

Official Journal

of the European Union

L 102

English edition

Legislation

Volume 49
11 April 2006

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I Acts whose publication is obligatory

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⁽¹⁾ Text with EEA relevance.

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(Acts whose publication is obligatory)

**REGULATION (EC) No 561/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 15 March 2006**

**on the harmonisation of certain social legislation relating to road transport and amending
Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation
(EEC) No 3820/85**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,

Whereas:

Having regard to the Treaty establishing the European
Community, and in particular Article 71 thereof,

(1) In the field of road transport, Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport ⁽⁴⁾ sought to harmonise the conditions of competition between modes of inland transport, especially with regard to the road transport sector, and to improve working conditions and road safety. Progress in these areas should be safeguarded and extended.

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

(2) Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities ⁽⁵⁾ requires Member States to adopt measures which limit the maximum weekly working time of mobile workers.

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

(3) Difficulties have been experienced in interpreting, applying, enforcing and monitoring certain provisions of Regulation (EEC) No 3820/85 relating to driving time, break and rest period rules for drivers engaged in national and international road transport within the Community in a uniform manner in all Member States, because of the broad terms in which they are drafted.

After consulting the Committee of the Regions,

(4) Effective and uniform enforcement of those provisions is desirable if their objectives are to be achieved and the application of the rules is not to be brought into disrepute. Therefore, a clearer and simpler set of rules is needed, which will be more easily understood, interpreted and applied by the road transport industry and the enforcement authorities.

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾, in the light of the joint text approved by the Conciliation Committee on 8 December 2005,

⁽¹⁾ OJ C 51 E, 26.2.2002, p. 234.

⁽²⁾ OJ C 221, 17.9.2002, p. 19.

⁽³⁾ Opinion of the European Parliament of 14 January 2003 (OJ C 38 E, 12.2.2004, p. 152), Council Common Position of 9 December 2004 (OJ C 63 E, 15.3.2005, p. 11) and Position of the European Parliament of 13 April 2005 (OJ C 33 E, 9.2.2006, p. 425). Legislative resolution of the European Parliament of 2 February 2006 and Decision of the Council of 2 February 2006.

⁽⁴⁾ OJ L 370, 31.12.1985, p. 1. Regulation as amended by Directive 2003/59/EC of the European Parliament and of the Council (OJ L 226, 10.9.2003, p. 4).

⁽⁵⁾ OJ L 80, 23.3.2002, p. 35.

- (5) Measures provided for in this Regulation regarding working conditions should not prejudice the right of the two sides of industry to lay down, by collective bargaining or otherwise, provisions more favourable to workers.
- (6) It is desirable to define clearly the scope of this Regulation by specifying the main categories of vehicle which it covers.
- (7) This Regulation should apply to carriage by road undertaken either exclusively within the Community or between the Community, Switzerland and the countries party to the Agreement on the European Economic Area.
- (8) The European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport of 1 July 1970 (the AETR), as amended, should continue to apply to the carriage by road of goods and passengers by vehicles registered in any Member State or any country which is a contracting party to the AETR, for the whole of the journey where that journey is between the Community and a third country other than Switzerland and the countries which are contracting parties to the Agreement on the European Economic Area or through such a country. It is essential to modify the AETR as soon as possible, ideally within two years of the entry into force of this Regulation, in order to align its provisions with this Regulation.
- (9) In the case of carriage by road using vehicles registered in a third country which is not a contracting party to the AETR, the provisions of the AETR should apply to that part of the journey effected within the Community or within countries which are contracting parties to the AETR.
- (10) Since the subject matter of the AETR falls within the scope of this Regulation, the power to negotiate and conclude the Agreement lies with the Community.
- (11) If an amendment to the internal Community rules in the field in question necessitates a corresponding amendment to the AETR, Member States should act together to bring about such an amendment to the AETR as soon as possible, in accordance with the procedure laid down therein.
- (12) The list of exemptions should be updated to reflect developments in the road transport sector over the past 19 years.
- (13) Full definitions of all key terms should be given in order to render interpretation easier and ensure that this Regulation is applied in a uniform manner. In addition, efforts should be made to ensure uniform interpretation and application of this Regulation by national supervisory authorities. The definition of 'week' provided in this Regulation should not prevent drivers from starting their working week on any day of the week.
- (14) To guarantee effective enforcement, it is essential that the competent authorities, when carrying out roadside checks, and after a transitional period, should be able to ascertain that driving times and rest periods have been properly observed on the day of the check and over the preceding 28 days.
- (15) The basic rules on driving times need to be clarified and simplified to allow effective and uniform enforcement by means of the digital tachograph, as provided for in Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport ⁽¹⁾ and this Regulation. In addition, through a standing committee, Member State enforcement authorities should strive to reach a common understanding of the implementation of this Regulation.
- (16) It has proved possible under the rules of Regulation (EEC) No 3820/85 to schedule daily driving periods and breaks to enable a driver to drive for too long without a full break, leading to reduced road safety and a deterioration in the driver's working conditions. It is therefore appropriate to ensure that split breaks are so ordered as to prevent abuse.
- (17) This Regulation aims to improve social conditions for employees who are covered by it, as well as to improve general road safety. It does so mainly by means of the provisions pertaining to maximum driving times per day, per week and per period of two consecutive weeks, the provision which obliges drivers to take a regular weekly rest period at least once per two consecutive weeks and the provisions which prescribe that under no circumstances should a daily rest period be less than an uninterrupted period of nine hours. Since those provisions guarantee adequate rest, and also taking into account experience with enforcement practices during the past years, a system of compensation for reduced daily rest periods is no longer necessary.
- (18) Many road transport operations within the Community involve transport by ferry or by rail for part of the journey. Clear, appropriate provisions regarding daily rest periods and breaks should therefore be laid down for such operations.
- (19) In view of the increase in the cross-border carriage of goods and passengers, it is desirable, in the interests of road safety and enhanced enforcement, for roadside checks and checks at the premises of undertakings to cover driving times, rest periods and breaks undertaken within other Member States or third countries and to determine whether the relevant rules have been fully and properly observed.
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- ⁽¹⁾ OJ L 370, 31.12.1985, p. 8. Regulation as last amended by Commission Regulation (EC) No 432/2004 (OJ L 71, 10.3.2004, p. 3).

- (20) The liability of transport undertakings should extend at least to transport undertakings that are legal or natural persons, and should not exclude proceedings against natural persons who are perpetrators, or instigators of, or accessories to, infringements of this Regulation.
- (21) It is necessary for drivers working for several transport undertakings to supply each of them with adequate information to enable it to fulfil its responsibilities under this Regulation.
- (22) In order to promote social progress and improve road safety, each Member State should retain the right to adopt certain appropriate measures.
- (23) National derogations should reflect changes in the road transport sector and be restricted to those elements not now subject to competitive pressures.
- (24) The Member States should lay down rules for vehicles used for the carriage of passengers on regular services where the route covered does not exceed 50 km. Those rules should provide adequate protection in terms of permitted driving times and mandatory breaks and rest periods.
- (25) It is desirable, in the interests of effective enforcement, that all regular national and international passenger transport services be checked using a standard recording device.
- (26) The Member States should lay down rules on penalties applicable to infringements of this Regulation and ensure that they are implemented. Those penalties must be effective, proportionate, dissuasive and non-discriminatory. The possibility of immobilising the vehicle where serious infringements are detected should also be included within the common range of measures open to Member States. The provisions contained in this Regulation pertaining to penalties or proceedings should not affect national rules concerning the burden of proof.
- (27) It is desirable in the interests of clear and effective enforcement to ensure uniform provisions on the liability of transport undertakings and drivers for infringements of this Regulation. This liability may result in penal, civil or administrative penalties as may be the case in the Member States.
- (28) Since the objective of this Regulation, namely the establishment of clear, common rules on driving times, breaks and rest periods cannot be sufficiently achieved by the Member States and can therefore, by reason of the need for coordinated action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (29) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.
- (30) Since provisions concerning the minimum ages of drivers have been laid down in Directive 2003/59/EC ⁽²⁾ and must be transposed by 2009, only transitional provisions concerning the minimum age of crews are required in this Regulation.
- (31) Regulation (EEC) No 3821/85 should be amended to clarify specific obligations on transport undertakings and drivers as well as to promote legal certainty and to facilitate enforcement of driving time and rest period limits during roadside checks.
- (32) Regulation (EEC) No 3821/85 should also be amended to ensure legal certainty as regards the new dates for the introduction of the digital tachograph and for the availability of driver cards.
- (33) The introduction of recording equipment pursuant to Regulation (EC) No 2135/98, enabling the activities of a driver over a 28-day period to be recorded electronically on his driver card and electronic records of vehicle operations to cover a 365-day period, will in future make for more rapid and comprehensive roadside checks.
- (34) Under Directive 88/599/EEC ⁽³⁾ roadside checks are confined to daily driving time, daily rest periods, and breaks. When digital recording equipment is introduced driver and vehicle data will be stored electronically and data will be able to be evaluated electronically on the spot. This should, over time, enable simple checks to be carried out on regular and reduced daily rest periods and on regular and reduced weekly rest periods and compensatory rest.
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- ⁽¹⁾ OJ L 184, 17.7.1999, p. 23.
- ⁽²⁾ Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, amending Council Regulation (EEC) No 3820/85 and Council Directive 91/439/EEC and repealing Council Directive 76/914/EEC (OJ L 226, 10.9.2003, p. 4). Directive as amended by Council Directive 2004/66/EC (OJ L 168, 1.5.2004, p. 35).
- ⁽³⁾ Council Directive 88/599/EEC of 23 November 1988 on standard checking procedures for the implementation of Regulation (EEC) No 3820/85 on harmonisation of certain social legislation relating to road transport and Regulation (EEC) No 3821/85 on recording equipment in road transport (OJ L 325, 29.11.1988, p. 55).

- (35) Experience indicates that compliance with the provisions of this Regulation, in particular the specified maximum driving time over a two-week period, cannot be enforced unless proper and effective supervision is brought to bear in roadside checks in relation to the whole of that period.
- (36) The application of the legal provisions regarding digital tachographs should be in line with this Regulation in order to achieve optimal effectiveness in monitoring and enforcing certain social provisions in road transport.
- (37) For reasons of clarity and rationalisation, Regulation (EEC) No 3820/85 should be repealed and replaced by this Regulation,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

INTRODUCTORY PROVISIONS

Article 1

This Regulation lays down rules on driving times, breaks and rest periods for drivers engaged in the carriage of goods and passengers by road in order to harmonise the conditions of competition between modes of inland transport, especially with regard to the road sector, and to improve working conditions and road safety. This Regulation also aims to promote improved monitoring and enforcement practices by Member States and improved working practices in the road transport industry.

Article 2

1. This Regulation shall apply to the carriage by road:

- (a) of goods where the maximum permissible mass of the vehicle, including any trailer, or semi-trailer, exceeds 3,5 tonnes, or
- (b) of passengers by vehicles which are constructed or permanently adapted for carrying more than nine persons including the driver, and are intended for that purpose.

2. This Regulation shall apply, irrespective of the country of registration of the vehicle, to carriage by road undertaken:

- (a) exclusively within the Community; or
- (b) between the Community, Switzerland and the countries party to the Agreement on the European Economic Area.

3. The AETR shall apply, instead of this Regulation, to international road transport operations undertaken in part outside the areas mentioned in paragraph 2, to:

- (a) vehicles registered in the Community or in countries which are contracting parties to the AETR, for the whole journey;
- (b) vehicles registered in a third country which is not a contracting party to the AETR, only for the part of the journey on the territory of the Community or of countries which are contracting parties to the AETR.

The provisions of the AETR should be aligned with those of this Regulation, so that the main provisions in this Regulation apply, through the AETR, to such vehicles for any part of the journey made within the Community.

Article 3

This Regulation shall not apply to carriage by road by:

- (a) vehicles used for the carriage of passengers on regular services where the route covered by the service in question does not exceed 50 kilometres;
- (b) vehicles with a maximum authorised speed not exceeding 40 kilometres per hour;
- (c) vehicles owned or hired without a driver by the armed services, civil defence services, fire services, and forces responsible for maintaining public order when the carriage is undertaken as a consequence of the tasks assigned to these services and is under their control;
- (d) vehicles, including vehicles used in the non-commercial transport of humanitarian aid, used in emergencies or rescue operations;
- (e) specialised vehicles used for medical purposes;
- (f) specialised breakdown vehicles operating within a 100 km radius of their base;
- (g) vehicles undergoing road tests for technical development, repair or maintenance purposes, and new or rebuilt vehicles which have not yet been put into service;
- (h) vehicles or combinations of vehicles with a maximum permissible mass not exceeding 7,5 tonnes used for the non-commercial carriage of goods;
- (i) commercial vehicles, which have a historic status according to the legislation of the Member State in which they are being driven and which are used for the non-commercial carriage of passengers or goods.

Article 4

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

- (a) 'carriage by road' means any journey made entirely or in part on roads open to the public by a vehicle, whether laden or not, used for the carriage of passengers or goods;
- (b) 'vehicle' means a motor vehicle, tractor, trailer or semi-trailer or a combination of these vehicles, defined as follows:
 - 'motor vehicle': any self-propelled vehicle travelling on the road, other than a vehicle permanently running on rails, and normally used for carrying passengers or goods,
 - 'tractor': any self-propelled vehicle travelling on the road, other than a vehicle permanently running on rails, and specially designed to pull, push or move trailers, semi-trailers, implements or machines,
 - 'trailer': any vehicle designed to be coupled to a motor vehicle or tractor,
 - 'semi-trailer': a trailer without a front axle coupled in such a way that a substantial part of its weight and of the weight of its load is borne by the tractor or motor vehicle;
- (c) 'driver' means any person who drives the vehicle even for a short period, or who is carried in a vehicle as part of his duties to be available for driving if necessary;
- (d) 'break' means any period during which a driver may not carry out any driving or any other work and which is used exclusively for recuperation;
- (e) 'other work' means all activities which are defined as working time in Article 3(a) of Directive 2002/15/EC except 'driving', including any work for the same or another employer, within or outside of the transport sector;
- (f) 'rest' means any uninterrupted period during which a driver may freely dispose of his time;
- (g) 'daily rest period' means the daily period during which a driver may freely dispose of his time and covers a 'regular daily rest period' and a 'reduced daily rest period':
 - 'regular daily rest period' means any period of rest of at least 11 hours. Alternatively, this regular daily rest period may be taken in two periods, the first of which must be an uninterrupted period of at least 3 hours and the second an uninterrupted period of at least nine hours,
 - 'reduced daily rest period' means any period of rest of at least nine hours but less than 11 hours;
- (h) 'weekly rest period' means the weekly period during which a driver may freely dispose of his time and covers a 'regular weekly rest period' and a 'reduced weekly rest period':
 - 'regular weekly rest period' means any period of rest of at least 45 hours,
 - 'reduced weekly rest period' means any period of rest of less than 45 hours, which may, subject to the conditions laid down in Article 8(6), be shortened to a minimum of 24 consecutive hours;
- (i) 'a week' means the period of time between 00.00 on Monday and 24.00 on Sunday;
- (j) 'driving time' means the duration of driving activity recorded:
 - automatically or semi-automatically by the recording equipment as defined in Annex I and Annex IB of Regulation (EEC) No 3821/85, or
 - manually as required by Article 16(2) of Regulation (EEC) No 3821/85;
- (k) 'daily driving time' means the total accumulated driving time between the end of one daily rest period and the beginning of the following daily rest period or between a daily rest period and a weekly rest period;
- (l) 'weekly driving time' means the total accumulated driving time during a week;
- (m) 'maximum permissible mass' means the maximum authorised operating mass of a vehicle when fully laden;
- (n) 'regular passenger services' means national and international services as defined in Article 2 of Council Regulation (EEC) No 684/92 of 16 March 1992 on common rules for the international carriage of passengers by coach and bus ⁽¹⁾;
- (o) 'multi-manning' means the situation where, during each period of driving between any two consecutive daily rest periods, or between a daily rest period and a weekly rest period, there are at least two drivers in the vehicle to do the driving. For the first hour of multi-manning the presence of another driver or drivers is optional but for the remainder of the period it is compulsory;

⁽¹⁾ OJ L 74, 20.3.1992, p. 1. Regulation as last amended by the 2003 Act of Accession.

- (p) 'transport undertaking' means any natural person, any legal person, any association or group of persons without legal personality, whether profit-making or not, or any official body, whether having its own legal personality or being dependent upon an authority having such a personality, which engages in carriage by road, whether for hire or reward or for own account;
- (q) 'driving period' means the accumulated driving time from when a driver commences driving following a rest period or a break until he takes a rest period or a break. The driving period may be continuous or broken.

CHAPTER II

CREWS, DRIVING TIMES, BREAKS AND REST PERIODS*Article 5*

1. The minimum age for conductors shall be 18 years.
2. The minimum age for drivers' mates shall be 18 years. However, Member States may reduce the minimum age for drivers' mates to 16 years, provided that:
 - (a) the carriage by road is carried out within one Member State within a 50 kilometre radius of the place where the vehicle is based, including local administrative areas the centre of which is situated within that radius;
 - (b) the reduction is for the purposes of vocational training; and
 - (c) there is compliance with the limits imposed by the Member State's national rules on employment matters.

Article 6

1. The daily driving time shall not exceed nine hours.

However, the daily driving time may be extended to at most 10 hours not more than twice during the week.

2. The weekly driving time shall not exceed 56 hours and shall not result in the maximum weekly working time laid down in Directive 2002/15/EC being exceeded.
3. The total accumulated driving time during any two consecutive weeks shall not exceed 90 hours.
4. Daily and weekly driving times shall include all driving time on the territory of the Community or of a third country.

5. A driver shall record as other work any time spent as described in Article 4(e) as well as any time spent driving a vehicle used for commercial operations not falling within the scope of this Regulation, and shall record any periods of availability, as defined in Article 15(3)(c) of Regulation (EEC) No 3821/85, since his last daily or weekly rest period. This record shall be entered either manually on a record sheet, a printout or by use of manual input facilities on recording equipment.

Article 7

After a driving period of four and a half hours a driver shall take an uninterrupted break of not less than 45 minutes, unless he takes a rest period.

This break may be replaced by a break of at least 15 minutes followed by a break of at least 30 minutes each distributed over the period in such a way as to comply with the provisions of the first paragraph.

Article 8

1. A driver shall take daily and weekly rest periods.
 2. Within each period of 24 hours after the end of the previous daily rest period or weekly rest period a driver shall have taken a new daily rest period.
- If the portion of the daily rest period which falls within that 24 hour period is at least nine hours but less than 11 hours, then the daily rest period in question shall be regarded as a reduced daily rest period.
3. A daily rest period may be extended to make a regular weekly rest period or a reduced weekly rest period.
 4. A driver may have at most three reduced daily rest periods between any two weekly rest periods.

5. By way of derogation from paragraph 2, within 30 hours of the end of a daily or weekly rest period, a driver engaged in multi-manning must have taken a new daily rest period of at least nine hours.

6. In any two consecutive weeks a driver shall take at least:

- two regular weekly rest periods, or
- one regular weekly rest period and one reduced weekly rest period of at least 24 hours. However, the reduction shall be compensated by an equivalent period of rest taken en bloc before the end of the third week following the week in question.

A weekly rest period shall start no later than at the end of six 24-hour periods from the end of the previous weekly rest period.

7. Any rest taken as compensation for a reduced weekly rest period shall be attached to another rest period of at least nine hours.

8. Where a driver chooses to do this, daily rest periods and reduced weekly rest periods away from base may be taken in a vehicle, as long as it has suitable sleeping facilities for each driver and the vehicle is stationary.

9. A weekly rest period that falls in two weeks may be counted in either week, but not in both.

Article 9

1. By way of derogation from Article 8, where a driver accompanies a vehicle which is transported by ferry or train, and takes a regular daily rest period, that period may be interrupted not more than twice by other activities not exceeding one hour in total. During that regular daily rest period the driver shall have access to a bunk or couchette.

2. Any time spent travelling to a location to take charge of a vehicle falling within the scope of this Regulation, or to return from that location, when the vehicle is neither at the driver's home nor at the employer's operational centre where the driver is normally based, shall not be counted as a rest or break unless the driver is on a ferry or train and has access to a bunk or couchette.

3. Any time spent by a driver driving a vehicle which falls outside the scope of this Regulation to or from a vehicle which falls within the scope of this Regulation, which is not at the driver's home or at the employer's operational centre where the driver is normally based, shall count as other work.

CHAPTER III

LIABILITY OF TRANSPORT UNDERTAKINGS

Article 10

1. A transport undertaking shall not give drivers it employs or who are put at its disposal any payment, even in the form of a bonus or wage supplement, related to distances travelled and/or the amount of goods carried if that payment is of such a kind as to endanger road safety and/or encourages infringement of this Regulation.

2. A transport undertaking shall organise the work of drivers referred to in paragraph 1 in such a way that the drivers are able to comply with Regulation (EEC) No 3821/85 and Chapter II of this Regulation. The transport undertaking shall properly instruct the driver and shall make regular checks to ensure that Regulation (EEC) No 3821/85 and Chapter II of this Regulation are complied with.

3. A transport undertaking shall be liable for infringements committed by drivers of the undertaking, even if the infringement was committed on the territory of another Member State or a third country.

Without prejudice to the right of Member States to hold transport undertakings fully liable, Member States may make this liability conditional on the undertaking's infringement of paragraphs 1 and 2. Member States may consider any evidence that the transport undertaking cannot reasonably be held responsible for the infringement committed.

4. Undertakings, consignors, freight forwarders, tour operators, principal contractors, subcontractors and driver employment agencies shall ensure that contractually agreed transport time schedules respect this Regulation.

5. (a) A transport undertaking which uses vehicles that are fitted with recording equipment complying with Annex IB of Regulation (EEC) No 3821/85 and that fall within the scope of this Regulation, shall:

(i) ensure that all data are downloaded from the vehicle unit and driver card as regularly as is stipulated by the Member State and that relevant data are downloaded more frequently so as to ensure that all data concerning activities undertaken by or for that undertaking are downloaded;

(ii) ensure that all data downloaded from both the vehicle unit and driver card are kept for at least 12 months following recording and, should an inspecting officer request it, such data are accessible, either directly or remotely, from the premises of the undertaking;

(b) for the purposes of this paragraph 'downloaded' shall be interpreted in accordance with the definition laid down in Annex IB, Chapter I, point (s) of Regulation (EEC) No 3821/85;

(c) the maximum period within which the relevant data shall be downloaded under (a)(i) shall be decided by the Commission in accordance with the procedure referred to in Article 24(2).

CHAPTER IV

EXCEPTIONS

Article 11

A Member State may provide for longer minimum breaks and rest periods or shorter maximum driving times than those laid down in Articles 6 to 9 in the case of carriage by road undertaken wholly within its territory. In so doing, Member States shall take account of relevant collective or other agreements between the social partners. Nevertheless, this Regulation shall remain applicable to drivers engaged in international transport operations.

Article 12

Provided that road safety is not thereby jeopardised and to enable the vehicle to reach a suitable stopping place, the driver may depart from Articles 6 to 9 to the extent necessary to ensure the safety of persons, of the vehicle or its load. The driver shall indicate the reason for such departure manually on the record sheet of the recording equipment or on a printout from the recording equipment or in the duty roster, at the latest on arrival at the suitable stopping place.

Article 13

1. Provided the objectives set out in Article 1 are not prejudiced, each Member State may grant exceptions from Articles 5 to 9 and make such exceptions subject to individual conditions on its own territory or, with the agreement of the States concerned, on the territory of another Member State, applicable to carriage by the following:

- (a) vehicles owned or hired, without a driver, by public authorities to undertake carriage by road which do not compete with private transport undertakings;
- (b) vehicles used or hired, without a driver, by agricultural, horticultural, forestry, farming or fishery undertakings for carrying goods as part of their own entrepreneurial activity within a radius of up to 100 km from the base of the undertaking;
- (c) agricultural tractors and forestry tractors used for agricultural or forestry activities, within a radius of up to 100 km from the base of the undertaking which owns, hires or leases the vehicle;
- (d) vehicles or combinations of vehicles with a maximum permissible mass not exceeding 7,5 tonnes used:
 - by universal service providers as defined in Article 2 (13) of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service ⁽¹⁾ to deliver items as part of the universal service, or
 - for carrying materials, equipment or machinery for the driver's use in the course of his work.

These vehicles shall be used only within a 50 kilometre radius from the base of the undertaking, and on condition that driving the vehicles does not constitute the driver's main activity;

- (e) vehicles operating exclusively on islands not exceeding 2 300 square kilometres in area which are not linked to the rest of the national territory by a bridge, ford or tunnel open for use by motor vehicles;
- (f) vehicles used for the carriage of goods within a 50 km radius from the base of the undertaking and propelled by means of natural or liquefied gas or electricity, the maximum permissible mass of which, including the mass of a trailer or semi-trailer, does not exceed 7,5 tonnes;
- (g) vehicles used for driving instruction and examination with a view to obtaining a driving licence or a certificate of professional competence, provided that they are not being used for the commercial carriage of goods or passengers;
- (h) vehicles used in connection with sewerage, flood protection, water, gas and electricity maintenance services, road maintenance and control, door-to-door household refuse collection and disposal, telegraph and telephone services, radio and television broadcasting, and the detection of radio or television transmitters or receivers;
- (i) vehicles with between 10 and 17 seats used exclusively for the non-commercial carriage of passengers;
- (j) specialised vehicles transporting circus and funfair equipment;
- (k) specially fitted mobile project vehicles, the primary purpose of which is use as an educational facility when stationary;
- (l) vehicles used for milk collection from farms and the return to farms of milk containers or milk products intended for animal feed;
- (m) specialised vehicles transporting money and/or valuables;
- (n) vehicles used for carrying animal waste or carcasses which are not intended for human consumption;
- (o) vehicles used exclusively on roads inside hub facilities such as ports, interports and railway terminals;
- (p) vehicles used for the carriage of live animals from farms to local markets and vice versa or from markets to local slaughterhouses within a radius of up to 50 km.

2. Member States shall inform the Commission of the exceptions granted under paragraph 1 and the Commission shall inform the other Member States thereof.

⁽¹⁾ OJ L 15, 21.1.1998, p. 14. Directive as last amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

3. Provided that the objectives set out in Article 1 are not prejudiced and adequate protection for drivers is provided, a Member State may, after approval by the Commission, grant on its own territory minor exemptions from this Regulation for vehicles used in predefined areas with a population density of less than five persons per square kilometre, in the following cases:

- regular domestic passenger services, where their schedule is confirmed by the authorities (in which case only exemptions relating to breaks may be permitted), and
- domestic road haulage operations for own account or for hire or reward, which have no impact on the single market and are needed to maintain certain sectors of industry in the territory concerned and where the exempting provisions of this Regulation impose a limiting radius of up to 100 km.

Carriage by road under this exemption may include a journey to an area with a population density of five persons or more per square kilometre only in order to end or start the journey. Any such measures shall be proportionate in nature and scope.

Article 14

1. Provided that the objectives set out in Article 1 are not prejudiced, Member States may, after authorisation by the Commission, grant exceptions from the application of Articles 6 to 9 to transport operations carried out in exceptional circumstances.

2. In urgent cases Member States may grant a temporary exception for a period not exceeding 30 days, which shall be notified immediately to the Commission.

3. The Commission shall inform the other Member States of any exception granted pursuant to this Article.

Article 15

Member States shall ensure that drivers of vehicles referred to in Article 3(a) are governed by national rules which provide adequate protection in terms of permitted driving times and mandatory breaks and rest periods.

CHAPTER V

CONTROL PROCEDURES AND SANCTIONS

Article 16

1. Where no recording equipment has been fitted to the vehicle in accordance with Regulation (EEC) No 3821/85, paragraphs 2 and 3 of this Article shall apply to:

- (a) regular national passenger services, and

- (b) regular international passenger services whose route terminals are located within a distance of 50 km as the crow flies from a border between two Member States and whose route length does not exceed 100 km.

2. A service timetable and a duty roster shall be drawn up by the transport undertaking and shall show, in respect of each driver, the name, place where he is based and the schedule laid down in advance for various periods of driving, other work, breaks and availability.

Each driver assigned to a service referred to in paragraph 1 shall carry an extract from the duty roster and a copy of the service timetable.

3. The duty roster shall:

- (a) include all the particulars specified in paragraph 2 for a minimum period covering the previous 28 days; these particulars must be updated on regular intervals, the duration of which may not exceed one month;
- (b) be signed by the head of the transport undertaking or by a person authorised to represent him;
- (c) be kept by the transport undertaking for one year after expiry of the period covered by it. The transport undertaking shall give an extract from the roster to the drivers concerned upon request; and
- (d) be produced and handed over at the request of an authorised inspecting officer.

Article 17

1. Member States, using the standard form set out in Decision 93/173/EEC ⁽¹⁾, shall communicate the necessary information to the Commission to enable it to draw up every two years a report on the application of this Regulation and Regulation (EEC) No 3821/85 and developments in the fields in question.

2. This information shall be communicated to the Commission not later than 30 September of the year following the end of the two-year period concerned.

3. The report shall state what use has been made of the exceptions provided for in Article 13.

4. The Commission shall forward the report to the European Parliament and to the Council within 13 months of the end of the two-year period concerned.

⁽¹⁾ OJ L 72, 25.3.1993, p. 33.

Article 18

Member States shall adopt such measures as may be necessary for the implementation of this Regulation.

Article 19

1. Member States shall lay down rules on penalties applicable to infringements of this Regulation and Regulation (EEC) No 3821/85 and shall take all measures necessary to ensure that they are implemented. Those penalties shall be effective, proportionate, dissuasive and non-discriminatory. No infringement of this Regulation and Regulation (EEC) No 3821/85 shall be subjected to more than one penalty or procedure. The Member States shall notify the Commission of these measures and the rules on penalties by the date specified in the second subparagraph of Article 29. The Commission shall inform Member States accordingly.

2. A Member State shall enable the competent authorities to impose a penalty on an undertaking and/or a driver for an infringement of this Regulation detected on its territory and for which a penalty has not already been imposed, even where that infringement has been committed on the territory of another Member State or of a third country.

By way of exception, where an infringement is detected:

- which was not committed on the territory of the Member State concerned, and
- which has been committed by an undertaking which is established in, or a driver whose place of employment is, in another Member State or a third country,

a Member State may, until 1 January 2009, instead of imposing a penalty, notify the facts of the infringement to the competent authority in the Member State or the third country where the undertaking is established or where the driver has his place of employment.

3. Whenever a Member State initiates proceedings or imposes a penalty for a particular infringement, it shall provide the driver with due evidence of this in writing.

4. Member States shall ensure that a system of proportionate penalties, which may include financial penalties, is in force for infringements of this Regulation or Regulation (EEC) No 3821/85 on the part of undertakings, or associated consignors, freight forwarders, tour operators, principal contractors, subcontractors and driver employment agencies.

Article 20

1. The driver shall keep any evidence provided by a Member State concerning penalties imposed or the initiation of proceedings until such time as the same infringement of this Regulation can no longer lead to a second proceeding or penalty pursuant to this Regulation.

2. The driver shall produce the evidence referred to in paragraph 1 upon request.

3. A driver who is employed or at the disposal of more than one transport undertaking shall provide sufficient information to each undertaking to enable it to comply with Chapter II.

Article 21

To address cases where a Member State considers that there has been an infringement of this Regulation which is of a kind that is clearly liable to endanger road safety, it shall empower the relevant competent authority to proceed with immobilisation of the vehicle concerned until such time as the cause of the infringement has been rectified. Member States may compel the driver to take a daily rest period. Member States shall, where appropriate also withdraw, suspend or restrict an undertaking's licence, if the undertaking is established in that Member State, or withdraw, suspend or restrict a driver's driving licence. The Commission, acting in accordance with the procedure in Article 24(2) shall develop guidelines with a view to promoting a harmonised application of this Article.

Article 22

1. Member States shall assist each other in applying this Regulation and in checking compliance herewith.

2. The competent authorities of the Member States shall regularly exchange all available information concerning:

- (a) infringements of the rules set out in Chapter II committed by non-residents and any penalties imposed for such infringements;
- (b) penalties imposed by a Member State on its residents for such infringements committed in other Member States.

3. The Member States shall regularly send relevant information concerning the national interpretation and application of this Regulation to the Commission, which will make this information available in electronic form to other Member States.

4. The Commission shall support dialogue between Member States concerning national interpretation and application of this Regulation through the Committee referred to in Article 24(1).

Article 23

The Community shall enter into any negotiations with third countries which may prove necessary for the purpose of implementing this Regulation.

Article 24

1. The Commission shall be assisted by the Committee set up under Article 18(1) of Regulation (EEC) No 3821/85.
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
3. The Committee shall adopt its rules of procedure.

Article 25

1. At the request of a Member State, or on its own initiative, the Commission shall:
 - (a) examine cases where differences in the application and enforcement of any of the provisions of this Regulation arise and particularly concerning driving times, breaks and rest periods;
 - (b) clarify the provisions of this Regulation, with a view to promoting a common approach.
2. In the cases referred to in paragraph 1 the Commission shall take a decision on a recommended approach in accordance with the procedure referred to in Article 24(2). The Commission shall communicate its decision to the European Parliament, the Council and to the Member States.

CHAPTER VI

FINAL PROVISIONS*Article 26*

Regulation (EEC) No 3821/85 is hereby amended as follows:

1. Article 2 shall be replaced by the following:

'Article 2

For the purpose of this Regulation the definitions set out in Article 4 of Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 (*) shall apply.

(*) OJ L 102, 11.4.2006, p. 1'

2. Article 3(1), (2) and (3) shall be replaced as follows:

'1. Recording equipment shall be installed and used in vehicles registered in a Member State which are used for

the carriage of passengers or goods by road, except the vehicles referred to in Article 3 of Regulation (EC) No 561/2006. Vehicles referred to in Article 16(1) of Regulation (EC) No 561/2006 and vehicles, which were exempt from the scope of application of Regulation (EEC) No 3820/85, but which are no longer exempt under Regulation (EC) No 561/2006 shall have until 31 December 2007 to comply with this requirement.

2. Member States may exempt vehicles mentioned in Articles 13(1) and (3) of Regulation (EC) No 561/2006 from application of this Regulation.

3. Member States may, after authorisation by the Commission, exempt from application of this Regulation vehicles used for the transport operations referred to in Article 14 of Regulation (EC) No 561/2006.;

3. Article 14(2) shall be replaced as follows:

'2. The undertaking shall keep record sheets and printouts, whenever printouts have been made to comply with Article 15(1), in chronological order and in a legible form for at least a year after their use and shall give copies to the drivers concerned who request them. The undertaking shall also give copies of downloaded data from the driver cards to the drivers concerned who request them and the printed papers of these copies. The record sheets, printouts and downloaded data shall be produced or handed over at the request of any authorised inspecting officer.;

4. Article 15 shall be amended as follows:

— in paragraph 1, the following subparagraph shall be added:

'Where a driver card is damaged, malfunctions, or is not in the possession of the driver, the driver shall:

- (a) at the start of his journey, print out the details of the vehicle the driver is driving, and shall enter onto that printout:
 - (i) details that enable the driver to be identified (name, driver card or driver's licence number), including his signature;
 - (ii) the periods referred to in paragraph 3, second indent (b), (c) and (d);
- (b) at the end of his journey, print out the information relating to periods of time recorded by the recording equipment, record any periods of other work, availability and rest undertaken since the printout that was made at the start of the journey, where not recorded by the tachograph, and mark on that document details that enable the driver to be identified (name, driver card or driver's licence number), including the driver's signature.;


- paragraph 2, second subparagraph shall be replaced by the following:


‘When as a result of being away from the vehicle, a driver is unable to use the equipment fitted to the vehicle, the periods of time referred to in paragraph 3, second indent (b), (c) and (d) shall:

- (a) if the vehicle is fitted with recording equipment in conformity with Annex I, be entered on the record sheet, either manually, by automatic recording or other means, legibly and without dirtying the sheet; or
- (b) if the vehicle is fitted with recording equipment in conformity with Annex IB, be entered onto the driver card using the manual entry facility provided in the recording equipment.

Where there is more than one driver on board the vehicle fitted with recording equipment in conformity with Annex IB, each driver shall ensure that his driver card is inserted into the correct slot in the tachograph.’

- paragraph 3(b) and (c) shall be replaced by the following:

‘(b) “other work” means any activity other than driving, as defined in Article 3(a) of Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (*), and also any work for the same or another employer within or outside of the transport sector, and must be recorded under this sign ;

(c) “availability” defined in Article 3(b) of Directive 2002/15/EC must be recorded under this sign .

(*) OJ L 80, 23.3.2002, p. 35.’

- paragraph 4 shall be deleted,
- paragraph 7 shall be replaced by the following:

‘7. (a) Where the driver drives a vehicle fitted with recording equipment in conformity with Annex I, the driver must be able to produce, whenever an inspecting officer so requests:

- (i) the record sheets for the current week and those used by the driver in the previous 15 days;

- (ii) the driver card if he holds one, and

- (iii) any manual record and printout made during the current week and the previous 15 days as required under this Regulation and Regulation (EC) No 561/2006.

However, after 1 January 2008, the time periods referred to under (i) and (iii) shall cover the current day and the previous 28 days.

(b) Where the driver drives a vehicle fitted with recording equipment in conformity with Annex IB, the driver must be able to produce, whenever an inspecting officer so requests:

- (i) the driver card of which he is holder;
- (ii) any manual record and printout made during the current week and the previous 15 days as required under this Regulation and Regulation (EC) No 561/2006, and
- (iii) the record sheets corresponding to the same period as the one referred to in the previous subparagraph during which he drove a vehicle fitted with recording equipment in conformity with Annex I.

However, after 1 January 2008, the time periods referred to under (ii) shall cover the current day and the previous 28 days.

(c) An authorised inspecting officer may check compliance with Regulation (EC) No 561/2006 by analysis of the record sheets, of the displayed or printed data which have been recorded by the recording equipment or by the driver card or, failing this, by analysis of any other supporting document that justifies non-compliance with a provision, such as those laid down in Article 16(2) and (3).’

Article 27

Regulation (EC) No 2135/98 is hereby amended as follows:

1. Article 2(1)(a) shall be replaced by the following:

‘1. (a) From the 20th day following the day of publication of Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 (*) vehicles put into service for the first time shall be fitted with recording equipment in accordance with the requirements of Annex IB to Regulation (EEC) No 3821/85.

(*) OJ L 102, 11.4.2006, p. 1’;

2. Article 2(2) shall be replaced by the following:

‘2. Member States shall take the necessary measures to ensure that they are able to issue driver cards at the latest on the 20th day following the day of publication of Regulation (EC) No 561/2006.’

Article 28

Regulation (EEC) No 3820/85 is hereby repealed and replaced by this Regulation.

Notwithstanding, paragraphs 1, 2 and 4 of Article 5 of Regulation (EEC) No 3820/85 shall continue to apply until the dates set out in Article 15(1) of Directive 2003/59/EC.

Article 29

This Regulation shall enter into force on 11 April 2007, with the exception of Articles 10(5), 26(3) and (4) and 27, which shall enter into force on 1 May 2006.

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

Done at Strasbourg, 15 March 2006.

For the European Parliament

The President

J. BORRELL FONTELLES

For the Council

The President

H. WINKLER

STATEMENT

The Commission and the Member States shall make every effort to ensure that, within two years of the entry into force of this Regulation, the provisions of the AETR are aligned with the provisions of this Regulation. If such an alignment has not been achieved within that period the Commission shall propose appropriate action to address the situation.

DIRECTIVE 2006/21/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 15 March 2006****on the management of waste from extractive industries and amending Directive 2004/35/EC**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

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

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾, in the light of the joint text approved by the Conciliation Committee on 8 December 2005,

Whereas:

- (1) The Communication of the Commission entitled 'Safe operation of mining activities: a follow-up to recent mining accidents' sets out as one of its priority actions an initiative to regulate the management of waste from the extractive industries. This action is designed to complement initiatives pursuant to Directive 2003/105/EC of the European Parliament and of the Council of 16 December 2003 amending Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances ⁽⁴⁾ as well as the production of a best available technique document covering the management of waste rock and tailings from mining activities under the auspices of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control ⁽⁵⁾.

- (2) In its Resolution ⁽⁶⁾ of 5 July 2001 concerning that Communication, the European Parliament strongly supported the need for a Directive on waste from the extractive industries.

- (3) 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 ⁽⁷⁾ sets as the objective for wastes that are still generated that the level of their hazardousness should be reduced and that they should present as little risk as possible, that preference should be given to recovery and especially to recycling, that the quantity of waste for disposal should be minimised and should be safely disposed of, and that waste intended for disposal should be treated as closely as possible to the place of its generation to the extent that this does not lead to a decrease in the efficiency of waste treatment operations. Decision No 1600/2002/EC also prescribes as a priority action, with reference to accidents and disasters, the development of measures to help prevent major accident hazards, with special regard to those arising from mining, and the development of measures on mining waste. Decision No 1600/2002/EC also sets as a priority action the promotion of sustainable management of extractive industries with a view to reducing their environmental impact.

- (4) In accordance with the objectives of Community policy on the environment, it is necessary to lay down minimum requirements in order to prevent or reduce as far as possible any adverse effects on the environment or on human health which are brought about as a result of the management of waste from the extractive industries, such as tailings (i.e. the waste solids or slurries that remain after the treatment of minerals by a number of techniques), waste rock and overburden (i.e. the material that extractive operations move during the process of accessing an ore or mineral body, including during the pre-production development stage), and topsoil (i.e. the upper layer of the ground) provided that they constitute waste as defined in Council Directive 75/442/EEC of 15 July 1975 on waste ⁽⁸⁾.

- (5) In accordance with paragraph 24 of the Johannesburg Plan of Implementation on Sustainable Development

⁽¹⁾ OJ C 80, 30.3.2004, p. 35.

⁽²⁾ OJ C 109, 30.4.2004, p. 33.

⁽³⁾ Opinion of the European Parliament of 31 March 2004 (OJ C 103 E, 29.4.2004, p. 451), Council Common Position of 12 April 2005 (OJ C 172 E, 12.7.2005, p. 1) and Position of the European Parliament of 6 September 2005 (not yet published in the Official Journal). European Parliament Legislative Resolution of 18 January 2006 and Council Decision of 30 January 2006.

⁽⁴⁾ OJ L 345, 31.12.2003, p. 97.

⁽⁵⁾ OJ L 257, 10.10.1996, p. 26. Directive as last amended by Regulation (EC) No 166/2006 of the European Parliament and of the Council (OJ L 33, 4.2.2006, p.1).

⁽⁶⁾ OJ C 65 E, 14.3.2002, p. 382.

⁽⁷⁾ OJ L 242, 10.9.2002, p. 1.

⁽⁸⁾ OJ L 194, 25.7.1975, p. 39. 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).

adopted within the framework of the United Nations at the 2002 World Summit on Sustainable Development, it is necessary to protect the natural resource base of economic and social development and reverse the current trend in natural resource degradation by managing the natural resource base in a sustainable and integrated manner.

- (6) Accordingly, this Directive should cover the management of waste from land-based extractive industries, that is to say, the waste arising from the prospecting, extraction (including the pre-production development stage), treatment and storage of mineral resources and from the working of quarries. However, such management should reflect the principles and priorities identified in Directive 75/442/EEC, which, in accordance with Article 2(1)(b)(ii) thereof, continues to apply to any aspects of the management of waste from the extractive industries which are not covered by this Directive.
- (7) In order to avoid duplication and disproportionate administrative requirements, the scope of this Directive should be limited to those particular operations considered to be a priority for the purposes of meeting its objectives.
- (8) Accordingly, the provisions of this Directive should not apply to those waste streams which, albeit generated in the course of mineral extraction or treatment operations, are not directly linked to the extraction or treatment process, e.g. food waste, waste oil, end-of-life vehicles, spent batteries and accumulators. The management of such waste should be subject to the provisions of Directive 75/442/EEC or of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste ⁽¹⁾ or any other relevant Community legislation, as is the case for waste generated at a prospecting, extraction or treatment site and transported to a location that is not a waste facility according to this Directive.
- (9) Nor should this Directive apply to waste resulting from the offshore prospecting, extraction and treatment of mineral resources or to the injection of water and re-injection of pumped groundwater, while inert waste, non-hazardous prospecting waste, unpolluted soil and waste resulting from the extraction, treatment and storage of peat should be covered only by a limited set of requirements due to their lower environmental risks. For non-hazardous non-inert waste, Member States may reduce or waive certain requirements. However, these exemptions should not apply to Category A waste facilities.
- (10) Moreover, while covering the management of waste from the extractive industries which may be radioactive, this Directive should not cover such aspects as are specific to radioactivity, which are a matter dealt with under the Treaty establishing the European Atomic Energy Community (Euratom).
- (11) In order to remain true to the principles and priorities identified in Directive 75/442/EEC and, in particular, Articles 3 and 4 thereof, Member States should ensure that operators engaged in the extractive industry take all necessary measures to prevent or reduce as far as possible any negative effects, actual or potential, on the environment or on human health which are brought about as a result of the management of waste from the extractive industries.
- (12) These measures should be based, *inter alia*, on the concept of best available techniques as defined in Directive 96/61/EC and, when such techniques are applied, it is for the Member States to determine how the technical characteristics of the waste facility, its geographical location and local environmental conditions can, where appropriate, be taken into consideration.
- (13) Member States should ensure that operators in the extractive industry draw up appropriate waste management plans for the prevention or minimisation, treatment, recovery and disposal of extractive waste. Such plans should be structured in such a way as to ensure appropriate planning of waste management options with a view to minimising waste generation and its harmfulness, and encouraging waste recovery. Moreover, waste from the extractive industries should be characterised with respect to its composition in order to ensure that, as far as possible, such waste reacts only in predictable ways.
- (14) In order to minimise the risk of accidents and to guarantee a high level of protection for the environment and human health, Member States should ensure that each operator of a Category A waste facility adopts and applies a major-accident prevention policy for waste. In terms of preventive measures, this should entail the delivery of a safety management system, emergency plans to be used in the event of accidents and the dissemination of safety information to persons likely to be affected by a major accident. In the event of an accident, operators should be required to provide the competent authorities with all the relevant information necessary to mitigate actual or potential environmental damage. These particular requirements should not apply to those waste facilities from the extractive industries falling within the scope of Directive 96/82/EC.
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- ⁽¹⁾ OJ L 182, 16.7.1999, p. 1. Directive as amended by Regulation (EC) No 1882/2003.

- (15) A waste facility should not be classified in Category A solely on the basis of risks to the safety and health protection of workers in the extractive industries covered by other Community legislation, in particular Directives 92/91/EEC ⁽¹⁾ and 92/104/EEC ⁽²⁾.
- (16) Because of the special nature of the management of waste from the extractive industries, it is necessary to introduce specific application and permit procedures in respect of waste facilities used to receive such waste. In addition, Member States should take the necessary measures to ensure that the competent authorities periodically reconsider and, where necessary, update permit conditions.
- (17) Member States should be required to ensure that, in accordance with the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of 25 June 1998 (Aarhus Convention), the public are informed of the application for a waste management permit and the public concerned are consulted prior to the granting of a waste management permit.
- (18) It is necessary to indicate clearly the requirements with which waste facilities servicing the extractive industries should comply as regards location, management, control, closure and preventive and protective measures to be taken against any threat to the environment in the short and long-term perspectives, and more especially against the pollution of groundwater by leachate infiltration into the soil.
- (19) It is necessary to define clearly Category A waste facilities used to service waste from the extractive industries, taking into account the likely effects of any pollution resulting from the operation of such a facility or from an accident in which waste escapes from such a facility.
- (20) Waste placed back into the excavation voids either for their rehabilitation or for construction purposes related to the mineral extraction process, such as the building or maintenance within voids of means of access for machinery, haulage ramps, bulkheads, safety barricades or berms, needs also to be subject to certain requirements in order to protect surface water and/or groundwater, secure the stability of such waste, and ensure appropriate monitoring upon cessation of such activities.
- Accordingly, such waste should not be subject to the requirements of this Directive which relate exclusively to 'waste facilities', except for the requirements mentioned in the specific provision on excavation voids.
- (21) With a view to ensuring the proper construction and maintenance of waste facilities servicing waste from the extractive industries, Member States should take appropriate measures to ensure that the design, location and management of such facilities is carried out by technically competent persons. It is necessary to ensure that the training and knowledge acquired by operators and staff afford them the necessary skills. In addition, competent authorities should satisfy themselves that operators ensure suitable arrangements with respect to the construction and maintenance of a new waste facility or to any extension or modification of an existing waste facility, including in the after-closure phase.
- (22) It is necessary to establish monitoring procedures during the operation and after-closure of waste facilities. An after-closure period for monitoring and control of Category A waste facilities should be laid down proportionate to the risk posed by the individual waste facility, in a way similar to that required by Directive 1999/31/EC.
- (23) It is necessary to define when and how a waste facility servicing the extractive industries should be closed and to set out the obligations and responsibilities to be met by the operator during the after-closure period.
- (24) Member States should require operators of the extractive industries to apply monitoring and management controls in order to prevent water and soil pollution and to identify any adverse effect that their waste facilities may have on the environment or on human health. In addition, for the purposes of minimising water pollution, the discharge of waste into any receiving body of water should comply with 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 ⁽³⁾. Furthermore, concentrations in tailings ponds of cyanide and cyanide compounds from certain extractive industries should, in view of their harmful and toxic effects, be reduced to the lowest possible levels, using best available techniques. Maximum concentration thresholds should be set accordingly and, in any case, in line with the specific requirements of this Directive to prevent such effects.
- (25) The operator of a waste facility servicing the extractive industries should be required to lodge a financial guarantee or equivalent in accordance with procedures to be decided by the Member States ensuring that all the obligations flowing from the permit will be fulfilled, including those relating to the closure and after-closure of the waste facility. The financial guarantee should be sufficient to cover the cost of rehabilitation of the land
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- ⁽¹⁾ Council Directive 92/91/EEC of 3 November 1992 concerning the minimum requirements for improving the safety and health protection of workers in the mineral-extracting industries through drilling (eleventh individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ L 348, 28.11.1992, p. 9).
- ⁽²⁾ Council Directive 92/104/EEC of 3 December 1992 on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries (twelfth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ L 404, 31.12.1992, p. 10).
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- ⁽³⁾ 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).

- affected by the waste facility, which includes the waste facility itself, as described in the waste management plan prepared pursuant to Article 5 and required by the Article 7 permit, by a suitably qualified and independent third party. It is also necessary for such a guarantee to be provided prior to the commencement of deposition operations in the waste facility and to be periodically adjusted. In addition, in accordance with the polluter pays principle and with Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage⁽¹⁾, it is important to clarify that an operator of a waste facility servicing the extractive industries is subject to appropriate liability in respect of environmental damage caused by its operations or the imminent threat of such damage.
- (26) In the case of the operation of waste facilities servicing the extractive industries that are likely to have significant adverse transboundary effects on the environment and any resultant risks to human health, in the territory of another Member State, there should be a common procedure in place to facilitate consultation among neighbouring countries. This should be done with a view to ensuring that there is an adequate exchange of information between authorities and that the public are duly informed of any such waste facilities that could have adverse effects for the environment of that other Member State.
- (27) It is necessary for Member States to ensure that competent authorities organise an effective system of inspections or equivalent control measures in respect of waste facilities servicing the extractive industries. Without prejudice to the obligations of the operator under the permit, prior to the commencement of deposition operations there should be an inspection to check that the permit conditions have been complied with. In addition, Member States should ensure that operators and their successors maintain up-to-date records relating to such waste facilities and that operators transfer to their successors information concerning the state of the waste facility and its operations.
- (28) Member States should send regular reports to the Commission on the implementation of this Directive, including information on accidents or near-accidents. On the basis of those reports, the Commission should report to the European Parliament and the Council.
- (29) Member States should lay down rules on penalties for infringement of this Directive and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.
- (30) It is necessary for Member States to ensure that an inventory of closed, including abandoned, waste facilities located on their territory is drawn up in order to identify those which cause serious negative environmental impacts or have the potential of becoming in the medium or short term a serious threat to human health or the environment. These inventories should provide a basis for an appropriate programme of measures.
- (31) The Commission should ensure an appropriate exchange of scientific and technical information on how to carry out an inventory of closed waste facilities at Member State level and on the development of methodologies to assist Member States in complying with this Directive when rehabilitating closed waste facilities. Moreover, an exchange of information should be ensured within and between Member States on the best available techniques.
- (32) With a view to the consistent application of Article 6 of the Treaty, environmental protection requirements must be integrated into the implementation of Community policies and activities with a view to promoting sustainable development.
- (33) This Directive could be a useful instrument to be taken into account when verifying that projects receiving Community funding in the context of development aid include the necessary measures to prevent or reduce as far as possible negative effects on the environment. Such an approach is consistent with Article 6 of the Treaty, particularly with regard to integrating environmental protection requirements into the Community's policy in the sphere of development cooperation.
- (34) The objective of this Directive, that is to say, improving the management of waste from the extractive industries, cannot be sufficiently achieved by the Member States acting alone because the mismanagement of such waste may cause pollution of a transboundary nature. Under the polluter pays principle it is necessary, *inter alia*, to take into account any damage to the environment caused by waste from the extractive industries, and different national applications of that principle may lead to substantial disparities in the financial burden on economic operators. Moreover, the existence of different national policies on the management of waste from the extractive industries hampers the aim of ensuring a minimum level of safe and responsible management of such waste and maximising its recovery throughout the Community. Therefore, since by reason of the scale and effects of this Directive, its objective 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 this objective.
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- ⁽¹⁾ OJ L 143, 30.4.2004, p. 56.

- (35) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.
- (36) The operation of waste facilities existing at the moment of transposition of this Directive should be regulated in order to take the necessary measures, within a specified period of time, for their adaptation to the requirements of this Directive.
- (37) In accordance with paragraph 34 of the Interinstitutional agreement on better law-making ⁽²⁾, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables, which will, as far as possible, illustrate the correlation between this Directive and the transposition measures and to make them public,

- (c) injection of water and re-injection of pumped groundwater as defined in the first and second indents of Article 11(3)(j) of Directive 2000/60/EC, to the extent authorised by that Article.

3. Inert waste and unpolluted soil resulting from the prospecting, extraction, treatment and storage of mineral resources and the working of quarries and waste resulting from the extraction, treatment and storage of peat shall not be subject to Articles 7, 8, 11(1) and (3), 12, 13(6), 14 and 16, unless deposited in a Category A waste facility.

The competent authority may reduce or waive the requirements for the deposit of non-hazardous waste generated from the prospecting of mineral resources, except oil and evaporites other than gypsum and anhydrite, as well as for the deposit of unpolluted soil and of waste resulting from the extraction, treatment and storage of peat as long as it is satisfied that the requirements of Article 4 are met.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive provides for measures, procedures and guidance to prevent or reduce as far as possible any adverse effects on the environment, in particular water, air, soil, fauna and flora and landscape, and any resultant risks to human health, brought about as a result of the management of waste from the extractive industries.

Member States may reduce or waive the requirements of Articles 11(3), 12(5) and (6), 13(6), 14 and 16 for non-hazardous non-inert waste, unless deposited in a Category A waste facility.

4. Without prejudice to other Community legislation, waste which falls within the scope of this Directive shall not be subject to Directive 1999/31/EC.

Article 3

Definitions

For the purposes of this Directive:

1. Subject to paragraphs 2 and 3, this Directive covers the management of waste resulting from the prospecting, extraction, treatment and storage of mineral resources and the working of quarries, hereinafter 'extractive waste'.
2. The following shall be excluded from the scope of this Directive:
- (a) waste which is generated by the prospecting, extraction and treatment of mineral resources and the working of quarries, but which does not directly result from those operations;
 - (b) waste resulting from the offshore prospecting, extraction and treatment of mineral resources;

- (1) 'waste' is as defined in Article 1(a) of Directive 75/442/EEC;
- (2) 'hazardous waste' is as defined in Article 1(4) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste ⁽³⁾;
- (3) 'inert waste' means waste that does not undergo any significant physical, chemical or biological transformations. Inert waste will not dissolve, burn or otherwise physically or chemically react, biodegrade or adversely affect other matter with which it comes into contact in a way likely to give rise to environmental pollution or harm human health. The total leachability and pollutant content of the waste and the ecotoxicity of the leachate must be insignificant, and in particular not endanger the quality of surface water and/or groundwater;

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

⁽²⁾ OJ C 321, 31.12.2003, p. 1.

⁽³⁾ OJ L 377, 31.12.1991, p. 20. Directive as amended by Regulation (EC) No 166/2006.

- (4) 'unpolluted soil' means soil that is removed from the upper layer of the ground during extractive activities and that is not deemed to be polluted under the national law of the Member State where the site is located or under Community law;
- (5) 'mineral resource' or 'mineral' means a naturally occurring deposit in the earth's crust of an organic or inorganic substance, such as energy fuels, metal ores, industrial minerals and construction minerals, but excluding water;
- (6) 'extractive industries' means all establishments and undertakings engaged in surface or underground extraction of mineral resources for commercial purposes, including extraction by drilling boreholes, or treatment of the extracted material;
- (7) 'off-shore' means that area of the sea and seabed extending from the low water mark of ordinary or medium tides outwards;
- (8) 'treatment' means the mechanical, physical, biological, thermal or chemical process or combination of processes carried out on mineral resources, including from the working of quarries, with a view to extracting the mineral, including size change, classification, separation and leaching, and the re-processing of previously discarded waste, but excluding smelting, thermal manufacturing processes (other than the burning of limestone) and metallurgical processes;
- (9) 'tailings' means the waste solids or slurries that remain after the treatment of minerals by separation processes (e.g. crushing, grinding, size-sorting, flotation and other physico-chemical techniques) to remove the valuable minerals from the less valuable rock;
- (10) 'heap' means an engineered facility for the deposit of solid waste on the surface;
- (11) 'dam' means an engineered structure designed to retain or confine water and/or waste within a pond;
- (12) 'pond' means a natural or engineered facility for disposing of fine-grained waste, normally tailings, along with varying amounts of free water, resulting from the treatment of mineral resources and from the clearing and recycling of process water;
- (13) 'weak acid dissociable cyanide' means cyanide and cyanide compounds that are dissociated with a weak acid at a defined pH;
- (14) 'leachate' means any liquid percolating through the deposited waste and emitted from or contained within a waste facility, including polluted drainage, which may adversely affect the environment if not appropriately treated;
- (15) 'waste facility' means any area designated for the accumulation or deposit of extractive waste, whether in a solid or liquid state or in solution or suspension, for the following time-periods:
- no time-period for Category A waste facilities and facilities for waste characterised as hazardous in the waste management plan;
 - a period of more than six months for facilities for hazardous waste generated unexpectedly;
 - a period of more than one year for facilities for non-hazardous non-inert waste;
 - a period of more than three years for facilities for unpolluted soil, non-hazardous prospecting waste, waste resulting from the extraction, treatment and storage of peat and inert waste.
- Such facilities are deemed to include any dam or other structure serving to contain, retain, confine or otherwise support such a facility, and also to include, but not be limited to, heaps and ponds, but excluding excavation voids into which waste is replaced, after extraction of the mineral, for rehabilitation and construction purposes;
- (16) 'major accident' means an occurrence on site in the course of an operation involving the management of extractive waste in any establishment covered by this Directive, leading to a serious danger to human health and/or the environment, whether immediately or over time, on-site or off-site;
- (17) 'dangerous substance' means a substance, mixture or preparation which is dangerous within the meaning of Directive 67/548/EEC ⁽¹⁾ or Directive 1999/45/EC ⁽²⁾;
- (18) 'best available techniques' is as defined in Article 2(11) of Directive 96/61/EC;
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- ⁽¹⁾ Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ L 196, 16.8.1967, p. 1). Directive as last amended by Commission Directive 2004/73/EC (OJ L 152, 30.4.2004, p. 1).
- ⁽²⁾ Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations (OJ L 200, 30.7.1999, p. 1). Directive as last amended by Commission Directive 2006/8/EC (OJ L 19, 24.1.2006, p. 12).

- (19) 'receiving body of water' means surface waters, ground-water, transitional waters and coastal water as defined in Article 2(1), (2), (6) and (7) of Directive 2000/60/EC, respectively;
- (20) 'rehabilitation' means the treatment of the land affected by a waste facility in such a way as to restore the land to a satisfactory state, with particular regard to soil quality, wild life, natural habitats, freshwater systems, landscape and appropriate beneficial uses;
- (21) 'prospecting' means the search for mineral deposits of economic value, including sampling, bulk sampling, drilling and trenching, but excluding any works required for the development of such deposits, and any activities directly associated with an existing extractive operation;
- (22) 'the public' means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;
- (23) 'the public concerned' means the public affected or likely to be affected by, or having an interest in, the environmental decision-making under Articles 6 and 7 of this Directive; for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirement under national law shall be deemed to have such an interest;
- (24) 'operator' means the natural or legal person responsible for the management of extractive waste, in accordance with the national law of the Member State in which waste management takes place, including in respect of temporary storage of extractive waste as well as the operational and the after-closure phases;
- (25) 'waste holder' means the producer of the extractive waste or the natural or legal person who is in possession of it;
- (26) 'competent person' means a natural person who has the technical knowledge and experience, as defined by the national law of the Member State in which the person operates, to perform the duties arising from this Directive;
- (27) 'competent authority' means the authority or authorities which a Member State designates as responsible for performing the duties arising from this Directive;
- (28) 'site' means all land at a distinct geographic location under the management control of an operator;
- (29) 'substantial change' means a change in the structure or operation of a waste facility that, in the opinion of the competent authority, may have significant negative effects on human health or the environment.

Article 4

General requirements

1. Member States shall take the necessary measures to ensure that extractive waste is managed without endangering human health and without using processes or methods which could harm the environment, and in particular without risk to water, air, soil and fauna and flora, without causing a nuisance through noise or odours and without adversely affecting the landscape or places of special interest. Member States shall also take the necessary measures to prohibit the abandonment, dumping or uncontrolled depositing of extractive waste.
2. Member States shall ensure that the operator takes all measures necessary to prevent or reduce as far as possible any adverse effects on the environment and human health brought about as a result of the management of extractive waste. This includes the management of any waste facility, also after its closure, and the prevention of major accidents involving that facility and the limiting of their consequences for the environment and human health.
3. The measures referred to in paragraph 2 shall be based, *inter alia*, on the best available techniques, without prescribing the use of any technique or specific technology, but taking into account the technical characteristics of the waste facility, its geographical location and the local environmental conditions.

Article 5

Waste management plan

1. Member States shall ensure that the operator draws up a waste management plan for the minimisation, treatment, recovery and disposal of extractive waste, taking account of the principle of sustainable development.
2. The objectives of the waste management plan shall be:
 - (a) to prevent or reduce waste production and its harmfulness, in particular by considering:
 - (i) waste management in the design phase and in the choice of the method used for mineral extraction and treatment;
 - (ii) the changes that the extractive waste may undergo in relation to an increase in surface area and exposure to conditions above ground;
 - (iii) placing extractive waste back into the excavation void after extraction of the mineral, as far as is technically and economically feasible and environmentally sound in accordance with existing environmental standards at Community level and with the requirements of this Directive where relevant;

- (iv) putting topsoil back in place after the closure of the waste facility or, if this is not practically feasible, reusing topsoil elsewhere;
- (v) using less dangerous substances for the treatment of mineral resources;
- (b) to encourage the recovery of extractive waste by means of recycling, reusing or reclaiming such waste, where this is environmentally sound in accordance with existing environmental standards at Community level and with the requirements of this Directive where relevant;
- (c) to ensure short and long-term safe disposal of the extractive waste, in particular by considering, during the design phase, management during the operation and after-closure of a waste facility and by choosing a design which:
 - (i) requires minimal and, if possible, ultimately no monitoring, control and management of the closed waste facility;
 - (ii) prevents or at least minimises any long-term negative effects, for example attributable to migration of airborne or aquatic pollutants from the waste facility; and
 - (iii) ensures the long-term geotechnical stability of any dams or heaps rising above the pre-existing ground surface.

3. The waste management plan shall contain at least the following elements:

- (a) where applicable, the proposed classification for the waste facility in accordance with the criteria laid down in Annex III:
 - where a Category A waste facility is required, a document demonstrating that a major-accident prevention policy, a safety management system for implementing it and an internal emergency plan will be put into effect in accordance with Article 6 (3);
 - when the operator considers that a Category A waste facility is not required, sufficient information justifying this, including an identification of possible accident hazards;
- (b) waste characterisation in accordance with Annex II and a statement of the estimated total quantities of extractive waste to be produced during the operational phase;
- (c) a description of the operation generating such waste and of any subsequent treatment to which it is subject;
- (d) a description of how the environment and human health may be adversely affected by the deposit of such waste

and the preventive measures to be taken in order to minimise environmental impact during operation and after closure, including the aspects referred to in Article 11(2) (a), (b), (d) and (e);

- (e) the proposed control and monitoring procedures pursuant to Articles 10, when applicable, and 11(2)(c);
- (f) the proposed plan for closure, including rehabilitation, after-closure procedures and monitoring as provided for in Article 12;
- (g) measures for the prevention of water status deterioration in accordance with Directive 2000/60/EC and for the prevention or minimisation of air and soil pollution pursuant to Article 13;
- (h) a survey of the condition of the land to be affected by the waste facility.

The waste management plan shall provide sufficient information to enable the competent authority to evaluate the operator's ability to meet the objectives of the waste management plan as set out in paragraph 2 and his obligations under this Directive. The plan shall explain, in particular, how the option and method chosen as mentioned in paragraph 2(a)(i) will fulfil the objectives of the waste management plan as laid down in paragraph 2(a).

4. The waste management plan shall be reviewed every five years and/or amended, as appropriate, in the event of substantial changes to the operation of the waste facility or to the waste deposited. Any amendments shall be notified to the competent authority.

5. Plans produced pursuant to other national or Community legislation and containing the information specified in paragraph 3 may be used where this obviates the unnecessary duplication of information and the repetition of work by the operator, on condition that all requirements under paragraphs 1 to 4 are met.

6. The competent authority shall approve the waste management plan on the basis of procedures to be decided by the Member States and shall monitor its implementation.

Article 6

Major-accident prevention and information

1. This Article shall apply to Category A waste facilities, save for those waste facilities falling within the scope of Directive 96/82/EC.

2. Without prejudice to other Community legislation, and in particular Directives 92/91/EEC and 92/104/EEC, Member States shall ensure that major-accident hazards are identified and that the necessary features are incorporated into the design, construction, operation and maintenance, closure and after-closure of the waste facility in order to prevent such accidents and to limit their adverse consequences for human health and/or the environment, including any transboundary impacts.

3. For the purposes of the requirements under paragraph 2, each operator shall, before the start of operations, draw up a major-accident prevention policy for the management of extractive waste and put into effect a safety management system implementing it, in accordance with the elements set out in Section 1 of Annex I, and shall also put into effect an internal emergency plan specifying the measures to be taken on site in the event of an accident.

As part of that policy, the operator shall appoint a safety manager responsible for the implementation and periodic supervision of the major-accident prevention policy.

The competent authority shall draw up an external emergency plan specifying the measures to be taken off-site in the event of an accident. As part of the application for a permit the operator shall provide the competent authority with the information necessary to enable the latter to draw up that plan.

4. The emergency plans referred to in paragraph 3 shall have the following objectives:

- (a) to contain and control major accidents and other incidents so as to minimise their effects, and in particular to limit damage to human health and the environment;
- (b) to implement the measures necessary to protect human health and the environment from the effects of major accidents and other incidents;
- (c) to communicate the necessary information to the public and to the relevant services or authorities in the area;
- (d) to provide for the rehabilitation, restoration and clean-up of the environment following a major accident.

Member States shall ensure that, in the event of a major accident, the operator immediately provides the competent authority with all the information required to help minimise its consequences for human health and to assess and minimise the extent, actual or potential, of the environmental damage.

5. Member States shall ensure that the public concerned are given early and effective opportunities to participate in the preparation or review of the external emergency plan to be drawn up in accordance with paragraph 3. To that end, the public concerned shall be informed about any such proposal and relevant information shall be made available, including, inter alia, information about the right to participate in the decision-making process and about the competent authority to which comments and questions may be submitted.

Member States shall ensure that the public concerned is entitled to express comments within reasonable time frames and that, in the decision on the external emergency plan, due account is taken of these comments.

6. Member States shall ensure that information on safety measures and on the action required in the event of an accident, containing at least the elements listed in Section 2 of Annex I, is provided, free of charge and as a matter of course, to the public concerned.

That information shall be reviewed every three years and, where necessary, updated.

Article 7

Application and permit

1. No waste facility shall be allowed to operate without a permit granted by the competent authority. The permit shall contain the elements specified in paragraph 2 of this Article and shall clearly indicate the category of the waste facility in accordance with the criteria referred to in Article 9.

Subject to compliance with all requirements under this Article, any permit produced pursuant to other national or Community legislation may be combined to form a single permit, where such a format obviates the unnecessary duplication of information and the repetition of work by the operator or competent authority. The details specified in paragraph 2 can be covered by one single permit or several permits, provided that all requirements under this Article are complied with.

2. The application for a permit shall contain at least the following details:

- (a) the identity of the operator;
- (b) the proposed location of the waste facility, including any possible alternative locations;
- (c) the waste management plan pursuant to Article 5;
- (d) adequate arrangements by way of a financial guarantee or equivalent, as required under Article 14;
- (e) the information provided by the operator in accordance with Article 5 of Directive 85/337/EEC⁽¹⁾ if an environmental impact assessment is required under that Directive.

⁽¹⁾ Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (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 competent authority shall only grant a permit if it is satisfied that:

- (a) the operator complies with the relevant requirements under this Directive;
- (b) the management of waste does not conflict directly or otherwise interfere with the implementation of the relevant waste management plan or plans referred to in Article 7 of Directive 75/442/EEC.

4. Member States shall take the necessary measures to ensure that competent authorities periodically reconsider and, where necessary, update permit conditions:

- where there are substantial changes in the operation of the waste facility or the waste deposited;
- on the basis of monitoring results reported by the operator pursuant to Article 11(3) or inspections carried out pursuant to Article 17;
- in the light of information exchange on substantial changes in best available techniques under Article 21(3).

5. The information contained in a permit granted under this Article shall be made available to the competent national and Community statistical authorities where requested for statistical purposes. Sensitive information of a purely commercial nature, such as information concerning business relations and cost components and the volume of economic mineral reserves, shall not be made public.

Article 8

Public participation

1. The public shall be informed, by public notices or other appropriate means, such as electronic media where available, of the following matters early in the procedure for granting a permit or, at the latest, as soon as the information can reasonably be provided:

- (a) the application for a permit;
- (b) where applicable, the fact that a decision concerning an application for a permit is subject to consultation between the Member States in accordance with Article 16;
- (c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;
- (d) the nature of possible decisions;

(e) where applicable, the details relating to a proposal for the updating of a permit or of permit conditions;

(f) an indication of the times and places where, or the means by which, the relevant information will be made available;

(g) details of the arrangements for public participation made pursuant to paragraph 7.

2. Member States shall ensure that, within appropriate time frames, the following are made available to the public concerned:

(a) in accordance with national legislation, the main reports and advice transmitted to the competent authority at the time when the public were informed in accordance with paragraph 1;

(b) in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information ⁽¹⁾, any information in addition to that referred to in paragraph 1 of this Article which is relevant for the decision in accordance with Article 7 of this Directive and which only becomes available after the time the public have been informed in accordance with paragraph 1 of this Article.

3. Member States shall take appropriate measures to ensure that the public are informed, in accordance with paragraph 1 of this Article, of an update of permit conditions in accordance with Article 7(4).

4. The public concerned shall be entitled to express comments and opinions to the competent authority before a decision is taken.

5. The results of the consultations held pursuant to this Article shall be duly taken into account in the taking of a decision.

6. When a decision has been taken the competent authority shall, in accordance with the appropriate procedures, inform the public concerned and shall make the following information available to the public concerned:

(a) the content of the decision, including a copy of the permit;

(b) the reasons and considerations on which the decision is based.

⁽¹⁾ OJ L 41, 14.2.2003, p. 26.

7. The detailed arrangements for public participation under this Article shall be determined by the Member States so as to enable the public concerned to prepare and participate effectively.

Article 9

Classification system for waste facilities

For the purposes of this Directive, the competent authorities shall classify a waste facility as Category A in accordance with the criteria set out in Annex III.

Article 10

Excavation voids

1. Member States shall ensure that the operator, when placing extractive waste back into the excavation voids for rehabilitation and construction purposes, whether created through surface or underground extraction, takes appropriate measures in order to:

- (1) secure the stability of the extractive waste in accordance, *mutatis mutandis*, with Article 11(2);
- (2) prevent the pollution of soil, surface water and groundwater in accordance, *mutatis mutandis*, with Article 13(1), (3) and (5);
- (3) ensure the monitoring of the extractive waste and the excavation void in accordance, *mutatis mutandis*, with Article 12(4) and (5).

2. Directive 1999/31/EC shall continue to apply to the waste other than extractive waste used for filling in excavation voids as appropriate.

Article 11

Construction and management of waste facilities

1. Member States shall take appropriate measures to ensure that the management of a waste facility is in the hands of a competent person and that technical development and training of staff are provided.

2. The competent authority shall satisfy itself that, in constructing a new waste facility or modifying an existing waste facility, the operator ensures that:

- (a) the waste facility is suitably located, taking into account in particular Community or national obligations relating to protected areas, and geological, hydrological, hydro-geological, seismic and geotechnical factors, and is

designed so as to meet the necessary conditions for, in the short and long-term perspectives, preventing pollution of the soil, air, groundwater or surface water, taking into account especially Directives 76/464/EEC ⁽¹⁾, 80/68/EEC ⁽²⁾ and 2000/60/EC, and ensuring efficient collection of contaminated water and leachate as and when required under the permit, and reducing erosion caused by water or wind as far as it is technically possible and economically viable;

- (b) the waste facility is suitably constructed, managed and maintained to ensure its physical stability and to prevent pollution or contamination of soil, air, surface water or groundwater in the short and long-term perspectives as well as to minimise as far as possible damage to landscape;
- (c) there are suitable plans and arrangements for regular monitoring and inspection of the waste facility by competent persons and for taking action in the event of results indicating instability or water or soil contamination;
- (d) suitable arrangements are made for the rehabilitation of the land and the closure of the waste facility;
- (e) suitable arrangements are made for the after-closure phase of the waste facility.

Records of the monitoring and inspections referred to in point (c) shall be kept, together with permit documentation, in order to ensure the appropriate hand-over of information, particularly in the event of a change of operator.

3. The operator shall, without undue delay and in any event not later than 48 hours thereafter, notify the competent authority of any events likely to affect the stability of the waste facility and any significant adverse environmental effects revealed by the control and monitoring procedures of the waste facility. The operator shall implement the internal emergency plan, where applicable, and follow any other instruction from the competent authority as to the corrective measures to be taken.

⁽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 (OJ L 129, 18.5.1976, p. 23). Directive as last amended by Directive 2000/60/EC.

⁽²⁾ Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances (OJ L 20, 26.1.1980, p. 43). Directive as amended by Directive 91/692/EEC (OJ L 377, 31.12.1991, p. 48).

The operator shall bear the costs of the measures to be undertaken.

At a frequency to be determined by the competent authority, and in any event at least once a year, the operator shall report, on the basis of aggregated data, all monitoring results to the competent authorities for the purposes of demonstrating compliance with permit conditions and increasing knowledge of waste and waste facility behaviour. On the basis of this report the competent authority may decide that validation by an independent expert is necessary.

Article 12

Closure and after-closure procedures for waste facilities

1. Member States shall take measures to ensure compliance with paragraphs 2 to 5.

2. A waste facility shall only start the closure procedure if one of the following conditions is satisfied:

- (a) the relevant conditions stated in the permit are met;
- (b) authorisation is granted by the competent authority, at the request of the operator;
- (c) the competent authority issues a reasoned decision to that effect.

3. A waste facility may be considered as finally closed only after the competent authority has, without undue delay, carried out a final on-site inspection, assessed all the reports submitted by the operator, certified that the land affected by a waste facility has been rehabilitated and communicated to the operator its approval of the closure.

That approval shall not in any way reduce the operator's obligations under the conditions of the permit or otherwise in law.

4. The operator shall be responsible for the maintenance, monitoring, control and corrective measures in the after-closure phase for as long as may be required by the competent authority, taking into account the nature and duration of the hazard, save where the competent authority decides to take over such tasks from the operator, after a waste facility has been finally closed and without prejudice to any national or Community legislation governing the liability of the waste holder.

5. When considered necessary by the competent authority, in order to fulfil relevant environmental requirements set out in Community legislation, in particular those in Directives 76/464/EEC, 80/68/EEC and 2000/60/EC, following closure of a waste facility, the operator shall, *inter alia*, control the physical and chemical stability of the facility and minimise any negative environmental effect, in particular with respect to surface and groundwater, by ensuring that:

- (a) all the structures pertaining to the facility are monitored and conserved, with control and measuring apparatus always ready for use;
- (b) where applicable, overflow channels and spillways are kept clean and free.

6. Following closure of a waste facility, the operator shall, without delay, notify the competent authority of any events or developments likely to affect the stability of the waste facility, and any significant adverse environmental effects revealed by the relevant control and monitoring procedures. The operator shall implement the internal emergency plan, where applicable, and follow any other instruction from the competent authority as to the corrective measures to be taken.

The operator shall bear the costs of the measures to be undertaken.

In cases and at a frequency to be determined by the competent authority, the operator shall report, on the basis of aggregated data, all monitoring results to the competent authorities for the purposes of demonstrating compliance with permit conditions and increasing knowledge of waste and waste facility behaviour.

Article 13

Prevention of water status deterioration, air and soil pollution

1. The competent authority shall satisfy itself that the operator has taken the necessary measures in order to meet Community environmental standards, in particular to prevent, in accordance with Directive 2000/60/EC, the deterioration of current water status, *inter alia*, by:

- (a) evaluating the leachate generation potential, including contaminant content of the leachate, of the deposited waste during both the operational and after-closure phase of the waste facility, and determining the water balance of the waste facility;
- (b) preventing or minimising leachate generation and surface water or groundwater and soil from being contaminated by the waste;

(c) collecting and treating contaminated water and leachate from the waste facility to the appropriate standard required for their discharge.

2. The competent authority shall ensure that the operator has taken adequate measures to prevent or reduce dust and gas emissions.

3. Where, on the basis of an assessment of environmental risks, taking into account, in particular, Directives 76/464/EEC, 80/68/EEC or 2000/60/EC, as applicable, the competent authority has decided that collection and treatment of leachate is not necessary or it has been established that the waste facility poses no potential hazard to soil, groundwater or surface water, the requirements set out in points (b) and (c) of paragraph 1 may be reduced or waived accordingly.

4. Member States shall make the disposal of extractive waste, whether in solid, slurry or liquid form, into any receiving body of water other than one constructed for the purpose of disposing of extractive waste conditional upon compliance by the operator with the relevant requirements of Directives 76/464/EEC, 80/68/EEC and 2000/60/EC.

5. When placing extractive waste back into excavation voids, whether created through surface or underground extraction, which will be allowed to flood after closure, the operator shall take the necessary measures to prevent or minimise water status deterioration and soil pollution in accordance, *mutatis mutandis*, with paragraphs (1) and (3). The operator shall provide the competent authority with the information necessary to ensure compliance with Community obligations, in particular those in Directive 2000/60/EC.

6. In the case of a pond involving the presence of cyanide, the operator shall ensure that the concentration of weak acid dissociable cyanide in the pond is reduced to the lowest possible level using best available techniques and, in any case, at waste facilities which have previously been granted a permit or have already been in operation on 1 May 2008 that the concentration of weak acid dissociable cyanide at the point of discharge of the tailings from the processing plant into the pond does not exceed 50 ppm as from 1 May 2008, 25 ppm as from 1 May 2013, 10 ppm as from 1 May 2018 and 10 ppm at waste facilities which are granted a permit after 1 May 2008.

If the competent authority so requests, the operator shall demonstrate, through a risk assessment that takes site-specific conditions into account, that those concentration limits need not be further lowered.

Article 14

Financial guarantee

1. The competent authority shall, prior to the commencement of any operations involving the accumulation or deposit of extractive waste in a waste facility, require a financial guarantee (e.g. in the form of a financial deposit, including industry-sponsored mutual guarantee funds) or equivalent, in

accordance with procedures to be decided by the Member States, so that:

(a) all obligations under the permit issued pursuant to this Directive, including after-closure provisions, are discharged;

(b) there are funds readily available at any given time for the rehabilitation of the land affected by the waste facility, as described in the waste management plan prepared pursuant to Article 5 and required by the Article 7 permit.

2. The calculation of the guarantee referred to in paragraph 1 shall be made on the basis of:

(a) the likely environmental impact of the waste facility, taking into account in particular the category of the waste facility, the characteristics of the waste and the future use of the rehabilitated land;

(b) the assumption that independent and suitably qualified third parties will assess and perform any rehabilitation work needed.

3. The size of the guarantee shall be periodically adjusted in accordance with any rehabilitation work needed to be carried out on the land affected by the waste facility, as described in the waste management plan prepared pursuant to Article 5 and required by the Article 7 permit.

4. Where the competent authority approves closure in accordance with Article 12(3), it shall provide the operator with a written statement releasing him from the guarantee obligation referred to in paragraph 1 of this Article with the exception of after-closure obligations as referred to in Article 12(4).

Article 15

Environmental liability

The following point shall be added to Annex III of Directive 2004/35/EC as follows:

'13. The management of extractive waste pursuant to Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries (*).

(*) OJ L 102, 11.4.2006, p. 15'

*Article 16***Transboundary effects**

1. Where a Member State in which a waste facility is situated is aware that the operation of a Category A waste facility is likely to have significant adverse effects on the environment of, and any resultant risks to human health in, another Member State, or where a Member State likely to be thus affected so requests, the Member State in whose territory the application for a permit pursuant to Article 7 was submitted shall forward the information provided pursuant to that Article to the other Member State at the same time as it makes it available to its own nationals.

Such information shall serve as a basis for any consultation necessary within the context of bilateral relations between the two Member States on a reciprocal and equivalent basis.

2. Within the framework of their bilateral relations, Member States shall ensure that in the cases referred to in paragraph 1 the applications are also made available for an appropriate period of time to the public concerned of the Member State likely to be affected so that they will have the right to comment on them before the competent authority reaches its decision.

3. Member States shall ensure that, in the event of an accident involving a waste facility as referred to in paragraph 1 of this Article, information provided by the operator to the competent authority pursuant to Article 6(4) is immediately forwarded to the other Member State in order to help minimise the consequences of the accident for human health and to assess and minimise the extent of the actual or potential environmental damage.

*Article 17***Inspections by the competent authority**

1. Prior to the commencement of deposit operations and at regular intervals thereafter, including the after-closure phase, to be decided by the Member State concerned, the competent authority shall inspect any waste facility covered by Article 7 in order to ensure that it complies with the relevant conditions of the permit. An affirmative finding shall in no way reduce the responsibility of the operator under the conditions of the permit.

2. Member States shall require the operator to keep up-to-date records of all waste management operations and make them available for inspection by the competent authority and to ensure that, in the event of a change of operator during the management of a waste facility, there is an appropriate transfer of relevant up-to-date information and records relating to the waste facility.

*Article 18***Obligation to report**

1. At intervals of three years Member States shall transmit to the Commission a report on the implementation of this Directive. The report shall be drawn up on the basis of a questionnaire or outline to be adopted by the Commission in accordance with the procedure referred to in Article 23(2). The report shall be transmitted to the Commission within nine months of the end of the three-year period covered by it.

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

2. Every year Member States shall transmit to the Commission information on events notified by the operators in accordance with Articles 11(3) and 12(6). The Commission shall make this information available to the Member States upon request. Without prejudice to Community law on public access to environmental information, Member States shall in their turn make the information available to members of the public concerned on request.

*Article 19***Penalties**

The Member States shall lay down rules on penalties for infringement of the provisions of national law adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

*Article 20***Inventory of closed waste facilities**

Member States shall ensure that an inventory of closed waste facilities, including abandoned waste facilities, located on their territory which cause serious negative environmental impacts or have the potential of becoming in the medium or short term a serious threat to human health or the environment is drawn up and periodically updated. Such an inventory, to be made available to the public, shall be carried out by 1 May 2012, taking into account the methodologies as referred to in Article 21, if available.

*Article 21***Exchange of information**

1. The Commission, assisted by the Committee referred to in Article 23, shall ensure that there is an appropriate exchange of technical and scientific information between Member States, with a view to developing methodologies relating to:

(a) the implementation of Article 20;

- (b) the rehabilitation of those closed waste facilities identified under Article 20 in order to satisfy the requirements of Article 4. Such methodologies shall allow for the establishment of the most appropriate risk assessment procedures and remedial actions having regard to the variation of geological, hydrogeological and climatological characteristics across Europe.

2. Member States shall ensure that the competent authority follows or is informed of developments in best available techniques.

3. The Commission shall organise an exchange of information between Member States and the organisations concerned on best available techniques, associated monitoring and developments in them. The Commission shall publish the results of the exchange of information.

Article 22

Implementing and amending measures

1. By 1 May 2008, the Commission shall adopt, in accordance with the procedure referred to in Article 23(2), the provisions necessary for the following, prioritising (e), (f) and (g):

- (a) the harmonisation and regular transmission of the information referred to in Articles 7(5) and 12(6);
- (b) the implementation of Article 13(6), including technical requirements relating to the definition of weak acid dissociable cyanide and its measurement method;
- (c) technical guidelines for the establishment of the financial guarantee in accordance with the requirements of Article 14(2);
- (d) technical guidelines for inspections in accordance with Article 17;
- (e) completion of the technical requirements for waste characterisation contained in Annex II;
- (f) interpretation of the definition contained in point 3 of Article 3;
- (g) definition of the criteria for the classification of waste facilities in accordance with Annex III;
- (h) determination of any harmonised standards for sampling and analysis methods needed for the technical implementation of this Directive.

2. Any subsequent amendments necessary for adapting the Annexes to scientific and technical progress shall be adopted by the Commission in accordance with the procedure referred to in Article 23(2).

Those amendments shall be made with a view to achieving a high level of environmental protection.

Article 23

Committee

1. The Commission shall be assisted by the Committee established by Article 18 of Directive 75/442/EEC, hereinafter 'the 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 24

Transitional provision

1. Member States shall ensure that any waste facility which has been granted a permit or which is already in operation on 1 May 2008 complies with the provisions of this Directive by 1 May 2012, except for those set out in Article 14(1) for which compliance must be ensured by 1 May 2014 and for those set out in Article 13(6) for which compliance must be ensured in accordance with the timetable laid down therein.

2. Paragraph 1 shall not apply to waste facilities closed by 1 May 2008.

3. Member States shall ensure that, from 1 May 2006 and notwithstanding any closure of a waste facility after that date and before 1 May 2008, extractive waste is managed in a way that does not prejudice the fulfilment of Article 4(1) of this Directive, and other applicable environmental requirements set out in Community legislation, including Directive 2000/60/EC.

4. Articles 5, 6(3) to (5), 7, 8, 12(1) and (2) and 14(1) to (3) shall not apply to those waste facilities that:

- stopped accepting waste before 1 May 2006,
- are completing the closure procedures in accordance with the applicable Community or national legislation or programmes approved by the competent authority, and
- will be effectively closed by 31 December 2010.

Member States shall notify such cases to the Commission by 1 August 2008 and ensure that these facilities are managed in a way that does not prejudice the achievement of the objectives of this Directive, in particular the objectives of

Article 4(1), and those of any other Community legislation, including Directive 2000/60/EC.

Article 25

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 May 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 reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Done at Strasbourg, 15 March 2006.

For the European Parliament

The President

J. BORRELL FONTELLES

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

Article 26

Entry into force

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

Article 27

Addressees

This Directive is addressed to the Member States.

For the Council

The President

H. WINKLER

ANNEX I

Major-accident prevention policy and information to be communicated to the public concerned**1. Major-accident prevention policy**

The operator's major-accident prevention policy and safety management system should be proportionate to the major-accident hazards presented by the waste facility. For the purpose of implementing them, account shall be taken of the following elements:

- (1) the major-accident prevention policy should include the operator's overall aims and principles of action with respect to the control of major-accident hazards;
- (2) the safety management system should include the part of the general management system which includes the organisational structure, responsibilities, practices, procedures, processes and resources for determining and implementing the major-accident prevention policy;
- (3) the following issues shall be addressed by the safety management system:
 - (a) organisation and personnel — the roles and responsibilities of personnel involved in the management of major hazards at all levels in the organisation; identification of training needs of such personnel and the provision of the training so identified; and involvement of employees and, where appropriate, subcontractors;
 - (b) identification and evaluation of major hazards — adoption and implementation of procedures for systematically identifying major hazards arising from normal and abnormal operations and assessment of their likelihood and severity;
 - (c) operational control — adoption and implementation of procedures and instructions for safe operation, including maintenance of plant, processes, equipment and temporary stoppages;
 - (d) management of change — adoption and implementation of procedures for planning modifications to, or the design of, new waste facilities;
 - (e) planning for emergencies — adoption and implementation of procedures to identify foreseeable emergencies by systematic analysis and to prepare, test and review emergency plans to respond to such emergencies;
 - (f) monitoring performance — adoption and implementation of procedures for the ongoing assessment of compliance with the objectives set by the operator's major-accident prevention policy and safety management system, and the mechanisms for investigation and taking corrective action in case of non-compliance. The procedures should cover the operator's system for reporting major accidents or near misses, particularly those involving failure of protective measures, and their investigation and follow-up on the basis of lessons learnt;
 - (g) audit and review — adoption and implementation of procedures for periodic systematic assessment of the major-accident prevention policy and the effectiveness and suitability of the safety management system; the documented review of performance of the policy and safety management system and its updating by senior management.

2. Information to be communicated to the public concerned

- (1) Name of operator and address of the waste facility.
- (2) Identification, by position held, of the person providing the information.

- (3) Confirmation that the waste facility is subject to the regulations and/or administrative provisions implementing this Directive and, when applicable, that the information relevant to the elements referred to in Article 6(2) has been submitted to the competent authority.
 - (4) An explanation in clear and simple terms of the activity or activities undertaken at the site.
 - (5) The common names or the generic names or the general danger classification of the substances and preparations involved at the waste facility as well as waste which could give rise to a major accident, with an indication of their principal dangerous characteristics.
 - (6) General information relating to the nature of the major-accident hazards, including their potential effects on the surrounding population and environment.
 - (7) Adequate information on how the surrounding population concerned are to be warned and kept informed in the event of a major accident.
 - (8) Adequate information on the actions the population concerned should take, and on the behaviour they should adopt, in the event of a major accident.
 - (9) Confirmation that the operator is required to make adequate arrangements on site, in particular liaison with the emergency services, to deal with major accidents and to minimise their effects.
 - (10) A reference to the external emergency plan drawn up to cope with any off-site effects from an accident. This should include advice to co-operate with any instructions or requests from the emergency services at the time of an accident.
 - (11) Details of where further relevant information can be obtained, subject to the requirements of confidentiality laid down in national legislation.
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ANNEX II

Waste characterisation

The waste to be deposited in a facility shall be characterised in such a way as to guarantee the long-term physical and chemical stability of the structure of the facility and to prevent major accidents. The waste characterisation shall include, where appropriate and in accordance with the category of the waste facility, the following aspects:

- (1) description of expected physical and chemical characteristics of the waste to be deposited in the short and the long term, with particular reference to its stability under surface atmospheric/meteorological conditions, taking account of the type of mineral or minerals to be extracted and the nature of any overburden and/or gangue minerals that will be displaced in the course of the extractive operations;
- (2) classification of the waste according to the relevant entry in Decision 2000/532/EC ⁽¹⁾, with particular regard to its hazardous characteristics;
- (3) description of the chemical substances to be used during treatment of the mineral resource and their stability;
- (4) description of the method of deposition;
- (5) waste transport system to be employed.

ANNEX III

Criteria for determining the classification of waste facilities

A waste facility shall be classified under category A if:

- a failure or incorrect operation, e.g. the collapse of a heap or the bursting of a dam, could give rise to a major accident, on the basis of a risk assessment taking into account factors such as the present or future size, the location and the environmental impact of the waste facility; or
- it contains waste classified as hazardous under Directive 91/689/EEC above a certain threshold; or
- it contains substances or preparations classified as dangerous under Directives 67/548/EEC or 1999/45/EC above a certain threshold.

⁽¹⁾ Commission Decision 2000/532/EC of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste (OJ L 226, 6.9.2000, p. 3). Decision as last amended by Council Decision 2001/573/EC (OJ L 203, 28.7.2001, p. 18).

STATEMENT BY THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION

The European Parliament, the Council and the Commission welcome the Joint Declaration by Bulgaria and Romania on the implementation of the forthcoming Directive on the Management of Waste from Extractive Industries.

**DIRECTIVE 2006/22/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 15 March 2006**

**on minimum conditions for the implementation of
Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85
concerning social legislation relating to road transport activities and repealing Council Directive
88/599/EEC**

(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 71(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⁾, in the light of the joint text approved by the Conciliation Committee on 8 December 2005,

Whereas:

(1) Council Regulations (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport ⁽³⁾ and (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport ⁽⁴⁾ and Directive 2002/15/EC of the European Parliament and the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities ⁽⁵⁾ are important for the creation of a common market for inland transport services, for road safety and for working conditions.

⁽¹⁾ OJ C 241, 28.9.2004, p. 65.

⁽²⁾ Opinion of the European Parliament of 20 April 2004 (OJ C 104 E, 30.4.2004, p. 385), Council Common Position of 9 December 2004 (OJ C 63 E, 15.3.2005, p. 1) and Position of the European Parliament of 13 April 2005 (OJ C 33 E, 9.2.2006, p. 415). Legislative resolution of the European Parliament of 2 February 2006 and Decision of the Council of 2 February 2006.

⁽³⁾ OJ L 370, 31.12.1985, p. 1. Regulation as amended by Directive 2003/59/EC of the European Parliament and of the Council (OJ L 226, 10.9.2003, p. 4).

⁽⁴⁾ OJ L 370, 31.12.1985, p. 8. Regulation as last amended by Commission Regulation (EC) No 432/2004 (OJ L 71, 10.3.2004, p. 3).

⁽⁵⁾ OJ L 80, 23.3.2002, p. 35.

(2) In its White Paper 'European transport policy for 2010: time to decide', the Commission indicated the need to tighten up checks and sanctions particularly for social legislation on road transport activities, and specifically to increase the number of checks, to encourage the systematic exchange of information between Member States, to coordinate inspection activities and to promote the training of enforcement officers.

(3) It is therefore necessary to ensure proper application and harmonised interpretation of the social rules on road transport through the establishment of minimum requirements for the uniform and effective checking by the Member States of compliance with the relevant provisions. Those checks should serve to reduce and prevent infringements. Furthermore, a mechanism should be introduced which ensures that undertakings with a high risk rating are checked more closely and more often.

(4) The risks arising from driver fatigue should also be addressed through enforcement of Directive 2002/15/EC.

(5) The measures provided for in this Directive should not only lead to greater road safety but should also contribute to a harmonisation of working conditions in the Community and promote a level playing field.

(6) The replacement of analogue tachographs by digital tachographs will progressively enable a greater volume of data to be checked more swiftly and more precisely and, for that reason, Member States will be increasingly able to undertake more checks. In terms of checks, the percentage of days worked by drivers of vehicles falling within the scope of the social legislation that are checked should therefore be gradually increased to 4 %.

(7) As regards checking systems, the aim must be that national systems develop towards European interoperability and practicability.

(8) Sufficient standard equipment and appropriate legal powers should be available to all enforcement units to enable them to carry out their duties effectively and efficiently.

- (9) Member States should seek to ensure, without prejudice to the proper execution of the tasks imposed by this Directive, that roadside checks are executed efficiently and quickly, with a view to completing the check in the shortest time possible and with the least delay for the driver.
- (10) Within each Member State there should be a single body for intracommunity liaison with other relevant competent authorities. That body should also compile relevant statistics. Member States should also apply a coherent national enforcement strategy on their territory and may designate a single body to coordinate its implementation.
- (11) Cooperation between Member State enforcement authorities should be further promoted through concerted checks, joint training initiatives, the electronic exchange of information, and the exchange of intelligence and experience.
- (12) Best practice in road transport enforcement operations, particularly to ensure a harmonised approach to the issue of proof of a driver's annual leave or sick leave, should be facilitated and promoted through a forum for Member State enforcement authorities.
- (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 ⁽¹⁾.
- (14) Since the objective of this Directive, namely to lay down clear, common rules on minimum conditions for checking the correct and uniform implementation of Regulations (EEC) No 3820/85 and (EEC) No 3821/85 and Regulation (EC) No 561/2006 of 15 March 2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 ⁽²⁾, cannot be sufficiently achieved by the Member States and can, by reason of the need for coordinated transnational action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

- (15) Council Directive 88/599/EEC ⁽³⁾ on standard checking procedures for the implementation of Regulations (EEC) No 3820/85 and (EEC) No 3821/85 should therefore be repealed,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject-matter

This Directive lays down minimum conditions for the implementation of Regulations (EEC) No 3820/85 and (EEC) No 3821/85.

Article 2

Checking systems

1. Member States shall organise a system of appropriate and regular checks on correct and consistent implementation, as referred to in Article 1, both at the roadside and at premises of undertakings of all transport categories.

These checks shall cover each year a large and representative cross-section of mobile workers, drivers, undertakings and vehicles of all transport categories falling within the scope of Regulations (EEC) No 3820/85 and (EEC) No 3821/85.

Member States shall ensure that a coherent national enforcement strategy is applied on their territory. For this purpose, Member States may designate a body for the coordination of actions taken under Articles 4 and 6, in which case the Commission and the other Member States shall be informed thereof.

2. In so far as this is not already the case, Member States shall, not later than 1 May 2007, provide authorised inspecting officers with appropriate legal powers to enable them correctly to discharge their inspection obligations as required by this Directive.

3. Each Member State shall organise checks in such a way that, as from 1 May 2006, 1 % of days worked by drivers of vehicles falling within the scope of Regulations (EEC) No 3820/85 and (EEC) No 3821/85 are checked. This percentage will increase to at least 2 % from 1 January 2008 and to at least 3 % from 1 January 2010.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

⁽²⁾ See OJ L 102, 11.4.2006, p. 1.

⁽³⁾ OJ L 325, 29.11.1988, p. 55. Directive as amended by Regulation (EC) No 2135/98 (OJ L 274, 9.10.1998, p. 1).

From 1 January 2012 this minimum percentage may be increased to 4 % by the Commission, in accordance with the procedure referred to in Article 12(2), provided that the statistics collected pursuant to Article 3 show that, on average, more than 90 % of all vehicles checked are equipped with a digital tachograph. In making its decision, the Commission shall also take into account the effectiveness of existing enforcement measures, in particular the availability of digital tachograph data at the premises of undertakings.

Not less than 15 % of the total number of the working days checked shall be checked at the roadside and not less than 30 % at the premises of undertakings. From 1 January 2008 not less than 30 % of the total number of the working days checked shall be checked at the roadside and not less than 50 % shall be checked at the premises of undertakings.

4. The information submitted to the Commission in accordance with Article 16(2) of Regulation (EEC) No 3820/85 shall include the number of drivers checked at the roadside, the number of checks at the premises of undertakings, the number of working days checked and the number and type of infringements reported, together with a record of whether passengers or goods were transported.

Article 3

Statistics

Member States shall ensure that statistics collected from the checks organised in accordance with Article 2(1) and (3) are broken down into the following categories:

- (a) for roadside checks:
 - (i) type of road, namely whether it is a motorway, a national or a secondary road, and country of registration of the vehicle inspected, in order to avoid discrimination;
 - (ii) type of tachograph: analogue or digital;
- (b) for checks at the premises:
 - (i) type of transport activity, namely whether the activity is international or domestic, passenger or freight, own account or for hire or reward;
 - (ii) size of company fleet;
 - (iii) type of tachograph: analogue or digital.

These statistics shall be submitted biennially to the Commission and shall be published in a report.

The competent authorities in the Member States shall keep a record of the data collected for the previous year.

Undertakings responsible for drivers shall keep, for a period of one year, the documents, records of results and other relevant data passed to them by the enforcement authorities concerning checks carried out on them at their premises and/or on their drivers at the roadside.

Any further clarification required of the definitions of the categories mentioned under (a) and (b) shall be established by the Commission, in accordance with the procedure referred to in Article 12(2).

Article 4

Roadside checks

1. Roadside checks shall be organised in various places and at any time and shall cover a sufficiently extensive part of the road network to make it difficult to avoid checkpoints.
2. Member States shall ensure that:
 - (a) sufficient provision is made for checkpoints on or nearby existing and planned roads and, if necessary, that service stations and other safe locations along motorways can function as checkpoints;
 - (b) checks are carried out following a random rotation system, with an appropriate geographical balance.
3. The points to be verified at roadside checks are set out in Part A of Annex I. Checks may focus on a specific point if the situation so requires.
4. Without prejudice to Article 9(2), roadside checks shall be carried out without discrimination. In particular, enforcement officers shall not discriminate on any of the following grounds:
 - (a) country of registration of vehicle;
 - (b) country of residence of driver;
 - (c) country of establishment of undertaking;
 - (d) origin and destination of journey;
 - (e) type of tachograph: analogue or digital.

5. Enforcement officers shall be provided with:

(a) a list of the principal points to be checked, as set out in Part A of Annex I;

(b) standard checking equipment, as set out in Annex II.

6. If, in a Member State, the findings of a roadside check on the driver of a vehicle registered in another Member State afford grounds for believing that infringements have been committed which cannot be established during the check owing to a lack of necessary data, the competent authorities of the Member States concerned shall assist each other in clarifying the situation.

Article 5

Concerted checks

Member States shall, at least six times per year, undertake concerted roadside checks on drivers and vehicles falling within the scope of Regulations (EEC) No 3820/85 and (EEC) No 3821/85. Such checks shall be undertaken at the same time by the enforcement authorities of two or more Member States, each operating in its own territory.

Article 6

Checks at the premises of undertakings

1. Checks at premises shall be planned in the light of past experience in relation to the various types of transport and undertakings. They shall also be carried out if serious infringements of Regulations (EEC) No 3820/85 or (EEC) No 3821/85 have been detected at the roadside.

2. Checks at premises shall cover the points listed in Part A and Part B of Annex I.

3. Enforcement officers shall be provided with:

(a) a list of the principal points to be checked, as set out in Parts A and B of Annex I;

(b) standard checking equipment, as set out in Annex II.

4. Enforcement officers in a Member State shall, in the course of the check take into account any information provided by the designated liaison body of another Member State, as referred to in Article 7(1), concerning the activities of the undertaking in question in that other Member State.

5. For the purposes of paragraphs 1 to 4, checks carried out at the premises of the competent authorities, on the basis of relevant documents or data handed over by undertakings at the request of the said authorities, shall have the same status as checks carried out at the premises of undertakings.

Article 7

Intracommunity liaison

1. Member States shall designate a body which shall have the following tasks:

(a) to ensure coordination with equivalent bodies in the other Member States concerned as regards actions taken under Article 5;

(b) to forward the biennial statistical returns to the Commission under Article 16(2) of Regulation (EEC) No 3820/85;

(c) to be primarily responsible for assisting the competent authorities of other Member States pursuant to Article 4 (6).

The body shall be represented on the Committee referred to in Article 12(1).

2. Member States shall notify the Commission of the designation of this body and the Commission shall advise the other Member States accordingly.

3. The exchange of data, of experience and of intelligence between Member States shall be actively promoted, primarily but not exclusively through the Committee referred to in Article 12(1) and any such body as the Commission may designate in accordance with the procedure referred to in Article 12(2).

Article 8

Exchange of information

1. Information made available bilaterally under Article 17(3) of Regulation (EEC) No 3820/85 or Article 19(3) of Regulation (EEC) No 3821/85 shall be exchanged between the designated bodies notified to the Commission in accordance with Article 7(2):

(a) at least once every six months after the entry into force of this Directive;

(b) upon specific request by a Member State in individual cases.

2. Member States shall seek to establish systems for the electronic exchange of information. In accordance with the procedure referred to in Article 12(2), the Commission shall define a common methodology for effective information exchange.

*Article 9***Risk rating system**

1. Member States shall introduce a risk rating system for undertakings based on the relative number and severity of any infringements of Regulations (EEC) No 3820/85 or (EEC) No 3821/85 that an individual undertaking has committed. The Commission shall support dialogue between Member States to encourage consistency between these risk rating systems.

2. Undertakings with a high risk rating shall be checked more closely and more often. The criteria and detailed rules for implementing such a system shall be discussed in the Committee referred to in Article 12, with a view to establishing a system for the exchange of information on best practices.

3. An initial list of infringements of Regulation (EEC) No 3820/85 and (EEC) No 3821/85 is set out in Annex III.

With a view to giving guidelines on the weighting of infringements of Regulations (EEC) No 3820/85 and (EEC) No 3821/85, the Commission may, as appropriate, in accordance with the procedure referred to in Article 12(2), adapt Annex III with a view to establishing guidelines on a common range of infringements, divided into categories according to their gravity.

The category for the most serious infringements should include those where failure to comply with the relevant provisions of Regulations (EEC) No 3820/85 and (EEC) No 3821/85 create a serious risk of death or serious personal injury.

*Article 10***Report**

By 1 May 2009 the Commission shall submit to the European Parliament and to the Council a report analysing the penalties for serious infringements provided for in the legislation of the Member States.

*Article 11***Best practice**

1. In accordance with the procedure referred to in Article 12(2), the Commission shall establish guidelines on best enforcement practice.

Those guidelines shall be published in a biennial report of the Commission.

2. Member States shall establish joint training programmes on best practice to be held at least once per year and shall facilitate exchanges, at least once per year, of staff of their respective bodies for intracommunity liaison with their counterparts in other Member States.

3. An electronic and printable form shall be drawn up by the Commission in accordance with the procedure referred to in Article 12(2), to be used when a driver has been on sick leave or on annual leave, or when the driver has driven another vehicle exempted from the scope of Regulation (EEC) No 3820/85, during the period mentioned in the first indent of the first subparagraph of Article 15(7) of Regulation (EEC) No 3821/85.

4. Member States shall ensure that enforcement officers are well trained for the execution of their tasks.

*Article 12***Committee procedure**

1. The Commission shall be assisted by the Committee set up by Article 18(1) of Regulation (EEC) No 3821/85.

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 13***Implementing measures**

At the request of a Member State or on its own initiative the Commission shall, in accordance with the procedure referred to in Article 12(2), adopt implementing measures in particular with one of the following aims:

- (a) to promote a common approach to the implementation of this Directive;
- (b) to encourage a coherence of approach between enforcement authorities and a harmonised interpretation of Regulation (EEC) No 3820/85 between enforcement authorities;
- (c) to facilitate dialogue between the transport sector and enforcement authorities.

*Article 14***Negotiations with third countries**

Once this Directive has entered into force, the Community shall begin negotiations with the relevant third countries with a view to the application of rules equivalent to those laid down in this Directive.

Pending the conclusion of these negotiations, Member States shall include data on checks carried out on vehicles from third countries in their returns to the Commission as set out in Article 16(2) of Regulation (EEC) No 3820/85.

*Article 15***Updating of the Annexes**

Amendments to the Annexes which are necessary to adapt them to developments in best practice shall be adopted in accordance with the procedure referred to in Article 12(2).

*Article 16***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 April 2007. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

Done at Strasbourg, 15 March 2006.

For the European Parliament

The President

J. BORRELL FONTELLES

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

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

*Article 17***Repeal**

1. Directive 88/599/EEC is hereby repealed.

2. References made to the repealed Directive shall be construed as being made to this Directive.

*Article 18***Entry into force**

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

*Article 19***Addressees**

This Directive is addressed to the Member States.

For the Council

The President

H. WINKLER

ANNEX I

PART A

ROADSIDE CHECKS

The following points shall, in general, be covered by roadside checks:

- (1) daily and weekly driving times, breaks and daily and weekly rest periods; also the preceding days' record sheets which have to be carried on board the vehicle in accordance with Article 15(7) of Regulation (EEC) No 3821/85 and/or the data stored for the same period on the driver card and/or in the memory of the recording equipment in accordance with Annex II to this Directive and/or on printouts;
- (2) for the period referred to in Article 15(7) of Regulation (EEC) No 3821/85, any cases where the vehicle's authorised speed is exceeded, to be defined as being any periods of more than one minute during which the vehicle's speed exceeds 90 km/h for category N₃ vehicles or 105 km/h for category M₃ vehicles (categories N₃ and M₃ being defined in Annex II, Part A to Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers ⁽¹⁾);
- (3) where appropriate, momentary speeds attained by the vehicle as recorded by the recording equipment in no more than the previous 24 hours' use of the vehicle;
- (4) the correct functioning of the recording equipment (determination of possible misuse of the equipment and/or the driver card and/or record sheets) or, where appropriate, presence of the documents referred to in Article 14 (5) of Regulation (EEC) No 3820/85.

PART B

CHECKS AT THE PREMISES OF UNDERTAKINGS

The following points shall be checked at the premises of undertakings, in addition to those set out in Part A:

- (1) weekly rest periods and driving times between these rest periods;
- (2) observance of the two-weekly limitation of driving times;
- (3) record sheets, vehicle unit and driver card data and printouts.

Member States may, if appropriate, check on the joint liability of other instigators or accessories in the transport chain, such as shippers, freight forwarders or contractors, if an infringement is detected, including verification that contracts for the provision of transport permit compliance with Regulations (EEC) No 3820/85 and (EEC) No 3821/85.

⁽¹⁾ OJ L 42, 23.2.1970, p. 1. Directive as last amended by Commission Directive 2006/28/EC (OJ L 65, 7.3.2006, p. 27).

*ANNEX II***Standard equipment to be available to enforcement units**

Member States shall ensure that the following standard equipment is available to enforcement units carrying out the duties set out in Annex I:

- (1) equipment capable of downloading data from the vehicle unit and driver card of the digital tachograph, reading data, and analysing data and/or transmitting findings to a central database for analysis;
 - (2) equipment to check the tachograph sheets.
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*ANNEX III***Infringements**

In accordance with Article 9(3), for the purposes of this Directive, the following non-exhaustive list gives guidance on what is to be regarded as an infringement:

- (1) exceeding the maximum daily, weekly or fortnightly driving times;
 - (2) disregarding the minimum daily or weekly rest period;
 - (3) disregarding the minimum break;
 - (4) failure to fit a tachograph in accordance with the requirements of Regulation (EEC) No 3821/85.
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STATEMENTS

The Commission declares that in relation to the classification of serious infringements, its understanding is that serious infringements against the Regulation on the harmonisation of certain social legislation relating to road transport include the following:

1. exceeding the maximum daily, six-day or fortnightly driving time limits by a margin of 20 % or more;
2. disregarding the minimum daily or weekly rest period by a margin of 20 % or more;
3. disregarding the minimum break by a margin of 33 % or more; and
4. a tachograph not fitted in accordance with the requirements of Council (EEC) No Regulation 3821/85.

The Commission and the Member States shall make every effort to ensure that, within two years of the entry into force of this Directive, the provisions of the AETR are aligned with the provisions of this Directive. If such an alignment has not been achieved within that period the Commission shall propose appropriate action to address the situation
