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

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I

(Acts whose publication is obligatory)

REGULATION (EC) No 1107/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 5 July 2006
concerning the rights of disabled persons and persons with reduced mobility when travelling by air
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

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

Having consulted of the Committee of the Regions,

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

Whereas:

- (1) The single market for air services should benefit citizens in general. Consequently, disabled persons and persons with reduced mobility, whether caused by disability, age or any other factor, should have opportunities for air travel comparable to those of other citizens. Disabled persons and persons with reduced mobility have the same right as all other citizens to free movement, freedom of choice and non-discrimination. This applies to air travel as to other areas of life.
- (2) Disabled persons and persons with reduced mobility should therefore be accepted for carriage and not refused transport on the grounds of their disability or lack of mobility, except for reasons which are justified on the grounds of safety and prescribed by law. Before accepting reservations from disabled persons or persons with reduced mobility, air carriers, their agents and tour operators should make all reasonable efforts to verify whether there is a reason which is justified on the grounds of safety and which would prevent such persons being accommodated on the flights concerned.

- (3) This Regulation should not affect other rights of passengers established by Community legislation and notably Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours ⁽³⁾ and Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights ⁽⁴⁾. Where the same event would give rise to the same right of reimbursement or rebooking under either of those legislative acts as well as under this Regulation, the person so entitled should be allowed to exercise that right once only, at his or her discretion.

- (4) In order to give disabled persons and persons with reduced mobility opportunities for air travel comparable to those of other citizens, assistance to meet their particular needs should be provided at the airport as well as on board aircraft, by employing the necessary staff and equipment. In the interests of social inclusion, the persons concerned should receive this assistance without additional charge.
- (5) Assistance given at airports situated in the territory of a Member State to which the Treaty applies should, among other things, enable disabled persons and persons with reduced mobility to proceed from a designated point of arrival at an airport to an aircraft and from the aircraft to a designated point of departure from the airport, including embarking and disembarking. These points should be designated at least at the main entrances to terminal buildings, in areas with check-in counters, in train, light rail, metro and bus stations, at taxi ranks and other drop-off points, and in airport car parks. The assistance should be organised so as to avoid interruption and delay, while ensuring high and equivalent standards throughout the Community and making best use of resources, whatever airport or air carrier is involved.

⁽¹⁾ OJ C 24, 31.1.2006, p. 12.

⁽²⁾ Opinion of the European Parliament of 15 December 2005 (not yet published in the Official Journal), and Council Decision of 9 June 2006.

⁽³⁾ OJ L 158, 23.6.1990, p. 59.

⁽⁴⁾ OJ L 46, 17.2.2004, p. 1.

- (6) To achieve these aims, ensuring high quality assistance at airports should be the responsibility of a central body. As managing bodies of airports play a central role in providing services throughout their airports, they should be given this overall responsibility.
- (7) Managing bodies of airports may provide the assistance to disabled persons and persons with reduced mobility themselves. Alternatively, in view of the positive role played in the past by certain operators and air carriers, managing bodies may contract with third parties for the supply of this assistance, without prejudice to the application of relevant rules of Community law, including those on public procurement.
- (8) Assistance should be financed in such a way as to spread the burden equitably among all passengers using an airport and to avoid disincentives to the carriage of disabled persons and persons with reduced mobility. A charge levied on each air carrier using an airport, proportionate to the number of passengers it carries to or from the airport, appears to be the most effective way of funding.
- (9) With a view to ensuring, in particular, that the charges levied on an air carrier are commensurate with the assistance provided to disabled persons and persons with reduced mobility, and that these charges do not serve to finance activities of the managing body other than those relating to the provision of such assistance, the charges should be adopted and applied in full transparency. Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports ⁽¹⁾ and in particular the provisions on separation of accounts, should therefore apply where this does not conflict with this Regulation.
- (10) In organising the provision of assistance to disabled persons and persons with reduced mobility, and the training of their personnel, airports and air carriers should have regard to document 30 of the European Civil Aviation Conference (ECAC), Part I, Section 5 and its associated annexes, in particular the Code of Good Conduct in Ground Handling for Persons with Reduced Mobility as set out in Annex J thereto at the time of adoption of this Regulation.
- (11) In deciding on the design of new airports and terminals, and as part of major refurbishments, managing bodies of airports should, where possible, take into account the needs of disabled persons and persons with reduced mobility. Similarly, air carriers should, where possible, take such needs into account when deciding on the design of new and newly refurbished aircraft.
- (12) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽²⁾ should be strictly enforced in order to guarantee respect for the privacy of disabled persons and persons with reduced mobility, and ensure that the information requested serves merely to fulfil the assistance obligations laid down in this Regulation and is not used against passengers seeking the service in question.
- (13) All essential information provided to air passengers should be provided in alternative formats accessible to disabled persons and persons with reduced mobility, and should be in at least the same languages as the information made available to other passengers.
- (14) Where wheelchairs or other mobility equipment or assistive devices are lost or damaged during handling at the airport or during transport on board aircraft, the passenger to whom the equipment belongs should be compensated, in accordance with rules of international, Community and national law.
- (15) Member States should supervise and ensure compliance with this Regulation and designate an appropriate body to carry out enforcement tasks. This supervision does not affect the rights of disabled persons and persons with reduced mobility to seek legal redress from courts under national law.
- (16) It is important that a disabled person or person with reduced mobility who considers that this Regulation has been infringed be able to bring the matter to the attention of the managing body of the airport or to the attention of the air carrier concerned, as the case may be. If the disabled person or person with reduced mobility cannot obtain satisfaction in such way, he or she should be free to make a complaint to the body or bodies designated to that end by the relevant Member State.
- (17) Complaints concerning assistance given at an airport should be addressed to the body or bodies designated for the enforcement of this Regulation by the Member State where the airport is situated. Complaints concerning assistance given by an air carrier should be addressed to the body or bodies designated for the enforcement of this Regulation by the Member State which has issued the operating licence to the air carrier.

⁽¹⁾ OJ L 272, 25.10.1996, p. 36. 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).

⁽²⁾ OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003.

- (18) Member States should lay down penalties applicable to infringements of this Regulation and ensure that those penalties are applied. The penalties, which could include ordering the payment of compensation to the person concerned, should be effective, proportionate and dissuasive.
- (19) Since the objectives of this Regulation, namely to ensure high and equivalent levels of protection and assistance throughout the Member States and to ensure that economic agents operate under harmonised conditions in a single market, cannot sufficiently be achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (20) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (21) Arrangements for greater cooperation over the use of Gibraltar airport were agreed in London on 2 December 1987 by the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland in a joint declaration by the Ministers of Foreign Affairs of the two countries. Such arrangements have yet to enter into operation,

HAVE ADOPTED THIS REGULATION:

Article 1

Purpose and scope

1. This Regulation establishes rules for the protection of and provision of assistance to disabled persons and persons with reduced mobility travelling by air, both to protect them against discrimination and to ensure that they receive assistance.
2. The provisions of this Regulation shall apply to disabled persons and persons with reduced mobility, using or intending to use commercial passenger air services on departure from, on transit through, or on arrival at an airport, when the airport is situated in the territory of a Member State to which the Treaty applies.
3. Articles 3, 4 and 10 shall also apply to passengers departing from an airport situated in a third country to an airport situated in the territory of a Member State to which the Treaty applies, if the operating carrier is a Community air carrier.
4. This Regulation shall not affect the rights of passengers established by Directive 90/314/EEC and under Regulation (EC) No 261/2004.

5. In so far as the provisions of this Regulation conflict with those of Directive 96/67/EC, this Regulation shall prevail.

6. Application of this Regulation to Gibraltar airport is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland with regard to the dispute over sovereignty over the territory in which the airport is situated.

7. Application of this Regulation to Gibraltar airport shall be suspended until the arrangements included in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland on 2 December 1987 enter into operation. The Governments of Spain and of the United Kingdom shall inform the Council of the date of entry into operation.

Article 2

Definitions

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

- (a) 'disabled person' or 'person with reduced mobility' means any person whose mobility when using transport is reduced due to any physical disability (sensory or locomotor, permanent or temporary), intellectual disability or impairment, or any other cause of disability, or age, and whose situation needs appropriate attention and the adaptation to his or her particular needs of the service made available to all passengers;
- (b) 'air carrier' means an air transport undertaking with a valid operating licence;
- (c) 'operating air carrier' means an air carrier that performs or intends to perform a flight under a contract with a passenger or on behalf of another person, legal or natural, having a contract with that passenger;
- (d) 'Community air carrier' means an air carrier with a valid operating licence granted by a Member State in accordance with Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers⁽¹⁾;
- (e) 'tour operator' means, with the exception of an air carrier, an organiser or retailer within the meaning of Article 2(2) and (3) of Directive 90/314/EEC;
- (f) 'managing body of the airport' or 'managing body' means a body which notably has as its objective under national legislation the administration and management of airport infrastructures, and the coordination and control of the activities of the various operators present in an airport or airport system;

⁽¹⁾ OJ L 240, 24.8.1992, p. 1.

- (g) 'airport user' means any natural or legal person responsible for the carriage of passengers by air from or to the airport in question;
- (h) 'Airport Users Committee' means a committee of representatives of airport users or organisations representing them;
- (i) 'reservation' means the fact that the passenger has a ticket, or other proof, which indicates that the reservation has been accepted and registered by the air carrier or tour operator;
- (j) 'airport' means any area of land specially adapted for the landing, taking-off and manoeuvres of aircraft, including ancillary installations which these operations may involve for the requirements of aircraft traffic and services including installations needed to assist commercial air services;
- (k) 'airport car park' means a car park, within the airport boundaries or under the direct control of the managing body of an airport, which directly serves the passengers using that airport;
- (l) 'commercial passenger air service' means a passenger air transport service operated by an air carrier through a scheduled or non-scheduled flight offered to the general public for valuable consideration, whether on its own or as part of a package.

Article 3

Prevention of refusal of carriage

An air carrier or its agent or a tour operator shall not refuse, on the grounds of disability or of reduced mobility:

- (a) to accept a reservation for a flight departing from or arriving at an airport to which this Regulation applies;
- (b) to embark a disabled person or a person with reduced mobility at such an airport, provided that the person concerned has a valid ticket and reservation.

Article 4

Derogations, special conditions and information

1. Notwithstanding the provisions of Article 3, an air carrier or its agent or a tour operator may refuse, on the grounds of disability or of reduced mobility, to accept a reservation from or to embark a disabled person or a person with reduced mobility:

- (a) in order to meet applicable safety requirements established by international, Community or national law or in order to meet safety requirements established by the authority that issued the air operator's certificate to the air carrier concerned;

- (b) if the size of the aircraft or its doors makes the embarkation or carriage of that disabled person or person with reduced mobility physically impossible.

In the event of refusal to accept a reservation on the grounds referred to under points (a) or (b) of the first subparagraph, the air carrier, its agent or the tour operator shall make reasonable efforts to propose an acceptable alternative to the person in question.

A disabled person or a person with reduced mobility who has been denied embarkation on the grounds of his or her disability or reduced mobility and any person accompanying this person pursuant to paragraph 2 of this Article shall be offered the right to reimbursement or re-routing as provided for in Article 8 of Regulation (EC) No 261/2004. The right to the option of a return flight or re-routing shall be conditional upon all safety requirements being met.

2. Under the same conditions referred to in paragraph 1, first subparagraph, point (a), an air carrier or its agent or a tour operator may require that a disabled person or person with reduced mobility be accompanied by another person who is capable of providing the assistance required by that person.

3. An air carrier or its agent shall make publicly available, in accessible formats and in at least the same languages as the information made available to other passengers, the safety rules that it applies to the carriage of disabled persons and persons with reduced mobility, as well as any restrictions on their carriage or on that of mobility equipment due to the size of aircraft. A tour operator shall make such safety rules and restrictions available for flights included in package travel, package holidays and package tours which it organises, sells or offers for sale.

4. When an air carrier or its agent or a tour operator exercises a derogation under paragraphs 1 or 2, it shall immediately inform the disabled person or person with reduced mobility of the reasons therefor. On request, an air carrier, its agent or a tour operator shall communicate these reasons in writing to the disabled person or person with reduced mobility, within five working days of the request.

Article 5

Designation of points of arrival and departure

1. In cooperation with airport users, through the Airport Users Committee where one exists, and relevant organisations representing disabled persons and persons with reduced mobility, the managing body of an airport shall, taking account of local conditions, designate points of arrival and departure within the airport boundary or at a point under the direct control of the managing body, both inside and outside terminal

buildings, at which disabled persons or persons with reduced mobility can, with ease, announce their arrival at the airport and request assistance.

2. The points of arrival and departure referred to in paragraph 1, shall be clearly signed and shall offer basic information about the airport, in accessible formats.

Article 6

Transmission of information

1. Air carriers, their agents and tour operators shall take all measures necessary for the receipt, at all their points of sale in the territory of the Member States to which the Treaty applies, including sale by telephone and via the Internet, of notifications of the need for assistance made by disabled persons or persons with reduced mobility.

2. When an air carrier or its agent or a tour operator receives a notification of the need for assistance at least 48 hours before the published departure time for the flight, it shall transmit the information concerned at least 36 hours before the published departure time for the flight:

- (a) to the managing bodies of the airports of departure, arrival and transit, and
- (b) to the operating air carrier, if a reservation was not made with that carrier, unless the identity of the operating air carrier is not known at the time of notification, in which case the information shall be transmitted as soon as practicable.

3. In all cases other than those mentioned in paragraph 2, the air carrier or its agent or tour operator shall transmit the information as soon as possible.

4. As soon as possible after the departure of the flight, an operating air carrier shall inform the managing body of the airport of destination, if situated in the territory of a Member State to which the Treaty applies, of the number of disabled persons and persons with reduced mobility on that flight requiring assistance specified in Annex I and of the nature of that assistance.

Article 7

Right to assistance at airports

1. When a disabled person or person with reduced mobility arrives at an airport for travel by air, the managing body of the airport shall be responsible for ensuring the provision of the assistance specified in Annex I in such a way that the person is able to take the flight for which he or she holds a reservation, provided that the notification of the person's particular needs for

such assistance has been made to the air carrier or its agent or the tour operator concerned at least 48 hours before the published time of departure of the flight. This notification shall also cover a return flight, if the outward flight and the return flight have been contracted with the same air carrier.

2. Where use of a recognised assistance dog is required, this shall be accommodated provided that notification of the same is made to the air carrier or its agent or the tour operator in accordance with applicable national rules covering the carriage of assistance dogs on board aircraft, where such rules exist.

3. If no notification is made in accordance with paragraph 1, the managing body shall make all reasonable efforts to provide the assistance specified in Annex I in such a way that the person concerned is able to take the flight for which he or she holds a reservation.

4. The provisions of paragraph 1 shall apply on condition that:

- (a) the person presents himself or herself for check-in:
 - (i) at the time stipulated in advance and in writing (including by electronic means) by the air carrier or its agent or the tour operator, or
 - (ii) if no time is stipulated, not later than one hour before the published departure time, or
- (b) the person arrives at a point within the airport boundary designated in accordance with Article 5:
 - (i) at the time stipulated in advance and in writing (including by electronic means) by the air carrier or its agent or the tour operator, or
 - (ii) if no time is stipulated, not later than two hours before the published departure time.

5. When a disabled person or person with reduced mobility transits through an airport to which this Regulation applies, or is transferred by an air carrier or a tour operator from the flight for which he or she holds a reservation to another flight, the managing body shall be responsible for ensuring the provision of the assistance specified in Annex I in such a way that the person is able to take the flight for which he or she holds a reservation.

6. On the arrival by air of a disabled person or person with reduced mobility at an airport to which this Regulation applies, the managing body of the airport shall be responsible for ensuring the provision of the assistance specified in Annex I in such a way that the person is able to reach his or her point of departure from the airport as referred to in Article 5.

7. The assistance provided shall, as far as possible, be appropriate to the particular needs of the individual passenger.

*Article 8***Responsibility for assistance at airports**

1. The managing body of an airport shall be responsible for ensuring the provision of the assistance specified in Annex I without additional charge to disabled persons and persons with reduced mobility.

2. The managing body may provide such assistance itself. Alternatively, in keeping with its responsibility, and subject always to compliance with the quality standards referred to in Article 9(1), the managing body may contract with one or more other parties for the supply of the assistance. In cooperation with airport users, through the Airport Users Committee where one exists, the managing body may enter into such a contract or contracts on its own initiative or on request, including from an air carrier, and taking into account the existing services at the airport concerned. In the event that it refuses such a request, the managing body shall provide written justification.

3. The managing body of an airport may, on a non-discriminatory basis, levy a specific charge on airport users for the purpose of funding this assistance.

4. This specific charge shall be reasonable, cost-related, transparent and established by the managing body of the airport in cooperation with airport users, through the Airport Users Committee where one exists or any other appropriate entity. It shall be shared among airport users in proportion to the total number of all passengers that each carries to and from that airport.

5. The managing body of an airport shall separate the accounts of its activities relating to the assistance provided to disabled persons and persons with reduced mobility from the accounts of its other activities, in accordance with current commercial practice.

6. The managing body of an airport shall make available to airport users, through the Airport Users Committee where one exists or any other appropriate entity, as well as to the enforcement body or bodies referred to in Article 14, an audited annual overview of charges received and expenses made in respect of the assistance provided to disabled persons and persons with reduced mobility.

*Article 9***Quality standards for assistance**

1. With the exception of airports whose annual traffic is less than 150 000 commercial passenger movements, the managing body shall set quality standards for the assistance specified in Annex I and determine resource requirements for meeting them, in cooperation with airport users, through the Airport Users Committee where one exists, and organisations representing disabled passengers and passengers with reduced mobility.

2. In the setting of such standards, full account shall be taken of internationally recognised policies and codes of conduct concerning facilitation of the transport of disabled persons or persons with reduced mobility, notably the ECAC Code of Good Conduct in Ground Handling for Persons with Reduced Mobility.

3. The managing body of an airport shall publish its quality standards.

4. An air carrier and the managing body of an airport may agree that, for the passengers whom that air carrier transports to and from the airport, the managing body shall provide assistance of a higher standard than the standards referred to in paragraph 1 or provide services additional to those specified in Annex I.

5. For the purpose of funding either of these, the managing body may levy a charge on the air carrier additional to that referred to in Article 8(3), which shall be transparent, cost-related and established after consultation of the air carrier concerned.

*Article 10***Assistance by air carriers**

An air carrier shall provide the assistance specified in Annex II without additional charge to a disabled person or person with reduced mobility departing from, arriving at or transiting through an airport to which this Regulation applies provided that the person in question fulfils the conditions set out in Article 7(1), (2) and (4).

*Article 11***Training**

Air carriers and airport managing bodies shall:

- (a) ensure that all their personnel, including those employed by any sub-contractor, providing direct assistance to disabled persons and persons with reduced mobility have knowledge of how to meet the needs of persons having various disabilities or mobility impairments;
- (b) provide disability-equality and disability-awareness training to all their personnel working at the airport who deal directly with the travelling public;
- (c) ensure that, upon recruitment, all new employees attend disability-related training and that personnel receive refresher training courses when appropriate.

*Article 12***Compensation for lost or damaged wheelchairs, other mobility equipment and assistive devices**

Where wheelchairs or other mobility equipment or assistive devices are lost or damaged whilst being handled at the airport or

transported on board aircraft, the passenger to whom the equipment belongs shall be compensated, in accordance with rules of international, Community and national law.

Article 13

Exclusion of waiver

Obligations towards disabled persons and persons with reduced mobility pursuant to this Regulation shall not be limited or waived.

Article 14

Enforcement body and its tasks

1. Each Member State shall designate a body or bodies responsible for the enforcement of this Regulation as regards flights departing from or arriving at airports situated in its territory. Where appropriate, this body or bodies shall take the measures necessary to ensure that the rights of disabled persons and persons with reduced mobility are respected, including compliance with the quality standards referred to in Article 9(1). The Member States shall inform the Commission of the body or bodies designated.

2. Member States shall, where appropriate, provide that the enforcement body or bodies designated under paragraph 1 shall also ensure the satisfactory implementation of Article 8, including as regards the provisions on charges with a view to avoiding unfair competition. They may also designate a specific body to that effect.

Article 15

Complaint procedure

1. A disabled person or person with reduced mobility who considers that this Regulation has been infringed may bring the matter to the attention of the managing body of the airport or to the attention of the air carrier concerned, as the case may be.

2. If the disabled person or person with reduced mobility cannot obtain satisfaction in such way, complaints may be made to any body or bodies designated under Article 14(1), or to any

other competent body designated by a Member State, about an alleged infringement of this Regulation.

3. A body in one Member State which receives a complaint concerning a matter that comes under the responsibility of a designated body of another Member State shall forward the complaint to the body of that other Member State.

4. The Member States shall take measures to inform disabled persons and persons with reduced mobility of their rights under this Regulation and of the possibility of complaint to this designated body or bodies.

Article 16

Penalties

The Member States shall lay down rules on penalties applicable to infringements of this Regulation and shall take all the measures necessary to ensure that those rules are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission and shall notify it without delay of any subsequent amendment affecting them.

Article 17

Report

The Commission shall report to the European Parliament and the Council by 1 January 2010 at the latest on the operation and the effects of this Regulation. The report shall be accompanied where necessary by legislative proposals implementing in further detail the provisions of this Regulation, or revising it.

Article 18

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*.

It shall apply with effect from 26 July 2008, except Articles 3 and 4, which shall apply with effect from 26 July 2007.

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

Done at Strasbourg, 5 July 2006.

For the European Parliament
The President
J. BORRELL FONTELLES

The President
For the Council
P. LEHTOMÄKI

ANNEX I

Assistance under the responsibility of the managing bodies of airports

Assistance and arrangements necessary to enable disabled persons and persons with reduced mobility to:

- communicate their arrival at an airport and their request for assistance at the designated points inside and outside terminal buildings mentioned in Article 5,
- move from a designated point to the check-in counter,
- check-in and register baggage,
- proceed from the check-in counter to the aircraft, with completion of emigration, customs and security procedures,
- board the aircraft, with the provision of lifts, wheelchairs or other assistance needed, as appropriate,
- proceed from the aircraft door to their seats,
- store and retrieve baggage on the aircraft,
- proceed from their seats to the aircraft door,
- disembark from the aircraft, with the provision of lifts, wheelchairs or other assistance needed, as appropriate,
- proceed from the aircraft to the baggage hall and retrieve baggage, with completion of immigration and customs procedures,
- proceed from the baggage hall to a designated point,
- reach connecting flights when in transit, with assistance on the air and land sides and within and between terminals as needed,
- move to the toilet facilities if required.

Where a disabled person or person with reduced mobility is assisted by an accompanying person, this person must, if requested, be allowed to provide the necessary assistance in the airport and with embarking and disembarking.

Ground handling of all necessary mobility equipment, including equipment such as electric wheelchairs subject to advance warning of 48 hours and to possible limitations of space on board the aircraft, and subject to the application of relevant legislation concerning dangerous goods.

Temporary replacement of damaged or lost mobility equipment, albeit not necessarily on a like-for-like basis.

Ground handling of recognised assistance dogs, when relevant.

Communication of information needed to take flights in accessible formats.

ANNEX II

Assistance by air carriers

Carriage of recognised assistance dogs in the cabin, subject to national regulations.

In addition to medical equipment, transport of up to two pieces of mobility equipment per disabled person or person with reduced mobility, including electric wheelchairs (subject to advance warning of 48 hours and to possible limitations of space on board the aircraft, and subject to the application of relevant legislation concerning dangerous goods).

Communication of essential information concerning a flight in accessible formats.

The making of all reasonable efforts to arrange seating to meet the needs of individuals with disability or reduced mobility on request and subject to safety requirements and availability.

Assistance in moving to toilet facilities if required.

Where a disabled person or person with reduced mobility is assisted by an accompanying person, the air carrier will make all reasonable efforts to give such person a seat next to the disabled person or person with reduced mobility.

DIRECTIVE 2006/52/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 5 July 2006

amending Directive 95/2/EC on food additives other than colours and sweeteners and Directive 94/35/EC on sweeteners for use in foodstuffs

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

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

Whereas:

- (1) Food additives may be approved for use in foodstuffs only if they comply with Annex II to Council Directive 89/107/EEC of 21 December 1988 on the approximation of the laws of the Member States concerning food additives authorized for use in foodstuffs intended for human consumption ⁽³⁾.
- (2) Directive 95/2/EC ⁽⁴⁾ lays down a list of food additives that may be used in the Community and the conditions for their use.
- (3) Directive 94/35/EC ⁽⁵⁾ lays down a list of sweeteners that may be used in the Community and the conditions for their use.

(4) There have been technical developments in the field of food additives since the adoption of Directives 95/2/EC and 94/35/EC. These Directives should be adapted to take account of those developments.

(5) On the basis of an opinion of the European Food Safety Authority (EFSA), expressed on 26 November 2003, changes are made to current authorisations in order to keep the level of nitrosamines as low as possible by bringing down the levels of nitrites and nitrates added to food whilst maintaining the microbiological safety of food products. EFSA recommends that the levels of nitrite and nitrate are set in the legislation as 'added amount'. EFSA is of the opinion that the added amount of nitrite rather than the residual amount contributes to the inhibitory activity against *C. botulinum*. The current provisions should be amended in such a way that the maximum levels permitted, as mentioned by EFSA, in non-heat-treated or heat-treated meat products, in cheese and in fish are expressed as added amounts. Exceptionally, however, for certain traditionally manufactured meat products maximum residual levels should be set, on the condition that the products are adequately specified and identified. The levels set should ensure that the acceptable daily intake (ADI) established by the Scientific Committee on Food in 1990 is not exceeded. Products which are not specifically named in this Directive, but which are traditionally produced in a similar manner (i. e. similar products) can if necessary be categorised in accordance with Articles 5 and 6 of Directive 95/2/EC. For cheese, the level should be expressed as the amount added to the cheese milk. If a process is used where addition of nitrate follows removal of whey and addition of water, this should lead to levels identical to those which would have been obtained had the nitrate been added directly to the cheese milk.

(6) Directive 2003/114/EC amending Directive 95/2/EC required the Commission and EFSA to review the conditions for the use of E 214 to E 219 p-hydroxybenzoates and their sodium salts before 1 July 2004. EFSA assessed the information on the safety of p-hydroxybenzoates and expressed its opinion on 13 July 2004. EFSA established a full-group ADI of 0 to 10 mg/kg body weight for the sum of methyl and ethyl p-hydroxybenzoic acid esters and their sodium salts. EFSA considered that propyl paraben should not be included in this group ADI because propyl paraben, contrary to methyl and ethyl paraben, had effects on sex hormones and the male reproductive organs in juvenile rats. Therefore, EFSA was unable to recommend an ADI for propyl paraben because of the lack of a clear no-observed-adverse-effect-level (NOAEL). It is necessary to withdraw E 216 propyl p-hydroxybenzoate and E 217 sodium propyl p-hydroxybenzoate from Directive 95/2/EC. In addition, it is necessary to withdraw the use of p-hydroxybenzoates in liquid dietary food supplements.

⁽¹⁾ OJ C 255, 14.10.2005, p. 59.

⁽²⁾ Opinion of the European Parliament of 26 October 2005 (not yet published in the Official Journal). Council Decision of 2 June 2006.

⁽³⁾ OJ L 40, 11.2.1989, p. 27. Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

⁽⁴⁾ OJ L 61, 18.3.1995, p. 1. Directive as last amended by Directive 2003/114/EC (OJ L 24, 29.1.2004, p. 58).

⁽⁵⁾ OJ L 237, 10.9.1994, p. 3. Directive as last amended by Directive 2003/115/EC (OJ L 24, 29.1.2004, p. 65).

- (7) Commission Decision 2004/374/EC⁽¹⁾ suspended the placing on the market and import of jelly mini-cups containing gel-forming food additives derived from seaweed and certain gums due to the risk of choking on these products. Following a review of that Decision it is necessary to exclude the use of certain gel-forming food additives in jelly mini-cups.
- (8) The Scientific Committee on Food assessed the information on the safety of erythritol and expressed its opinion on 5 March 2003. The Committee concluded that the use of erythritol as a food additive is acceptable. The Committee also notes that erythritol has a laxative effect, but at a higher dose than other polyols. Erythritol has many technological non-sweetening properties that are important in a wide range of foods, from confectionery to dairy products. These include functions such as flavour enhancer, carrier, humectant, stabiliser, thickener, bulking agent and sequestrant. It is necessary to permit the use of erythritol in the same food applications as the other currently permitted polyols. In addition, it is necessary to amend Directive 94/35/EC, as erythritol can also be used for sweetening purposes like the other currently permitted polyols.
- (9) The Scientific Committee on Food assessed the information on the safety of soybean hemicellulose and expressed its opinion on 4 April 2003. The Committee concluded that the use of soybean hemicellulose is acceptable in certain foods in respect of which the request was made and at certain inclusion levels. It is therefore appropriate to permit such use for certain purposes. In order to facilitate matters for allergy sufferers, however, such use should not be permitted for unprocessed foods in which soybean is not expected to be found. At all events, consumers should be informed when products contain hemicellulose derived from soybean in accordance with the provisions of Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs⁽²⁾.
- (10) EFSA assessed the information on the safety of ethyl cellulose and expressed its opinion on 17 February 2004. EFSA decided to include ethyl cellulose in the group ADI 'not specified' for modified celluloses established by the Scientific Committee on Food. The main application of ethyl cellulose is in food supplements and encapsulated flavourings. The use of ethyl cellulose should therefore be permitted in a way similar to that for other celluloses.
- (11) EFSA assessed the information on the safety of pullulan and expressed its opinion on 13 July 2004. EFSA found the use of pullulan acceptable in the coating of food supplements that are in the form of capsules and tablets as well as in breath fresheners in the form of films. It is therefore appropriate to permit these uses.
- (12) EFSA assessed the information on the safety of tertiary butyl hydroquinone (TBHQ) and expressed its opinion on 12 July 2004. EFSA established an ADI of 0 to 0,7 mg/kg body weight for this antioxidant and found that its use would be acceptable in certain foodstuffs at certain inclusion levels. It is therefore appropriate to permit this additive.
- (13) The Scientific Committee on Food assessed the information on the safety of starch aluminium octenyl succinate and expressed its opinion on 21 March 1997. The Committee found that the use of this additive as a component of micro encapsulated vitamins and carotenoids may be regarded as acceptable. It is therefore appropriate to permit this use.
- (14) During the manufacture of sour milk cheese, E 500ii sodium hydrogen carbonate is added to the pasteurised milk in order to buffer the acidity caused by the lactic acid to an appropriate pH value, thereby creating the necessary growth conditions for the ripening cultures. It is, therefore, appropriate to permit the use of sodium hydrogen carbonate in sour milk cheese.
- (15) Currently, the use of a mixture of sorbates (E 200, E 202 and E 203) and benzoates (E 210 to E 213) is authorised in cooked shrimps for preservation. It is appropriate to extend that authorisation to its use in all cooked crustaceans and molluscs.
- (16) E 551 silicon dioxide is permitted as a carrier for food colours at the maximum level of 5 %. The use of silicon dioxide as a carrier for food colours E 171 titanium dioxide and E 172 iron oxides and hydroxides should also be permitted at the level of maximum 90 % relative to the pigment.
- (17) Directive 95/2/EC limits the use of additives listed in Annex I to that Directive in traditional French bread '*Pain courant français*'. The same limitation should apply to similar traditional Hungarian bread. It is also appropriate to authorise use of ascorbic acid (E 300), sodium ascorbate (E 301) and calcium disodium EDTA (E 385) in Hungarian liver patés.
- (18) It is necessary to update the current provisions regarding the use of sulphites (E 220 to E 228) in cooked crustaceans, table grapes and lychees.
- (19) In accordance with a request from a Member State and the opinion of the Scientific Committee on Food of 5 March 2003, 4-hexylresorcinol, which was authorised at national level under Directive 89/107/EEC, should be authorised at Community level.

(1) OJ L 118, 23.4.2004, p. 70.

(2) OJ L 109, 6.5.2000, p. 29. Directive as last amended by Directive 2003/89/EC (OJ L 308, 25.11.2003, p. 15).

(20) The terminology used in Directive 95/2/EC should be adapted to take into account Council Directive 89/398/EEC of 3 May 1989 on the approximation of the laws of the Member States relating to foodstuffs intended for particular nutritional uses ⁽¹⁾, Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements ⁽²⁾ and Commission Directive 1999/21/EC of 25 March 1999 on dietary foods for special medical purposes ⁽³⁾.

(21) Directives 95/2/EC and 94/35/EC should, therefore, be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 95/2/EC is hereby amended as follows:

- Article 1(3)(c) shall be replaced by the following:

‘(c) “carriers”, including carrier solvents, are substances used to dissolve, dilute, disperse or otherwise physically modify a food additive or flavouring without altering its function (and without exerting any technological effect themselves) in order to facilitate its handling, application or use;’;
- in Article 3(2) ‘weaning foods’ shall be replaced by ‘processed cereal-based foods and baby foods’;
- the Annexes shall be amended in accordance with Annex I to this Directive.

Article 2

The Annex to Directive 94/35/EC shall be amended in accordance with Annex II to this Directive.

Article 3

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

- permit trade in and the use of products complying with this Directive by 15 February 2008;
- prohibit trade in and use of products which do not comply with this Directive by 15 August 2008.

However, products placed on the market or labelled before 15 August 2008 which do not comply with this Directive may be marketed until stocks are exhausted.

Member States shall forthwith communicate to the Commission the text of such laws, regulations and administrative provisions, together with a correlation table between them and this Directive.

2. When Member States adopt the laws, regulations and administrative provisions referred to in paragraph 1, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 4

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

Article 5

This Directive is addressed to the Member States.

Done at Strasbourg, 5 July 2006.

For the European Parliament

The President

J. BORRELL FONTELLES

For the Council

The President

P. LEHTOMÄKI

⁽¹⁾ OJ L 186, 30.6.1989, p. 27. Directive as last amended by Regulation (EC) No 1882/2003.

⁽²⁾ OJ L 183, 12.7.2002, p. 51.

⁽³⁾ OJ L 91, 7.4.1999, p. 29. Directive as amended by the 2003 Act of Accession.

ANNEX I

The Annexes to Directive 95/2/EC are amended as follows:

(1) Annex I is amended as follows:

(a) in the introductory note, the following note is added:

- '4. The substances listed under numbers E 400, E 401, E 402, E 403, E 404, E 406, E 407, E 407a, E 410, E 412, E 413, E 414, E 415, E 417, E 418 and E 440 may not be used in jelly mini-cups, defined, for the purpose of this Directive, as jelly confectionery of a firm consistence, contained in semi-rigid mini-cups or mini-capsules, intended to be ingested in a single bite by exerting pressure on the mini-cups or mini-capsule to project the confectionery into the mouth.'

(b) in the table, the following row is inserted:

E 462	Ethyl cellulose'
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(2) Annex II is amended as follows:

(a) the row for 'ripened cheese' is replaced by the following:

Ripened cheese	E 170 Calcium carbonate E 504 Magnesium carbonates E 509 Calcium chloride E 575 Glucono-delta-lactone E 500ii Sodium hydrogen carbonate	quantum satis <i>quantum satis (only for sour milk cheese)</i> ;
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- (b) in the row for '*Pain courant français*' after the words '*Pain courant français*' the following words are added: '*Friss búzakenyér, fehér és félbarna kenyerek*';
- (c) in the row for '*Foie gras, foie gras entier, blocs de foie gras*' after the words '*Foie gras, foie gras entier, blocs de foie gras*' the following words are added: '*Libamáj, libamáj egészben, libamáj tömbben*';

(3) Annex III is amended as follows:

(a) Part A is amended as follows:

- (i) in the table 'Sorbates, benzoates and p-hydroxybenzoates', the rows for 'E 216 Propyl p-hydroxybenzoate' and 'E 217 Sodium propyl p-hydroxybenzoate' are deleted;

(ii) the table for foodstuffs is amended as follows:

— the following rows are deleted:

Shrimps, cooked				2 000	
Crayfish tails, cooked, and pre-packed marinated cooked molluscs	2 000				
Liquid dietary food supplements					2 000';

- the following rows are added:

'Crustaceans and molluscs, cooked		1 000		2 000		
Food supplements as defined in Directive 2002/46/EC (*) supplied in liquid form				2 000		

(*) Directive 2002/46/EC of the European Parliament and of the Council (OJ L 183, 12.7.2002, p. 51).'

- the words 'Dietetic food intended for special medical purposes' are replaced by the words 'Dietary foods for special medical purposes as defined in Directive 1999/21/EC (*)'

(*) Commission Directive 1999/21/EC (OJ L 91, 7.4.1999, p. 29).'

- (b) in Part B the table for foodstuffs is amended as follows:

- the row for 'crustaceans and cephalopods' is replaced by the following:

'Crustaceans and cephalopods:	
— fresh, frozen and deep-frozen	150 ⁽¹⁾
— crustaceans, <i>Penaeidae</i> , <i>Solenoceridae</i> , <i>Aristaeidae</i> family:	
— up to 80 units	150 ⁽¹⁾
— between 80 and 120 units	200 ⁽¹⁾
— over 120 units	300 ⁽¹⁾
Crustaceans and cephalopods	
— cooked	50 ⁽¹⁾
— cooked crustaceans, <i>Penaeidae</i> , <i>Solenoceridae</i> , <i>Aristaeidae</i> family:	
— up to 80 units	135 ⁽¹⁾
— between 80 and 120 units	180 ⁽¹⁾
— over 120 units	270 ⁽¹⁾

⁽¹⁾ In edible parts.'

- the entry 'Starches (excluding starches for weaning foods, follow-on formulae and infant formulae)' is replaced by 'Starches (excluding starches in infant formulae, follow-on formulae and processed cereal-based foods and baby foods)';
- the following rows are added:

'Salsicha fresca	450
Table grapes	10
Fresh lychees	10 (measured on edible parts)';

(c) in Part C the table for E 249, E 250, E 251 and E 252 is replaced by the following:

E No	Name	Foodstuff	Maximum amount that may be added during manufacture (expressed as NaNO ₂)	Maximum residual level (expressed as NaNO ₂)
E 249	Potassium nitrite (*)	Meat products	150 mg/kg	
E 250	Sodium nitrite (*)	Sterilised meat products (Fo > 3,00) (*)	100 mg/kg	
		Traditional immersion cured meat products (1): <i>Wiltshire bacon</i> (1.1); <i>Entremeada, entrecosto, chispe, orelheira e cabeça (salgados)</i> <i>Toucinho fumado</i> (1.2); and similar products		175 mg/kg
		<i>Wiltshire ham</i> (1.1); and similar products		100 mg/kg
		<i>Rohschinken, nassgepökelt</i> (1.6); and similar products		50 mg/kg
		<i>Cured tongue</i> (1.3)		
		Traditional dry cured meat products (2): <i>Dry cured bacon</i> (2.1); and similar products		175 mg/kg
		<i>Dry cured ham</i> (2.1); <i>Jamón curado, paleta curada, lomo embuchado y cecina</i> (2.2); <i>Presunto, presunto da pá and paio do lombo</i> (2.3); and similar products		100 mg/kg
		<i>Rohschinken, trockengepökelt</i> (2.5); and similar products		50 mg/kg
		Other traditionally cured meat products (3): <i>Vysočina</i> <i>Selský salám</i> <i>Turistický trvanlivý salám</i> <i>Poličan</i> <i>Herkules</i> <i>Lovecký salám</i> <i>Dunajská klobása</i> <i>Paprikáš</i> (3.5); and similar products	180 mg/kg	
		<i>Rohschinken, trocken-/nassgepökelt</i> (3.1); and similar products <i>Jellied veal and brisket</i> (3.2)		50 mg/kg

E No	Name	Foodstuff	Maximum amount that may be added during manufacture (expressed as NaNO ₂)	Maximum residual level (expressed as NaNO ₂)
E 251 E 252	Potassium nitrate ^(?) Sodium nitrate ^(?)	Non-heat-treated meat products	150 mg/kg	
		<p>Traditional immersion cured meat products (1):</p> <p><i>Kylmäsavustettu poronliha/ Kallrökt renkött</i> (1.4);</p> <p>Wiltshire bacon and Wiltshire ham (1.1); <i>Entremeada, entrecosto, chispe, orelheira e cabeça (salgados), Toucinho fumado</i> (1.2); <i>Rohschinken, nassgepökelt</i> (1.6); and similar products</p> <p>Bacon, <i>Filet de bacon</i> (1.5); and similar products</p> <p><i>Cured tongue</i> (1.3)</p> <p>Traditional dry cured meat products (2): <i>Dry cured bacon and Dry cured ham</i> (2.1); <i>Jamón curado, paleta curada, lomo embuchado y cecina</i> (2.2);</p> <p><i>Presunto, presunto da pá and paio do lombo</i> (2.3); <i>Rohschinken, trockengepökelt</i> (2.5); and similar products</p> <p><i>Jambon sec, jambon sel sec et autres pièces maturées séchées similaires</i> (2.4)</p>	<p>300 mg/kg</p>	<p>250 mg/kg</p> <p>250 mg/kg without added E 249 or E 250</p> <p>10 mg/kg</p> <p>250 mg/kg</p>
		<p>Other traditionally cured meat products (3): <i>Rohwürste (Salami and Kantwurst)</i> (3.3);</p> <p><i>Rohschinken, trocken-/nassgepökelt</i> (3.1); and similar products</p> <p><i>Salchichón y chorizo tradicionales de larga curación</i> (3.4); <i>Saucissons secs</i> (3.6); and similar products</p> <p><i>Jellied veal and brisket</i> (3.2);</p>	<p>300 mg/kg (without added E 249 or E 250)</p> <p>250 mg/kg</p> <p>250 mg/kg (without added E 249 or E 250)</p>	<p>250 mg/kg without added E 249 or E 250</p> <p>10 mg/kg</p>

E No	Name	Foodstuff	Maximum amount that may be added during manufacture (expressed as NaNO ₂)	Maximum residual level (expressed as NaNO ₂)
		Hard, semi-hard and semi-soft cheese	150 mg/kg in the cheese milk or equivalent level if added after removal of whey and addition of water	
		Dairy-based cheese analogue		
		Pickled herring and sprat	500 mg/kg	

(*) When labelled "for food use", nitrite may be sold only in a mixture with salt or a salt substitute.

(†) Fo-value 3 is equivalent to 3 minutes heating at 121 °C (reduction of the bacterial load of one billion spores in each 1 000 cans to one spore in a thousand cans).

(‡) Nitrates may be present in some heat-treated meat products resulting from natural conversion of nitrites to nitrates in a low-acid environment.

1 Meat products are immersed in curing solution containing nitrites and/or nitrates, salt and other components. The meat products may undergo further treatments e.g. smoking.

1.1 Meat is injected with curing solution followed by immersion curing for 3 to 10 days. The immersion brine solution also includes microbiological starter cultures.

1.2 Immersion cured for 3 to 5 days. Product is not heat-treated and has a high water activity.

1.3 Immersion cured for at least 4 days and pre-cooked.

1.4 Meat is injected with curing solution followed by immersion curing. Curing time is 14 to 21 days followed by maturation in cold-smoke for 4 to 5 weeks.

1.5 Immersion cured for 4 to 5 days at 5 to 7 °C, matured for typically 24 to 40 hours at 22 °C, possibly smoked for 24 hrs at 20 to 25 °C and stored for 3 to 6 weeks at 12 to 14 °C.

1.6 Curing time depending on the shape and weight of meat pieces for approximately 2 days/kg followed by stabilisation/maturation.

2 Dry curing process involves dry application of curing mixture containing nitrites and/or nitrates, salt and other components to the surface of the meat followed by a period of stabilisation/maturation. The meat products may undergo further treatments e.g. smoking.

2.1 Dry curing followed by maturation for at least 4 days.

2.2 Dry curing with a stabilisation period of at least 10 days and a maturation period of more than 45 days.

2.3 Dry cured for 10 to 15 days followed by a 30 to 45 day stabilisation period and a maturation period of at least 2 months.

2.4 Dry cured for 3 days + 1 day/kg followed by a 1 week post-salting period and an ageing/ripening period of 45 days to 18 months.

2.5 Curing time depending on the shape and weight of meat pieces for approximately 10 to 14 days followed by stabilisation/maturation.

3 Immersion and dry cured processes used in combination or where nitrite and/or nitrate is included in a compound product or where the curing solution is injected into the product prior to cooking. The products may undergo further treatments e.g. smoking.

3.1 Dry curing and immersion curing used in combination (without injection of curing solution). Curing time depending on the shape and weight of meat pieces for approximately 14 to 35 days followed by stabilisation/maturation.

3.2 Injection of curing solution followed, after a minimum of 2 days, by cooking in boiling water for up to 3 hours.

3.3 Product has a minimum 4-week maturation period and a water/protein ratio of less than 1,7.

3.4 Maturation period of at least 30 days.

3.5 Dried product cooked to 70 °C followed by 8 to 12 day drying and smoking process. Fermented product subject to 14 to 30 day three-stage fermentation process followed by smoking.

3.6 Raw fermented dried sausage without added nitrites. Product is fermented at temperatures in the range of 18 to 22 °C or lower (10 to 12 °C) and then has a minimum ageing/ripening period of 3 weeks. Product has a water/protein ratio of less than 1,7;

(d) Part D is amended as follows:

- (i) the Note is replaced by: 'The * in the table refers to the proportionality rule: when combinations of gallates, TBHQ, BHA and BHT are used, the individual levels must be reduced proportionally';
- (ii) row E 310 to E 321 and row E 310 to E 320 are replaced by the following:

'E 310	Propyl gallate	Fats and oils for the professional manufacture of heat-treated food-stuffs	200 * (gallates, TBHQ and BHA, individually or in combination)
E 311	Octyl gallate	Frying oil and frying fat, excluding olive pomace oil	100 * (BHT)
E 312	Dodecyl gallate		
E 319	Tertiary-butyl hydroquinone (TBHQ)	Lard; fish oil; beef, poultry and sheep fat	both expressed on fat
E 320	Butylated hydroxyanisole (BHA)	Cake mixes Cereal-based snack foods Milk powder for vending machines	200 (gallates, TBHQ and BHA, individually or in combination)
E 321	Butylated hydroxytoluene (BHT)	Dehydrated soups and broths Sauces Dehydrated meat Processed nuts Pre-cooked cereals	expressed on fat
		Seasonings and condiments	200 (gallates and BHA, individually or in combination) expressed on fat
		Dehydrated potatoes	25 (gallates, TBHQ and BHA, individually or in combination)
		Chewing gum Food supplements as defined in Directive 2002/46/EC	400 (gallates, TBHQ, BHT and BHA, individually or in combination)
		Essential oils	1 000 (gallates, TBHQ and BHA, individually or in combination)
		Flavourings other than essential oils	100 * (gallates, individually or in combination) 200 * (TBHQ and BHA, individually or in combination)';

(iii) the following row is added:

'E 586	4-Hexylresorcinol	Fresh, frozen and deep-frozen crustaceans	2 mg/kg as residues in crustacean meat;
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(4) Annex IV is amended as follows:

(a) the row for E 385 is replaced by the following:

E 385	Calcium disodium ethylene diamine tetra-acetate (Calcium disodium EDTA)	Emulsified sauces	75 mg/kg
		Canned and bottled pulses, legumes, mushrooms and artichokes	250 mg/kg
		Canned and bottled crustaceans and molluscs	75 mg/kg
		Canned and bottled fish	75 mg/kg
		Spreadable fats as defined in Annexes B and C to Regulation (EC) No 2991/94 (*), having a fat content of 41 % or less	100 mg/kg
		Frozen and deep-frozen crustaceans	75 mg/kg
		Libamáj, egészben és tömbben	250 mg/kg

(*) OJ L 316, 9.12.1994, p. 2.;

(b) the following row is inserted after the row for E 967:

E 968	Erythritol	Foodstuffs in general (except drinks and those foodstuffs referred to in Article 2(3))	quantum satis
		Frozen and deep-frozen unprocessed fish, crustaceans, molluscs and cephalopods	quantum satis
		Liqueurs	quantum satis
			For purposes other than sweetening;

(c) the following row is added:

E 426	Soybean hemicellulose	Dairy-based drinks intended for retail sale	5 g/l
		Food supplements as defined in Directive 2002/46/EC	1,5 g/l
		Emulsified sauces	30 g/l
		Pre-packaged fine bakery wares intended for retail sale	10 g/kg
		Pre-packaged ready to eat oriental noodles intended for retail sale	10 g/kg
		Pre-packaged ready to eat rice intended for retail sale	10 g/kg

		<i>Pre-packaged processed potato and rice products (including frozen, deep-frozen, chilled and dried processed products) intended for retail sale</i>	10 g/kg
		<i>Dehydrated, concentrated, frozen and deep-frozen egg products</i>	10 g/kg
		<i>Jelly confectionery, except jelly mini-cups</i>	10 g/kg;

- (d) in row E 468 the words 'Solid dietary supplements' are replaced by the words 'Food supplements as defined in Directive 2002/46/EC supplied in solid form';
- (e) in row E 338 to E 452 the words 'Dietary supplements' are replaced by the words 'Food supplements as defined in Directive 2002/46/EC';
- (f) in row E 405, row E 416, row E 432 to E 436, row E 473 and E 474, row E 475, row E 491 to E 495, row E 551 to E 559, and row E 901 to E 904, the words 'Dietary food supplements' are replaced by the words 'Food supplements as defined in Directive 2002/46/EC';
- (g) in row E 1201 and E 1202 the words 'Dietary food supplements in tablet and coated tablet form' are replaced by the words 'Food supplements as defined in Directive 2002/46/EC in tablet and coated tablet form';
- (h) in row E 405, row E 432 to E 436, row E 473 and E 474, row E 475, row E 477, row E 481 and E 482, row E 491 to E 495 the words 'Dietetic food intended for special medical purposes' are replaced by the words 'Dietary foods for special medical purposes as defined in Directive 1999/21/EC';
- (i) Row E 1505 to E 1520 is replaced by the following:

E 1505	Triethyl citrate	Flavourings	<i>3 g/kg from all sources in foodstuffs as consumed or as reconstituted according to the instructions of the manufacturer; individually or in combination. In the case of beverages, with the exception of cream liqueurs, the maximum level of E 1520 shall be 1 g/l;</i>
E 1517	Glyceryl diacetate (diacetin)		
E 1518	Glyceryl triacetate (triacetin)		
E 1520	Propan-1,2-diol (propylene glycol)		

- (j) the following rows are added:

E 1204	Pullulan	<i>Food supplements as defined in Directive 2002/46/EC in capsule and tablet form</i>	quantum satis
		<i>Breath freshening micro-sweets in the form of films</i>	quantum satis
E 1452	Starch Aluminium Octenyl Succinate	<i>Encapsulated vitamin preparations in food supplements as defined in Directive 2002/46/EC</i>	35 g/kg in food supplement';

(5) Annex V is amended as follows:

(a) the following row is inserted after the row for E 967:

E 968	Erythritol;	
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(b) the following row is inserted after the row for E 466:

E 462	Ethyl cellulose;	
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(c) in the third column of the row for E 551 and E 552 the following sentence is added:

'For E 551: in E 171 titanium dioxide and E 172 iron oxides and hydroxides (max. 90 % relative to the pigment).';

(6) Annex VI is amended as follows:

(a) in the first, second and third paragraph of the introductory note 'weaning foods' are replaced by 'processed cereal-based foods and baby foods';

(b) in Part 3, in the title, in row E 170 to E 526, row E 500, E 501 and E 503, row E 338, row E 410 to E 440, row E 1404 to E 1450 and row E 1451 'weaning foods' are replaced by 'processed cereal-based foods and baby foods';

(c) in Part 4, the following is inserted after row E 472:

E 473	Sucrose esters of fatty acids	120 mg/l	Products containing hydrolysed proteins, peptides and amino acids'
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ANNEX II

The Annex to Directive 94/35/EC is amended as follows:

- (1) in the first column of the row for E 420 to E 967, 'E 968' is added;
 - (2) in the second column of the row for E 420 to E 967, 'Erythritol' is added.
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DIRECTIVE 2006/54/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 5 July 2006

on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 141(3) 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) Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions ⁽³⁾ and Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes ⁽⁴⁾ have been significantly amended ⁽⁵⁾. Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women ⁽⁶⁾ and Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex ⁽⁷⁾ also contain provisions which have as their purpose the implementation of the principle of equal treatment between men and women. Now that new amendments are being made to the said Directives, it is desirable, for reasons of clarity, that the provisions in question should be recast by bringing together in a single text the main provisions existing in this field as well as certain developments arising out of the case-law of the Court of Justice of the European Communities (hereinafter referred to as the Court of Justice).

(2) Equality between men and women is a fundamental principle of Community law under Article 2 and Article 3 (2) of the Treaty and the case-law of the Court of Justice. Those Treaty provisions proclaim equality between men and women as a 'task' and an 'aim' of the Community and impose a positive obligation to promote it in all its activities.

(3) The Court of Justice has held that the scope of the principle of equal treatment for men and women cannot be confined to the prohibition of discrimination based on the fact that a person is of one or other sex. In view of its purpose and the nature of the rights which it seeks to safeguard, it also applies to discrimination arising from the gender reassignment of a person.

(4) Article 141(3) of the Treaty now provides a specific legal basis for the adoption of Community measures to ensure the application of the principle of equal opportunities and equal treatment in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value.

(5) Articles 21 and 23 of the Charter of Fundamental Rights of the European Union also prohibit any discrimination on grounds of sex and enshrine the right to equal treatment between men and women in all areas, including employment, work and pay.

(6) Harassment and sexual harassment are contrary to the principle of equal treatment between men and women and constitute discrimination on grounds of sex for the purposes of this Directive. These forms of discrimination occur not only in the workplace, but also in the context of access to employment, vocational training and promotion. They should therefore be prohibited and should be subject to effective, proportionate and dissuasive penalties.

(7) In this context, employers and those responsible for vocational training should be encouraged to take measures to combat all forms of discrimination on grounds of sex and, in particular, to take preventive measures against harassment and sexual harassment in the workplace and in access to employment, vocational training and promotion, in accordance with national law and practice.

(8) The principle of equal pay for equal work or work of equal value as laid down by Article 141 of the Treaty and consistently upheld in the case-law of the Court of Justice constitutes an important aspect of the principle of equal treatment between men and women and an essential and

⁽¹⁾ OJ C 157, 28.6.2005, p. 83.

⁽²⁾ Opinion of the European Parliament of 6 July 2005 (not yet published in the Official Journal), Council Common Position of 10 March 2006(OJ C 126 E, 30.5.2006, p. 33) and Position of the European Parliament of 1 June 2006 (not yet published in the Official Journal).

⁽³⁾ OJ L 39, 14.2.1976, p. 40. Directive as amended by Directive 2002/73/EC of the European Parliament and of the Council (OJ L 269, 5.10.2002, p. 15).

⁽⁴⁾ OJ L 225, 12.8.1986, p. 40. Directive as amended by Directive 96/97/EC (OJ L 46, 17.2.1997, p. 20).

⁽⁵⁾ See Annex I Part A.

⁽⁶⁾ OJ L 45, 19.2.1975, p. 19.

⁽⁷⁾ OJ L 14, 20.1.1998, p. 6. Directive as amended by Directive 98/52/EC (OJ L 205, 22.7.1998, p. 66).

- indispensable part of the *acquis communautaire*, including the case-law of the Court concerning sex discrimination. It is therefore appropriate to make further provision for its implementation.
- (9) In accordance with settled case-law of the Court of Justice, in order to assess whether workers are performing the same work or work of equal value, it should be determined whether, having regard to a range of factors including the nature of the work and training and working conditions, those workers may be considered to be in a comparable situation.
- (10) The Court of Justice has established that, in certain circumstances, the principle of equal pay is not limited to situations in which men and women work for the same employer.
- (11) The Member States, in collaboration with the social partners, should continue to address the problem of the continuing gender-based wage differentials and marked gender segregation on the labour market by means such as flexible working time arrangements which enable both men and women to combine family and work commitments more successfully. This could also include appropriate parental leave arrangements which could be taken up by either parent as well as the provision of accessible and affordable child-care facilities and care for dependent persons.
- (12) Specific measures should be adopted to ensure the implementation of the principle of equal treatment in occupational social security schemes and to define its scope more clearly.
- (13) In its judgment of 17 May 1990 in Case C-262/88 ⁽¹⁾, the Court of Justice determined that all forms of occupational pension constitute an element of pay within the meaning of Article 141 of the Treaty.
- (14) Although the concept of pay within the meaning of Article 141 of the Treaty does not encompass social security benefits, it is now clearly established that a pension scheme for public servants falls within the scope of the principle of equal pay if the benefits payable under the scheme are paid to the worker by reason of his/her employment relationship with the public employer, notwithstanding the fact that such scheme forms part of a general statutory scheme. According to the judgments of the Court of Justice in Cases C-7/93 ⁽²⁾ and C-351/00 ⁽³⁾, that condition will be satisfied if the pension scheme concerns a particular category of workers and its benefits are directly related to the period of service and calculated by reference to the public servant's final salary. For reasons of clarity, it is therefore appropriate to make specific provision to that effect.
- (15) The Court of Justice has confirmed that whilst the contributions of male and female workers to a defined-benefit pension scheme are covered by Article 141 of the Treaty, any inequality in employers' contributions paid under funded defined-benefit schemes which is due to the use of actuarial factors differing according to sex is not to be assessed in the light of that same provision.
- (16) By way of example, in the case of funded defined-benefit schemes, certain elements, such as conversion into a capital sum of part of a periodic pension, transfer of pension rights, a reversionary pension payable to a dependant in return for the surrender of part of a pension or a reduced pension where the worker opts to take earlier retirement, may be unequal where the inequality of the amounts results from the effects of the use of actuarial factors differing according to sex at the time when the scheme's funding is implemented.
- (17) It is well established that benefits payable under occupational social security schemes are not to be considered as remuneration insofar as they are attributable to periods of employment prior to 17 May 1990, except in the case of workers or those claiming under them who initiated legal proceedings or brought an equivalent claim under the applicable national law before that date. It is therefore necessary to limit the implementation of the principle of equal treatment accordingly.
- (18) The Court of Justice has consistently held that the Barber Protocol ⁽⁴⁾ does not affect the right to join an occupational pension scheme and that the limitation of the effects in time of the judgment in Case C-262/88 does not apply to the right to join an occupational pension scheme. The Court of Justice also ruled that the national rules relating to time limits for bringing actions under national law may be relied on against workers who assert their right to join an occupational pension scheme, provided that they are not less favourable for that type of action than for similar actions of a domestic nature and that they do not render the exercise of rights conferred by Community law impossible in practice. The Court of Justice has also pointed out that the fact that a worker can claim retroactively to join an occupational pension scheme does not allow the worker to avoid paying the contributions relating to the period of membership concerned.
- (19) Ensuring equal access to employment and the vocational training leading thereto is fundamental to the application of the principle of equal treatment of men and women in matters of employment and occupation. Any exception to this principle should therefore be limited to those occupational activities which necessitate the employment of a person of a particular sex by reason of their nature or the context in which they are carried out, provided that the objective sought is legitimate and complies with the principle of proportionality.

⁽¹⁾ C-262/88: Barber v Guardian Royal Exchange Assurance Group (1990 ECR I-1889).

⁽²⁾ C-7/93: Bestuur van het Algemeen Burgerlijk Pensioenfonds v G. A. Beune (1994 ECR I-4471).

⁽³⁾ C-351/00: Pirkko Niemi (2002 ECR I-7007).

⁽⁴⁾ Protocol 17 concerning Article 141 of the Treaty establishing the European Community (1992).

- (20) This Directive does not prejudice freedom of association, including the right to establish unions with others and to join unions to defend one's interests. Measures within the meaning of Article 141(4) of the Treaty may include membership or the continuation of the activity of organisations or unions whose main objective is the promotion, in practice, of the principle of equal treatment between men and women.
- (21) The prohibition of discrimination should be without prejudice to the maintenance or adoption of measures intended to prevent or compensate for disadvantages suffered by a group of persons of one sex. Such measures permit organisations of persons of one sex where their main object is the promotion of the special needs of those persons and the promotion of equality between men and women.
- (22) In accordance with Article 141(4) of the Treaty, with a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment does not prevent Member States from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers. Given the current situation and bearing in mind Declaration No 28 to the Amsterdam Treaty, Member States should, in the first instance, aim at improving the situation of women in working life.
- (23) It is clear from the case-law of the Court of Justice that unfavourable treatment of a woman related to pregnancy or maternity constitutes direct discrimination on grounds of sex. Such treatment should therefore be expressly covered by this Directive.
- (24) The Court of Justice has consistently recognised the legitimacy, as regards the principle of equal treatment, of protecting a woman's biological condition during pregnancy and maternity and of introducing maternity protection measures as a means to achieve substantive equality. This Directive should therefore be without prejudice to Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding⁽¹⁾. This Directive should further be without prejudice to Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC⁽²⁾.
- (25) For reasons of clarity, it is also appropriate to make express provision for the protection of the employment rights of women on maternity leave and in particular their right to return to the same or an equivalent post, to suffer no detriment in their terms and conditions as a result of taking such leave and to benefit from any improvement in working conditions to which they would have been entitled during their absence.
- (26) In the Resolution of the Council and of the Ministers for Employment and Social Policy, meeting within the Council, of 29 June 2000 on the balanced participation of women and men in family and working life⁽³⁾, Member States were encouraged to consider examining the scope for their respective legal systems to grant working men an individual and non-transferable right to paternity leave, while maintaining their rights relating to employment.
- (27) Similar considerations apply to the granting by Member States to men and women of an individual and non-transferable right to leave subsequent to the adoption of a child. It is for the Member States to determine whether or not to grant such a right to paternity and/or adoption leave and also to determine any conditions, other than dismissal and return to work, which are outside the scope of this Directive.
- (28) The effective implementation of the principle of equal treatment requires appropriate procedures to be put in place by the Member States.
- (29) The provision of adequate judicial or administrative procedures for the enforcement of the obligations imposed by this Directive is essential to the effective implementation of the principle of equal treatment.
- (30) The adoption of rules on the burden of proof plays a significant role in ensuring that the principle of equal treatment can be effectively enforced. As the Court of Justice has held, provision should therefore be made to ensure that the burden of proof shifts to the respondent when there is a *prima facie* case of discrimination, except in relation to proceedings in which it is for the court or other competent national body to investigate the facts. It is however necessary to clarify that the appreciation of the facts from which it may be presumed that there has been direct or indirect discrimination remains a matter for the relevant national body in accordance with national law or practice. Further, it is for the Member States to introduce, at any appropriate stage of the proceedings, rules of evidence which are more favourable to plaintiffs.
- (31) With a view to further improving the level of protection offered by this Directive, associations, organisations and other legal entities should also be empowered to engage in proceedings, as the Member States so determine, either on behalf or in support of a complainant, without prejudice to national rules of procedure concerning representation and defence.
- (32) Having regard to the fundamental nature of the right to effective legal protection, it is appropriate to ensure that workers continue to enjoy such protection even after the relationship giving rise to an alleged breach of the principle

⁽¹⁾ OJ L 348, 28.11.1992, p. 1.

⁽²⁾ OJ L 145, 19.6.1996, p. 4. Directive as amended by Directive 97/75/EC (OJ L 10, 16.1.1998, p. 24).

⁽³⁾ OJ C 218, 31.7.2000, p. 5.

of equal treatment has ended. An employee defending or giving evidence on behalf of a person protected under this Directive should be entitled to the same protection.

- (33) It has been clearly established by the Court of Justice that in order to be effective, the principle of equal treatment implies that the compensation awarded for any breach must be adequate in relation to the damage sustained. It is therefore appropriate to exclude the fixing of any prior upper limit for such compensation, except where the employer can prove that the only damage suffered by an applicant as a result of discrimination within the meaning of this Directive was the refusal to take his/her job application into consideration.
- (34) In order to enhance the effective implementation of the principle of equal treatment, Member States should promote dialogue between the social partners and, within the framework of national practice, with non-governmental organisations.
- (35) Member States should provide for effective, proportionate and dissuasive penalties for breaches of the obligations under this Directive.
- (36) Since the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (37) For the sake of a better understanding of the different treatment of men and women in matters of employment and occupation, comparable statistics disaggregated by sex should continue to be developed, analysed and made available at the appropriate levels.
- (38) Equal treatment of men and women in matters of employment and occupation cannot be restricted to legislative measures. Instead, the European Union and the Member States should continue to promote the raising of public awareness of wage discrimination and the changing of public attitudes, involving all parties concerned at public and private level to the greatest possible extent. The dialogue between the social partners could play an important role in this process.
- (39) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directives. The obligation to transpose the provisions which are substantially unchanged arises under the earlier Directives.
- (40) This Directive should be without prejudice to the obligations of the Member States relating to the time limits for transposition into national law and application of the Directives set out in Annex I, Part B.

- (41) In accordance with paragraph 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, which will, as far as possible, illustrate the correlation between this Directive and the transposition measures and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

TITLE I

GENERAL PROVISIONS

Article 1

Purpose

The purpose of this Directive is to ensure the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

To that end, it contains provisions to implement the principle of equal treatment in relation to:

- (a) access to employment, including promotion, and to vocational training;
- (b) working conditions, including pay;
- (c) occupational social security schemes.

It also contains provisions to ensure that such implementation is made more effective by the establishment of appropriate procedures.

Article 2

Definitions

1. For the purposes of this Directive, the following definitions shall apply:
 - (a) 'direct discrimination': where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation;
 - (b) 'indirect discrimination': where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary;
 - (c) 'harassment': where unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment;

⁽¹⁾ OJ C 321, 31.12.2003, p. 1.

(d) 'sexual harassment': where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment;

(e) 'pay': the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his/her employment from his/her employer;

(f) 'occupational social security schemes': schemes not governed by Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security ⁽¹⁾ whose purpose is to provide workers, whether employees or self-employed, in an undertaking or group of undertakings, area of economic activity, occupational sector or group of sectors with benefits intended to supplement the benefits provided by statutory social security schemes or to replace them, whether membership of such schemes is compulsory or optional.

2. For the purposes of this Directive, discrimination includes:

- (a) harassment and sexual harassment, as well as any less favourable treatment based on a person's rejection of or submission to such conduct;
- (b) instruction to discriminate against persons on grounds of sex;
- (c) any less favourable treatment of a woman related to pregnancy or maternity leave within the meaning of Directive 92/85/EEC.

Article 3

Positive action

Member States may maintain or adopt measures within the meaning of Article 141(4) of the Treaty with a view to ensuring full equality in practice between men and women in working life.

⁽¹⁾ OJ L 6, 10.1.1979, p. 24.

TITLE II

SPECIFIC PROVISIONS

CHAPTER 1

Equal pay

Article 4

Prohibition of discrimination

For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated.

In particular, where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.

CHAPTER 2

Equal treatment in occupational social security schemes

Article 5

Prohibition of discrimination

Without prejudice to Article 4, there shall be no direct or indirect discrimination on grounds of sex in occupational social security schemes, in particular as regards:

- (a) the scope of such schemes and the conditions of access to them;
- (b) the obligation to contribute and the calculation of contributions;
- (c) the calculation of benefits, including supplementary benefits due in respect of a spouse or dependants, and the conditions governing the duration and retention of entitlement to benefits.

Article 6

Personal scope

This Chapter shall apply to members of the working population, including self-employed persons, persons whose activity is interrupted by illness, maternity, accident or involuntary unemployment and persons seeking employment and to retired and disabled workers, and to those claiming under them, in accordance with national law and/or practice.

*Article 7***Material scope**

1. This Chapter applies to:
 - (a) occupational social security schemes which provide protection against the following risks:
 - (i) sickness,
 - (ii) invalidity,
 - (iii) old age, including early retirement,
 - (iv) industrial accidents and occupational diseases,
 - (v) unemployment;
 - (b) occupational social security schemes which provide for other social benefits, in cash or in kind, and in particular survivors' benefits and family allowances, if such benefits constitute a consideration paid by the employer to the worker by reason of the latter's employment.

2. This Chapter also applies to pension schemes for a particular category of worker such as that of public servants if the benefits payable under the scheme are paid by reason of the employment relationship with the public employer. The fact that such a scheme forms part of a general statutory scheme shall be without prejudice in that respect.

*Article 8***Exclusions from the material scope**

1. This Chapter does not apply to:
 - (a) individual contracts for self-employed persons;
 - (b) single-member schemes for self-employed persons;
 - (c) insurance contracts to which the employer is not a party, in the case of workers;
 - (d) optional provisions of occupational social security schemes offered to participants individually to guarantee them:
 - (i) either additional benefits,
 - (ii) or a choice of date on which the normal benefits for self-employed persons will start, or a choice between several benefits;
 - (e) occupational social security schemes in so far as benefits are financed by contributions paid by workers on a voluntary basis.

2. This Chapter does not preclude an employer granting to persons who have already reached the retirement age for the purposes of granting a pension by virtue of an occupational social security scheme, but who have not yet reached the retirement age for the purposes of granting a statutory retirement pension, a pension supplement, the aim of which is to make equal or more nearly equal the overall amount of benefit paid to these persons in relation to the amount paid to persons of the other sex in the same situation who have already reached the statutory retirement age, until the persons benefiting from the supplement reach the statutory retirement age.

*Article 9***Examples of discrimination**

1. Provisions contrary to the principle of equal treatment shall include those based on sex, either directly or indirectly, for:

- (a) determining the persons who may participate in an occupational social security scheme;
- (b) fixing the compulsory or optional nature of participation in an occupational social security scheme;
- (c) laying down different rules as regards the age of entry into the scheme or the minimum period of employment or membership of the scheme required to obtain the benefits thereof;
- (d) laying down different rules, except as provided for in points (h) and (j), for the reimbursement of contributions when a worker leaves a scheme without having fulfilled the conditions guaranteeing a deferred right to long-term benefits;
- (e) setting different conditions for the granting of benefits or restricting such benefits to workers of one or other of the sexes;
- (f) fixing different retirement ages;
- (g) suspending the retention or acquisition of rights during periods of maternity leave or leave for family reasons which are granted by law or agreement and are paid by the employer;
- (h) setting different levels of benefit, except in so far as may be necessary to take account of actuarial calculation factors which differ according to sex in the case of defined-contribution schemes; in the case of funded defined-benefit schemes, certain elements may be unequal where the inequality of the amounts results from the effects of the use of actuarial factors differing according to sex at the time when the scheme's funding is implemented;

- (i) setting different levels for workers' contributions;
- (j) setting different levels for employers' contributions, except:
 - (i) in the case of defined-contribution schemes if the aim is to equalise the amount of the final benefits or to make them more nearly equal for both sexes,
 - (ii) in the case of funded defined-benefit schemes where the employer's contributions are intended to ensure the adequacy of the funds necessary to cover the cost of the benefits defined;
- (k) laying down different standards or standards applicable only to workers of a specified sex, except as provided for in points (h) and (j), as regards the guarantee or retention of entitlement to deferred benefits when a worker leaves a scheme.

2. Where the granting of benefits within the scope of this Chapter is left to the discretion of the scheme's management bodies, the latter shall comply with the principle of equal treatment.

Article 10

Implementation as regards self-employed persons

1. Member States shall take the necessary steps to ensure that the provisions of occupational social security schemes for self-employed persons contrary to the principle of equal treatment are revised with effect from 1 January 1993 at the latest or for Member States whose accession took place after that date, at the date that Directive 86/378/EEC became applicable in their territory.
2. This Chapter shall not preclude rights and obligations relating to a period of membership of an occupational social security scheme for self-employed persons prior to revision of that scheme from remaining subject to the provisions of the scheme in force during that period.

Article 11

Possibility of deferral as regards self-employed persons

As regards occupational social security schemes for self-employed persons, Member States may defer compulsory application of the principle of equal treatment with regard to:

- (a) determination of pensionable age for the granting of old-age or retirement pensions, and the possible implications for other benefits:
 - (i) either until the date on which such equality is achieved in statutory schemes,
 - (ii) or, at the latest, until such equality is prescribed by a directive;

- (b) survivors' pensions until Community law establishes the principle of equal treatment in statutory social security schemes in that regard;
- (c) the application of Article 9(1)(i) in relation to the use of actuarial calculation factors, until 1 January 1999 or for Member States whose accession took place after that date until the date that Directive 86/378/EEC became applicable in their territory.

Article 12

Retroactive effect

1. Any measure implementing this Chapter, as regards workers, shall cover all benefits under occupational social security schemes derived from periods of employment subsequent to 17 May 1990 and shall apply retroactively to that date, without prejudice to workers or those claiming under them who have, before that date, initiated legal proceedings or raised an equivalent claim under national law. In that event, the implementation measures shall apply retroactively to 8 April 1976 and shall cover all the benefits derived from periods of employment after that date. For Member States which acceded to the Community after 8 April 1976, and before 17 May 1990, that date shall be replaced by the date on which Article 141 of the Treaty became applicable in their territory.

2. The second sentence of paragraph 1 shall not prevent national rules relating to time limits for bringing actions under national law from being relied on against workers or those claiming under them who initiated legal proceedings or raised an equivalent claim under national law before 17 May 1990, provided that they are not less favourable for that type of action than for similar actions of a domestic nature and that they do not render the exercise of rights conferred by Community law impossible in practice.

3. For Member States whose accession took place after 17 May 1990 and which were on 1 January 1994 Contracting Parties to the Agreement on the European Economic Area, the date of 17 May 1990 in the first sentence of paragraph 1 shall be replaced by 1 January 1994.

4. For other Member States whose accession took place after 17 May 1990, the date of 17 May 1990 in paragraphs 1 and 2 shall be replaced by the date on which Article 141 of the Treaty became applicable in their territory.

Article 13

Flexible pensionable age

Where men and women may claim a flexible pensionable age under the same conditions, this shall not be deemed to be incompatible with this Chapter.

CHAPTER 3

Equal treatment as regards access to employment, vocational training and promotion and working conditions

Article 14

Prohibition of discrimination

1. There shall be no direct or indirect discrimination on grounds of sex in the public or private sectors, including public bodies, in relation to:

- (a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
- (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
- (c) employment and working conditions, including dismissals, as well as pay as provided for in Article 141 of the Treaty;
- (d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

2. Member States may provide, as regards access to employment including the training leading thereto, that a difference of treatment which is based on a characteristic related to sex shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that its objective is legitimate and the requirement is proportionate.

Article 15

Return from maternity leave

A woman on maternity leave shall be entitled, after the end of her period of maternity leave, to return to her job or to an equivalent post on terms and conditions which are no less favourable to her and to benefit from any improvement in working conditions to which she would have been entitled during her absence.

Article 16

Paternity and adoption leave

This Directive is without prejudice to the right of Member States to recognise distinct rights to paternity and/or adoption leave. Those Member States which recognise such rights shall take the necessary measures to protect working men and women against dismissal due to exercising those rights and ensure that, at the

end of such leave, they are entitled to return to their jobs or to equivalent posts on terms and conditions which are no less favourable to them, and to benefit from any improvement in working conditions to which they would have been entitled during their absence.

TITLE III

HORIZONTAL PROVISIONS

CHAPTER 1

Remedies and enforcement

Section 1

Remedies

Article 17

Defence of rights

1. Member States shall ensure that, after possible recourse to other competent authorities including where they deem it appropriate conciliation procedures, judicial procedures for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.

2. Member States shall ensure that associations, organisations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his/her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.

3. Paragraphs 1 and 2 are without prejudice to national rules relating to time limits for bringing actions as regards the principle of equal treatment.

Article 18

Compensation or reparation

Member States shall introduce into their national legal systems such measures as are necessary to ensure real and effective compensation or reparation as the Member States so determine for the loss and damage sustained by a person injured as a result of discrimination on grounds of sex, in a way which is dissuasive and proportionate to the damage suffered. Such compensation or reparation may not be restricted by the fixing of a prior upper limit, except in cases where the employer can prove that the only damage suffered by an applicant as a result of discrimination within the meaning of this Directive is the refusal to take his/her job application into consideration.

Section 2

Burden of proof*Article 19***Burden of proof**

1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

2. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.

3. Member States need not apply paragraph 1 to proceedings in which it is for the court or competent body to investigate the facts of the case.

4. Paragraphs 1, 2 and 3 shall also apply to:

- (a) the situations covered by Article 141 of the Treaty and, insofar as discrimination based on sex is concerned, by Directives 92/85/EEC and 96/34/EC;
- (b) any civil or administrative procedure concerning the public or private sector which provides for means of redress under national law pursuant to the measures referred to in (a) with the exception of out-of-court procedures of a voluntary nature or provided for in national law.

5. This Article shall not apply to criminal procedures, unless otherwise provided by the Member States.

CHAPTER 2

Promotion of equal treatment — dialogue*Article 20***Equality bodies**

1. Member States shall designate and make the necessary arrangements for a body or bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex. These bodies may form part of agencies with responsibility at national level for the defence of human rights or the safeguard of individuals' rights.

2. Member States shall ensure that the competences of these bodies include:

- (a) without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 17(2), providing independent assistance to victims

of discrimination in pursuing their complaints about discrimination;

- (b) conducting independent surveys concerning discrimination;
- (c) publishing independent reports and making recommendations on any issue relating to such discrimination;
- (d) at the appropriate level exchanging available information with corresponding European bodies such as any future European Institute for Gender Equality.

*Article 21***Social dialogue**

1. Member States shall, in accordance with national traditions and practice, take adequate measures to promote social dialogue between the social partners with a view to fostering equal treatment, including, for example, through the monitoring of practices in the workplace, in access to employment, vocational training and promotion, as well as through the monitoring of collective agreements, codes of conduct, research or exchange of experience and good practice.

2. Where consistent with national traditions and practice, Member States shall encourage the social partners, without prejudice to their autonomy, to promote equality between men and women, and flexible working arrangements, with the aim of facilitating the reconciliation of work and private life, and to conclude, at the appropriate level, agreements laying down anti-discrimination rules in the fields referred to in Article 1 which fall within the scope of collective bargaining. These agreements shall respect the provisions of this Directive and the relevant national implementing measures.

3. Member States shall, in accordance with national law, collective agreements or practice, encourage employers to promote equal treatment for men and women in a planned and systematic way in the workplace, in access to employment, vocational training and promotion.

4. To this end, employers shall be encouraged to provide at appropriate regular intervals employees and/or their representatives with appropriate information on equal treatment for men and women in the undertaking.

Such information may include an overview of the proportions of men and women at different levels of the organisation; their pay and pay differentials; and possible measures to improve the situation in cooperation with employees' representatives.

*Article 22***Dialogue with non-governmental organisations**

Member States shall encourage dialogue with appropriate non-governmental organisations which have, in accordance with their national law and practice, a legitimate interest in contributing to

the fight against discrimination on grounds of sex with a view to promoting the principle of equal treatment.

Article 26

CHAPTER 3

General horizontal provisions

Article 23

Compliance

Member States shall take all necessary measures to ensure that:

- (a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished;
- (b) provisions contrary to the principle of equal treatment in individual or collective contracts or agreements, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations or any other arrangements shall be, or may be, declared null and void or are amended;
- (c) occupational social security schemes containing such provisions may not be approved or extended by administrative measures.

Article 24

Victimisation

Member States shall introduce into their national legal systems such measures as are necessary to protect employees, including those who are employees' representatives provided for by national laws and/or practices, against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment.

Article 25

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are applied. The penalties, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by 5 October 2005 at the latest and shall notify it without delay of any subsequent amendment affecting them.

Prevention of discrimination

Member States shall encourage, in accordance with national law, collective agreements or practice, employers and those responsible for access to vocational training to take effective measures to prevent all forms of discrimination on grounds of sex, in particular harassment and sexual harassment in the workplace, in access to employment, vocational training and promotion.

Article 27

Minimum requirements

1. Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.
2. Implementation of this Directive shall under no circumstances be sufficient grounds for a reduction in the level of protection of workers in the areas to which it applies, without prejudice to the Member States' right to respond to changes in the situation by introducing laws, regulations and administrative provisions which differ from those in force on the notification of this Directive, provided that the provisions of this Directive are complied with.

Article 28

Relationship to Community and national provisions

1. This Directive shall be without prejudice to provisions concerning the protection of women, particularly as regards pregnancy and maternity.
2. This Directive shall be without prejudice to the provisions of Directive 96/34/EC and Directive 92/85/EEC.

Article 29

Gender mainstreaming

Member States shall actively take into account the objective of equality between men and women when formulating and implementing laws, regulations, administrative provisions, policies and activities in the areas referred to in this Directive.

Article 30

Dissemination of information

Member States shall ensure that measures taken pursuant to this Directive, together with the provisions already in force, are brought to the attention of all the persons concerned by all suitable means and, where appropriate, at the workplace.

TITLE IV

FINAL PROVISIONS

Article 31

Reports

1. By 15 February 2011, the Member States shall communicate to the Commission all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.

2. Without prejudice to paragraph 1, Member States shall communicate to the Commission, every four years, the texts of any measures adopted pursuant to Article 141(4) of the Treaty, as well as reports on these measures and their implementation. On the basis of that information, the Commission will adopt and publish every four years a report establishing a comparative assessment of any measures in the light of Declaration No 28 annexed to the Final Act of the Treaty of Amsterdam.

3. Member States shall assess the occupational activities referred to in Article 14(2), in order to decide, in the light of social developments, whether there is justification for maintaining the exclusions concerned. They shall notify the Commission of the results of this assessment periodically, but at least every 8 years.

Article 32

Review

By 15 February 2011 at the latest, the Commission shall review the operation of this Directive and if appropriate, propose any amendments it deems necessary.

Article 33

Implementation

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 15 August 2008 at the latest or shall ensure, by that date, that management and labour introduce the requisite provisions by way of agreement. Member States may, if necessary to take account of particular difficulties, have up to one additional year to comply with this Directive. Member States shall take all necessary steps to be able to guarantee the results imposed by this Directive. They shall forthwith communicate to the Commission the texts of those measures.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directives repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

The obligation to transpose this Directive into national law shall be confined to those provisions which represent a substantive change as compared with the earlier Directives. The obligation to transpose the provisions which are substantially unchanged arises under the earlier Directives.

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

Article 34

Repeal

1. With effect from 15 August 2009 Directives 75/117/EEC, 76/207/EEC, 86/378/EEC and 97/80/EC shall be repealed without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex I, Part B.

2. References made to the repealed Directives shall be construed as being made to this Directive and should be read in accordance with the correlation table in Annex II.

Article 35

Entry into force

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

Article 36

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 5 July 2006.

For the European Parliament

The President

J. BORRELL FONTELLES

For the Council

The President

P. LEHTOMÄKI

ANNEX I

PART A

Repealed Directives with their successive amendments

Council Directive 75/117/EEC	OJ L 45, 19.2.1975, p. 19
Council Directive 76/207/EEC	OJ L 39, 14.2.1976, p. 40
Directive 2002/73/EC of the European Parliament and of the Council	OJ L 269, 5.10.2002, p. 15
Council Directive 86/378/EEC	OJ L 225, 12.8.1986, p. 40
Council Directive 96/97/EC	OJ L 46, 17.2.1997, p. 20
Council Directive 97/80/EC	OJ L 14, 20.1.1998, p. 6
Council Directive 98/52/EC	OJ L 205, 22.7.1998, p. 66

PART B

List of time limits for transposition into national law and application dates

(referred to in Article 34(1))

Directive	Time-limit for transposition	Date of application
Directive 75/117/EEC	19.2.1976	
Directive 76/207/EEC	14.8.1978	
Directive 86/378/EEC	1.1.1993	
Directive 96/97/EC	1.7.1997	17.5.1990 in relation to workers, except for those workers or those claiming under them who had before that date initiated legal proceedings or raised an equivalent claim under national law. Article 8 of Directive 86/378/EEC — 1.1.1993 at the latest. Article 6(1)(i), first indent of Directive 86/378/EEC — 1.1.1999 at the latest.
Directive 97/80/EC	1.1.2001	As regards the United Kingdom of Great Britain and Northern Ireland 22.7.2001
Directive 98/52/EC	22.7.2001	
Directive 2002/73/EC	5.10.2005	

ANNEX II

Correlation table

Directive 75/117/EEC	Directive 76/207/EEC	Directive 86/378/EEC	Directive 97/80/EC	This Directive
—	Article 1(1)	Article 1	Article 1	Article 1
—	Article 1(2)	—	—	—
—	Article 2(2), first indent	—	—	Article 2(1), (a)
—	Article 2(2), second indent	—	Article 2(2)	Article 2(1), (b)
—	Article 2(2), third and fourth indents	—	—	Article 2(1), (c) and (d)
—	—	—	—	Article 2(1), (e)
—	—	Article 2(1)	—	Article 2(1), (f)
—	Article 2(3) and (4) and Article 2(7) third subparagraph	—	—	Article 2(2)
—	Article 2(8)	—	—	Article 3
Article 1	—	—	—	Article 4
—	—	Article 5(1)	—	Article 5
—	—	Article 3	—	Article 6
—	—	Article 4	—	Article 7(1)
—	—	—	—	Article 7(2)
—	—	Article 2(2)	—	Article 8(1)
—	—	Article 2(3)	—	Article 8(2)
—	—	Article 6	—	Article 9
—	—	Article 8	—	Article 10
—	—	Article 9	—	Article 11
—	—	(Article 2 of Directive 96/97/EC)	—	Article 12
—	—	Article 9a	—	Article 13
—	Articles 2(1) and 3(1)	—	Article 2(1)	Article 14(1)
—	Article 2(6)	—	—	Article 14(2)
—	Article 2(7), second subparagraph	—	—	Article 15
—	Article 2(7), fourth subparagraph, second and third sentence	—	—	Article 16
Article 2	Article 6(1)	Article 10	—	Article 17(1)
—	Article 6(3)	—	—	Article 17(2)
—	Article 6(4)	—	—	Article 17(3)

Directive 75/117/EEC	Directive 76/207/EEC	Directive 86/378/EEC	Directive 97/80/EC	This Directive
—	Article 6(2)	—	—	Article 18
—	—	—	Articles 3 and 4	Article 19
—	Article 8a	—	—	Article 20
—	Article 8b	—	—	Article 21
—	Article 8c	—	—	Article 22
Articles 3 and 6	Article 3 (2)(a)	—	—	Article 23(a)
Article 4	Article 3(2)(b)	Article 7(a)	—	Article 23(b)
—	—	Article 7(b)	—	Article 23(c)
Article 5	Article 7	Article 11	—	Article 24
Article 6	—	—	—	—
—	Article 8d	—	—	Article 25
—	Article 2(5)	—	—	Article 26
—	Article 8e(1)	—	Article 4(2)	Article 27(1)
—	Article 8e(2)	—	Article 6	Article 27(2)
—	Article 2(7) first subparagraph	Article 5(2)	—	Article 28(1)
—	Article 2(7) fourth subparagraph first sentence	—	—	Article 28(2)
—	Article 1(1a)	—	—	Article 29
Article 7	Article 8	—	Article 5	Article 30
Article 9	Article 10	Article 12(2)	Article 7, fourth subparagraph	Article 31(1) and (2)
—	Article 9(2)	—	—	Article 31(3)
—	—	—	—	Article 32
Article 8	Article 9(1), first subparagraph and 9 (2) and (3)	Article 12(1)	Article 7, first, second and third subparagraphs	Article 33
—	Article 9(1), second subparagraph	—	—	—
—	—	—	—	Article 34
—	—	—	—	Article 35
—	—	—	—	Article 36
—	—	Annex	—	—