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⁽¹⁾ Text with EEA relevance.

I

(Acts whose publication is obligatory)

**REGULATION (EC) No 1365/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 6 September 2006
on statistics of goods transport by inland waterways and repealing Council Directive 80/1119/EEC**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 285(1) thereof,

Having regard to the proposal from the Commission,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽¹⁾,

Whereas:

(1) Inland waterways are an important part of the Community's transport networks and the promotion of inland waterways transport is one of the objectives of the common transport policy, both for reasons of economic efficiency and in order to reduce energy consumption and the environmental impact of transport, as described in the Commission White Paper: European transport policy for 2010: time to decide.

(2) The Commission needs statistics concerning the transport of goods by inland waterways in order to monitor and develop the common transport policy, as well as the transport elements of policies on the regions and on trans-European networks.

(3) Statistics on inland waterways transport have been collected under Council Directive 80/1119/EEC of 17 November 1980 on statistical returns in respect of carriage of goods by inland waterways ⁽²⁾, which no longer corresponds to the present needs in this domain. It is therefore appropriate to replace that Directive with a new instrument which extends its scope and improves its efficiency.

(4) Consequently, Directive 80/1119/EEC should be repealed.

⁽¹⁾ Opinion of the European Parliament of 17 January 2006 (not yet published in the Official Journal) and Council Decision of 24 July 2006.

⁽²⁾ OJ L 339, 15.12.1980, p. 30. Directive as last amended by the 2003 Act of Accession.

(5) Community statistics on all modes of transport should be collected according to common concepts and standards, with the aim of achieving the fullest practicable comparability between transport modes.

(6) Inland waterways transport does not occur in all Member States and, therefore, the effect of this Regulation is limited to those Member States where this mode of transport exists.

(7) Since the objective of this Regulation, namely the creation of common statistical standards that permit the production of harmonised data, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(8) Council Regulation (EC) No 322/97 of 17 February 1997 on Community Statistics ⁽³⁾ provides a reference framework for the provisions laid down by this Regulation.

(9) 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 ⁽⁴⁾.

(10) The Statistical Programme Committee established by Council Decision 89/382/EEC, Euratom ⁽⁵⁾ has been consulted in accordance with Article 3 of that Decision,

⁽³⁾ OJ L 52, 22.2.1997, p. 1. Regulation as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

⁽⁴⁾ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

⁽⁵⁾ OJ L 181, 28.6.1989, p. 47.

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation establishes common rules for the production of Community statistics concerning inland waterways transport.

Article 2

Scope

1. Member States shall transmit to the Commission (Eurostat) data relating to inland waterways transport on their national territory.

2. Member States in which the total volume of goods transported annually by inland waterways as national, international or transit transport exceeds 1 000 000 tonnes shall supply the data referred to in Article 4(1).

3. By way of derogation from paragraph 2, Member States where there is no international or transit inland waterways transport but where the total volume of goods transported annually by inland waterways as national transport exceeds 1 000 000 tonnes shall supply only the data required under Article 4(2).

4. This Regulation shall not apply to:

- (a) the carriage of goods by vessels of less than 50 deadweight tonnes;
- (b) vessels used principally for the carriage of passengers;
- (c) vessels used for ferrying purposes;
- (d) vessels used solely for non-commercial purposes by port administrations and public authorities;
- (e) vessels used solely for bunkering or storage;
- (f) vessels not used for the carriage of goods such as fishery vessels, dredgers, floating workshops, houseboats and pleasure craft.

Article 3

Definitions

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

- (a) 'navigable inland waterway' means a stretch of water, not part of the sea, over which vessels of a carrying capacity of not less than 50 tonnes can navigate when normally loaded. This term covers both navigable rivers and lakes and navigable canals;

(b) 'inland waterway vessel' means a floating craft designed for the carriage of goods or public transport of passengers by navigable inland waterways;

(c) 'nationality of the vessel' refers to the country in which the inland waterway vessel is registered.

Article 4

Data collection

1. Data shall be collected in accordance with the tables set out in Annexes A to D.

2. In the case referred to in Article 2(3) data shall be collected in accordance with the table set out in Annex E.

3. For the purposes of this Regulation, goods shall be classified in accordance with Annex F.

Article 5

Transmission of data

1. The first period of observation shall begin on 1 January 2007. The transmission of data shall take place as soon as possible and no later than five months after the end of the relevant period of observation.

2. During the first three years of application of this Regulation, the time allowed for the transmission of data referred to in paragraph 1 may be extended in accordance with the procedure referred to in Article 10(2). The maximum time allowed for transmission, including any extension granted, shall not exceed eight months.

Extensions of the time allowed for transmission are set out in Annex G.

Article 6

Dissemination

Community statistics based on the data referred to in Article 4 shall be disseminated with a frequency similar to that laid down for the transmission of data by the Member States.

Article 7

Quality of data

1. The Commission (Eurostat) shall develop and publish, in accordance with the procedure referred to in Article 10(2), methodological requirements and criteria designed to ensure the quality of the data produced.

2. Member States shall take all measures necessary to ensure the quality of the data transmitted.

3. The Commission (Eurostat) shall assess the quality of the data transmitted. Member States shall supply the Commission (Eurostat) with a report containing such information and data as it may request in order to verify the quality of the data transmitted.

Article 8

Report on implementation

By 15 October 2009 and after consulting the Statistical Programme Committee, the Commission shall submit a report to the European Parliament and the Council on the implementation of this Regulation. In particular, that report shall:

- (a) assess the benefits accruing to the Community, the Member States and the providers and users of statistical information of the statistics produced, in relation to their costs;
- (b) assess the quality of the statistics produced;
- (c) identify areas for potential improvement and any amendments considered necessary in the light of the results obtained.

Article 9

Implementing measures

The measures for implementing this Regulation, including measures to take account of economic and technical trends, shall be laid down in accordance with the procedure referred to in Article 10(2). Such measures shall concern:

- (a) adaptation of the threshold for statistical coverage of inland waterways transport (Article 2);
- (b) adaptation of the definitions and adoption of additional definitions (Article 3);
- (c) adaptation of the data collection scope and the content of the annexes (Article 4);

- (d) arrangements for transmitting data to the Commission (Eurostat) including data interchange standards (Article 5);
- (e) arrangements for the dissemination of results by the Commission (Eurostat) (Article 6);
- (f) development and publication of methodological requirements and criteria (Article 7).

Article 10

Committee procedure

1. The Commission shall be assisted by the Statistical Programme Committee established by Article 1 of Decision 89/382/EEC, Euratom.
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 11

Transitional provisions and repeal

1. Member States shall provide statistical results for the year 2006 in accordance with Directive 80/1119/EEC.
2. Directive 80/1119/EEC is hereby repealed with effect from 1 January 2007.

Article 12

Entry into force

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

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

Done at Strasbourg, 6 September 2006.

For the European Parliament
The President
J. BORRELL FONTELLES

For the Council
The President
P. LEHTOMÄKI

ANNEX A

Table A1. Goods transport by type of goods (annual data)

Elements	Coding details	Nomenclature	Unit
Table	2-alpha	A1	
Reporting country	2-letter	ISO national code	
Year	4-digit	yyyy	
Country/region of loading	2-letter or 4-alpha	ISO national code or NUTS II	
Country/region of unloading	2-letter or 4-alpha	ISO national code or NUTS II	
Type of transport	1-digit	1 = national 2 = international (except transit) 3 = transit	
Type of goods	2-digit	NST 2000	
Type of packaging	1-digit	1 = goods in containers 2 = goods not in containers	
Tonnes transported			tonnes
Tonnes-km			tonnes-km

ANNEX B

Table B1. Transport by nationality of the vessel and type of vessel (annual data)

Elements	Coding details	Nomenclature	Unit
Table	2-alpha	B1	
Reporting country	2-letter	ISO national code	
Year	4-digit	yyyy	
Country/region of loading	2-letter or 4-alpha	ISO national code or NUTS II	
Country/region of unloading	2-letter or 4-alpha	ISO national code or NUTS II	
Type of transport	1-digit	1 = national 2 = international (except transit) 3 = transit	
Type of vessel	1-digit	1 = self-propelled barge 2 = barge not self-propelled 3 = self-propelled tanker barge 4 = tanker barge not self-propelled 5 = other goods carrying vessel	
Nationality of vessel	2-letter	ISO national code	
Tonnes transported			tonnes
Tonnes-km			tonnes-km

Table B2. Vessel traffic (annual data)

Elements	Coding details	Nomenclature	Unit
Table	2-alpha	B2	
Reporting country	2-letter	ISO national code	
Year	4-digit	yyyy	
Number of loaded vessels			vessels
Number of empty vessels			vessels
Vessel-Km (loaded vessels)			vessel-km
Vessel-Km (empty vessels)			vessel-km

Note: The provision of the data mentioned in this Table B2 is optional.

ANNEX C

Table C1. Container transport by type of goods (annual data)

Elements	Coding details	Nomenclature	Unit
Table	2-alpha	C1	
Reporting country	2-letter	ISO national code	
Year	4-digit	YYYY	
Country/region of loading	2-letter or -alpha	ISO national code or NUTS2	
Country/region of unloading	2-letter or 4-alpha	ISO national code or NUTS2	
Type of transport	1-digit	1 = national 2 = international (except transit) 3 = transit	
Size of containers	1-digit	1 = 20' freight units 2 = 40' freight units 3 = freight units > 20' and < 40' 4 = freight units > 40'	
Loading status	1-digit	1 = loaded containers 2 = empty containers	
Type of goods	2-digit	NST 2000	
Tonnes transported (*)			tonnes
Tonnes-km (*)			tonnes-km
TEU			TEU
TEU-km			TEU-km

(*) Only for loaded containers.

ANNEX D

Table D1. Transport by nationality of vessels (quarterly data)

Elements	Coding details	Nomenclature	Unit
Table	2-alpha	D1	
Reporting country	2-letter	ISO national code	
Year	4-digit	yyyy	
Quarter	2-alpha	Q1, Q2, Q3 or Q4	
Type of transport	1-digit	1 = national 2 = international (except transit) 3 = transit	
Nationality of the vessel	2-letter	ISO national code	
Tonnes transported			tonnes
Tonnes-km			tonnes-km

Table D2. Container transport by nationality of vessels (quarterly data)

Elements	Coding details	Nomenclature	Unit
Table	2-alpha	D2	
Reporting country	2-letter	ISO national code	
Year	4-digit	yyyy	
Quarter	2-alpha	Q1, Q2, Q3 or Q4	
Type of transport	1-digit	1 = national 2 = international (except transit) 3 = transit	
Nationality of vessel	2-letter	ISO national code	
Loading status	1-digit	1 = loaded containers 2 = empty containers	
Tonnes transported (*)			tonnes
Tonnes-km (*)			tonnes-km
TEU			TEU
TEU-km			TEU-km

(*) Only for loaded containers

ANNEX E

Table E1. Goods transport (annual data)

Elements	Coding details	Nomenclature	Unit
Table	2-alpha	E1	
Reporting country	2-letter	ISO national code	
Year	4-digit	YYYY	
Total tonnes transported			tonnes
Total tonnes-km			tonnes-km

ANNEX F

Goods nomenclature

NST-2000

NST-2000 groups	Description of goods	Defined by products in CPA divisions
01	Products of agriculture, hunting, and forestry; fish and other fishing products	01, 02, 05
02	Coal and lignite; peat; crude petroleum and natural gas; uranium and thorium	10, 11, 12
03	Metal ores and other mining and quarrying products	13, 14
04	Food products, beverages and tobacco	15, 16
05	Textiles and textile products; leather and leather products	17, 18, 19
06	Wood and products of wood and cork (except furniture); articles of straw and plaiting materials; pulp, paper and paper products; printed matter and recorded media	20, 21, 22
07	Coke, refined petroleum products and nuclear fuel	23
08	Chemicals, chemical products, and man-made fibres; rubber and plastic products	24, 25
09	Other non-metallic mineral products	26
10	Basic metals; fabricated metal products, except machinery and equipment	27, 28
11	Machinery and equipment n.e.c.; office machinery and computers; electrical machinery and apparatus n.e.c.; radio, television and communication equipment and apparatus; medical, precision and optical instruments; watches and clocks	29, 30, 31, 32, 33
12	Transport equipment	34, 35
13	Furniture; other manufactured goods n.e.c.	36
14	Secondary raw materials; municipal wastes and other wastes not specified elsewhere in CPA	37 + municipal wastes (as input to CPA division 90) and other wastes not specified elsewhere in CPA
15	Mail, parcels Note: this heading is normally used for goods transported by postal administrations and specialised courier services in NACE Rev. 1 division 64.	
16	Equipment and material utilised in the transport of goods Note: this heading covers items such as empty containers, palettes, boxes, crates and roll cages. It also covers vehicles used to contain goods, where the vehicle is itself carried on another vehicle. The existence of a code for this type of material does not prejudice the question of whether such materials are to be counted as 'goods'; this will depend on the rules for data collection for each mode of transport.	

NST-2000 groups	Description of goods	Defined by products in CPA divisions
17	Goods moved in the course of household and office removals; baggage transported separately from passengers; motor vehicles being moved for repair; other non-market goods n.e.c.	
18	Grouped goods: a mixture of types of goods which are transported together Note: this heading is used whenever it is not considered appropriate to assign the goods separately to groups 01-16.	
19	Unidentifiable goods: goods which for any reason cannot be identified and therefore cannot be assigned to groups 01-16 Note: this heading is intended to cover goods where the reporting unit does not have information on the type of goods being transported.	
20	Other goods n.e.c. Note: this heading covers any items which cannot be assigned to any of the groups 01-19. Since the groups 01-19 are intended to cover all foreseeable categories of transported goods, the use of group 20 should be considered unusual and may indicate a need for further checking of the data reported under this heading.	

ANNEX G

Extensions of the time allowed for transmission (Article 5(2))

Member State	Extended transmission period after the end of the period of observation	Last year for which an extension is granted
Belgium	8 months	2009

**REGULATION (EC) No 1366/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 6 September 2006**

amending Regulation (EC) No 2037/2000 as regards the base year for the allocation of quotas of hydrochlorofluorocarbons with respect to the Member States that acceded to the European Union on 1 May 2004

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

After consulting the Committee of the Regions,

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

Whereas:

- (1) Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer ⁽³⁾ takes 1999 as the base year for allocating quotas of hydrochlorofluorocarbons (HCFCs). The HCFC market in the 10 new Member States has changed considerably since 1999, with the arrival of new companies and changes in market shares. Taking 1999 as the base year for allocating quotas of HCFCs in these new Member States would result in a large number of companies not receiving an import quota. This could be considered as being arbitrary and might also result in a breach of the principles of non-discrimination and legitimate expectations.
- (2) As a general rule, quotas should be based on the most recent and representative figures available in order to ensure that a number of importing companies in the new

Member States are not excluded. It is therefore appropriate to choose the years for which the most recent data are available. In order to best reflect the commercial situation on the HCFC market in the 10 new Member States, average market shares in 2002 and 2003 should therefore be used as the basis for the companies from those Member States.

- (3) Regulation (EC) No 2037/2000 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

The following point shall be added to Article 4(3)(i) of Regulation (EC) No 2037/2000:

- (i) by way of derogation from point (h), each producer and importer in the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia shall ensure that the calculated level of hydrochlorofluorocarbons which it places on the market or uses for its own account shall not exceed, as a percentage of the calculated levels set out in points (b), (d), (e) and (f), the average of its percentage market share in 2002 and 2003.

Article 2

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

It shall apply from 1 January 2007.

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

Done at Strasbourg, 6 September 2006.

For the European Parliament
The President
J. BORRELL FONTELLES

For the Council
The President
P. LEHTOMÄKI

⁽¹⁾ OJ C 110, 9.5.2006, p. 33.

⁽²⁾ Opinion of the European Parliament of 27 April 2006 (not yet published in the Official Journal) and Council Decision of 27 June 2006.

⁽³⁾ OJ L 244, 29.9.2000, p. 1. Regulation as last amended by Regulation (EC) No 29/2006 (OJ L 6, 11.1.2006, p. 27).

**REGULATION (EC) No 1367/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 6 September 2006**

on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty, in the light of the joint text approved by the Conciliation Committee on 22 June 2006 ⁽²⁾,

Whereas:

- (1) Community legislation in the field of the environment aims to contribute *inter alia* to preserving, protecting and improving the quality of the environment and protecting human health, thereby promoting sustainable development.
- (2) The Sixth Community Environment Action Programme ⁽³⁾ stresses the importance of providing adequate environmental information and effective opportunities for public participation in environmental decision-making, thereby increasing accountability and transparency of decision-making and contributing to public awareness and support for the decisions taken. It furthermore encourages, as did its predecessors ⁽⁴⁾, more effective implementation and application of Community legislation on environmental protection, including the enforcement of Community rules and the taking of action against breaches of Community environmental legislation.

- (3) On 25 June 1998 the Community signed the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter the Aarhus Convention). The Community approved the Aarhus Convention on 17 February 2005 ⁽⁵⁾. Provisions of Community law should be consistent with that Convention.

- (4) The Community has already adopted a body of legislation, which is evolving and contributes to the achievement of the objectives of the Aarhus Convention. Provision should be made to apply the requirements of the Convention to Community institutions and bodies.

- (5) It is appropriate to deal with the three pillars of the Aarhus Convention, namely access to information, public participation in decision-making and access to justice in environmental matters, in one piece of legislation and to lay down common provisions regarding objectives and definitions. This contributes to rationalising legislation and increasing the transparency of the implementation measures taken with regard to Community institutions and bodies.

- (6) As a general principle, the rights guaranteed by the three pillars of the Aarhus Convention are without discrimination as to citizenship, nationality or domicile.

- (7) The Aarhus Convention defines public authorities in a broad way, the basic concept being that wherever public authority is exercised, there should be rights for individuals and their organisations. It is therefore necessary that the Community institutions and bodies covered by this Regulation be defined in the same broad and functional way. Under the Aarhus Convention, Community institutions and bodies can be excluded from the scope of application of the Convention when acting in a judicial or legislative capacity. However, for reasons of consistency with Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ⁽⁶⁾, the provisions on access to environmental information should apply to Community institutions and bodies acting in a legislative capacity.

⁽¹⁾ OJ C 117, 30.4.2004, p. 52.

⁽²⁾ Opinion of the European Parliament of 31 March 2004 (OJ C 103 E, 29.4.2004, p. 612), Council Common Position of 18 July 2005 (OJ C 264 E, 25.10.2005, p. 18), and Position of the European Parliament of 18 January 2006 (not yet published in the Official Journal). Legislative resolution of the European Parliament of 4 July 2006 (not yet published in the Official Journal) and Decision of the Council of 18 July 2006.

⁽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 (OJ L 242, 10.9.2002, p. 1).

⁽⁴⁾ Fourth Community Action Programme for the Environment (OJ C 328, 7.12.1987, p. 1), Fifth Community Action Programme for the Environment (OJ C 138, 17.5.1993, p. 1).

⁽⁵⁾ Council Decision 2005/370/EC (OJ L 124, 17.5.2005, p. 1).

⁽⁶⁾ OJ L 145, 31.5.2001, p. 43.

- (8) The definition of environmental information in this Regulation encompasses information in any form on the state of the environment. This definition, which has been aligned to the definition adopted for Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC ⁽¹⁾, has the same content as the one laid down in the Aarhus Convention. The definition of 'document' in Regulation (EC) No 1049/2001 encompasses environmental information as defined in this Regulation.
- (9) It is appropriate for this Regulation to provide for a definition of plans and programmes taking into account the provisions of the Aarhus Convention, in parallel with the approach followed in relation to the Member States' obligations under existing EC law. 'Plans and programmes relating to the environment' should be defined in relation to their contribution to the achievement, or to their likely significant effect on the achievement, of the objectives and priorities of Community environmental policy. For the ten-year period starting from 22 July 2002, the Sixth Community Environment Action Programme establishes the objectives of Community environmental policy and the actions planned to attain these objectives. At the end of this period, a subsequent environmental action programme should be adopted.
- (10) In view of the fact that environmental law is constantly evolving, the definition of environmental law should refer to the objectives of Community policy on the environment as set out in the Treaty.
- (11) Administrative acts of individual scope should be open to possible internal review where they have legally binding and external effects. Similarly, omissions should be covered where there is an obligation to adopt an administrative act under environmental law. Given that acts adopted by a Community institution or body acting in a judicial or legislative capacity can be excluded, the same should apply to other inquiry procedures where the Community institution or body acts as an administrative review body under provisions of the Treaty.
- (12) The Aarhus Convention calls for public access to environmental information either following a request or by active dissemination by the authorities covered by the Convention. Regulation (EC) No 1049/2001 applies to the European Parliament, the Council and the Commission, as well as to agencies and similar bodies set up by a Community legal act. It lays down rules for these institutions that comply to a great extent with the rules laid down in the Aarhus Convention. It is necessary to extend the application of Regulation (EC) No 1049/2001 to all other Community institutions and bodies.
- (13) Where the Aarhus Convention contains provisions that are not, in whole or in part, to be found also in Regulation (EC) No 1049/2001, it is necessary to address those, in particular with regard to the collection and dissemination of environmental information.
- (14) For the right of public access to environmental information to be effective, environmental information of good quality is essential. It is therefore appropriate to introduce rules that oblige Community institutions and bodies to ensure such quality.
- (15) Where Regulation (EC) No 1049/2001 provides for exceptions, these should apply subject to any more specific provisions in this Regulation concerning requests for environmental information. The grounds for refusal as regards access to environmental information should be interpreted in a restrictive way, taking into account the public interest served by disclosure and whether the information requested relates to emissions in the environment. The term 'commercial interests' covers confidentiality agreements concluded by institutions or bodies acting in a banking capacity.
- (16) Pursuant to Decision No 2119/98/EC of the European Parliament and the Council of 24 September 1998 setting up a network for the epidemiological surveillance and control of communicable diseases in the Community ⁽²⁾, a network at Community level has already been set up to promote cooperation and coordination between the Member States, with the assistance of the Commission, with a view to improving the prevention and control in the Community of a number of communicable diseases. Decision No 1786/2002/EC of the European Parliament and of the Council ⁽³⁾ adopts a programme of Community action in the field of public health that complements national policies. Improving information and knowledge for the development of public health and enhancing the capability to respond rapidly and in a coordinated fashion to threats to health, both of which are elements of this programme, are objectives that are equally fully in line with the requirements of the Aarhus Convention. This Regulation should therefore apply without prejudice to Decision No 2119/98/EC and Decision No 1786/2002/EC.

⁽¹⁾ OJ L 41, 14.2.2003, p. 26.

⁽²⁾ OJ L 268, 3.10.1998, p. 1. Decision as last amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

⁽³⁾ OJ L 271, 9.10.2002, p. 1. Decision as amended by Decision No 786/2004/EC (OJ L 138, 30.4.2004, p. 7).

(17) The Aarhus Convention requires Parties to make provisions for the public to participate during the preparation of plans and programmes relating to the environment. Such provisions are to include reasonable timeframes for informing the public of the environmental decision-making in question. To be effective, public participation is to take place at an early stage, when all options are open. When laying down provisions on public participation, Community institutions and bodies, should identify the public which may participate. The Aarhus Convention also requires that, to the extent appropriate, Parties shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.

(18) Article 9(3) of the Aarhus Convention provides for access to judicial or other review procedures for challenging acts and omissions by private persons and public authorities which contravene provisions of law relating to the environment. Provisions on access to justice should be consistent with the Treaty. It is appropriate in this context that this Regulation address only acts and omissions by public authorities.

(19) To ensure adequate and effective remedies, including those available before the Court of Justice of the European Communities under the relevant provisions of the Treaty, it is appropriate that the Community institution or body which issued the act to be challenged or which, in the case of an alleged administrative omission, omitted to act, be given the opportunity to reconsider its former decision, or, in the case of an omission, to act.

(20) Non-governmental organisations active in the field of environmental protection which meet certain criteria, in particular in order to ensure that they are independent and accountable organisations that have demonstrated that their primary objective is to promote environmental protection, should be entitled to request internal review at Community level of acts adopted or of omissions under environmental law by a Community institution or body, with a view to their reconsideration by the institution or body in question.

(21) Where previous requests for internal review have been unsuccessful, the non-governmental organisation concerned should be able to institute proceedings before the Court of Justice in accordance with the relevant provisions of the Treaty.

(22) This Regulation respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on the European Union and reflected in the Charter of Fundamental Rights of the European Union, in particular Article 37 thereof,

HAVE ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

Article 1

Objective

1. The objective of this Regulation is to contribute to the implementation of the obligations arising under the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, hereinafter referred to as 'the Aarhus Convention', by laying down rules to apply the provisions of the Convention to Community institutions and bodies, in particular by:

- (a) guaranteeing the right of public access to environmental information received or produced by Community institutions or bodies and held by them, and by setting out the basic terms and conditions of, and practical arrangements for, the exercise of that right;
- (b) ensuring that environmental information is progressively made available and disseminated to the public in order to achieve its widest possible systematic availability and dissemination. To that end, the use, in particular, of computer telecommunication and/or electronic technology, where available, shall be promoted;
- (c) providing for public participation concerning plans and programmes relating to the environment;
- (d) granting access to justice in environmental matters at Community level under the conditions laid down by this Regulation.

2. In applying the provisions of this Regulation, the Community institutions and bodies shall endeavour to assist and provide guidance to the public with regard to access to information, participation in decision-making and access to justice in environmental matters.

Article 2

Definitions

1. For the purpose of this Regulation:

- (a) 'applicant' means any natural or legal person requesting environmental information;
- (b) 'the public' means one or more natural or legal persons, and associations, organisations or groups of such persons;

- (c) 'Community institution or body' means any public institution, body, office or agency established by, or on the basis of, the Treaty except when acting in a judicial or legislative capacity. However, the provisions under Title II shall apply to Community institutions or bodies acting in a legislative capacity;
- (d) 'environmental information' means any information in written, visual, aural, electronic or any other material form on:
- (i) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (ii) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in point (i);
 - (iii) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in points (i) and (ii) as well as measures or activities designed to protect those elements;
 - (iv) reports on the implementation of environmental legislation;
 - (v) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in point (iii);
 - (vi) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures in as much as they are or may be affected by the state of the elements of the environment referred to in point (i) or, through those elements, by any of the matters referred to in points (ii) and (iii);
- (e) 'plans and programmes relating to the environment' means plans and programmes,
- (i) which are subject to preparation and, as appropriate, adoption by a Community institution or body;
 - (ii) which are required under legislative, regulatory or administrative provisions; and
 - (iii) which contribute to, or are likely to have significant effects on, the achievement of the objectives of Community environmental policy, such as laid down in the Sixth Community Environment Action Programme, or in any subsequent general environmental action programme.

General environmental action programmes shall also be considered as plans and programmes relating to the environment.

This definition shall not include financial or budget plans and programmes, namely those laying down how particular projects or activities should be financed or those related to the proposed annual budgets, internal work programmes of a Community institution or body, or emergency plans and programmes designed for the sole purpose of civil protection;

- (f) 'environmental law' means Community legislation which, irrespective of its legal basis, contributes to the pursuit of the objectives of Community policy on the environment as set out in the Treaty: preserving, protecting and improving the quality of the environment, protecting human health, the prudent and rational utilisation of natural resources, and promoting measures at international level to deal with regional or worldwide environmental problems;
- (g) 'administrative act' means any measure of individual scope under environmental law, taken by a Community institution or body, and having legally binding and external effects;
- (h) 'administrative omission' means any failure of a Community institution or body to adopt an administrative act as defined in (g).

2. Administrative acts and administrative omissions shall not include measures taken or omissions by a Community institution or body in its capacity as an administrative review body, such as under:

- (a) Articles 81, 82, 86 and 87 of the Treaty (competition rules);
- (b) Articles 226 and 228 of the Treaty (infringement proceedings);
- (c) Article 195 of the Treaty (Ombudsman proceedings);
- (d) Article 280 of the Treaty (OLAF proceedings).

TITLE II

ACCESS TO ENVIRONMENTAL INFORMATION

Article 3

Application of Regulation (EC) No 1049/2001

Regulation (EC) No 1049/2001 shall apply to any request by an applicant for access to environmental information held by Community institutions and bodies without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.

For the purposes of this Regulation, the word 'institution' in Regulation (EC) No 1049/2001 shall be read as 'Community institution or body'.

Article 4

Collection and dissemination of environmental information

1. Community institutions and bodies shall organise the environmental information which is relevant to their functions and which is held by them, with a view to its active and systematic dissemination to the public, in particular by means of computer telecommunication and/or electronic technology in accordance with Articles 11(1) and (2), and 12 of Regulation (EC) No 1049/2001. They shall make this environmental information progressively available in electronic databases that are easily accessible to the public through public telecommunication networks. To that end, they shall place the environmental information that they hold on databases and equip these with search aids and other forms of software designed to assist the public in locating the information they require.

The information made available by means of computer telecommunication and/or electronic technology need not include information collected before the entry into force of this Regulation unless it is already available in electronic form. Community institutions and bodies shall as far as possible indicate where information collected before entry into force of this Regulation which is not available in electronic form is located.

Community institutions and bodies shall make all reasonable efforts to maintain environmental information held by them in forms or formats that are readily reproducible and accessible by computer telecommunications or by other electronic means.

2. The environmental information to be made available and disseminated shall be updated as appropriate. In addition to the documents listed in Article 12(2) and (3) and in Article 13(1) and (2) of Regulation (EC) No 1049/2001, the databases or registers shall include the following:

- (a) texts of international treaties, conventions or agreements, and of Community legislation on the environment or relating to it, and of policies, plans and programmes relating to the environment;
- (b) progress reports on the implementation of the items referred to under (a) where prepared or held in electronic form by Community institutions or bodies;
- (c) steps taken in proceedings for infringements of Community law from the stage of the reasoned opinion pursuant to Article 226(1) of the Treaty;
- (d) reports on the state of the environment as referred to in paragraph 4;

- (e) data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment;
- (f) authorisations with a significant impact on the environment, and environmental agreements, or a reference to the place where such information can be requested or accessed;
- (g) environmental impact studies and risk assessments concerning environmental elements, or a reference to the place where such information can be requested or accessed.

3. In appropriate cases, Community institutions and bodies may satisfy the requirements of paragraphs 1 and 2 by creating links to Internet sites where the information can be found.

4. The Commission shall ensure that, at regular intervals not exceeding four years, a report on the state of the environment, including information on the quality of, and pressures on, the environment is published and disseminated.

Article 5

Quality of the environmental information

1. Community institutions and bodies shall, insofar as is within their power, ensure that any information that is compiled by them, or on their behalf, is up-to-date, accurate and comparable.

2. Community institutions and bodies shall, upon request, inform the applicant of the place where information on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling the information can be found, if it is available. Alternatively, they may refer them to the standardised procedure that was used.

Article 6

Application of exceptions concerning requests for access to environmental information

1. As regards Article 4(2), first and third indents, of Regulation (EC) No 1049/2001, with the exception of investigations, in particular those concerning possible infringements of Community law, an overriding public interest in disclosure shall be deemed to exist where the information requested relates to emissions into the environment. As regards the other exceptions set out in Article 4 of Regulation (EC) No 1049/2001, the grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and whether the information requested relates to emissions into the environment.

2. In addition to the exceptions set out in Article 4 of Regulation (EC) No 1049/2001, Community institutions and bodies may refuse access to environmental information where disclosure of the information would adversely affect the protection of the environment to which the information relates, such as the breeding sites of rare species.

*Article 7***Requests for access to environmental information which is not held by a Community institution or body**

Where a Community institution or body receives a request for access to environmental information and where this information is not held by that Community institution or body, it shall, as promptly as possible, but within 15 working days at the latest, inform the applicant of the Community institution or body or the public authority within the meaning of Directive 2003/4/EC to which it believes it is possible to apply for the information requested or transfer the request to the relevant Community institution or body or the public authority and inform the applicant accordingly.

*Article 8***Cooperation**

In the event of an imminent threat to human health, life or the environment, whether caused by human activities or due to natural causes, Community institutions and bodies shall, upon request of public authorities within the meaning of Directive 2003/4/EC, collaborate with and assist those public authorities in order to enable the latter to disseminate immediately and without delay to the public that might be affected all environmental information which could enable it to take measures to prevent or mitigate harm arising from the threat, to the extent that this information is held by or on behalf of Community institutions and bodies and/or those public authorities.

The first subparagraph shall apply without prejudice to any specific obligation laid down by Community legislation, in particular by Decision No 2119/98/EC and by Decision No 1786/2002/EC.

TITLE III

PUBLIC PARTICIPATION CONCERNING PLANS AND PROGRAMMES RELATING TO THE ENVIRONMENT*Article 9*

1. Community institutions and bodies shall provide, through appropriate practical and/or other provisions, early and effective opportunities for the public to participate during the preparation, modification or review of plans or programmes relating to the environment when all options are still open. In particular, where the Commission prepares a proposal for such a plan or programme which is submitted to other Community institutions or bodies for decision, it shall provide for public participation at that preparatory stage.

2. Community institutions and bodies shall identify the public affected or likely to be affected by, or having an interest in, a

plan or programme of the type referred to in paragraph 1, taking into account the objectives of this Regulation.

3. Community institutions and bodies shall ensure that the public referred to in paragraph 2 is informed, whether by public notices or other appropriate means, such as electronic media where available, of:

- (a) the draft proposal, where available;
- (b) the environmental information or assessment relevant to the plan or programme under preparation, where available; and
- (c) practical arrangements for participation, including:
 - (i) the administrative entity from which the relevant information may be obtained,
 - (ii) the administrative entity to which comments, opinions or questions may be submitted, and
 - (iii) reasonable time-frames allowing sufficient time for the public to be informed and to prepare and participate effectively in the environmental decision-making process.

4. A time limit of at least eight weeks shall be set for receiving comments. Where meetings or hearings are organised, prior notice of at least four weeks shall be given. Time limits may be shortened in urgent cases or where the public has already had the opportunity to comment on the plan or programme in question.

5. In taking a decision on a plan or programme relating to the environment, Community institutions and bodies shall take due account of the outcome of the public participation. Community institutions and bodies shall inform the public of that plan or programme, including its text, and of the reasons and considerations upon which the decision is based, including information on public participation.

TITLE IV

INTERNAL REVIEW AND ACCESS TO JUSTICE*Article 10***Request for internal review of administrative acts**

1. Any non-governmental organisation which meets the criteria set out in Article 11 is entitled to make a request for internal review to the Community institution or body that has adopted an administrative act under environmental law or, in case of an alleged administrative omission, should have adopted such an act.

Such a request must be made in writing and within a time limit not exceeding six weeks after the administrative act was adopted, notified or published, whichever is the latest, or, in the case of an alleged omission, six weeks after the date when the administrative act was required. The request shall state the grounds for the review.

2. The Community institution or body referred to in paragraph 1 shall consider any such request, unless it is clearly unsubstantiated. The Community institution or body shall state its reasons in a written reply as soon as possible, but no later than 12 weeks after receipt of the request.

3. Where the Community institution or body is unable, despite exercising due diligence, to act in accordance with paragraph 2, it shall inform the non-governmental organisation which made the request as soon as possible and at the latest within the period mentioned in that paragraph, of the reasons for its failure to act and when it intends to do so.

In any event, the Community institution or body shall act within 18 weeks from receipt of the request.

Article 11

Criteria for entitlement at Community level

1. A non-governmental organisation shall be entitled to make a request for internal review in accordance with Article 10, provided that:
 - (a) it is an independent non-profit-making legal person in accordance with a Member State's national law or practice;
 - (b) it has the primary stated objective of promoting environmental protection in the context of environmental law;
 - (c) it has existed for more than two years and is actively pursuing the objective referred to under (b);
 - (d) the subject matter in respect of which the request for internal review is made is covered by its objective and activities.

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

Done at Strasbourg, 6 September 2006.

For the European Parliament
The President
J. BORRELL FONTELLES

For the Council
The President
P. LEHTOMÄKI

2. The Commission shall adopt the provisions which are necessary to ensure transparent and consistent application of the criteria mentioned in paragraph 1.

Article 12

Proceedings before the Court of Justice

1. The non-governmental organisation which made the request for internal review pursuant to Article 10 may institute proceedings before the Court of Justice in accordance with the relevant provisions of the Treaty.
2. Where the Community institution or body fails to act in accordance with Article 10(2) or (3) the non-governmental organisation may institute proceedings before the Court of Justice in accordance with the relevant provisions of the Treaty.

TITLE V

FINAL PROVISIONS

Article 13

Application measures

Where necessary, Community institutions and bodies shall adapt their rules of procedure to the provisions of this Regulation. These adaptations shall take effect from 28 June 2007.

Article 14

Entry into force

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

It shall apply from 28 June 2007.

DIRECTIVE 2006/44/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 6 September 2006
on the quality of fresh waters needing protection or improvement in order to support fish life
(codified version)
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

Having consulted the Committee of the Regions,

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

Whereas:

- (1) Council Directive 78/659/EEC of 18 July 1978 on the quality of fresh waters needing protection or improvement in order to support fish life ⁽³⁾ has been significantly amended on several occasions ⁽⁴⁾. In the interests of clarity and rationality that Directive should be codified.
- (2) The protection and improvement of the environment necessitates concrete measures to protect waters against pollution, including fresh waters capable of supporting fish life.
- (3) It is necessary from the ecological and economic viewpoint to safeguard fish populations from various harmful consequences resulting from the discharge of pollutant substances into the waters, such as, in particular, the reduction in number of fish belonging to a certain species and even in some cases the disappearance of a number of these species.
- (4) Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme ⁽⁵⁾ is designed to achieve levels of surface water quality that do not give rise to significant impacts on, and risks to, the environment.

(5) Discrepancies between the provisions applicable in the various Member States with regard to the quality of fresh water capable of supporting fish life may give rise to unequal conditions of competition and thus have a direct bearing on the functioning of the internal market.

(6) In order to attain the objectives of this Directive, Member States should designate the waters to which it will apply and set limit values corresponding to certain parameters. The waters so designated should be brought into conformity with these values within five years of this designation.

(7) Provision should be made that fresh waters capable of supporting fish life will, under certain conditions, be deemed to conform to the relevant parametric values even if a certain percentage of samples taken does not comply with the limits specified.

(8) To ensure that the quality of fresh waters capable of supporting fish life is checked, a minimum number of samples should be taken and the measurements relating to specified parameters, as annexed hereto, should be carried out. Such sampling may be reduced or discontinued in the light of the quality of the water.

(9) Member States are unable to control certain natural circumstances and it is therefore necessary to provide for the possibility of derogating from this Directive in certain cases.

(10) Technical and scientific progress may call for the rapid adaptation of certain of the requirements laid down in Annex I. In order to facilitate the introduction of the measures required for this purpose, a procedure should be laid down whereby close cooperation would be established between Member States and the Commission 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 ⁽⁶⁾.

(11) This Directive should be without prejudice to the obligations of the Member States relating to the time limits for transposition into national law of the Directives set out in Part B of Annex III,

⁽¹⁾ OJ C 117, 30.4.2004, p. 11.

⁽²⁾ Opinion of the European Parliament of 21 April 2004 (OJ C 104 E, 30.4.2004, p. 545) and Council Decision of 25 April 2006.

⁽³⁾ OJ L 222, 14.8.1978, p. 1. Directive as last amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

⁽⁴⁾ See Part A of Annex III.

⁽⁵⁾ OJ L 242, 10.9.2002, p. 1.

⁽⁶⁾ OJ L 184, 17.7.1999, p. 23.

HAVE ADOPTED THIS DIRECTIVE:

Article 4

Article 1

1. This Directive concerns the quality of fresh waters and shall apply to those waters designated by the Member States as needing protection or improvement in order to support fish life.

2. This Directive shall not apply to waters in natural or artificial fish ponds used for intensive fish-farming.

3. The aim of this Directive is to protect or improve the quality of those running or standing fresh waters which support, or which, if pollution were reduced or eliminated, would become capable of supporting, fish belonging to:

- (a) indigenous species offering a natural diversity;
- (b) species the presence of which is judged desirable for water management purposes by the competent authorities of the Member States.

4. For the purposes of this Directive:

- (a) salmonid waters shall mean waters which support or become capable of supporting fish belonging to species such as salmon (*Salmo salar*), trout (*Salmo trutta*), grayling (*Thymallus thymallus*) and whitefish (*Coregonus*);
- (b) cyprinid waters shall mean waters which support or become capable of supporting fish belonging to the cyprinids (*Cyprinidae*), or other species such as pike (*Esox lucius*), perch (*Perca fluviatilis*) and eel (*Anguilla anguilla*).

Article 2

The physical and chemical parameters applicable to the waters designated by the Member States are listed in Annex I.

For the purposes of applying these parameters, waters are divided into salmonid waters and cyprinid waters.

Article 3

1. Member States shall, for the designated waters, set values for the parameters listed in Annex I, in so far as values are listed in column G or in column I. They shall comply with the comments contained in each of these two columns.

2. Member States shall not set values less stringent than those listed in column I of Annex I and shall endeavour to respect the values in column G taking into account the principle set out in Article 8.

1. Member States shall designate salmonid waters and cyprinid waters and may subsequently make additional designations.

2. Member States may revise the designation of certain waters owing to factors unforeseen at the time of designation, taking into account the principle set out in Article 8.

Article 5

Member States shall establish programmes in order to reduce pollution and to ensure that designated waters conform, within five years following designation in accordance with Article 4, to both the values set by the Member States in accordance with Article 3 and the comments contained in columns G and I of Annex I.

Article 6

1. For the purposes of implementing Article 5, the designated waters shall be deemed to conform to this Directive if samples of such waters, taken at the minimum frequency specified in Annex I at the same sampling point and over a period of 12 months, show that they conform to both the values set by the Member States in accordance with Article 3 and the comments contained in columns G and I of Annex I, in the case of:

- (a) 95 % of the samples for the parameters: pH, BOD₅, nitrites, non-ionised ammonia, total ammonium, total residual chlorine, total zinc and dissolved copper. When the sampling frequency is lower than one sample per month, both the abovementioned values and comments shall be respected for all the samples;
- (b) the percentages listed in Annex I for the parameters: temperature and dissolved oxygen;
- (c) the average concentration set for the parameter: suspended solids.

2. Instances in which the values set by Member States in accordance with Article 3 or the comments contained in columns G and I of Annex I are not respected shall not be taken into consideration in the calculation of the percentages provided for in paragraph 1 when they are the result of floods or other natural disasters.

Article 7

1. The competent authorities in the Member States shall carry out sampling operations, the minimum frequency of which is laid down in Annex I.

2. Where the competent authority records that the quality of designated waters is appreciably higher than that which would result from the application of the values set in accordance with Article 3 and the comments contained in columns G and I of Annex I, the frequency of the sampling may be reduced. Where there is no pollution or no risk of deterioration in the quality of the waters, the competent authority concerned may decide that no sampling is necessary.

3. If sampling shows that a value set by a Member State in accordance with Article 3 or a comment contained in columns G or I of Annex I is not respected, the Member State shall establish whether this is the result of chance, a natural phenomenon or pollution and shall adopt appropriate measures.

4. The exact sampling point, the distance from this point to the nearest point where pollutants are discharged and the depth at which the samples are to be taken shall be fixed by the competent authority of each Member State on the basis of local environmental conditions in particular.

5. Certain reference methods of analysis for calculating the value of the parameters concerned are set out in Annex I. Laboratories which employ other methods shall ensure that the results obtained are equivalent or comparable to those specified in Annex I.

Article 8

Implementation of the measures taken pursuant to this Directive may on no account lead, either directly or indirectly, to increased pollution of fresh water.

Article 9

Member States may at any time set more stringent values for designated waters than those laid down in this Directive. They may also lay down provisions relating to parameters other than those provided for in this Directive.

Article 10

When fresh waters cross or form national frontiers between Member States and which one of the States concerned is considering designating, the States concerned shall consult each other in order to determine the stretches of such waters to which this Directive might apply and the consequences to be drawn from the common quality objectives; these consequences shall be determined, after formal consultations, by each State concerned. The Commission may participate in these deliberations.

Article 11

Member States may derogate from this Directive:

- (a) in the case of certain parameters marked (0) in Annex I, because of exceptional weather or special geographical conditions;

- (b) when designated waters undergo natural enrichment in certain substances, so that the values set out in Annex I are not respected.

Natural enrichment means the process whereby, without human intervention, a given body of water receives from the soil certain substances contained therein.

Article 12

Such amendments as are necessary for adapting to technical and scientific progress the G values for the parameters and the methods of analysis contained in Annex I shall be adopted in accordance with the procedure referred to in Article 13(2).

Article 13

1. The Commission shall be assisted by a committee on adaptation to technical and scientific progress, hereinafter referred to as '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 14

For the purposes of applying this Directive, Member States shall provide the Commission with information concerning:

- (a) the waters designated in accordance with Article 4(1), in summary form;
- (b) the revision of the designation of certain waters in accordance with Article 4(2);
- (c) the provisions laid down in order to establish new parameters in accordance with Article 9;
- (d) the application of the derogations from the values listed in column I of Annex I.

More generally, Member States shall provide the Commission, on a reasoned request from the latter, with any information necessary for the application of this Directive.

Article 15

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

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

Article 16

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

Article 17

Directive 78/659/EEC is hereby repealed, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law of the Directives set out in Part B of Annex III.

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

Article 18

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

Article 19

This Directive is addressed to the Member States.

Done at Strasbourg, 6 September 2006.

For the European Parliament
The President
J. BORRELL FONTELLES

For the Council
The President
P. LEHTOMÄKI

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

Parameter	Salmonid waters		Cyprinid waters		Methods of analysis or inspection	Minimum sampling and measuring frequency	Observations
	G	I	G	I			
2. Dissolved oxygen (mg/l O ₂)	50 % ≥ 9 100 % ≥ 7	50 % ≥ 9 When the oxygen concentration falls below 6 mg/l, Member States shall implement the provisions of Article 7(3). The competent authority must prove that this situation will have no harmful consequences for the balanced development of the fish population	50 % ≥ 8 100 % ≥ 5	50 % ≥ 7 When the oxygen concentration falls below 4 mg/l, Member States shall implement the provisions of Article 7(3). The competent authority must prove that this situation will have no harmful consequences for the balanced development of the fish population	Winkler's method or specific electrodes (electro-chemical method)	Monthly, minimum one sample representative of low oxygen conditions of the day of sampling However, where major daily variations are suspected, a minimum of two day samples in one day shall be taken	
3. pH		6 to 9 (0) ⁽¹⁾		6 to 9 (0) ⁽¹⁾	Electrometry calibration by means of two solutions with known pH values, preferably on either side of, and close to the pH being measured	Monthly	
4. Suspended solids (mg/l)	≤ 25 (0)		≤ 25 (0)		Filtration through a 0,45 µm filtering membrane, or centrifugation (five minutes minimum, average acceleration of 2 800 to 3 200 g) drying at 105 °C and weighing		The values shown are average concentrations and do not apply to suspended solids with harmful chemical properties Floods are liable to cause particularly high concentrations
5. BOD ₅ (mg/l O ₂)	≤ 3		≤ 6		Determination of O ₂ by the Winkler method before and after five days incubation in complete darkness at 20 ± 1 °C (nitrification should not be inhibited)		

Parameter	Salmonid waters		Cyprinid waters		Methods of analysis or inspection	Minimum sampling and measuring frequency	Observations
	G	I	G	I			
6. Total phosphorus (mg/l P)					Molecular absorption spectrophotometry		<p>In the case of lakes of average depth between 18 and 300 m, the following formula could be applied:</p> $L \leq 10 \frac{\bar{Z}}{T_w} (1 + \sqrt{T_w})$ <p>where:</p> <p>L = loading expressed as mg P per square metre lake surface in one year</p> <p>\bar{Z} = mean depth of lake in metres</p> <p>T_w = theoretical renewal time of lake water in years</p> <p>In other cases limit values of 0,2 mg/l for salmonid and of 0,4 mg/l for cyprinid waters, expressed as PO_4, may be regarded as indicative in order to reduce eutrophication</p>
7. Nitrites (mg/l NO_2)	$\leq 0,01$		$\leq 0,03$		Molecular absorption spectrophotometry		
8. Phenolic compounds (mg/l C_6H_5OH)		⁽²⁾		⁽²⁾	By taste		An examination by taste shall be made only where the presence of phenolic compounds is presumed
9. Petroleum hydrocarbons		⁽³⁾		⁽³⁾	Visual By taste	Monthly	A visual examination shall be made regularly once a month, with an examination by taste only where the presence of hydrocarbons is presumed

Parameter	Salmonid waters		Cyprinid waters		Methods of analysis or inspection	Minimum sampling and measuring frequency	Observations
	G	I	G	I			
10. Non-ionised ammonia (mg/l NH ₃)	≤ 0,005	≤ 0,025	≤ 0,005	≤ 0,025	Molecular absorption spectrophotometry using indophenol blue or Nessler's method associated with pH and temperature determination	Monthly	Values for non-ionised ammonia may be exceeded in the form of minor peaks in the daytime
11. Total ammonium (mg/l NH ₄)	≤ 0,04	≤ 1 (*)	≤ 0,2	≤ 1 (*)			
12. Total residual chlorine (mg/l HOCl)		≤ 0,005		≤ 0,005	DPD-method (diethyl-p-phenylenediamine)	Monthly	The I-values correspond to pH = 6 Higher concentrations of total chlorine can be accepted if the pH is higher
13. Total zinc (mg/l Zn)		≤ 0,3		≤ 1,0	Atomic absorption spectrometry	Monthly	The I-values correspond to a water hardness of 100 mg/l CaCO ₃ For hardness levels between 10 and 500 mg/l corresponding limit values can be found in Annex II
14. Dissolved copper (mg/l Cu)	≤ 0,04		≤ 0,04		Atomic absorption spectrometry		The G-values correspond to a water hardness of 100 mg/l CaCO ₃ For hardness levels between 10 and 300 mg/l corresponding limit values can be found in Annex II

(1) Artificial pH variations with respect to the unaffected values shall not exceed ± 0,5 of a pH unit within the limits falling between 6,0 and 9,0 provided that these variations do not increase the harmfulness of other substances present in the water.

(2) Phenolic compounds must not be present in such concentrations that they adversely affect fish flavour.

(3) Petroleum products must not be present in water in such quantities that they:

- form a visible film on the surface of the water or form coatings on the beds of water-courses and lakes,
- impart a detectable 'hydrocarbon' taste to fish,
- produce harmful effects in fish.

(4) In particular geographical or climatic conditions and particularly in cases of low water temperature and of reduced nitrification or where the competent authority can prove that there are no harmful consequences for the balanced development of the fish population, Member States may fix values higher than 1 mg/l.

General observation:

It should be noted that the parametric values listed in this Annex assume that the other parameters, whether mentioned in this Annex or not, are favourable. This implies, in particular, that the concentrations of other harmful substances are very low.

Where two or more harmful substances are present in mixture, joint effects (additive, synergic or antagonistic effects) may be significant.

Abbreviations:

G = guide.

I = mandatory.

(0) = derogations are possible in accordance with Article 11.

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ANNEX II

PARTICULARS REGARDING TOTAL ZINC AND DISSOLVED COPPER

Total zinc*(see Annex I, No 13, 'Observations' column)*Total zinc concentrations (mg/l Zn) for different water hardness values between 10 and 500 mg/l CaCO₃:

	Water hardness (mg/l CaCO ₃)			
	10	50	100	500
Salmonid waters (mg/l Zn)	0,03	0,2	0,3	0,5
Cyprinid waters (mg/l Zn)	0,3	0,7	1,0	2,0

Dissolved copper*(See Annex I, No 14, 'Observations' column)*Dissolved copper concentrations (mg/l Cu) for different water hardness values between 10 and 300 mg/l CaCO₃:

	Water hardness (mg/l CaCO ₃)			
	10	50	100	300
mg/l Cu	0,005 ⁽¹⁾	0,022	0,04	0,112

⁽¹⁾ The presence of fish in waters containing higher concentrations of copper may indicate a predominance of dissolved organo-cupric complexes.

ANNEX III

Part A**Repealed Directive with its successive amendments***(referred to in Article 17)*

Council Directive 78/659/EEC (OJ L 222, 14.8.1978, p. 1) ⁽¹⁾	
Council Directive 91/692/EEC (OJ L 377, 31.12.1991, p. 48)	Annex I, point (c) only
Council Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36)	Annex III, point 26 only

Part B**List of time-limits for transposition into national law***(referred to in Article 17)*

Directive	Time-limit for transposition
78/659/EEC	20 July 1980
91/692/EEC	1 January 1993

⁽¹⁾ Directive 78/659/EEC has also been amended by the following unrepealed acts:

- the 1979 Act of Accession,
- the 1985 Act of Accession,
- the 1994 Act of Accession.

ANNEX IV

CORRELATION TABLE

Directive 78/659/EEC	This Directive
Article 1(1) and (2)	Article 1(1) and (2)
Article 1(3), introductory phrase	Article 1(3), introductory phrase
Article 1(3), first indent	Article 1(3)(a)
Article 1(3), second indent	Article 1(3)(b)
Article 1(4), introductory phrase	Article 1(4), introductory phrase
Article 1(4), first indent	Article 1(4)(a)
Article 1(4), second indent	Article 1(4)(b)
Article 2(1)	Article 2, first subparagraph
Article 2(2)	Article 2, second subparagraph
Article 3	Article 3
Article 4(1) and (2)	Article 4(1)
Article 4(3)	Article 4(2)
Article 5	Article 5
Article 6(1), introductory phrase	Article 6(1), introductory phrase
Article 6(1), first indent	Article 6(1)(a)
Article 6(1), second indent	Article 6(1)(b)
Article 6(1), third indent	Article 6(1)(c)
Article 6(2)	Article 6(2)
Article 7	Article 7
Article 8	Article 8
Article 9	Article 9
Article 10	Article 10
Article 11	Article 11
Article 12	Article 12
Article 13(1) and Article 14	Article 13
Article 15, first subparagraph, introductory phrase	Article 14, first subparagraph, introductory phrase
Article 15, first subparagraph, first indent	Article 14, first subparagraph, point (a)
Article 15, first subparagraph, second indent	Article 14, first subparagraph, point (b)
Article 15, first subparagraph, third indent	Article 14, first subparagraph, point (c)
Article 15, first subparagraph, fourth indent	Article 14, first subparagraph, point (d)
Article 15, second subparagraph	Article 14, second subparagraph
Article 16	Article 15
Article 17(1)	—
Article 17(2)	Article 16
—	Article 17
—	Article 18
Article 18	Article 19
Annex I	Annex I
Annex II	Annex II
—	Annex III
—	Annex IV

DIRECTIVE 2006/68/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 6 September 2006
amending Council Directive 77/91/EEC as regards the formation of public limited liability companies
and the maintenance and alteration of their capital

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 44(1) thereof,

Having regard to the proposal from the Commission,

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

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

Whereas:

(1) The second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent ⁽³⁾, sets out the requirements for several capital-related measures taken by such companies.

(2) In its Communication of 21 May 2003 to the Council and the European Parliament entitled 'Modernising Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward' the Commission draws the conclusion that a simplification and modernisation of Directive 77/91/EEC would significantly contribute to the promotion of business efficiency and competitiveness without reducing the protection offered to shareholders and creditors. Those objectives have the first priority but do not affect the need to proceed without delay to a general examination of the feasibility of alternatives to the capital maintenance regime which would adequately protect the interests of creditors and shareholders of a public limited liability company.

(3) Member States should be able to permit public limited liability companies to allot shares for consideration other than in cash without requiring them to obtain a special expert valuation in cases in which there is a clear point of reference for the valuation of such consideration. Nonetheless, the right of minority shareholders to require such valuation should be guaranteed.

(4) Public limited liability companies should be allowed to acquire their own shares up to the limit of the company's distributable reserves and the period for which such an acquisition may be authorised by the general meeting should be increased so as to enhance flexibility and reduce the administrative burden for companies which have to react promptly to market developments affecting the price of their shares.

(5) Member States should be able to permit public limited liability companies to grant financial assistance with a view to the acquisition of their shares by a third party up to the limit of the company's distributable reserves so as to increase flexibility with regard to changes in the ownership structure of the share capital of companies. This possibility should be subject to safeguards, having regard to this Directive's objective of protecting both shareholders and third parties.

(6) In order to enhance standardised creditor protection in all Member States, creditors should be able to resort, under certain conditions, to judicial or administrative proceedings where their claims are at stake as a consequence of a reduction in the capital of a public limited liability company.

(7) In order to ensure that market abuse is prevented, Member States should take into account, for the purpose of implementation of this Directive, the provisions of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) ⁽⁴⁾, Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments ⁽⁵⁾ and Commission Directive 2004/72/EC of 29 April 2004 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions ⁽⁶⁾.

⁽¹⁾ OJ C 294, 25.11.2005, p. 1.

⁽²⁾ Opinion of the European Parliament of 14 March 2006 (not yet published in the Official Journal) and Council Decision of 24 July 2006.

⁽³⁾ OJ L 26, 31.1.1977, p. 1. Directive as last amended by the 2003 Act of Accession.

⁽⁴⁾ OJ L 96, 12.4.2003, p. 16.

⁽⁵⁾ OJ L 336, 23.12.2003, p. 33.

⁽⁶⁾ OJ L 162, 30.4.2004, p. 70.

- (8) Directive 77/91/EEC should therefore be amended accordingly.
- (9) In accordance with point 34 of the Interinstitutional Agreement on better law-making ⁽¹⁾, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 77/91/EEC is hereby amended as follows:

1. in Article 1(1), the 21st indent shall be replaced by the following:

— in Hungary:

nyilvánosan működő részvénytársaság;';

2. the following Articles shall be inserted:

'Article 10a

1. Member States may decide not to apply Article 10(1), (2) and (3) where, upon a decision of the administrative or management body, transferable securities as defined in point 18 of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (*) or money-market instruments as defined in point 19 of Article 4(1) of that Directive are contributed as consideration other than in cash, and those securities or money-market instruments are valued at the weighted average price at which they have been traded on one or more regulated market(s) as defined in point 14 of Article 4(1) of that Directive during a sufficient period, to be determined by national law, preceding the effective date of the contribution of the respective consideration other than in cash.

However, where that price has been affected by exceptional circumstances that would significantly change the value of the asset at the effective date of its contribution, including situations where the market for such transferable securities or money-market instruments has become illiquid, a revaluation shall be carried out on the initiative and under the responsibility of the administrative or management body. For the purposes of the aforementioned revaluation, Article 10(1), (2) and (3) shall apply.

2. Member States may decide not to apply Article 10(1), (2) and (3) where, upon a decision of the administrative or management body, assets, other than the transferable securities and money-market instruments referred to in paragraph 1, are contributed as consideration other than in cash which have already been subject to a fair value opinion by a

recognised independent expert and where the following conditions are fulfilled:

- (a) the fair value is determined for a date not more than six months before the effective date of the asset contribution;
- (b) the valuation has been performed in accordance with generally accepted valuation standards and principles in the Member State, which are applicable to the kind of assets to be contributed.

In the case of new qualifying circumstances that would significantly change the fair value of the asset at the effective date of its contribution, a revaluation shall be carried out on the initiative and under the responsibility of the administrative or management body. For the purposes of the aforementioned revaluation, Article 10(1), (2) and (3) shall apply.

In the absence of such a revaluation, one or more shareholders holding an aggregate percentage of at least 5 % of the company's subscribed capital on the day the decision on the increase in the capital is taken may demand a valuation by an independent expert, in which case Article 10(1), (2) and (3) shall apply. Such shareholder(s) may submit a demand up until the effective date of the asset contribution, provided that, at the date of the demand, the shareholder(s) in question still hold(s) an aggregate percentage of at least 5 % of the company's subscribed capital, as it was on the day the decision on the increase in the capital was taken.

3. Member States may decide not to apply Article 10(1), (2) and (3) where, upon a decision of the administrative or management body, assets, other than the transferable securities and money-market instruments referred to in paragraph 1, are contributed as consideration other than in cash whose fair value is derived by individual asset from the statutory accounts of the previous financial year provided that the statutory accounts have been subject to an audit in accordance with Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts (**).

The second and third subparagraphs of paragraph 2 shall apply *mutatis mutandis*.

Article 10b

1. Where consideration other than in cash as referred to in Article 10a occurs without an expert's report as referred to in Article 10(1), (2) and (3), in addition to the requirements set out in point (h) of Article 3 and within one month after the effective date of the asset contribution, a declaration containing the following shall be published:

- (a) a description of the consideration other than in cash at issue;

(¹) OJ C 321, 31.12.2003, p. 1.

- (b) its value, the source of this valuation and, where appropriate, the method of valuation;
- (c) a statement whether the value arrived at corresponds at least to the number, to the nominal value or, where there is no nominal value, the accountable par and, where appropriate, to the premium on the shares to be issued for such consideration;
- (d) a statement that no new qualifying circumstances with regard to the original valuation have occurred.

That publication shall be effected in the manner laid down by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC.

2. Where consideration other than in cash is proposed to be made without an expert's report as referred to in Article 10(1), (2) and (3) in relation to an increase in the capital proposed to be made under Article 25(2), an announcement containing the date when the decision on the increase was taken and the information listed in paragraph 1 shall be published, in the manner laid down by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC, before the contribution of the asset as consideration other than in cash is to become effective. In that event, the declaration pursuant to paragraph 1 shall be limited to the statement that no new qualifying circumstances have occurred since the aforementioned announcement was published.

3. Each Member State shall provide for adequate safeguards ensuring compliance with the procedure set out in Article 10a and in this Article where a contribution for a consideration other than in cash is made without an expert's report as referred to in Article 10(1), (2) and (3).

(*) OJ L 145, 30.4.2004, p. 1. Directive as last amended by Directive 2006/31/EC (OJ L 114, 27.4.2006, p. 60).

(**) OJ L 157, 9.6.2006, p. 87.;

3. in Article 11(1), the first subparagraph shall be amended as follows:

(a) 'Article 10' shall be replaced by 'Article 10(1), (2) and (3)';

(b) the following sentence shall be added:

'Articles 10a and 10b shall apply *mutatis mutandis*.';

4. in Article 19, paragraph 1 shall be replaced by the following:

'1. Without prejudice to the principle of equal treatment of all shareholders who are in the same position, and to Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (*), Member States may permit a company to acquire its own shares, either itself or through a person acting in his own name but on the company's behalf. To the extent that the acquisitions are permitted,

Member States shall make such acquisitions subject to the following conditions:

(a) authorisation shall be given by the general meeting, which shall determine the terms and conditions of such acquisitions, and, in particular, the maximum number of shares to be acquired, the duration of the period for which the authorisation is given, the maximum length of which shall be determined by national law without, however, exceeding five years, and, in the case of acquisition for value, the maximum and minimum consideration. Members of the administrative or management body shall satisfy themselves that, at the time when each authorised acquisition is effected, the conditions referred to in points (b) and (c) are respected;

(b) the acquisitions, including shares previously acquired by the company and held by it, and shares acquired by a person acting in his own name but on the company's behalf, may not have the effect of reducing the net assets below the amount mentioned in points (a) and (b) of Article 15(1);

(c) only fully paid-up shares may be included in the transaction.

Furthermore, Member States may subject acquisitions within the meaning of the first subparagraph to any of the following conditions:

(i) that the nominal value or, in the absence thereof, the accountable par of the acquired shares, including shares previously acquired by the company and held by it, and shares acquired by a person acting in his own name but on the company's behalf, may not exceed a limit to be determined by Member States. This limit may not be lower than 10 % of the subscribed capital;

(ii) that the power of the company to acquire its own shares within the meaning of the first subparagraph, the maximum number of shares to be acquired, the duration of the period for which the power is given and the maximum or minimum consideration are laid down in the statutes or in the instrument of incorporation of the company;

(iii) that the company complies with appropriate reporting and notification requirements;

(iv) that certain companies, as determined by Member States, may be required to cancel the acquired shares provided that an amount equal to the nominal value of the shares cancelled must be included in a reserve which cannot be distributed to the shareholders, except in the event of a reduction in the subscribed capital. This reserve may be used only for the purposes of increasing the subscribed capital by the capitalisation of reserves;

(v) that the acquisition shall not prejudice the satisfaction of creditors' claims.

(*) OJ L 96, 12.4.2003, p. 16.;

5. in Article 20(3), the words 'Article 15(1)(a)' shall be replaced by the words 'points (a) and (b) of Article 15(1)';
6. Article 23(1) shall be replaced by the following:

'1. Where Member States permit a company to, either directly or indirectly, advance funds or make loans or provide security, with a view to the acquisition of its shares by a third party, they shall make such transactions subject to the conditions set out in the second, third, fourth and fifth subparagraphs.

The transactions shall take place under the responsibility of the administrative or management body at fair market conditions, especially with regard to interest received by the company and with regard to security provided to the company for the loans and advances referred to in the first subparagraph. The credit standing of the third party or, in the case of multiparty transactions, of each counterparty thereto shall have been duly investigated.

The transactions shall be submitted by the administrative or management body to the general meeting for prior approval, whereby the general meeting shall act in accordance with the rules for a quorum and a majority laid down in Article 40. The administrative or management body shall present a written report to the general meeting, indicating the reasons for the transaction, the interest of the company in entering into such a transaction, the conditions on which the transaction is entered into, the risks involved in the transaction for the liquidity and solvency of the company and the price at which the third party is to acquire the shares. This report shall be submitted to the register for publication in accordance with Article 3 of Directive 68/151/EEC.

The aggregate financial assistance granted to third parties shall at no time result in the reduction of the net assets below the amount specified in points (a) and (b) of Article 15(1), taking into account also any reduction of the net assets that may have occurred through the acquisition, by the company or on behalf of the company, of its own shares in accordance with Article 19(1). The company shall include, among the liabilities in the balance sheet, a reserve, unavailable for distribution, of the amount of the aggregate financial assistance.

Where a third party by means of financial assistance from a company acquires that company's own shares within the meaning of Article 19(1) or subscribes for shares issued in the course of an increase in the subscribed capital, such acquisition or subscription shall be made at a fair price.;

7. the following Article shall be inserted:

'Article 23a

In cases where individual members of the administrative or management body of the company being party to a transaction referred to in Article 23(1), or of the administrative or management body of a parent undertaking within the meaning of Article 1 of Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts (*) or such parent

undertaking itself, or individuals acting in their own name, but on behalf of the members of such bodies or on behalf of such undertaking, are counterparties to such a transaction, Member States shall ensure through adequate safeguards that such transaction does not conflict with the company's best interests.

(*) OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2006/43/EC.;

8. in Article 27(2), the second subparagraph shall be replaced by the following:

'Article 10(2) and (3) and Articles 10a and 10b shall apply.;

9. Article 32(1) shall be replaced by the following:

'1. In the event of a reduction in the subscribed capital, at least the creditors whose claims antedate the publication of the decision on the reduction shall at least have the right to obtain security for claims which have not fallen due by the date of that publication. Member States may not set aside such a right unless the creditor has adequate safeguards, or unless such safeguards are not necessary having regard to the assets of the company.

Member States shall lay down the conditions for the exercise of the right provided for in the first subparagraph. In any event, Member States shall ensure that the creditors are authorised to apply to the appropriate administrative or judicial authority for adequate safeguards provided that they can credibly demonstrate that due to the reduction in the subscribed capital the satisfaction of their claims is at stake, and that no adequate safeguards have been obtained from the company.;

10. Article 41(1) shall be replaced by the following:

'1. Member States may derogate from Article 9(1), the first sentence of point (a) of Article 19(1), and Articles 25, 26 and 29 to the extent that such derogations are necessary for the adoption or application of provisions designed to encourage the participation of employees, or other groups of persons defined by national law, in the capital of undertakings.'

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 15 April 2008.

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

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Strasbourg, 6 September 2006.

For the European Parliament
The President
J. BORRELL FONTELLES

For the Council
The President
P. LEHTOMÄKI
