in particular the methods referred to in paragraphs 2 and 3.

2. All discharges into the waters referred to in Article 1 which are liable to contain any List II substances, shall require prior authorisation by the competent authority in the Member State concerned, in which emission standards shall be laid down. Such standards shall be based on the environmental quality standards, which shall be fixed as provided for in paragraph 3.

3. The programmes referred to in paragraph 1 shall include environmental quality standards for water; these shall be laid down in accordance with Council Directives, where they exist.

4. The programmes may also include specific provisions governing the composition and use of substances or groups of substances and products and shall take into account the latest economically feasible technical developments.

5. The programmes shall set deadlines for their implementation.

6. Summaries of the programmes and the results of their implementation shall be communicated to the Commission.

7. The Commission, together with the Member States, shall arrange for regular comparisons of the programmes in order to ensure sufficient coordination in their implementation. If it sees fit, it shall submit relevant proposals to the European Parliament and to the Council to this end.

Article 7

Member States shall take all appropriate steps to implement measures adopted by them pursuant to this Directive in such a way as not to increase the pollution of waters to which Article 1 does not apply. They shall in addition prohibit all acts which intentionally or unintentionally circumvent the provisions of this Directive.

Article 8

The application of the measures taken pursuant to this Directive may on no account lead, either directly or indirectly, to increased pollution of the waters referred to in Article 1.

Article 9

Where appropriate, one or more Member States may individually or jointly take more stringent measures than those provided for under this Directive.

Article 10

The competent authority shall draw up an inventory of the discharges into the waters referred to in Article 1 which may contain List I substances to which emission standards are applicable.

Article 11

1. At intervals of three years, and for the first time for the period 1993 to 1995 inclusive, Member States shall send information to the Commission on the implementation of this Directive, in the form of a sectoral report which shall also cover other pertinent Community Directives. This report shall be drawn up on the basis of a questionnaire or outline drafted by the Commission in accordance with the procedure referred to in Article 6 of Council Directive 91/692/EEC of 23 December 1991 standardising and rationalising reports on the implementation of certain Directives relating to the environment ⁽¹⁾. The questionnaire or outline shall be sent to the Member States six months before the start of the period covered by the report. The report shall be sent to the Commission within nine months of the end of the three-year period covered by it.

The Commission shall publish a Community report on the implementation of the Directive within nine months of receiving the reports from the Member States.

2. Information acquired as a result of the application of paragraph 1 shall be used only for the purpose for which it was requested.

3. The Commission and the competent authorities of the Member States, their officials and other servants shall not disclose information acquired by them pursuant to this Directive and of a kind covered by the obligation of professional secrecy.

4. The provisions of paragraphs 2 and 3 shall not prevent publication of general information or surveys which do not contain information relating to particular undertakings or associations of undertakings.

Article 12

The European Parliament and the Council, acting on a proposal from the Commission, which shall act on its own initiative or at the request of a Member State, shall revise and, where necessary, supplement Lists I and II of Annex I on the basis of experience, if appropriate, by transferring certain List II substances to List I.

Article 13

Directive 76/464/EEC is hereby repealed, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law of the Directives set out in Part B of Annex II.

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

Article 14

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

Article 15

This Directive is addressed to the Member States.

Done at Strasbourg, 15 February 2006.

For the European Parliament

The President

J. BORRELL FONTELLES

For the Council

The President

H. WINKLER

⁽¹⁾ OJ L 377, 31.12.1991, p. 48. Directive as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

ANNEX I

List I of families and groups of substances

List I contains certain individual substances which belong to the following families and groups of substances, selected mainly on the basis of their toxicity, persistence and bioaccumulation, with the exception of those which are biologically harmless or which are rapidly converted into substances which are biologically harmless:

1. organohalogen compounds and substances which may form such compounds in the aquatic environment;
2. organophosphorus compounds;
3. organotin compounds;
4. substances which have been proved to possess carcinogenic properties in or via the aquatic environment ⁽¹⁾;
5. mercury and its compounds;
6. cadmium and its compounds;
7. persistent mineral oils and hydrocarbons of petroleum origin;

and for the purposes of implementing Articles 3, 7, 8 and 12:

8. persistent synthetic substances which may float, remain in suspension or sink and which may interfere with any use of the waters.

List II of families and groups of substances

List II contains:

- substances belonging to the families and groups of substances in List I for which the emission limit values laid down by the Directives referred to in Annex IX to Directive 2000/60/EC have not been determined by those Directives,
- certain individual substances and categories of substances belonging to the families and groups of substances listed below,

and which have a deleterious effect on the aquatic environment, which can, however, be confined to a given area and which depends on the characteristics and location of the water into which such substances are discharged.

Families and groups of substances referred to in the second indent

1. The following metalloids and metals and their compounds:

- | | | | |
|-------------|---------------|---------------|---------------|
| 1. zinc | 6. selenium | 11. tin | 16. vanadium |
| 2. copper | 7. arsenic | 12. barium | 17. cobalt |
| 3. nickel | 8. antimony | 13. beryllium | 18. thalium |
| 4. chromium | 9. molybdenum | 14. boron | 19. tellurium |
| 5. lead | 10. titanium | 15. uranium | 20. silver |

2. Biocides

and their derivatives not appearing in List I.

⁽¹⁾ Where certain substances in List II are carcinogenic, they are included in category 4 of this list.

3. Substances which have a deleterious effect on the taste and/or smell of the products for human consumption derived from the aquatic environment,

and compounds liable to give rise to such substances in water.
4. Toxic or persistent organic compounds of silicon, and substances which may give rise to such compounds in water, excluding those which are biologically harmless or are rapidly converted in water into harmless substances.
5. Inorganic compounds of phosphorus and elemental phosphorus.
6. Non-persistent mineral oils and hydrocarbons of petroleum origin.
7. Cyanides,

fluorides.
8. Substances which have an adverse effect on the oxygen balance, particularly:

ammonia,

nitrites.

Statement on Article 7

With regard to the discharge of waste water into the open sea by means of pipelines, Member States undertake to lay down requirements which shall be not less stringent than those imposed by this Directive.

ANNEX II

PART A

REPEALED DIRECTIVE WITH ITS SUCCESSIVE AMENDMENTS

(referred to in Article 13)

Council Directive 76/464/EEC (OJ L 129, 18.5.1976, p. 23)	Annex I, point (a) only Only as regards the reference in Article 22(2), fourth indent, to Article 6 of Directive 76/ 464/EEC
Council Directive 91/692/EEC (OJ L 377, 31.12.1991, p. 48)	
Directive 2000/60/EC of the European Parliament and of the Council (OJ L 327, 22.12.2000, p. 1)	

PART B

LIST OF TIME LIMITS FOR TRANSPOSITION INTO NATIONAL LAW

(referred to in Article 13)

Directive	Time limit for transposition
76/464/EEC	—
91/692/EEC	1 January 1993
2000/60/EC	22 December 2003

ANNEX III

CORRELATION TABLE

Directive 76/464/EEC	This Directive
Article 1(1), introductory wording	Article 1, introductory wording
Article 1(1), first indent	Article 1(a)
Article 1(1), second indent	Article 1(b)
Article 1(1), third indent	Article 1(c)
Article 1(1), fourth indent	—
Article 1(2), introductory wording	Article 2, introductory wording
Article 1(2)(a), (b) and (c)	Article 2(a), (b) and (c)
Article 1(2)(d), first indent	Article 2(d)(i)
Article 1(2)(d), second indent	Article 2(d)(ii)
Article 1(2)(d), third indent	Article 2(d)(iii)
Article 1(2)(e)	Article 2(e)
Article 2	Article 3
Article 3, introductory wording	Article 4, introductory wording
Article 3, point 1	Article 4(a)
Article 3, point 2	Article 4(b)
Article 3, point 3	—
Article 3, point 4	Article 4(c)
Article 4	—
Article 5	Article 5
Article 7	Article 6
Article 8	Article 7
Article 9	Article 8
Article 10	Article 9
Article 11	Article 10
Article 12	—
Article 13	Article 11
Article 14	Article 12
—	Article 13
—	Article 14
Article 15	Article 15
Annex	Annex I
—	Annex II
—	Annex III

II

(Acts whose publication is not obligatory)

EUROPEAN PARLIAMENT AND COUNCIL

RECOMMENDATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 February 2006

on further European cooperation in quality assurance in higher education

(2006/143/EC)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 149(4) and 150(4) thereof,

Having regard to the proposal from the Commission,

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

After consulting the Committee of the Regions,

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

Whereas:

(1) Although the implementation of Council Recommendation 98/561/EC of 24 September 1998 on European cooperation in quality assurance in higher education ⁽³⁾ has been a marked success as demonstrated in the report of the Commission of 30 September 2004, there is still a need to improve the performance of European higher

education, particularly as regards quality, in order for it to become more transparent and trustworthy for European citizens and for students and scholars from other continents.

(2) Recommendation 98/561/EC called for support to and, where necessary, the establishment of transparent quality assurance systems. Almost all Member States have set up national assurance systems and have initiated or enabled the establishment of one or more quality assurance or accreditation agencies.

(3) Recommendation 98/561/EC called for quality assurance systems to be based on a series of essential features, including evaluation of programmes or institutions through internal assessment, external review, and involving the participation of students, publication of results and international participation. The results of quality assurance assessments play a significant role in helping higher education institutions to improve performance.

(4) The essential features referred to in recital 3 have generally been implemented in all quality assurance systems and they have been affirmed by the European Ministers of Education, in Berlin, in September 2003, in the context of the Bologna Process, working towards the realisation of a European Higher Education Area.

(5) The European Association for Quality Assurance in Higher Education (ENQA) was established in 2000 and has a growing membership of quality assurance or accreditation agencies in all Member States.

(6) In the context of the Bologna Process, Ministers of Education from 45 countries adopted the standards and guidelines for quality assurance in the European Higher Education Area, as proposed by ENQA, during their meeting in Bergen on 19 and 20 May 2005 and as a

⁽¹⁾ OJ C 255, 14.10.2005, p. 72.

⁽²⁾ Opinion of the European Parliament of 13 October 2005 (not yet published in the Official Journal) and Council Decision of 30 January 2006.

⁽³⁾ OJ L 270, 7.10.1998, p. 56.

follow-up to the meeting in Berlin in September 2003. They also welcomed the principle of a European register of quality assurance agencies based on national review and asked that the practicalities of implementation be further developed by ENQA, in cooperation with the European University Association (EUA), the European Association for Institutions of Higher Education (EUR-ASHE) and the National Unions of Students in Europe (ESIB), with a report back to Ministers through the Bologna Follow-up Group. They furthermore underlined the importance of cooperation between nationally recognised agencies with a view to enhancing the mutual recognition of accreditation or quality assurance decisions.

- (7) EU action supporting quality assurance should be developed in coherence with activities carried out in the context of the Bologna Process.
- (8) It is desirable to draw up a register of independent and trustworthy quality assurance agencies operating in Europe, be they regional or national, general or specialised, public or private, to support transparency in higher education and help the recognition of qualifications and periods of study abroad.
- (9) In the context of the Lisbon Strategy, the European Council in Barcelona, in March 2002, expressed their conclusion that European education and training systems should become a 'world quality reference',

HEREBY RECOMMEND THAT MEMBER STATES:

1. encourage all higher education institutions active within their territory to introduce or develop rigorous internal quality assurance systems, in accordance with the standards and guidelines for quality assurance in the European Higher Education Area adopted in Bergen in the context of the Bologna Process;
2. encourage all quality assurance or accreditation agencies active within their territory to be independent in their assessments, to apply the features of quality assurance laid down in Recommendation 98/561/EC and to apply the common set of general standards and guidelines adopted in Bergen, for assessment purposes. These standards should be further developed in cooperation with representatives of the higher education sector. They should be applied in such a way as to protect and promote diversity and innovation;
3. encourage representatives of national authorities, the higher education sector and quality assurance and

accreditation agencies, together with social partners, to set up a 'European Register of Quality Assurance Agencies' (European Register) based on national review, that takes account of the principles set out in the Annex, and to define the conditions for registration and the rules for management of the register;

4. enable higher education institutions active within their territory to choose among quality assurance or accreditation agencies in the European Register an agency which meets their needs and profile, provided that this is compatible with their national legislation or permitted by their national authorities;
5. allow higher education institutions to work towards a complementary assessment by another agency in the European Register, for example to enhance their international reputation;
6. promote cooperation between agencies in order to build up mutual trust and the recognition of quality assurance and accreditation assessments, thus contributing to the recognition of qualifications for the purpose of study or work in another country;
7. ensure public access to the assessments made by the quality assurance or accreditation agencies listed in the European Register,

INVITE THE COMMISSION:

1. to continue, in close cooperation with the Member States, its support for cooperation between higher education institutions, quality assurance and accreditation agencies, competent authorities and other bodies active in the field;
2. to present triennial reports to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on progress in the development of quality assurance systems in the various Member States and on cooperation activities at European level, including the progress achieved with respect to the objectives referred to above.

Done at Strasbourg, 15 February 2006.

For the European Parliament

The President

J. BORRELL FONTELLES

For the Council

The President

H. WINKLER

ANNEX

'European Register of Quality Assurance Agencies'

The Register should provide a list of reliable agencies whose assessments Member States (and public authorities within Member States) can trust. It should be founded on the following main principles.

1. The list of agencies should be drawn up by representatives of national authorities, the higher education sector (higher education institutions, students, teachers and researchers) and quality assurance and accreditation agencies active in the Member States, together with social partners.
 2. Conditions for registration of agencies could include, *inter alia*:
 - (i) a commitment to complete independence in reaching their judgement;
 - (ii) recognition by at least the Member State within which they operate (or by public authorities within that Member State);
 - (iii) operation on the basis of the common set of standards and guidelines referred to in recommendations 1 and 2 addressed to the Member State;
 - (iv) regular external review by peers and other experts, including publication of the criteria, methodologies and results of such review.
 3. In the event of an initial refusal of registration, re-evaluation is possible on the basis of improvements made.
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